**MINUTES**

**of the**

**DIRECT MARKETING COMMISSION**

**on**

**Thursday 7th February, 2019**

**at**

**The DMA offices**

**Present:**

George Kidd, Chief Commissioner (GK)

## Dr Simon Davey, Independent Commissioner (SD)

Fedelma Good, Industry Commissioner (FG) – in part

Charles Ping, Industry Commissioner (CP)

**In Attendance:**

Suzi Higman, Secretary, Direct Marketing Commission (SH)

John Mitchison, Director of Policy & Compliance (JM)

1. **Apologies for absence**

Rosaleen Hubbard had given apologies for absence. FG was to join the meeting later.

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

The minutes of the last meeting were approved.

JM updated Commissioners on the status of a member following previous discussions 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. The DMC needed to be clear on the membership terms in order to progress complaints effectively.

Following queries around the content of the Third Party Data Guide, JM explained that the guide reflected the ‘status quo’ as it stands. If any matters come to challenge the content, then the DMA would take this into account.

1. **Complaints**

SH had circulated complaint summaries for November, December and January. The following complaints were noted in particular:

**Complaint 1**

This complaint was from a consumer who had received an unwanted piece of marketing mail (from a non-member company) in relation to PPI. She had discovered that her data for the marketing had been supplied by a DMA member and the member had held and processed her data since 2004 when she completed a lifestyle survey. This complaint was in progress and the Secretariat had asked for further details on the reasons for the member’s choice of legal basis for processing the consumer’s data.

**Complaint 2**

This formal investigation centered on five complaints made against a member in the business to business marketing space. A draft casework report had been circulated to Commissioners. The complaints had been varied, but shared some common themes in terms of claims of alleged unprofessional conduct, a lack of written agreements/terms, miss-selling data, and data which did not fit the criteria or was unusable. GK and SH had had attended an informal conference call with the member to discuss the issues. The case was to proceed to adjudication and SH would set a date for this as soon as possible.

**ACTION POINT: SH to arrange date for adjudication**

**Complaint 3**

This case related to a complaint from an elderly lady who had ordered some candles from a member in the mail order sector. She had received a note saying they were out of stock so cancelled the order as they would have arrived too late. She had requested a collection many times but there had been no responses. She had then received a message from the company’s financial department saying she had not paid what was owing and would she ring them back. She had tried to call back but no one answered and she could only leave a message. The member had apologised for the errors, compensated the complainant, and agreed to collect the item. The complainant had then expressed her wish not to pursue the matter further. However, the Secretariat continued its investigation as there had been previous complaints which also centered around the member’s customer service process. The Secretariat had written to the member highlighting the DMA Code’s requirements to take particular care with vulnerable consumers and to have administrative procedures in place to achieve efficient customer service. The Secretariat had noted that remedial actions were being taken, but asked the member for information on how it manages its business in a way that addresses the issues that come with elderly customers and telephone and mail order. The member had reverted to the DMC with an overview of how it addresses the issues that come with customer vulnerability including an awareness presentation for staff training. GK thought the awareness presentation was a useful document which he could share with the DMA’s Responsible Marketing Committee.

**ACTION POINT: GK to share company awareness presentation with RMC**

**Complaint 4**

This complaint centred on a door drop delivery which the complainant, an opticians, believed had not been carried out fully. The order was for 5000 leaflets to be distributed in the immediate location of 13 of their branch opticians. The total cost was £4017 plus VAT. The complainant had used the company previously and said he was aware of what sort of response level should be achieved. He had received just 4 leaflets returned. Additionally, the leaflets that had been returned were printed upside down, and when the complainant raised his concerns with the member, despite their 3 day response period as per their complaints procedure, he said he had to chase for a response. The complainant had been told when he did complain that they had a 7 day policy for complaints, whereby clients have to get in touch with them within 7 days of a distribution otherwise there is nothing they can do.

SH reported that the case was still ongoing, but that an initial response from the member had been received. There did not appear to be evidence that the delivery had not been undertaken fully as claimed and backchecking documents had been provided by the members’ independent backchecking company. Commissioners noted that recall of leaflet deliveries were not always reliable and that more might be achieved through guidance on good practice in the sector.

1. **DMA/DMC Matters:**
2. **DMA re-brand**

Chris Combemale, DMA Group CEO and Rachel Aldighieri, MD presented the DMA re-brand to Commissioners. The DMA would from April, be re-named the Data & Marketing Association.

GK had identified a number of elements to potentially re-branding the DMC to align with the DMA brand. These had been circulated to Commissioners and the DMA.

Those Commissioners present at the meeting were in agreement that whilst the DMC should retain its independence as a separate brand, it should be connected in expertise to the DMA particularly as the DMC would be entering the ASA environment (and potentially other environments) with a new extended remit. They agreed that the DMC should reflect the words ‘Data & Marketing’ in its name, and that this re-brand should align with the DMA re-brand in April. It was thought that to reach this deadline only essential changes would need to be applied, including a re-skin of the website using the right language; name changes to the Articles and other document changes (including the ASA/CAP MOU). RA agreed to send Commissioners details of the agency employed by the DMA for its re-brand and suggested that the DMA team handle the changes. JM said he would provide a figure to add to the budget to go to ASBOF.

SH would arrange a meeting asap to reach agreement with all Commissioners on whether to proceed in this way and if so, the elements of the project which needed to be undertaken by April. SH would also circulate a copy of the DMA’s branding presentation.

**ACTION POINT: SH to arrange meeting to discuss branding with Commissioners + circulate presentation**

1. **Role of DMC + highlighting Code: review of mechanics**

SH had circulated a note from GK which looked at what mechanics were/could be in place to ensure that there were no barriers to those with a wish to make an in remit and legitimate complaint. For example, highlighting the DMC’s presence via website links with other organisations and via DMA membership processes. GK was also keen to have assurance that the new DMA site would offer a ‘how to complain’ type link in an appropriately prominent way. This would be looked at during any re-branding exercise.

1. **Extended remit ASA/CAP: status of MOU – legitimate interest round table**

SH had circulated the ASA’s draft MOU with ASA/CAP which would allow the DMC to extend its remit to advise on non-member cases relating to legitimate interest and related matters. SH had provided this to RA but it had not yet been signed. It was thought that before the first case was presented, that it would be helpful for SH and a Commissioner to go in person to the ASA to discuss process and approach.

SH had circulated a copy of the DMA’s GDPR guidance for marketeers on consent and legitimate interest.

1. **Responsible Marketing Committee:**
2. **Recent minutes**

SH had circulated minutes of the latest Responsible Marketing Committee meetings in December and January, and Commissioners welcomed the new proposed terms of reference.

1. **New rules on Use of Data for Marketing**

SH had circulated the above document to Commissioners.

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

JM reported on current activities at the DMA:

* Restructuring of the DMA – SH circulated the DMA’s new organisation chart for DMA’s central services. This highlighted the merging departments vis DMA and IDM.
* TPS contract – JM reported that TPS had been given a six month notice period before its contract expires. This was under discussion.
* JM reported that the Code had been recently updated to reflect current legislation and revisions were to be put to the DMA Board for approval.
* The next Data Protection Conference was to take place on Friday 1st March. Details had been circulated to Commissioners.
1. **DMC database**

SD updated Commissioners on progress and circulated screen shots of how the new database would look in practice. This would be up and running in March.

1. **DMC Annual Report**

SH had circulated the final Report to Commissioners. This would now be sent out with a press release to media contacts and SH would circulate to key organisations. The Report was in soft copy only.

SH would circulate the draft press release for approval by Commissioners.

**ACTION POINT: SH to circulate press release for approval.**

1. **Call for views on the ICO DM Code**

SH had circulated a copy of the DMC’s response to the above call for views.

1. **DMA legal/Articles of Association + tenures:**

James Milligan, the DMC’s Company Secretary and Asli Yildiz, the DMA’s new Head of Legal attended the meeting to discuss GK and RH’s tenures and any necessary revisions to the DMC Articles :

* **Chief Commissioner position**: The DMA Board had agreed that GK’s position would be extended for up to one year whilst going through the process of redefining the Chief Commissioner role and seeking the right candidate. This was with the caveat that when the new appointment was made GK could begin to step down.
* **Independent Commissioner position (RH):** At a previous DMC meeting RH had volunteered to stay on the DMC Board for an additional period of time if required. This would allow time to source a suitable replacement and handover.

Role descriptions for the Chief Commissioner and Independent Commissioner had been drafted and would be presented at the DMA Board Planning Day on 12 February.

* **Additional Independent Commissioner:** The DMA had suggested that the Articles allow for an additional Independent Commissioner should this be required in the future. This was to allow the DMC to sit closer to the ASA model which had two third independent members.

James Milligan had drafted revisions to the DMC’s Articles to reflect extensions for up to 12 months for the Chief Commissioner and Independent Commissioner roles, when those extensions were required in a situation when the DMC/DMA was securing replacement Commissioners, and to allow the flexibility to appoint an additional Independent Commissioner. It was agreed that during any period of handover, the incumbent Commissioner would retain his/her powers until notified. James would circulate a second draft for approval following which he would produce a written resolution for GK and a representative from the DMA to sign.

It was agreed the DMA give thought to adding some Commissioners in addition to the Chief Commissioner as directors of the company at Companies House.

1. **Any other Business**

FG asked whether a young marketing lawyer from PWC could attend the next DMC Board meting to observe proceedings. All agreed but under conditions of an NDA. SH would ask JM to send an NDA to FG for signing prior to the next meeting.

**ACTION POINT: SH to send NDA to FG.**

1. **Future Meetings 2019:**

**Thursday 16th May**

**Thursday 12th September**

**Wednesday 11th December**