

Direct Marketing

# CODE OF PRACTICE

CATALOGUE & HOME SHOPPING DIRECT MAIL  
e-COMMERCE FINANCIAL SERVICES  
FAX MARKETING DATA TELEMARKETING  
CHARITIES EMAIL MARKETING  
DIRECT MARKETING COMMISSION  
PROMOTIONAL OFFERS  
ENVIRONMENTAL RESPONSIBILITY  
MOBILE MARKETING COMPLIANCE OFFICER DUTIES  
MARKETING TO CHILDREN  
FULFILMENT & CUSTOMER SERVICE  
DIRECT RESPONSE TV & RADIO FIELD MARKETING  
INTERACTIVE TV

4th Edition, June 2011 version



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# FOREWORD

**The Chairman of The Direct Marketing Association**

I am delighted to introduce this fourth edition of the DMA's Code of Practice on Direct Marketing. Since the first edition in 1992, the Code has evolved and expanded to cover not only new legislation on commercial communications but to reflect the increasingly sophisticated marketing techniques developed by our rapidly expanding industry. UK consumers now buy goods and services worth over £205 billion through direct marketing channels, representing over £43 billion spend on direct marketing services.


This new edition of the Code has been updated to include all recent changes to relevant legislation, including data protection, consumer credit, prize draws, telemarketing, and consumer protection. For the first time, the Code contains a section on key environmental responsibilities for member companies. We have also brought together in one Annexe all the relevant Code clauses relating to Marketing to Children and Young People. A new glossary and an updated List of Key Legislation have also been included.

The Code has also been amended to bring it into line with the 14th Edition of the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) which takes effect from 1st September 2010, and by which all marketers must abide.

In future, the Code will be kept as an online document, rather than as a printed version. In this way, we will be able to keep the Code completely up to date, making any necessary amendments immediately. Members will be kept informed of all such amendments.

The purpose and spirit of the Code remains the same – to set the highest standards for direct marketers, in accordance with legislation and the very best industry practice. By operating to the Code's standards, DMA members can be sure that they will not only earn consumers' trust and confidence, but will gain a significant competitive advantage over those practitioners who have not signed up to the Code.

In the ever more diverse and multi-channelled marketplace, the consumer now demands higher standards of product and service information; of security of their personal data; and of choice, value and service levels. Government and regulators in the UK and the European Union exert a constant pressure on industry to deliver effective and accountable standards of consumer protection. The best way to head off more restrictive and onerous statutory controls is an effective self-regulatory system. This is not an easy option: it requires time, effort, resources and commitment and I am proud to say that the Direct Marketing Association has fully accepted this challenge.



David Metcalfe – Chairman of the Direct Marketing Association  
July 2010

DMA House, 70 Margaret Street, London W1W 8SS

# 1.0 INTRODUCTION

## 1.0 INTRODUCTION

Self-regulatory system	1.1	The Direct Marketing Association (UK) Ltd seeks to maintain and support an effective and credible system of self-regulation that meets the reasonable expectations of consumers and businesses regarding the conduct of the direct marketing industry.
Code of Practice	1.2	To that end, the Association has devised this Code of Practice, which covers all direct marketing activities in the UK, or carried out on behalf of UK based organisations.
Best practice	1.3	The Code sets standards of ethical conduct and best practice in order to promote the highest quality standards and consistency in practices in the direct marketing industry as a whole and particularly within the Association's member companies.
The Commission	1.4	The Association has created the independent Direct Marketing Commission to enforce the Code (see Section 4).
Compliance	1.5	Compliance with this Code is mandatory for all Association members as a condition of membership, but all those involved in direct marketing, whether members or not, are encouraged to consult this Code and to comply with its provisions in order to ensure the highest possible standards in all their direct marketing activities.
Effective date	1.6	This edition of the Code replaces all previous editions.

## 2.0 INTERPRETATION

## 2.0 INTERPRETATION

Application	2.1	The Code applies to all direct marketing activities (see para 1.2 above). Compliance with it is mandatory for all Association members.
Scope	2.2	The Code refers to relevant legal requirements and it supplements the law with requirements, which are considered by the industry to be essential best practice.
Must	2.3	The use of the word "must" indicates that a requirement is compulsory for members, either because it is law or because it is considered to be essential to good direct marketing practice.
Should	2.4	The word "should" is used where a requirement is considered best practice. Members are expected to comply.
<b>Definitions</b>		
The Association and the Board	2.5	"the Association" is The Direct Marketing Association (UK) Ltd and "the Board" is the Board of the Association.
The Commission	2.6	"the Commission" is The Direct Marketing Commission (see Section 4).
Best Practice Guidelines	2.7	"Best Practice Guidelines" are a series of guidelines produced by the Association for specific membership groups. They provide members with additional guidance on particular industry sectors and set down higher standards of practice than this Code requires.
The Code	2.8	This "Code" or "the Code" is the Direct Marketing Code of Practice . The Code is not endorsed or approved by a public body.
Commercial Practice	2.9	A 'commercial practice' is any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a member, which is directly connected with the promotion, sale or supply of goods or services (including immovable property, rights and obligations) to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to goods or services.
Commercial Communication	2.10	The term "commercial communication" is any communication of advertising or marketing material directed by a business (including sole traders and partnerships) to consumers or another business whether it represents the entirety of the communication or constitutes part of an otherwise non-marketing message. The term includes sales promotion, fundraising and all advertising whether it contains an offer for goods or services or an invitation to treat. It also includes advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fundraising activities.



## 2.0 INTERPRETATION cont.

Compliance Officer	2.11	The term "compliance officer" refers to the individual designated by each member of the Association to take responsibility for that member's compliance with this Code. Designation of a compliance officer is a mandatory requirement of this Code (see para 3.6 below).
Consumer	2.12	The term "consumer" means a person acting in a private capacity and not for the purposes of a trade or profession.
Customer...etc	2.13	The terms "customer", "respondent", "recipient" and "participant" refer to people, whether or not in their private capacities.
Individual	2.14	The term "individual" means a living person or a person acting as a sole trader or within a partnership.
ASBOF levy	2.15	The term "ASBOF Levy" is a levy collected on a mailer's invoice and passed to the Advertising Standards Board of Finance to fund designated self-regulatory bodies.
Member	2.16	The term "member" refers to companies or organisations that have:  i) been accepted into, and remain within, membership of the Association under the terms of the Articles of the Association.  ii) accepted the terms and conditions of membership of the Association.
Children and young persons	2.17	Any reference to "children" means those aged under 18 years and "young persons" means those of 16 and 17 years, unless otherwise specified.
Vulnerable consumers	2.18	The term "vulnerable consumer" includes, but is not limited to, children and young persons, people with disabilities, people with literacy or numeracy difficulties and other groups. See Appendix 6 for the full list.

## 3.0 GENERAL OBLIGATIONS

## 3.0 GENERAL OBLIGATIONS

Compliance with the Code	3.1	Members must comply with the provisions of this Code as a condition of membership of the Association. Members must comply with the spirit as well as the letter of the Code.
Compliance with Legislation	3.2	Members must comply with all relevant legislation and regulations relevant to their area of business. Members can refer to Appendix 4, which contains a list of principal legislation affecting the advertising and marketing industry.
Claiming to be a member of the DMA	3.3	Members should not claim to be a member of the Association unless they have met all their obligations under the Code and have met any financial obligations in connection with membership.
Co-operation with compliance team	3.4	Members must fulfil requests made to them in writing by the Compliance Team in the context of ensuring compliance with this Code.
Written undertaking	3.5	Before gaining membership of the Association, applicants must sign an undertaking that they will ensure compliance with this Code in all their direct marketing activities and designate a Compliance Officer to take responsibility for this undertaking (see para 3.6 below). Members are required to repeat such an undertaking upon payment of their membership renewal fee.
Designation of Compliance Officer	3.6	Members must take all reasonable steps to ensure that their staff and anyone working on their behalf comply with this Code and with relevant legislation. To that end, members must designate a person to act as a Compliance Officer. The Compliance Officer must:
Knowledge of the Code		a) have a thorough knowledge of the provisions of the Code and of relevant legislation
Compliance seminar		b) attend at least one Compliance Awareness Seminar or complete at least one Compliance Awareness Webinar run by the Association
Point of contact		c) act as a point of contact for the Association on all compliance issues
Training		d) ensure distribution of the Code and provide appropriate training to all relevant members of staff and anyone working on behalf of the member, compiling internal compliance training records, which may be inspected by the Compliance Team upon request
Membership Certificate	3.7	The Membership Certificate, which is renewable upon payment of the annual membership fee, must be displayed in the members' premises and reference should be made to it in their direct marketing literature (see para 3.27 below).
Direct Marketing Commission	3.8	Members must accept the jurisdiction of The Direct Marketing Commission and co-operate fully with any investigations or enquiries initiated by the Commission. Members must comply with any conclusion reached by the Commission, including a decision to take disciplinary action resulting from a breach of the Code (see Section 4).

## 3.0 GENERAL OBLIGATIONS cont.

Association monitoring of Code	3.9	Members must accept the right of the Association to monitor compliance with the Code through an audit scheme, mystery-shopping exercises etc and to accept compliance visits (see para 4.1 below). As a result of these activities, the Association may raise compliance issues with a 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 Commission for adjudication and therefore, where such adjudication is negative, to the imposition of sanctions for a breach of the Code. (see Section 4).
CAP Code and PhonepayPlus	3.10	Members must comply with the provisions of the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code) and other relevant Codes, such as the Code of Practice of PhonepayPlus, formerly the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS). Members must also comply with any decision reached by the Advertising Standards Authority.
Other codes	3.11	The Commission will take into account any breach of other relevant codes of practice in reaching its decisions (see para 3.10 above).
Legislation	3.12	Members must comply with all relevant legislation (see Appendix 4 on principal legislation affecting direct marketing). Members must recognise that compliance with the Code does not necessarily guarantee that they are acting within the law but any breach of relevant legislation will be considered a breach of this Code.
Responsibility for suppliers	3.13	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, their sales agents, their agencies, their direct marketing suppliers and others.
Responsibility for clients	3.14	A member acting as an agency or supplier for a non member's direct marketing activity must advise the non-member to act within this Code. If the non-member client does not take that advice, the member must insist that the Code is followed, in respect of work in which the member is involved, as a condition of acting for the client.
Sub-contracted work	3.15	Where members sub-contract work to non-Association members, they must ensure that the non-member contractor complies with the Code in respect of the sub-contracted work and accept responsibility for non-compliance by the non-member.
Best Practice Guidelines	3.16	Members should refer to the Association's relevant Best Practice Guidelines for the sectors they are working in. Compliance with these guidelines is not compulsory, except where there is an overlap with the law or with this Code, but the Commission in any adjudication may consider as relevant the extent to which a member has followed them.
Standard terms & conditions	3.17	Members should refer to any documents containing standard terms and conditions created by the Association for particular direct marketing activities.

## 3.0 GENERAL OBLIGATIONS cont.

ASBOF levy	3.18	Unless specifically exempted, members must pay the ASBOF Levy on their postage invoices or have in place an equivalent arrangement with the Advertising Standards Board of Finance (ASBOF).
Fair behaviour	3.19	In all their dealings with consumers, other businesses and each other, members must act decently, fairly and reasonably, fulfilling their contractual obligations at all times.
"sugging"	3.20	Members must not misrepresent themselves as carrying out research or a survey, or soliciting donations when the real purpose of the contact is to sell goods or services.
"dugging"	3.21	If members are collecting personal information for the purposes of research or a survey and also intend to use this information for other purposes, such as making offers to respondents, they must make these other purposes conspicuously clear.
High pressure selling	3.22	Members must not adopt high pressure selling techniques in the course of any contact with consumers or businesses. Members must not falsely claim that a product will only be available for a limited time, or that it will only be available on particular terms for a very limited period, in order to deprive consumers of sufficient opportunity or time to make an informed choice.
'Closing down sales'	3.23	Members must not claim that they are about to cease trading or move premises when they are not.
Clear terms and conditions of supply	3.24	Members must adopt clear terms and conditions of supply, including fair contracts. Contracts with consumers must be drawn up taking into account the Unfair Terms in Consumer Contracts Regulations 1994, Consumer Protection from Unfair Trading Regulations 2008, The Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008 and the Consumer Protection (Distance Selling Regulations) 2000, which prescribe pre-contract and point of sale information.
Public image of direct marketing	3.25	Members must ensure that they do nothing that could damage the public image of direct marketing or the Association.
Protection of vulnerable consumers	3.26	When members become aware that they are dealing with vulnerable consumers (See Appendix 6), they must take all reasonable steps to allow for any difficulties the consumer may have, for instance explaining the terms of an offer or the consequences of responding in a clear and helpful manner and giving appropriate advice. Members must ensure compliance with all relevant legislation and codes of practice on this subject, including those listed in para 3.24 above. Members must not exploit the credulity, lack of knowledge or inexperience of any consumer, taking particular care when dealing with vulnerable consumers. Members should refer to the relevant legislation and codes of practice on this subject for further guidance.
The logo	3.27	Members should include the Association logo in their commercial communications and in all correspondence, including invoices, to their customers and the public. Where this is not possible members should include a text alternative indicating that they are members of the Association.

## 3.0 GENERAL OBLIGATIONS cont.

Use of logo	3.28	Members must not use the Association logo on products or packaging, or in any way that implies endorsement by the Association for any particular product. The logo must not be used by non-members.
Ownership of logo	3.29	The logo is a trademark of the Association and the copyright remains the property of the Association. The Association reserves the right to object to its use in any way thought to be inappropriate. Members' attention is drawn to Appendix 3, which gives further guidance on the use of the logo.
Trust/Quality Marks	3.30	Members must not display a trust mark or quality mark without having obtained the necessary authorization.
False Endorsement	3.31	Members must not falsely claim that a code of conduct has been endorsed by a public or other body. Members must not claim that they, or their products have been approved, endorsed or authorised by a public or private body if it has not or without complying with the terms of that authorisation. (See para 2.8 above)
<b>Environmental Responsibility</b>		
Data kept up to date	3.32	Members must make every effort to ensure that data is kept up to date and regularly cleaned to remove details of deceaseds, goneaways and other similar categories (see Section 5 below).
Mailing Preference Service/Your Choice Preference Service	3.33	Members must observe the conditions of the Mailing Preference Service for addressed mail and the Your Choice Preference Service for unaddressed mail.
Environmental Claim in marketing material	3.34	Members making environmental claims in their marketing materials must observe the requirements of Section 11: Environmental Claims in the CAP Code.
ISO14001/EMAS	3.35	All paper materials used by members should originate from paper mills which operate an environmental management system that conforms to ISO14001 or the Eco-Management and Audit Scheme (EMAS) run by the Institute of Environmental and Management Assessment.
PAS 2020	3.36	Members should seek, wherever possible and where appropriate, to attain certification to PAS 2020
Environmental Policy	3.37	Members should have a documented environmental policy in place.
Recycle message/logo	3.38	Members should display prominently a "call to action" recycle message and/or logo on all printed and printable materials. E.g. "Recycle Now.....Please Recycle after Use" or other similar wording.

## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission

## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission cont.

### Introduction

Direct Marketing Commission	4.1	The Association has put in place mechanisms to achieve a high level of member compliance with this Code. This includes designation of member Compliance Officers, compliance visits to members and mystery shopping exercises (see Section 3.9). The Association has also established the Direct Marketing Commission (the Commission) to enforce the provisions of this Code where, in particular cases, compliance has not been achieved.
Independence of the Commission	4.2	Decisions relating to the adjudication of complaints about a member organisation are taken by the Commission independently of the Association. These decisions are final.
Funding of the Commission	4.3	The Commission is funded by the Association.
Composition of the Commission	4.4	The Commission comprises an independent Chief Commissioner, two further Independent Commissioners and two Industry Commissioners acting in their individual capacities (see para 4.6 below).
Administration of the Commission	4.5	The Commission is administered by a Secretariat within the Association who deal with complaints and Commission monitoring procedures, consulting other departments within the Association as appropriate.

### Composition of the Commission

Composition	4.6	<p>The Commission comprises:</p> <p>a) The Chief Commissioner:</p> <p>An individual from outside the direct marketing industry, appointed by the Association after appropriate consultation. The Chief Commissioner will be selected for their broad experience and public standing. They are appointed for a three-year term, renewable for one further period of three years.</p> <p>b) The Independent Commissioners:</p> <p>Two additional individuals, appointed by the Association after appropriate consultation. The Independent Commissioners are independent of the Association and of the industry as a whole and at least one of them will have direct experience of consumer issues. They are appointed for a three-year term, renewable for a further period of three years.</p> <p>c) The Industry Commissioners:</p> <p>Two Industry Commissioners appointed by the Association, after appropriate consultation. The Industry Commissioners are appointed in their individual capacities on the basis of their experience and standing within the industry. They are appointed for a three-year term, renewable for a further period of three years.</p>
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## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission cont.

Register of Commissioners' Interests	4.7	All Direct Marketing Commissioners are required to complete the Register of Members' Interests, which is maintained by the Association.
<b>Meetings of the Commission</b>		
Meetings	4.8	The quorum for a meeting of the Commission shall be three members, of which at least one shall be an Industry Commissioner. In all deliberations of the Commission, the Chief Commissioner shall also have the casting vote.
Voting	4.9	Commissioners will not be eligible to vote in any adjudication if they are in any way connected with, or a direct competitor of, the organisation being adjudicated upon or are in any way related to or connected with a consumer complaint. Industry members will not be present during an adjudication involving their own organisation unless they are invited to remain.
<b>The Role of the Commission</b>		
Investigation of consumer complaints	4.10	The Commission investigates all unresolved consumer complaints against Association members, whether received directly or referred from the Association or from a statutory, advisory, self-regulatory or enforcement body. It will seek to resolve such complaints informally or, when appropriate, will adjudicate upon them within the provisions of the Code.
Industry complaints	4.11	Where there is a clear possibility of a breach of the Code, the Commission will seek to resolve these informally or, when appropriate, adjudicate within the provisions of the Code, in disputes between members or where a complaint is brought against a member organisation by a non-member. If there is no easily identifiable breach of the Code in such disputes (for example where the dispute is of a contractual nature) both parties will be informed and advised to pursue an alternative dispute resolution mechanism.
Assistance of the Association	4.12	For the investigation of all complaints, whether consumer or business-to-business, the Commission may ask the Association to compile additional information on its behalf through its monitoring procedures or via a visit to the member(s) in question.
Breaches of the Code	4.13	The Commission investigates any possible breaches of the Code raised through the Association's monitoring procedures or brought to its attention by a statutory, advisory, self-regulatory or enforcement body. Where appropriate it will adjudicate on such matters within the provisions of the Code.

## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission cont.

Assessment of applicants to the DMA	4.14	On referral from the Association, the Commission may, in relation to the Code, assess the direct marketing activities of non-members who have applied for membership of the Association, whether there are concerns about particular practices or a specific complaint has been made. It will report its views to the Association which may include information relating to organisations with which the applicant directors or principals have been previously involved.
Consultation with consumer bodies and the Association	4.15	The Commission will consult consumer, enforcement and advisory bodies/services on an on-going basis in order to help identify emerging consumer issues and to ensure the effectiveness and relevance of the Code. The Commission may comment on and/or make recommendations to the Association on particular aspects of the Code.
Assessment of consumer satisfaction	4.16	The Commission will take appropriate steps to assess consumer satisfaction with the Code through consultation as detailed in para 4.15 above.
Annual Report	4.17	The Commission makes an Annual Report compiled from casework on the operation and effectiveness of the Code, which is made publicly available.

### **Powers of the Commission - Sanctions**

Sanctions	4.18	<p>Where the Commission finds a member to be in breach of the Code, it may, depending on the circumstances of the case, take one or more of the following steps:</p> <p>a) Undertaking to rectify</p> <p>seek an undertaking from the member that the breach will not be repeated and, if appropriate, agree alternative procedures with the member</p> <p>b) Visits &amp; compulsory audits</p> <p>request that the Association carry out a visit and a compulsory audit of compliance in relation to all the member's direct marketing activities</p> <p>c) Written admonishment</p> <p>issue a formal written admonishment to the member that would normally be made public, including specifically informing the membership that such action has been taken. The member will be given an opportunity to see such a statement and to comment before publication</p> <p>d) Request to other organisations to withdraw co-operation</p> <p>identify the relevant supply chain or media channel on which the member in question is dependent and request these bodies do not co-operate in future direct marketing activities planned by the member</p>
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## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission cont.

- e) Recommendation for the suspension or termination of DMA membership

recommend for suspension or, if the circumstances warrant, termination of membership of the Association in accordance with the Association's Articles of Association.

- i) Use of logo whilst suspended

following termination or whilst under suspension the member must (unless otherwise directed by the Association) take immediate steps to cease using the Association's logo and Membership Certificate and must not imply in any way that it is a member of the Association. The Association may take legal action against any organisation found to be using the logo beyond a reasonable time following suspension or termination

- ii) Public statement of suspension or termination

when a member is suspended or expelled, the Commission and the Association will notify the appropriate industry bodies and would normally issue a public statement, giving reasons for the suspension or expulsion

- f) Reporting of disciplinary action taken

report any disciplinary action taken against a particular member in its Annual Report or in any other public report on compliance with this Code (see para 4.17 above).

- g) Stop Now Orders

request that the Office of Fair Trading or other appropriate body apply for an injunction.

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### Complaints Procedure

Complaints procedure 4.19

Complaints against members must be set out in writing, or other durable medium, and addressed to the Secretary of the Commission. They should be accompanied by any available supporting material such as correspondence or a copy of the relevant commercial communication. A complaint may be from an individual or a company or it might be referred from a statutory, advisory, enforcement or self-regulatory body or from the Association.

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## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission cont.

Responding to Commission	4.20	Upon receipt of a complaint, the Secretariat will invite the member to attempt to settle the matter directly with the complainant (except where the complaint can be answered without reference to the member). Members must respond to such a request within ten working days of receipt, Where a member fails to respond to any request for information from the Secretariat, this will in itself be considered a clear breach of the Code and may result in disciplinary action or in a more serious sanction being applied, should any additional breach of the Code be found in respect of the original complaint.
Copy of correspondence to member	4.21	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.
Referral to Commission	4.22	Where there is an apparent infringement of the Code, or where, in the view of the complainant and/or the Secretariat, the complaint cannot be satisfactorily resolved, or where either party to a complaint has specifically requested it, a complaint will be referred to the Board of the Commission for consideration and possible adjudication under the provisions of the Code.
Informing parties of referral	4.23	Where a complaint is to be referred to the Board of the Commission, the Secretary will inform the member and request further comments. Members must respond within ten working days. The Secretariat will then submit a report to the Commission including any material that either party has specifically requested be brought to the Commission's attention. The Commission will then consider the complaint, requesting any further information as necessary. The Commission can request a personal appearance at a Commission meeting from the member in question in order to obtain additional information/ explanation.

### Appeals Procedure

Entitlement to appeal	4.24	Where the Commission concludes that a member is in breach of the Code the member is entitled to appeal against that ruling, and/or against any sanctions imposed by the Commission, to the Independent Appeals Commissioner. Where it has imposed sanctions under para 4.18 above, the Commission has a discretion, on the application of the organisation in question, not to implement these until all appeal mechanisms have been exhausted.
Timing of appeal	4.25	Members must submit an appeal in writing to the Independent Appeals Commissioner within 14 days of the Commission communicating a decision to them.
Grounds for hearing	4.26	The Independent Appeals Commissioner will hear an appeal on one or more of the following grounds only: <ul style="list-style-type: none"> <li>a) substantial new evidence has emerged affecting the reliability of the original decision</li> <li>b) the decision is unreasonable in the circumstances</li> </ul>

## 4.0 ENFORCEMENT OF THE CODE - The Direct Marketing Commission cont.

- c) the Commission's procedures have not been adhered to, with the result that the appellant's position has been prejudiced and/or
- d) the Commission has acted ultra vires.

Appeal hearing	4.27	Where the Independent Appeals Commissioner agrees to hear an appeal, a hearing will be convened by notice given within 30 days of submission of the appeal.
Successful appeal	4.28	Where the Independent Appeals Commissioner finds in favour of the appellant, he will refer the decision back to the Commission and direct it to reconsider its findings, except where a decision has been found to be perverse, in which case the Independent Appeals Commissioner will make his own decision which will be final and binding.
Commission's reconsideration	4.29	Once the Commission has confirmed or substituted its earlier decision, that decision shall be final and binding. The Commission must hear a case redirected by the Independent Appeals Commissioner within 30 days of his decision.
Appointment of Independent Appeals Commissioner	4.30	The Board of the Association appoints the Independent Appeals Commissioner after appropriate consultation.

# 5.0 DATA



### Definitions

Commercial communications	5.1	"commercial communication" is as defined in para 2.10.
Data	5.2	"data" is information which: <ul style="list-style-type: none"> <li>a) is processed, or is recorded with the intention that it should be processed, by means of equipment operating automatically in response to instructions given for any direct marketing purposes, however it is accessed and whether or not it is in the form of a list</li> <li>b) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system (i.e. manual data where data is structured in such a way that specific information relating to a particular individual is readily accessible).</li> </ul>
Personal data	5.3	"personal data" is information from which a living individual can be identified, whether from that information alone or when combined with other information, which is in the possession of, or is likely to come into the possession of, the data controller (see definition below). Members should be aware that information might be personal data even where an individual is not named, if it is possible to identify that person using information obtained from other sources. Business information and email addresses from which a living individual can be identified may also be regarded as personal data and therefore should be covered by these rules.
Sensitive personal data	5.4	Data is regarded as sensitive if it relates to racial or ethnic origin, political opinions, trade union membership, religious beliefs, physical or mental health, sexual life, the commission or alleged commission of an offence and any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings and the sentence of any court in such proceedings.
Data controller	5.5	"data controller" is a person or organisation who, either alone or jointly, determines the purposes for which, and the manner in which, any personal data are, or are to be, processed.
Data subject	5.6	"data subject" is a living individual who is the subject of personal data.
Data processing	5.7	"data processing" is collecting or storing information or data or carrying out any operation/s on the information or data. It extends to the erasure or destruction of the information or data and to the disclosure of the information or data by transmission, dissemination or otherwise making available.
Data processor	5.8	"data processor" is a person or organisation who collects, stores or deals with personal data on behalf of a data controller (including a list broker/manager).
Data supplier	5.9	"data supplier" is a data controller who makes data available to third parties for use in their direct marketing activities.
Data user	5.10	"data user" is an organisation making use of either its own data or of data obtained from other sources for any direct marketing purpose.

List or database	5.11	"list" or "database" are the means by which personal information or data are held for direct marketing purposes, which is normally accessed by reference to names and addresses and is held in the form of a paper or electronic list.
Data Protection Principles	5.12	"the Data Protection Principles" are the eight enforceable rules contained in the Data Protection Act 1998 which prescribe the required conduct for the lawful management of personal data.
Unsolicited commercial communication	5.13	"unsolicited commercial communication" is a communication sent to consumers with whom the sender does not have an ongoing commercial or contractual relationship or where such a communication is otherwise uninvited.
Mobile marketing	5.14	"mobile marketing" is the sending of commercial communications (see para 2.10 above) using "text", "picture", or "video" messaging via a mobile handset, or via a Bluetooth enabled device.
WAP	5.15	"WAP" (wireless application protocol) is a collection of protocols and transport layers, which allow mobile and portable communication devices such as mobile telephone and Personal Digital Assistants (PDAs) to receive information over the airwaves.
European Economic Area	5.16	"the European Economic Area" comprises the member states of the European Union plus Norway, Iceland and Liechtenstein.
<b>Scope</b>		
Processing for direct marketing purposes	5.17	This Section of the Code applies to all members processing personal data that will be subsequently used for direct marketing purposes, whether they are involved in mailing, telephone, fax, SMS, email or mobile marketing or any other direct marketing communication. For the avoidance of doubt, this section applies to the statistical analysis of data when the end result will be used for direct marketing.
Capacity of processor or supplier	5.18	This Section of the Code applies to all members processing or supplying personal data, whether acting in the capacity of data controller, list broker, list manager or data processor.
Best Practice Guidelines	5.19	Members should refer to the Association's Data Council's Best Practice Guidelines for further guidance.
Notification	5.20	Members processing personal data as a data controller must notify the Information Commissioner (the Commissioner), unless exempt, and ensure that an entry is included in the data protection register. As soon as possible and in any event within 28 days, members must inform the Commissioner whenever their entry becomes inaccurate or incomplete. Notifications must be renewed every twelve months.
<b>Obtaining Personal Data</b>		
Identity	5.21	When collecting personal data, members must, immediately prior to, or at the time of collection, clearly identify themselves or the party collecting the data.



## 5.0 DATA cont.

Information to be provided	5.22	When collecting personal data, either on or off line, to be subsequently used for direct marketing purposes, members must display a clear, prominent statement, immediately prior to or at the time of collection, setting out:
Purposes of collection		a) the purpose(s) for which the personal data being collected is to be used unless this is obvious from the context or individuals already know. In particular, individuals must be made aware of any intended marketing and any intention to disclose the information for marketing purposes to third parties, including other companies in the same group (where members change the intended use subsequent to collection they must comply with para 5.28c below).
Third party transfer - right to object		b) the mechanism by which an individual can, with the minimum of effort, exercise their right to object to the disclosure of personal data to third parties for marketing purposes or consent to the disclosure of their email address or mobile number to third parties for marketing purposes.
Right to object to direct marketing		c) the mechanism by which an individual may, with the minimum of effort, exercise their right to object to the processing of their personal data for direct marketing purposes, including future marketing approaches from the data controller (except where para 10.13 below applies).
Confirmation of objections Objection by letter		i) where a postal address is provided as a means to object to the processing of personal data for direct marketing purposes, in compliance with c) above, members must respond to the individual in writing as soon as reasonably practicable, and in any event within 28 days, confirming that the objection will be complied with.
Objection via opt-out box		ii) Members are not required to confirm in writing receipt of an objection where individuals have ticked an opt-out box.
Other information necessary to ensure fair processing		d) any further information necessary to enable the processing to be fair, such as whether there is a likelihood of the information being transferred outside the European Economic Area (see para 5.42 below).
Collection of data via mobile marketing or WAP	5.23	Where personal data are collected via mobile marketing or WAP, members must give clear instructions before any data are collected as to how individuals can obtain the information set out above in this paragraph or provide a mechanism so that individuals can easily access the information, for example via a website.
Collection of data by processors	5.24	Where a data processor collects personal data on behalf of a data controller this must be carried out under contract (see para 5.65 below).
Host mailings	5.25	If members intend to undertake host mailings (i.e. enclosing third party material in their mailings) on the basis of selective criteria, they must inform data subjects at the time of data collection, otherwise individuals might divulge personal data to third parties without realising they are doing so.

## 5.0 DATA cont.

Tracking technology	5.26	In addition to the requirements set out in paras 5.21 and 5.22 above, where data are collected automatically by way of cookies (see para 5.28f iv below), calling line identification or other similar tracking technology, members must, immediately prior to or at the time of collection, provide a clear, prominent statement explaining the personal data to be collected, how it is collected, who is collecting it and how it will be used. Users must consent to the use of such cookies or other similar tracking technology except where the use of the cookie or other similar tracking technology is strictly necessary for the provision of a service requested by the user. The consent must be freely given, specific and informed. For personal data collected automatically via mobile marketing or WAP, members must give clear instructions as to how individuals can obtain the information referred to above before such collection takes place, or provide a mechanism so that the information can easily be accessed, for example via a website.
On-line collection of data	5.27	Where personal data are collected on-line, members must provide, immediately prior to or at the time of collection, a prominent click-through link to their privacy policy statement.
Privacy Policy	5.28	As a minimum, a privacy policy must include the following:
Legality and fairness		a) the collection and use of personal information must be lawful and fair and in compliance with the Data Protection Act 1998
Accountability		b) responsibility must be taken for all personal information held and used and members will be held accountable for any breaches of the Data Protection Act 1998 and/or this Code
Information collection		c) a clear and prominent statement must be displayed, immediately prior to or at the time of collection, explaining what personal data is to be collected, how it is to be collected and by whom. This should include specific reference to the collection of information through "cookies" and other tracking technology (see para 5.26 above). Users must consent to the use of "cookies" and other tracking technology. For communications sent via WAP this information should be provided on screen, but where it is not practical to do so, members must give prominent details of where the information can be accessed or provide a mechanism allowing easy access to the information
Collection from third parties		d) where personal information is not collected from the data subjects themselves, members must take such steps as are necessary to ensure that the data subjects are nevertheless made aware of the information required under c) and f) unless, in the view of the data controller, doing so would involve a disproportionate effort (see para 5.31a)
Sensitive personal data		e) sensitive personal data (see para 5.4 above for the definition of sensitive personal data) must not be collected, used, disclosed or otherwise processed without the explicit consent of the individual

## 5.0 DATA cont.

Use of information	f)
Purposes for which data are to be used	i) a clear and prominent statement must be displayed, immediately prior to or at the time of collection, explaining the purposes for which the personal information being collected is to be used (see para 5.22 a) above). Personal information may not subsequently be used for other significantly different purposes without first advising the individuals of the further intended use and either obtaining their positive consent or at least providing an opportunity to object (unless they have obtained the data from a third party source and are relying on the disproportionate effort exemption, see para d) above)
Significantly different use	ii) members must not use the personal information for a different use where the individual has objected, not responded or otherwise failed to give a clear indication of non-objection
Data collected via WAP	iii) where personal data are collected via WAP, members should provide the information required on screen, but where this is not practical members must provide clear instructions as to where the information can be accessed or provide a mechanism allowing data subjects to easily access the information
Opting out of direct marketing	iv) a statement must be given of an individual's right to object to the processing of their personal information for direct marketing purposes (see para 5.22c above) and there must be an online mechanism for opting out of such processing. In the case of the processing of personal information in order to personalise future visits by the individual to a particular website through the use of cookies or other similar tracking technology, the individual must have consented to this, unless the cookie or other similar tracking technology is strictly necessary for the provision of a service provided at the request of the individual. Where future visits to a website will be personalised using information gathered from previous visits individuals must be given: <ol style="list-style-type: none"> <li>1) a statement clearly explaining this along with</li> <li>2) a mechanism as to how they can consent to such personalisation, unless the personalisation is strictly necessary for the provision of a service provided at the individual's request. (see para 5.26 above)</li> </ol>
Opting out of transfers to third parties	v) a statement must be given of an individual's right to object to the disclosure of personal information to third parties and there must be an online mechanism for opting out of such disclosures (see para 5.22b above)
Accuracy	g) personal information held must be accurate and up to date and must be held only as long as necessary for the purposes for which it was collected

## 5.0 DATA cont.

Security policy		h) appropriate measures must be taken to ensure the security of personal information, including the implementation of a system security policy, having regard to the state of technological development and the cost of implementing any measures. Security procedures must be enhanced as new threats become apparent and new technologies become available and activities change (see paras 19.20 and 19.21 below)
Right of subject access		i) a prominent statement must be given of the individual's right of subject access (see para 5.101 below). Members must accept requests for such information sent to a designated email address or via any other durable medium and must respond to such requests within 20 working days unless there are exceptional circumstances preventing it, and in any event within 40 days
Transfer of data outside EEA		j) A prominent statement must be given where appropriate, explaining that it is intended to transfer personal information outside the EEA, (see para 5.16 above for the countries included with the European Economic Area (EEA)) whether or not a disclosure to a third party is involved. The consent of an individual to such a transfer must be obtained unless there is another lawful basis for the transfer i.e.
Adequacy		i) the country has been designated by the European Commission as having an adequate level of data protection. An up to date list of countries approved can be obtained from the European Commission Justice and Home Affairs website.
Safe Harbor		ii) there is a bilateral agreement between the EU and the receiving country (e.g. Safe Harbor)
Performance of Contracts		iii) the transfer is necessary for the performance of a contract between the member and the data subject or for the implementation of pre-contractual measures taken in response to a request from the data subject
Contract drawn up by data controller		iv) a contract exists between the data controller and the recipient of the data ensuring an adequate level of data protection (either a contract based on approved standard terms or a non standard contract drawn up by the data controller). Approved model contract clauses are available from the European Commission Justice and Home Affairs website
Alternative grounds for adequacy		v) there are alternative grounds for "adequacy" as determined by the data controller following a risk assessment, taking into account factors such as the nature of the data being transferred, how they will be used, the laws and practices of the country to which they are being transferred and the ability of individuals to enforce their rights and obtain redress
Information collected from a public or third party source	5.29	Where members collect personal data for direct marketing purposes from a public source or from a third party, such as via a rented in list, rather than from the data subject themselves, in addition to the information required in 5.22 a – d, they must take such steps as necessary to ensure that data subjects are provided with:

5.0 DATA cont.

Information to be provided – identity		a) the identity of the member now in possession of the data
Purposes		b) the purpose(s) for which the data have been collected by that member
Further information to allow fair processing		c) any further information needed to enable processing to be fair.
Timing of information provision	5.30	This information must be provided to data subjects either prior to or at the time of the first commercial communication, as long as this is within a reasonable period of time after the data comes into the possession of the member, unless the disproportionate effort exemption can be applied (see para 5.31a below).
Delayed provision of information	5.31	Where it is not intended to immediately contact an individual whose data has been obtained from a public or third party source, or where a long period of time elapses before the first commercial communication is sent, members must still ensure that the information set out in para 5.29 above is made available to the data subject, unless the disproportionate effort exemption can be applied (see below).
Disproportionate effort exemption		a) In assessing whether the disproportionate effort exemption can be validly claimed, certain factors should be taken into account, including: <ul style="list-style-type: none"> <li>i) the nature of the data</li> <li>ii) the time and cost of providing the information and</li> <li>iii) how easy or difficult it would be to provide the information</li> </ul>
Written statement		b) Members claiming the disproportionate effort exemption must prepare a written statement setting out the reasons for not providing the information and must keep a signed and dated copy on record
Request for information		c) Even where the disproportionate effort exemption has been claimed, members must provide the information set out in para 5.29 above, where requested to do so by the individual to whom the data relates
List of individuals requiring information		i) Members must therefore keep a list of individuals who have given notice in writing that they be provided with the information detailed in para 5.29 above in the event that information relating to those individuals, in respect of whom the disproportionate effort exemption is claimed, comes into their possession.
Unidentified individuals		ii) Where such notice from an individual does not contain sufficient identifying information to allow the data controller to readily determine whether they are processing personal data relating to that individual, members must write to the individual explaining the reasons for their inability to make such a determination

## 5.0 DATA cont.

Member-get-member schemes	5.32	Where members collect personal data via a member-get-member scheme the rules outlined in paras 5.29 and 5.30 above must be followed, bearing in mind that it may be more difficult in these circumstances to validly claim the disproportionate effort exemption. Where members intend to disclose the identity of the recommending party, the party must be informed in advance that this is the case and given an opportunity to object. Where an objection is filed the contact must not be used.
New ownership for similar purposes	5.33	If members acquire ownership of personal data and use it for a purpose substantially the same as that originally intended by the former owner then they must, no later than the first point of contact, advise individuals of the new ownership. For further information refer to the Information Commissioner's Office's guidance on Buying and Selling Customer Databases.
Substantially different purpose	5.34	If members acquire ownership of personal data and intend to use it for a purpose that is significantly different from the one originally intended (see para 5.45 below) by the former owner they must comply with para 5.44 below.
Collecting data from directories	5.35	Members should note that publishers of directories normally reserve the right to charge for the use of the data and restrict the use of their directories for marketing purposes. Members intending to use personal data in directories should take adequate steps to ensure there is no breach of copyright or bar to the intended use.
<b>Recording and Storage of Data</b>		
Extent of data held	5.36	The extent and detail of personal data held for any purpose must be adequate, relevant and not excessive for that purpose.
Accurate and up to date	5.37	Personal data held by members must be accurate and, where necessary, kept up to date.
Holding data – duration	5.38	Personal data must not be held for longer than is necessary for the purpose for which it was collected and, in particular, data obtained from a data supplier must not be held longer than six months after the original use or date of supply unless otherwise expressly agreed by the data supplier.
<b>Data Security</b>		
Security of data	5.39	Members must take appropriate technical and organisational measures to ensure that personal data is held securely and safeguarded against unauthorised use, disclosure or alteration and accidental loss, damage or destruction (see para 5.63 below).
ISO27001 and DataSeal	5.40	Members should seek, wherever possible and where appropriate, to attain certification to ISO27001 and/or DMA DataSeal.

Employee security	5.41	Members must regularly review their operations to ensure that access by staff to personal data is limited to those who need to have access to such personal data in the performance of their duties. Members should make it clear to their staff that any unauthorised use or disclosure of personal data is a serious disciplinary matter and could, in certain circumstances, lead to criminal proceedings. (see para 5.111)
Transfers outside EEA	5.42	Members must not transfer personal data to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for data subjects as approved by the European Commission, or where an alternative means of ensuring adequacy exists such as through an appropriate contract (see paras 5.22d and 5.28j above).
CD/Digital File Transfer	5.43	Members must be able to identify each CD or Digital File Transfer by the name of the campaign and a unique reference number. Members must refer to Section 5 of this Code in respect of data encryption and security of file transfers
<b>Use of Personal Data</b>		
Preconditions for data use	5.44	Members must not use personal data, whether on their own behalf as a data controller or when acting on behalf of a third party, as a data processor, unless the data is accurate and up to date and in particular: <ul style="list-style-type: none"> <li>a) it has been cleaned against the data controller's and data user's in house suppression files (see para 5.81 below)</li> <li>b) where the communication is unsolicited, it has been cleaned against the relevant preference file within the specified time period (see paras 5.85 to 5.98 below)</li> <li>c) it has been cleaned against an appropriate suppression file of deceased persons as soon as possible before the time of use or at least within the previous 90 days</li> <li>d) it has been updated, within the previous 60 days, at most, with requests from individuals for the correction or deletion of inaccurate data or the marking of disputed data</li> <li>e) it has been updated with corrections in respect of those individuals who, it is reasonable to conclude, are no longer residing at the addresses held within the previous 30 days or, if this is not possible, at least within the period specified in their list warranty (see para 5.79 below).</li> </ul>
Significantly different	5.45	If, after collecting personal data from individuals, members decide to use it for a purpose that is significantly different from the one originally intended, they must first advise those individuals of the further intended use and either obtain positive consent or at least provide an opportunity to object (unless they have obtained the data from a third party source and are relying on the disproportionate effort exemption). Members must not use the personal information for the different use where the individual has objected, not responded or otherwise failed to give a clear indication of non-objection.

Definition of different purpose	5.46	A significantly different use is: <ul style="list-style-type: none"> <li>a) the disclosure of personal data to third parties for their direct marketing purposes where this was not originally envisaged, or</li> <li>b) the use or disclosure of personal information for any purpose(s) substantially different from the purpose(s) for which it was collected and which individuals could not reasonably have foreseen and to which it is probable that they would have objected if they had known.</li> </ul>
Sensitive personal data	5.47	Members must not use “sensitive” personal data for direct marketing purposes without the written consent of the individual concerned (see para 5.4 above).
Financial information	5.48	Members should note that personal financial information (such as an individual’s exact income, investment or banking details etc) might be considered to be sensitive by the data subject and members must therefore not disclose such personal financial information to a third party without the consent of the individual concerned.
Permitted uses	5.49	Members must not use data for a direct marketing communication unless the content of the communication complies with Sections 6, 7 and 8 of this Code and, where relevant, with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code). Members must also comply with the relevant Sections of this Code covering the means of communication the member intends to use (e.g. members using data for telemarketing purposes must comply with Section 21 of this Code).
Responsibility of data users	5.50	Data users remain responsible for the uses to which data are put.
<b>Use of Personal Data Obtained from a Data Supplier</b>		
Scope	5.51	In addition to paras 5.44 to 5.50 above, members using personal data that has been obtained from a data supplier must comply with paras 5.52 to 5.64 below.
Obligations of data users	5.52	Unless they are advised that the data owner has an alternative system for identifying them, members using personal data obtained from a data supplier must: <ul style="list-style-type: none"> <li>a) advise the data supplier within 30 days of being notified of the names of deceased individuals and the list they came from</li> <li>b) advise the data supplier within 30 days of being notified of any requests from individuals for the correction or deletion of inaccurate data or marking of disputed data and the list they came from</li> </ul>
Deceased names		
Accuracy of data		



## 5.0 DATA cont.

Gone-aways		c) identify from which list mailing pieces returned as “gone-away” or “undeliverable” were generated and where relevant return these pieces to the data supplier as soon as practicable and normally within 60 days of receipt of such notification.
Re-use and late use of data	5.53	Members must not use or reuse lists that are more than six months old unless they have been updated. If the list or section of the list is to be used or reused more than six months after supply, data users must, unless they have an adequate alternative system for updating lists, either return the list to the data supplier or, if it is agreed between the parties that the use may proceed, obtain and process an updated list or the appropriate suppressions or relevant corrections from the data supplier.
Purposes	5.54	Members must ensure that the personal data is only used for the express purpose for which permission has been given by the data supplier or their agents in advance of that use and must specify to the supplier the type of marketing the data are to be used for.
Marketing copy of script	5.55	Before any use of the data is made, members must forward a copy of the marketing copy or script to the data supplier on request (see para 5.49 above).
One-time use	5.56	<p>In the absence of a contractual provision to the contrary, one time use of a list would normally permit one or all of the following:</p> <ul style="list-style-type: none"> <li>a) A format conversion</li> <li>b) Merge and purge (including use of suppression files)</li> <li>c) Application of selection criteria (including profiling, regression etc)</li> <li>d) Statistical analysis (including levels of duplication with other lists)</li> <li>e) Formatting for output or printing</li> <li>f) Printing of letters, labels etc.</li> </ul> <p>One time use normally also allows note to be taken of the number of occurrences of a particular name, across all files, and to use that information in a decision making process of selection. However, this information must not be recorded in the members’ own files for future use unless specifically agreed by the data supplier.</p>
Further use	5.57	If a member wishes to make further use of personal data beyond the processes set out in para 5.56 above, including suppression and follow up marketing approaches, then permission of the data supplier must be negotiated prior to any further use taking place and normally within six months of the original use.

Net name agreements	5.58	If a list has been obtained under a "net name" or other similar arrangement (a "net name" is a name that survives a merge/purge operation), data users must not use those names excluded during the merge/purge process for any other purpose, except where the names selected from an individual list fall below the minimum agreed level and the data owner agrees that the shortfall may be used within an agreed timescale, for an approved promotion and in accordance with the other provisions of this Code.
No net name agreement	5.59	If a data user obtains a list without a "net name" or other similar arrangement, then the data user has the right to use each name on each list, once only, including their use in the processes listed in para 5.56 above, if required.
Re-use of list	5.60	Once the list has been used for the purposes approved by the data supplier, the member must not further contact any individuals on that list or continue to hold information on those individuals. Where a member receives a response from an individual as a result of the legitimate use of the list they may contact those individuals.
Telemarketing response	5.61	If the list has been used for telemarketing a response would normally be where the individual has shown sufficient interest in the goods or services offered to indicate that they have taken preliminary steps towards conclusion of a contract, for example, purchasing goods or services. This would not normally include simply claiming the consent of the person canvassed to be re-contacted at a later date unless otherwise agreed by the data supplier.
Seed names	5.62	Members using lists supplied by a data supplier must accept that any unauthorised use of a seed name may result in the data supplier claiming full recompense for use of the whole list, whether or not the whole list was improperly used.
Copyright	5.63	Members must accept that copyright or database rights in rented or exchanged data remains with the data supplier unless expressly transferred by way of contract.
Information to be given to data subject	5.64	When using personal data obtained from a data supplier for direct marketing purposes, members must provide the following information to the data subject: <ul style="list-style-type: none"> <li>a) the mechanism by which the data subject can, with the minimum of effort, exercise their right to object to the disclosure of personal data to third parties for marketing purposes or consent to the disclosure of their email address or mobile number to third parties for marketing purposes</li> <li>b) the mechanism by which an individual may, with the minimum of effort, exercise their right to object to the processing of their personal data for direct marketing purposes, including future marketing approaches from the third party (see para 5.22c i and ii)</li> </ul>

- c) any further information necessary to enable the processing to be fair, such as whether there is a likelihood of the information being transferred outside the European Economic Area (see para 5.42 above).

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#### Use of Data on Behalf of Another Party (Data Processors)

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Processing contract	5.65	Members instructing data processors to carry out processing on their behalf must ensure that the following terms are included in a written contract in order to ensure compliance with this Code, whether or not the processor is a member of the Association:
Content of contract		<p>a) a description of the processing to be carried out</p> <p>b) a requirement that the processor act only on instructions from the data controller</p> <p>c) appropriate requirements relating to security, in particular:</p> <ul style="list-style-type: none"> <li>i) the reliability of the processor's staff, including, where appropriate, training in data protection and the necessity of keeping data secure</li> <li>ii) organisational measures to avoid unauthorised or unlawful processing or accidental loss, destruction or damage of data and</li> <li>iii) technical measures to avoid unauthorised or unlawful processing or accidental loss, destruction or damage of data</li> <li>iv) that where sensitive data are to be processed, the level of security must be greater than when non-sensitive data is involved.</li> </ul>

Compliance with processing contract	5.66	Data controllers must take reasonable steps to ensure that processors comply with the provisions of the contract as set out in para 5.65 above and processors must regularly review their security measures, particularly in the light of technological developments, to ensure continued compliance.
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Accuracy	5.67	Data processors must take reasonable steps to ensure accuracy in their data processing and matching, particularly in reference to suppression, tagging and merge-purge, screening and sortation etc.
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One-time use and data processors	5.68	If asked to process personal data in a way which differs from the normal practices set out in para 5.56, data processors must satisfy themselves that the data user has the approval of the data controller to process in this way.
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#### Supply of data

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Supply of data	5.69	Data supply is the rental or exchange of data, usually in the form of a list, for direct marketing purposes, whether or not payment is made.
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## 5.0 DATA cont.

CAP Code and Data suppliers	5.70	Members must not supply personal data unless both the supply and intended use of the data complies with this Code and, where appropriate, the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code) (see para 5.49 above). Members must therefore satisfy themselves that any planned advertising is acceptable under this Code and the CAP Code before making personal data available by, for example, requesting a copy of the marketing material or script to be used (see para 5.55 above).
Re-use and late use	5.71	If data controllers are informed that a list is to be used or re-used more than six months after supply and it is agreed between the parties that the use may proceed, the data controller must either supply an updated list if available or supply a list to the data user of any suppressions or relevant corrections (see para 5.53 above).
Return of "gone-aways" and data controllers	5.72	Data suppliers must require data users to return "gone-aways" and "undeliverables" unless they have an alternative system for identifying them. Where the data supplier is not the data controller, "gone-aways" and "undeliverables" must be returned to the data controller within 30 days.
Level of "gone-aways" and data controllers	5.73	If data suppliers anticipate that the percentage of "gone-aways" or "undeliverables" exceeds 3% for a "responder" list or 6% for a "compiled" list, the data user must be so informed. If the actual percentage of "gone-aways" exceeds these levels without prior notification then members should have in place a policy of reimbursement. For the avoidance of doubt the levels specified above relate to postal mail and not any other form of direct marketing.
Information on data and data controllers	5.74	Data suppliers must ensure that any information supplied about data is accurate and take reasonable steps to ensure the information provided by any appointed list managers or list brokers is not misleading or incorrect.
Seed names	5.75	Data suppliers are recommended to ensure that a list is adequately seeded to identify unauthorised or improper use (see para 5.62 above).
Responsibility of controllers	5.76	Data controllers remain primarily responsible under this Code for compliance, even when a data supplier is assigned any of these responsibilities on the data controller's behalf.
Advertising lists	5.77	When advertising lists or publishing list information, the data supplier must ensure that the information is accurate and up-to-date, and clearly state: <ul style="list-style-type: none"> <li>a) if they are not the data controller (i.e. they are a list broker or manager)</li> <li>b) if they are not the data controller but have an interest in the list, for instance as a list manager or</li> <li>c) if they are not the exclusive supplier of the list.</li> </ul>
List warranties	5.78	Members must make use of list warranties in all their list rental and exchange activities, and adhere to the provisions contained in them.

List Warranty Register	5.79	Members should make use of the List Warranty Register which records details of available warranties on a database allowing quick response to enquiries from owners, brokers, users and managers. For further information, telephone 020 7291 3340 or email lwr@dma.org.uk.
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### Suppression

Confirming opt-out in writing	5.80	Where a terrestrial address is provided as a mechanism for opting out of the processing of personal data for direct marketing purposes in accordance with para 5.22c i above, members must ensure they acknowledge receipt of such a request as soon as practicable and in any event within 28 days.
In-house suppression file	5.81	Members must operate and maintain an in-house suppression file, listing the names and addresses of recipients who have indicated they do not wish to receive commercial communications, via all or particular means of communication (see para 5.44a above). This will include recipients of third party communications who have indicated at the first contact that they do not want to receive further communications.
Suppression of opt-outs	5.82	Where a recipient requests not to receive commercial communications, members must, as soon as possible, suppress the recipient's data from their marketing database.
Delayed suppression	5.83	Where the suppression cannot take effect immediately, members must inform recipients of this fact and explain they may receive further commercial communications for a maximum period of 90 days.
Forwarding opt-outs to advertiser	5.84	Where a member receives a request from a recipient that they do not wish to receive commercial communications, they must forward the request to the advertiser expeditiously, thereby enabling the advertiser to fulfil its obligations under para 5.79 above.

### Use of Suppression Files

MPS	5.85	Members must ensure that lists containing consumers names and addresses are not used for mailing purposes unless they have been cleaned against the Mailing Preference Service (MPS) (see para 5.86 below).
Cleaning against MPS	5.86	Members supplying data must ensure that such lists are cleaned against the most recent MPS file no more than 90 days before supply, although a user may choose to clean it again before use. Where members, supplying data, do not clean their lists against the MPS they must advise the data user of this and advise them to clean against the MPS. Where the data user is not a member of the DMA the data supplier must clean the list against the MPS. Data users must clean their list against MPS prior to the printing of any direct marketing material

## 5.0 DATA cont.

Customer lists and MPS	5.87	Members may use their own list (i.e. a list of those with whom they have an established relationship) without cleaning against the MPS file where individuals were given an appropriate opt-out opportunity when the data was collected.
BMPS	5.88	Members must ensure that lists containing consumers' names and addresses, including those with whom they have an established relationship, are not used for baby related mailings unless cleaned against the Baby Mailing Preference Service (BMPS).
Cleaning against BMPS	5.89	Members must ensure that such lists are cleaned against the BMPS as soon as possible before use.
TPS and CTPS	5.90	Members must ensure that lists containing telephone numbers are not used for telephone marketing purposes unless cleaned against the Telephone Preference Service (TPS) and the Corporate Telephone Preference Service (CTPS).
Cleaning against TPS and CTPS	5.91	Members must ensure that such lists are cleaned against the most recent TPS and/or CTPS files no more than 28 days before supply, although a user may choose to clean it again before use.
Customer lists and TPS/CTPS	5.92	Members may use their own lists (i.e. those with whom they have an established relationship) without cleaning against the TPS and/or CTPS files, as long as the data subject has provided their telephone number (i.e. it is not sourced) and it was made absolutely clear at the time of collecting the telephone number that the data subject may receive telemarketing calls to that number. The individuals must have been given an opportunity to object to receiving marketing when the telephone number was collected.
eMPS	5.93	Members must not send unsolicited commercial communications via email unless the individual has notified that they consent to such communications or unless the member has an established relationship with the recipient and has given them the opportunity to object to receiving such emails both at the time of collection of the email address and, where relevant, on all subsequent email communications (see paras 14.6, 14.7, 14.9 and 14.10 below for detailed guidance). Members should, however, continue to screen their email address lists against the email Preference Service (eMPS) file when they are conducting cross-border email marketing campaigns outside the EEA.
Cleaning against eMPS	5.94	Members should ensure that email address lists used for cross-border email marketing campaigns conducted outside the EEA are cleaned against the eMPS no more than 28 days before supply, although a user may choose to clean it again before use.
Customer lists and eMPS	5.95	Members conducting cross border email marketing campaigns outside the EEA may use their own lists (i.e. a list of those with whom they have an established relationship) without cleaning against the eMPS file where individuals were given an appropriate opt-out or opt-in opportunity when the data was collected.

## 5.0 DATA cont.

FPS	5.96	Members must ensure that lists used to send unsolicited fax marketing messages to businesses are cleaned against the Fax Preference Service (FPS). Members must ensure that such lists are cleaned against the most recent FPS file no more than 28 days before supply, although a user may choose to clean it again before use. Members may use their own lists (i.e. those with whom they have an established relationship) without cleaning against the FPS file, as long as the data subject has provided their fax number (i.e. it is not sourced) and it was made absolutely clear at the time of collecting the number that fax marketing messages may be sent to that number. The individuals must have been given an opportunity to object to receiving marketing when the fax number was collected.
Fax marketing to individuals	5.97	Members must not send fax marketing messages to individuals unless the individual has notified the member that they consent to such communications.
Deceased files	5.98	Files of deceased persons must only be used by members for suppression purposes and never for marketing.
Preference service information	5.99	<p>If a member is informed by an individual that they wish to reduce the number of consumer mailings, telephone marketing calls, fax marketing or emails they receive from all sources or is informed by an individual of a death, then the member should invite the individual to contact the appropriate preference service as follows:</p> <p>Mailing Preference Service (MPS)  Freepost 29 LON20771  London  W1E 0ZT  Tel. 0845 703 4599  <a href="http://www.mpsonline.org.uk">www.mpsonline.org.uk</a></p> <p>Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS)  DMA House  70 Margaret Street  London  W1W 8SS  Tel. 0845 070 0707  <a href="http://www.tpsonline.org.uk">www.tpsonline.org.uk</a></p> <p>Fax Preference Service (FPS)  DMA House  70 Margaret Street  London  W1W 8SS  Tel. 0845 070 0702.  <a href="http://www.fpsonline.org.uk">www.fpsonline.org.uk</a></p>
Non-UK preference files	5.100	Where individuals are targeted outside the UK, members are reminded to use national preference service files where required and to check for other national legal requirements when targeting individuals outside the UK with marketing communications.

### Rights of the Data Subject

Right of subject access request	5.101	<p>Following a request in writing (which includes email) and the payment of the appropriate fee (currently a maximum of £10), members must promptly and in any event within a maximum of 40 days of receipt of the request inform a data subject as to whether data about them are being processed and, if requested, provide</p> <ol style="list-style-type: none"> <li>the information constituting that data</li> <li>a description of the personal data being processed</li> <li>a description of the purposes for which the data are being, or are to be, processed</li> <li>a description of the recipients or classes of recipients to whom personal data are or may be disclosed</li> <li>information as to the source of the data, where available.</li> </ol>
Automated decision taking	5.102	<p>Where the data are processed automatically, and such processing is likely to form the sole basis for any decision significantly affecting the data subject, members must inform the data subject of the logic involved in that process, so long as, in so doing the member does not reveal a "trade secret".</p>
Intelligible and permanent form	5.103	<p>Members must provide the required information in an intelligible and permanent form, unless it is not possible or would involve disproportionate effort, or the data subject agrees otherwise.</p>
Right to prevent processing likely to cause damage or distress	5.104	<p>On receiving a written subject access request, members must cease or not begin any processing which is, or may cause, unwarranted substantial damage or distress to the individual making the request or to another individual.</p>
Right to prevent processing for the purposes of direct marketing	5.105	<p>On receiving a written request, members must not begin processing personal data relating to that individual for direct marketing purposes (see para 5.22c above). Where processing has already begun, members must take immediate steps to cease processing or to ensure that any processing carried out on their behalf is ceased as soon as possible, informing the data subject if it is not possible to prevent any commercial communication already in the system from reaching them.</p>
Rights in relation to automated decision taking	5.106	<p>If members take decisions which significantly affect an individual solely on the processing of personal data by automatic means, members must not do so if they receive a written request from that individual, and in other cases must notify the individual of the automated basis for such a decision as soon as reasonably practicable and reconsider the decision, if so requested, within 21 days. Automated decisions which are exempt from these requirements are those taken to grant the data subject's request, or having allowed them to make written representations, and:</p> <ol style="list-style-type: none"> <li>for the purpose of considering whether to contract with the data subject</li> </ol>



- ii) with a view to entering into such a contract
- iii) in the course of performing such a contract; or
- iv) authorised or required by or under an enactment.

Right to compensation	5.107	Members should note that individuals have a right to claim compensation from the court for damage and distress caused by any breach of the Data Protection Act.
Right to have personal data rectified, blocked, erased or destroyed	5.108	Following a request from an individual, members must rectify, block, erase or destroy inaccurate personal data relating to that individual. It should be noted that failure to carry out such instructions may result in a court order to the same effect.

**Sanctions**

Breach of this Code	5.109	Members should refer to Section 4 of this Code for details of the possible consequences of breaching any provisions contained in this Code, whether they are legal requirements or mandatory best practice requirements.
Breach of CAP Code	5.110	Any alleged breaches of the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code) brought to the attention of the Advertising Standards Authority (ASA) by an individual or, in some circumstances by the Commission, may be investigated and appropriate sanctions applied. (Details can be obtained from the ASA).
Breaches of DPA	5.111	In the event of a breach of the Data Protection Act 1998 (the Act) the Information Commissioner has the following powers;
Enforcement notices		a) to serve an Information Notice requiring an organisation to provide specified information within a certain time period
Compliance assessment		b) to conduct a compliance assessment to check an organisation's compliance with the Act
Assessment notice		c) to issue an Assessment Notice on a public sector organisation to assess whether it is following good practice in its processing of personal data
Voluntary audit		d) to conduct a voluntary audit (with the consent of the organisation) to assess whether its processing of personal data follows good practice
Enforcement notice		e) to serve an Enforcement Notice or a 'Stop Now' order requiring an organisation to take (or refrain from taking) specified steps in order to ensure it complies with data protection legislation
Major penalty notice		f) in case of major breaches of the Data Protection Principles, to issue a monetary penalty notice (up to the maximum amount of £500,000) where the conditions to issue such a notice in S55A-S55E of the Act are met,

Criminal prosecution

g) to prosecute through the courts in the case of criminal offences under the Act.

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## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules

### Introduction

Scope	6.1	Members must comply with the requirements contained in this Section of the Code when using both on and off line media. Members must also, where relevant, refer to the Section covering the specific means of communication being used, for example Section 14 for email marketing.
"CAP" Code and other relevant Codes of Practice	6.2	Members' attention is drawn to para 3.10 above, which requires compliance with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code) and other relevant Codes, such as the Code of Practice of PhonepayPlus, formerly known as the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS). These Codes must be read in conjunction with this Code.
Responsibility	6.3	Members as advertisers are responsible for the content of their commercial communications. Members acting in another capacity, such as fulfilment, printing or the supply of data, must ensure that any commercial communication with which they are involved complies with this Code and the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).

### Definitions

Commercial communication	6.4	"Commercial communication" is as defined in para 2.10 above.
Distance selling	6.5	"Distance Selling" see para 6.23 below.

### General Requirements

Legal, decent honest and truthful	6.6	Members' commercial communications must be legal, decent, honest and truthful, and not misleading. Every commercial communication must be prepared and communicated with a sense of responsibility to consumers and society. In particular, members must conform to the principles of fair competition generally accepted in business and respect an individual's reasonable expectation of privacy.
Persistent and unwanted solicitations	6.7	Members must not make persistent and unwanted solicitations by telephone, fax, email or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation.
Recognisable as a marketing communication	6.8	Members' commercial communications must be clearly recognisable as advertising or marketing material.
Disrepute	6.9	Members must ensure that no commercial communication with which they are involved brings direct marketing into disrepute.

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

Offence	6.10	Members must not produce any commercial communication that is likely to cause serious and widespread offence, bearing in mind that material which might not be considered offensive in the context of the market as a whole could be when targeted at a particular social group.
Fear or distress	6.11	Members must not produce any commercial communication that is likely to cause fear or distress to the recipient without good reason. Members must not make materially inaccurate claims concerning the nature and extent of the risk to the personal security of the consumer or their family if the consumer does not buy the product.
Substantiation	6.12	Members must not make any claim, either direct or implied, regarding their products or services unless it can be readily substantiated with documentary evidence. Where claims are not capable of objective substantiation, such as in respect of videos or books etc, members must not exaggerate the value, accuracy, scientific validity or practical usefulness of the product and where there is a difference in informed opinion over a product, members must not imply that a particular opinion is generally agreed.
False/Untrue statements	6.13	Members must not create a commercial communication that uses false information in respect of a product or which in its overall presentation is designed to deceive or is likely to deceive a consumer, and is therefore likely to make that consumer change their mind in respect of that product, even if the information contained is factually correct.
Acting as a business	6.14	Members must not falsely claim or imply that they are not acting for purposes related to their trade, business, craft or profession, nor must they falsely represent themselves as consumers.
Matter or opinion	6.15	Members must not present as fact a matter of opinion regarding their products or services.
Rights in law	6.16	Members must ensure that nothing in a commercial communication could reasonably lead respondents to believe that their rights in law are in any way diminished or removed. Members must ensure that all commercial communications comply with the law and must not incite anyone to break it. Members must not create the impression that a product can legally be sold when it cannot, nor present rights given to consumers in law as a distinctive feature of an offer.
Clarity	6.17	Members' offers must be clear and unambiguous so that respondents know exactly what they are committing themselves to when responding to a commercial communication.
Copying	6.18	Members must not copy the promotional material of another member or another's business in a way that might cause confusion between them. Members are reminded to adhere to copyright law.

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

Trade marks	6.19	Members must not deliberately mislead consumers into believing that any advertised product is made by someone else nor must members create any confusion in any marketing material concerning the trade mark, trade name or other distinguishing marks of another company.
Misleading ads	6.20	Members must not issue commercial communications, which are likely to mislead or give false or misleading indications as to price, value or quality, or as to the purpose of any follow-up sales visit arranged. Members must not provide materially inaccurate information on market conditions or the possibility of finding a particular product elsewhere in order to induce consumers to buy the product at conditions less favourable than normal market conditions.
Anti-social behaviour	6.21	Members must not issue commercial communications which condone or are likely to encourage violent or anti-social behaviour or unsafe practices.
Dummy cheques etc	6.22	Members using formats that might be taken to have intrinsic value, such as cheques or airline tickets, must make clear that such formats are examples only.

### Offers for Goods and Services (Distance Selling)

Definition of distance selling	6.23	Distance selling is the offering of goods or services to a consumer (an "offer"), with a view to concluding a contract for those goods or services without the buyer and seller meeting face to face. Members are reminded of their legal obligations, particularly under the Consumer Protection (Distance Selling) Regulations 2000, including the need to make clear any commercial purpose in distance selling communications. Members offering financial services via a distance sale, must also refer to paras 8.38 – 8.48 below.
Prior information requirements	6.24	Prior information is information to be provided before the conclusion of the contract. Members must refer to the relevant Section of this Code covering the specific means of the communication being used (for example, Section 14 on email marketing) for specific requirements on when particular information must be given. General requirements are given below.
Identity of the advertiser	6.25	All offers for goods and services must prominently display the identity of the advertiser.
Name and address	6.26	All offers for goods or services must include the advertiser's full name and full on and off-line addresses (as appropriate).
Written response		a) Offers that include a written response mechanism must give this information outside any coupon or other response device so that it can be retained by the recipient
Telephone response		b) Offers containing a telephone response mechanism must state the full name and telephone number of the advertiser and the full contact details must be given on request to callers who telephone that number. Such offers must comply with the PhoneyPayPlus (previously ICSTIS) Code of Practice

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

Offers by Mobile text message		c) Offers sent by mobile messaging must give clear instructions as to how the recipient can obtain this information. See Sections 19 and 20 of this Code. Such offers must also comply with the PhonepayPlus (previously ICSTIS) Code of Practice.
Order forms	6.27	All order forms, whether on or off-line, must include the advertiser's full registered office address or principal place of business for unincorporated associations, (PO Box addresses are not sufficient), company registration details (company name, country of registration and registered number), postal address for orders, email address and terrestrial telephone number.
Other information to be provided	6.28	a) clear details of the goods or services offered, including:
Description Price		<ul style="list-style-type: none"> <li>i) a description of the main characteristics of the goods or services</li> <li>ii) the price including VAT, unless the offer is addressed exclusively to trade, and any other tax and duties payable so that the total amount payable can be easily calculated</li> </ul>
Post and packing		iii) details of any additional, non-optional extras such as post, delivery and packing charges (see paras 6.48 and 6.49 below on post and packing) so that the total amount payable can be easily calculated
Delivery arrangements and timing		b) clear details of the arrangements for the delivery of goods or performance of a service, including the estimated fulfillment time which, unless the parties agree otherwise, must be within a maximum of 30 days from the day following that on which the customer placed their order (see para 9.10 below)
Right to cancel		c) a prominent statement explaining the existence of a right to cancel orders for goods or services (unless exempted, see para 9.24 below)
Cost of communication		d) details of any postal, telephone or other communication charges that are higher than the basic rate (for example, premium rate numbers)
Restrictions		e) details of any limitations on the offer such as geographic restrictions, period of availability of the offer or any other conditions that affects its validity
Open-ended contracts		f) details of the minimum duration of open-ended contracts (i.e. where goods are supplied or services performed permanently or recurrently)
Substitutions		g) where appropriate, a statement outlining the intention to provide substitute goods or services (of equivalent quality or price) if those ordered become unavailable and that the advertiser will meet the cost of returning substitute goods on cancellation
Payment mechanisms		i) information on the payment mechanisms available, including any credit and instalment terms.

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

Offers sent by Mobile text message	6.29	Offers sent via mobile messaging must give clear instructions as to how a recipient can obtain the information given in para 6.28 above before entering into a contract. For example, such information can be provided via a website address, provided this address is displayed in the offer.
Additional and written information the goods	6.30	In addition to the above, for all means of distance communication, prior to conclusion of the contract or at least no later than the time of delivery of or, for services, in good time and in any event before the service has been fully performed, the following information must be provided in writing or other durable medium:
Confirmation of Prior information		a) the information required in paras 6.24, 6.25 and 6.28 a to c above, if originally given in a non-durable form
Complaints Address		b) the advertiser's full geographical business address to which a consumer can send complaints
Conditions for right to cancel		c) the conditions and procedures for exercising the right to cancel (unless inapplicable, see para 9.24 below), including information regarding who is responsible for the return of cancelled goods and the cost of returning or collecting them
After sales service and guarantees		d) information regarding any after-sales service and guarantees
Cancellation of open-ended contracts		e) the conditions for exercising any contractual right to cancel a contract of unspecified duration or duration exceeding one year.
One-off supply through means of distance communication	6.31	Para 6.30 above does not apply to a contract for the supply of services which are performed through the use of a means of distance communication, where those services are supplied on one occasion only and are invoiced by the operator of the means of communication. However, in such cases, all necessary steps must be taken to ensure that the consumer is able to obtain the supplier's geographical address and the place of business to which complaints may be sent.
Cancellation of services	6.32	Subject to para 6.30 above, prior to the conclusion of a contract for the supply of services, members must inform the consumer in writing or in another durable medium that they will not be able to cancel the contract once the performance of the service has begun with the consumer's agreement. The parties can agree otherwise.
Access to terms and conditions	6.33	Members must provide easy access to the terms and conditions applicable to a particular transaction, which must also be available in writing or other durable medium.



## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

### Additional Rules

Substantiation of testimonials	6.34	A testimonial must not be used unless it relates to the product being advertised and the member can substantiate its authenticity. In particular, a testimonial must not be used unless it is the genuine and informed opinion of the person giving it and, unless it has been taken from a published source, permission to use it has first been obtained. Members must hold documentary evidence of the testimonial, including contact details (email address only is acceptable) for the person who, or organisation that, gives it.
Fictitious testimonials	6.35	Fictitious testimonials must not be represented as if they are genuine.
Quotation marks	6.36	Quotation marks must not be used in a way which suggests a testimonial unless the source is identified.
Declaration of Interest	6.37	Testimonials given by a member's staff or by anyone connected with the member or with the product or service being advertised must not be used unless the interest of such an individual is explicitly declared.
Recency of testimonials	6.38	Testimonials, including press reviews, must not be used if they are out of date or otherwise no longer applicable. It should be noted that a testimonial for products such as high technology items may date rapidly and that, if in doubt, a member should give the date of the testimonial or press review.
References to tests, trials etc	6.39	Unless they are genuine statements taken from a published source, references to tests, trials, professional endorsements, research facilities and professional journals must only be used with the permission of those concerned.
Guarantees	6.40	On request a member must make available to consumers the full terms of any guarantee or warranty before they are committed to purchase. This must include the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee, as well as the name and address of the guarantor. Any substantial limitations on such a guarantee must be stated clearly in the commercial communication.
After sales service	6.41	If any after sales service is not available in the language of the marketing communication, consumers must be told prior to the completion of the contract. Members must not create the false impression that after sales service is available outside the country in which the product is sold.
Statutory rights	6.42	No guarantee (which includes any document or form of words) may be issued by a member which might convey to the customer that any statutory or other rights are limited to those described in the guarantee and members must state in all guarantees that the guarantee does not affect their statutory rights.
Additional rights	6.43	Members must inform customers about the nature and extent of any additional rights provided by the guarantee, over and above those given to them by law, and if not obvious must make clear how to exercise those rights.

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

Money back guarantees	6.44	Members must provide a refund promptly to those claiming redress under a money back guarantee.
Characteristics of goods	6.45	If any special physical characteristic of a product or service is likely to influence consumers whether to place an order for it, exact details of these special physical characteristics must be given.
Assembly or installation of goods or services	6.46	If goods or services are offered that are likely to require installation or assembly other than by the purchaser, information must be given in the advertisement as to the nature and extent of the work involved and the existence of any additional costs should be pointed out.
Clear pricing	6.47	Stated prices must be clear and relate to the product or service being promoted and accurately match any illustrations. Claims such as "up to" and "from" must not exaggerate the benefits likely to be obtained by consumers. Members must make it clear if the price of one product is dependent on the purchase of another. A member who uses a recommended retail price (RRP), or similar, as the basis of a price comparison must ensure that it complies with the Pricing Practices Guide – guidance for traders on good practice in giving information about prices (The Department for Business, Innovation & Skills, BIS).
Post and packing, delivery and insurance charges	6.48	It must be made perfectly clear whether a price is inclusive or exclusive of non-optional extra charges such as postage and packing, delivery and/or insurance so that consumers are fully aware of them before they commit to buy. Where such prices cannot be determined in advance, members must indicate clearly how they will be calculated or specify where the information is given. If members offer a delivery service for certain items they must make it clear whether there are any separate delivery charges (e.g for delivery outside a particular area) and what those charges are before the consumer is committed to buying. Post and packing charges must represent the actual cost incurred. Offers direct to consumers must show prices inclusive of VAT and other non-optional extras and taxes.
Exclusive of p&p, delivery, insurance	6.49	<p>If the price is exclusive of postage and packing, delivery and /or insurance then:</p> <ol style="list-style-type: none"> <li>a) the cost of postage and packing, delivery and/or insurance or a phrase such as "plus p&amp;p", must be included with the price sufficiently prominently to ensure that respondents are in no doubt as to the application of such a charge and</li> <li>b) such a postage and packing, delivery and/or insurance charge, as a sum of money, should be detailed clearly on any order form or coupon, whether on or off line, and in every other place where the terms of sale are set out, or should be sufficiently prominently displayed elsewhere in the communication so that, taking the communication as a whole, respondents can be in no doubt as to the amount of any charge due.</li> </ol>

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

Availability of good and excess demand/ Bait advertising	6.50	Members must make it clear if stocks are limited and must not advertise goods unless they can demonstrate that they have reasonable grounds for believing that they can satisfy demand. If stocks do become exhausted, members must discontinue all advertising as soon as possible and be able to produce evidence of stock monitoring.
Assessing demand/ limited stock	6.51	If an advertisement is for products that are not yet available, as a way of assessing potential demand, then the advertisement must clearly state this.
Switch selling	6.52	Members must not use the technique of "switch selling" where staff refuse to show the advertised product or demonstrate a defective sample of it in order to promote a different item or service. Similarly, difficulties in purchasing or promptly delivering goods must not be used in order to persuade respondents to purchase a different item (see para 9.15 below).
Goods on approval	6.53	Where goods are offered "on approval" members must clearly specify in any advertising the conditions attached to the arrangement, any return delivery charge that will be made and the period within which the goods must be returned. See para 6.28c above and paras 9.20 – 9.25 below.
Cost of return	6.54	If goods are offered on "free" approval, the consumer must not be liable for any costs and the advertiser must be prepared on request to bear the normal cost of returning the goods.
Comparisons	6.55	Members may make comparisons with the products and services offered by other organisations as long as such comparisons: <ul style="list-style-type: none"> <li>a) are not misleading</li> <li>b) compare like goods or services</li> <li>c) do not create confusion between the member and the competitor (or their trade name/mark etc)</li> <li>d) do not denigrate or attempt to discredit the competitor, its trade name/mark, activities etc</li> <li>e) Objectively compares one or more material, relevant, verifiable and representative features of the product or service, which may include price.</li> </ul>
Alcohol	6.56	Members must not issue commercial communications that encourage excessive consumption of alcohol or unsafe practices such as drink driving. Particular care must be taken to avoid targeting children and young persons with communications relating to alcohol or issuing communications that are likely to appeal to children and young persons (see para 8.23 below).
Direct selling	6.57	Direct selling as such is not within the scope of this Code, but where relevant members must comply with Section 16 on Field Marketing. Any direct marketing communications used in connection with direct selling activities, such as home visits, must comply with this Section.

## 6.0 CONTENT OF COMMERCIAL COMMUNICATIONS - General Rules cont.

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Visits	6.58	Members intending to visit a respondent must clearly state this intention in the original commercial communication or follow-up contact. Members must fairly represent the true purpose of the visit, providing a mechanism for the consumer to refuse such a visit or cancel an arranged visit at no cost.
Network marketing	6.59	Members operating network marketing schemes must comply with Part X1 of the Fair Trading Act 1973 and the Regulations made under it. Members must not establish, operate or promote any scheme in which payments or other benefits to any participant derive from the recruiting of participants rather than from sale or consumption of products. Regardless of the legal arrangement between a member and its network participants, the member is responsible for ensuring that the participants comply with this Code.

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## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers

## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers

### Gifts, Premiums and Awards

General compliance	7.1	Offers involving gifts, premiums, awards or other sales promotion benefits must comply with this Section and also with Section 6 of this Code.
Fairness	7.2	Members operating promotional schemes must deal fairly with participants at all times and must take all reasonable steps to avoid disappointment.
Administration	7.3	Members operating promotional schemes must have in place proper supervision and adequate resources to ensure their efficient administration. Sufficient time must be allowed for each phase of the promotion and applications, and claims must be fulfilled within 30 days unless a different timescale has been agreed in advance or participants have been informed of any delays. Sufficient supplies of entry forms or products required for proof of purchase must be available.
Unsuitable material or samples	7.4	Bearing in mind the target audience, members must ensure that unsuitable or inappropriate material does not reach consumers, and that no potentially unsafe or harmful product samples are distributed. Members must take care not to encourage excessive consumption or unsafe practices or in any way to encourage inappropriate use of the products or services being promoted.
Information to be included in offers	7.5	Offers involving gifts, premiums, awards or other sales promotion benefits must state clearly: <ul style="list-style-type: none"> <li>a) how to participate, including any conditions and cost</li> <li>b) the member's full name and address in a form that can be retained by consumers</li> <li>c) details of the gift, premium or award being offered</li> <li>d) start date and any closing date – it must be made specifically clear if the final date for purchase of the promoted product differs from the closing date for submission of entries or claims</li> <li>e) any proof of purchase requirements or a statement that no purchase is necessary and instructions as to how to pursue a free entry route if any limitation on availability, including where no closing date is specified</li> <li>f) any geographical or personal restrictions, including whether permission is needed from an adult</li> <li>g) any other factor/s likely to influence an individual's decision to respond to the offer or their understanding of the offer.</li> </ul>

## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers cont.

Participants must be able to retain the above rules or be informed as to how to access them easily for the duration of the promotion.

Offers via a marketing channel that are significantly limited by time or space must include as much information about the above rules as practicable and must direct consumers clearly to an easily accessible source, where all significant rules are prominently stated. Participants should be able to retain these rules or easily access them throughout the promotion.

Response deadlines	7.6	If an offer requires a response within a stated period, the deadline must be calculated from the date the mailing is believed to have been received.
Demand for Promotional Offers	7.7	Members must take all reasonable steps to avoid creating a demand that cannot be met but if they are unable to supply demand for a promotional offer because of an unexpectedly high response or some other factor outside their control, products of a similar or greater perceived quality and value or a cash payment must be substituted. Members must not unfairly represent the chances of receiving a particular gift or award.
Publicity	7.8	Members must make clear to individuals before they respond to an offer involving gifts, premiums or awards whether they may be required to become featured in the member's publicity or advertising. Members must not publish personal information about successful participants without their consent.
Trade Incentives	7.9	Members must make all reasonable efforts not make any offer which might result in an employee's obligation to give consumers honest advice and assistance being in any way compromised or in a conflict of interest between the organisation and their staff. Before offering any incentive to the staff of another organisation members must obtain its permission and ensure that the rules and procedures of that organisation are followed.
Use of the term "free"	7.10	An advertisement must not describe goods or samples as "free" unless they are supplied at no cost (or at no extra cost to the recipient other than the current rate of postage/actual rates of carriage). The term "free" must not be used if there is any additional charge for packing or handling.
Premiums	7.11	A premium must not be described as "free" if the product to be purchased is increased in price or decreased in quantity or quality as a result of the premium offer.
Conditional gifts	7.12	A conditional gift or premium may be described as "free" only if the conditions are given suitable prominence and are in near proximity to the term "free".

## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers cont.

Presentations & events	7.13	Members offering a free gift to consumers in return for attendance at a presentation/special event must make it clear in all advertising material that the purpose of the presentation/special event is to sell a particular product or service. The exact nature of the free gift must be explained and details given of any restrictions on the receipt of such a gift. Members must not unfairly represent the chances of receiving a particular gift.
<b>Promotions with Prizes</b>		
Scope	7.14	These general rules apply to all promotions with prizes.
Advertising promotions	7.15	The advertising for any prize promotion is to be regarded as an offer and must therefore comply with all relevant provisions of Section 6 of this Code, in addition to the paragraphs below.
Rules for entry	7.16	Rules for entry must be prepared in advance of the publication of any advertisement for a prize promotion and be made available to entrants no later than the time at which they are expected to respond. It must be possible for participants to retain the rules for future reference. Complex rules should be avoided and members should not supplement with additional rules, unless unavoidable, in which case members must explain clearly to consumers how to obtain such additional rules and they must not contain any conditions that would have influenced the decision to participate.
Closing date	7.17	The closing date for entry to a prize promotion should not be changed unless circumstances outside the reasonable control of members make it unavoidable. Poor response to a promotion or inferior entries will not be considered sufficient reason for extending a closing date unless this has been clearly stated in advance.
Use of "win" & "prize"	7.18	Members must not create a false impression that a consumer has already won, will win, or will on doing a particular act win a prize or other equivalent when either there is no prize or equivalent or if the consumer is required to pay money or incur a cost to claim the prize or equivalent. In particular, promotions in which all or the vast majority of participants qualify to receive goods or services must not be described as a prize promotion, and the words "prize" and "win", or any other term for either word likely to have the same meaning for consumers, must not be used. If a promotion offers a gift to a significant proportion of participants and a prize to those who win, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers "qualify" for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two. For the avoidance of doubt, 'paying money or incurring a cost to claim the prize' includes providing a premium rate phone number to claim the prize.
Use of "finalists" and "final round" etc	7.19	Members must not imply that participants have progressed to an advanced stage of a promotion when this is not the case. Particular care must be taken with references to "finalists" or "final stage/round".



## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers cont.

Availability of entry forms and goods	7.20	If a promotion is widely advertised, members must ensure that entry forms and any goods that need to be purchased are readily available.
Chances of success	7.21	Members must not unfairly represent the chance of winning a particular prize or raise unjustified expectations that any particular prize can be won.
List of winners	7.22	A full list of winners must be produced and be available, on request, to participants as soon as possible after the completion of the promotion.
Eligibility	7.23	Persons in any way connected with the operation or administration of a promotion must not be eligible to participate.
Award of prizes	7.24	All prizes or reasonable equivalents should be awarded in accordance with the terms and conditions of the promotion. Members must ensure that prizes in a prize draw are awarded in accordance with the laws of chance and, unless winners are selected by a computer process that produces verifiably random results, by an independent person, or under the supervision of an independent person.
Withholding prizes	7.25	Withholding of prizes is justified only if participants have not met clear criteria set out in the promotional rules and consumers were told at the outset of the promotion that insufficient entries or entries of insufficient quality will lead to the withholding of prizes
Time limit for award of prizes	7.26	Prize winners must receive their prizes within 30 days of the closing date of the promotion unless otherwise stated in advance.
Information to be included in promotional material	7.27	<p>In addition, advertisements for prize promotions must include information on:</p> <ul style="list-style-type: none"> <li>a) the nature and quantity of prizes to be given away</li> <li>b) a closing date</li> <li>c) any restrictions on the number of entries or prizes</li> <li>d) any restrictions on who can enter</li> <li>e) any need to obtain permission to enter from an adult or an organisation that the entrant is working for</li> <li>f) any cash alternatives that will be available</li> <li>g) any requirements for proof of purchase</li> <li>h) how and when winners will be notified of results</li> <li>i) how and when winners and results will be announced or made available</li> <li>j) when prize winners will receive their prizes if it is later than 30 days after the closing date of the promotion</li> <li>k) any intention to use winners in post-event publicity</li> </ul>

## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers cont.

- l) any conditions under which the entries may be disqualified and
- m) whether the member intends to limit, or disclaim responsibility for entries that may be lost. Members may want to consider advising entrants that acceptance of the consumer's entry will take place once the promoter has received the entry in the post and advise entrants that recorded delivery may be the most effective entry route.

Prize draws	7.28	A prize draw is a scheme in which prizes are allocated by chance. Any charge for entry, or any requirement to buy goods or services, may result in an illegal lottery. However, conditions that do not include payment or purchase, such as a request for personal information, are acceptable as a requirement for entry into a prize draw. Any request for an excessive amount of personal data may be considered to be payment.
Free entry	7.29	<p>To avoid an illegal lottery, if operating a prize draw that involves payment to enter in Northern Ireland, England, Wales or Scotland, members must offer a free, no purchase necessary, entry route. For the avoidance of doubt, in England, Wales and Scotland only, payment to enter does not include the requirement to purchase a product or service, provided there is no increase in the price of the product or service in order to take account of the right to enter the prize draw or competition.</p> <p>Any entry route that is free must be stated clearly and prominently so that no recipient would be in any doubt as to the route's availability. A free entry route may incur an expense at the normal rate of either: sending a letter by ordinary post; making a telephone call; or any other method of communication. Normal rate is a rate which does not reflect the opportunity to participate in an arrangement under which a person may win a prize, and ordinary post means ordinary first-class or second-class post (without special arrangements for delivery). See also para 7.31 below.</p>
Chances of success	7.30	If entry to a prize draw is open to all respondents, then the chances of success must be exactly the same for all. Prizes must be awarded in accordance with the laws of chance and under the supervision of an independent observer.
No obligation to purchase	7.31	If members are promoting a prize draw to run in Northern Ireland, advertisements for prize draws open to all respondents that also invite orders for which payment is expected, must include a separate means for entering the prize draw without accepting the invitation to order, and vice versa. It must be clear to respondents that there is no obligation to purchase to enter the prize draw. Members who operate prize draws only in Great Britain (ie England, Scotland and Wales) where there is no payment to enter do not need to provide a no purchase necessary route.

## 7.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Promotional Offers cont.

Prize competitions	7.32	A prize competition is a scheme in which success depends to a substantial degree upon skill. The level of skill should be such that either a significant proportion of entrants are prevented from obtaining a prize or a significant proportion of potential entrants are prevented from entering. If there is not a significant level of skill, the prize competition may be deemed a prize draw. In such cases, members must bear in mind the requirements of para 7.29 above.
Information to be given for prize competitions	7.33	Before entering a prize competition, participants must be informed: <ul style="list-style-type: none"> <li>a) of the criteria for judging entries</li> <li>b) whether and how entries will be returned by promoters</li> <li>c) if appropriate, who owns any copyright in the entries.</li> </ul>
Timing for prize competitions	7.34	Members must ensure that entrants to a prize competition are given adequate time in which to complete and submit their entries.
Judging prize competitions	7.35	The selection of winning entries to a prize competition must be carried out by an independent judge or a panel of judges including one independent member. In either case, the judge or panel member must be demonstrably independent, especially from the competition's promoters, intermediaries and from the pool of entrants from which the eventual winner is picked. Such judge(s) must include someone with particular knowledge of any special field covered in the competition. The identity/ies of the panel or judge must be made available on request.
Instant win offers	7.36	Participants in instant win promotions must be given their winnings at once or should know immediately what they have won and how to claim it without delay, unreasonable costs or administrative barriers. Members using premium rate services must comply with the PhonepayPlus Code of Practice.
Instant win tickets & tokens	7.37	Instant win tickets, tokens or numbers must be awarded on a fair and random basis that must be independently verified.
Facilitating winning in games of chance	7.38	Members must not claim that products are able to facilitate winning in games of chance.

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules

Inertia selling	8.1	Members must not send goods or provide services for which payment is requested to any addressee without first having received an instruction to supply such goods or services. Where a member does so for any reason, the goods or services must be treated as an unconditional gift and payment cannot be enforced. Members must not include with any marketing material an invoice or similar document seeking payment, which gives the consumer the impression that he has already ordered the marketed product when he has not. Members should not demand consumers pay for or return unsolicited products, except for substitute products supplied in conformity with para 6.28 g above.
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### Continuing Series

Information to be given goods or in offers	8.2	When offering an open-ended commitment for a continuing series of services members must:
Intervals of supply		a) make clear the intervals, or conditions of intervals, at which goods or services will be supplied
Terms of contract		b) make clear, either in the original advertisement or with the initial supply of goods sent on approval, the full terms of the contractual commitment into which a respondent is being asked to enter, including, but not limited to: <ul style="list-style-type: none"> <li>i) pricing information and in particular any charges that may be imposed on cancellation. Such cancellation charges must only reflect the loss to the member</li> <li>ii) the minimum term of the contractual commitment</li> <li>iii) the number of goods or services the respondent must purchase during the minimum term</li> <li>iv) the means by which a respondent signifies agreement to entering into the contractual commitment.</li> </ul>

Club Schemes	8.3	In schemes involving an "Editor's Choice" or other recommended selection, members must:
Terms of business		a) make clear to respondents, before any commitment for membership is entered into, the terms of business relating to the supply of such a selection and
Timings		b) on each occasion give 14 days advance notice of the selection to be supplied in which period the respondent may reject or accept the selection or choose an alternative and c) honour the respondent's cancellation right as provided in para 8.6 below.

Change in terms of offer	8.4	Members must not change intervals of supply or quantity of goods unless they have made it clear in the terms of the offer that such changes may occur, or unless they obtain the express agreement of the customer before any goods are dispatched.
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## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

Changing payment Terms	8.5	Members must not change the terms for frequency of payment and amount without the express agreement of the customer.
Cancellation	8.6	Members must accept cancellation at all times after any initial contractual commitment has been fulfilled, and refund any money owing, or costs incurred in returning products supplied after the date of cancellation. Members must also comply with the provisions of paras 9.20-9.25
Continuing series where number of instalments is known	8.7	<p>Where members offer a continuing series (for example a magazine with parts for a model) and there is a defined number of instalments, the member must include in all communications:</p> <ul style="list-style-type: none"> <li>a) the maximum number of instalments</li> <li>b) the price of each instalment</li> <li>c) a statement as to whether any of the instalments are liable to change</li> <li>d) a statement that there is no ongoing commitment to purchase</li> <li>e) details of how to cancel the deliveries.</li> </ul>
<b>Collectibles</b>		
Definition of collectibles	8.8	A collectible is a product advertised in terms of its interest as a collector's item, with emphasis being placed primarily on such factors as scarcity or aesthetic quality.
Promotion of collectible offers	8.9	When advertising collectibles, members must not:
Scarcity		a) mislead respondents as to the scarcity or the current or likely future re-sale value of the item(s) on offer
Price		b) appear to justify an inflated price by suggesting limitations on quantities available
Lack of knowledge		c) trade upon any lack of knowledge among the general public as to the nature and extent of the market for items of the kind being advertised or about the criteria for assessment employed within the market.
Limited numbers	8.10	<p>When advertising items where the value is perceived as attributable to limited numbers, members must ensure that the nature of the limitation is immediately evident from the description in the advertisement and depending on the nature of the limitation must either:</p> <ul style="list-style-type: none"> <li>a) state the maximum number of articles to be produced, including, if appropriate, the worldwide total and/or</li> <li>b) make it clear that the limitation is on the number of persons applying within a given period and in such a case members should offer to inform all interested purchasers of the number of articles eventually produced and/or</li> </ul>

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

- c) give clear information about any period during which the offer is available and where the offer is to be made in more than one stage.

Closing date	8.11	Any final closing date must be clearly stated in the advertisement and prior to any information regarding other dates by which the initial orders are being limited.
Scarcity	8.12	When making claims as to the scarcity or rarity of items not produced directly by or for the member, substantiation must be available.

### Children and Young persons

Scope	8.13	Members must comply with the general rules regarding children and young persons when using all media, including the internet.
Parental consent	8.14	When collecting data in both the online and offline environment from children under 12 years of age, members must secure verifiable and explicit consent from a parent or guardian.  Members must not send unsolicited commercial communications to children under 12 years of age without first obtaining the verifiable and explicit consent of the parent/guardian. Members must also ensure that they comply with any legislation regarding consent for the sending of commercial communications.
Content of commercial communications to children and young persons	8.15	Commercial communications addressed or likely to appeal to children and young persons should contain nothing that is likely to result in their physical, mental or moral harm.
Safety		a) children and young persons should not be encouraged to enter strange places or talk to strangers. Particular care is needed where they are asked to make collections, enter schemes or gather labels, wrappers, coupons and other similar items
Hazardous situations		b) children and young persons should not be shown in hazardous situations or behaving dangerously in the home or outside, except to promote safety. They should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety
Dangerous substances or equipment		c) children and young persons should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include petrol, certain medicines and household substances as well as electrical appliances and machinery, including agricultural machinery
Copying		d) children and young persons should not be encouraged to copy any practice that might be unsafe for a minor.
Suitability	8.16	Advertisements or promotions addressed or likely to appeal to children and young persons should not exploit their inexperience, vulnerability, credulity or natural loyalty. In particular:

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

Inferior / unpopular		a) children and young persons should not be made to feel inferior or unpopular for not buying the advertised product or not undertaking a particular activity
Lack of courage, duty or loyalty		b) children and young persons should not be made to feel they are lacking in courage, duty or loyalty if they do not buy, or do not encourage others to buy, a particular product or undertake a particular activity
Easy assessment of product		c) it should be made easy for children and young persons to judge the size, characteristics and performance of any product advertised and distinguish between real-life situations and fantasy and
Costly products		d) adult permission must be obtained before children and young persons are committed to purchasing costly products.
Addressed marketing	8.17	Advertisements and promotions addressed to children and young persons:
Nuisance		a) should not encourage them to make a nuisance of themselves to parents, teachers or others
Appeals to purchase		b) should not make a direct appeal to children and young persons to buy the advertised products or persuade their parents or other adults to buy the advertised products for them
Exaggeration		c) should not exaggerate what is attainable to an ordinary child using the product being advertised or promoted
Eating & drinking near bedtime		d) should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack food
Charitable appeals		e) should not exploit their susceptibility to charitable appeals and should explain the extent to which their participation will help any charity-linked promotions.
Adult materials	8.18	Advertisers should take care not to send material or otherwise target advertising at children and young persons that is suitable only for adults and must exercise care when packaging products for despatch to adults that may fall into the hands of children and young persons.
Credit & children and young persons	8.19	Members must not make offers of credit to those under 18 (Consumer Credit Act 1974) and are advised to include in their offers a prominent statement explaining that credit terms are not available to those under 18.
Contracts & children and young persons	8.20	When an offer suitable only for adults is addressed to adults but is particularly likely to appeal to children and young persons then members must take reasonable steps to identify any respondent as being over 18. Members should also note that contracts are legally unenforceable against children and young persons.
Prize promotions and children and young persons	8.21	Promotions addressed to children and young persons:



## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

- a) must not encourage excessive purchases in order to participate
- b) must require adult permission if prizes or incentives are likely to cause conflict between a parent/guardian and child, such as holidays or pets
- c) must clearly explain any proof of purchase required must not exaggerate the chance of winning or the value of a particular prize.

Prize promotions addressed to children and young persons must also comply with paras 7.14 to 7.38 above. Members should also note that contracts are not normally enforceable against children and young persons.

Offensive weapons & children and young persons	8.22	Members must not make offers of offensive weapons to children and young persons under 16 years of age and are advised to double-check the age of all those making cash payments for such goods.
Gaming and alcohol	8.23	Members must not make offers for or in any way promote gaming schemes or alcoholic drinks to children and young persons, taking care not to produce any commercial communication for these products which might appeal to children and young persons.
Data	8.24	Members must not rent lists known to contain children under 12 years of age without first obtaining a parent or guardian's verifiable and explicit consent.
Collection of data	8.25	Members must not attempt to obtain information from children and young persons about other persons (e.g. parents) for marketing purposes.

### Tobacco direct marketing

Tobacco Advertising and Promotion Act 2002	8.26	Members must comply with the Tobacco Advertising and Promotion Act 2002 and with any regulations made under the Act, including, but not limited to, the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004.
Ban on tobacco advertising	8.27	Unless exempted (see para 8.28 below), members must not publish, print, devise or distribute a commercial communication in the UK where the purpose or effect is to promote a tobacco product or cause such a commercial communication to be printed, devised or distributed. This prohibition covers the distribution of a tobacco advertisement through all channels of communication, including electronic transmission. Currently the prohibition does not cover tobacco rolling papers and filters. Members should consult Rule 21 Tobacco, Rolling Papers and Filters in the CAP Code, 12th Edition.
Exemptions	8.28	Members are exempted from para 8.27 above if: <ul style="list-style-type: none"> <li>a) the commercial communication in which a tobacco product is promoted is made in the course of a business which is part of the tobacco trade, and is for the purposes of that trade and is directed solely at persons engaged in the sale of tobacco products</li> </ul>

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

- b) the commercial communication is made in reply to a particular request by an individual for information about a tobacco product. However, members must not permit tobacco advertisements to be sent to all consumers on a database. Individuals must specifically request that information on each and every occasion. A request for information cannot be considered as a request for further information in the future
- c) the advertisement is contained in a publication (other than an in-flight magazine) where the principal market is not the UK (or any part of it) or if it is contained in any internet version of such a publication.

Free distribution	8.29	Members must not give away any tobacco product or coupon to the public or cause or permit the giving away of any product or coupon if the purpose or effect of so doing is to promote the product. A coupon means a document or other device (whether by itself or not) that can be redeemed for a product or service or for cash or any other benefit.
Sponsorship	8.30	Members must not be party to any sponsorship agreement where the purpose or effect is the promotion of tobacco products.
Broadcast services	8.31	Members should refer to the Broadcasting Act 1990 (as amended) and the Broadcasting Act 1996 (as amended), and to the Codes of Practice issued by the Broadcast Committee of Advertising Practice (BCAP) for the rules relating to the promotion of tobacco products via broadcast services.

### Charities

Legislation	8.32	Members dealing with charity advertisements must ensure compliance with the Charities Act 1992, the Charities Act 2006, and the Charitable Institutions (Fund-Raising) Regulations 1994.
Contributions to charity	8.33	<p>Members' offers which claim to benefit third party registered charities or good causes must:</p> <ul style="list-style-type: none"> <li>a) name each charity (including the registered charity number) or good cause and specify what exactly will be gained by the named charity or cause</li> <li>b) if there is more than one institution concerned, state the proportions in which the institutions are respectively to benefit</li> <li>c) state the actual amount of the charitable contribution, if it is known at the time the statement is made, or if the actual amount of the charitable contribution is not known an accurate estimate of the charitable contribution as is reasonably possible in the circumstances and</li> <li>d) have a prior written agreement with charitable institution(s) for which it is represented that charitable contributions are to be given or applied. The statement must meet the requirements of the Charitable Institutions (Fund-Raising) Regulations 1994 (as amended).</li> </ul>

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

		Members must not exaggerate the benefit to the charity or good cause from individual purchases or contributions and must make available on request a current or final total of contributions made.
Professional Fund Raisers	8.34	<p>Members, who are acting as professional fundraisers (a business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable purposes) for charities must, when they are making solicitations for money or other products for the benefit of one or more charitable institutions, include a statement. The statement must clearly indicate:</p> <ol style="list-style-type: none"> <li>for whom they are fundraising</li> <li>the proportions in which the charitable institution, if more than one, will benefit</li> <li>how their remuneration is calculated and</li> <li>the amount of remuneration they will receive in connection with the appeal, or if the actual amount is not known at the time the statement is made, an accurate estimate of that remuneration is as reasonably possible in the circumstances.</li> </ol>
Charity-linked promotions	8.35	<p>Members' offers or promotions which benefit charities or causes should:</p> <ol style="list-style-type: none"> <li>state if the promoter has imposed any limitations on its own contribution</li> <li>not limit consumers' contributions. If an amount is stated for each purchase, there should be no cut-off point for contributions. If a target total is stated, any extra money collected should be given to the named charity or cause on the same basis as contributions below that level.</li> <li>be able to show that any targets set are realistic, and should not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product</li> <li>if asked, make available to consumers a current or final total of contributions made and</li> <li>take particular care when appealing to children and young persons.</li> </ol>
Written contracts	8.36	Members involved in commercial "tie-ups" with third party charities must ensure that a formal agreement is in place with the charities in question and be able to produce such an agreement on request from the Association or the Commission.
Non-registered charity	8.37	Offers or promotions that benefit a non-registered charity should also define the nature and objectives of that charity.

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

### Financial Services

Definition of financial products	8.38	<p>Paras 8.38 to 8.55 below apply to all members offering consumer financial products and services, including:</p> <ul style="list-style-type: none"> <li>a) investment opportunities, including the giving of investment advice, managing or arranging investments, buying, selling, subscribing for or underwriting investments, banking, life-based insurance and pure protection policies, collective investment schemes and funeral plan contracts</li> <li>b) mortgages and mortgage advice</li> <li>c) general insurance and insurance advice</li> <li>d) consumer loans.</li> </ul>
Definition of Distance Contract	8.39	<p>For the purposes of paras 8.38 to 8.55, a distance contract for financial services is any contract concluded between a supplier and a consumer under an organised distance sale or service provision scheme run by the supplier, who, for the purposes of that contract, makes exclusive use of one or more means of a distance communication up to and including the time at which the contract is concluded.</p>
Legislation	8.40	<p>Members issuing commercial communications for financial products must comply with all relevant legislation. Please see appendix 4 for a list of legislation affecting direct marketers. Members should look at the guidance produced by the Department for Business, Innovation and Skills (BIS) and the Office of Fair Trading (OFT) in these areas.</p>
Code compliance	8.41	<p>Members must also comply with all relevant provisions of this Code, paying particular attention to the paragraphs below, the remainder of Sections 6, 7 and 8 on Content of Commercial Communications and Section 5 on Data.</p>
Contents of financial offers	8.42	<p>Offers for financial products must clearly indicate the nature of the contract being offered and must be expressed in simple terms so that recipients are in no doubt as to the commitment they are entering into.</p>
Financial Services Authority	8.43	<p>Members are referred to Appendix 5 for information on the Financial Services Authority Principles of Business.</p>
Credit Advertisement - definition	8.44	<p>A "credit advertisement" means an advertisement published for the purposes of a business carried on by the advertiser indicating that it is willing;</p> <ul style="list-style-type: none"> <li>a) to provide credit, or</li> <li>b) to enter into an agreement for the bailment or (in Scotland) the hiring of goods by the advertiser.</li> </ul> <p>A credit advertisement is exempt from the rules in paras 8.45 -8.55 below if</p> <ul style="list-style-type: none"> <li>a) it indicates that credit is available only to bodies corporate (for example limited companies),or</li> </ul>

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

		<p>b) it indicates that credit was only available for business purposes, or</p> <p>c) it is regulated under the Financial Services and Markets Act 2000 by the Financial Services Authority (FSA).</p>
Content of credit advertisements	8.45	<p>All credit advertisements must use plain and intelligible language, be easily legible, and include the name of each advertiser. A postal address must also be specified for each advertiser if a representative example is triggered.</p> <p>A postal address is not required where the advertisement:</p> <p>a) is published by means of a television or radio broadcast, or</p> <p>b) is in the premises of a creditor or a dealer (i.e. a retailer of goods or services on credit) and is not intended to be taken away, or</p> <p>c) includes the name and address of a dealer or the name and postal address of a credit-broker.</p>
Responsibility of publishers of credit advertisements for compliance	8.46	<p>Any person who causes a credit advertisement to be published must ensure that it complies with The Consumer Credit (Advertisements) Regulations 2010.</p> <p>The advertiser or publisher must also ensure that the advertisement is not misleading, by inclusion or omission, contrary to The Consumer Protection from Unfair Trading Regulations 2008 (See Section 6 Content Of Commercial Communications General Rules for a summary).</p>
Requirement to display a representative example	8.47	<p>If a credit advertisement includes an interest rate or any amount relating to the cost of the credit then a representative example of the credit on offer must also be included in the advertisement. An interest rate for this purpose is not limited to an annual rate of interest but would include a monthly or daily rate or an Annual Percentage Rate (APR). It would also include reference to 0% credit. An amount relating to the cost of credit would include the amount of any fee or charge, or any repayment of credit (where it includes interest or other charges), whether expressed as a sum of money or a proportion of a specified amount.</p>
Representative Example	8.48	<p>The representative example must comprise the standard information (see 8.49 below) and must be accompanied by the words "representative example". It must be representative of agreements to which the representative APR applies and which are expected to result from the advertisement. This is not limited to agreements featured in the advertisement if the advertiser expects other agreements (e.g. with different rates or amounts) to be entered into as a result of the advertisement, whether with the advertiser or a third party.</p> <p>'Representative' here means typical or characteristic of the relevant agreements. There is no 51% test to be applied, but the advertiser should ensure that the terms advertised (or better terms) would apply to enough business generated by the advertisement to make it truly representative of the relevant agreements.</p>

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

If there is more than one product which is representative of the relevant agreements, either may be shown as the representative example as long as in doing so this does not lead to a misleading example, contrary to The Consumer Protection from Unfair Trading Regulations 2008.

The representative example must be more prominent than any other cost information and any APR trigger. Other examples may also be included but must be less prominent than the overall representative example. The same applies to any other cost information such as the Total Charge for Credit per £ 100. However, the prominence rule does not apply to non- cost information.

Standard Information	8.49	<p>The standard information to be included in a representative example comprises the following where applicable:</p> <ul style="list-style-type: none"> <li>a) the rate of interest</li> <li>b) any Total Charge for Credit charges</li> <li>c) the total amount of credit</li> <li>d) the representative APR</li> <li>e) the cash price and the amount of any advance payment</li> <li>f) the duration of the agreement</li> <li>g) the total amount payable</li> <li>h) the amount of each repayment of credit</li> </ul>
Presentation of standard information	8.50	<p>The rules on the presentation of the standard information are as follows:</p> <ul style="list-style-type: none"> <li>a) it must be clear concise and presented together</li> <li>b) it should appear in the same place-for example in a box-rather than individual pieces of the standard information being scattered around the advertisement so that they are unlikely to be seen together. This is to ensure that the borrower views the standard information as a whole</li> <li>c) each item of the standard information should be given equal prominence</li> <li>d) it must be more prominent than any other information in the advertisement relating to the cost of credit and any APR trigger</li> <li>e) it should stand out from other information relating in any way to the cost of the credit</li> <li>f) it should be easily legible (or clearly audible) for a typical consumer.</li> </ul>

## 8.0 CONTENT OF COMMERCIAL COMMUNICATIONS - Special Rules cont.

Requirement to provide a representative APR only	8.51	<p>Credit advertisements which</p> <ul style="list-style-type: none"> <li>a) indicate in any way (whether expressly or by implication) that credit is available to persons who might otherwise consider their access to credit restricted (e.g. non- status borrowers), or</li> <li>b) indicate in any way that any of the terms on which credit is available is more favourable (either in relation to a limited period or generally) than corresponding terms applied in any other case or by any other creditor (this would include comparisons with any existing loan), or</li> <li>c) include any incentive to apply for credit or to enter into an agreement under which credit is provided</li> </ul> <p>must display the representative APR.</p> <p>This requirement will not in itself trigger the requirement for the rest of the standard information as described above in para 8.49.</p> <p>However a representative example will be required and must be more prominent than the APR trigger if:</p> <ul style="list-style-type: none"> <li>a) the advertisement also includes any interest rate or cost figure, or</li> <li>b) an advertiser chooses to display an APR of its own volition rather than being required to be law.</li> </ul> <p>The requirement to provide a representative APR only does not apply in the case of authorised non- business overdrafts.</p>
Internet, mobile phone, TV and radio advertisements	8.52	<p>The above rules must be complied with where applicable on all forms of advertising, including on the internet, mobile phone, TV and radio communication channels. The rules do not make any specific provision for advertisements on such communication channels.</p> <p>Example</p> <p>Mobile – an advertisement sent by SMS that included an interest rate or any amount relating to the cost of credit would need to display a representative example, shown together and of equal prominence. It is not permissible to include some of the required information in the SMS message and redirect the borrower to another source, such as a website, for the remainder of the information.</p> <p>In the case of internet advertisements, an additional aspect of the rules on prominence (see para 8.50 above) will be the ease with which information can be found on the internet site.</p>
Ancillary service (Payment Protection Insurance or other insurance) contract statement.	8.53	<p>If an ancillary service contract is mandatory or a condition of obtaining the credit on the applicable terms and conditions and the cost is known or ascertainable at the time the advertisement is published, then a statement of the costs of the ancillary service must be included in the Total Cost for Credit.</p>

If the cost of the ancillary service contract is not known or ascertainable at the time the advertisement is published, the advertisement must contain a clear statement as to the obligation to enter into the ancillary service contract.

This requirement to include a statement of the costs of the ancillary service contract or the obligation to enter into such contract is irrespective of whether an APR is stated in the advertisement and whether the advertisement includes standard information.

This requirement does not apply to authorised non- business overdrafts.

The ancillary services contract statement must be:

- a) clear and concise
- b) at least as prominent as any standard information contained in the advertisement and
- c) presented together with any representative APR.

Advertisements for secured lending or hiring	8.54	<p>Advertisements for secured lending or hiring must reveal that security is required and state the nature of that security.</p> <p>No wording is prescribed for this (see below) and there are no requirements concerning prominence of this information, provided that it is clear and easily legible (or clearly audible).</p> <p>If the security for a loan takes the form of a mortgage or charge over the borrower's home then the appropriate statutory wealth warning must be shown with the required prominence.</p>
Restrictions on certain expressions in credit advertisements	8.55	<p>The following expressions are prohibited in credit advertisements where they do not reflect the reality of the product on offer, "overdraft", "interest free", "no deposit", "loan guaranteed", " pre-approved", "gift", "present", "weekly equivalent".</p>



## 9.0 FULFILMENT AND CUSTOMER SERVICE

## 9.0 FULFILMENT AND CUSTOMER SERVICE

**Introduction**

Scope	9.1	This Section of this Code contains provisions relating to the fulfilment/ performance of goods or services and to the customer service operations of all members.
Compliance	9.2	Members providing goods or services to customers, whether consumers or other businesses, must comply with the requirements contained in this Section.
Compliance	9.3	Members must read this Section in conjunction with Sections 6, 7 and 8 of this Code on the Content of Commercial Communications.

**Characteristics of Goods or Services**

Providing correct goods/services	9.4	Members must make every effort to provide the goods or services as ordered by goods/services the customer and as described in the relevant commercial communication (see para 9.14 below on the substitution of goods).
Fit for purpose	9.5	Goods supplied by members must be fit for the purpose described and for any purpose that a customer has made known to them.
Satisfactory quality	9.6	Goods supplied by members must be of satisfactory quality and in particular, taking into account the price, nature of the goods and the description given, must be: <ul style="list-style-type: none"> <li>a) safe (members must refer to all relevant health and safety and consumer protection legislation)</li> <li>b) durable</li> <li>c) of acceptable appearance and finish and</li> <li>d) free from minor defects.</li> </ul>

**Introduction**

Unsolicited goods and inertia selling	9.7	Members must not send goods or provide services for which payment is requested to any addressee without first having received an instruction to supply such goods or services. Where a member does so for any reason, the goods or services must be treated as an unconditional gift and members must not ask consumers to pay for or return unsolicited goods except for substitute goods supplied in conformity with clause 6.28 g.
Hoax orders	9.8	Members must operate reasonable verification procedures to minimise the irritation resulting from hoax orders.

## 9.0 FULFILMENT AND CUSTOMER SERVICE cont.

Investigating hoax orders	9.9	Any allegation that a hoax order has been received, must be promptly investigated and, where appropriate, provide the complainant with order details (such as the original order form or a record of the date and time of any telephone call). Where there is any doubt as to the authenticity of an order, members must arrange to collect the goods in question or allow the return of the goods, free of charge. Requests for payment must cease as soon as practicable, explaining to the customer if there is any unavoidable delay in doing so.
Fulfilment timing	9.10	Members must take no longer than 30 days from the day following the date on which the customer sent their order to fulfil an order unless the member has a fair reason for later fulfilment (such as made-to-measure goods) and has stated clearly in the offer when the order will be fulfilled (or that it may not be fulfilled due to limited stocks or insufficient orders) (see para 6.28 b above).
Failure to fulfil	9.11	If it becomes clear that an order cannot be fulfilled within 30 days without prior agreement, members must inform customers immediately, giving them a firm date for dispatch or regular progress reports, and giving them the opportunity to cancel. If a customer requests cancellation, members must provide a full refund of any sums paid in advance as soon as possible and in any case within 30 days. Such a request must be accepted even when it is not possible to prevent delivery and in this event the member must meet the customer's reasonable cost of returning the goods.
Subscription/series	9.12	If the order is for a subscription or series, the order is fulfilled for the purpose of paras 9.10 and 9.11 above when the first item is dispatched or the service is first made available to the respondent.
Availability of Goods	9.13	Members must take all reasonable steps to ensure that they do not create a demand that cannot be met, ensuring there are sufficient stocks available (see paras 6.50 and 7.7 above). Products must not be advertised unless members can demonstrate that they have reasonable grounds for believing they can satisfy demand.
Substitutes	9.14	If a product does become unavailable, a substitute may be supplied as long as it is of equivalent quality and price and the possibility was explained clearly in the offer. Members must accept the return of any unwanted substitute products and meet the cost of such a return, informing customers at the time of delivery that the substitute may be returned free of charge (see para 6.28 g above).
Substitutes and promotional offers	9.15	If a promotional offer becomes unavailable, products of a similar or greater perceived quality and value or a cash payment must be substituted unless the original offer clearly stipulated alternative procedures (see para 7.7 above).
Prepayments	9.16	When a member requires prepayment from the customer and the customer pays by credit or debit card, the relevant account must not be debited until the product or service is available to be dispatched or provided. A payment by cheque may be paid into the member's account before the product or service is dispatched or provided.

## 9.0 FULFILMENT AND CUSTOMER SERVICE cont.

Failure to fulfil after payment is cashed	9.17	If it becomes clear after the payment has been cashed that the order cannot be fulfilled, then the member must offer to refund the money paid within 30 days unless the customer prefers to wait, in which case they must be given a firm dispatch date or regular progress reports.
Payment protection schemes	9.18	Safe Home Ordering Protection Scheme (SHOPS) or another appropriate scheme should cover a particular advertisement.
Packaging of goods	9.19	Members must exercise care when packaging products dispatched to adults that may fall into the hands of children and young persons. Members should refer to the Industry Council for Packaging and the Environment (INCPEN) Responsible Packaging Code of Practice.

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**Cancellation**


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Refunds	9.20	Members must offer to refund all money paid in advance if:
Goods/Services not received		a) the customer has not received their goods or services, unless they prefer to wait (in which case they must be given a firm dispatch date or regular progress reports) or a substitute is provided in line with para 9.14 above
Damaged goods		b) goods are returned because they are damaged when received, are faulty or are not as described (see para 9.6 above), in which case the member must bear the cost of post and packing, including the cost of returning the goods
Money-back guarantee		c) an unconditional money-back guarantee is given and the goods are returned within a reasonable period
Returned goods not received		d) goods that have been returned are not received by members providing customers can produce proof of posting
Right to cancel		e) a consumer has exercised their right to cancel as set out in para 9.21 below, in which case members must refund all money paid within 30 days of receiving notice of the decision to cancel or
Other		f) the member is otherwise in breach of its statutory or contractual obligations.
Right to cancel – time limits	9.21	Members must accept that in relation to most distance contracts (see para 9.24 below for exceptions), consumers have an unconditional right to cancel orders for goods or services as long as a notice of cancellation is provided to the member in writing or other durable medium and within the following time limits:
Time limit when correct information provided		a) where a member has provided the additional and written information required in para 6.26 above, an order may be cancelled within seven working days from the day following that on which the consumer received the goods or agreed to go ahead with the service (see para 6.32 above)

## 9.0 FULFILMENT AND CUSTOMER SERVICE cont.

Late provision of information		b) where a member has failed to provide the required information, the period of cancellation begins on the day following that on which the consumer receives the information, providing this is within three months of the goods being delivered or the service being agreed to or
Failure to provide information		c) where the member fails to provide the required information at any stage, the cancellation period expires three months and seven working days from the day following that on which the consumer received the goods or agreed to go ahead with the service
Return of goods	9.22	Members must make clear to consumers prior to the conclusion of the contract whether they are required to return goods following cancellation and if they are required to pay for the cost of returning the goods. In the absence of such an explanation, consumers are under no obligation to return cancelled goods, although they must ensure that the goods are available for collection where the member, within 21 days of the cancellation, has given written notice of its intention to collect. During this time, the consumer has an obligation to take reasonable care of the goods.
Return of substitutes		Any contractual requirement for the consumer to cover the cost of returning cancelled goods, does not apply to any goods which were supplied as substitutes for the goods ordered by the consumer (see para 9.14 above).
Trying out goods	9.23	Members must be aware that consumers may try out products that they then cancel even though they are under a duty to take reasonable care of the goods and must return them in the same condition as they were received.
Exemptions to right to cancel	9.24	The right to cancel does not apply to: <ul style="list-style-type: none"> <li>a) services that have already begun with the consumer's agreement before the end of the cancellation period, provided the member has informed the consumer in writing or other durable form that the right to cancel will be lost once the service begins (see para 6.32 above)</li> <li>b) goods made to the consumer's specification, personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly</li> <li>c) goods or services, the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier</li> <li>e) audio or video recordings or computer software if unsealed by the consumer</li> <li>f) newspapers, magazines or periodicals and</li> <li>g) betting, gaming or lottery services.</li> </ul>

## 9.0 FULFILMENT AND CUSTOMER SERVICE cont.

Refund for cancelled goods	9.25	Following cancellation of goods or services, members must refund all money paid by consumers within 30 days of receiving notice of the decision to cancel (see para 9.20 above), including the cost of returning the goods, where appropriate.
<b>Characteristics of Goods or Services</b>		
Prompt, efficient and courteous customer service	9.26	Members must at all times aim to give prompt, efficient and courteous service to customers and must ensure they have in place adequate administrative procedures to achieve this. Where a member uses a mailing house or other agent for fulfilment, the member retains full responsibility for this and all other aspects of customer and client service.
Contact details	9.27	Members must ensure that customers are able to contact them easily, via a dedicated address and telephone number, in order to raise queries or complaints with the minimum of effort. (see para 6.27 above for information that must be included on order forms and para 19.9 below for information that should be displayed on an organisation's website) In particular, automated telephone answering services must give clear instructions, and quickly and correctly route a customer to the appropriate service or live operator.
Order records	9.28	Members must keep adequate records of the processing of orders received for goods or services, and must maintain an adequate system of monitoring and recording queries and complaints.
Answering queries	9.29	Members must answer customers' queries promptly and efficiently and carry out instructions immediately, or where this is not possible give a careful explanation as to why a particular request is not possible or will take some time to action. In particular, in the event of a cancellation of an order, members must explain if goods have already been dispatched or if further letters incorrectly requesting payment cannot be prevented.
Responsibility for staff	9.30	Members must accept responsibility for statements made by their staff or others working on their behalf.
Complaints	9.31	A complaint is any expression of dissatisfaction by a customer about a particular solicitation, transaction, product or service. It does not apply to general enquiries or comments regarding the member's business or products. However, members must recognise that inefficiency in dealing with queries can quickly escalate to a complaint (see para 9.29 above).
Time limits for dealing with complaints	9.32	Members must deal with complaints promptly and in any case normally within five working days. If the complaint is complex or cannot be dealt with within ten working days of receipt, then it must be acknowledged within five working days.

## 9.0 FULFILMENT AND CUSTOMER SERVICE cont.

Settling complaints	9.33	If a complaint is found to be justified, members should settle it quickly, effectively and courteously. If a complaint is not justified, this should be politely explained to the complainant. Where there is any uncertainty, the member should give the customer the benefit of the doubt.
Direct Marketing Commission	9.34	If the complaint is still not satisfied, the member must advise the complainant of the services provided by the Commission (see Section 4).
Payment and Collection Procedures	9.35	Members' debt collection procedures must be reasonable. Letters requesting payment must be polite and clear, and sufficient time must be allowed between correspondence for payment to be made. Before referring any debt for collection by a third party, members must first serve adequate and polite notice of their intention to do so. Members must comply with section 40 of the Administration of Justice Act 1985 (as amended) and the Office of Fair Trading guidelines on payment and collection procedures, namely the Guidance on Debt Collection
Third party debt collectors	9.36	Members must satisfy themselves that any parties used for the collection of debt have reasonable procedures and methods.

## 10.0 CATALOGUE AND HOME SHOPPING



## 10.0 CATALOGUE AND HOME SHOPPING

**Definitions**

Catalogue and home shopping	10.1	"catalogue and home shopping" refers to offers for goods or services made via catalogues (two stage) or off-the-page (one stage) without the buyer and seller meeting face to face. Catalogues or advertisements can be accessed on-line or in print and response can be via the internet, post, telephone or any other means of communication
Existing and prospective customers	10.2	"existing customer" is where there has been an established trading relationship between the customer and advertiser company
Prospective customer	10.3	"prospective customer" is where the company has received no previous order from that particular customer.

**General Requirements**

Code compliance	10.4	Members involved with catalogue and home shopping must comply with this Code as a whole and in particular with Sections 6, 7 and 8 on the Content of Commercial Communications and with Section 9 on Fulfilment and Customer Service. Members must also comply with Section 5 on Data and, where relevant, with Section 19 on On-Line Commercial Communications.
Information to be provided	10.5	Members must provide existing and prospective customers with the significant terms and conditions of an offer within the final written advertised stage in a process that allows individuals to buy products or services (i.e. in a main catalogue or in an "off-the-page" advertisement). This must include the identity of the advertiser and their full contact details, both of which must appear on the retained part of any catalogue or advertisement.
Description of the main features	10.6	Members must give a clear and accurate representation of the main features of the product or service being offered.
Additional charges	10.7	The amount of any additional charges, for example, postage and packing, must be made clear in any offer or advertisement.
Credit	10.8	Where credit terms are offered, members must clearly state the full terms and conditions at the time of the offer, for example, the APR. Offers of credit must not be made to any person less than 18 years of age. Members must ensure that any offers of credit terms comply with the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006 and the various regulations issued under it, including, but not limited to, the Consumer Credit (Advertisements) Regulations 2004, the Consumer Credit (Disclosure of Information) Regulations 2004, the Consumer Credit (Agreements) (Amendment) Regulations 2004 and the Consumer Credit (Early Settlement) Regulations 2004 (see paras 8.44 - 8.48 above). All response advertisements must clearly state that the member may, in the case of opening a credit account, contact a third party credit agency for credit information on prospective applicants and may pass credit information about the operation of the account to the third party credit agency.

## 10.0 CATALOGUE AND HOME SHOPPING cont.

Telephone response	10.9	For the rules relating to telephone response, direct response television and direct response radio, members must refer to Sections 12 and 21.
Requests for catalogues	10.10	Requests to send a catalogue or brochure must be fulfilled as soon as possible and preferably within three days of receipt.
Statements	10.11	Where relevant, all customers must receive a regular statement stating the amount paid, the outstanding balance, the minimum amount and date for the next payment. Statements should clearly show all elements of charges, including interest, where applicable.
Letters chasing overdue accounts and collection agencies	10.12	All letters asking for the payment of overdue accounts must clearly state the amount of payment still outstanding. Members must inform customers if the debt is to be sent to a collection agency (see para 9.35 above).
Catalogues/direct marketing	10.13	Para 5.22 c above requires members to provide a mechanism by which an individual can exercise their right to object to the processing of their personal data for direct marketing purposes. However, where this requirement is incompatible with the relationship that is being promoted, i.e. where a catalogue is requested which, in itself, may be considered to be direct marketing, such a mechanism is not required.
Credit and children and young persons	10.14	Members must not make offers of credit to those under 18 (Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006) and are advised to include in their offers a prominent statement explaining that credit terms are not available to those under 18.

## 11.0 DIRECT MAIL

## 11.0 DIRECT MAIL

**Scope**

Scope	11.1	This Section applies to all members involved in direct mail production either as clients or as suppliers (i.e. those companies providing production services, including envelope manufacture and supply, printing, computing and lettershop facilities).
Contractual relations'	11.2	The relationship between client/agency and production company will predominantly be governed by contract and as such is largely outside the scope of this Code. For additional guidance members should refer to the Association's Best Practice in Direct Mail Production and, where relevant, to the Association's Suggested Standard Terms and Conditions for Mailing Houses and their Clients.

**General Requirements**

Code compliance	11.3	Members involved in direct mail production must comply with this Section and with the Code as a whole, and should take particular notice of paras 3.32 – 3.38 above on Environmental Responsibility.
Suppliers' responsibility	11.4	Members acting as a supplier for a non-Association member client must insist that all direct marketing activity with which they are involved is legal and complies with this Code, as a condition of acting for the client.
Client responsibility	11.5	Members employing a non-Association member for direct mail production services must ensure that this Code and any relevant legal requirements are followed. Members must accept that they normally remain responsible for any actions taken on their behalf by the supplier.
ASBOF levy	11.6	Members carrying out a direct mail campaign, unless specifically exempted, must have in place an arrangement with the Advertising Standards Board of Finance (ASBOF).
Written contracts	11.7	Contractual arrangements between client and supplier should be made in writing. Members are encouraged to ensure that all commercial arrangements and agreed conditions are included in such a written contract.

**Specific Requirements**

Content and the CAP Code	11.8	Requirements relating to the content of direct mail pieces are covered in Sections 6,7 and 8 of this Code (Content of Commercial Communications). All members involved in a direct mail campaign either as a supplier or an advertiser must comply with these Sections and with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).
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## 11.0 DIRECT MAIL cont.

Sample mailings	11.9	In order to ensure compliance with para 11.8 above suppliers must ensure they receive a sample of the mailing in question in good time before the start of a project. They must have in place written procedures for checking that the copy complies with this Code and with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).
Data processing	11.10	<p>Suppliers processing data on behalf of clients must enter into a written contract with the client in order to ensure compliance with the Data Protection Act 1998 and with this Code (see para 5.65 above). Such a contract must include:</p> <ul style="list-style-type: none"> <li>a) a description of the processing to be carried out</li> <li>b) a requirement that the processor act only on instructions from the data controller</li> <li>c) requirements relating to security, in particular: <ul style="list-style-type: none"> <li>i) the reliability of the processor's staff</li> <li>ii) technical measures to avoid unauthorised or unlawful processing or accidental loss, destruction or damage of data</li> <li>iii) organisational measures</li> <li>iv) that where sensitive data are to be processed, the level of security must be greater.</li> </ul> </li> </ul> <p>Members need not necessarily agree a written contract for every individual job. One contract can cover a number of jobs carried out on behalf of one client, provided that a reference is made on paperwork relating to a job that the previously agreed contract between the parties is to apply.</p>
Compliance with contract	11.11	Clients must take reasonable steps to ensure that processors comply with the provisions of the contract as set out in para 11.10 above and suppliers must regularly review their security measures, particularly in the light of technological developments, to ensure continued compliance.
Accuracy in data processing	11.12	Suppliers must take reasonable steps to ensure accuracy in their data processing.
Disclosure of personal information	11.13	Suppliers must not disclose personal data to any other party (including subcontractors) without the written prior consent of the client and nor must they or sub-contractors use personal data for any purpose other than the project in question, either during or after the project. Members are reminded of the Seventh Principle under the Data Protection Act 1998 (see para 5.39 above) and the need to have in place a data processing contract (see para 5.65 above) with any subcontractors they use.
Destruction or return of data	11.14	Personal data must, according to instructions received, either be destroyed or returned to the client upon completion or termination of the project.

## 11.0 DIRECT MAIL cont.

Project requirements	11.15	Clients must clearly define all their requirements for a particular project prior to the conclusion of the contract, specifying all components of the project and the required timings.
Meeting requirements	11.16	Suppliers must ensure that they have a full understanding of the client's requirements and be sure that they can provide what is required of them and in the timescale required.
Sub-contracting	11.17	Members should normally make clients aware of plans to sub-contract. Where the sub-contracting will materially change the contract between the mailing house and the client, e.g. service deadlines, postage dates etc, the mailing house should obtain the client's agreement before sub-contracting any elements of a project. Responsibility and payment issues should be clearly defined at this time and a written contract put in place, which must include data processing issues where relevant (see para 5.65 above). However, even where the mailing house has sub-contracted elements of a project, the mailing house remains responsible for the contract between itself and the client.
Quality of sub-contractors	11.18	Suppliers must ensure that all subcontractors used are reliable, capable of carrying out the work in question and that they will operate within the provisions of this Code.
Supply of materials	11.19	Clients must ensure that materials supplied for production purposes are packaged safely and are not in any way hazardous to health. Suppliers must store such materials safely and securely.
Postage	11.20	Where an electronic docketing system is used, clients must ensure that before the start of a mailing an appropriate account has been set up. Where a physical docketing system is still used, clients must provide blank postage dockets to mailing houses if required or lodge sufficient funds to cover postage in good time before the start of a mailing.
Proof of postage	11.21	Where relevant, suppliers must ensure that their client receives proper proof of postage documentation.

## 12.0 DIRECT RESPONSE TELEVISION AND RADIO

## 12.0 DIRECT RESPONSE TELEVISION AND RADIO

**Definitions**

Direct response broadcasting	12.1	'direct response broadcasting' is an advertising campaign run via television, radio, SMS, online or via the red button which includes a direct invitation for a recipient to telephone for further information on goods or services or to purchase goods or services.
Bureau or contact centre	12.2	A 'bureau' or 'contact centre' is the company, acting on behalf of the advertiser, employed to run the direct response campaign (i.e. to receive telephone calls and fulfil the particular request) whether for further information to be given or sent or to take orders for the goods or services offered.
Automated call handling	12.3	'automated call handling' (ACH) is the process whereby incoming calls are answered and handled by a pre-recorded message using specialist computer and telecoms equipment. It is also known as 'interactive voice response' (IVR) or 'voice interactive computer'.
Live operators	12.4	'live operators' are people specifically employed and trained by a live bureau to handle incoming calls.
Automated call distributor	12.5	'automated call distributor' is the equipment used by a live bureau to manage and report on incoming call traffic.

**Scope**

Scope	12.6	This Section of the Code applies to all members involved with direct response broadcasting, whether as a supplier or client. It covers direct response advertising campaigns via television, radio, SMS, online or via the red button and call handling practices in response to direct response broadcasting.
Code compliance	12.7	Members must comply with this Section of this Code and with the Code as a whole. In particular, members must comply with Section 21 on Telemarketing. Members should also refer to the Broadcasting Committee of Advertising Practice (BCAP's) Television Advertising Code on television advertising and Clearcast's Notes of Guidance.
Non-member bureau	12.8	Where members do not employ Association members to act on their behalf as bureaux or contact centres, steps must be taken to ensure that the non-member bureaux or contact centre complies with this Code in respect of all work carried out on behalf of the member. Similarly, members acting as a bureau or call centre on behalf of a non-member client must ensure that all of the advertisements with which they are involved comply with this Code.

**General Rules**

Content	12.9	Members must ensure that the content of all direct response broadcast advertisements complies, where relevant, with Sections 6,7 and 8 of this Code. In particular, all advertisements must be lawful, decent, honest and truthful and must not be misleading.
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## 12.0 DIRECT RESPONSE TELEVISION AND RADIO cont.

Clear instructions	12.10	Direct response broadcast advertisements must give clear instructions as to how to respond and an indication of the consequences of responding (i.e. that a brochure will be sent). It must be made clear if the response is via a premium rate number or by text message and if so, the cost per minute and the maximum length of the call or the cost of the text must be given. (see para 21.4 in respect of compliance with PhonepayPlus' Code of Practice).
Identity of the advertiser and contact details	12.11	At the beginning of a call respondents must be informed, either by the live call handler or the automated call handling system, of the identity of the advertiser. Respondents must also be given alternative contact details for the advertiser. The advertiser's name, address and telephone number must appear in the telephone directory or be listed with Directory Enquiries under the name given during the call and in the broadcast advertisement. When receiving calls on behalf of another organisation, members must disclose their own name, address and telephone number if requested at any time during the conversation.
Distance Selling Regs	12.12	Where respondents are given an opportunity to purchase goods or services offered for sale during the response telephone call or via an online site, members must comply with the Consumer Protection (Distance Selling) Regulations 2000 (see paras 6.23 to 6.33 above).
Personal information	12.13	Where personal data is collected during the telephone response, either by a live operator or an automated call handling system, members must comply with the Data Protection Act 1998 and with Section 5 of this Code. In particular, members must ensure that respondents are told who is collecting the data and for what purposes. An opportunity to object to further direct marketing communications and to the transfer of personal data to third parties must be given at the time of data collection, (i.e. during the telephone call).
<b>Bureaux/Contact Centres</b>		
Service levels	12.14	Members must use all reasonable endeavours to achieve service levels and performance standards agreed in advance with the client.
CD/Digital File Transfer	12.15	Members must refer to Section 5 of the DMA Code of Practice in respect of data encryption and security of file transfers.
Training	12.16	Members must ensure that all staff are suitably trained and have been fully briefed on the campaign and its objectives. A preview of the advertisement must be made available to them.
<b>Clients</b>		
Preview of advert	12.17	Members must provide a preview of the advertisement prior to the launch of the campaign and, where possible, forecasts of potential call volumes.
Service levels and performance standards	12.18	Prior to the start of the campaign, members must define in writing and obtain agreement to the service levels and performance standards it expects from a bureau.

## 13.0 DOOR TO DOOR DISTRIBUTION

## 13.0 DOOR TO DOOR DISTRIBUTION

## Introduction and Scope

Definition	13.1	Door to Door Distribution is the activity of distributing promotional or marketing material to residential homes and to businesses.
Code compliance	13.2	Members involved in Door to Door Distribution must comply with this Code as a whole and in particular with Sections 6, 7 and 8 on the Content of Commercial Communications, and should take particular notice of paras 3.32–3.38 above on Environmental Responsibility.
Scope - practitioners	13.3	This Section of the Code specifically applies to members who are involved as practitioners in Door to Door Distribution.
Scope - advertisers	13.4	This Section also applies to members who undertake any form of Door to Door delivery, including in-house distribution involving their own products and services. However, many provisions in this Section are intended only to apply to members involved in Door to Door Distribution on a commercial basis (i.e. as a contractor). Where this is the case, it will be clear from the wording used in the relevant paragraphs.
Scope - "in-house" and commercial	13.5	This Section of the Code is intended to apply equally to Association members who undertake Door to Door Distribution via their own 'in-house' delivery network and members who offer commercial Door to Door Distribution services, sub-contracting delivery to third party distributors.
Code compliance - distributors	13.6	Members using Door to Door Distribution as advertisers must make every effort to ensure that any commercial Door to Door distributor with which they are involved complies with the provisions of this Section and with the Code as a whole, whether or not the distributor is a member of the Association.
DMA membership applications	13.7	This Section of the Code will also be used as the basis for assessing applications from Door to Door practitioners to join the Association. Companies participating in commercial Door to Door Distribution must declare this on applying for membership and will be subject to a vetting procedure designed to assess their ability to meet the specific criteria of this Section.
Best Practice	13.8	Members should refer to the Association's Door to Door Practitioner's Handbook.
Your Choice Preference Service	13.9	Members must not deliver unaddressed items to addresses that have been registered with the Your Choice Preference Service Scheme (see glossary).
The CAP Code	13.10	Members must ensure that they do not knowingly deliver promotional material that breaches the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code). Members must honour requests from the Advertising Standards Authority or the Direct Marketing Commission not to deliver advertising material that is in breach of the CAP Code or this Code.

## 13.0 DOOR TO DOOR DISTRIBUTION cont.

**Structure**

Resources and systems	13.11	Practitioner members must be able to demonstrate that they have adequate resources and appropriate systems in place to carry out the services they offer.
D2D Distribution services	13.12	Practitioner members who offer commercial Door to Door Distribution services and directly control their distribution network must have: <ul style="list-style-type: none"> <li>a) a regular field management structure</li> <li>b) a postal sector mapping system to street level</li> <li>c) a matching database relevant to the areas in which distribution is offered.</li> </ul>
D2D Distribution services with no direct control of network	13.13	Practitioner members who offer commercial Door to Door Distribution services but which do not directly control their own distribution network must have: <ul style="list-style-type: none"> <li>a) a postal sector mapping system</li> <li>b) a matching database.</li> </ul>
Areas of distribution	13.14	The areas to which distribution will take place should be available to clients on request, either graphically or in writing.

**Delivery to Properties**

Ensuring delivery	13.15	Members undertaking delivery (on a commercial or non-commercial basis) must make every effort to ensure that the items delivered to homes or businesses will not be left protruding from letterboxes or left on doorsteps in such a way as to be an invitation to crime.
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**Commercial Contracts**

Availability of terms and conditions	13.16	Members involved in commercial Door to Door Distribution must make their terms and conditions of business available to customers prior to the conclusion of the contract (i.e. before any binding commitment has been entered into).
Content of contracts	13.17	Members involved in commercial Door to Door Distribution must ensure that all contracts (or supporting schedules supplied before commencement) for delivery clearly state: <ul style="list-style-type: none"> <li>a) the number of home and/or businesses to which delivery will take place</li> <li>b) the time span in which the material will be delivered</li> <li>c) the areas in which delivery will take place, for which listings of postcode sectors or graphic representation will be made available to the client</li> <li>d) the methods of delivery to be used</li> </ul>

## 13.0 DOOR TO DOOR DISTRIBUTION cont.

- e) the requirements for receipt of material
- f) the agreed cost and
- g) arrangements for payment.

Malpractice	13.18	Members must not knowingly make a contract with any person as a distributor who has an unspent conviction for malpractice related to the Door to Door industry.
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#### Accountability and “Backchecking”

Advising of quality control services to be used	13.19	Members undertaking commercial Door to Door Distribution must advise clients, at the time the contract is agreed, of the backchecking or other quality control services that form part of the standard contract.
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Free newspaper deliveries	13.20	Leaflets and other commercial Door to Door material delivered via the free newspaper networks of publications that are certified by ABC (Audit Bureau of Circulations Ltd) must be included in the backchecking procedures required by ABC for the relevant publications distributed during the week in question. Results must be included on backcheck forms in the same way as for ABC certification. Subject to the restrictions of the Data Protection Act 1998 and any related legislation, ABC backcheck results must be made available to the client on request.
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Quality control systems for other commercial distribution	13.21	Any backchecking arrangements or other quality control systems applying to Door to Door material delivered using other commercial methods of distribution, for example, solus, shareplan or Royal Mail must be advised to the client at the time the distribution contract is agreed.
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Results of quality control checks	13.22	Members should, if requested, be able to provide clients with the results from backchecks or alternative forms of quality control, although the passing of personal information to clients must not breach the Data Protection Act 1998 and any related legislation. In particular, the client must make it clear from the outset whether it considers the backchecking company to be acting as a data processor or a data controller (see paras 5.5 and 5.8 above for definitions).
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#### Observing Householders’ Wishes

Requests not to receive unaddressed items	13.23	Members must have in place a structure to enable every effort to be made to respect a householder's wish not to receive unaddressed items, whether such requests are made directly to the member or via any industry schemes approved by the Association (see para 13.9 above).
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#### General Requirements

## 13.0 DOOR TO DOOR DISTRIBUTION cont.

Schemes for monitoring distribution	13.24	Members must co-operate with any independent research or validation scheme for monitoring distribution, which have the approval of the Association.
Claims about competitors	13.25	Members must only make claims or representations regarding competitors based on independent source(s), which must be quoted. Members must comply with Regulation 4 under the Business Protection from Misleading Marketing Regulations 2008.
Security of stock and insurance	13.26	Members acting as distribution companies must ensure that any depots used for the receipt of stock are secure and fully insured.
Safe product samples	13.27	Members must not arrange the distribution of product samples that, if unintentionally misused, would be likely to cause injury or illness.
Association Guidelines	13.28	Members should comply with The Industry Council for Packaging and the Environment (INCPEN) Responsible Packaging Code of Practice.

## 14.0 EMAIL MARKETING

## 14.0 EMAIL MARKETING

Scope	14.1	This section of this Code applies specifically to commercial communications sent by email.
Code compliance	14.2	Members sending commercial communications via email must comply with this Section and with the Code as a whole. In particular, members must ensure that the content of any email marketing complies with Section 5 on Data, Sections 6, 7 and 8 on the Content of Commercial Communications and with Section 19 on On-Line Commercial Communications (E-Commerce).
Best Practice Guidelines	14.3	Members should refer to the Association's Email Marketing Best Practice Guidelines.
<b>Definitions</b>		
Commercial communication	14.4	see paragraph 2.10
Email marketing		'email marketing' is the sending of commercial communications (see paragraph 2.10 above) via email.
Advertiser		'advertiser' is any person or company that initiates a commercial communication via email to promote its products or services or its aims and ideals.
Recipient		'recipient' is any natural or legal person, including a sole trader or a partnership, who receives a commercial communication sent via an email.
Individuals		'individuals' are consumers (see paragraph 2.12), sole traders, partnerships, and staff of sole traders and partnerships.
Customer		see para 2.13 above.
Third Party		'third party' is any person or organisation other than the advertiser, excluding data processors. This includes associated and/or affiliated companies.
Hidden identity	14.5	A member must not send, or instigate the sending, of an email for the purposes of direct marketing where the identity of the advertiser on whose behalf the communication is sent is disguised or concealed or where no valid address has been provided where recipients can request that such communications should stop.
No Spam	14.6	Members must not send unsolicited direct marketing email communications to individuals, unless the recipient of the communication is a customer of the member and the member complies with para 14.10 below or the customer has previously consented to receiving such communications from the member in accordance with paras 14.7 and 14.9 below. Members must not send or instigate the sending of random, untargeted commercial communications via email to individuals using data obtained in breach of data protection and/or privacy legislation, Section 5 of this Code, and paras 14.7 and 14.9 below.



## 14.0 EMAIL MARKETING cont.

Consent	14.7	<p>a) Unless the customer exemption principle applies (see para 14.10 below) or it is a B2B communication see para 14.12 below) an individual must give proactive consent (i.e. opt-in) to receiving email marketing. The onus is on members to ensure that proactive consent has been obtained before such communications are sent. Members must not provide a pre-ticked opt-in box for consent to send email marketing.</p>
3rd Party Consent		<p>b) An individual must expressly consent (i.e. opt-in) to their email address being passed to third parties. (Data processors, for example, mailing broadcasters, are not third parties for these purposes). At point of data collection the member must either:</p> <ul style="list-style-type: none"> <li>i) make it clear to the individual the type of organisation to whom it will pass the email address and the types of products and services these organisations will market to the individual</li> <li>ii) provide the individual with the name of the third party companies that the email address will be passed to.</li> </ul> <p>Where an individual has opted-in to their data being passed on as detailed above they can be said to have agreed, for the time being, to receiving marketing communications from the third party sender. Members are reminded that each email communication must contain an unsubscribe mechanism.</p>
Passing email addresses to third party companies or associated/affiliated companies		<p>Where members want to pass on their customers' email addresses to third party and/or associated/affiliated companies, an opt-in mechanism must be offered to the individual (see para 14.7 above). When collecting email addresses for own marketing purposes and to pass on to third parties, members should provide a separate opt-in mechanism for third party email marketing, so that the customer is clear as to what they are consenting to receive.</p>
Host mailing	14.8	<p>Members must ensure that they do not disclose an email address to a third party unless the individual actively agrees to such a disclosure. A host mailing service is where the advertiser is willing, for a fee, to send (or to instigate the sending through the advertiser's normal outsourcing arrangements under a data processing agreement), on behalf of third parties, email marketing promoting the third party's goods and services, or aims and ideals to the advertiser's own email database. In this case, the advertiser's email database is not passed to the third party and the advertiser must appear in the "From" box of the email as the sender of the email. Advertisers should note that they must obtain the express consent (i.e. opt-in) of individuals in accordance with para 14.7 above and therefore they cannot rely on the provisions of para 14.10 for any such host mailing activities to customers.</p>
Unsolicited email marketing communications – with consent	14.9	<p>Unless the customer exemption principle applies (see para 14.10 below), members must not send or instigate the sending of unsolicited commercial communications via email unless:</p>

## 14.0 EMAIL MARKETING cont.

- a) the recipient of the email has previously notified the member that they consent, for the time being, to receive such communications, for example, by having ticked an opt-in box
- b) the member clearly states its identity or the identity of the person on whose behalf such communication is sent (the recipient of such communication must be able to clearly identify that the email is a commercial communication and identify the advertising company on receipt of the email so they may delete the communication without having to open it) and
- c) the member has provided the recipient with an unsubscribe mechanism, such as a return email address, to which unsubscribe requests can be sent.

Unsolicited email marketing - existing customer exemption	14.10	Members may send or instigate the sending of unsolicited commercial communications via email without the explicit consent of individuals provided all of the following conditions are met:
Obtaining an email address		a) the member has obtained the email address in the course of selling or negotiating to sell goods or services to the individual (i.e. the individual is a customer of the member) and
Content of emails		b) the commercial communication only relates to similar products or services sold by the member and
Opportunity to object		c) the member provides a simple means of enabling the individual, without charge, to refuse the use of their email address for such purposes, both at the time the email address was first collected (i.e. an opt-out box) and, where the individual initially allows the use of their email address for such purposes, on each and every subsequent email message (i.e. a return email unsubscribe mechanism) and
Identity		d) the member has not disguised or concealed its identity or, where the member is sending out an email marketing campaign at the instigation of an advertiser, the identity of the advertiser on whose behalf the communication is sent.
Charity donors	14.11	Making a donation to a charity does not in itself make the individual an existing customer.
B2B marketing	14.12	Unless they have prior consent, members must not send marketing communications to business email addresses for goods or services that the recipient would only purchase in an individual capacity. However, members may send unsolicited emails to staff of limited companies and plcs provided: <ul style="list-style-type: none"> <li>a) the goods and services marketed are restricted to those that the recipient would purchase when acting in a professional capacity, and</li> <li>b) the recipient is offered a simple mechanism by which to unsubscribe/opt-out of receiving further email marketing messages from the sender.</li> </ul>

## 14.0 EMAIL MARKETING cont.

		Members must not send unsolicited email marketing messages to partners/staff of a partnership or a sole trader and its staff unless the requirements of paras 14.7 and 14.10 above are met.
Identification of communication	14.13	Commercial communications sent by email, whether solicited or unsolicited, must be clearly identifiable as such to the recipient at the time of receipt of the communication.
In-house suppression file	14.14	Members marketing via email must operate and maintain an in-house suppression file, listing recipients who have indicated that they do not wish to receive further commercial communications via email (see paras 5.80 to 5.84 above). Members must screen email-marketing lists against in-house suppression files prior to each email marketing campaign.
e-MPS	14.15	Members should screen their data against the email Preference Service (eMPS) file when they are conducting cross-border email marketing campaigns outside the European Economic Area (EEA).
Connection to web	14.16	Where a commercial communication directs recipients to a related website, members must comply with the provisions of Section 19 of this Code on On-Line Commercial Communications.
Distance Selling Regulations Contact details	14.17	All offers sent by email (i.e. email communications that are the final written advertised stage in a process that allows individuals to buy products or services without the buyer and seller meeting face to face) must comply with the Consumer Protection (Distance Selling) Regulations 2000 and must include the information required by paras 6.23-6.33 above. In particular, members must ensure that the advertiser's full name and address are included outside any written response mechanism so that they can be retained by the recipient.

## 15.0 FAX MARKETING

## 15.0 FAX MARKETING

**Definitions**

Individuals	15.1	"Individuals" are consumers, sole traders, and (except in Scotland) partnerships.
Subscribers	15.2	"Subscribers" are all potential recipients of a direct marketing fax message including individuals and corporate subscribers.

**General Rules**

Scope	15.3	This Section of this Code applies specifically to commercial communications sent via fax. It applies to all members, including charities or other voluntary organisations.
Code compliance	15.4	Members sending commercial communications via fax must comply with this Section and with the Code as a whole. In particular, members must ensure that the content of any fax marketing communication complies with Sections 6, 7 and 8 on the Content of Commercial Communications and with Section 5 on Data.
Fax Scanning	15.5	A common variant of number scanning is fax scanning where a call is made to determine the presence of a fax receiver at the terminating end. This activity is motivated by the commercial value of a directory of validated fax numbers. Fax scanning is considered by Ofcom to be a persistent misuse of a communications network or service and therefore a breach of the Communications Act 2003 and Ofcom has powers to take enforcement.

**Restriction of Contacts**

Consent for faxes	15.6	Members must not send direct marketing communications via fax to an individual unless that individual has previously notified the sender that they consent to receive such communications.
FPS	15.7	Members must not send unsolicited direct marketing communications via fax to any subscriber who has previously notified the member that they do not wish to receive such communications or who has registered their fax number with the Fax Preference Service (FPS).
In-house suppression file	15.8	Members must therefore operate and maintain an in-house suppression file, listing subscribers who have indicated that they do not wish to be contacted by fax (see para 5.81 above).
FPS cleaning	15.9	Members must also ensure that no list is used for unsolicited fax marketing purposes unless it has been cleaned against the Fax Preference Service (FPS) file within the previous 28 days. Members may use their own list (i.e. a list of those with whom they have an established relationship) without cleaning against the FPS file, as long as the subscriber has provided their fax number and it is made clear that the number may be used for fax marketing purposes (see para 5.96 above).

## 15.0 FAX MARKETING cont.

		<b>Content</b>
Compliance	15.10	The content of any fax communication must comply with Sections 6,7 and 8 of this Code and with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).
Information to be provided	15.11	The name of the advertiser and a freephone number and/or address where the advertiser can be contacted at no cost must be prominently displayed on each page of any fax marketing communication.
Distance Selling Regulations	15.12	All offers sent by fax (i.e. fax communications that are the final written advertised stage in a process that allows individuals to buy products or services without the buyer and seller meeting face to face) must comply with the Consumer Protection (Distance Selling) Regulations 2000 and must include the information required by paras 6.23 to 6.33 above of this Code.
Contact Details	15.13	In particular, members must ensure that the advertiser's full name and address are included outside any written response mechanism so that they can be retained by the recipient.
Order forms	15.14	All order forms sent by fax must include the advertiser's full company address or principal place of business for unincorporated associations, legal address, company registration details, postal address (PO Box addresses are not sufficient), email address and terrestrial telephone number.
Premium rate fax numbers	15.15	Members inviting a response via a premium rate fax number must make clear to subscribers the exact cost of such a response or give a means to easily and accurately calculate the total cost. Members must comply with the requirements of the PhonepayPlus Code.
Delayed responses	15.16	Members must not unnecessarily prolong or delay the receipt of a response via a premium rate number so as to increase the total cost to the subscriber.
Permission	15.17	Members must encourage respondents to a premium rate fax number to obtain permission from the bill payer before use.
Data	15.18	Members collecting personal information via a fax response must comply with Section 5 of this Code and with the Data Protection Act 1998.

## 16.0 FIELD MARKETING

## 16.0 FIELD MARKETING

**Introduction**

Field marketing	16.1	“Field marketing” is the face to face promotion or sale of goods or services to consumers or businesses. It includes merchandising, sampling/demonstrations, promotions, events and leaflet distribution. It also includes mystery shopping activities and the auditing of goods and services being sold or promoted for facings, volume, point-of-sale material, positioning, relevance etc. Field marketing staff may also be involved in telesales, handling, packaging and warehousing.
Scope	16.2	This Section applies to all members carrying out the above and related activities and to members employing field marketers to act on their behalf.
Compliance with the Code	16.3	Members involved in field marketing must comply with this Section and, where relevant, with the Code of Practice as a whole.
Best Practice Guidelines	16.4	Members should adhere to the Association's Field Marketing Council Best Practice Guidelines. Members should also refer to the International Chamber of Commerce International Code of Direct Selling.
Telesales	16.5	Members involved in telephone marketing or sales must comply with Section 21 of this Code.
Door to door and direct sales	16.6	Members involved in door to door, direct sales and home visits must comply with section 13 of this Code.

**General Requirements**

Ethical behaviour	16.7	Members must ensure that all field marketing activities with which they are involved are carried out in a lawful, ethical and professional manner, displaying a due sense of social responsibility and conforming to the principles of fair competition as generally accepted by business.
Disreputable behaviour	16.8	Members must not be involved with any activity that is likely to bring field marketing and direct marketing as a whole into disrepute.
Responsibility for clients	16.9	Members must inform clients of any aspect of a field marketing campaign that does not adhere to this Code or to any relevant legislation, whether the client is an Association member or not. Members must refuse any further involvement unless appropriate changes are made.
Responsibility for field marketing activities	16.10	Members employing organisations, whether they are Association members or not, to carry out field marketing activities on their behalf must ensure that any such activities comply with this Code and relevant legislation and must cease involvement with the organisation unless appropriate changes are made.
Health and safety	16.11	Members must have in place a health and safety policy for all activities undertaken, particularly where the distribution of samples or demonstration of products is involved (see paras 16.17 and 16.20 below).



## 16.0 FIELD MARKETING cont.

Business premises	16.12	When carrying out activities on the premises of another business, members must ensure that any general business practices and policies of that business to which they have been alerted are followed.
<b>Specific Requirements</b>		
Content of advertising material	16.13	Members must ensure that the content of any advertising or promotional material used in the course of field marketing activities complies with Sections 6,7 and 8 of this Code and with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code). In particular, members must ensure that any such material is lawful, decent, honest and truthful and not misleading to the recipient. It must contain the identity of the advertiser and relevant contact details.
Cancellation Regulations	16.14	For visits to a private or work address where a contract for total payments exceeding £35 is to be concluded with a consumer, members will have to comply with the Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008, including a 7 day cancellation period, and should refer to the legislation.
Promotional schemes	16.15	Members operating promotional schemes must deal fairly with participants at all times and must take all reasonable steps to avoid disappointment. Members must have in place proper supervision and adequate resources to ensure the efficient administration of such schemes (see paras 7.2 and 7.3).
Information given face to face	16.16	Members must ensure that information relating to goods or services given face to face is lawful, decent, honest and truthful, and not misleading. Members must not exaggerate the merits of goods or services being promoted or sold and high pressure sales tactics must not be used. In particular members must ensure that field staff do not make a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or their family if a consumer does not buy the product, or explicitly inform a consumer that if they do not buy the product or service, their job or livelihood will be in jeopardy. Examples of high pressure sales tactics include, but are not limited to: an unreasonably long visit, a high initial price followed by a discount, discount on condition that the consumer agrees to the sale on the same day as the visit, falsely stating that there is limited availability of the product in order to elicit an immediate decision and deprive the consumer of sufficient opportunity to make an informed choice and/or misrepresentation of the product, price or contract. The terms of any offer must be explained clearly and members must take reasonable steps to ensure that the customer understands the commitment into which they are entering.

## 16.0 FIELD MARKETING cont.

Sampling	16.17	Members must take reasonable steps to ensure that samples are not distributed inappropriately. For instance, care must be taken not to give samples to children and young persons that could result in accident or illness or which may cause problems between a child and their parent/guardian. Members must take all reasonable steps to ensure that age-restricted products are not distributed to anyone under 18 years.
Packaging	16.18	Members must ensure that appropriate packaging is used to prevent foreseeable mishandling or misuse of products that could result in accident or injury, particularly if it is possible that the samples will fall into the hands of children and young persons or domestic pets.
Unused samples	16.19	Members must ensure that unused samples are returned by field staff and not left unattended, particularly where the products may cause accident or injury if misused.
Safety of demonstrations	16.20	Members must ensure that demonstrations of products are carried out safely and in an appropriate environment. Reasonable steps must be taken to ensure that only staff who are suitably trained and briefed in the product are involved in demonstrations. Appropriate permission must be obtained for any demonstration carried out in a public place or on business premises.
<b>Home visits</b>		
Cancellation of home visits	16.21	When a home visit is arranged in advance, members must provide the individual with contact details where they may easily cancel the visit.
Identification badges	16.22	Members must supply all staff with a photographic identification badge showing details of the company represented and contact details (including a telephone number) where the householder can check the validity of a visiting agent. Members must take all reasonable steps to ensure that this identification badge is shown to householders before entry. Staff acting on behalf of a client must be required to disclose the name and contact details of their own company on request.
Right to refuse entry	16.23	Members must respect the right of a householder to refuse entry or to terminate a visit at any time.
Home visit staff	16.24	Members must carefully vet staff involved in home visits to ensure their suitability. For example, members should carry out a criminal record check or an enhanced criminal check, as appropriate.
Terms of an offer and Cancellation	16.25	Members must ensure that the terms of any offer are made explicitly clear and have been accepted by the householder. Members must accept the right of a householder to cancel any order for goods or services or return any goods purchased during a home visit within seven days of such a visit. Any product demonstrations must be carried out safely and with the permission of the householder.

## 16.0 FIELD MARKETING cont.

Staff training	16.26	Members must ensure that all staff are appropriately trained and briefed on the product or service in question and on the correct procedures for a home visit. In particular, staff must be courteous and professional and must not engage in any high pressure sales tactics. Members must ensure that staff do not tell consumers that their job or livelihood is in jeopardy if they do not purchase the goods or services offered.
Mystery shopping	16.27	Members must ensure that all staff are appropriately trained to maintain consistently high standards.
	16.28	Members should ensure consistency of "audit" across all outlets, regions and groups.
	16.29	Members should ensure that all staff understand whether the work in question is covert, covert then reveal, or overt mystery shopping so as to maintain consistently high standards.
Auditing	16.30	Members must ensure that all staff are correctly briefed and trained to ensure consistently high standards of accuracy across the audit activity.
	16.31	Members must ensure that audit activity takes place within agreed time frames in order to produce a correct representation of results.
	16.32	Members must ensure that data capture accuracy levels are in line with agreed client service level agreements.
<b>Data</b>		
Data Protection Act	16.33	Members who process personal data (i.e. collecting or storing personal data or carrying out any operation(s) on the data) must comply with Section 5 of this Code and with the Data Protection Act 1998.
<b>Employment</b>		
Employment legislation	16.34	Members must comply with all relevant employment legislation, in particular with the Working Time Regulations 1998 (as amended), and taxation legislation.
Contract of employment	16.35	Members employing field marketing staff, including temporary agency workers, consultants and other self-employed workers, must do so under the terms of a formal, written contract that must be adhered to by both parties.
Written confirmation of work to be undertaken	16.36	Members must confirm in writing the scope and details of all work to be undertaken on their behalf or with the client, as appropriate.
<b>Complaints</b>		
Complaint handling	16.37	All complaints regarding field marketing activities must be dealt with promptly, efficiently and in line with Section 9 of this Code.

17.0 INSERTS

## 17.0 INSERTS

**Definitions**

Insert	17.1	"insert" is advertising material, which may or may not include a response mechanism, distributed via a third party publication.
Client	17.2	"client" is the advertiser or an agency acting on the advertiser's behalf.
Printer I	17.3	"printer I" is the printer contracted by the client or agency to produce the insert.
Printer II	17.4	"printer II" is the printer contracted or owned by the publisher to produce the publication and to execute the insertion process.
Publisher	17.5	"publisher" is the owner of the publication in which the insert is to be placed.

**General Rules**

Scope	17.6	This Section applies to all members involved in the inserts process, whether they are acting as a client, printer or publisher.
	17.7	Members must comply with this Section, as appropriate, and with the Code as a whole and with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code). In particular, members must ensure that they comply with paras 3.32 – 3.38 above on Environmental Responsibilities; that the content of any insert complies with Sections 6, 7 and 8 on the Content of Commercial Communications; and that the processing of any personal data collected in the course of an inserts campaign complies with Section 5 on Data and the Data Protection Act 1998.
Best Practice Guidelines	17.8	Members should refer to the Association's Inserts Council Best Practice Guidelines.
	17.9	Inserts that include a written response mechanism must include the advertiser's full contact details outside any coupon or other response device so that it can be retained by the respondent. Inserts offering a telephone response mechanism must state the name and telephone number of the advertiser (see paras 6.26 a and b above).
	17.10	Members involved in an insert that is the final written stage in a process that allows an individual to place an order for goods or services must refer to paras 6.23 to 6.33 above for full details of the requirements of the Distance Selling Regulations.

**Clients**

	17.11	Members must ensure that a sample of the insert is provided at the time of booking and that Printer II is supplied with a final sample of the insert for approval by their publisher at least two weeks prior to the delivery date. Members are reminded of their obligations to ensure advertising is decent, legal, honest and truthful, and not misleading.
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## 17.0 INSERTS cont.

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- 17.12 Members should plan an inserts campaign thoroughly and at the appropriate time must provide comprehensive briefing to all involved parties. In particular, members must provide detailed campaign information to the publisher/media agency at the time of booking and ensure that printers are made aware of key details such as paper size, weight and quality, testing/full runs versus part print and timings. (For full details, members should consult the Association's Inserts Council Best Practice Guidelines).
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**Printer I**

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- 17.13 Members must acknowledge any order with a full specification and confirmation of all details, including a made up sample and Computer Aided Design Drawing.
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- 17.14 Following printing of inserts, members must issue a delivery note to be checked and signed by Printer II upon delivery. Key information should be shown on the labels affixed to each box of inserts.
- 

**Printer II**

- 
- 17.15 Members must ensure that accurate and detailed paperwork accompanies each delivery of inserts to the publisher. Information must include:
- a) quantity
  - b) publication to be used
  - c) issue date
  - d) client
  - e) regions
  - f) codes
  - g) contact telephone number
  - h) names of supplying printer
  - i) number of pallets
  - j) quantity of pallets.
- 
- 17.16 Members must issue a certificate of insertion that should be sent to the publisher within four working days of the finish of the inserting operation. The certificate of insertion should include an estimate of the number of overs. Overs must not be destroyed without the consent of the advertiser.
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**Transportation/Storage**

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- 17.17 Members providing transportation and/or storage for inserts must ensure that the inserts are kept in a safe, dry and secure environment and that care is taken to ensure that they are not damaged.
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## 17.0 INSERTS cont.

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17.18	Members should confirm delivery details with Printer II and must obtain a signature from Printer II upon delivery.
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**Publishers**

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17.19	Members must set and monitor the standards of performance for their printers to ensure the smooth operation of an inserts campaign.
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17.20	Members must provide key information to clients before a booking is confirmed, including delivery date and specification, approval/rejection of samples supplied, accurate on sale date, print run estimates, details of regional splits available, cash guarantees when requested.
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17.21	Following a booking, members must provide confirmation of booking details and delivery specifications which should be forwarded to Printer I.
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## 18.0 INTERACTIVE TELEVISION



## 18.0 INTERACTIVE TELEVISION

**Definitions**

Interactive TV	18.1	“interactive television” advertising is defined as television advertising provided via digital equipment (satellite, cable or digital terrestrial) that involves some form of selection or navigation by the viewer and a return path. This Section of this Code does not govern the purchase of pay per view events or films, or the purchase of goods via interactive television.
Enhanced TV	18.2	“enhanced television” advertising is television advertising provided via digital equipment that involves some form of selection or navigation by the viewer but has no return path.
Return path	18.3	“return path” is a means for a viewer to deliver information via digital equipment to the advertiser and/or broadcaster.
Viewer/customer	18.4	“viewer” is an individual who may make use of an interactive/enhanced advertising opportunity via a digital platform.  “customer” is an individual who has contracted with a digital broadcaster for the provision of digital broadcast services.
Availability of interactive/enhanced TV advertising	18.5	Interactive/enhanced television advertising opportunities are available through either:  a) dedicated interactive/enhanced services  b) interactive airtime/commercials (i.e. television advertisements with interactive/enhanced advertising opportunities) or  c) enhanced programme services (i.e. television programming with interactive/enhanced advertising opportunities).

**General rules**

General rules	18.6	Members must comply with Ofcom’s rules on television advertising and in particular the TV Advertising Standards Code, as implemented by the Broadcasting Committee of Advertising Practice (BCAP), the Rules on the Scheduling of Television Advertisements, as implemented by BCAP and Guidance to Broadcasters on the Regulation of Interactive Television Services.
BCAP Codes	18.7	Members must ensure that all interactive/enhanced television advertising with which they are involved, either as an advertiser or a digital broadcaster, is decent, legal, honest and truthful, and not misleading.
Separation of advertising and editorial	18.8	Members must ensure that viewers are clear at all times whether they are watching advertising or editorial material (see paras 18.17 to 18.23 below) and must not mislead as to the regulatory regime that applies (i.e. where the digital platform has given access to the internet. See Section 19 on On-line Commercial Communications).

## 18.0 INTERACTIVE TELEVISION cont.

Direct Response TV & telephone marketing	18.9	Members providing enhanced advertising opportunities (i.e. with no digital return path but with a telephone number or other similar response mechanism) must refer to Section 12 of the Code on Direct Response Television and Radio and, where relevant, to Section 21 of the Code on Telemarketing.
<b>Data</b>		
Data Protection Act 1998	18.10	When processing personal data collected via or for the purposes of interactive television, members must comply with the requirements of the Data Protection Act 1998 and all related legislation. Members must also comply with Section 5 of the Code, specifically those sections that include detailed requirements on the processing of data for all direct marketing purposes.
Digital broadcasters	18.11	When acting as a digital broadcaster offering interactive services, immediately prior to or at the point of data collection (i.e. in the initial contract with a subscribing customer) members must:
Identity of data controller		a) clearly identify themselves as the party collecting personal data (ie the data controller)
Purposes of collection		b) explain the purposes for which data are being collected, including the fact that certain personal data may be transferred automatically to a third party advertiser in the event that the customer later decides to access an interactive advertisement placed by that advertiser. It should be made clear: <p style="margin-left: 40px;">that where such a transfer takes place, the digital broadcaster continues to hold the data and that use of the data by the advertiser will be appropriately controlled; and</p> <p style="margin-left: 40px;">whether the data to be transferred will include the customer's telephone number.</p>
Later collection of data		c) make clear the identity of the party the viewer may give any additional personal data to at a later stage via an interactive opportunity. It should be clear whether this is the digital broadcaster, the advertiser or both acting as joint data controllers. If the digital broadcaster is to be the data controller of data collected through a later interactive opportunity, then it should be explained that this data will be transferred to the advertiser in question who will use it for the purposes described
Future direct marketing approaches		d) explain that when a customer decides to access an interactive opportunity they will, where relevant, be offered an opportunity to opt-out of, or opt-in to, receiving future direct marketing approaches from the third party advertiser, other than fulfilment of a particular request, such as for a brochure
Access to privacy		e) inform customers how they can access privacy information through their digital platform at any point, particularly during any interaction with a third party advertiser (i.e. by clicking on a "help" button)

## 18.0 INTERACTIVE TELEVISION cont.

Opting out of interactive services		f) make clear that it is the customer's choice to make use of interactive opportunities provided via the digital platform. Where relevant, explain that they may opt-out of having interactive opportunities made available to them and what steps they should take to exercise this right and the consequences of doing so and
Security		g) inform customers that appropriate steps are taken to ensure the security of any personal information collected via an interactive opportunity and any personal information held by them or transferred to third parties, in accordance with Section 5 of this Code and the Data Protection Act 1998.
Individual/subscriber	18.12	Members should recognise that an individual submitting data via an interactive screen may not necessarily be the named subscriber to the digital platform, particularly where name and address details must be re-submitted. They should also note that at each point of data collection, the Data Protection Act 1998 requires that a data subject must be informed of the identity of the party collecting the data and the purposes for which the data is being collected.
Information to be provided to individuals at each point of collection	18.13	Members collecting personal data through an interactive advertising opportunity must, immediately prior to or at the time of data collection:
Identity		a) clearly identify the party collecting personal data, whether this is the digital broadcaster, the advertiser or both acting as joint data controllers
Purposes		b) give the purposes for which data are being collected, including whether it is intended to transfer data to third parties
Further marketing approaches - opt-in/out		c) where the digital broadcaster is collecting data on behalf of the advertiser, it must explain that data will be transferred to the advertiser for the purposes described where relevant and provide an easy to use opt-out mechanism on the interactive screen that allows viewers to object to the use of their data for future direct marketing approaches from the advertiser
Privacy information		d) make available to viewers more detailed privacy information, for instance through an interactive "help" button. Such information should include: <ul style="list-style-type: none"> <li>i) a reminder that data already collected by the digital broadcaster at the point of initial contact with a customer (such as name and address details) may be automatically transferred to an advertiser in the event of the customer making use of an interactive opportunity</li> <li>ii) details of the security measures adopted to ensure the protection of personal data submitted during an interactive opportunity and during any transfer to the advertiser</li> </ul>

## 18.0 INTERACTIVE TELEVISION cont.

- iii) details of any third party processors to whom data will be transferred and the fact that such a transfer will only take place under contract (see para 5.65 above). It should also be mentioned whether this transfer will involve the transfer of data outside the European Economic Area (see para 5.28j above).

Automatic transfers of data from a digital broadcaster	18.14	Members advertising through interactive television that do not collect personal data, but have data collected by the digital broadcaster at the initial contract stage automatically transferred to them in the event of a customer interacting, must remind customers of this possibility before such a transfer takes place.
Telephone marketing	18.15	Members collecting telephone numbers for direct marketing purposes, other than for the fulfilment of an initial specific request to telephone, must ensure that before use those numbers are cleaned against the most recent Telephone Preference Service (TPS) file. However, members may use their own list (i.e. a list of those with whom they have an established relationship) without cleaning against the TPS, as long as the data subject has provided their own telephone number (i.e. it is not sourced) and it was made absolutely clear at the time of collecting the telephone number that the data subject may receive telemarketing calls to that number and the data subject did not opt-out of receiving such calls (see paras 5.90, 5.91 and 5.92 above).
Data collected via interactive programme services	18.16	Members collecting data via interactive programme services (i.e. where viewers have entered a competition or voted on issues pertaining to a programme) that may be used for marketing purposes, must make clear to viewers at, or immediately prior to, the point of collection: <ul style="list-style-type: none"> <li>a) the identity of the data controller (i.e. the broadcaster and/or sponsor of the programme)</li> <li>b) the purposes for which data are collected, such as marketing or, if relevant, the transfer of data to third party advertisers, including specific mention of the programme sponsor, where relevant, and</li> <li>c) inform viewers of their right to object to the processing of the data for direct marketing purposes and give an easy to use opt-out mechanism for exercising this right.</li> </ul>

**Content**

BCAP's rules	18.17	Members must refer to BCAP's TV Advertising Standards Code (BCAP's Code).
Code compliance	18.18	Members must comply with Sections 6, 7 and 8 of this Code, which cover the content of advertisements and offers in detail.

## 18.0 INTERACTIVE TELEVISION cont.

Competitions and prize draws	18.19	In particular, members operating competitions or prize draws, either in conjunction with interactive advertising or enhanced programme services, must refer to paras 7.28 to 7.38 above of this Code. Members must not promote competitions, prize draws or other gaming schemes as a solution to financial difficulties or encourage excessive or reckless playing of such schemes.
PhonepayPlus	18.20	Members operating competitions or prize draws through interactive or enhanced programme services or advertising, entry for which is via premium rate telephone services must refer to the PhonepayPlus (see glossary) Code of Practice.
Cost of interactivity	18.21	Members must give clear and simple instructions to viewers as to how to access interactive/enhanced opportunities. Any cost to the viewer of selecting an interactive/enhanced route, such as the cost of a telephone call, must be made explicitly clear prior to the viewer selecting the route.
Distinction between editorial and advertising	18.22	Interactive/enhanced advertising must be clearly distinguishable from editorial content. Viewers must be clear as to which environment they are in at any time and they must not be misled as to which regulatory regime applies. In particular:
First click rule		a) when viewers choose to interact during editorial programming, the first screen accessed must offer editorial programme enhancements and not contain wholly advertising content (the "first click" rule)
Second click		b) although the first screen accessed may contain links to further screens containing commercial material, it must be made explicitly clear to viewers that a "second click" will take them to advertisements or offers for sale
Predominance of advertising		c) within any programme enhancement, advertising not specifically selected by the viewer must not predominate over programme material
Icons		d) any icon within editorial programming, which allows access to interactive or enhanced opportunities, must not be commercially branded or placed in such a way as to lead to interactive or enhanced opportunities that are in any way related to the editorial content
Collection of data		e) members collecting personal data via programme enhancements must make it explicitly clear to viewers if that data is to be used for marketing purposes (see para 18.16 above)
News programmes		f) an advertisement on an enhancement screen linked to a news or current affairs programme should not be linked to any advertiser, product or service referred to in that programme and should not make direct offers for sale
Consumer programmes		g) an advertisement on an enhancement screen linked to a consumer advice programme should not make a direct offer for sale of any product or service referred to in that programme

## 18.0 INTERACTIVE TELEVISION cont.

Childrens' programmes		<p>h) an advertisement on an enhancement screen linked to a children's programme or one likely to have a significant child audience should not:</p> <ul style="list-style-type: none"> <li>i) be for a product or service that could not be transmitted in or adjacent to that programme in a linear environment and</li> <li>ii) make a direct appeal to a child to purchase products or services by mail, telephone, mobile or email or encourage the child to persuade parents or others to make such purchases on their behalf.</li> </ul>
Content	18.23	BCAP's Code contains detailed rules on the content of television advertising. This also covers interactive/enhanced advertising. In particular members must be aware that:
Unacceptable products		a) there are certain products that must not be advertised - these include breath testing devices, the occult, betting and gaming, tobacco products, private investigation agencies, guns and gun clubs, escort agencies, pornography and, unless specifically permitted, commercial services offering advice on personal or consumer problems
Special rules		b) Members should not make a direct appeal to children to purchase products or services by mail, telephone, mobile or email or be encouraged to persuade their parents or others to make such purchases on their behalf.
Children		c) Members should not make a direct appeal to children to purchase products or services by mail, telephone, mobile or email or be encouraged to persuade their parents or others to make such purchases on their behalf.

## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce)

## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce)

### Definitions

On-line commercial communications	19.1	“Online commercial communications” are any commercial communications (see para 2.10 above), including advertisements and offers for goods and services, which take place on-line through any digital channel including but not limited to search engine marketing (PPC), search engine optimisation, online advertising (banner ads), email, an organisation’s website, mobile marketing (SMS, MMS, WAP, wireless application protocol (WAP), Applications etc.), data storage devices or interactive kiosks.
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### Scope

Scope	19.2	This Section of the Code applies specifically to online commercial communications.
General Sections of the Code	19.3	Members must comply with this Section of the Code and with the general sections of the Code, Sections 1 to 9, on Data, Content of Commercial Communications, Fulfilment and Performance and Compliance, which apply on or off line. Where relevant, members must also comply with Section 14 on Email Marketing and with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).

### General Obligations

“Hotlink” to DMA website	19.4	Members' internet websites must provide a “hotlink” to the Association’s website to allow users to access information on this Code.
DMA logo	19.5	Members should prominently display the Association’s logo on all internet websites. In all other online commercial communications members should endeavour to display the logo but where this is not practical - for instance in email - members should include a text alternative indicating that they are a member of the Association.

### Content of On-Line Commercial Communications

Section 6, 7 & 8	19.6	In addition to the requirements set out in paras 19.7 to 19.18, members must comply with Sections 6, 7 and 8 of this Code which cover the content of commercial communications in both the off and online environment.
Clear and truthful	19.7	Online commercial communications must be clear and truthful.
Identity of the advertiser	19.8	Online commercial communications must prominently display the identity of the advertiser.



## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce) cont.

Contact details	19.9	Online commercial communications must prominently display the advertiser's on and offline contact details, including the full company name, the registered office address or principal place of business for unincorporated organisations, registered number, and country of registration, any other terrestrial contact address, the email address and the terrestrial telephone number.
Pre-contractual information	19.10	Where an online commercial communication is the final written stage in a process that allows individuals to place an order for goods or services, all relevant pre-contractual information must be given, including:
Restrictions		a) details of any limitations on the offer such as geographic restrictions, period of availability of the offer, or any other conditions that affects its validity
Details of goods and service		b) clear details of the goods or services offered, including:
Description		i) a description of the main characteristics of the goods or services
Price		ii) the price including VAT, unless the offer is addressed exclusively to trade, and any other tax and duties payable so that the total amount payable can be easily calculated
Post & packing		iii) details of any additional, non-optional extras such as post, delivery and packing charges (see paras 6.48 and 6.49 above on post and packing) so that the total amount payable can be easily calculated
Substitutions		iv) where appropriate, a statement outlining the intention to provide substitute goods or services (of equivalent quality or price) if those ordered become unavailable and that the advertiser will meet the cost of returning substitute goods on cancellation
Open-ended contracts		v) details of the minimum duration of open-ended contracts (i.e. where goods are supplied or services performed permanently or recurrently).
Ordering		c) information on ordering including: <ul style="list-style-type: none"> <li>i) how to order</li> <li>ii) details of any postal, telephone or other communication charges that are higher than the basic rate (e.g. premium rate numbers) (see para 21.4 below relating to the PhonepayPlus Code of Practice)</li> <li>iii) how and when confirmation of the order will be sent (which must be available in writing or other durable medium)</li> <li>iv) an explanation of how the ordering process may be stopped or cancelled</li> <li>v) a summary of the goods or services selected.</li> </ul>

## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce) cont.

Payment mechanisms		d) information on the payment mechanisms available, including any credit and instalment terms, which must be easy to use. Where online payment mechanisms are employed, a statement must be included setting out the security measures used and the level of protection provided by them (see para 19.20 below)
Delivery arrangements		e) clear details of the arrangements for the delivery of goods or performance of a service, including the estimated fulfilment time, which, unless the parties agree otherwise, must be within a maximum of 30 days from the day following that on which the customer placed their order (see para 9.10 above)
Right to cancel		f) a prominent statement explaining the existence of a right to cancel, orders for goods or services (unless exempted, see para 9.24 above)
Access to terms and conditions		g) information on how users can easily access the terms and conditions applicable to a particular transaction, which must also be available in writing or other durable medium.
Mobile communications	19.11	On-line commercial communications sent to a mobile device should provide the details listed in para 19.10 above on screen but where it is not practical to provide all the information, prominent details must be given of where the information can be accessed or a mechanism must be provided so that the information can easily be accessed.
Acceptance of terms	19.12	Prior to the conclusion of a contract via a mobile device for the sale or supply of goods or services, users must be required to indicate in a clearly defined manner that any of the information in para 19.11 above not provided on screen has been accessed and agreed to.
Additional information	19.13	Following the conclusion of the contract, but no later than the time of delivery or before the service has been fully performed, individuals must be provided in writing or other durable medium, with the additional and written information set out in para 6.28 above. Members must also comply with para 6.30 above.
Acknowledgement of orders	19.14	All orders must be acknowledged online immediately they are placed, with a date and time of order, a unique identifying reference number and the total and final price charged. This information must also be available in writing or other durable medium.
Fulfilment timing and availability of goods	19.15	Members must refer to Section 9 of this Code for the rules relating to fulfilment and performance.
Call backs	19.16	Where, as a result of visiting a website a consumer requests a call back, then members carrying out this request must in all cases comply with Section 21 of this Code on Telemarketing. In particular, members must take reasonable steps to verify the identity of the recipient of the call before obtaining any personal information.

## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce) cont.

Co-browsing	19.17	When inviting a consumer to co-browse, members must explain clearly what this involves and must not proceed without the consent of the individual. In particular, if co-browsing results in the individual leaving the member's website and visiting another, this fact must be fully explained in advance and details given of the contents of the website in question and the relevance for the individual. The consent of the individual must be obtained before the move to another website proceeds.
Joint form completion	19.18	Where a member wishes to assist a consumer in the completion of an online order or enquiry form, they must verify the identity of the individual before offering to input any personal information or data referring to previous orders or activities. On completion of such a form, the submission may only be carried out by the consumer and it must not be possible for any member, their staff or representatives to submit the form.
<b>Data</b>		
Data Protection Act and Section 5	19.19	In addition to the requirements set out below, members must comply with the Data Protection Act 1998 and all related legislation and with Section 5 of this Code that covers data in the off and on-line environment.
<b>Online Payment Security</b>		
Security of payment	19.20	Members must provide easy-to use, secure payment mechanisms and must give clear information on the level of security such mechanisms afford. If payment is made using a payment card, members must comply with the Payment Security Systems Data Security Standards (available at <a href="https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml">https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml</a> ).
System security BS150/IEC	19.21	a) It is recommended that members use BSBS150/IEC 11770-3:2008 (Information Technology Security Techniques. FRX management) as a basis for their security standards
Implementation of security policy		b) Members must ensure that a security policy for their systems has been developed and reviewed and that its provisions are implemented and tested appropriately
Responsibility for security		c) Members must identify a person who is responsible for the security of the company's systems. Their responsibilities should include: <ul style="list-style-type: none"> <li>i) scheduled reviews of the security of the system</li> <li>ii) ensuring that changes to the system (including maintenance and disposal of component parts of the software and hardware) are made in a secure manner</li> <li>iii) ensuring that security-critical changes recommended by the supplier of the system or any of its components are made in a secure and timely manner.</li> </ul>

## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce) cont.

Authentication of parties	d) Members must authenticate parties to transactions (including third parties) in a secure manner unless such transactions are designed to be anonymous
Integrity of content	e) Members must assure the integrity of the content available on their website
Integrity and confidentiality	f) Members must assure the integrity and confidentiality of transactions and the integrity and confidentiality of information about such transactions whether stored on computers or in transit across networks and against both internal and external threats and abuse
Third parties and security	g) Members must ensure that third parties involved in the fulfilment of a transaction maintain an equivalent level of security in respect of transactions and information about such transactions
Security of information in disputes	h) Members must ensure that, where the Commission for the purposes of investigating a complaint or dispute has a legitimate interest in information about transactions, this information is made available in accordance with the Commission's procedures as set out in Section 4. Similarly, correct procedures must be followed when releasing information for the purposes of legal proceedings
Third parties	i) If members contract with another party to operate any part of its service they must ensure that the other party is contracted to operate in accordance with the requirements of this Code.

### Online Commercial Communications sent to Children

Definition of children	19.22	Children for this purpose are those under 18 years of age unless a different age is mentioned. Reference to parents includes, where applicable, legal guardians.
Section 7	19.23	In addition to the paragraphs below, members must comply with paras 8.13 to 8.25 above of this Code that set out the detailed rules covering marketing to children, either on or off line.
Orders from children	19.24	Orders for goods or services must not be accepted from children under 12 without first obtaining a parent/teacher's verifiable and explicit consent. Members should also note that contracts are legally unenforceable against children and young persons.
Personal information from children	19.25	Websites that are directed to children must not collect personal data from children under 12 years of age without first obtaining a parent/guardian's verifiable and explicit consent.
Transfer of data	19.26	Websites that are directed to children and that collect personal data from children must not publicly post or disclose personal data collected from children under 12 years of age without first obtaining a parent/guardian's verifiable and explicit consent.

## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce) cont.

Submission of age	19.27	Websites that are directed to children and that collect personal data from children must require a child to give their age before any other personal information is requested. If the age given is under 12 the child should be excluded from giving further personal information until the appropriate verifiable and explicit consent has been given.
Notice informing of consent requirements	19.28	A notice informing children of the requirement for parental or guardian's consent must be shown at the point where personal information is requested. This notice should be clear and prominent and written in language that will be easily understood by young children. It should include an explanation of the purposes for which data are being collected (ie for marketing purposes) and how that consent may be given to the advertiser.
Contingent access to websites	19.29	Advertisers must not make a child's access to a website contingent on the collection of personal information or entice a child to divulge personal information with the prospect of a special prize or other offer.
Collection of other data	19.30	Personal information relating to other people (for example parents) must not be collected from children.
Privacy policy statement	19.31	<p>Members collecting personal information from children must post a privacy policy statement on their internet website (or for other means of online communication where this may not be practical, they must provide a prominent link to where this information can be accessed). Such a statement, and any link to it, must be understandable by a child audience and posted in a prominent location - both on a site's home page and any page where information is collected. In addition to the requirements set out in para 5.28 above, such a statement must contain:</p> <ol style="list-style-type: none"> <li>a statement that data will not be collected online without the explicit and verifiable consent of the parent/guardian</li> <li>a statement that provision of the requested information is entirely voluntary</li> <li>an explanation of the measures by which the parent/guardian may exercise their right to have ready and inexpensive access to the data held regarding the child in their care, so as to contest inaccurate or incomplete data, verify the information and correct it as appropriate</li> <li>where a website offers children interactive activities such as chat, message boards, free email services, posting of home pages etc, information by which the parent/guardian can assess and understand the nature of these activities and the consequences of the child's participation.</li> </ol>

### Complaint Handling and Customer Service

Complaint handling system	19.32	Members must have in place a complaints handling system that is fair, effective, confidential, easy to use and speedy. Specifically, such a system must, as a minimum, adhere to the following procedures:
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## 19.0 ONLINE COMMERCIAL COMMUNICATIONS (E-Commerce) cont.

Making a complaint		a) other than for WAP communications (see i) below, users must be able to make an initial online complaint to the member via an easy to use “click-through” mechanism
WAP complaints		i) for WAP communications or otherwise where technology does not allow, users must be provided with prominent link to information on how to make a complaint which must be possible with minimum effort.
Complaint handling		b) members must have in place effective in-house procedures for handling complaints ie through customer service or a named individual who is responsible for complaints/enquiries and who has the authority to resolve complaints and answer enquiries
Acknowledging complaints		c) members must acknowledge complaints promptly and normally within five working days. If the complaint is complicated and will take longer to resolve, then at this time details must be given as to the likely timescale for resolving the complaint
Resolving complaints		d) members must take appropriate action to resolve complaints, such as ensuring that the goods or services have been delivered/ replaced or a refund given.
Direct Marketing Commission	19.33	Where a complaint cannot be satisfactorily resolved or where a customer specifically requests it, members must direct complaints to the Commission or other appropriate industry regulatory body for consideration.

## 20.0 MOBILE MARKETING

## 20.0 MOBILE MARKETING

**Scope**

Scope	20.1	This Section of the Code applies specifically to commercial communications received via a mobile handset, or via a Bluetooth enabled device.
Code compliance	20.2	Members must comply with this Section of the Code and with the Code as a whole. In particular, members must comply with Section 5 on Data, Section 6, 7 and 8 on the Content of Commercial Communications, and Section 9 on Fulfilment and Customer Service.
Best Practice Guidelines	20.3	Members should refer to the Association's Mobile Marketing Best Practice Guidelines.

**Definitions**

Mobile marketing	20.4	Mobile marketing is the sending of commercial communications (see para 2.10 above) using "text", "picture", or "video" messaging via a mobile handset, or via a Bluetooth enabled device.
Data controller		a 'data controller' is a person or organisation who, either alone or jointly, determines the purposes for which, and the manner in which, any personal data are, or are to be, processed.
Data processor		a 'data processor' is a person who collects, stores or deals with personal data on behalf of a data controller (including a list broker/manager).
Host messaging service		'host messaging' is where the data controller is willing, for a fee, to send (or to instigate the sending through the data controller's normal outsourcing arrangements under a data processing agreement), on behalf of third parties, mobile marketing, promoting the third party's goods and services to the data controller's own mobile phone number database. In this case the data controller's mobile phone number file is not passed to the third party and the data controller must appear in the text message as the sender of the email.
Sender		a 'sender' is a body (including sole traders and partnerships) that, on behalf of an data controller, distributes a commercial communication via text through a mobile telecommunications network.
Recipient		a 'recipient' is any natural or legal person, including a sole trader or partnership, which receives a commercial communication sent by text.
Customer		a 'customer' is an individual who has made a purchase or who has entered into negotiations with the relevant business.
Telecommunications		a 'telecommunications network provider' is the holder of a valid licence to provide mobile telecommunications services. network provider.
Telecommunications network provider	20.5	A telecommunications network provider will only be deemed to be a data controller when sending its own commercial communications and will only be deemed to be a sender when distributing a commercial communication on behalf of itself or another data controller.



## 20.0 MOBILE MARKETING cont.

## General Rules

Spam	20.6	Members must not send unsolicited direct marketing mobile communications to individuals, unless the recipient of the communication is an existing customer of the member and the member complies with para 20.10 below or the individual has previously subscribed to receiving such communications from the member in accordance with paras 20.7, 20.9 and 20.10 below. Members must not send or instigate the sending of random, untargeted, commercial communications via mobile text to individuals using data obtained in breach of data protection or privacy legislation, Section 5 of this Code, and paras 20.7, 20.8, 20.9 and 20.10 below.
Consent	20.7	<p>a) Unless the customer exemption principle applies (see para 20.10 below), an individual must give proactive consent in order to receive mobile marketing communications. The onus is on members to ensure that proactive consent has been obtained before communications are sent. Members must not provide a pre-ticked opt-in box for consent purposes.</p> <p>b) An individual must give proactive consent to their mobile number being passed to third parties. (Data processors, for example SMS broadcasters are not third parties for this purpose). The onus is on members to ensure that proactive consent has been obtained before the mobile number is passed to third parties. At point of data collection the member must make it clear who they are proposing to pass the details on to and what sort of products and services they will be offering.</p> <p>Where an individual has opted -in to their data being passed on, as detailed above, they can be said to have agreed, for the time being, to receiving marketing communications from the third party sender. Members are reminded that each mobile communication must contain an unsubscribe mechanism.</p>
Consent and passing mobile phone number files to third parties		
Host mailing	20.8	Members must ensure that they do not disclose a mobile phone number to a third party unless the individual actively agrees to such a disclosure. A host messaging service is where the data controller is willing, for a fee, to send (or to instigate the sending through the data controller's normal outsourcing arrangements under a data processing agreement), on behalf of a third party, SMS marketing, promoting the third party's goods and services to the data controller's own mobile phone number database. In this case the data controller's mobile phone number file is not passed to the third party and the data controller must appear in the SMS message as the sender of the message. Data controllers should note that they must obtain the express consent of individuals (ie opt-in to receive host mailing) in accordance with para 20.9 below and therefore they cannot rely on the provisions of para 20.10 below for any such host messaging service.
Unsolicited SMS marketing	20.9	Unless the customer exemption principle applies (see para 20.10 below), members must not send or instigate the sending of unsolicited commercial communications via SMS unless:

## 20.0 MOBILE MARKETING cont.

Communications – with consent

- a) the recipient of the SMS has previously notified the member that they consent, for the time being, to receive such communications, for example by having ticked an opt-in box
- b) the member has clearly stated its identity or, where the member is acting as a data processor by sending out an SMS marketing communication at the instigation of the data controller, the identity of the data controller (i.e. the person on whose behalf such communication is sent). The recipient of the SMS communication must be able to clearly identify that the SMS message is a marketing communication and identify the data controller on receipt of the SMS so they may delete the communication without having to open it, and
- c) the member has provided the recipient with valid address details where requests can be sent for such SMS communications to stop. Members must provide an unsubscribe mechanism, such as a text back STOP facility, a website address or a local rate telephone number or a postal address where unsubscribe requests may be sent. Premium rate or national rate numbers are not acceptable. (NB: Because of the 160 character limit members can provide an alternative mechanism, such as a website address or standard local rate telephone number, through which an individual can send an unsubscribe request).

Unsolicited SMS communications without consent

20.10

Members may send or instigate the sending of unsolicited commercial communications via SMS without the explicit consent of individuals where:

Identity

- a) the member has obtained the mobile telephone number in the course of selling or negotiating to sell products or services to the individual (i.e. the individual is a customer of the member), and
- b) the commercial communication only relates to similar products or services sold by the member only, and
- c) the member provides a simple means of enabling the individual, without charge, (other than the cost of transmitting the refusal), to refuse the use of their mobile telephone number for such purposes, both at the time the number was first collected (i.e. an opt-out box) and, where the individual initially allows the use of their mobile number for such purposes, in each subsequent mobile communication (i.e. a return unsubscribe mechanism using for example "STOP " to a valid short code, which does not incur a premium rate charge and an abbreviated name), and
- d) the member has clearly stated its identity or where the member is acting as a data processor by sending out a mobile marketing campaign at the instigation of a data controller, the identity of the data controller on whose behalf the communication is sent.

## 20.0 MOBILE MARKETING cont.

Passing mobile numbers to third party companies or associated/affiliated companies	20.11	Where members want to pass on their customers' mobile phone numbers to a third party and/or associated/affiliated companies, an opt-in mechanism must be provided to the individual (see paras 20.7 and 20.9 above). When collecting mobile numbers for their own marketing purposes and to pass on to third parties, members must provide a separate opt-in mechanism for third party mobile marketing so that the customer is clear as to what they are consenting to receive.
Identification of commercial communication	20.12	All commercial communications sent via mobile, whether solicited or unsolicited, must be clearly identifiable as such to the recipient at the time of receipt of the communication.
TPS	20.13	If members are making live voice calls to mobile phone numbers, then they must screen their lists of mobile telephone numbers against the Telephone Preference Service (TPS) and the Corporate Telephone Preference Service (CTPS) and remove and suppress any mobile numbers that are on the TPS or CTPS. Where the member has specifically notified the individual, sole trader or partnership, at the time of collection that unsolicited live voice marketing calls may be made to the mobile number and the individual has provided their mobile number with knowledge of this, then the member does not have to suppress any mobile number that is on the TPS. If members are simply sending text messages to mobile phone numbers then they do not have to screen their lists of mobile telephone numbers against the TPS. However, members must comply with paras 20.9 and 20.10 above.
In-house suppression	20.14	Members marketing via mobile must operate and maintain an in-house suppression file, listing recipients who have indicated that they do not wish to receive further commercial communications via mobile (see para 5.81 above). As well as screening against the TPS and CTPS for voice calls only, members must screen against in-house suppression files, prior to each mobile marketing campaign.
Reasonable hours	20.15	Members must take all reasonable steps to ensure recipients do not receive commercial communications sent via mobile between the hours of 9pm and 8am Monday to Friday and 9pm and 9am on weekends, unless a prior express invitation has been received. Members should also bear in mind that recipients might regard messages sent on a Sunday, or a national or religious holiday, as unwelcome.
Connection to web	20.16	Where a commercial communication via mobile directs recipients to a related website, members must comply with the provisions of Section 19 on On-Line Commercial Communications.
<b>Data</b>		
Information to be provided	20.17	When collecting personal data via mobile to be subsequently used for direct marketing purposes, a mechanism must be provided, immediately prior to or at the time of collection, to allow the data subject access to the information as detailed in paragraph 5.22 above of this Code.

## 20.0 MOBILE MARKETING cont.

Privacy policy	20.18	When collecting personal data via mobile members must provide a mechanism whereby individuals can obtain details of the member's privacy policy. The contents of this privacy policy must comply with para 5.28 above.
<b>Content of Commercial Communications sent via mobile</b>		
Information to be included	20.19	Commercial communications sent via mobile must contain the following information:
Organisation information		<ul style="list-style-type: none"> <li>a) Information, such as a website address, as to where the recipient can obtain the following: <ul style="list-style-type: none"> <li>i) full organisation name</li> <li>ii) registered office address (companies), or principal place of business (unincorporated associations)</li> <li>iii) company registration details</li> <li>iv) full postal contact address (PO Box addresses are not sufficient)</li> <li>v) email address</li> <li>vi) terrestrial telephone number.</li> </ul> </li> </ul>
Access to terms and conditions		<ul style="list-style-type: none"> <li>b) where relevant, details of where the recipient can view the terms and conditions applicable to a particular promotion, advertisement or offer. The terms and conditions must be available in writing or other durable medium</li> </ul>
Distance Selling Regulations		<ul style="list-style-type: none"> <li>c) the information required by the Consumer Protection (Distance Selling) Regulations 2000 (see paras 6.26 and 6.27 above) where the commercial communication is the final written advertised stage in a process that allows individuals to buy products or services (see para 6.26 above for additional and written information required).</li> </ul>
Free access to information	20.20	Recipients must be able to access the information detailed in paras 20.19a) to c) above free of charge or at a rate that at no time exceeds the recipient's standard local call rate.
Confirmation of acceptance of terms	20.21	Prior to the conclusion of a contract via mobile, for the sale or supply of goods and/or services, members must require the recipient to indicate, in a manner clearly defined by the data controller, that the information outlined in paras 20.19b) and c) above have been accessed and agreed to.
<b>Mobile Marketing to Children and Young Persons</b>		
SMS to children and young persons	20.22	Members must comply with paras 8.13 to 8.25 above for full details of the rules covering marketing to children and young persons, in addition to the requirements set out below.

## 20.0 MOBILE MARKETING cont.

Orders from children and young persons	20.23	Orders for goods or services made in response to mobile communications must not be accepted from children under 12 of age without first obtaining a parent/guardian's verifiable and explicit consent.
Personal data from children and young persons	20.24	Members must obtain the verifiable and explicit consent of a parent/guardian prior to collecting personal data in both the online and the offline world from children under 12 years of age for use in targeting commercial communications via mobile.
Notice explaining consent requirement	20.25	A notice informing children of the requirement for parental consent must be given at the point where the personal information is requested. This notice should be clear, prominent and in a language which a child can easily understand. It should also include an explanation of the purposes for which data are collected (i.e. marketing purposes) and how consent may be given. The opt-out mechanism must be free of charge to the consumer other than the normal call rate, premium rate or national rate numbers are not acceptable.
Unsolicited SMS	20.26	Members must not send unsolicited commercial communications via mobile to children and young persons under 12 years of age without first obtaining the verifiable and explicit consent of the parent/guardian. Members are reminded of their obligations under paras 6.30 and 9.11 above.

# 21.0 TELEMARKETING

## 21.0 TELEMARKETING

**General Rules**

Scope	21.1	This Section of the Code applies to all members using the telephone for marketing, sales, market research or customer service purposes to consumers, businesses and other organisations.
Code compliance	21.2	Members using the telephone for these purposes must comply with this Section of the Code and with the Code as a whole. In particular, members' attention is drawn to Section 5 on Data and to Sections 6, 7 and 8 on the Content of Commercial Communications.
Best Practice	21.3	Members should refer to the Association's Contact Centres and Telemarketing Best Practice Guidelines.

**Premium Rate Services**

PhoneyPayPlus	21.4	Members using premium rate services must comply with the Code of Practice of PhoneyPayPlus, formerly the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS).
CAP Code	21.5	Members must ensure that commercial communications that advertise premium rate services and the content of such services comply as appropriate with this Code and the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).

**Information to be provided**

Identity of advertiser	21.6	Members making sales, marketing or customer service calls must volunteer the name of the advertiser at the beginning of the call and must repeat this information on request at any time during the conversation.
Contact details	21.7	Members making sales, marketing or customer service calls must, on request, give the full contact details of the advertiser, including the full company/organisation name, registered office address (companies) or principal place of business (unincorporated associations), company registration details, postal address (PO Box numbers are not sufficient), email address and terrestrial telephone number. The advertiser's name, address and telephone number must also appear in the telephone directory or be listed with Directory Enquiries under the name given during the call. Individuals initiating a call in response to an offer with a telephone response mechanism must, on request, be given the advertiser's name and contact details as above (see para 6.26 above).
Identity and contact	21.8	When making calls on behalf of another organisation, members must disclose their own name, address and telephone number if requested at any time during the conversation.
Purpose of call	21.9	Members must clearly state at the beginning of the conversation all commercial purposes of the call and must restrict the content of the call to matters directly relevant to these purposes.

## 21.0 TELEMARKETING cont.

Visits	21.10	If a member arranges to visit the recipient of a sales, marketing or customer service call, a telephone number or address must be provided in advance of the visit to enable the recipient to cancel or change the appointment. Members should refer to Section 16 Field Marketing of this Code for rules on solicited visits.
<b>Distance Selling Regulations</b>		
Prior Information	21.11	Members making offers by telephone, which are the final stage in a process that allows individuals to buy products or services, must provide the information required by the Consumer Protection (Distance Selling) Regulations 2000. Specifically, the call must include:
Description Price Post & packing		<p>a) clear details of the goods or services offered, including:</p> <ul style="list-style-type: none"> <li>i) a description of the main characteristics of the goods or services</li> <li>ii) the price including VAT, unless the offer is addressed exclusively to trade, and any other tax and duties payable so that the total amount payable can be easily calculated</li> <li>ii) details of any additional, non-optional extras such as post, delivery and packing charges (see paras 6.48 and 6.49 above on post and packaging) so that the total amount payable can be easily calculated</li> </ul>
Delivery arrangements and timing		b) clear details on the arrangements for the delivery of goods or performance of a service, including the estimated fulfilment time which, unless the parties agree otherwise, must be within a maximum of 30 days from the day following that on which the customer placed their order (see para 9.10 above)
Right to cancel		c) a prominent statement explaining the existence of a right to cancel orders for goods or services (unless exempted, see para 9.24 above)
Cost of communication		d) details of any postal, telephone or other communication charges that are higher than the basic rate (e.g premium rate numbers)
Restrictions		e) details of any limitations on the offer such as geographic restrictions, period of availability of the offer or any other conditions that affects its validity
Open-ended contracts		<p>f) details of the minimum duration of open-ended contracts (ie where goods are supplied or services performed permanently or recurrently)</p> <p>g) where appropriate, a statement outlining the intention to provide substitute goods or services (of equivalent quality and price) if those ordered become unavailable and that the advertiser will meet the cost of returning substitute goods on cancellation</p> <p>h) information on the payment mechanisms available, including any credit and instalment terms.</p>



## 21.0 TELEMARKETING cont.

Additional and written information	21.12	In addition to the above, prior to the conclusion of the contract or thereafter in good time but no later than the time of delivery of the goods or the service has been fully performed, the following information must be provided in writing or other durable medium (see para 6.26 above):
General information		a) the information required in paras 21.11a to c above, which was originally given verbally during the telephone call
Name and address		b) the identity of the advertiser, which must be prominently displayed and the advertiser's full geographical business address to which a consumer can send complaints
Right to cancel		c) the conditions and procedures for exercising the right to cancel (unless inapplicable, see para 9.24 above), including information regarding who is responsible for the return of cancelled goods and the cost of returning or collecting them
After-sales service & guarantees		d) information regarding after-sales service and guarantees
Cancellation of open-ended contracts.		e) the conditions for exercising any contractual right to cancel a contract of unspecified duration or duration exceeding one year.

**Restriction of Contacts**

Children and young persons	21.13	Members must make all reasonable steps not to make outbound marketing calls to children and young persons.
Random number dialling/ Random number scanning	21.14	Calls must not be generated by random number or sequential dialling, manually or by computer. Additionally members must not undertake number-scanning activities (also known as 'pinging'), where calls are made to find out which telephone numbers, out of a range of numbers, are in service or not; as soon as a tone is received, and the status of a particular number has been established, the call is terminated,. This activity is carried out in order to develop lists of active telephone numbers. As well as the inconvenience that may be caused to the recipient of an abruptly terminated call such behaviour is detrimental to consumers in general by adding to network congestion. In a worst-case scenario high-volume number-scanning could overload either the originating or terminating local exchange thus depriving subscribers connected to that exchange of the ability to make or receive any calls at all. The activities above are considered by Ofcom to be a persistent misuse of a communications network or service and therefore a breach of the Communications Act 2003, under which Ofcom have powers to take enforcement action.
Ex-directory numbers	21.15	Members must not knowingly make sales and marketing calls to unlisted or ex-directory numbers unless the consumer concerned has provided the number.
Calls to place of work	21.16	Members must not make consumer calls to individuals at their place of work unless the individual has given this number for that purpose.

## 21.0 TELEMARKETING cont.

Unsolicited telephone calls promoting mortgages	21.17	Under Rule 3.7.3 of the Financial Services Authority Mortgage Conduct of Business Rules (unsolicited real time qualifying credit promotions to consumers) a member must not make unsolicited calls promoting mortgages unless the member has an established existing relationship with the consumer and the relationship is such that the consumer envisages receiving unsolicited real time qualifying telephone calls promoting mortgages (see appendix 5).
Calls to those who have objected and TPS/CTPS	21.18	Members must not make unsolicited calls for marketing purposes to individuals (including sole traders and, except in Scotland, partnerships) and/or corporate subscribers (limited companies, plcs and partnerships in Scotland) where the individual or corporate subscriber has notified the caller that he does not wish to receive such calls, or where the individual or corporate subscriber has registered his objection with the Telephone Preference Service or the Corporate Telephone Preference Service.
In-house suppression file	21.19	Members must therefore operate and maintain an in-house suppression file, listing recipients who have indicated that they do not wish to be contacted by telephone. Members must have documented procedures to ensure that all such names have been blocked from the telephone contact lists used by them or on their behalf (see para 5.81 above).
TPS/CTPS	21.20	Members must also ensure that no list containing telephone numbers is used for marketing purposes unless it has been cleaned against the Telephone Preference Service (TPS) or Corporate Telephone Preference Service (CTPS) files. Members must ensure that such a list is cleaned against the most recent TPS or CTPS file no more than 28 days before supply, although a user may choose to clean it again before use. [N.B. Members may use their own list (i.e. a list of those with whom they have an established relationship) without cleaning against the TPS or CTPS file, as long as the individual or corporate subscriber has provided their telephone number (i.e. it is not sourced) and it was made absolutely clear at the time of collecting the telephone number that the data subject may receive telemarketing calls to that number]. The individual or corporate subscriber must have been given an opportunity to object to receiving marketing when the telephone number was collected (see para 5.90 above).
Automated voice calls	21.21	Members intending to initiate outbound calls involving the use of an automated calling system (i.e. a system which, when activated, operates to make calls without human intervention) must have obtained the prior consent of the person being called, whether they are an individual or another business.
<b>Automated Dialling Equipment</b>		
Definition of dialling equipment	21.22	For the purposes of this Code, "dialling equipment" means any equipment capable of dialling a telephone number prior to a live operator being available to exclusively handle the call. This includes, but is not limited to, predictive diallers, progressive diallers, power diallers, auto diallers, adaptive diallers and automatic diallers.

## 21.0 TELEMARKETING cont.

Live individual	21.23	A 'live individual' refers to a person who is called by an Automated Calling System (ACS) user.
Live call to a Live operator	21.24	A 'live call to a 'live operator' is a call where a live operator is put through to a live individual. A 'live call to a live operator' does not include calls made by ACS users that are answered by answer machines.
Abandoned call	21.25	An 'abandoned call' is where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual.
Abandoned call rate	21.26	The 'abandoned call rate' is the number of abandoned calls as a proportion of total live calls. It must include a reasoned estimate of Answer Machine Detect (AMD) false positives where AMD is used and may exclude a reasoned estimate of calls abandoned to answer machines.
AMD false positive	21.27	An 'Answer Machine Detect (AMD) false positive' is when an AMD device mistakenly identifies a call as being answered by an answer machine whereas, in reality, it has been answered by a live individual.
24 hour period	21.28	A '24 hour period' means between midnight and midnight on a calendar day.
Campaign	21.29	A campaign is identified by the use of a single call script to make a single proposition to a single target audience. A campaign can be run from more than one call centre over a 24 hour period. If calls are made for identifiable purposes with a single script to a single target audience, then Ofcom and the Association will continue to regard this as a campaign. In the event of an investigation, Ofcom and the Commission will consider the facts of each case on its own particular merits.
Reasoned estimate of calls abandoned	21.30	A 'reasoned estimate of calls abandoned to answer machines' is an estimate of the number of ACS identified abandoned calls made to answer machines that have actually been answered by an answer machine. Ofcom and the Association will assess the methodology used to factor in the number of calls abandoned to answer machines into an abandoned call rate on a case by case basis.
Ring time	21.31	Members must ensure that their dialling equipment is adjusted to ensure a minimum ring time of 15 seconds before the call is abandoned as unanswered.
Rate of abandoned calls	21.32	The dialling equipment must at all times be adjusted to ensure that the rate of calls abandoned is no more than 3% of live calls per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over any given 24 hour period. If this rate is exceeded the Commission will take action as defined under section 4 of the Code.
Information message in the event of an abandoned call	21.33	In the event of an abandoned call (other than an AMD false positive), a very brief recorded information message must be played no later than 2.0 seconds after the telephone has been picked up or within two seconds of the call being answered i.e.:

## 21.0 TELEMARKETING cont.

- i) no later than two seconds after the telephone has been picked up; or
- ii) no later than two seconds after an individual begins to speak (or 'start of salutation')

whichever is more applicable to the technology deployed.

AMD users can choose to play an information message in the event of an abandoned call from when an individual finishes speaking (or 'end of salutation'). This must be achieved on the condition that the total time taken to start playing an information message is no more than two seconds from start of salutation.

Contents of the information message	21.34	<p>The information message must contain at least the following information:</p> <ul style="list-style-type: none"> <li>i) the identity of the organisation on whose behalf the call was made (which will not necessarily be the same organisation that is making the call)</li> <li>ii) details of a special services (080 – no charge) or a Special Services basic rate (0845 only) or a Geographic Number (01/02) or a UK wide number at a geographic rate (03) number the recipient can contact so they have the possibility of declining to receive further marketing calls from that organisation and</li> <li>iii) the message must not include any marketing material and must not be used as an opportunity to market to the recipient.</li> </ul>
Repeat of abandoned calls	21.35	<p>Where a number has received an abandoned call, any further calls to that number within the following 72-hour period, may only be made with the guaranteed presence of a live operator to prevent any chance of a further abandoned call.</p> <p>Example: If an abandoned call is made at 3pm on a Monday, the 72 hour period will run until 3pm on a Thursday.</p>
Repeat of calls to an answer machine where AMD equipment is being used	21.36	<p>When a call has been identified by AMD equipment as being picked up by an answer machine (including AMD false positives), any repeat calls to that specific number within the same 24 hour period (between midnight and midnight on a calendar day) may only be made with the guaranteed presence of a live operator.</p> <p>Example: This will enable an AMD user who reaches an answer machine at 3pm on a calendar day to call that number again on the morning of the following calendar day.</p>
Dialler statistics	21.37	<p>For each individual campaign, members must maintain an up to date archive of dialler statistics that clearly demonstrate compliance with 21.32 to 21.36 above. This must include a daily summary of:</p> <ul style="list-style-type: none"> <li>a) the number of calls attempted</li> <li>b) the number of calls answered</li> </ul>

## 21.0 TELEMARKETING cont.

- c) the number of calls connected
- d) the number of calls passed to a live operator
- e) the number of live calls abandoned by the dialling equipment.

Detailed calling statistics at the CDR (Call data record) level must be kept for all calls for a period of six months. All calls in this case refer to both connected calls and non-connects.

Records of dialler	21.38	Summary records of dialler statistics must be retained for a minimum of 24 months and must be available for inspection on reasonable notice from the Association, the Commission or other appropriate authorities.
AMD False Positive Testing	21.39	Members must retain records relating to any AMD false positive testing in order that they can demonstrate compliance with para 21.33 above and must be available for inspection on reasonable notice from the Association, the Commission or other appropriate authorities.

#### Caller Line Identification

Caller Line Identification	21.40	When undertaking outbound calls, members must provide caller line identification to which a return call may be made which is either a geographic number or a non geographic number adopted as a Presentation Number which satisfies the Ofcom Guide to the use of Presentation Numbers
Information to be given when calling through CLI	21.41	<p>Consumers calling back on the number provided through caller line identification must, either by live operator or a recorded message, be informed:</p> <ul style="list-style-type: none"> <li>a) the identity of the organisation on whose behalf the call was made (which may not necessarily be the same organisation that makes the call)</li> <li>b) an opportunity to decline further calls from that organisation. Where the recipient phones to decline further calls, they may be informed that this is not an option because of the circumstances of the call, for example debt recovery, customer service, credit management. If a further call is required, this must be on the same basis as 21.33 below</li> <li>c) the message must not include any marketing material and must not be used as an opportunity to market to the recipient.</li> </ul>
Publication of network and presentation CLIs	21.42	<p>Members will record and keep up to date details of:</p> <ul style="list-style-type: none"> <li>- Organisation name</li> <li>- Contact details for those who wish to be added to their in house do not call list</li> <li>- Network CLIs that they use</li> </ul>

## 21.0 TELEMARKETING cont.

- Presentation CLIs that they use
- CLI text that they forward.

This data must be supplied to the Association and will be kept by them on an internal database. This information will be available to the Nuisance Call Bureaux and the public for purpose of allowing them to quickly identify the companies that are calling them.

Permission to pass on details	21.43	Members must sign a form provided by the Association that gives staff at the Nuisance Call Bureau permission to pass on their company name and contact details to any member of the public who complains about receiving calls from them.
Procedures for complaints and do not call requests	21.44	Members who conduct outbound work should have a documented procedure for staff to follow when: <ul style="list-style-type: none"> <li>an individual asks to be placed on the company's in-house do not call list</li> <li>complaints are received from the Nuisance Call Bureaux, the TPS or Ofcom on behalf of an individual</li> </ul>
Pass Back do-not call request	21.45	Members who conduct outbound work on an agency basis should have a documented procedure showing how an individual requests to be added to the in-house do not call list are passed back to the client.

#### Honesty

Honesty	21.46	Members must not evade the truth and must take care not to mislead. Any questions must be answered honestly and to the best of available knowledge. Members must not allow their staff to tell consumers that their livelihood or job is in jeopardy if they do not purchase the goods or services on offer.
Sugging	21.47	Sales, marketing or customer service calls must not be made under the guise of research or a survey. When collecting information for legitimate research or survey, members must not use this information to form the basis of a sales approach either during or after the call.
Responsibility for staff	21.48	Members must accept responsibility for statements made by their staff or others working on their behalf.

#### Courtesy and Procedures

Courtesy	21.49	Members must at all times be courteous and efficient during calls.
No high pressure tactics	21.50	Members must avoid the use of high pressure sales tactics that could be construed as harassment.
Right to terminate call	21.51	Members must always recognise the right of the other party to end the telephone conversation at any stage, and must accept any request to end the call promptly and courteously.

Callers right to terminate call	21.52	Members have the right to politely terminate a call at any time where, for example, the other party has become abusive or early termination of the call may avoid confrontation or confusion.
Reasonable hours	21.53	Members must not make sales, marketing or service calls during hours that are unreasonable to the person being called, recognising that what is regarded as reasonable can vary in different locations and in different types of households or businesses. In general, members should not make calls between the hours of 9pm and 8am Monday to Friday and 9pm and 9am at weekends, unless an express invitation to do so is received. Members must also be aware that many consumers might consider it unreasonable to be called on a Sunday or on national/religious holidays.
<b>Warning Tones and Silent Monitoring</b>		
Regulation of Investigatory Powers Act 2000	21.54	Members must comply with the Regulation of Investigatory Powers Act 2000 and with The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.
Monitoring or recording – with consent	21.55	Members may record or monitor telephone calls for any purpose where both the person making/receiving the call and the call centre agent receiving/making the call have given their consent.
Monitoring or recording – exception	21.56	Provided that members have made all reasonable efforts to inform the call centre agent that calls may be monitored or recorded, members may monitor or record telephone calls, without consent from the person receiving/making the call (this applies to both B2C and B2B) for the following purposes:
Establishing facts (quality control and training)		a) in order to establish the existence of facts, to ascertain compliance with regulatory or self-regulatory practices or procedures or to ascertain or demonstrate standards which are or ought to be achieved (i.e. for quality control and training purposes) or
Detection of a crime		b) in order to prevent or detect a crime or to investigate or detect unauthorised use of the telephone system, or
Ensuring effective system operation		c) in order to ensure effective system operation including the monitoring of calls to determine whether they are business or personal communications.
Financial Information	21.57	If a call containing a financial transaction made using a payment card is to be recorded and such recording is to be stored, members should ensure that they comply with the Payment Security Systems Data Security Standards (available at <a href="https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml">https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml</a> )
Contracts of employment Informing individuals	21.58	It is recommended that contracts of employment for individuals using the telephone on behalf of a member include a provision explaining that calls may be monitored or recorded in accordance with the The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

# APPENDICES



## APPENDIX 1 - Glossary

### A

#### **Advertiser**

'Advertiser' is any person or company that initiates a commercial communication via email to promote its products or services or its aims and ideals.

#### **ASBOF levy**

The term "ASBOF Levy" is a levy collected on a mailer's invoice and passed to the Advertising Standards Board of Finance to fund designated self-regulatory bodies.

#### **Automated call distributor**

"Automated call distributor" is the equipment used by a live bureau to manage and report on incoming call traffic.

#### **Automated call handling**

"Automated call handling" (ACH) is the process whereby incoming calls are answered and handled by a pre-recorded message using specialist computer and telecoms equipment. It is also known as 'interactive voice response' (IVR) or 'voice interactive computer'.

#### **Availability of interactive/enhanced TV advertising**

Interactive/enhanced television advertising opportunities are available through either:

- a) dedicated interactive/enhanced services
- b) interactive airtime/commercials (i.e. television advertisements with interactive/enhanced advertising opportunities) or
- c) enhanced programme services (i.e. television programming with interactive/enhanced advertising opportunities).

### B

#### **Best Practice Guidelines**

"Best Practice Guidelines" are a series of guidelines produced by the Association for specific membership groups. They provide members with additional guidance on particular industry sectors and set down higher standards of practice than this Code requires.

#### **Bureau or contact centre**

A "bureau" or "contact centre" is the company, acting on behalf of the advertiser, employed to run the direct response campaign (i.e. to receive telephone calls and fulfil the particular request) whether for further information to be given or sent or to take orders for the goods or services offered.

### C

#### **Catalogue and home shopping**

"Catalogue and home shopping" refers to offers for goods or services made via catalogues (two stage) or off-the-page (one stage) without the buyer and seller meeting face to face. Catalogues or advertisements can be accessed on-line or in print and response can be via the internet, post, telephone or any other means of communication.

#### **Client**

"Client" is the advertiser or an agency acting on the advertiser's behalf.

## APPENDIX 1 - Glossary cont.

**Commercial Communication**

The term "commercial communication" is any communication of advertising or marketing material directed by a business (including sole traders and partnerships) to consumers or another business whether it represents the entirety of the communication or constitutes part of an otherwise non-marketing message. The term includes sales promotion, fundraising and all advertising whether it contains an offer for goods or services or an invitation to treat.

**Commercial Practice**

A "commercial practice" is any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a member, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product.

**Compliance Officer**

The term "compliance officer" refers to the individual required by this Code designated by each member of the Association to take responsibility for that member's compliance with this Code.

**Consumer**

The term "consumer" means a person acting in a private capacity and not for the purposes of a trade or profession.

**Customer**

A "customer" is an individual who has made a purchase or who has entered into negotiations with the relevant business.

**Customer...etc**

The terms "customer", "respondent", "recipient" and "participant" refer to people, whether or not in their private capacities.

**D****Data**

"Data" is information which:

- a) is processed, or is recorded with the intention that it should be processed, by means of equipment operating automatically in response to instructions given for any direct marketing purposes, however it is accessed and whether or not it is in the form of a list
- b) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system (i.e. manual data where data is structured in such a way that specific information relating to a particular individual is readily accessible).

**Data controller**

"Data controller" is a person or organisation who, either alone or jointly, determines the purposes for which, and the manner in which, any personal data are, or are to be, processed.

**Data processor**

"Data processor" is 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**

"Data processing" is collecting or storing information or data or carrying out any operation/s on the information or data. It extends to the erasure or destruction of the information or data and to the disclosure of the information or data by transmission, dissemination or otherwise making available.

## APPENDIX 1 - Glossary cont.

### **Data Protection Principles**

“The Data Protection Principles” are the eight enforceable rules contained in the Data Protection Act 1998 which prescribe the required conduct for the lawful management of personal data.

### **Data subject**

“Data subject” is a living individual who is the subject of personal data.

### **Data supplier**

“Data supplier” is a data controller who makes data available to third parties for use in their direct marketing activities.

### **Data user**

“Data user” is an organisation making use of either its own data or of data obtained from other sources for any direct marketing purpose.

### **Direct response broadcasting**

“Direct response broadcasting” is an advertising campaign run via television or radio which includes a direct invitation for a recipient to telephone for further information on goods or services or to purchase goods or services.

### **Distance selling**

“Distance Selling” is the offering of goods or services to a consumer (an “offer”), with a view to concluding a contract for those goods or services without the buyer and seller meeting face to face.

## **E**

### **EEA**

“The European Economic Area” comprises the member states of the European Union plus Norway, Iceland and Liechtenstein.

### **Effective date**

The “effective date” is the date that this edition of the Code came into force (see para 1.6 above).

### **Email marketing**

“Email marketing” is the sending of commercial communications (see paragraph 2.10 above) via email.

### **Enhanced TV**

“Enhanced television” advertising is television advertising provided via digital equipment that involves some form of selection or navigation by the viewer but has no return path.

### **Existing and prospective customers**

“Existing customer” is where there has been, and still is, an established trading relationship between the customer and advertiser.

## **H**

### **Host messaging service**

“Host messaging” is where the data controller is willing, for a fee, to send (or to instigate the sending through the data controller’s normal outsourcing arrangements under a data processing agreement), on behalf of a third party, marketing communications promoting the third party’s goods and services to the data controller’s own customer database. In this case the data controller’s customer database is not passed to the third party and the data controller must appear in the as the sender of the marketing communication.

## APPENDIX 1 - Glossary cont.

### I

#### **Individual**

The term “individual(s)” means a living person or a person acting as a sole trader or (except in Scotland) within a partnership.

#### **Insert**

“Insert” is advertising material, which may or may not include a response mechanism, distributed via a third party publication.

#### **Interactive TV**

“Interactive television” advertising is defined as television advertising provided via digital equipment (satellite, cable or digital terrestrial) that involves some form of selection or navigation by the viewer and a return path.

### L

#### **List or database**

“List” or “database” are the means by which personal information or data are held for direct marketing purposes, which is normally accessed by reference to names and addresses and is held in the form of a paper or electronic list.

#### **Live operators**

“Live operators” are people specifically employed and trained by a live bureau to handle incoming calls.

### M

#### **Member**

The term “member” refers to companies or organisations that have:

- a) been accepted into, and remain within, membership of the Association under the terms of the Articles of the Association and
- b) accepted the terms and conditions of membership of the Association.

#### **Mobile marketing**

Mobile marketing is the sending of commercial communications (see para 2.10 above) using “text”, “picture”, or “video” messaging via a mobile handset, or via a Bluetooth enabled device.

### O

#### **On-line commercial communications**

“On-line commercial communications” are any commercial communications (see para 2.10 above), including advertisements and offers for goods and services, which take place on-line through any digital channel including but not limited to search engine marketing (PPC), search engine optimisation, online advertising (banner ads), email, an organisation’s website, mobile marketing (SMS, MMS, WAP, wireless application protocol (WAP), applications etc.), data storage devices or interactive kiosks.

## APPENDIX 1 - Glossary cont.

## P

**Personal data**

“Personal data” is information from which a living individual can be identified, whether from that information alone or when combined with other information, which is in the possession of, or is likely to come into the possession of, the data controller. Members should be aware that information might be personal data even where an individual is not named, if it is possible to identify that person using information obtained from other sources. Business information and email addresses from which a living individual can be identified may also be regarded as personal data and therefore should be covered by these rules.

**PhonepayPlus**

Formerly known as the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), PhonePayPlus is the organisation that regulates phone-paid services in the United Kingdom.

**Premium Rate Services**

“Premium rate services” are services that use a telephone number that is charged at a rate for BT customers higher than 10pence per minute up to and including £1.50 per minute excluding VAT, or fixed fee calls costing over 10 pence per minute up to and including £1.50 including VAT. These numbers start with 090 and 091. The money paid for by users is shared between the phone network and the organisation providing the content.

**Printer I**

“Printer I” is the printer contracted by the client or agency to produce the insert.

**Printer II**

“Printer II” is the printer contracted or owned by the publisher to produce the publication and to execute the insertion process.

**Prospective customer**

“Prospective customer” is where the company has received no previous order from that particular customer

**Publisher**

“Publisher” is the owner of the publication in which the insert is to be placed.

## R

**Recipient**

‘Recipient’ is any natural or legal person, including a sole trader or a partnership, who receives a commercial communication sent via an email or text.

**Return path**

“Return path” is a means for a viewer to deliver information via digital equipment to the advertiser and/or broadcaster.

## S

**Sender**

A ‘sender’ is an organisation (including sole traders and partnerships) that, on behalf of an data controller, distributes a commercial communication via a communication channel.

**Sensitive Personal Data**

Data is regarded as sensitive if it relates to racial or ethnic origin, political opinions, trade union membership, religious beliefs, physical or mental health, sexual life, the commission or alleged commission of an offence and any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings and the sentence of any court in such proceedings.

## APPENDIX 1 - Glossary cont.

### **SMS**

“SMS” is a communication sent using “text”, “picture” or “video” messaging via a mobile handset.

### **Subscribers**

“Subscribers” are all potential recipients of a direct marketing communication, including individuals and organisations.

## **T**

### **Telecommunications**

A ‘telecommunications network provider’ is the holder of a valid licence to provide mobile telecommunications services network provider.

### **The Association**

“The Association” is The Direct Marketing Association (UK) Ltd.

### **The Board**

“the Board” is the Board of the Association.

### **The Commission**

“The Commission” is the Direct Marketing Commission (see Section 4).

### **The Code**

This “Code” or “the Code” is the Direct Marketing Code of Practice 4th Edition. The DMA Code is not endorsed or approved by a public body.

### **Third Party**

“Third party” is any person or organisation other than the advertiser (with the exception of data processors). This includes associated and/or affiliated companies.

## **U**

### **Unsolicited commercial communication**

“Unsolicited commercial communication” is a communication sent to consumers with whom the sender does not have an ongoing commercial or contractual relationship or where such a communication is otherwise uninvited.

## **V**

### **Viewer/customer**

“Viewer” is an individual who may make use of an interactive/enhanced advertising opportunity via a digital platform.

“Customer” is an individual who has contracted with a digital broadcaster for the provision of digital broadcast services.

### **Vulnerable consumers**

The term “vulnerable consumer” includes, but is not limited to, people with disabilities, the elderly and those for whom English is not their first language. See Appendix 4

## APPENDIX 1 - Glossary cont.

### W

#### **WAP**

“WAP” (wireless application protocol) is a collection of protocols and transport layers, which allow mobile and portable communication devices such as mobile telephone and Personal Digital Assistants (PDAs) to receive information over the airwaves.

### Y

#### **Your Choice Preference Service Scheme**

“Your Choice” is a scheme run by The Direct Marketing Association which enables householders to register their wish not to receive unaddressed items, delivered by the Association’s members, to their home address.

## APPENDIX 2 - Marketing to Children

This section brings together those sections within the DMA Code of Practice that marketers have to take into account when marketing to children across all media channels. It aims to assist members understand their obligations when considering direct marketing campaigns targeted at those under the age of 18. The DMA is committed to an ethical and responsible approach to marketing to children and requires members to be mindful of the impact their campaigns may have, even where the target market is not exclusively adolescent. Members are also reminded that they have to comply with the British Code of Advertising, Sales Promotion and Direct Marketing (The CAP Code).

The use of the word 'must' indicates that a requirement is compulsory for members, either because it is law or because it is considered to be essential to good direct marketing practice. The word 'should' is used where a requirement is considered best practice: members are expected to comply (see section 2.2 - 2.4).

Data	Code Reference	
Parental consent	8.14	<p>When collecting data in both the online and offline environment from children under 12 years of age, members must secure verifiable and explicit consent from a parent or guardian.</p> <p>Members must not send unsolicited commercial communications to children under 12 years of age without first obtaining the verifiable and explicit consent of the parent/guardian. Members must also ensure that they comply with any legislation regarding consent for the sending of commercial communications.</p>
Transfer of data	19.26	Websites that are directed to children and that collect personal data from children must not publicly post or disclose personal data collected from children under 12 years of age without first obtaining a parent/guardian's verifiable and explicit consent.
Submission of age	19.27	Websites that are directed to children and that collect personal data from children must require a child to give their age before any other personal information is requested. If the age given is under 12 the child should be excluded from giving further personal information until the appropriate verifiable and explicit consent has been given.
Collection of other data	19.30	Personal information relating to other people (for example parents) must not be collected from children.
Privacy policy statement	19.31	<p>Members collecting personal information from children must post a privacy policy statement on their internet website (or for other means of online communication where this may not be practical, they must provide a prominent link to where this information can be accessed). Such a statement, and any link to it, must be understandable by a child audience and posted in a prominent location - both on a site's home page and any page where information is collected. In addition to the requirements set out in para 5.27 above, such a statement must contain:</p> <ul style="list-style-type: none"> <li>a) a statement that data will not be collected online without the explicit and verifiable consent of the parent/guardian</li> <li>b) a statement that provision of the requested information is entirely voluntary</li> </ul>



## APPENDIX 2 - Marketing to Children cont.

- c) an explanation of the measures by which the parent/guardian may exercise their right to have ready and inexpensive access to the data held regarding the child in their care, so as to contest inaccurate or incomplete data, verify the information and correct it as appropriate
- d) Where a website offers children interactive activities such as chat, message boards, free email services, posting of home pages etc, information by which the parent/guardian can assess and understand the nature of these activities and the consequences of the child's participation.

Data	8.24	Members must not rent lists known to contain children under 12 years of age without first obtaining a parent or guardian's verifiable and explicit consent.
Collection of data	8.25	Members must not attempt to obtain information from children and young persons about other persons (e.g. parents) for marketing purposes.
<b>Commercial Communications</b>		
Content	8.15	Commercial communications addressed to, or likely to appeal to children and young persons should contain nothing that is likely to result in their physical, mental or moral harm.
Safety	8.15 a)	Children and young persons should not be encouraged to enter strange places or talk to strangers. Particular care is needed where they are asked to make collections, enter schemes or gather labels, wrappers, coupons and other similar items.
Hazardous situations	8.15 b)	Children and young persons should not be shown in hazardous situations or behaving dangerously in the home or outside, except to promote safety. They should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety.
Dangerous substances or equipment	8.15 c)	Children and young persons should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include petrol, certain medicines and household substances as well as electrical appliances and machinery, including agricultural machinery.
Copying	8.15 d)	Children and young persons should not be encouraged to copy any practice that might be unsafe for a minor.
<b>Suitability</b>		
Inferior/unpopular	8.16 a)	Children and young persons should not be made to feel inferior or unpopular for not buying the advertised product or not undertaking a particular activity.

## APPENDIX 2 - Marketing to Children cont.

Lack of courage, duty or loyalty	8.16 b)	Children and young persons should not be made to feel they are lacking in courage, duty or loyalty if they do not buy, or do not encourage others to buy, a particular product or undertake a particular activity.
Easy assessment of product	8.16 c)	It should be made easy for children and young persons to judge the size, characteristics and performance of any product advertised and distinguish between real-life situations and fantasy.
Costly products	8.16 d)	Adult permission must be obtained before children and young persons are committed to purchasing costly products.
Addressed marketing	8.17	Advertisements and promotions addressed to children and young persons:
Nuisance		a) should not encourage them to make a nuisance of themselves to parents, teachers or others
Appeals to purchase		b) should not make a direct appeal to children to buy the advertised products or persuade their parents or other adults to buy the advertised products for them
Exaggeration		c) should not exaggerate what is attainable to an ordinary child using the product being advertised or promoted
Eating & drinking near bedtime		d) should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack food
Charitable appeals		e) should not exploit their susceptibility to charitable appeals and should explain the extent to which their participation will help any charity linked promotions.
<b>General</b>		
Orders from children	19.24	Orders for goods or services made in response to commercial communications must not be accepted from children under 12 of age without first obtaining a parent/guardian's verifiable and explicit consent. Members should also note that contracts are legally unenforceable against children and younger persons.
Adult materials	8.18	Advertisers should take care not to send material or otherwise target advertising at children and young persons that is suitable only for adults and must exercise care when packaging products for despatch to adults that may fall into the hands of children and young persons.
Credit	8.19, 10.14	Members must not make offers of credit to those under 18 (Consumer Credit Act 1974) and are advised to include in their offers a prominent statement explaining that credit terms are not available to those under 18.
Offensive weapons	8.22	Members must not make offers of offensive weapons to children and young persons under 16 years of age and are advised to double-check the age of all those making cash payments for such goods.

## APPENDIX 2 - Marketing to Children cont.

Gaming and alcohol	8.23	Members must not make offers for or in any way promote gaming schemes or alcoholic drinks to children and young persons, taking care not to produce any commercial communication for these products which might appeal to children and young persons.
Unsuitable material or samples	16.17, 7.4	<p>Bearing in mind the target audience, members must take all reasonable steps to ensure that age-restricted products are not distributed to anyone under 18 years.</p> <p>Additionally, members must take reasonable steps to ensure that samples are not distributed inappropriately to children and young persons. For instance, care must be taken not to distribute samples which:</p> <ul style="list-style-type: none"> <li>i) could result in accident or illness</li> <li>ii) if unintentionally misused, would be likely to cause injury or illness.</li> <li>iii) may cause problems between a child and their parent/guardian</li> <li>iv) are unsuitable, contain inappropriate material or are potentially unsafe or harmful.</li> </ul>
Excessive consumption	7.4	Members must take care not to encourage excessive consumption or unsafe practices or in any way to encourage inappropriate use of the products or services being promoted.
Packaging	13.27	Members must ensure that appropriate packaging is used to prevent foreseeable mishandling or misuse of products that could result in accident or injury, particularly if it is possible that the samples will fall into the hands of children and young persons or domestic pets.
Prize promotions and children and young persons	8.21	<p>Promotions addressed to children and young persons:</p> <ul style="list-style-type: none"> <li>a) must not encourage excessive purchases in order to participate</li> <li>b) must require adult permission if prizes or incentives are likely to cause conflict between a parent/guardian and child, such as holidays or pets</li> <li>c) must clearly explain any proof of purchase required must not exaggerate the chance of winning or the value of a particular prize.</li> </ul>
Charity-linked promotions	8.35 e)	Members' offers or promotions which benefit charities or causes should take particular care when appealing to children and young persons
Children and young persons	21.13	Members must make all reasonable steps not to make outbound marketing calls to children and young persons.

## APPENDIX 2 - Marketing to Children cont.

**Interactive TV**

Distinction between editorial and advertising/ Childrens' programmes	18.22 h)	<p>An advertisement on an enhancement screen linked to a children's programme or one likely to have a significant child audience should not:</p> <ul style="list-style-type: none"> <li>i) be for a product or service that could not be transmitted in or adjacent to that programme in a linear environment and</li> <li>ii) make a direct appeal to a child to purchase products or services by mail, telephone, mobile or email or encourage the child to persuade parents or others to make such purchases on their behalf.</li> </ul>
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**Mobile Marketing**

SMS to children and young persons	20.22	Members must comply with paras 8.13 to 8.25 for full details of the rules covering marketing to children and young persons, in addition to the requirements set out below.
Orders from children and young persons	20.23	Orders for goods or services made in response to mobile communications must not be accepted from children under 12 of age without first obtaining a parent/guardian's verifiable and explicit consent.
Personal data from children and young persons	20.24	Members must obtain the verifiable and explicit consent of a parent/guardian prior to collecting personal data in both the online and the offline world from children under 12 years of age for use in targeting commercial communications via mobile.
Notice explaining consent requirement	20.25	A notice informing children of the requirement for parental consent must be given at the point where the personal information is requested. This notice should be clear, prominent and in a language which a child can easily understand. It should also include an explanation of the purposes for which data are collected (i.e. marketing purposes) and how consent may be given. The opt-out mechanism must be free of charge to the consumer other than the normal call rate, premium rate or national rate numbers are not acceptable.
Unsolicited SMS	20.26	Members must not send unsolicited commercial communications via mobile to children and young persons under 12 years of age without first obtaining the verifiable and explicit consent of the parent/guardian. Members are reminded of their obligations under paras 6.30 and 9.11 above.

## APPENDIX 2 - Marketing to Children cont.

## APPENDIX 3 - The Logo: A Guide for Members

**Use of the Association logo**

Colour	The logo should always appear in solid blue, pantone reference 281, and in black on black only literature. If placed on a dark background, the logo may be reversed out in white
Size	The minimum diameter with which the logo should appear is 15 mm. The logo should be separated from other graphic devices by at least half its diameter and when used on members' stationery, should be at least the same distance from the edge of the paper
Wording	When members are using the logo smaller than 22mm in diameter, The Direct Marketing Association wording should be deleted.
Artwork	The logo should be reproduced in line, using approved artwork provided by the Association.
Coupons	Members should not use the logo within a response coupon or next to credit card or other payment symbols.
Text	Members are encouraged to use the logo in combination with text to clarify or explain membership, although the Association reserves the right to object to any wording thought to be inappropriate

## APPENDIX 4 - Principal Legislation Affecting Direct Marketing

### Principal legislation affecting direct marketing

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A number of laws and regulations must be followed when carrying out direct marketing activities in the UK:

- Business Protection from Misleading Marketing Regulations 2008
- Charities Act 1992
- Charities Act 1993
- Charities Act 2006
- Communications Act 2003
- Conduct of Employment Agencies and Employment Business Regulations 2003 (as amended)
- Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006)
- Consumer Credit (Advertisement) Regulations 2010
- Consumer Credit (Agreements) Regulations 2010
- Consumer Credit (Early Settlement) Regulations 2010
- Consumer Credit (Disclosure of Information) Regulations 2010
- Consumer Credit (EU Directive) Regulations 2010
- Consumer Credit (Total Charge for Credit) Regulations 2010
- Consumer Credit (Amendment) Regulations 2010
- Consumer Protection Act 1987
- Consumer Protection (Distance Selling) Regulations 2000
- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Transactions (Restrictions on Statements) Order 1976 (as amended)
- Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008
- Copyright Designs and Patents Act 1988
- Copyright and Related Rights Regulations 2003
- Data Protection Act 1998 (as amended)
- Disability Discrimination Act 1995
- Disability Discrimination Act 2005
- Electronic Communications Act 2000
- Electronic Commerce (EC Directive) Regulations 2002
- Employment Rights Act 1996
- Employment Rights (Dispute Resolution ) Act 1998
- Enterprise Act 2002
- Fair Trading Act 1973
- Financial Services and Markets Act 2000
- Financial Services (Distance Marketing) Regulations 2004
- Fixed\_Term Employees (Prevention of Less Favorable Treatment Regulations 2002 (2) (as amended)
- Gambling Act 2005
- National Minimum Wages Regulations 1999 (as amended)
- Offensive Weapons Act 1996
- Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (as amended)
- Privacy and Electronic Communications (EC Directive) Regulations 2003

## APPENDIX 4 - Principal Legislation Affecting Direct Marketing cont.

- Price Marking Order 1999
  - Price Marking Order 2004
  - Regulation of Investigatory Powers Act 2000
  - Representation of the People Act 2000
  - Representation of the People (England and Wales) (Amendment) Regulations 2002
  - 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
  - Sex Discrimination Act 1975
  - Stop Now Orders (EC Directive) Regulations 2001
  - Supply of Goods and Services Act 1982
  - Telecommunications Act 1984
  - Telecommunications Lawful Business Practice (Interception of Communications) Regulations 2000
  - Theft Act 1978
  - Trademarks Act 1994
  - Trade Descriptions Act 1968
  - Unfair Contract Terms Act 1977
  - Unfair Terms in Consumer Contracts Regulations 1994
  - Unsolicited Goods and Services Act 1971 (as amended)
  - Working Time Regulations 1998 (as amended)
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## APPENDIX 5 - Financial Services Authority

**Financial Services Authority**

Principles of business	1	<p>The FSA's rules based regime has moved more to a principle based regime. The following are the eleven principles that should be adhered to by members carrying out promotional activity for FSA regulated products</p> <ol style="list-style-type: none"> <li>1) A firm must conduct its business with integrity</li> <li>2) A firm must conduct its business with due skill care and diligence</li> <li>3) A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems</li> <li>4) A firm must maintain adequate financial resources</li> <li>5) A firm must observe proper standards of market conduct</li> <li>6) A firm must pay due regard to the interests of its customers and treat them fairly</li> <li>7) A firm must pay due regard to the information needs of its clients, and communicate to them in a way which is clear, fair and not misleading</li> <li>8) A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client</li> <li>9) A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment</li> <li>10) A firm must arrange adequate protection for clients assets when it is responsible for them</li> <li>11) A firm must deal with its regulators in an open and cooperative way and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice</li> </ol>
Treating Customer Fairly	2	<p>Principle 6 - Treating customers fairly (TCF) is central to the delivery of the FSA's retail regulatory programme. Members should take note of this area of the FSA's website and must ensure that this principle is embedded in its company's culture from development of products through the sales process to after sales care.</p>
Financial communications	3	<p>Members issuing commercial communications for financial products regulated by the Financial Services Authority (FSA) must either be authorised to do so by the FSA, or be acting on behalf of organisations that are authorised to do so by the FSA. If members are carrying out telemarketing campaigns on behalf of an authorised organisation, they must announce that they are calling on behalf of that organisation at the beginning of the call. (see Section 21 of this Code on Telemarketing)</p>

## APPENDIX 5 - Financial Services Authority cont.

Verbal Telephone Communications	4	In the case of voice telephony communications the following information must be included:
Details of supplier and purpose of call		<ul style="list-style-type: none"> <li>a) the identity of the supplier and the commercial purpose of the call initiated by the supplier must be made explicitly clear at the beginning of any conversation with the consumer</li> <li>b) Subject to the explicit consent of the consumer to receiving limited information, only the following information needs to be given during any conversation with the consumer: <ul style="list-style-type: none"> <li>i) the identity of the person in contact with the consumer and his link with the supplier</li> <li>ii) a description of the main characteristics of the financial service</li> <li>iii) the total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated the basis for the calculation of the price enabling the consumer to verify it</li> <li>iv) notice of the possibility that extra taxes and/or costs may exist that are not paid via the supplier or imposed by him</li> <li>v) the existence, except in certain specified circumstances, of a right of withdrawal where the right of withdrawal exists, its duration (as required by law) and the conditions relating to the right. Information must also be provided on the amount that a consumer may be required to pay where withdrawal from a service takes place after commencement. Information must also be provided, inter alia, on the address to which the withdrawal notice should be sent</li> <li>vi) the supplier must inform the consumer that other information is available on request and the nature of this information.</li> </ul> </li> </ul>
Identity		
Details of the service		
Details of the price		
Additional costs		
Right of withdrawal		
Further information		
Communication of written information		c) In addition, in good time before the consumer is bound by a distance contract or offer, the supplier must provide to the consumer, on paper or other available and accessible durable medium, all the information contained in a) and b) above and any additional information prescribed by other existing legislation applicable to the distance contract. Please see para 5 below for the prohibition on unsolicited telephone calls promoting mortgages.
Unsolicited telephone calls promoting mortgage	5	Under Rule 3.7.3 of the Financial Services Authority Mortgage Conduct of Business Rules (unsolicited real time qualifying credit promotions to consumers) a member must not make an unsolicited real time qualifying credit promotion unless the consumer has an established existing customer relationship with the member and the relationship is such that the consumer envisages receiving unsolicited real time qualifying credit promotions. Members are advised that guidance should be obtained on the interpretation of this rule and on what constitutes "express consent". (See also section 21.7 of this Code)

## APPENDIX 5 - Financial Services Authority cont.

Unsolicited telephone calls promoting general insurance	6	Members are reminded that when making unsolicited calls promoting general insurance that they must at all times treat the customer fairly by disclosing full details of the product and not making significant omissions that could mislead the customer into buying an unsuitable product
Markets in Financial Instruments Directive (MiFID) – suitability test	7	Members’ attention is drawn to the obligation under MiFID that sufficient information regarding the customer’s knowledge and experience, financial situation and investment objectives must be obtained by accompany to enable it to recommend investment services and financial instruments suited to the client. Members should refer to the Conduct of Business Sourcebook (COBS) 9 Suitability (including basic advice) in the FSA Handbook.
MiFID – appropriateness test	8	Members must take note of the appropriateness provisions of MiFID. See COBS 10 Appropriateness (for non-advised services) in the FSA’s Handbook. Particular care should be taken with regards to the contents of mailings promoting products covered by MiFID. See particularly COBS 10.5: Assessing Appropriateness: Guidance that contains guidance on personalised mailings.
Recording of telephone and electronic communications	9	Members engaged in transactions in the equity, bond and derivatives markets must record all telephone conversations and electronic communications relating to client order and the conclusions of transactions regarding these products. Members should note COBS 11.8 on Telephone Recording in the FSA Handbook.
Information to be included	10	In good time before being bound by any distance contract or offer for financial services, the consumer must be provided with the following information in a clear and comprehensible manner:
Description		a) a description of the main characteristics of the financial product being offered
Price		b) the total price, including all related fees, charges and expenses and all taxes paid via the supplier or where the exact price cannot be indicated, the basis for the calculation of the price
Limitations		c) any limitations, penalties and the terms of withdrawal
Rates of interest etc		d) the basis used to calculate any rates of interest, forecasts or projections
Warning notices – risks		e) warning notices regarding the existence of special risks associated with features of the product and an indication that the value of the product may vary and, unless guaranteed, can go down as well as up
Guarantees		f) where the value of the product is guaranteed, details of the guarantee offered
Warning notices – past and future performance		g) warning notices that past performance or experience does not necessarily give a guide for the future (any examples used must not be unrepresentative)

## APPENDIX 5 - Financial Services Authority cont.

Taxes/extra costs	h) where applicable, an indication that other taxes and/or costs may exist that are not imposed by or paid via the supplier
Validity of offer	i) any limitation of the period for which the information is valid
Payment and performance	j) arrangements for payment and performance
Cost of communicating	k) any specific additional cost for the consumer of using the means of distance communication to accept the offer in question
Details of the supplier	l) full details of the supplier, and any relevant representative, including: <ul style="list-style-type: none"> <li>i) their identity and main business</li> <li>ii) the geographical address at which the supplier, and any relevant representative, is established and any other relevant address</li> <li>iii) any registration number or equivalent relating to any trade or similar public register in which the supplier is entered and, where relevant, full details of any representative of the supplier in the consumer's country of residence and</li> <li>iv) details of any professional involved in the sale of the product including identity, geographical address and the capacity in which that person is acting</li> </ul>
Details of the contract	m) details of the contract including:
Right of withdrawal	i) the existence or absence, except in certain specified circumstances, of a right of withdrawal and where the right of withdrawal exists, its duration (as required by law) and the conditions relating to the right. Information must also be provided on the amount that a consumer may be required to pay where withdrawal from a service takes place after commencement. Information must also be provided, inter alia, on the address to which the withdrawal notice should be sent
Duration of the contract	ii) the minimum duration of the contract in the case of financial services to be performed permanently or recurrently
Early termination of the contract	iii) information on any conditions or penalties applying to early termination of the contract
Applicable law	iv) an indication of which country's law will apply within the EEA (the Member States of the European Union together with Iceland, Liechtenstein, and Norway) to the particular distance contract and any contractual clause on law applicable to the distance contract and/or competent court
Language to be used	v) the language in which the contractual terms and conditions and prior information as detailed are to be supplied and the language used, with the consumer's agreement, to communicate for the duration of the contract

## APPENDIX 5 - Financial Services Authority cont.

Redress

vi) any information on redress mechanisms and methods of access to them

Guarantee funds/  
compensation

vii) the existence of any guarantee funds or compensation arrangements.

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## APPENDIX 6 - Vulnerable Consumers

### What is a vulnerable consumer?

Many people believe that vulnerable consumers cover people such as children and young persons, or those having physical disabilities. Whilst these two sectors do indeed fall under the category, it is important to recognise that the interpretation does include other sectors.

The definition as found in the Collins English Dictionary is: 'Liable to be physically or emotionally hurt; exposed to attack'

A more defined list might be:

- a) Children and young persons - those under 18 and in some cases 16 or 14 as defined further under paras 2.17, 8.13 - 8.25, 19.22 - 19.31 and 20.22 - 20.26.
- b) Physical Disabilities - those having sight, hearing, or mobility impairment or difficulties
- c) Mental Disabilities
- d) Literacy or Numeracy difficulties - those who are educationally disadvantaged, or for whom English is not their first language.
- e) Other Groups
  - i) Permanent or temporary non-British citizens
  - ii) The elderly
  - iii) Unemployed
  - iv) Recently bereaved including stillbirths and neonatal

### What does the DMA Code of Practice say about vulnerable consumers?

In addition to the section above regarding children and young persons, the Code also has the following statement at para 3.26:

When members become aware that they are dealing with vulnerable consumers, they must take all reasonable steps to allow for any difficulties the consumer may have, for instance explaining the terms of an offer or the consequences of responding in a clear and helpful manner and giving appropriate advice. Members must not exploit the credulity, lack of knowledge or inexperience of any consumer, taking particular care when dealing with vulnerable consumers. Members should refer to the relevant legislation and codes of practice on this subject for further guidance.

This states the member's obligation towards vulnerable consumers, in addition advice can also be sought from the DMA legal team (0207 291 3300) or by contacting such organisations as:

The Office of Fair Trading [www.offt.gov.uk](http://www.offt.gov.uk)

The RNIB [www.rnib.org.uk](http://www.rnib.org.uk)

The RNID [www.rnid.org.uk](http://www.rnid.org.uk)

Age Concern [www.ageconcern.org.uk](http://www.ageconcern.org.uk)

NSPCC [www.nspcc.org.uk](http://www.nspcc.org.uk)

The Equality and Human Rights Commission [www.equalitydisabilityrights.com](http://www.equalitydisabilityrights.com)

## APPENDIX 6 - Vulnerable Consumers cont.

### **What can you do to ensure non-exploitation of vulnerable consumers through your direct marketing activities?**

It is our responsibility, in fact our obligation, under the Code to ensure that vulnerable groups are not disadvantaged when dealing with our industry. Apart from the suggestions above we would recommend that you:

- a) Take time to explain your product, service or offer in a clear and concise manner, giving time for questions and clarification.
- b) Repeat any acceptance given to you with clear explanations of the implications of such decisions
- c) Ensure adequate type points sizes are used and that small fonts are not used to those consumers to whom it would cause particular difficulty i.e. partially sighted, or educationally disadvantaged.
- d) Ensure adequate training is given to customer-facing departments
- e) Always get advice from experts if you think that a particularly vulnerable consumer group could be included in your direct marketing activities.
- f) Make sure your data are sourced 'fit for use' of your intended audience.