

## Guidelines for Direct Marketing

This guidance forms part of Mill House Day Nursery General Data Protection Regulations compliance. Compliance to the GDPR will ensure that breaches do not occur which can result in fines imposed by the ICO (Information Commissioners Office) and will safeguard staff members from undergoing disciplinary procedures in relation to breaching GDPR regulations.

### Definition

Section 11(3) of the Data Protection Act (DPA) defines “direct marketing” as *“the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals”*.

This definition covers **any and all** advertising or marketing material.

### In Brief

- Specific consent must be given by an individual to be included in a direct marketing activity. A tick box or assumed consent cannot be used
- Third parties who rely on consent to perform their duties must be named
- Data can only be collected for a specific purpose and cannot later be used for related or incompatible purposes
- Data collected must be up to date and must accurately record peoples marketing preferences
- Individuals have the right to prevent their personal data being processed for direct marketing and can give written notice to stop using the details.
- When making marketing calls we must ensure our number (or an alternative contact number) is displayed to the person receiving the call.
- Marketing texts or emails to individuals must not be sent without specific prior consent. There is a limited exception for previous customers, known as the **soft opt-in**.
- We must not share data with any other organisations for the purpose of marketing.
- Records of all direct marketing campaigns must be kept and staff may not and must not store data outside of Mill House Day Nursery property.

### Consent

Consent is central to the rules on direct marketing. We must have an individual’s consent before we can send them marketing communications. Consent must be knowingly and freely given, clear and specific. We must keep clear records of what an individual has consented to, and when and how this consent was obtained, so that we can demonstrate compliance in the event of a complaint.

Consent is defined 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 key points are that for consent to be valid, it must be:

- *freely given* – the individual must have a genuine choice over whether or not to consent to marketing. We must not coerce or unduly incentivise people to consent, or penalise anyone who refuses.
- *specific* – in the context of direct marketing, consent must be specific to the type of marketing communication in question (e.g. email or text message).
- *informed* – the person must understand what they are consenting to. We must make sure we clearly and prominently explain exactly what the person is agreeing to.
- *an indication signifying agreement* – consent must be a positive expression of choice.
- *consents for the time being* – the context must indicate that consent is ongoing.

We must keep records as to what consent has been obtained, an email to the person thanking them for their time and for their consent must be sent.

### **The ‘soft opt-in’**

Although we can generally only send marketing emails with specific consent, there is an exception to this rule for **existing customers**, known as the ‘soft opt-in’. This means we can send marketing emails if:

- we have obtained the contact details in the course of a sale (or negotiations for a sale) of a product or service to that person;
- we are only marketing their own similar products or services; **and**
- we give the person a simple opportunity to refuse or opt out of the marketing, both when first collecting the details and in every message after that (the individual should be able to reply directly to the message, or click a clear ‘unsubscribe’ link).

### **Market Research**

The direct marketing rules will not apply where genuine market research is being carried out, e.g., to develop policy.

Market research must not:

- promote products or
- obtain research data for future sales or marketing purposes

Market research must not be used as a tool for keeping our records updated.

### **Bought-in marketing lists**

Mill House Day Nursery does not use 'bought in lists'.

### **Applicants**

Applicants are classed as existing and former customers and thus the 'soft opt-in' applies for marketing communication purposes.

Communications related to current applications are not classed as marketing and so the need for explicit consent does not apply as the communication is part of the service that they have signed up to.

### **Warm Communication**

A 'warm communication' is an invite extended via a current contact, e.g., 'if you feel that Jane Smith would like to hear about this service ask her if she would like more information'.