



Dear Sirs,

**Response from the Direct Marketing Association (UK) Limited on Business leadership in consumer protection – A discussion document on self regulation and industry-led compliance.**

**Introduction**

The Direct Marketing Association (DMA) is Europe's largest trade association in the marketing and communications sector, with over 920 corporate members and positioned in the top 5% of UK trade associations by income. The total value of direct marketing to the UK economy was £50.5 billion in 2007. This comprises three separate figures; £18 billion on expenditure on direct marketing media and activities, £18.6 billion on employment and £13.9 billion on overheads resulting from employment (Economic Impact Analysis 2008: the Direct Marketing Industry published by the DMA).

The DMA represents both advertisers, who market their products using direct marketing techniques, and specialist suppliers of direct marketing services to those advertisers - for example, advertising agencies, outsourced contact centres etc. The DMA also administers the Mailing Preference Service, the Telephone Preference Service and the Fax Preference Service. On behalf of its membership, the DMA promotes best practice, through its Direct Marketing Code of Practice, in order to maintain and enhance consumers' trust and confidence in the direct marketing industry.

The Direct Marketing Commission is an independent body that monitors industry compliance.

Please visit our website [www.dma.org.uk](http://www.dma.org.uk) for further information about us.

**The Consultation**

**Introduction**

The DMA welcomes this opportunity to input into the discussion over the role of self-regulation in achieving higher standards in business and improved confidence of consumers and business buyers and sellers.

The DMA's Code of Practice has been in existence for 17 years and is currently undertaking its fourth complete update to reflect not only recent legislation in the field of marketing and advertising but also the great strides the industry have taken to improve the standards to which it operates.

The DMA's Code has, as mentioned in the discussion document, no legal backing or basis and therefore there is no requirement for businesses to agree to its terms. What this demonstrates is willingness for businesses in this sector to not just settle for the legal minimum but to aim for higher and higher standards as they can see the benefits for their business. The direct marketing industry has received more than its fair share of bad press over the years, but this industry is the third largest employer in the UK. Those within the industry want to move away for phrases such as 'junk mail' and show consumers and other businesses that we will comply with the law and strive to constantly improve our standards of business.

### **Discussion Paper Questions**

i. What types of market problem are most likely to be suitable for an industry-led solution?

One of the best types of market problem that would benefit from an industry-led solution would be where a common practice within an industry or particular sector is not against the law but improving that practice would have a significant impact on consumer confidence.

For example, businesses selling goods by means of distance selling, either through the internet, telephone or mail order have 30 days in which to refund a consumer who has cancelled an order in accordance with their rights under the Consumer Protection (Distance Selling) Regulations 2000.

It may be that for a variety of reasons, the majority of businesses are taking the full 30 days to provide a full refund which is affecting consumer confidence in distance selling. Self-regulation can have two main benefits here. First it can modify any existing codes of conduct to require its members to provide the refund in a shorter time, and second in conjunction with this it can provide education and support to persuade members of the benefit to their business of such a change. This could not be achieved through normal channels of enforcement, as the practice is entirely legal.

Self-regulation through a code of conduct can offer better quality standards for consumers and ensure compliance with the law. More importantly it can provide an incentive to businesses to aim for best practice or higher standards of business by providing tailor made rules and guidance relevant to specific industries or sectors.

ii. In which market condition is self-regulation more likely to be an effective solution than legislation and enforcement?

The market condition where self-regulation is going to have a better effect than legislation and enforcement is a market where there are a large number of businesses in a sector, particularly small businesses, that will benefit from the other things self-regulation can bring.

The DMA's Code of Practice is a set of rules that we expect our members to comply with. Some of the rules are mandatory, and these in the main reflect legislation affecting the industry, whilst other rules are aspirational, in that we

believe that trying to comply with these is in the best interests of the industry itself. However the DMA offers a lot more to its members than just a set of rules to do business by. We offer training and events that will increase their knowledge and help them grow their businesses. We offer them legal advice and assistance on a variety of areas of law and good practice, including data protection, consumer protection, employment law and intellectual property. The cost to businesses of finding these services elsewhere far exceed their membership fee and show members the value of being part of a Code of Practice, especially in such a wide industry as direct marketing.

If self regulation can offer rules and much more, businesses, especially small and medium sized ones will see the benefits to them of agreeing to abide by a set of rules, which in time will help to improve the actions of the majority of that industry or sector.

iii. What type of support from the OFT would be appropriate to encourage more self-regulatory solutions to market problems?

Any self-regulatory solution needs the backing and approval of the OFT to be seen as an effective alternative way to deal with market problems.

The OFT has been approving codes under its Consumer Codes Approval Scheme (CCAS) since it was given the power in 2003 and so far eight codes have been approved. There are six more codes seeking approval. What these fourteen codes have in common is that they are small sector specific and cover businesses that have direct dealings with the consumer.

There are a number of Codes of Practice operating, including the DMAs, that include elements of business to business dealings and these codes also need the approval of the OFT before they can have the authority to provide effective self-regulation.

To take the DMA's Code as an example. Members of the DMA cover all aspects of direct marketing and are divided up into clients, agencies and suppliers. Many of the client members are retailers who have direct contact with consumers. Most of the agencies and suppliers provide services to other businesses, and therefore do not deal directly with consumers, but their actions can indirectly affect consumers.

The Code therefore includes all the relevant consumer legislation and other legislation affecting businesses that have direct contact with consumers, for example the rules on telecommunications, but the Code also has rules covering how businesses should deal with other businesses.

It would therefore be difficult for such a code to win CCAS approval, but the Code would need the backing of the OFT in some other form if it was to be used in a self-regulatory way. In the OFT's consultation on 'established means', the OFT did suggest that another system of approval for such Codes was a possibility.

iv. How will the current economic climate impact on the role of self-regulation as a solution to market problems?

In the current economic climate, the role of self-regulation will become more important. When the economy is down, there is increased competition and every business is looking for an edge over its competitors. The last thing that businesses need at this time if there is an issue within their sector is increased legislation or heavy-handed enforcement. If businesses can show they are

committed to a self-regulatory scheme, that has the backing of the OFT, this will provide confidence in consumers and business customers alike and provide a boost to the reputation of members of the Code.

What can also happen, especially in hard times, is the problem businesses within an industry, which would never join a Code in the first place, start to get left behind, as standards in the industry improve and consumer confidence in the Code grows. These businesses find it more and more difficult to compete, even if they offer low prices and they either aim to improve the business or they fail.

v. What does effective self-regulation require?

Effective self-regulation needs a number of elements:

- a. the system of self-regulation has to be approved and recognised to be of the highest quality.
- b. The system should contain an element of persuasion to comply with the rules, employing education to help raise standards.
- c. The costs to business of complying should not provide any disadvantage to the business to operate and compete.
- d. The benefits of complying should provide added value to the business.
- e. There should be consistent monitoring of members to ensure compliance.
- f. There should be effective forms of sanctions for failure to comply, whether these are monetary or not.

The DMA is encouraged that the OFT are exploring other ways to deal with bad practice within industries and welcome the launch of the policy statement on how the OFT will work with self-regulation in dealing with consumer protection issues.

Yours faithfully,

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