



The Code



Introduction:

The DMA Code is the code of conduct to which you and all DMA members must work, on top of all legal requirements.

But the Code is much, much greater than just a rulebook: it stands as an aspirational agreement between you, the DMA and your fellow members to inspire our industry to serve each customer with fairness and respect – and, in consequence, to cultivate a profitable and successful commercial ecosystem.

Under the hero principle **Put your customer first**, the Code promotes the evolution of one-to-one marketing as *an exchange of value* between your business, looking to prosper, and your customer, looking to benefit.

The DMA is committed to helping you put your customer at the heart of everything you do, in order that your business can prosperously grow to be enjoyed, prized and ultimately sustained by your market.





Put your customer first

Value your customer, understand their needs and offer relevant products and services

Outcomes:

Customers receive a positive and transparent experience throughout their association with a company

Customers receive marketing information that is relevant to them and reflects their preferences

Customers receive prompt, efficient and courteous service



Respect
privacy



Be honest
and fair



Be diligent
with data



Take
responsibility





Respect privacy

Act in accordance with your
customer's expectations

Outcomes:

- Customers have a clear understanding of the value exchange when sharing personal information
- Companies are upfront and clear about why they are collecting data and how they intend to use it
- Companies are sensitive and avoid marketing that is intrusive or excessive
- Companies do not target vulnerable customers irresponsibly

Rules:

- 1.1. Members must not send unsolicited one-to-one marketing email and/or SMS communications unless they comply with the rules of PECR and related guidance.
- 1.2. Members must operate and maintain an in-house suppression file – listing the names and contact details of consumers who have indicated they do not wish to receive commercial communications via all or particular means of communication.

This includes recipients of third-party communications who have indicated at the first contact that they do not want to receive further communications.
- 1.3. Members must ensure that lists containing names and contact details are not used for marketing purposes unless the list has been cleaned against the relevant preference services – TPS, MPS, CTPS, BMPS, FPS and *Your Choice*.
- 1.4. Members must take all reasonable steps to ensure consumers do not receive commercial telephone calls or SMS messages at times considered to be antisocial.

Members must consider their target audience when scheduling the delivery of commercial communications.
- 1.5. Members must screen data to remove files of deceased people so that they are not used for marketing.
- 1.6. Members must not undertake random number or sequential dialling, whether manually or by computer, or any number scanning activities (any activity designed to establish the validity of telephone numbers).





Be honest and fair

Be honest, fair and transparent
throughout your business

Outcomes:

Companies are clear, open and transparent about all costs and processes

Companies must not mislead customers, whether through omission, exaggeration or other means

Companies deliver what they promise

Rules:

2.1. Members must not exploit the credulity, lack of knowledge or inexperience of any consumer – and take particular care when dealing with children and other vulnerable consumers.

2.2. Members must clearly identify the advertiser on any one-to-one marketing communication that they send or instigate.

Members must provide caller line identification, to which a return call can be made, whenever they undertake any outbound calls.

Members must provide a valid address on any marketing communication, through which the consumer can opt out of future communications.

2.3. Members must not send goods or provide services for which payment is requested to any consumer without

first having received an instruction to supply such goods or services.

Members must not demand that any consumer either pay for or return unsolicited products, except for substitute products.

2.4. Members must not misrepresent themselves as carrying out research or a survey when the real purpose of the contact is to sell goods or services, or to solicit donations.

When members collect personal information for the purposes of research or a survey and also intend to use this information for any other purpose, such as to market to the consumer, they must make this conspicuously clear.

Members must not adopt high-pressure selling techniques in the course of any contact with any consumer or business.



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Be diligent with data

Treat your customer's
personal data with the
utmost care and respect

Outcomes:

Customers always know who is collecting their data, why it is being collected and what it will be used for

All customer data held by companies is accurate, up to date and not held longer than necessary

Companies always hold customers' data safely and securely

Rules:

3.1. Members must follow all legislation relating to the processing of data, including the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003.

3.2. Members must not send or instigate the sending of one-to-one commercial communications to any consumer using data obtained in breach of data protection and/or privacy legislation.

3.3. When collecting personal data, either on or off line, to be subsequently used for one-to-one marketing purposes, members must do all of the following:

- a. Clearly identify themselves or the party collecting the data
- b. Specify the purpose for which this personal data is to be used – unless this is obvious from the context or the consumer already knows
- c. Identify any further information necessary to enable the processing to be fair

3.4. Any personal data collected should be adequate, relevant and not excessive for the purpose for which it has been collected.

3.5. Personal data should be accurate and up to date and should not be kept for longer than necessary for the purpose for which it has been collected.

3.6. When processing data for marketing purposes, members should process that data in accordance with the rights of the consumer.

3.7. Members should ensure that they have appropriate technical and organisational measures to ensure data is not processed unlawfully or without authority and is protected from accidental loss, destruction or damage.

3.8. Members must ensure that if they transfer personal data outside the EEA, there are adequate levels of protection for the rights of the consumer.

3.9. Where a member acts as a data processor and collects data on behalf of a data controller, this must be carried out under contract.

3.10. Members must not use 'sensitive' personal data for marketing purposes without the explicit consent of the consumer concerned.

3.11. When buying or renting personal data, members must satisfy themselves that the data has been properly sourced, permissioned and cleaned.





Take responsibility

Act responsibly at all times and honour your accountability

Outcomes:

Companies have the resources and systems in place to carry out agreed contracts

Companies take responsibility for the entire customer experience, whether provided in-house or outsourced to a third party

Companies take responsibility for their commitments and fix things if they go wrong

Rules:

4.1. Members must act decently, fairly and reasonably, fulfilling their contractual obligations at all times.

4.2. Members must ensure that they do nothing that could bring into disrepute the public image of one-to-one marketing or the DMA.

4.3. Members must accept that in the context of this Code they are normally responsible for any action (including the content of commercial communications) taken on their behalf by their staff, sales agents, agencies, one-to-one marketing suppliers and others.

4.4. Members acting as an agency or supplier for a non-member's one-to-one marketing activity must advise the non-member to act within the Code. If the non-member client does not take that advice, the member must insist as a condition of acting for the non-member that the Code is followed in respect of all relevant work.

4.5. Where members sub-contract work to non-DMA members, they must ensure that the contractor complies with the Code in respect of the sub-contracted work – and must accept responsibility for the consequences of non-compliance by the contractor.

4.6. Members must maintain adequate records to demonstrate compliance with the Code – and must maintain an adequate system of monitoring and audit.

4.7. Members must ensure that they market in an environmentally sustainable way – and must have a documented environmental policy in place.

4.8. Members must at all times give prompt, efficient and courteous service to customers – and must ensure they have in place adequate administrative procedures and resources to achieve this.

4.9. Members must accept the jurisdiction of the Direct Marketing Commission (DMC) and co-operate fully with their investigations or enquiries.

Members must comply with any conclusion reached by the DMC, including any decision to take disciplinary action resulting from a breach of the Code.

4.10. Members must accept the right of the DMA to monitor compliance with the Code through an audit scheme, mystery shopping exercises or other activity – and to accept compliance visits.

As a result of these activities, the DMA may raise compliance issues with the member and make appropriate recommendations to prevent a possible breach of the Code.

Failure to accept such recommendations may result in a referral to the DMC for adjudication and, where such adjudication is negative, to sanctions for a breach of the Code.





Legislation and codes

Principal rules affecting one-to-one marketing

Legislation

A number of laws and regulations must be followed when carrying out one-to-one marketing activities in the UK. You can find up-to-date documents on legislation at www.legislation.gov.uk

Core

- Business Protection from Misleading Marketing Regulations 2008
- Communications Act 2003
- Consumer Protection from Unfair Trading Regulations 2008
- The Consumer Protection (Amendment) Regulations 2014
- Data Protection Act 1998 (as amended)
- Disability Discrimination Act 2005
- Electronic Communications Act 2000
- Electronic Commerce (EC Directive) Regulations 2002
- Gambling Act 2005
- Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended 2011)
- Representation of the People Act 2000
- Representation of the People (England and Wales) (Amendment) Regulations 2002

- Representation of the People (England and Wales) (Amendment) Regulations 2006

Charity

- Charities Act 1992
- Charities Act 2006
- Charities Act 2011

Consumer

- Consumer Protection Act 1987
- Enterprise Act 2002
- Fair Trading Act 1973
- Price Marking Order 2004
- Sale of Goods Act 1979
- Supply of Goods and Services Act 1984
- Sale and Supply of Goods Act 1994
- Sale and Supply of Goods to Consumers Regulations 2002
- Supply of Goods and Services Act 1982
- Trade Descriptions Act 1968
- Unfair Contract Terms Act 1977

- Unfair Terms in Consumer Contracts Regulations 1994
- Unsolicited Goods and Services Act 1971 (as amended)

Employment

- Conduct of Employment Agencies and Employment Business Regulations 2003 (as amended)
- National Minimum Wages Regulations 1999 (as amended)
- Working Time Regulations 1998 (as amended)

Financial services

- Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006)
- Consumer Credit (Agreements) Regulations 2010
- Consumer Credit (Early Settlement) Regulations 2004 as amended by Consumer Credit (Early Settlement) Regulations 2010
- Consumer Credit (Disclosure of Information) Regulations 2010

- Consumer Credit (EU Directive) Regulations 2010
- Consumer Credit (Amendment) Regulations 2010
- Financial Services and Markets Act 2000
- Financial Services (Distance Marketing) Regulations 2004

Intellectual property

- Copyright Designs and Patents Act 1988
- Copyright and Related Rights Regulations 2003
- Trademarks Act 1994

Telecommunications

- Regulation of Investigatory Powers Act 2000
- Telecommunications Act 1984
- Telecommunications Lawful Business Practice (Interception of Communications) Regulations 2000

Specialist

- Offensive Weapons Act 1996
- Theft Act 1978

Industry codes of practice

There are also several codes of practice that must be adhered to, the most important of which are:

CAP Code

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing

BCAP Code

The UK Code of Broadcast Advertising

Regulators

The regulators who enforce compliance with the DPA and PECR are:

ICO

The Information Commissioner's Office

Ofcom

The communications regulator





Glossary

Advertiser

Any person or company that initiates a commercial communication to promote its products, services or aims

BMPS

The Baby Mailing Preference Service

Client

An advertiser, or agency acting on the advertiser's behalf

The Code

This "Code" or "the Code" is the DMA Code of Practice 4th Edition

Commercial communication

Any communication that carries a marketing message: including sales promotions, fundraising and all advertising

The Commission / DMC

The Direct Marketing Commission

Consumer

The potential or actual end user of a product or service

CTPS

The Corporate Telephone Preference Service

Customer

An individual who has made a purchase or who has entered into negotiations with the relevant business

Data

Information gathered or stored for analytical, decision-making or marketing purposes

Data controller

A person or organisation involved in deciding how data is processed, stored or used

Data processor

A person or organisation who collects, stores or deals with personal data on behalf of a data controller (including a list broker/manager)

Data processing

Collecting, storing, processing or using information: including its destruction, transmission, sharing or other use

Direct marketing

Any marketing communication to an identified individual

The DMA

The Direct Marketing Association (UK) Ltd

European Economic Area (EEA)

The member states of the EU plus Norway, Iceland and Liechtenstein

FPS

The Facsimile Preference Service

Member

A company or organisation that has been accepted into, remains within and is bound by the terms and conditions of the DMA

MPS

The Mailing Preference Service

Number scanning activities

Any activity designed to establish the validity of telephone numbers

One-to-one marketing

Any marketing communication to an identified individual

PECR

Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended

Personal data

Information from which a living individual can be identified

Data might be personal if it could potentially be combined with other information to identify an individual, even where they are not named

This includes business information and email addresses

Random number dialling

Randomly dialling to find valid phone numbers

Recipient

Any natural or legal person, including a sole trader or a partnership, who receives a commercial communication

Sensitive personal data

Personal data relating to racial or ethnic origin, sexual life, political opinions, trade union membership, religious beliefs, physical or mental health, any criminal offence, alleged offence or legal proceedings, the disposal of such proceedings and the sentence of any court in such proceedings

Sequential dialling

Calling digits in numerical order to find valid phone numbers

SMS

Communication sent via a mobile handset using text, picture or video messaging

Suppression file

A list of individuals who have opted-out of all future marketing communications

Third party

Any person or organisation other than the advertiser (with the exception of data processors).

This includes associated and/or affiliated companies

TPS

The Telephone Preference Service

Unsolicited commercial communication

One-to-one marketing to a consumer with whom the sender does not have an ongoing commercial or contractual relationship or where such direct marketing is otherwise uninvited

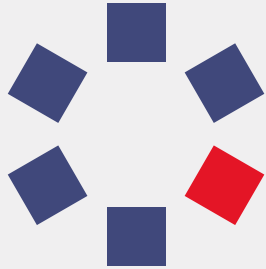
Vulnerable consumers

Includes, but not limited to, the elderly, people with disabilities and those for whom English is not their first language

Your Choice

A DMA scheme through which householders can register their wish to not receive unaddressed items to their home address from DMA members





The Direct Marketing Commission

Enforcing Higher Industry Standards

About

The Direct Marketing Commission (DMC) is the body that oversees and enforces the DMA Code.

The DMC investigates and adjudicates on reported breaches of the Code by DMA members.

The DMC can also pass comment and recommendation to the DMA regarding particular aspects of the Code and the promotion of compliance.

The DMC may consult consumer, enforcement and advisory services to ensure the relevance and effectiveness of the Code, as well as to help identify emerging consumer issues.

The DMC produces a public annual report of its work.

More information about the DMC:

www.dmcommission.com

Complaints considered

The DMC will investigate any complaint made against a DMA member that relates to one-to-one marketing activity and falls under the scope of the Code.

A complaint can either be received directly or referred from the DMA or from a statutory, advisory, self-regulatory or enforcement body.

The DMC can also open an investigation on its own initiative if it sees an issue, involving a member company, that might pose a serious threat to public trust in direct marketing, or to the well-being of consumers.

The DMC will investigate a complaint against a non-DMA member if the Code is binding on that party by any regulatory, licensing or other condition.

Complaints not considered

Where a complaint is of a contractual nature and does not involve a serious breach of the Code that would affect other parties, then the disputing parties may be advised to use an alternative mechanism to reach resolution.

If a complaint is not covered by the Code, or involves a company not in DMA membership, it will be referred to another relevant organisation or enforcement body.

The DMC may look at and express a view on the conduct of non-members in exceptional circumstances, where this is in the best interests of customers and members in the marketplace, but will not seek to enforce the Code or the procedures set out here.

More information about the complaints process:

www.dmcommission.com/make-a-complaint/

Receipt of complaints

A complaint can be made in writing or online at www.dmcommission.com

The DMC aims to acknowledge a complaint within two working days and to complete a case involving investigation and adjudication within three months, but expects an informally-resolved case to be closed in a shorter timeframe.

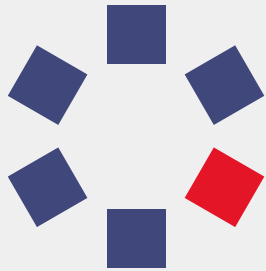
The DMC can only act on a complaint if there is enough information to identify that there is an issue in relation to the Code and a party over which the DMC has jurisdiction.

A complaint should be accompanied by all available supporting material, such as correspondence or a copy of the relevant commercial communication.

Gathering evidence

Upon receipt of a complaint, the Secretariat will raise the matter directly with the member. The member must respond to this request within 10 working days of receipt.





The Direct Marketing Commission

Enforcing Higher Industry Standards

If the member fails to respond to any request for information from the Secretariat, this may in itself constitute a breach of the Code and result in disciplinary action.

The Secretariat may also request that the member responds directly to the complainant, with a copy of any response sent to the DMC.

The DMC may ask the DMA to compile additional information to inform investigation into any complaints.

Investigation process

The DMC exercises judgment in deciding whether a complaint or a number of related complaints appear to require a substantive investigation and a formal adjudication or whether the matter can be resolved informally.

It is the responsibility of the DMC, and the chief commissioner in particular, to ensure complaints are treated in a proportionate and appropriate manner.

Informal resolution

Where there appears to have been a minor breach of the Code and where there is no evidence of wider harm or risk, the Secretariat may close the matter with a formal reminder of the member's obligations under the Code.

Where a complaint can be answered by the Secretariat without reference to the member, a copy of any correspondence will be sent to the member for information.

In a case where an informal resolution is being considered, the DMC retains the right to revert to a formal investigation in the light of evidence of more serious or widespread harm.

If a complaint is not resolved to the satisfaction of the DMC, or it appears that there is a serious or ongoing breach of the Code, it will be referred to the DMC Board for consideration and possible adjudication under the provisions of the Code.

Formal investigation

If a complaint is referred to the DMC Board, the Secretary will inform the member and request any information or comment. Members must respond to the request within 10 working days.

The Secretariat may revert to the member, either through meetings or correspondence, if this is necessary to bring together the information needed to reach an informed adjudication.

The Secretariat will then submit a report to the DMC, including any material that either party has specifically requested be brought to attention.

The DMC Board will then consider the complaint, requesting any further information as necessary.

The DMC may invite the member to meet with them in advance of their deliberations if it is thought that it would be helpful for the member to explain their business model and the events in question informally.

In the case of a formal investigation, member representations may be made as part of the evidence-gathering process and just prior to adjudication.

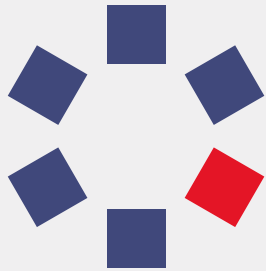
Adjudication meetings generally involve only Commissioners and the Secretariat.

The Secretariat may end a formal investigation during the process and close the case, or reach an informal resolution if it becomes clear the case did not merit a substantive process and formal adjudication.

The decision of the DMC will be recorded and communicated in writing to the member company.

A summary of the adjudication is placed on the DMC website as soon as possible in all cases following a formal investigation, whether or not breaches have been upheld. A summary is NOT posted if the DMC declines to adjudicate on the grounds that there is no case to answer.





The Direct Marketing Commission

Enforcing Higher Industry Standards

The DMC may refer a case back to the Secretariat with a request that the Secretariat look further at resolving the matter through informal procedures.

More information about adjudications:

www.dmcommission.com/adjudications

Sanctions

If a complaint is upheld following adjudication, the DMC has a range of sanctions that it will apply proportionately, depending on the seriousness of the issue or complaint.

These include:

- A formal recommendation to the DMA
- A formal visit to the member by the DMA
- A formal undertaking from the member to comply with the standards set out in the Code
- An undertaking by the member to carry out specific changes in processes, procedures, management or other arrangements to ensure an end to the problem

The DMC may make a recommendation to the DMA that a member be suspended from DMA membership or have their membership cancelled in cases where the DMC thinks this is necessary and proportionate.

The DMC may refer a member to relevant law enforcement and consumer protection bodies when this appears necessary. The DMC may make its adjudications and files available to these bodies as required.

More information about the sanctions:

www.dmcommission.com/adjudications/appealssanctions/

Appeal

Where the DMC concludes that a member is in breach of the Code, the member is entitled to appeal against that

ruling, as well as against any sanctions imposed by the DMC to the Independent Appeals Commissioner (IAC).

On the application of the member, the DMC has the discretion to not implement any sanctions imposed until all appeal mechanisms have been exhausted.

Members must submit an appeal in writing to the IAC within 14 days of the DMC communicating their decision.

The IAC will only consider an appeal on one or more of the following grounds:

1. Substantial new evidence has emerged affecting the reliability of the original decision
2. The decision is unreasonable in the circumstances
3. DMC procedures have not been adhered to, with the result that the member's position has been prejudiced
4. The DMC has acted *ultra vires* (beyond its powers)
5. The sanction imposed is not proportionate

Where the IAC agrees to consider an appeal, that decision will be communicated by notice to the member within 30 days of submission of the appeal. From this notice, the IAC then has a period of eight weeks in which to consider the appeal.

Where the IAC finds in favour of the member, they will refer the decision back to the DMC and invite it to reconsider its findings or the sanction imposed.

Where a decision by the DMC has been found to be perverse, the IAC will make their own decision. This will be final and binding on all parties.

The DMC must consider a case redirected by the IAC within 30 days of his decision. Once the DMC has either confirmed or substituted its earlier decision, that decision shall be final and binding on all parties.

More information about the appeals process:

www.dmcommission.com/adjudications/appealssanctions/

