

Webinar Q&A Summary

“Are your fundraisers ready for the new electronic marketing soft opt-in rules?”



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Event: “Are your fundraisers ready for the new electronic marketing soft opt-in rules?”

Date: Thursday 3rd July 2025

Panel: Dan Fletcher (Director, Non-Profit Advisory)
Ian Inman (Data Protection Officer)

Host: Rich Jackson (Data Protection Officer)

Question 1:

“We are considering using soft opt in in some form. There are very knotty issues about existing supporters. E.g if we have consent from someone then they pass through a soft opt in mechanism where they do opt out from a secondary action, this must mean the pre-existing consent has been revoked?”

Answer:

“Yes, if an individual had previously opted in to receiving marketing communications from you and then they subsequently pass through a soft opt-in mechanism and choose to opt out, then they are opted out from that point. Individuals are entitled to change their minds, and this is why maintaining accurate and up to date records of user preferences is important.”

Question 2:

“If you can please provide some examples of good statements/forms in your summary documents that would help.”

Answer:

“We will publish some guidance on a good approach to the soft opt in soon.”

Question 3:

“Can you backdate soft opt in, or is it only for new people who contact/support the charity?”

Answer:

“Because the soft opt-in requires that, amongst other things, you provided the individual with a simple means of opting out at the point at which you obtained their details it is highly unlikely it will apply retrospectively as this will not have been done.”

Question 4:

“Will you now be able to automatically opt people in and they can opt out - rather than all having to opt in at the moment?”

Answer:

“The soft opt in allows you to use an unticked opt out box at the point at which you collect someone's details rather than an opt in box as would be the case normally.

You do have to ensure you have met its other requirements as well (i.e. that you are only sending marketing to further your own charitable purposes, you collected the details as part of the person expressing interest in or support for your charitable purposes and you provide them with a simple means of opting out at the point you collect their details and as part of each subsequent communication).”

Question 5:

“If PECR requires consent and DUAA allows soft opt in - how can this work together? Or does PECR not require consent for marketing communications by electronic means?”

Answer:

“The Data Use & Access Act amends the existing legislation (in this case the Privacy & Electronic Communications Regulations or PECR). So, DUA does not contain contradictory rules, it will simply amend the existing rules to allow charities to do this.”

Question 6:

“I think I know this but not everyone will. You've talked about how to manage soft opt-in but haven't really explained what soft opt-in is - what does the term actually mean?”

Answer:

“The soft opt in will amend the current rules around sending email and text marketing so that charities will be able to send such marketing, provided:

- 1) The marketing is solely sent to further their own charitable purposes, and
- 2) The charity collected the recipient's details as part of the recipient showing interest in or support for the charity's charitable purposes, and
- 3) The recipient was provided with a simple means of opting out of receiving those communications both at the point their details were collected and as part of each subsequent communication (e.g. via an unsubscribe link).”

Question 7:

“I thought most of the DUAA can be implemented now. Which elements can be implemented now and which will be later?”

Answer:

“Most of the Data Use & Access Act (including these provisions around the soft opt in) will need to be implemented via commencement orders. These are likely to be introduced gradually over the next 12 months.”

Question 8:

“Will we need to do an LIA ([Legitimate Interest Assessment](#))?”

Answer:

“You will not need to do an LIA to send marketing emails and texts under the soft opt in. You only need to satisfy the soft opt in criteria.

However, in terms of the wider use and management of the personal data beyond the sending of marketing, you will need to comply with the UK GDPR and Data Protection Act 2018. This will include having a valid lawful basis for processing and complying with marketing opt out requests.”

Question 9:

“Dan mentioned mobile in the Starbucks case study. Does the legislation cover email only or all electronic media?”

Answer:

“The soft opt in applies only to 'electronic mail' as defined under PECR which covers both email and text messages.”

Question 10:

“Can we contact past supporters who haven't opted in to emails?”

Answer:

“Because the soft opt-in requires that, amongst other things, you provided the individual with a simple means of opting out at the point at which you obtained their details it is highly unlikely it will apply retrospectively as this will not have been done.”

Question 11:

“If at the point of capture users should be given the option to opt-out, how is this effectively any different from getting consent?”

Answer:

“Consent requires an individual to **opt in** to something. The soft opt in requires an individual to **opt out**.”

Question 12:

“Do you have to state people will receive comms at the point they make an enquiry or is it enough to have it within your privacy policy?”

Answer:

“Yes, as part of the statement accompanying your opt out mechanism, you should provide enough information to clearly explain what will happen if the recipient does **not** opt out.”

Question 13:

“Is any of this retrospective, or can we only use soft opt-in for data collected after the Commencement Orders come into effect?”

Answer:

“Because the soft opt-in requires that, amongst other things, you provided the individual with a simple means of opting out at the point at which you obtained their details it is highly unlikely it will apply retrospectively as this will not have been done. So yes, you will only be able to use the soft opt in for data collected once it has come into force.”

Question 14:

“In terms of historically collected data, do we need to treat these two groups separately to ensure compliance?”

Answer:

“The Soft opt in is unlikely to apply retrospectively because it requires you to have offered individuals a simple means of opting out at the point at which you collected their details, and it is unlikely this will have been done for existing contacts.”

Question 15:

“What's the timeline for this change being implemented?”

Answer:

“We do not have an exact timeframe, but it is expected that most of the Data Use & Access Act will be in force within the next 12 months.”

Question 16:

“Do you have to provide an opt out at the point of collecting data (ie on a donation page should you have an opt out instead of the current opt in for email)?”

Answer:

“The soft opt in allows you to use an unticked opt out box at the point at which you collect someone's details rather than an opt in box as would be the case normally.

You do have to ensure you have met its other requirements as well (i.e. that you are only sending marketing to further your own charitable purposes, you collected the details as part of the person expressing interest in or support for your charitable purposes and you provide them with a simple means of opting out at the point you collect their details and as part of each subsequent communication).”



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