

An abstract graphic in the top left corner consisting of a network of white dots connected by thin white lines, set against a dark blue background that transitions to a lighter blue on the left.

# **CONSENT, FORMS & GDPR**

Best Practice Guide



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# Introduction

In this paper, we will help you better understand how the General Data Protection Regulation (GDPR) will impact the email consent process and how to tackle those changes to create best-in-class consent forms across multiple channels and mediums.

**Note: This paper does not constitute legal advice, so any changes to your current processes and forms should be reviewed with your legal team or advisors.**

## What is the GDPR?

The General Data Protection Regulation (GDPR) has been put together to protect the privacy and data of EU citizens. It replaces the Data Protection Directive 95/46/EC, and aims to harmonise and broaden the reach of EU data protection law across Europe. In May 2018, the GDPR will signify change for a lot of marketers, specifically they will affect the way data is collected, processed and used.

# What has changed?

The current Data Protection Directive (officially Directive 95/46/EC) defines an individual's consent as "any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed."

The standards for lawful consent have now been raised under the GDPR. On 25th May 2018, the new EU regulation (GDPR), aims to give citizens control of their personal data and to simplify the regulatory environment for internal businesses by unifying the regulation within the EU. Personal data must be collected for specified, explicit and legitimate purposes relative to the purposes for which they are processed.

With regards to 'sign-up', a few things have changed:

1. Indication of consent must be unambiguous and involve a clear affirmative action.
2. Consent should be separate from other terms and conditions. It should not be a precondition of signing up to a service.
3. The GDPR specifically bans pre-ticked opt-in boxes.
4. It requires granular consent for distinct processing operations.
5. The GDPR gives a specific right to withdraw consent. You need to tell people about their right to withdraw, and offer them easy ways to withdraw consent at any time.

Consent under the GDPR must be "freely given, specific, informed and unambiguous consent; which informs subscribers about the brand that's collecting the consent and provide information about the purposes of collecting personal data," according to the Information Commissioner's Office (ICO) circa May 2017.

## Why does it matter?

Contact without consent results in bad customer experiences. You must earn the right to market to customers. But it isn't just for your customer's benefit – gaining proper consent will put your audience in control, build customer trust and engagement and enhance your reputation. Relying on inappropriate or invalid consent can destroy trust and harm your reputation – and may leave you open to substantial fines.

Failure to comply with the GDPR by May 2018 can lead to stiff penalties from the ICO. The first is a maximum fine of up to €10 million or 2% of your global turnover, whichever is higher. The second is a maximum fine of up to €20 million or 4% of your global turnover, whichever is higher.

We know that the ICO has been working hard behind the scenes to identify organisations that are not complying with the new regulations.

Some brands have already made unfortunate mistakes resulting in huge fines for their organisations. Let's take a quick look at what has happened.

## Honda fined £13,000

### **What did it do?**

Honda sent 289,790 emails that aimed to clarify its customers' choices for receiving marketing. The data had been acquired from numerous sources, including sign-ups made via the website and promotional events, and customers details passed on from dealers, etc.

### **What went wrong?**

Honda could not provide evidence that customers had ever given consent to receive this type of email. Furthermore, its emails were not related to customer service, but instead were classed as marketing related.

[Read the ICO's penalty notice against Honda here.](#)

## Flybe fined £7,000

### **What did it do?**

Flybe sent 3.3 million emails in August 2016 with the subject line 'Are your details correct?' advising recipients to amend any outdated information and update any marketing preferences. The email also stated an opportunity to be entered into a prize draw on completion of their preferences update. Flybe had categorised this campaign as 'data cleansing, however the ICO could not justify this claim, as the email had been sent to customers who had previously opted out of receiving marketing messages, and therefore would not require any update to their records.

### **What went wrong?**

The customers contacted by Flybe clearly had an opt-out status, meaning the company simply did not have the right to contact them via email. Secondly, the email contained an incentive, which by the new standards of consent, must be freely given. Having an incentive is doing quite the opposite.

[Read the ICO's penalty notice against Flybe here.](#)

## WHAT DO YOU NEED TO DO?

1. Make the necessary changes to your consent forms so that they comply with the GDPR rules moving forward.
2. Look back at the methods you've used to acquire subscribers in the past and consider a re-permission programme if you're concerned that it may not meet the standards of the GDPR.

Steve Eckersley, ICO Head of Enforcement said:

*"Both companies sent emails asking for consent to future marketing. In doing so they broke the law. Sending emails to determine whether people want to receive marketing without the right consent, is still marketing and it is against the law ... Businesses must understand they can't break one law to get ready for another."*

Sounds scary, right? But let's consider what you can do.

# Best practices for consent forms

The GDPR defines consent as: "Freely given, specific, informed and unambiguous consent; which informs subscribers about the brand that's collecting the consent and provide information about the purposes of collecting personal data," via the ICO, May 2017.

We have suggested a list of best practices to help you bring your consent forms in compliance with these new regulations:

## Tip 1: Use easy, clear language

Consent must be unambiguous. This means customers need to easily understand what they are signing up for. Avoid double negatives, and use the simplest language possible. If there is any room for doubt, it is not valid consent.

Examples:

"I would like to receive emails from [Brand name]"

"Sign me up for email communications"

"I understand and agree to the email marketing terms & conditions"

## Tip 2: Customers should actively opt-in

If you choose to use a checkbox, avoid having it pre-ticked. Customers should take an action to subscribe to any communications. Pre-ticked boxes, opt-out boxes or default settings should be avoided. Options need to have equal prominence.

## Tip 3: Let customers freely choose content, channel and frequency and gain consent for each

Sales emails, product launch communications and behaviour-based targeting are all different methods of marketing. Try to provide granular consent options for each marketing type, as blanketing will not provide your customers with an outstanding experience. This should also apply to frequency and channel. Customers should be provided with frequency and channel preference options as well. As always, consent must be gained at each level.

## Tip 4: Do not tie consent to other agreements, nor use incentives

Be sure to keep email marketing consent requests separate from other bundled terms and conditions. This especially applies at checkout stage. Consent should also not be a precondition of signing up to a service, unless it is necessary for that service.

Example:

"Click here to view our mailing terms and conditions"

## Tip 5: Explain clearly how customers can withdraw consent

Tell your customers they have the right to withdraw their consent at any time, and clearly detail how to do this. It should be as easy to withdraw as it was to give consent. This means you will need to have simple and effective withdrawal mechanisms in place, such as a preference centre for example.

Examples:

“All our communications contain an unsubscribe link.”

“If you wish to stop receiving communications from us, you will be able to do so by following the preference centre link in our emails and website footer.”

# Channel-specific consent forms

Understanding best practices for consent forms is all well and good, but entry into a subscription list can come from a range of different channels and mediums – from websites (via a registration page, a quick sign-up form, pop ups and checkout pages), to social media channels and mobile apps.

Below are some best practices to help you create consent forms across the various mediums and channels. Remember to get your new subscriptions process approved by your legal team before going live.

## Website

Customers can sign up to your newsletter communications via a range of methods:

### Registration Form

- Positive action to opt in (click a button / tick a box)
- Provide a choice of frequency, content and channel
- Clear mailing terms and conditions, not bundled with other terms
- Tell customers what you will do with this data and ask for consent

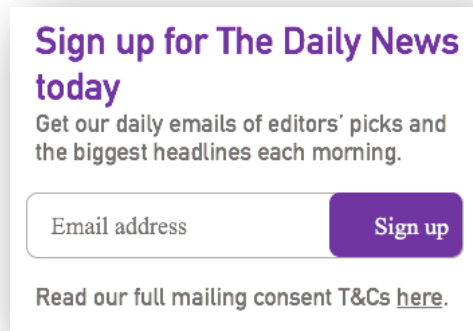
It could look like this...

The image shows a smartphone screen displaying a registration form. The form is divided into two main sections: 'Your information' and 'How we use your data'. The 'Your information' section includes input fields for 'First name', 'Last name', 'Email Address', 'Mobile phone number', and 'Date of birth' (with a date picker showing 4/20/2012). The 'How we use your data' section contains a paragraph of placeholder text, a checkbox for 'I agree to the use of my personal information in printing as explained in the [privacy policy](#)', and a 'Getting in touch' section. The 'Getting in touch' section has a sub-header 'We would like to let you know about our latest products...' and a question 'Choose how you would like to be contacted' with radio buttons for 'Email' and 'SMS'. Below this is another question 'Choose how you would like to hear about' with radio buttons for 'Product news and updates' and 'Special offers and sales'. A slider for 'How often would you like to hear from us?' is set to 'I don't want to miss a thing' on a scale from 'I don't want to miss a thing' to 'Just the really important stuff'. At the bottom, there is a checkbox for 'I agree to the [terms & conditions](#)' and a 'Sign up' button.

## Quick Sign-up Box and Pop-up Box

- Simple, clear language outlining content, channel, frequency and timings, i.e. 'sign up for daily emails on the biggest headlines each morning'
- No confusing tick boxes
- Affirmative action to opt in by clicking a sign-up button
- Link to mailing consent terms & conditions
- No incentive

It could look like this...



**Sign up for The Daily News today**

Get our daily emails of editors' picks and the biggest headlines each morning.

Email address

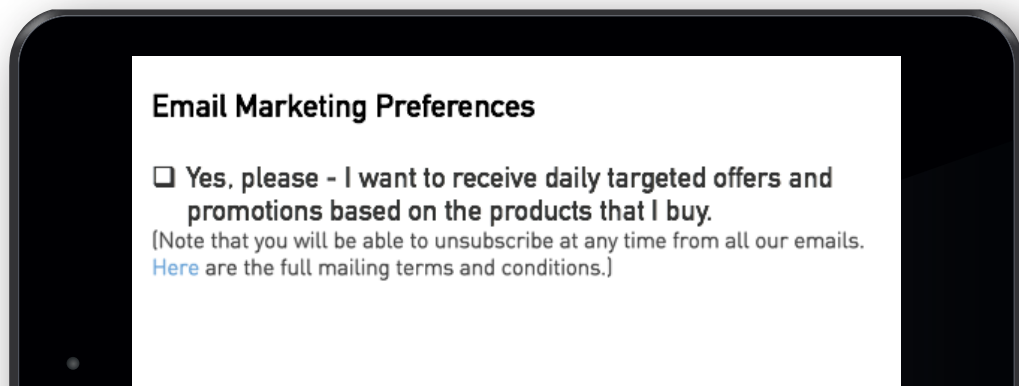
**Sign up**

Read our full mailing consent T&Cs [here](#).

## Checkout page

- Unselected box to subscribe to email
- Outlines channel, content and frequency expectations
- Link to mailing consent terms & conditions, kept separate from purchase terms & conditions

It could look like this...



**Email Marketing Preferences**

☐ **Yes, please - I want to receive daily targeted offers and promotions based on the products that I buy.**

(Note that you will be able to unsubscribe at any time from all our emails. [Here](#) are the full mailing terms and conditions.)

## Social media

As we know, social media is a great tool to help acquire more customers and engage with your most loyal fans. The various social media sites (Facebook, Twitter, Instagram) will have different subscription techniques. Let's explore some.

### Facebook and Twitter - Lead Generation Cards

- Copy outlines channel, content and frequency expectations
- Positive action required to subscribe
- Includes link to mailing privacy policy and how to unsubscribe
- No incentives

It could look like this...



## Mobile applications

Nowadays, most apps will require customer registration upon app open, as this allows for future one-to-one targeting, should they consent to marketing.

### Registration Form

- Content, frequency and channel outlined
- Positive action required for sign up
- Mailing terms & conditions not bundled with services terms & conditions

It could look like this...

Close



 SIGNUP WITH FACEBOOK

OR

 Email

 Password

 First Name  Last Name

 Date of Birth

☐ I want to receive daily emails on tips to improve my fitness

By continuing you are agreeing to our mailing terms, privacy and policy, terms of service and billing terms.

