

# **MMA CODE FOR RESPONSIBLE MOBILE MARKETING**

A code of conduct and guidelines to best practice

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**Mobile Marketing Association**  
[www.mmaglobal.co.uk](http://www.mmaglobal.co.uk)



## Preface

The mobile is a more personal communication channel than any other, which can benefit consumers and businesses in many new ways. As it is more personal, however, particular care is needed not to abuse the power of the medium and to put control of the channel firmly in the hands of the user.

Since the Mobile Marketing Association was formed in 2000, it has been a committed advocate of permission-based marketing, the principle of which is that mobile users are able, and know how to, opt in and out at will of marketer communications.

The MMA is pleased to acknowledge that the new Privacy & Electronic Communications legislation being implemented across Europe will put regulatory force behind this principle.

For marketers mobile is a highly attractive new channel offering the ability to deliver far more valued and effective communications. However, a vast array of legislation and codes cover use of the medium and there are many new considerations of which to take account in developing its use. The goal of this Code therefore has been to provide:

1. The first comprehensive code of conduct and best practice guidelines for the industry, based on members' practical experience and the requirements of current legislation
2. A central reference source to the laws and regulations affecting mobile marketing
3. A step-by-step guide to planning and implementing mobile marketing activity

The MMA recognises that mobile is a fast evolving medium that will bring many new challenges as the market transitions from text to picture-based messaging to multimedia and location based services. The MMA Code is therefore a living document that will be refined and extended over time.

It is the MMA's intention to be the benchmark of best practice in the industry at each stage, so that membership of the MMA is a sign of adherence to the highest standards. Companies interested in joining the MMA should contact [membership@mmaglobal.co.uk](mailto:membership@mmaglobal.co.uk).



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3. The Direct Marketing Association Draft Code of Practice for SMS Marketing (the "SMS Code")
4. The Data Protection Act 1998 (the "1998 Act")
5. The Electronic Commerce (EC Directive) Regulations 2002 (the "E-Commerce Regulations")
6. The Privacy and Electronic Communications (EC Directive) Regulations 2003 (the "Electronic Communications Regulations")
7. The ICSTIS Code of Practice (the "ICSTIS Code")
8. The Consumer Protection (Distance Selling) Regulations 2000 (the "Distance Selling Regulations")



## A. Introduction

### 1. What is the MMA?

The Mobile Marketing Association ("MMA") is an independent body which has been set up to:

- act as the mobile marketing industry body, actively supporting and encouraging the development of responsible mobile marketing in the UK;
- develop a code of conduct for mobile marketing which will provide a means of self-regulation and establish accepted best practice policies and procedures;
- act as an independent industry voice to the general public, commercial entities and the government and governmental or other public bodies;
- respond to government consultations on areas of interest to its members and, where appropriate, to lobby the government in relation to these areas; and
- liaise and co-ordinate as appropriate with other relevant industry regulators and bodies such as the ASA, DMA, MDA, MEF and ICSTIS.

Membership is open to any commercial entity that is engaged or otherwise involved in mobile marketing. MMA members include mobile marketing agencies, mobile ASPs and service providers, network operators, mobile marketing software providers, mobile data aggregators and vendors, traditional media and marketing agencies, consumer goods and services providers, media providers and industry lawyers and advisors.

### 2. What is mobile marketing?

Mobile marketing is any form of marketing, advertising or sales promotion activity aimed at consumers and conducted over a mobile channel.

Methods of communication for this type of marketing include voice files, SMS, MMS, WAP messaging, Java, SyncML and video and audio messaging.

### 3. What is the purpose of the MMA Code?

The MMA Code for Responsible Mobile Marketing (the "MMA Code") sets out practical mandatory standards and best practice guidelines in relation to the provision and operation of mobile marketing services based on the MMA's interpretation of the current relevant UK legislation applicable to this area and MMA members' experience of the medium. The MMA Code may be updated from time to time as new UK legislation comes into force and as practical knowledge of the ways in which the medium can be used develops.

While the MMA Code aims to highlight and provide guidance in those areas which the MMA views as key to ensuring legally compliant mobile marketing, the MMA Code is not intended to be a substitute for specific legal advice and compliance with the MMA Code does not guarantee legal compliance. Members should take their own legal advice where appropriate.

Please also note that the legal and regulatory position in relation to mobile marketing in other countries may be very different to that in the UK.



#### 4. Who does the MMA Code apply to?

All members of the MMA in the UK must comply with the mandatory standards set out in the MMA Code (as updated from time to time) as a condition of membership. The MMA also strongly encourages its members to comply with the best practice guidelines set out in the MMA Code (as updated from time to time). All standards set out in the MMA Code are mandatory standards unless expressly referred to as being best practice, in which case they are included as best practice guidelines only.

Where possible Members should also encourage any non-MMA members with whom they are working in the mobile marketing field to adopt the MMA Code as best practice.

#### 5. What happens if I do not comply with the MMA Code?

If the MMA:

- receives a complaint in relation to the mobile marketing activities of any MMA member(s); or
- otherwise becomes aware of any possible non-compliance with the MMA Code by any MMA member(s);

then the MMA board of directors will investigate this to establish if the MMA member(s) concerned has/have breached the MMA Code.

The relevant MMA member or members must give the MMA board of directors all reasonable assistance and co-operation in relation to such investigation.

If the MMA board of directors decides that there has been a breach of the MMA Code, then it will issue a written warning to the relevant MMA member(s). This warning may include:

- a request to withdraw or make amendments to the campaign or promotion complained of; and/or
- a set of recommendations for such actions to be taken by the relevant MMA member(s) to ensure future compliance.

If the relevant MMA member(s) do not rectify their non-compliance with the MMA Code or comply with any requests or recommendations set out in the warning within such time as may be specified by the MMA board of directors or, if they do not specify a time, within a reasonable time, then the MMA board of directors may:

notify the relevant MMA member(s) that their MMA membership has been suspended or terminated (and in this event no membership fees will be refunded); and/or

issue a notice on the MMA web site, in the MMA newsletter or by such other means as the MMA board of directors may see fit (including, where appropriate, by means of a press release) setting out details of the relevant MMA member(s) non-compliance with the MMA Code and any action taken by the MMA board in relation to this non-compliance (including any suspension or termination of the relevant MMA member(s) membership).

Where appropriate the MMA board of directors may also decide at any time to refer any complaint or other non-compliance matter to any other interested regulatory body such as the Office of the Information Commissioner, ICSTIS or the Advertising Standards Authority.



## B. MMA Code

### 1. What does the MMA Code cover?

The main body of the MMA Code is set out as a series of frequently asked questions covering the following areas:

- general guidelines;
- first/key things to think about when setting up a mobile marketing promotion;
- special wording/information to be included in promotional material or mobile marketing communications;
- mobile marketing to children;
- games, competitions, prize promotions and prize draws;
- ongoing considerations when running a campaign;
- special requirements for mobile marketing relating to particular types of products or services;
- special requirements when using premium rate numbers;
- special requirements when using location based mobile marketing;
- special requirements if actually selling products or services to consumers via a mobile marketing mechanism; and
- complaints.

The Appendix to the MMA Code sets out some brief details of the key UK legislation and codes of practice to bear in mind when carrying out mobile marketing, including details of where to obtain further information on each of these. This is not a full list of all UK legislation or codes of practice which could potentially be applicable when carrying on mobile marketing, only those which the MMA believes to be particularly key in this area. It is intended to provide MMA members with a useful starting point for ensuring compliance but not as a substitute for legal advice. MMA members should obtain their own legal advice where appropriate.

There is a contents section at the front of the MMA Code to help you find your way around the main body of the MMA Code.



## 2. Are there any general guidelines that I need to think about when mobile marketing?

When carrying out mobile marketing you must take care not to abuse the personal nature and impact of this medium, which is what sets it apart from other marketing media.

All mobile marketing must be carried out in a manner that is:

- legal;
- decent;
- honest;
- truthful;
- permission-based;
- responsible;
- responsive; and
- respectful.

These are the general guidelines on which the rest of the MMA Code is based.

In addition, all mobile marketing must be carried out in accordance with all applicable UK legislation and codes of practice, in particular the key legislation and codes of practice referred to in the Appendix.

## 3. What are the first/key things that I need to think about when setting up a mobile marketing campaign?

### 3.1 *Decide on your target group*

Before doing anything else you need to:

- decide what target group the campaign is aimed at; and
- ensure that the proposed content/form of the campaign is appropriate for that target group.

For example, you must ensure that all content:

- is clear;
- makes sense;
- is not misleading or deliberately baffling; and
- is not offensive, explicit or sexually inappropriate;

bearing in mind that what is offensive or inappropriate will vary depending on the target group and the context of the campaign.

### 3.2 *Some types of marketing where you need to be particularly careful*

Given the personal nature of the mobile marketing medium you must take particular care to ensure that all content is appropriate to the relevant target group and in the context of the campaign. A significant percentage of all complaints received in relation to mobile marketing campaigns relate to what is perceived by the complainant as inappropriate content.



The following are particularly prone to potential complaints:

- marketing containing references to religion, political beliefs, race, gender, sexual preferences or orientation;
- marketing encouraging the recipient to ring a premium rate line (for example, to claim a prize or to reply to an urgent message) (please also see B9 below);
- marketing aimed at children (please also see B3.3 and B5 below);
- marketing relating to alcohol (please also see B3.3 and B8.2 below);
- marketing relating to gambling services or products (please also see B3.3 and B8.3 below);
- marketing relating to adult products (please also see B3.3 and B8.1 below);
- marketing suggesting that the target or someone they know may be ill, has been involved in an accident or has died or is about to die (for example, a spoof invite to a hospital appointment or to write someone's obituary);
- marketing suggesting that the target or someone they know may be being stalked or victimised in some way or is being threatened with violence (for example, use of a silent heavy breathing phone call);
- marketing suggesting that the target or someone they know is being contacted by the government or the military (for example, a spoof call up for military action or jury service);
- marketing suggesting that the target or someone they know is or has been involved in any criminal activity (for example, a spoof invite to come joyriding);
- marketing suggesting that the target or someone they know is or has been involved in a particular form of sexual activity or is of a particular sexual orientation (for example, a spoof message from an ex-girl/boyfriend).

### ***3.3 Only market to an appropriate target group***

You must take all reasonable steps to ensure that if you are involved in any of the above types of marketing that such marketing is only sent to an appropriate target group. In particular, you must:

- not send any marketing relating to alcohol, tobacco, gambling services or products, cosmetic surgery or adult products to under 18s;
- not send any marketing relating to medicines or diet products (such as artificial weight loss aids) to under 18s (this does not include non-commercial public health related marketing campaigns, such as tips on healthy eating or information relating to sexual health, which may be sent to under 18s subject to the restrictions set out in B5 below on marketing to children);
- only send marketing relating to adult products or material to recipients who are 18 or over and who have specifically consented to receive such adult marketing.



Please note that the mobile marketing of each of above types of products or services to recipients who are 18 or over while allowed in principle is subject to a number of specific requirements elsewhere in the MMA Code (see B5 and B8 below) and also in the majority of cases to specific UK legislative and/or regulatory requirements (for example, the marketing of tobacco is banned and the marketing of rolling papers and filters is subject to strict rules administered by the ASA).

Where marketing is not to be sent to a particular age group, then, subject to the exception set out below in relation to people who have responded to age-restricted promotions, such marketing must not be sent unless age verification can be confirmed. If the mobile number alone is the only form of targeting then no such age-restricted marketing may be sent.

If someone has made contact with you in order to participate in a promotion which is restricted to a particular age group and which has been promoted:

- in such a way that the fact that participation in that promotion is age-restricted has been clearly brought to that person's attention (for example by clearly highlighting this fact on the relevant promotional packs); and
- by way of a medium which is appropriate to the relevant age group (for example by way of advertisements placed in publications appropriate to that age group);

then you are entitled to assume that that person is within the relevant age group and to continue to treat them as falling within the relevant age group for the purposes of sending them further age-restricted marketing (assuming that they have opted in to receive further marketing – see B3.6 – B3.8 below) without taking any further steps to confirm their age.

Sponsorship of text alerts by adult brands, such as alcoholic drinks, will not be treated as marketing for the purpose of the above provided that such sponsorship is carried out in a manner which is not intrusive to those under 18s who may be signed up to receive such text alerts (for example, a simple tag at the end of the message “sponsored/powered by [insert name]”) and that such text alerts are not solely or primarily targeted at under 18s.

### ***3.4 Take care in relation to when and how often you are sending mobile marketing communications***


When sending mobile marketing communications, you must be responsible in relation to the:

- timing (i.e. when the mobile marketing communication will be received);
- volume; and
- frequency;

of such communications, taking into account in each case the relevant target group and the nature of the campaign.

For example, it is not acceptable to send mobile marketing communications aimed at children to be received at a time when they might reasonably be expected to be asleep.

It is best practice not to send mobile marketing communications to be received between 10pm and 7am on week days or between 10pm and 9am on weekends or bank or public holidays, unless there is some special reason to do this (for example the specific nature of the campaign or the service being provided).



### **3.5 Where did you obtain the details of your target group and how can you use these?**

In addition to the above, you also need to think carefully about where you obtained the details of your target group from and whether you are in fact lawfully able to send mobile marketing to these people.

In dealing with personal details, which can include mobile telephone numbers (even if you do not hold any other personal details about the user of the relevant mobile phone) as well as names, addresses and e-mail addresses (again whether held alone or in combination with any other personal details), you must make sure that you comply with the Data Protection Act 1998, and in particular the 8 data protection principles laid down in that act. See the Appendix for further details. This is in addition to any requirements set out in this MMA Code.

Please also see B7.2 below.

### **3.6 Using Opt in and Soft Opt in**

The MMA believes strongly in permission-based marketing. Except in the limited circumstances set out below, you must only send mobile marketing to people who have agreed in advance to your doing this (i.e. on an “opt in” basis).

There is one exception to this. This is that you can send mobile marketing to people whose details you have obtained in the course of the sale of a product or service to that person or in the course of negotiations for the sale of a product or service (even if this does not actually result in a sale) provided that you:

gave them the opportunity to opt out of receiving mobile marketing at the time you collected their details (this must have been free of charge except for the costs of transmission of the opt out);

- give them the opportunity to opt out of receiving further mobile marketing from you each time you send them a further mobile marketing message (again this must be free of charge except for the costs of transmission of the opt out); and
- only market to them in relation to your own products and services which are similar to the products and services that you originally sold to them or over which you were originally negotiating with them.

This “soft opt in” basis must only be used as set out above. Where details have been collected other than in the course of a sale or negotiations for a sale, this soft opt in cannot be relied on. For example, where details are collected as a result of promotional activities by charities and membership organisations which do not involve any form of sale, the soft opt in cannot be relied on and an express opt in must be obtained before any mobile marketing communications can be sent.

For the purposes of the MMA Code a “sale” will include any form of commercial transaction so that, for example, the payment of 24p to register a vote or to enter a competition will constitute a sale for the purposes of the above. This is based on the MMA’s interpretation of the provisions of the Electronic Communications Regulations (see Appendix for further details) but is not a guarantee of compliance with these. A narrower view may be taken by the Information Commissioner in relation to interpretation and enforcement of the Electronic Communications Regulations in relation to this issue than is taken by the MMA.

It is best practice, wherever possible, to upgrade a soft opt in to a full opt in rather than relying on the soft opt in as a long term strategy. It is best practice to obtain this upgrade as soon as reasonably possible following the obtaining of the soft opt in.



It is best practice only to use any details obtained on a soft opt in basis for the purpose of contacting the relevant person to ask them to opt in to receive further mobile marketing communications from you and to delete that person's details if you have not received an opt in response from them within 48 hours of having requested this.

### ***3.7 Asking someone to opt in***

Where asking someone to opt in to receive mobile marketing communications from you, you must be very clear about exactly what this opt in covers.

For example, are you going to:

- a** only send them mobile marketing communications relating to your own products and services;
- b** send them mobile marketing communications relating to both your own and third parties' products and services;
- c** make their details available to other companies in the same group as you so they can send them mobile marketing communications in relation to their products and services;
- d** make their details available to unrelated third parties so they can send them mobile marketing communications in relation to their products and services.

It is particularly important that if you are planning to make their details available to third parties (whether related to you or not) you make this very clear up front.

Where appropriate you may want to split your opt in mechanism so that there are separate opt ins to mirror the different types of scenario set out in (a) to (d) above.

This has the advantage that where, for example, someone is happy to receive marketing from you in relation to your own products and services (scenario (a) above) but not any other type of marketing, they can opt in specifically to just receive this type of marketing. If the opt in is not split, this person will probably not give an opt in at all, as this will open them up to receiving types of marketing which they do not want to receive (scenarios (b) to (d) above) in which case you will lose the ability to market to them at all. (Also see B4.2 below).

You must also make sure that your marketing database is set up in such a way that you can clearly see who has given what level of opt in. For example, you must be able to clearly see who has opted in to receive mobile marketing from you and who has opted in for their details to be sent to third parties.

### ***3.8 Using the opt in once you have got it***

If someone has opted in to receive mobile marketing communications you must only send them communications which fall within the scope of that opt in. In particular, you must not make their details available to third parties to send them mobile marketing unless you made clear you were going to do this when you collected their details and they agreed to this as part of their opt in.

If you have collected someone's details for a purpose other than to send them mobile marketing and then decide that you want to use these details for mobile marketing then you must ask that person to opt in to this before you do so.

If you want to use someone's details for anything significantly different from what you originally told them you were going to do with their details, then you must ask that person to agree to this before you



do so. For example, making details available to a third party for them to send mobile marketing to the individual where you had previously not told them you might do this.

### ***3.9 Making sure the recipient knows who is contacting them and how they can opt out of further contact***

You must not send any mobile marketing communications unless you have already provided the recipient with a valid address to which they can send an opt out request or you do so in the communication itself.

In addition, you must not send any mobile marketing communications where the identity of the person on whose behalf the communication has been sent has been disguised or concealed.

Please also see B4 below.

### ***3.10 Some types of campaign where you need to be particularly careful re: legal compliance Where you are intending to run a mobile marketing campaign involving any of the following:***

- children;
- anyone outside the UK / EU;
- a competition or prize draw;
- gaming or betting;
- any regulated industry, for example financial services;
- online sales or sales via a mobile device;
- anything potentially offensive;
- anything particularly unusual;
- then you need to be particularly careful to ensure that your campaign is legally compliant.

## **4. Do I need to include any special wording or information in any mobile marketing communications or on any promotional material for any mobile marketing campaigns?**

### ***4.1 Wording/information to include in all mobile marketing communications***

NB All the points below assume that you have already obtained opt in (or soft opt in) consent from the recipient of the mobile marketing communication to send them that mobile marketing communication (see B3.6 above).

You must make sure that **all** mobile marketing communications sent by you:

- are clearly identifiable as mobile marketing communications;
- clearly identify:
  - the person on whose behalf the communication is being sent; and
  - if this is a different person, the person to whom the recipient gave the permission to send them mobile marketing communications on which you are relying to send them this communication (the "permission holder");
- include clear identification of any promotional offers you are advertising together with an unambiguous explanation of any qualifying conditions regarding such offers;
- include clear identification of any promotional competition or game; and



- if you are using the mobile marketing communication to collect personal details in order to carry out further mobile marketing to the recipient and the recipient has not already given a clear opt in for you to do this, include suitable opt in wording.

**In addition** to the requirements above for wording/information to be **included** in the mobile marketing communication itself, you must also include **a means of accessing**:

- the basic information referred to in B4.3 below;
- any conditions for qualifying for participation in any promotional competition or game (which conditions must be clear and unambiguous);
- any other applicable terms and conditions; and
- if you are using the campaign to collect personal details, your privacy statement.

This means of access can be a web site address. If you are providing a web site address then it is best practice to also provide a phone number as well in case the recipient does not have easily available web access. You must not use phone numbers or other methods of access which exceed the national standard rate for this purpose. It is best practice where providing a phone number for this to be a free phone number where possible.

#### ***4.2 Opt in and opt out mechanisms***

If you are using the campaign to collect personal details, you must provide a suitable mechanism for opting in or out of receiving further mobile marketing communications at the point at which these details are collected (see B3.6, B3.7 and B4.1 above). This mechanism must be clearly brought to the recipient's attention. In particular, when collecting personal details via a mobile phone the necessary opt in wording must not simply be included in a privacy statement accessible through a web site as this is not bringing it clearly to the recipient's attention.

**In addition**, each time you send a mobile marketing communication you must provide a clear response mechanism through which recipients can unsubscribe from further such mobile marketing communications. It is best practice to provide a response mechanism through which the recipient can unsubscribe simply by replying "STOP" or "STOP" plus a service identifier (such as one or more words or a number) to any mobile marketing communication. If you are not providing a "STOP" response mechanism, then you must provide a clear, memorable and easy to use alternative opt out route. For example a web site address or telephone number.

It is best practice to unsubscribe a recipient from a service where it is their clear intention to unsubscribe even if they have not used the correct unsubscribe mechanism. For example, where instead of replying "STOP" the recipient has replied "unsubscribe" or some other word or words to the same effect as "STOP".

If a recipient sends a response from which it is not clear whether or not they intend to unsubscribe or, if there is more than one service involved, which service(s) they intend to unsubscribe from, then it is best practice to contact that recipient once (but no more than once) in order to clarify their intentions.

If you are providing a web site address then it is best practice to also provide a phone number as well in case the recipient does not have easily available web access. You must not use phone numbers or other methods of access which exceed the national standard rate for this purpose. It is best practice where providing a phone number for this to be a free phone number where possible.



When putting in place your opt out mechanism you may want to bear in mind whether or not you wish to differentiate between different types of opt out. For example, where the recipient wants to opt out of receiving third party mobile marketing communications but is still happy to receive mobile marketing communications in relation to your own products or services.

#### ***4.3 Basic information which you must bring to the recipient's attention***

Even if there are no terms and conditions as such in relation to the campaign you must still make sure that you have brought the following basic details to the recipient's attention in such a way that they have had an opportunity to easily access and read them (please see B4.1 for further guidance as to how to provide this opportunity):

- the name of the person on whose behalf the mobile marketing communication is being sent;
- that person's geographic address;
- that person's contact details (including an e-mail address);
- if that person is a registered company, their registered company number;
- reference to any codes of conduct that person is subject to and how these can be accessed electronically.

#### ***4.4 Some additional basic information requirements applicable in specific circumstances***

Please note that there are specific requirements under the E-Commerce Regulations (please see Appendix) in relation to additional information to be provided;

- by people who are members of a regulated profession, such as lawyers, doctors or accountants;
- by people who are registered on a trade or similar register which is available to the public;
- where a mobile marketing communication is being sent as part of a service which is subject to a regulatory authorisation scheme; or
- where a mobile marketing communication is being sent as part of a service which is subject to VAT.

If these requirements are applicable to you then you must comply with them as well as with the above MMA Code requirements.

#### ***4.5 Use of hard copy promotional material***

Where a campaign is being publicised by hard copy promotional material, such as a card given out in certain shops, then the basic information set out in B4.3 can be included on this card, together with suitable opt in wording (see B4.2) and a means of obtaining access to the full terms and conditions and privacy statement, for example a web site address, or phone number. This means of access must be straightforward and easy to use.

If you are providing a web site address then it is best practice to also provide a phone number as well in case the recipient does not have easily available web access. You must not use phone numbers or other methods of access which exceed the national standard rate for this purpose. It is best practice where providing a phone number for this to be a free phone number where possible.



If you are using a mechanism such as a card given out in shops/on the streets, then it is useful to give a code (this can be a code word or a number) which needs to be texted back to you in order to enter the promotion. This allows you to see that each person entering the promotion has seen the card and therefore the information held on the card.

Please note that this does not affect the requirements set out in B4.1 to include (as opposed to just making accessible) certain wording/information in all mobile communications.

#### ***4.6 Terms and conditions and privacy statement***

At the start of any promotion, you must make sure that any applicable terms and conditions are brought to the recipient's attention in such a way that they have had an opportunity to easily access and read these.

In addition, if you are using the campaign to collect any personal details then you also need to make sure that a suitable privacy statement is brought to the recipient's attention in such a way that they have had an opportunity to easily access and read this.

Your privacy statement must contain at least the following details:

- who you are;
- what you collect and use personal information for;
- whether you will disclose this information to anyone else;
- that anyone whose information is being held by you is free to opt out of receiving further mobile marketing communications at any time;
- an explanation as to how to opt out of receiving further mobile marketing communications from you;
- who to contact to ask questions, check the information held is accurate or change this information;
- whether any personal information will be transferred outside the European Economic Area and if so why and what for.

Where you are also collecting details through a web site linked to the mobile marketing, the privacy policy must also make clear whether you are using any cookies on that site and, if so, what for and how these can be disabled.

The means of access to the terms and conditions and privacy statement must be straightforward and easy to use. For example, access through a web site address included in the mobile marketing communication and on any relevant hard copy promotional material as stated above.

If you are providing a web site address then it is best practice to also provide a phone number as well in case the recipient does not have easily available web access. You must not use phone numbers or other methods of access which exceed the national standard rate for this purpose. It is best practice where providing a phone number for this to be a free phone number where possible.

#### ***4.7 The approach to take to all information/wording to be provided***

All terms and conditions, privacy statements, opt in/opt out wording and promotional material must be:

- clear;
- concise;
- easy to understand (bearing in mind the age of the target group); and
- customer friendly.



#### 4.8 Some types of marketing where there will be additional requirements in relation to information to be provided

If you are sending mobile marketing to children then there are a number of additional things to bear in mind. See B5 below.

If you are including games, competitions, prize promotions or prize draws in your campaign then there are a number of additional things to bear in mind. See B6 below.

If you are sending mobile marketing in relation to any specially regulated products or services, for example financial services (including insurance), tobacco, alcohol or gambling, then you must make sure that you comply with any specific legal or regulatory requirements in relation to the marketing of such products or services and should take legal advice where appropriate.

If any sales are being entered into by consumers as part of a mobile marketing campaign so that there is no face to face contact between the consumer and the seller before the sale takes place then there is specific UK legislation that may apply to this (see Appendix) and you should take legal advice where appropriate.

### 5. What about children?

All mobile marketing to children must be carried out in a responsible and sensitive manner and the manner and content of such marketing must be appropriate to the target age group.

In particular, all mobile marketing must be carried out in accordance with the following guidelines:

Age	What you are/are not allowed to do
Under 12	<p><i>Collection of details</i></p> <p>You must not collect any personal details from or send any marketing (however soft) to children under 12 years of age unless the child's parent or guardian has given their explicit and verifiable consent to this.</p> <p>Subject to the conditions below, if the child's parent or guardian has given such consent you may collect such limited details from the child as you need to send them further limited mobile or online communications (i.e. their name, their age, their mobile number and, if applicable, their e-mail address).</p> <p>You may only do this if you have first made clear to the child's parent/guardian (in clear user friendly language) why you are collecting the child's details and what you are going to use them for in such a way that it is clear that the child's parent/guardian understands what is involved and has agreed to this.</p>
	<p><i>Use of details by you</i></p> <p>You may use these limited details for relationship marketing purposes provided that:</p> <ul style="list-style-type: none"> <li>● such marketing is appropriate to the age of the child; and</li> <li>● such use falls within the type of use that you have told the child's parent/guardian that you are going to use the child's details for.</li> </ul>



	<p><i>Making details available to third parties</i></p> <p>You must not make the child's details available to any third party unless you have explained to the child's parent/guardian that you are proposing to do this and why and have obtained their explicit and verifiable consent to this.</p>
12-13	<p><i>Collection of details</i></p> <p>Subject to the conditions below, you may collect such limited details from the child as you need to send them further limited mobile or online communications (i.e. their name, their age, their mobile number and, if applicable, their e-mail address).</p> <p>You may only do this if you have first made clear to the child (in clear child friendly language) why you are collecting these details and what you are going to use them for in such a way that it is clear that the child understands what is involved and has agreed to this.</p> <p><i>Use of details by you</i></p> <p>You may use these limited details for relationship marketing purposes provided that:</p> <ul style="list-style-type: none"><li>● such marketing is appropriate to the age of the child; and</li><li>● such use falls within the type of use that you have told the child that you are going to use their details for.</li></ul> <p><i>Making details available to third parties</i></p> <p>You must not make the child's details available to any third party unless you have explained to the child's parent/guardian that you are proposing to do this and why and have obtained their explicit and verifiable consent to this.</p>
14-16	<p><i>Collection of details</i></p> <p>Subject to the conditions below, you may collect such limited details from the child as you need to send them further limited mobile or online communications (i.e. their name, their age, their mobile number and, if applicable, their e-mail address).</p> <p>You may only do this if you have first made clear to the child (in clear child friendly language) why you are collecting these details and what you are going to use them for in such a way that it is clear that the child understands what is involved and has agreed to this.</p> <p><i>Use of details by you</i></p> <p>You may use these limited details for relationship marketing purposes provided that:</p> <ul style="list-style-type: none"><li>● such marketing is appropriate to the age of the child; and</li><li>● such use falls within the type of use that you have told the child that you are going to use their details for.</li></ul>



In addition, you may use these limited details to promote specific products or services provided that:

- such products or services are:
  - appropriate to the age of the child;
  - are the type of products or services which are regularly consumed by children of that age; and
  - are within the average budget of children of that age;
- the manner and content of such promotion is appropriate to the age of the child; and
- such use falls within the type of use that you have told the child that you are going to use their details for.

*Making details available to third parties*

You must not make the child's details available to any third party unless:

- you have explained to the child's parent/guardian that you are proposing to do this and why and have obtained their explicit and verifiable consent to this; or
- you have explained to the child (in clear child friendly language) that you are proposing to do this and why in such a way that it is clear that the child understands what is involved and has agreed to this.

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*Collection of details*

Subject to the conditions below, you may collect such personal details from the child as you need for the purpose of mobile marketing to them.

You may only do this if you have first made clear to the child (in clear child friendly language) why you are collecting these details and what you are going to use them for in such a way that it is clear that the child understands what is involved and has agreed to this.

*Use of details by you*

You may use these details for all reasonable marketing purposes provided that:

- such marketing is appropriate to the age of the child;
- any products or services being marketed or promoted to them are able to be legally consumed by children of that age and are otherwise suitable for consumption by them; and
- such use falls within the type of use that you have told the child that you are going to use their details for.



### *Making details available to third parties*

You may make the child's details available to a third party provided you have explained to the child (in clear child friendly language) that you are proposing to do this and why and the child has agreed to this.

In addition to the above, you must comply with any specific requirements in relation to mobile marketing to children set out in any of the key legislation or codes of practice listed in the Appendix.

## **6. What if the campaign includes a game, competition, prize promotion or prize draw?**

### ***6.1 Information to include in the promotional material***

Certain information must always be provided in the promotional material of any game, competition, prize promotion or prize draw. This is as follows:

- any significant terms and conditions and where these are located;
- any closing date of the game or competition;
- any age, geographical or other eligibility restrictions; and
- a description of the prizes and the number of prizes on offer in the case of games or competitions or any alternative prize that is available such as cash.

### ***6.2 Information to include in the terms and conditions***

In addition, the following must be included in the terms and conditions that relate to a game, competition, prize promotion or prize draw:

- any need to obtain permission to enter from an adult or employer;
- any requirements for proof of purchase;
- how and when winners will be notified of the results;
- any intention to involve winners in post event publicity;
- any conditions under which the entries may be disqualified; and
- any costs which an entrant might not expect to pay in connection with the collection, delivery or use of the prize or item.

### ***6.3 Compliance with additional legal requirements***

The laws that relate to lotteries and competitions are complex. In particular, there is a risk, if a campaign including an element that falls within the ambit of these laws is not structured in the right way, that you will be running an illegal lottery. If your campaign is going to include any game, competition, prize promotion or prize draw, then you must ensure that you comply with any



additional legal requirements in relation to this area as well as the requirements set out in the MMA Code and should take legal advice where appropriate.

## **7. Are there any ongoing considerations I need to think about?**

### ***7.1 Dealing with changes to the campaign***

If you are running an ongoing mobile marketing campaign and you decide that you want to change any significant aspect of the way in which this is being run, for example the nature of a particular promotion forming part of the campaign, such as a competition or draw, then you must check to see if you need to revise your terms and conditions for this promotion.

Always include a term in your terms and conditions for any promotion that will allow you to change these if you need to.

### ***7.2 Keeping your marketing database up to date***

You must keep your marketing database accurate and up to date. If you have not had any contact with someone on your marketing database for 12 months (whether by mobile marketing communication, e-mail or any other direct form of contact) then you must delete that person from your database as you can no longer guarantee that that person's details will be accurate or that they will still want to receive mobile marketing communications from you.

It is best practice to contact everyone on your marketing database at least once every 3 to 6 months (whether by sending them a mobile marketing communication, an e-mail newsletter or any other direct form of contact) unless:

- they have opted out of receiving further mobile marketing or other marketing communications from you;
- they are signed up to a regular seasonal promotion or service which is sent less frequently; or
- there is some other special reason not to do this, for example it is inappropriate in the context of the specific nature of the relationship.

### ***7.3 Opt out reminders***

Where someone is signed up to a regular seasonal promotion or service, for example a service tied in to a particular sporting season, then it is best practice to contact that person:

- at the end of the season to remind them that you will contact them again at the start of the next season (unless they opt out in the meantime) and giving them the opportunity to opt out of this; and
- at the start of the next season (unless they have opted out in the meantime) to remind them that the promotion or service is about to restart and giving them the opportunity to opt out of this.

In addition to the MMA Code requirement to provide a clear opt out mechanism each time you send a mobile marketing communication (see B3 above) it is best practice to send each person on your database a mobile marketing communication every 6 months reminding them how they can unsubscribe from further mobile marketing communications.



Where appropriate you may also send this 6 months opt out reminder by another medium provided that a suitable opt out route is still provided. The opt out reminder does not have to be a separate contact just for that purpose and it may be linked to the best practice guidance set out above to contact everyone on your marketing database at least once every 3 to 6 months.

#### **7.4 What to do if someone wants to opt out**

If someone contacts you to unsubscribe from receiving further mobile marketing communications from you, then wherever possible you must take all reasonable steps to action this immediately so that they do not receive any further communications after the time of contacting you. If this is not possible, you must let them know when the opt out will be put into effect, warn them that some communications may still be received in the interim and take all reasonable steps to action the opt out as soon as possible and in any event within 28 days.

### **8. Are there any special requirements in relation to marketing particular types of products or services?**

There are a number of areas elsewhere in the MMA Code where special requirements are set out in relation to certain types of marketing. In addition to these you must also comply with the following requirements.

#### **8.1 Adult**

You must only send marketing relating to adult products or material to recipients who:

- are 18 or over; and
- have specifically consented to receive such adult marketing.

#### **8.2 Alcohol**

Mobile marketing relating to alcoholic drinks must not target under 18s.

Sponsorship of text alerts by alcohol brands is allowed provided that:

- the text alert service is not solely or primarily aimed at under 18s; and
- the sponsorship is done in such a way that it is not intrusive to under 18s who may be signed up to the text alert service. A simple tag line at the end of the message "sponsored by/powerd by [insert name]" is acceptable. Anything more intrusive than that is not.

#### **8.3 Betting and gaming**

Mobile marketing in relation to betting and gambling must not:

- encourage addiction to gambling
- be misleading on the associated costs or chances or winning

It must also comply with all relevant regulatory requirements.



#### **8.4 Employment/Business Opportunities**

Mobile marketing in relation to employment/business opportunities must:

- not be offensive; and
- be clear who the person recruiting is and what the position is.

#### **8.5 Financial services (including insurance)**

Mobile marketing in relation to financial services must comply with all relevant regulatory requirements. For example, any FSA requirements or GISC requirements.

#### **8.6 Health products and treatments/therapies**

Mobile marketing in relation to health products and treatments/therapies must:

- not be misleading or offensive;
- make clear exactly what the product/treatment/therapy being promoted is or where to find further details about this; and
- be sensitively and clearly worded.

Particular care must be taken in relation to mobile marketing in relation to cosmetic surgery.

Sponsored text alerts are acceptable. For example, "Hayfever alerts sponsored by [insert name of Hayfever relief brand]".

#### **8.7 Motoring**

Mobile marketing in relation to marketing must not encourage drivers to interact while:

- driving; or
- in a petrol station.

#### **8.8 Weight control**

Mobile marketing in relation to weight control products must not:

- promote being underweight; or
- be offensive to overweight people.

Sponsorship of text alerts is acceptable. For example "diet tips sponsored by [insert name of slimming product]".



## 9. Are there any special requirements if I am using premium rate numbers?

Yes – if you are using premium rate numbers the ICSTIS Code of Practice will apply and you must comply with this in full. Please see the Appendix for further details.

## 10. Are there any special requirements if I am using location based mobile marketing?

The collection and use of location data relating to individuals is subject to specific legal requirements, in particular those set out in the Electronic Communications Regulations (see Appendix). If you are planning to collect or use such data in any way you must make sure that you comply with these requirements.

In addition, you must:

- only send location based mobile marketing (i.e. mobile marketing which is sent based on the location of the recipient at a given time) to people who have specifically agreed to receive this type of marketing; and
- each time you send a location based mobile marketing communication provide the recipient with a simple free of charge (other than the costs of transmission) means of opting out of receiving any further such location based mobile marketing communications at any time.

When asking people to opt in to receive location based mobile marketing you must make clear to them:

- that in order to send them such marketing it will be necessary to identify the location of their mobile device and so their personal location; and
- what you will be using these location details for.

Please note that if you are a network operator or provider there are some very specific requirements on you under the Electronic Communications Regulations in relation to the use of location data and provision of location based services and you must ensure that you comply with these in addition to the above MMA Code requirements.

## 11. Are there any special requirements if I am actually selling products or services to consumers via a mobile marketing mechanism?

If you sell goods or services to consumers:

- on the internet;
- on interactive digital television;
- by mail order, including catalogue shopping;
- by telephone;
- by fax; or
- by advertising on television or radio, in newspapers or magazines;

then the Distance Selling Regulations (see Appendix) may apply to your business and you must make sure that you comply with these.



## 12. What about complaints?

Complaint handling is part of brand management – a badly dealt with complaint can damage a brand far more than almost anything else.

You must make sure that all complaints are handled as quickly and efficiently as possible and that your complaint handling procedures are:

- clear;
- transparent;
- responsive; and
- customer friendly.

## C. Contact the MMA

Please contact the MMA if you are interested in membership and/or our lobbying activities or you have any questions in relation to the MMA Code.

Our contact details are:

[code@mmaglobal.co.uk](mailto:code@mmaglobal.co.uk)

Our web site is at [www.mmaglobal.co.uk/](http://www.mmaglobal.co.uk/)



## Appendix

### Key Applicable Legislation/Codes

The key legislation/codes of practice to bear in mind in relation to mobile marketing are:

#### **1. *The British Code of Advertising, Sales Promotion and Direct Marketing***

Any form of advertising must comply with the British Code of Advertising, Sales Promotion and Direct Marketing (the "CAP Code") written by the Committee of Advertising Practice ("CAP") the body that represents the marketing and media business, and administered independently by the Advertising Standards Authority (the "ASA"). The ASA's control over advertisements is self-regulatory, but if the CAP Code is breached, then there are sanctions that the ASA can impose if the provider does not change or withdraw the advertisement. These are:

- Refusal by publishers and media owners to carry the offending advertisement;
- Publication of an adjudication against the advert often leading to adverse publicity;
- Withdrawal of trading privileges and other incentives available through the membership of some advertising bodies; and
- The referral of a persistent offender to the Office of Fair Trading, who may seek an injunction through the courts.

Among other things there are specific provisions in the CAP Code concerning advertising directed at children.

A copy of the CAP Code is available on the ASA's web site which is at [www.asa.org.uk/index.asp](http://www.asa.org.uk/index.asp)

#### **2. *The Direct Marketing Association Code of Practice (the "DMA Code")***

The DMA Code is of mandatory application to members of the Direct Marketing Association ("DMA"). Even for non-DMA members, following the DMA Code is best practice and the MMA would strongly advise that all its members do so.

Consequences of non-compliance with the DMA Code consist of adjudication of any complaint by the Direct Marketing Authority which has the power to:

- Seek undertakings;
- Issue a public admonition;
- Suspend or terminate membership of the DMA.
- Among other things the DMA Code contains specific provisions relating to direct marketing aimed at children.

A copy of the DMA Code is available from the DMA (free for DMA members). The DMA's web site is at [www.dma.org.uk/DMA/default.asp](http://www.dma.org.uk/DMA/default.asp)

#### **3. *The Direct Marketing Association Draft Code of Practice for SMS Marketing (the "SMS Code")***

The SMS Code is of mandatory application to members of the Direct Marketing Association ("DMA"). Even for non-DMA members, following the SMS Code is best practice and the MMA would strongly advise that all its members do so.

The consequences of non-compliance with the SMS Code are as for the DMA Code above.

A copy of the SMS Code is available from the DMA (free for DMA members). The DMA's web site is at [www.dma.org.uk/DMA/default.asp](http://www.dma.org.uk/DMA/default.asp)



#### **4. *The Data Protection Act 1998 (the "1998 Act")***

The 1998 Act regulates the processing of personal data. Personal data is defined fairly broadly under the 1998 Act and can include names, addresses, e-mail addresses and mobile telephone numbers or any of these. Many breaches of the 1998 Act are **criminal offences**. Further, the directors or other officers of a company in breach may also be **personally liable**.

To force compliance, the Information Commissioner may serve enforcement and/or information notices, the latter requiring a controller to provide information to assist the Commissioner in determining whether the data protection principles have been broken. Going even further, the Commissioner may in certain circumstances apply to the court for an entry and inspection warrant.

Non-compliance can result, among other things, in the imposition of fines and compensation awards by the courts and/or deletion of data collected in breach of the Data Protection Act 1998.

The Information Commissioner's web site contains useful compliance information including guidance on compliance with various aspects of the Data Protection Act 1998. The IC's web site is at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

#### **5. *The Electronic Commerce (EC Directive) Regulations 2002 (the "E-Commerce Regulations")***

These Regulations implement the Electronic Commerce Directive. The Directive aims to harmonise the law across the various member states of the EU in relation to certain aspects of electronic commerce. A breach of the requirements under the Regulations is actionable by the recipient of a relevant service (which includes marketing by SMS) as a breach of statutory duty.

A copy of the E-Commerce Regulations is available on the HMSO web site which is at [www.hmso.gov.uk](http://www.hmso.gov.uk)

Guidance on the E-Commerce Regulations is available on the DTI's web site which is at [www.dti.gov.uk](http://www.dti.gov.uk).

#### **6. *The Privacy and Electronic Communications (EC Directive) Regulations 2003 (the "Electronic Communications Regulations")***

These Regulations implement the Data Protection and Electronic Communications Directive. This Directive aims to harmonise the law across the various member states of the EU in relation to certain matters relating to electronic communications. They include, in particular, sections on restrictions on the processing of location data (regulation 14) and use of electronic mail (including text, voice, sound or image message and specifically including SMS) for direct marketing purposes (regulations 22 and 23). The Electronic Communications Regulations provide that as a general rule (subject to certain limited exceptions) you may only send direct mobile marketing to a recipient who has opted in to receive such mobile marketing.

A copy of the Electronic Communications Regulations is available on the HMSO web site which is at <http://www.hmso.gov.uk/>

The Information Commissioner is responsible for enforcing the Electronic Communications Regulations as well as the Data Protection Act 1998. The Information Commissioner is also responsible for issuing guidance notes on complying with the Electronic Communications Regulations. All currently available guidance notes on areas for which the Information Commissioner is responsible are available on the Information Commissioner's web site at <http://www.informationcommissioner.gov.uk>



## 7. *The ICSTIS Code of Practice (the “ICSTIS Code”)*

The Independent Committee for the Supervision of Standards of Telephone Information Services (“ICSTIS”) regulates the content and promotion of all services offered on premium rate. Its role is to prevent consumer harm, by requiring clear and accurate pricing information, honest advertising and operation of services and appropriate and targeted promotions.

The role of ICSTIS is to supervise both the content of and promotional material for premium rate services and, with the support of the network operators, to enforce the ICSTIS Code. ICSTIS undertakes the following tasks:

- setting and maintaining standards and, as appropriate, requirements for the content and promotion of premium rate services, and keeping these standards under review;
- consulting the industry and other stakeholders before changing these standards;
- monitoring premium rate services to ensure that both the content and promotional material comply with these standards;
- determining any categories of premium rate service which may only be provided on the basis of prior written permission from ICSTIS, identifying conditions which should be attached to the grant of such prior permission, keeping such categories and conditions under review, and receiving, considering and determining applications for prior written permission;
- investigating and adjudicating upon complaints relating to the content and promotion of premium rate services and recommending action designed to achieve compliance with the ICSTIS Code where that has been breached, which may include the imposition of sanctions; all of these, together with decisions relating to the refusal, or grant upon conditions, of prior permission, are subject to an independent appeals procedure;
- administering a system for the payment of claims for compensation for unauthorised use of Live Services, and providing a system for adjudications where such claims are disputed;
- publishing reports on its work at regular intervals and generally publicising its role.

A copy of the ICSTIS Code of Practice is available on ICSTIS’ web site which is at [www.icstis.org.uk/icstis2002/default.asp](http://www.icstis.org.uk/icstis2002/default.asp)

## 8. *The Consumer Protection (Distance Selling) Regulations 2000 (the “Distance Selling Regulations”)*

The Distance Selling Regulations apply to both goods and services, where a contract is made without any face-to-face contact between supplier and consumer. The Distance Selling Regulations do not apply to business-to-business transactions or contracts that relate to financial services, the purchase of goods from a vending machine or the purchase of goods from an auction.

The key features of the regulations are as follows:

- the consumer must be given clear information about the goods or services offered before he or she buys;
- the consumer must be given written confirmation of the purchase; and
- the consumer is entitled to a cooling off period of 7 working days.



A copy of the Distance Selling Regulations is available on the HMSO web site which is at [www.hmso.gov.uk/](http://www.hmso.gov.uk/)

Guidance on the Distance Selling Regulations is available on the DTI's web site which is at [www.dti.gov.uk](http://www.dti.gov.uk).