

## **OFCOM telephone directory information obligations and regulations consultation.**

Response made on behalf of the Information Commissioner.

The operation of directory information services relies on the collection and use of information about individuals such as name, address and telephone number. As such, it is subject to the requirements of the Data Protection Act 1998 (the Act) and the Privacy and Electronic Communications Regulations 2003 (PECR). The Information Commissioner is responsible for enforcing and promoting compliance with both these pieces of legislation and we therefore welcome the opportunity to comment on OFCOM's proposals to revise regulations relating to the delivery of directory information services.

We do not think it appropriate to respond to each of the specific questions. Large sections of the consultation concern matters outside our area of expertise so this response is confined to Section 4 which concerns the use of subscriber information for the purpose of providing directory services. We have made some brief general comments, which we trust are relevant, whilst addressing the substance of some of the questions in Section 4.

We are keen to stress that subject to proper observance of the rights of individuals as set out in data protection legislation the legitimate interests of responsible directory service providers should not be unnecessarily inhibited. Indeed, recital eight of the Data Protection Directive 95/46/EC specifically refers to the need to 'remove obstacles to flows of personal data' and we are convinced that sensible, privacy friendly directory services can be offered within the existing legislative framework.

**Question 4.1:** *Do you agree with Ofcom's view that GC19 should be modified so as to clarify persons having 'rights of access' as set out above (a redrafted version of condition GC19 and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.*

We agree that it would be helpful to modify GC19. It is important that all parties are clear on the question of whether a person undertaking particular activities has a right to the information.

**Question 4.2:** *Do you have any other comments about 'rights of access'?*

It will be important to establish who decides if someone qualifies for access and who polices the exercising of these rights. There is a strong argument that given

their existing role in this area, then OFCOM is best placed to decide where there is a lack of certainty.

**Question 4.3:** *Do you agree with Ofcom's view that GC19 should be modified so that responsibility for the provision of information rests with the Communications Provider controlling the telephone number (a proposed redrafting of GC19 incorporating this change is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.*

**Question 4.4:** *Do you agree with Ofcom's view that GC19 should be modified so as to capture actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves (a proposed redrafting of the definition of directory information is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.*

We recognise the benefits of capturing end users in this context. There is clear enhanced value in a Directory Service which allows the identification of the individual using a number as opposed to the subscriber and we recognise that many end users will believe that they have a 'right' to be included in a directory subject to their own preferences. However, the new GC19 would place a number of obligations on subscribers (for example informing end users and asking whether they agree to their data being captured, providing those details to the communications provider in an adequate form). If these obligations are perceived as onerous, this may reduce the effectiveness of such directories in that it may actually be better to have no information about end users as opposed to woefully inaccurate information about end users who may have ceased using the number.

**Question 4.5:** *Do you consider that Ofcom should consider modifying GC19 (and related definitions, such as 'Directory Information') to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS)(a proposed redrafting of the condition and definition is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part only (e.g. a reference to public Electronic Communications Service being too wide), how do you suggest that Ofcom should address this matter?*

This is not strictly a matter for us to comment on but we recognise it would lead to the possibility for subscribers with VoIP and 'receive only' phone lines to be on a directory whereas at the moment they are not included. Our concern would be that providers are aware of the obligation to inform these users that their numbers may be captured.

**Question 4.6:** *Do you consider that Ofcom should modify GC19 (and related definitions, such as 'Directory Information') such that:*

- *end-user name and address are also required to be provided; and*
- *business and non-geographic numbers to replace geographic information in the end-user address with more relevant data that would allow the identification of the number by a third party (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you*

*disagree, please provide detailed reasons for this view. Or if you disagree in part, how do you suggest that Ofcom should address this matter?*

To build on the point made in response to question 4.4: they would require the communications provider to provide information that they do not have themselves – they rely on subscriber to pass it on and check it's up to date. Again, this could be seen to be onerous for subscribers and providers might, therefore, be wary of the quality of the data and have concerns that they would not be updated by subscribers. Practically, this could lead to disagreements between Directory Service providers and Communications Providers over whether end user data is held by the Communications Provider and also whether enough effort has been made to collect user data from subscribers.

**Question 4.7:** *Do you consider that there is a requirement for a wider mandated set of information beyond subscriber and end-user name and address under GC19? If so, what additional information do you think should be made available under GC19 – please provide reasons and any evidence to support why you consider that users regard such additional information as necessary to find the persons they are looking for by indicating what specific circumstances exist in the UK?*

There is a great deal made in this consultation of the importance of and value in allowing consumers easy access to information that allows them to contact specific people. We are not sure whether and to what extent the potential benefits to searchers of more information such as honours and qualifications outweigh the obvious point that much of it will be irrelevant to many searches

We accept that there may be circumstances where it would assist those searching for business contact numbers (looking for John Smith the chiropractor as opposed to John Smith the chiropodist) but mandating the collection and use of more information about end users might not sit comfortably with increased public concern about large databases – a concern which surely include directories in light of the large number of ex-directory fixed line numbers and the tiny number of mobile end users who opt in to mobile directories.

**Question 4.8:** *Do you agree with our assessment of Communications Providers responsibilities with respect to the provision of GC19 data? If not, please provide details of your objection to this assessment and your proposed alternative.*

The overall point appears to be that if consumers indicate information should be withheld then providers do not provide it to requesters. If this is the point, then we would agree.

A contrast has arisen between fixed line (opt out model) and mobile (opt in model) directories. We would like to stress that this difference does not arise from the legislation. Regulation 18 of the Privacy and Electronic Communications Regulations (PECR) prohibits inclusion of personal data relating to an individual subscriber unless the subscriber has been informed of the purposes of the directory and given the opportunity to consider whether the personal data should be included in the directory. Clearly, this does not establish either a strict opt-in or opt-out model and does not distinguish between fixed and mobile lines.

It is the case that both the 'fixed line' and 'mobile' models can be operated in compliance with Regulation 18. However, we feel it is important to note that the development of the

opt-in model for mobile subscribers has led to consumer expectation that in the mobile world their information will not be provided to a directory service provider unless they request that it is. The consequence for mobile directory service providers is that while they are entitled to adopt an opt-out model, they are likely to have to go to a great deal of effort to ensure that subscribers (and, presumably, end users) are aware of how the service operates and of the options available to them.

We would mention in passing that onward connection services, where no consumer information is disclosed to the enquirer, rather than the consumer is asked whether they would like to be put in contact with the enquirer, are one way in which consumers can be put in control of the information they choose to make available to directory services.

**Question 4.9:** *Do you agree that it is appropriate for the Opt-in approach to assume that not opting-in is equivalent to selecting an unlisted option? If not, please provide your reasons and your proposed alternative.*

We agree. We would have some concerns if a consumer who decides not to opt in finds that their status is not 'unlisted' but is in fact still available to the enquirer in that information is given out regarding a number relating to an individual was withheld. The latter result at least confirms to enquirer that particular person is a subscriber and is potentially a disclosure of personal data. We recognise that the opt-out approach offered in the fixed line context did not arise of any legislative requirements as the service existed before the current legislation.

We would ask OFCOM to consider whether or not communications providers should alert subscribers/end users to the various options available as opposed to merely an 'in or out' choice. This is especially important in the light of comments made above relating to different means of providing a directory service such as onward connection services which do not fit in with 'traditional' services but which still offer consumers a choice over whether their details are included in a directory.

**Question 4.10:** *Do you consider whether there are any issues arising in respect of the DIPs collection of additional data? If so, please provide details of any such concerns.*

Mobile devices and the numbers associated with them are regularly passed from user to user. We would therefore have concerns around keeping additional data up to date and the deletion of information relevant to the previous 'owner' when the DIP is made aware there is a new user.

**Question 4.11:** *Do you agree that there is no requirement for specific additional protection of end-user information? If not, please provide details of your objection to this assessment and any proposed alternative.*

Regulation 18 of PECR provides protection for those individuals who might be included in a directory. It is important to note as noted previously, that these relate to a subscriber not an end user –it therefore falls to the subscriber to inform the user an offer the choice of being in the directory. In most cases the risks which might stem from a subscriber failing to do this are low but we can imagine some situations where a subscriber who would themselves opt in, fails to give sufficient weight to user concerns and assumes user attitude is same as theirs. There is some potential here for

subscriber-user disagreement leading to the detriment of user but we recognise that this would not automatically outweigh any benefits accruing from better directory services?

We recognise that this is a difficult area in which to set rules but we would urge consideration of issues such as who is responsible if data are inaccurate.

**Question 4.12:** *Do you have any comments about the operation of the requirements in Privacy Regulation 18(3) and 18(5)? We would also be interested to hear your views on whether Privacy Regulation 18(5) is sufficient to protect end-user data.*

We are not aware of anything that would suggest it was insufficient but would be interested if other respondents felt otherwise.

**Question 4.13:** *Do you have any comments about the operation of the requirement in Privacy Regulation 18(4) as it applies to GC19?*

**Question 4.14:** *Do you agree that GC19 should be modified so as to refer also to the word “objective” in the context of the terms on which GC19 data should be provided (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for maintaining this view.*

**Question 4.14:** *Do you agree with the proposed redrafting of GC19 and related definitions as set out above and discussed through this section? If you disagree, please provide detailed reasons for this view.*

Taking the above points into account and providing effective safeguards for consumers are in place there are no overriding data protection reasons which would lead us to disagree.