



ICO Direct Marketing Code of Practice: draft Code for consultation

Response by the Intermediary Mortgage Lenders Association

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IMLA

IMLA is the representative trade body for mortgage lenders who lend wholly or predominantly through intermediaries. Our 41 members include banks, building societies and specialist lenders, including 17 of the top 20 UK mortgage lenders responsible for almost £244bn of annual lending (over 90% of market share). IMLA provides a unique, democratic forum where intermediary lenders can work together with industry, regulators and government on initiatives to support a stable and inclusive mortgage market. We welcome this opportunity to comment on the ICO's draft Direct Marketing Code of Practice.

1. We note the comprehensive Guide which has been drafted by the ICO and consider that much of it will be very helpful to firms.
2. We are concerned, however that some aspects of the Guide, if interpreted strictly, could actually disadvantage consumers by making it less likely that they will receive information which might be useful and helpful to them – but which they could, equally, simply ignore if they so wished. We would draw attention in particular to page 21, which acknowledges that a firm might “*need to send the individual a renewal or end of contract notice. These are unlikely to constitute direct marketing if neutrally worded and not actively promoting or encouraging the individual to renew or take on a further contract ...*”. This would appear to prohibit mortgage lenders from writing to customers who are nearing the end of the fixed term of a mortgage product and offering them an alternative product. Provided such an offer is made in a way which makes it clear that the customer can freely choose whether or not to accept the lender's offer of a new product or seek an alternative product elsewhere - how can it not be in the customer's interests to be sent such an offer?

3. The example given on page 24 - of a GP's clinic being judged to be in breach of the requirements because it offers to make an appointment for a patient to attend for a flu jab - seems completely counter-intuitive. There is no suggestion that a charge is going to be made for such a jab, or that the clinic is suggesting that such a jab is definitely necessary in order to protect the patient's health. But in terms of offering what may be useful information to the patient – who may not be aware that such jabs are available, but who may wish to find out more – how can this communication not be in the patient's interests?

4. Page 36 refers to the “balancing test” and invites firms to consider the question: “is the legitimate interest overridden by the individual's interests, rights or freedoms?” Page 37 suggests that firms should consider “whether people would expect you to use their details in this way.” We would argue that mortgage customers would absolutely expect their lender to use their details (a) to write to them to advise that their mortgage term is coming to an end and (b) to outline what their options might be in terms of taking out a new product. They would neither expect nor welcome a communication that gave the impression that the only option available to them was to accept the lender's proposal – and such a communication would clearly not be appropriate. But a communication which explained that another product or range of products might be available – ideally including illustrative pricing – would surely be helpful to the customer?

5. The alternative would be for the lender's initial communication to be written in entirely neutral terms, simply inviting the customer to contact the lender if they wished to be sent more information. That would add another step in the process for the customer, which could be avoided - without imposing on or causing unnecessary annoyance to the customer – if the lender were simply able to set out the available options. We believe that many customers would probably prefer a more pro-active approach from their lender, which provided more specific information on alternative options immediately, without having to be asked. It would be entirely up to the customer to decide whether to ignore the lender or pursue the communication.

6. The Guide discusses the “lawful bases” for processing personal data for direct marketing purposes. One option (presumably) would be acceptable for lenders to obtain customers' consent at the start of a mortgage contract to receiving direct marketing as that contract comes to an end? The lender could explain that it proposed to contact the customer before the end of the contract with a reminder that the end date was in sight – and offering information about alternative products. The customer would retain the right to opt out of receiving such information at any time during the period of the contract – but many might well regard it as being in their interests to receive such information at the appropriate time in the future.

7. Given that a high proportion of the mortgage market is intermediated, it is not necessarily straightforward to obtain and maintain records of consent to receiving marketing from borrowers, since the initial relationship was between the customer and the mortgage intermediary. There is a risk that some customers might inadvertently fail to opt in, or opt out of, receiving what could be useful information from their lender – which could

be to their disadvantage. For this reason, it seems likely that lenders would prefer to rely on “legitimate interest” as their lawful basis for communicating with their customers.

8. We would urge the ICO to consider carefully the practical implications of making it more difficult for mortgage lenders to send information to customers which may be entirely to their advantage and benefit.