**MINUTES**

**of the**

**DIRECT MARKETING COMMISSION**

**on**

**Thursday 6th February, 2020**

**at**

**The DMA offices**

**Present:**

George Kidd, Chief Commissioner (GK)

## Dr Simon Davey, Independent Commissioner (SD)

Fedelma Good, Industry Commissioner (FG)

Charles Ping, Industry Commissioner (CP)

**In Attendance:**

Suzi Higman, Secretary, DMC (SH)

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

1. **Apologies for absence**

There were no apologies.

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

The minutes of the last meeting on Wednesday 11th December had been approved.

1. **General update**

* **DMC structure – independence and a co-regulatory role**

At the last meeting, SH had circulated a briefing paper which GK had shared with the DMA Board at its meeting on 24th October – this focused on the DMC’s ongoing operational robustness and how that could be reflected in its structure and constitution. Since that time, GK had met with the DMA’s CEO Chris Combemale to talk about progress on a co-regulatory format for the DMC. SH had circulated GK’s review paper of co-regulation and the reforms needed.

JM and CC updated the DMC on recent talks with the ICO and there was to be a workshop on 12th February to review feedback on the various approaches.

JM said he was in the process of creating an infographic which identifies the hierarchy, intersections and interactions of how some possible mix of Codes of Practice and Conduct and GDPR guidance and the DMA Code might relate.

Two potential models were identified in terms of broader coverage under any co-regulatory regime and it was agreed that the Commissioners would crystallise their thoughts on these and feedback to Chris Combemale.

Action Point: GK to arrange feedback to DMA on potential co-regulatory function.

* **Chief and Independent Commissioner positions – update**

Independent Commissioner position: Three candidates had been selected for interview on Monday 10 February. SD, CP and Mike Lordan, DMA would be on the interview panel. SH would circulate potential interview questions as discussed to the panel before Monday’s interviews.

Chief Commissioner position: Three candidates for the Chief Commissioner position had also been identified. The interview date was yet to be set but and would be conducted by the DMA – Chris Combemale, Rachel Aldighieri and the DMA’s Chair Stephen Maher. GK would speak to the candidates individually to talk through the role and its requirements – this would be entirely independent of the interview process.

All agreed it would be helpful if the DMC was represented on the interview panel. CP agreed to ask CC if SD could sit on the panel alongside JM.

Action Point: CP to liaise with CC on interview panel representation.

* **DMC name change – update**

The DMA’s Comms team had amended the Code to reflect the DMC’s new name and this would be uploaded to the DMA site as soon as possible at which point SH would make the necessary changes on the DMC site. JM was looking at relevant messaging for the DMC under the DMA site’s section on the Code.

Action Point: SH to ensure DMC logo changes reflected on DMC and DMA website – JM looking at messaging on DMA website in Code section.

* **DMC privacy & cookie policy – update**

SH reported that this was still in progress and the compliance department were liaising with the DMA’s IT team to make any necessary amendments as soon as possible.

* **DMC database training – update**

A two-hour training session with two DMA staff to be trained on the DMC database was required.

The DMA Preference Services had identified one person. JM had agreed to identify a second person.

Action Point: SH to arrange date for training session as soon as second staff member confirmed.

* **Co Secretary position – update**

Ken Goulding, the DMA’s Group Finance Director was to be the new Company Secretary replacing James Milligan who had recently left the DMA. GK signed the relevant documentation which SH would pass back to DMA.

1. **Complaints**

* **Recent complaints**

SH had circulated a breakdown of complaints for the last three months.

In the light of some recent complaints, SD pointed out that Commissioners could play a part in providing support to the Secretariat in cases where complainants were particularly challenging.

* **Previous complaint**

SH updated Commissioners on a previous complaint which had been informally resolved. This had centered on a complaint from a consumer about a renewal notice received from an insurance company. FG and SH had discussed the matter and noted the draft ICO guidance which refers to renewals and regulatory communications being unlikely to constitute direct marketing if neutrally worded and not actively encouraging the individual to renew.

JM had written an article on the draft guidance on the DMA website – SH had published this on the DMC site.

* **DMC position/LI - update**

The Commissioners had agreed previously that the DMC would, in future, assess cases, particularly those which related to lead generation and third party data broking for telephone and postal purposes, and where data had been processed under Legitimate Interest, against the current DMA’s guidelines for Consent timescales.

Final wording for the DMC’s position had been agreed and letters had been sent to the DMA, the former member, three complainants, ICO and ASA/CAP. The DMC’s position had been published on the DMC website. SH had circulated responses from the ASA and ICO.

Chris Combemale, DMA’s CEO had told the DMC he was supportive but would like to review the position internally first before promotion of any new position to the membership. FG offered to obtain a legal view for JM on applying the ‘consent’ (permission) timescales to LI given that Consent and LI are two separate lawful bases. GK clarified the DMC position in that it may generally be making judgements on whether behaviors seem ‘fair and reasonable’ as required in the DMA Code rather than seeking to interpret and apply the terms of the Regulation.

In taking a view on the timeframes within which marketing might be appropriate under a LI rationale, the Commission had taken the view that data and the rationale for use would degrade under a LI basis just it would under consent. When considering data used under a Legitimate Interest purpose that is coming to the end of a valid lifetime period, the Commission believe any new Legitimate Interest Assessment should treat the time since the original personal data point was captured as a key factor in the assessment.

It was agreed the DMC’s position statement be updated to clarify the importance of members having a recorded strategy in place within their Legitimate Interest Assessment to show their process for keeping a ‘permission’ up to date beyond its initial lifetime.

Action Point: CP to draft addition to position statement and SH to circulate. FG obtaining legal view for JM.

* **Formal Investigation**

Two complaints had been received against a door to door company in membership. There had been little to no responses received and the matter had now been progressed to a formal stage. GK and SH were to meet with the member on 13th February for an informal pre-adjudication discussion. Further details and date for adjudication would be provided to Commissioners in due course.

1. **Responsible Marketing Group**

* **Recent minutes**

SH had circulated minutes of the last meeting on 23rd January.

* **AI working groups**

SH had circulated minutes of the AI Working Group on 25 September and 17

December 2019.

1. **General Matters**

* **DMA activities**

JM reported on DMA activities.

The draft ICO Code alongside a summary of comments and issues raised by members and an article by JM, had been circulated to Commissioners. If enforced, the ICO Code could have significant impacts to particular aspects of the industry – of particular note was guidance for companies that collect data from indirect sources such as Companies House, Edited Electoral Roll and third party data providers as they would be obliged to provide privacy information to the consumer within a month.

* **Annual Report 2018/19**

Articles for the Annual Report were to be received as soon as possible, ideally by the end of the following week. The following topics had been previously agreed

* SD – Artificial Intelligence
* GK – Legitimate Interest/Coregulation
* FG – Cookies and E-Privacy

Action Point: All above to provide articles to SH by 14 February.

1. **Any other business**

There was no other business.

1. **Future meetings 2020**

**10.30am at the DMA:**

**Thursday 14 May**

**Thursday 10 September**

**Thursday 10 December**