



Buyapowa's Response to the ICO consultation on the draft direct marketing code of practice

What is Referral Marketing?

Referral marketing is a strategy to encourage passionate customers and advocates to directly refer their network to a client's business. It is pivotal in the way society operates today, as the modern consumer is far more trustful of the views and recommendations of their friends and family than the traditional approach of paid advertising.

The evolution of referral marketing started from its most primitive form, simple word of mouth, to a more complex online / internet-based solution. By tracking customer behaviour, online referral marketing can increase brand awareness, referrals and, ultimately revenue.

The main benefits of referral marketing are:

- Empowers word of mouth
- Leads you to a targeted audience
- It is an owned pay per performance model
- Loyal customers multiply
- Provides a channel for engagement
- Cost effective marketing strategy

"65% of new business comes from referrals"

"People are 4 times more likely to buy when referred by a friend"

Nielsen

"Referred customers have an 18% lower churn than customers acquired by other marketing means."

Wharton University

"People trust recommendations from friends 7x more than traditional advertising"

Nielsen

"Referral leads convert 30% better than leads generated from other marketing channels"

R&G Technologies

"92% of consumers trust referrals from people they know"

Nielsen





How does Buyapowa's "Refer a Friend" platform work?

One of Buyapowa's customers is a huge UK mobile phone provider "Mobile X". Mobile X has recently launched a new mobile network "Network X" which is aimed at Millennials and Generation Z as it has unlimited social media use and is highly flexible (no contract and you can cancel at any time). It is also low cost and has packages starting at £10 per month.

Mobile X has signed up to Buyapowa's RAF platform as it knows that "word of mouth" is a great way of getting the message out there about Network X. ██████ started using Network X 3 months ago and is absolutely loving it – she switched from another phone provider which was more expensive and did not have endless social media data. She told her friends about Network X at school and they too want to sign-up.

██████ visits networkx.com/refer which explains that for every friend she successfully refers to Network X, both her and her friend will receive a £20 gift card. ██████ signs up the refer a friend programme and accepts programme rules and conditions. She is then presented with her referrer dashboard, which includes her unique referral link and a few quick tools she can use to share this link with her friend. It is most likely that she will copy her referral link, open her SMS app, paste the link and add a personal note reminding her friend that this is the link she can use to sign up, and they can both get a reward for doing so. ██████ sends the SMS (or email, or other communication form - depending on what ██████ chooses) - at this point Buyapowa and Mobile X do not know who ██████ shared this with, as ██████ did this from her own device.

The friend ██████ receives the SMS message from ██████ remembers their conversation and is keen to explore Network X's offering. She clicks the link which takes her to a page on the Network X website which explains that ██████ referred her, and if she purchases through this link, both will receive a £20 gift card. To be eligible for the reward, ██████ enters her name and email address, and gives consent to be part of this programme - this creates a relationship between ██████ in the Buyapowa platform, and enables Mobile X to reconcile any future purchases back to this referral.

██████ is then redirected to the Network X online shop where she can browse and purchase a mobile phone or plan. After ██████ has met Network X's business rules for a reward, both ██████ will receive an email thanking them for being great customers - and including their gift cards.





The Draft Code of Practice on Direct Marketing

The section in the draft Code titled “Can we ask individuals to send our direct marketing” is not a question that the ICO has addressed previously. The response in the Code takes no account of the fact that incentivising individuals to make recommendations in relation to goods or services they like is not the same as instigating a third-party business to send out direct marketing messages. The Code response assumes that individuals sending out messages to their friends and family should be treated in the same way as those sent by an organisation paid to carry out direct marketing activities. The conclusion drawn in relation to “refer a friend schemes” fails to consider:

- (1) An individual recommending a product/service that they love to family and friends is very different from a third-party business being paid to send direct marketing messages.
- (2) That individuals can create their own message to go with any link to the goods or services being recommended (and responsible “refer a friend schemes” give the referrer the opportunity to create their own message). This requires a level of personal engagement on the part of the referrer and a desire to share and “shout about” a product or service which they may well do without the incentive.
- (3) People have been recommending businesses that they love to friends and family since the beginning of commerce. All “Refer a Friend” programmes do is use technology to make it easier to communicate these recommendations and keep up with the way that people communicate today (i.e. via social media, instant messaging and whatsapp).
- (4) When does a recommendation become a direct marketing message? Even if an individual is incentivised to make a recommendation, if that individual drafts the message themselves without any marketing messaging being provided by the instigator and the individual chooses who to send their message to someone without any direction from the instigator, and the individual does not receive any incentive until the recipient has directly engaged with the instigator, what makes that a direct marketing message as opposed to a recommendation? The ICO example in the Code does not consider or address this distinction.
- (5) That individuals are not likely to behave like businesses. A business that is paid to send direct marketing messages on behalf of someone else is not engaging with the person to whom the message is being sent in the same way as an individual is likely to engage with a friend or family member. A referrer is not likely to send a direct marketing message to a friend or family member about something which they do not think that friend or family member will like (even if the referrer is receiving a reward for giving the recommendation). Market research shows that friends often have similar interests and likes and therefore respond well to recommendations from other friends. Even if a friend or family member received a message about something they are not interested in it is likely the friend or family member will discuss directly with the individual that sent it if they do not wish to receive such messages and the referrer is unlikely to do it again. (Statistics show that the incidence of complaints from such schemes is low to non-existent which supports these assumptions.)





(6) Responsible “refer a friend schemes” do not receive any information on the friends or family members to which the referrer has sent the information on the scheme. Therefore, no personal data is being collected or processed by the instigator before consent is obtained directly from the friend or family member when they themselves sign up for the scheme. The referrer is in control of to whom they send the information without interference from the instigator. All of this supports responsible campaigning, putting the customer first and engendering trust and loyalty which are key tenets of the Direct Marketing Association code which guides its members on responsible marketing practices.

The majority of the recommendations are sent by electronic mail. PECR section 22(2) provides:

“Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.”

It is to the sender to whom the recipient must have provided their consent not to the instigator. As GDPR does not apply to “the processing of personal data by a natural person in the course of a purely personal or household activity” (including “social networking” and “online activity”), GDPR consent does not come into it where the sender is an individual processing as described in GDPR.

Whilst PECR refers to “person” rather than organisation the construction of the regulation is directed at organisations or individuals acting in a business capacity as opposed to individuals acting for purely personal purposes. Guidance on PECR so far adopts that position including the ICO’s own PECR guidance.

The existing ICO Guidance on PECR does not cover the sending of electronic direct marketing messages by individuals at the instigation of a third party for their own personal purposes (which could well include receiving an incentive reward). It is our view that the ICO in this draft of the Code has applied an interpretation of applicable privacy regulations to individuals without fully considering the implications of doing so.

Statistics show that “refer a friend schemes” are highly effective at engaging new customers and engender loyalty when done responsibly. Statistics also show that such schemes have not resulted in significant complaints from individual recipients that they are receiving direct marketing messages which they do not wish to receive by means to which they have not consented.





Therefore, we consider the Code in this respect to be interpreting the current privacy legislation more widely than it should and we think this could result in such schemes having to be discontinued which would seriously damage some business models which rely on personal recommendations and loyalty to generate further business. While the current PECR clearly legislates against instigating a person to send direct marketing messages by electronic means where there is no consent and GDPR legislates that must be to GDPR standard, PECR is not clear on the application of this in the context of individuals making recommendations for their own personal purposes.

Technology has developed significantly since 2003 when the current PECR came into force and GDPR does not take account of the latest technology and the rapid development of technologies. Therefore, we believe it is open to the ICO to provide a different interpretation in the Code to “refer a friend schemes”.

The purpose of the Code should be to help individuals and organisations interpret the applicable privacy legislation in the light of the latest technologies and to encourage and facilitate responsible direct marketing which takes into consideration the rights and freedoms of individuals and provides individuals with the ultimate decision-making powers as to what type of messages they wish to receive. The ICO needs to be mindful of not interpreting the privacy legislation in such a way that it prevents individuals processing for their own personal purposes or household purposes. In our view the interpretation in the Code of the privacy regulations in respect of responsibly conducted “refer a friend schemes” undermines those principles and we would appreciate if the ICO could revisit the legislation in this respect and reconsider its interpretation in the Code and provide further guidance on this particular point.

We would be more than happy to meet with the ICO for further discussion on this if that would be helpful.

Regards,

