**MINUTES**

**of the**

**DIRECT MARKETING COMMISSION**

**on**

**Wednesday 12th September, 2018**

**at**

**The DMA offices**

**Present:**

George Kidd, Chief Commissioner (GK)

## Dr Simon Davey, Independent Commissioner (SD)

Fedelma Good, Industry Commissioner (FG)

Rosaleen Hubbard, Independent Commissioner (RH)

Charles Ping, Industry Commissioner (CP)

**In Attendance:**

Suzi Higman, Secretary, Direct Marketing Commission (SH)

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

1. **Apologies for absence**

There were no apologies for absence.

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

SH circulated minutes of the previous meeting on Wednesday 9th May.

There were a couple of minor amendments to the minutes which SH would revise before publishing on the DMC website.

SD said he would write his short piece on audit trails before the next meeting.

1. **Complaints:**

SH circulated summaries of complaints for June, July and August.

SH updated Commissioners on a recent formal adjudication. The case was now fully closed and the website summary had been posted on the DMC website.

SH highlighted the potential issues with member companies with a number of separate entities within some form of group membership. This raised questions over how the DMC would manage complaints with an entity in membership in relation to issues over a sister or subsidiary business that was not in membership. As a membership issue this is something for the DMA to address. It was agreed, however, that it was important for the DMC to highlight the possibility of complications in such scenarios and for DMA decisions to be informed by such inputs.

Action Point: GK to liaise with the DMA on above point.

**Complaint 1**

This investigation concerned a complaint from a consumer who said she had received a number of calls from a lifestyle survey company. The consumer had been rung three times by the member and had spoken to them twice on the day of the complaint: for the first call there was no answer, for the second call the consumer was unable to speak at the time and on the third call she had undertaken a survey. The consumer had also undertaken surveys on numerous previous occasions with the off-shore supplier which had passed the consumer’s data on to the member. The Secretariat, however, was looking at the member’s due diligence on its off-shore supplier to clarify the process of consent and the case was still undergoing investigation.

***Recent v Original Source***

Previously, the DMC had concluded that the issue of recent consent v original consent was a policy issue and it awaited advice from the DMA on the matter. JM did not think there needed to be a policy, consent for GDPR had to be demonstrated and members must satisfy themselves that the data has been appropriately collected. In the case of off-shore companies, JM did not think this could be easily demonstrated and said that this view would be supported by the DMA legal team. It was agreed that the DMC would in future deal with each case – for those cases which needed to address the issue of third party consent - on its merits and would look at previous consent whether it was for consent gathered one stage removed from most recent consent or further back. Commissioners recognised the impracticality of taking each consent back to the original point and form of engagement. This assessment would be done as appropriate and in a proportionate way sufficient to inform a decision of the Commission.

JM said the DMA’s Third Party working group had drafted guidance on the use of third party data – he agreed to circulate this to Commissioners.

**Complaint 2**

This complaint had focused on the activities of a company operating in the affiliate network marketing sector. A consumer who had received a number of emails from a window company had complained that his complaint, when he enquired how his details had been collected, had not then been dealt with in a timely manner. It transpired that the member had provided the creative for the campaign to its network but its clients on the network had used their data in order to send out the emails. One email that the consumer had provided as evidence did not belong to any clients on the member’s network. The Secretariat had investigated and looked into the company’s due diligence on its clients. In terms of the consumer’s complaint, the opt-in details had been provided and these had not been disputed. The member had however, admitted that there had been delays with its responses. It was reminded of its obligations under the Code to provide a prompt and efficient customer service and to have in place adequate resource to achieve this.

***Third party data/hosted mailings***

This case raised questions around the issue of third party data and hosted mailings. An emerging principle (emanating from the ICO – JM offered to circulate the correspondence) seemed to place the same responsibilities on hosted third party marketing as other third party communications….to have informed consent that is closely tied to the services they wish to market. In the past, compliance was focused on the member company which held the data and/or sourced data from third parties for marketing purposes. With affiliate marketing the member company managing the marketing campaign might not seek e-mail or other data from affiliates but rather distribute campaign material for their affiliate partners to distribute based on the data and consents they hold.

The DMC took the view that member companies were responsible for the marketing behavior of these affiliates. It was agreed that affiliates sending messages would need to have opted-in consent relatively specific to that product or service.

SH would write to the member to explain the above points with a view to possibly reverting with further questions at some future point. The Secretariat would remind the member of its customer service obligations in relation to the complaint but also point out the DMC’s expectation that it should be looking carefully at how its affiliates are sourcing consents to ensure compliance. All agreed that when these minutes were publically available, this section describing the Commission and DMA views could be sent as a link to the member.

Action Point: SH to write to member and complainant.

**Complaint 3**

This concerned a complaint from a consumer who had wished to take advantage of a door to door opt out service. He had found it difficult to make contact and the Secretariat had reminded the member of its obligations under the Code to provide a prompt and efficient customer service, and to have in place adequate resource to achieve this. The complainant was also concerned that his registration with the service was not confirmed as having been actioned.

It was agreed that the complainant made a valid point in that it would have been helpful for the member to have confirmed his registration with the service. Whilst this was a service issue and not a decision for the DMC, it was agreed that the Secretariat would write to the member to remind it of the importance of the Code principle to ‘put the customer first’.

Action Point: SH would write to the member and complainant.

**Complaint 4**

This case had looked at complaints from four consumers who had experienced technical difficulties redeeming points and receiving payments following participation on a consumer survey panel. It appeared there had been technical difficulties which had since been resolved. However, there was a further complaint from a consumer who had received texts and emails following his alleged interest in joining the survey panel. The consumer had denied showing any interest in joining the panel. The member thought that the consumer had shown an interest via one of their third party partners, however, they were to investigate and report back to the DMC with details of any consent and permission wording.

**Complaint 5**

This complaint had been raised by a consumer who, having received business emails, had issued a subject access request but had not been told which companies her details had been sold on to. The complainant had also been concerned at the personal manner of the director. The Secretariat was awaiting further details from the consumer before proceeding. It was noted that this complaint was made against a company with which the DMC had had previous dealings.

**Complaint 6**

This complaint was against a non-member company that was part of a larger group of companies, some of which were in membership. The complaint concerned a consumer who had been unable to unsubscribe easily from a marketing communication. The communication concerned his credit report which the consumer had signed up to receive on a regular basis. However, the company had argued that they considered the email to be a service message which therefore did not require an unsubscribe option. The Secretariat had taken advice from the DMA legal team who considered the communication to be a marketing email which therefore would require an unsubscribe option within the email. The member had been informed that this was a view it might wish to consider and it was suggested to the complainant that he raise the matter with the ICO.

***Service v Marketing Communications***

Commissioners discussed the differences between service and marketing communications and how this might have applied in the above case. GK thought this was a good example of an issue which, in the light of new GDPR rules, could be seen more often if/when the DMC does extend its remit and it was important for Commissioners to explore the issues and build a framework of understanding that would inform future work. JM said he would circulate the ICO’s view on service v marketing emails.

1. **DMC extended remit proposal**

**ASA/CAP proposal:**

GK 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 power point presentation had been created and circulated amongst Commissioners with a view to sharing with stakeholders at the relevant time.

SH reported that Rachel Aldighieri, DMA MD had met with CAP the day before this meeting. However, they had not had the opportunity to discuss the proposal. This would be looked at on a future date yet to be decided. RA would keep the DMC updated.

**FEDMA visit:**

GK reported that he was to give a presentation to FEDMA on 2nd October. This was to describe the DMC model and process with a view to seeing whether it could be adopted and developed in multiple markets. All agreed that if this did go ahead and the model was ‘franchised’ then this would not affect the current extent of the DMC remit.

1. **DMA Code:**

GK updated Commissioners on Code matters as discussed in meetings of the Responsible Marketing Committee. The Committee had questioned whether, now GDPR is underway, the Code remained adequate. GK had said he thought it worked as it stood.

The Committee had also discussed how the DMA should handle ‘disaster scenarios’ eg the ‘Bell Pottinger’ case. GK had thought that if a case fell under the remit of the Code and it related to a member, then it could be referred to DMC as we have the process in place to deal with it. Commissioners thought however, that if it is a matter of a member business simply bringing the industry into disrepute through conduct unrelated to the Code then we do not have a role to play, and it makes sense for the DMA to deal with these situations. It was agreed the DMA had primary responsibility for issues around continued membership following action by statutory regulators or in the courts.

1. **General Matters:**

**DMC tenures:**

RH was due to retire in October this year and GK in June next year. Both CP and FG were up for renewal in January next year. All agreed that it was important to have a hand over period when any new Commissioner could be mentored for a period of, eg 6 months and it was agreed that the Articles should be amended to allow for this change to our process. RH said she was happy to remain on the Board for an additional six months or so to allow for a new Commissioner to settle in. FG pointed out the importance of bringing in younger members.

FG agreed to draft a page which would describe what this process would look like. SH would forward FG a copy of the DMC and DMA Articles for reference.

GK would seek DMA agreement before formalising RH’s position. GK would also speak to the DMA about his own position.

Action points:

* SH to send copy of Articles to FG
* GK to agree new process with DMA – formalise with RH
* GK to liaise with DMA about Chief Commission position

**DMC Annual Report:**

This year’s report was discussed. It was agreed to keep it as a soft copy PDF document. The following ideas were presented:

* It would be helpful to make any content ‘bite-sized’ – it could then be used as thought leadership comment usefully in social media, blogs etc..
* It would be helpful to report on any agreement for the DMC’s remit expansion (if in time for the deadline of January).
* FG agreed to send a link on PWC’s enforcement tracker so we could see the type of graphics used.
* Chair’s introduction – to look at the difference we made, future direction, thinking and a couple of thought pieces.
* PR team could interview GK
* Thought pieces should reflect the GDPR environment covering trends, issues, things likely to cause problems.

Action Points:

* Commissioners to email ideas for thought pieces.
* FG to send link for PWC enforcement tracker

**DMC Database:**

SD reported on an earlier meeting that morning with SH and ML. Acxiom had previously checked the spec and we had now asked five Salesforce suppliers for ball park costings. This had been whittled down to three, and we were to revert to the three businesses with a formal invitation to tender document with some key expectations. We expected tender responses back by 8th October, to be reviewed by 22nd October and to make a decision in November. SD/SH/ML would consult GK and inform the DMC Board. ML and SH would talk to IT about integration processes. ML would take responsibility for due diligence and a minimum viable project would be ready by end of March with a refinement phase between April and June next year. SD reported that we were to start from scratch with data on the new database. In terms of time, it would take around 10-12 days of SH’s time and an unknown quantity of SD’s time. SD was prepared to do the work pro bono but not in his role as a Commissioner. Should small additional monies be required then ML did not think this a problem.

**Succession/back-up for Secretariat:**

FG flagged her concern that there was no succession/back up plan for SH’s role.

Action Point: GK agreed to talk to DMA about funding a viable back up plan.

1. **Any other Business**

There was no other business.

1. **Future Meetings:**

**Wednesday 5th December, 10.30am at the DMA offices**