## **MINUTES**

**of the**

**DIRECT MARKETING COMMISSION**

**on**

**Wednesday 9th May, 2018**

**at**

**The DMA offices**

**Present:**

George Kidd, Chief Commissioner (GK)

Fedelma Good, Industry Commissioner (FG)

## Dr Simon Davey, Independent Commissioner (SD)

Charles Ping, Industry Commissioner (CP)

**In Attendance:**

Suzi Higman, Secretary, Direct Marketing Commission (SH)

John Mitchison (JM), Director of Policy & Compliance, DMA (in part)

Mike Lordan (ML), Director, External Affairs, DMA (in part)

Janine Paterson (JP), DMA lawyer (in part)

1. **Apologies for absence**

Rosaleen Hubbard, Independent Commissioner had given apologies for absence.

1. **Minutes of last meeting + Matters arising**

SH circulated minutes of the previous meeting on Thursday 1st February.

At the last meeting the Commissioners had discussed potential issues in relation to the DMA Code if use of the edited electoral roll register for marketing purposes continued. JM said the matter had now been looked at by the Responsible Marketing Group – he reiterated that every consumer has a chance to unsubscribe once a year when they re-confirm their wish to vote. About 50% of people opt out. There was nothing further to consider. FG pointed out that there may be a potential challenge on how the data is used by consumers in future, if so the DMC would re-evaluate.

The last meeting had looked at how complaints would be dealt with post GDPR. The Commissioners had recognised the importance of members being in a position where they can demonstrate their thinking and ensure they have clear and transparent audit trails to evidence their compliance. SD thought this latter statement should be presented publicly and would act as a vehicle for making clear that this is the DMC’s expectation of DMA members. SD agreed to draft a piece for the DMA website.

Action Point – SD to draft short article for DMA website.

1. **GDPR:**
* **Janine Paterson, DMA lawyer – GDPR update**

JP updated Commissioners on prominent issues in relation to GDPR which are dealt with by the DMA legal department. In particular, the issue of using consent versus legitimate interests was key for many members and there was still some confusion about which form to use. JP explained that a key point the legal department was making to members was that GDPR was about accountability: knowing what your business is doing and then doing it right. The day GDPR comes into force, 25th May, was a day the law changes, but it was recognised that GDPR was an ongoing journey for many companies – not all businesses were going to be immediately compliant. FG pointed out that adhering to the law was important, the ICO were more likely to investigate those businesses that are causing serious problems and are not committed to making change - the key was ‘proportionality’. For those businesses that are working towards compliance, they are unlikely to be on the ICO radar.

* **DMC website – GDPR update**

SH updated Commissioners on the DMC website. The website host company, 383 Project, were in the process of making sure the site was fully secure and compliant under the new GDPR rules.

The privacy policy was also to be updated by JP now that a review had been undertaken by DQM. The policy should also mention our process for when we pass data to third parties, eg, in the event of a referral following an adjudication. It was agreed that in terms of data retention, the DMC would need to retain data indefinitely for the purpose of background information in the event of future cases as well as if requested for reasons of law and order. This would apply to materials kept at the DMA as well as the archive library of adjudications on the DMC website.

1. **DMC extended remit proposal**
* **Mike Lordan, DMA – update**

ML updated Commissioners on discussions around the proposition for the DMC to potentially widen its remit to take on an advisory role for data cases outside membership.

A public consultation had now been issued by CAP due to close on 8th June, which stated that they had reached an agreement to use the DMC as an expert panel to provide advice to the CAP Executive, ASA Executive and the ASA Council in complex cases and other matters involving Section 10 rules. ASBOF were to confirm funding which had been notionally agreed. The next ASBOF meeting was on 26th June, ML thought we may know more then. CP declared a parallel interest in this area as he was a director of ASBOF.

ML confirmed that there had been no formal agreement as yet to the extended remit, but it had been approved in principle. The Commissioners all agreed that whilst an extended remit could work it would be necessary to prepare a ‘strawman’ proposal for the DMA to share with its leading stakeholders, which would outline how the DMC may see any extended remit working in principle – this could include the requirements if necessary for practitioner expertise and legal resource and we needed to consider how we fulfil a role for both the ASA and DMA. All agreed that we could stay close to the law but not be the decision maker of the law and we should continue to take an unbiased view, as at the heart of this is protecting consumers. CP offered to prepare the ‘strawman’ and GK would then discuss with Chris Combemale for sharing with stakeholders.

**Action Point – CP to prepare ‘strawman’ proposal alongside process flowcharts from SH/GK. GK to later discuss with CC.**

1. **Complaints:**
* **Summary of complaints February, March, April**

SH had circulated complaints for the above months.

* **Informal investigation + meeting – update**

This related to a complaint where a consumer had received an email promoting health insurance addressed to an incorrect name. GK, RH and SD had met with the member informally and discussed in more detail. The member had now assured the DMC of its due diligence process, provided the DMC with requested materials and the matter had been closed.

**Ongoing formal investigations:**

* + **Formal case 1**

This related to a formal investigation against a member company operating primarily in the B2B sector. Complaints had been received from businesses who were unable to unsubscribe from unwanted emails but promises to action the requests had not been successful. Two complaints had now been taken to a formal stage. SH reported that the business was unwilling to meet with the DMC in person, but a conference call would be set up with GK and the company’s director in due course to discuss the matter prior to any adjudication. Commissioners discussed the importance of rule 4.9 in the Code which states that members must co-operate fully with the DMC’s investigation or enquiries.

It was agreed that SH would write to the member prior to the conference call citing rule 4.9 and asking that they provide written details in order for the Commissioners to be in a position to fully investigate and adjudicate on the complaints. If the member fails to respond to any request for information from the Secretariat, this may in itself constitute a breach of the Code and result in disciplinary action. In addition, SH would also provide wording from the DMA’s membership terms & conditions which asks members to act in accordance with the findings from the DMC.

**Action Point – SH to write and arrange conference call with member.**

* + **Formal case 2**

A complaint had been received from an individual whose mother had received a call from a legal company. The member’s brokerage arm had sponsored questions via an off-shore supplier which had telephoned the individual asking lifestyle survey questions with the aim of gathering consent for other third parties to also contact the individual. Issues appear to exist over the clarity and timing of the consent to marketing calls and the supplier’s live call script.

SH was awaiting a final response from the member, after which a date for adjudication would be set. An ongoing policy issue which was outstanding in relation to the matter of identifying ‘original’ source was not included in this investigation as we were awaiting a response from the DMA on this point.

**Action Point – SH to set up adjudication date.**

1. **General Matters:**
* **DMA activities**

ML updated Commissioners on DMA matters, particularly in relation to the TPS contract and DMA re-branding.

JM reported that the DMA had now published guidance to GDPR on legitimate interest and consent. FG referred Commissioners to the ICO website where the first part of their consumer education programme ‘Your Data Matters’ had been published.

* **Letter to DMA**

JM reported that Category 4 and Category 5 audits were still progressing – he said that in most cases members have to fix a few things. He confirmed that the audit process is now even tighter than it was when they first started the process.

GK raised a key point in the letter which related to third party suppliers and how consistent this was - specifically to lead generation companies/off-shore companies - with the Code and its principles. JM agreed to verify this with the management team and revert to the DMC. JM questioned whether a member can be truly accountable when it does not know the source of the data it is collecting. He cited a known academic who had recently stated that there was no space in GDPR for third party activity, and informed Commissioners that there was a working party at the DMA which was looking at the main uses for third party data, i.e. suppression, contact and linkage.

* **Responsible Marketing Group**

SH had circulated minutes of the last two meetings.

* **DMC Database**

SD thanked ML for providing feedback from Axciom to the database specification and asked for clarification on next steps in the process. It was agreed that three quotes would be helpful. SD was in the process of gathering an initial quote and he would send ML the final specification alongside suggested suppliers for the DMA to continue the process.

**Action Point – SD to send final specification to ML.**

1. **Any other Business**

The Commissioners agreed on the date of Wednesday 30th May at 9.30am to discuss the DMC extended remit proposal.

1. **Future Meetings:**
* **Wednesday 12th September**
* **Wednesday 5th December**