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**21st December 2018**

Dear Sir/Madam,

**Response to 'Call for views – Direct Marketing Code of Practice'**

We support the development of a Direct Marketing Code of Practice. We agree that consumers can suffer detriment when marketing is done badly, and can particularly impact vulnerable consumers. We also support the strengthened data protections that are afforded to consumers through GDPR, and think that the current marketing guidance should be updated to reflect these changes.

In addition to changes in data protection, the ICO should also consider the new applications of consumer data that have emerged, and how these interact with marketing and data protection rules. One emerging use of data has been the introduction of 'prompts to engage' by regulators in essential service markets.

These prompts are sent by companies to their customers and use personal data to give tailored information about better deals that are available, with either the existing company and/or its competitors. Regulator-led trials of these prompts to engage have shown varying levels of success, but have generally demonstrated that these messages are effective at prompting engagement.<sup>1</sup> In its response to our loyalty penalty super-complaint, the CMA said that 'well-designed nudges can have a positive effect on some consumers'.<sup>2</sup>

We support these prompts to engage as one of the tools available to regulators to help tackle the loyalty penalty. However, we also think they should be subject to strict controls. We support the steps regulators have taken to date to ensure that prompts:

- Undergo extensive testing by regulators to demonstrate that they are effective at prompting engagement, and do so in a way that consumers are happy with.
- Where feasible, have a specific opt-out available for consumers who don't want to receive them.

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<sup>1</sup> For example, see the results of various Ofgem trials of prompts to engage [here](#).

<sup>2</sup> The CMA's full response is available [here](#).

However, we're aware of concerns that consumers who opt out of marketing may be automatically excluded from receiving regulated prompts because of current marketing rules. This could reduce the efficacy of these interventions, and prevent disengaged consumers who have objected to marketing from benefiting from them.

We think that these prompts differ from other marketing in two key ways:

- The prompts are designed to encourage the consumer to switch to a cheaper deal, or to another company altogether. These changes are unlikely to benefit the company sending the prompt to engage.
- The target consumers, timing and design of the prompts are not under the control of the company but are defined by the regulator.

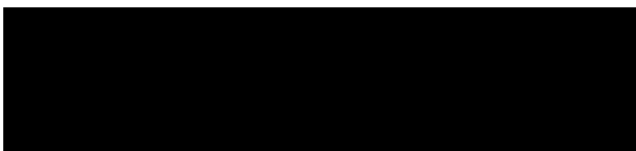
Because of these differences, consumers may not think about prompts to engage when making choices about marketing. Decisions on marketing are also generally made at the start of a contract, whereas the point at which these prompts to engage are sent is normally much later, when the consumer is outside of a fixed contract period. These factors could mean it is difficult for consumers to make an informed choice about the benefits of opting in or out of marketing.

If the prompts are considered to fall under the normal marketing rules, it could also incentivise companies to encourage their customers to opt-out of marketing, ensuring they did not receive prompts to engage in the future.

We think that the ICO should consider these issues as it develops the new Code, and come to a clear view of how regulated prompts to engage are affected by marketing rules. We would support a way forward which gives consumers the ability to opt-out of traditional marketing, while not unduly limiting the scope of regulators to develop effective prompts to engage.

If you would like to discuss any matter we have raised in more detail please do not hesitate to get in contact.

Yours sincerely,



**Patron HRH The Princess Royal**

**Chief Executive Gillian Guy**

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