

[REDACTED]

From: [REDACTED]@dlapiper.com >
Sent: 05 February 2020 18:10
To: directmarketingcode
Subject: Consultation: Direct Marketing Code

External: This email originated outside the ICO.

Dear Sirs,

Further to the consultation relating to the direct marketing code, and in particular question 6 of the consultation paper "*Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code*". On behalf of certain of our clients, we would welcome an example of what could be considered an "acceptable refer a friend scheme" and/or what would "not constitute instigating", in particular clarity on the following example:

Example: a retailer has developed an application for consumers to pre-pay credits for goods, and each user has their own referral code e.g. JOHNSMITH1234 which can be accessed within the application. Provided that the application does not generate any direct marketing (e.g. provide a template for a prepopulated SMS message or email), if a user informs their friends of their referral code, and a friend elects to download the application, consents to receiving marketing and inputs the relevant referral code in order to receive a discount, this would not constitute instigating by the retailer.

In particular, it would be useful to clarify whether the test is if the scheme is driven to increase sales (versus viral marketing) and whether the focus in the proposed current example in the draft guidance is that the current example includes the generation of a marketing email and receipt of contact details, whereas the example I set out above would allow the individual to: (a) decide whether they then download the application and benefit from the discount on the sales (allowing them the opportunity to review any privacy notices on the application) but (b) elect not to receive future marketing.

Best regards,
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