

SMS and the Law

SMS is an incredibly powerful communications tool. After all, most of us carry our mobile phone with us at all times and the Mobile Data Association reports that the UK sends 265m text messages every day ! It's therefore not surprising that more and more businesses are using SMS to talk to existing and potential customers, staff and suppliers.

But with this power comes responsibility.

There are two main pieces of legislation covering the use of SMS ;

- Privacy and Electronic Communications (EC Directive) Regulations 2003
- Data Protection Act 1998

This legislation is enforced by the Information Commissioner and a breach of these laws is a criminal offence.

But complying with this legislation is relatively straightforward, as long as you follow a few basic rules. Most of the legislation is around the use of SMS for advertising and concerns **marketing consent** - which is whether or not you have permission to contact an individual or organisation to promote your brand, goods or services.

- if you are marketing to **existing customers**, you can text them to promote any of your products and services which are similar or related to those they already have with you. These customers should though be given the opportunity to **opt-out** of getting such messages.
- if you are marketing to individuals who are not customers, i.e. **prospects**, then the rules are much stricter - you will need their express permission to do so - they must **opt-in**.
- if you are marketing to **businesses**, even if you do not have a relationship with them, they don't need to give you consent, but you do need to give them the ability to **opt-out**.

Whether you are using SMS for marketing purposes, or just as part of your day-to-day service communications with your customers, staff and suppliers, there are still some **general rules** which you must abide by. These are common sense and will actually ensure your SMSs are more favourably received - after all what business wants waste money or annoy its customers, staff or suppliers ?

- collect data lawfully and fairly and keep it accurate and up to date
- ensure that the data is held confidentially and transferred securely
- make sure that the message clearly identifies the sender and their contact details

- when a customer or company states that they wish to opt-out, act upon this promptly
- ensure that the data is not kept for longer than it is needed

The Information Commissioner's Office is a great place to get more information and to ensure that you are correctly registered to process personal data.

Information Commissioner's Office <http://www.ico.gov.uk/>

Privacy and Electronic Communications (EC Directive) Regulations 2003

- guide
http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications_guide.aspx
- legislation in full <http://www.opsi.gov.uk/si/si2003/20032426.ht>

Data Protection Act 1998

- guide
http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/the_guide_to_data_protection.pdf
- legislation in full http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1