

## Q1 Is the draft code clear and easy to understand?

1. We appreciate the distinction the ICO has drawn between: (a) the scenario whereby an organisation asks its existing customers (for the purposes of this response we have defined this category as "**Referrers**") to give the contact details of their friends and family (for the purposes of this response we have defined this category as "**Referees**") to the organisation for direct marketing purposes (on page 54); and (b) the scenario whereby an organisation asks its Referrers to send a referral offer to their Referees directly (on page 83).
2. The guidance is clear that the scenario outlined in (a) is likely to breach both PECR and GDPR. However, the guidance for the scenario outlined in (b) is unclear and does not take into account the range of refer-a-friend campaigns run in the UK. Therefore, the guidance should be further clarified as follows:

### The meaning of "instigate" when applied to refer-a-friend

3. Refer-a-friend campaigns fall broadly into two types:
  - (a) a Referrer is asked to send a uneditable marketing communication to a Referee in return for a reward for the Referrer and Referee; and
  - (b) a Referrer is asked to send a referral link to a Referee without any ancillary marketing language. If the Referee makes a purchase from the organisation the Referee and Referrer are both rewarded by the organisation. Whilst some operators may suggest some default wording to go in the email to the Referee the key point is that it is editable by the Referrer.
4. The current wording in the draft states that "*actively encouraging the individual to forward your direct marketing messages to their friends without actually providing a reward or benefit still means that you are instigating the sending of the message and you therefore need to comply with PECR*".
5. For organisations looking to run refer-a-friend campaigns it is difficult for an organisation to obtain a Referee's consent (the main requirement under PECR Reg. 22) as the organisation would not have access to the Referee's details and are not permitted to do so in line with the guidance on page 54. Therefore, in practice it is difficult for an organisation looking to run a refer-a-friend campaign to comply with Reg. 22 of PECR with respect to the Referee based on this guidance.
6. It should be clarified in the guidance that "it is not active encouragement or instigation by an organisation if an individual has control over the message being sent to a friend and how the message is sent. However, there should be a message recommending individuals to only send a refer a friend message to a friend who would be interested in this message rather than to all friends in their network".

## The 'soft opt-in' for Referrers and Referees

7. The next paragraph "*direct marketing emails and text messages require consent (the 'soft opt-in' does not apply in this situation) and you must be able to demonstrate this consent*" needs further clarification. From the context, the aim of this sentence is to explain that an organisation cannot rely on the 'soft opt-in' mechanism with regard to the Referee. A Referrer should be entitled to be marketed to by an organisation under the 'soft opt-in' mechanism to the extent the organisation has the required pre-existing relationship with the Referrer.

**Q2 Answer "No" and under the response field insert "as noted above".**

**Q3 Answer "Yes"**

**Q4 Answer "Yes"**

**Q5 Answer "Yes"**

**Q6 Answer "Yes" and under the response field insert the following:**

The example given does not take into account the distinction we have drawn out in our response to Q1 above about how refer-a-friend campaigns are run. Therefore, we would suggest the following:

- (a) the second sentence should be amended to state:

"The individual provides their own name and email address and the retailer automatically generates an email containing its marketing (which cannot be edited) for the individual to forward to their friends and family".

- (b) A further example making this distinction clear should also be given to organisations looking to run refer-a-friend campaigns as follows:

"An online retailer operates a 'refer a friend' scheme where individuals are given 10% off their orders if they refer a friend and the friend makes a purchase. The individual is given a unique URL to send to its friend and the message sent by the individual to its friend is written by the individual. The retailer is not instigating the direct marketing in this scenario as the retailer has no control over the communication to the friend."

**Q7 Do you have any suggestions for the direct marketing code?**

Mention Me are a marketing company which amongst other services offers refer-a-friend services to its business clients in the UK. We have already outlined above that there are a few clarifications which would be beneficial for organisations looking to engage in refer-a-friend campaigns and we would be happy to discuss this further with the ICO in the context of PECR.

We have outlined below some other comments on the benefits of referral marketing for the ICO to consider when clarifying the guidance in its draft code of practice:

1. One of the primary motivations behind Regulation 22 of PECR was to protect the privacy of individuals by reducing the number of unwanted and irrelevant marketing email messages they receive.
2. Referral marketing is based on trust. Firstly, the trust between a customer and a brand and secondly, the trust between that customer and any friends they choose to share the brand with. Trust is an important part of any friendship and as a result, people will naturally want to avoid breaching that trust. In the context of a referral, this means that a customer will consider how their message will be received before referring a brand to a friend. They will filter for relevance and for trust. We consider these filters in more detail below:

- a. The Relevance Filter

Firstly, a friend will not want to share an offer with their friend if they know their friend will not be interested in it. They are also in a much better position than a brand to know what their friend will or will not be interested in. Friends are much more sensitive to their friend's feelings and are therefore much less inclined to send irrelevant emails to their friends.

- b. The Trust Filter

Secondly, a friend will not recommend a brand to a friend if they think that by doing so they will risk their reputation or social capital with their friend. The value of that trust and their reputation is worth more to them than an incentive they might receive from the brand. This means that a friend is only likely to recommend a brand to a friend if they have had a genuinely positive experience with that brand and that their friend will not judge them negatively for sharing it with them.

In light of these filters, referrers typically do not share referral offers with a huge number of friends. As an overall statistic from our platform we find that the ratio of the number of customers introduced by each referrer is on average 1:1.1 (i.e. one referrer will on average only refer 1 friend to a brand).

3. Arguably Regulation 22 was seeking, albeit by different means, to apply exactly the same kinds of filters, ensuring individuals only receive relevant and credible marketing from trusted sources, rather than unwanted junk mail. In our view, we think that referral marketing should be encouraged for this reason and not excluded or constrained on technical grounds.
4. It is no secret that brands are always looking to increase customer acquisition and sales. To do this most efficiently, they want to introduce their brand directly to the customers who are most likely to want to engage with it. Brands therefore value the filters that existing customers are able to apply when they make a referral. It ensures that referrals are only made by people who value their brand and made to people who they think will appreciate it.

5. The fact that the referrer is making an introduction means that the brand is not required to spend money on other less efficient marketing channels and so they are willing to share that saving with their customers. Because of this, brands are willing to offer incentives to both the referring customer and the referred friend for participation in their refer-a-friend programmes. These incentives offer real value to both the referrer and their friend, making it a mutually beneficial process for the consumers and giving them the opportunity to benefit from discounts and other rewards they would not otherwise have access to.

We co-authored an article with the Data & Marketing Association around the benefits of referral marketing here in addition to our above comments: <https://dma.org.uk/research/referral-marketing-are-you-creating-customer-advocates>.