

MINUTES
of the
DIRECT MARKETING COMMISSION
on
Thursday 11th May 2017
at
The DMA offices

Present:

George Kidd, Chief Commissioner (GK)
Fedelma Good, Industry Commissioner (FG) – in part
Rosaleen Hubbard, Independent Commissioner (RH)
Charles Ping, Independent Commissioner (CP)

In Attendance:

John Mitchison, Head of Preference Services, Compliance & Legal (JM - attendance in part)
Suzi Higman, Secretary, Direct Marketing Commission (SH)

1. APOLOGIES FOR ABSENCE

Dr Simon Davey (SD) had given apologies for absence. RH announced that she would not be able to attend the next meeting in September.

2. APPROVAL OF MINUTES OF 16th February 2017

The final minutes had been circulated to the Commissioners prior to the meeting. These had been approved.

3. MATTERS ARISING

Door to Door letter/response: At the last meeting SH had reported on an informal case which had related to a door drop delivery of 12,000 leaflets. The case, though informally resolved, had raised concerns around the industry standards of 'validation on request'. It had been agreed that we would inform the relevant committee at the DMA of the Commission's findings and reflections to challenge whether DM companies in membership should be clear that validation should exist and be made available, irrespective of the confidence the service provider has in their systems. A letter had been sent to the Chair of the Door Drop Committee and we had received a response thanking the Commission for its letter and offering assurance that the matter would be raised with the Council at their forthcoming meeting with a view to looking at what action could be taken to improve the level of information available to advertisers on validation services and best practice. It would also explore what actions could be taken with the DMA around standards that member organisations should adhere to in regards to the provision and promotion of validation services to prospect customers.

SH circulated an email from Philip Ricketts, Chair of the Door Drop Committee with feedback from the last Committee meeting - they were to update the section in the DMA guide for Door

Drop on validation services. The Chair reported that this guide was available to advertisers as well as door drop suppliers and forms the basis of what is industry best practice. The amendment and the updated guide would shortly be re- issued to all DMA door drop suppliers along with a covering e-mail outlining the changes and why they have been made.

4. RESPONSIBLE MARKETING COMMITTEE – update

SH had circulated minutes of the last two meetings. GK updated Commissioners on recent discussions in relation to consent timescales and the suggestion that members can have up to six months to use third party data for the first time, and have up to two years for first party data use.

At the last meeting, Commissioners had been concerned that the RMC were planning to amend the Code as they considered the existing Code to provide enough by way of requirements and outcomes in relation to data matters to give a basis for any investigation and adjudication on the issue of aged consents. GK reported that the RMC had come to the conclusion that there should be a small revision in order to provide a strong hook to the guidance on timeframes. JM said there would be no reference to a specific time limit for consent given in the Code, but rather alongside the rule which refers to holding data no longer than necessary, there would be a small revision which refers to the use of data within appropriate timescales. The guidance notes would provide more detailed interpretations.

JM said he was meeting with GK, and the RMC's Chair, Skip Fidura as soon as possible to finalise the Code wording.

5. DMC/DMA REVIEW

a. Grounds of Appeal

Following the last meeting, GK had written to the DMA with the suggested revised appeal grounds. These had been approved by the DMA and sent on to the Independent Appeals Commissioner for his opinion. The IAC had agreed with all but one of the revisions which related to removal of a ground covering proportionality of sanctions. The Commission discussed how its new guidance, to be used when competing evaluation of a case, should ensure the proportionality of sanctions. It was agreed the DMC would request that this appeal ground was reinstated on the basis that the IAC would hear the 'reasoning' for the sanction, that is, the process, decisions and factors taken into account when setting the sanction, rather than seek to reach views on the breaches decided upon by the Commissioners.

Action Point: GK to liaise with DMA RMC + CEO.

b. Commissioner Checklist

At the last meeting, it had been agreed that it would be helpful to add, alongside the Commission's sanctions test and policy documentation which sets out the core factors the Commissioners will take into account in deciding on the appropriate sanction, a checklist of questions to ensure that Commissioners follow good practice post adjudication. This had been circulated to Commissioners. All agreed with the checklist with some minor adjustments.

Action Point: SH to make revisions to Commissioner Checklist.

c. Commissioner performance evaluation

GK reported that part of the DMC's review was to look at the Commission's process of evaluation. SH had circulated a draft Performance Evaluation form. A minor adjustment was suggested.

It was agreed that Commissioners would be asked to complete this once a year (in May/June) to complete and then discuss with GK. GK would also complete his own evaluation and this would be circulated to the Commissioners.

Action Point: SH to circulate soft copy of Effectiveness Evaluation form to Commissioners.

6. **COMPLAINTS**

a. **Summary of complaints: February – April 2017**

SH had circulated a monthly summary of complaints over the last three months. SH had noted that complaint numbers were low and this was also reflected in figures released by the Preference Services and the ICO. CP thought that the latest sector based initiatives, eg BT's scam call blocking system and Royal Mail's interception of scam mail may have contributed to this.

CP noted a complaint against a well-known brand in the car maintenance sector (a non-member). The complaint had related to a number of unwanted marketing emails promoting the company's products and services which had been sent following the customer's provision of his email address in store so that he could receive an e-receipt following a purchase. CP thought this was becoming a common problem and driving negative behaviours. He agreed to write to the Chair of the Email Marketing Committee, highlighting his concerns that this issue seemed to be an emerging trend as more retailers were now offering e-receipts to customers at point of sale.

Action Point – CP to write to Chair of Email Marketing Committee and copy in Commissioners.

FG noted a complaint against a non-member company which related to unwanted faxes from a vehicle management company. The complainant had said that receiving the faxes cost money to receive and print copies. FG asked whether the Secretariat could provide statistics and general information about the Fax Preference Service. SH agreed to liaise with JM.

Action Point – SH to liaise with JM re Fax Preference Service.

b. **Update on formal adjudication**

SH updated Commissioners on a recent adjudication following complaints from two individuals whose TPS registered numbers were contacted by the member to undertake a survey for lead generation purposes. The member had obtained data from two off-shore suppliers which had conducted their own lead generation surveys. The Commission had upheld breaches of two Code provisions – 3.11 and 4.3. In particular issues had been found in relation to the use of off-shore suppliers and their methods for consent; the use of differing brand names; call-recordings/live listings of client/sponsor names at end of survey calls.

A letter of feedback had been sent to the DMA and its response had been circulated to Commissioners for this meeting. The DMC's recommendations were to be discussed at the Responsible Marketing Group meeting with a view to accepting the recommendations regarding end of call consents and asking the relevant councils to update their guides accordingly. The DMA had also thought it prudent to ask the DMA's external compliance auditors to increase focus on sub-contractors in their audits.

7. **GENERAL MATTERS**

a. **DMA activities/preference services/compliance**

JM updated Commissioners on the latest charity rulings and fines by the ICO. The fines were mostly judged against the Data Protection Act rather than PECR. Practices legitimate from 1998 until now, were recently deemed inappropriate without any change to the law – the interpretation has been toughened and the ICO's interpretation of what is 'fair' has changed. GK questioned what is acceptable and what is not and how the Commission should judge future cases. RH said the Commission's duty is to regulate based on the Code – she would

be reluctant to go further. FG thought the Code should be in line with the regulatory environment.

GK identified two rules (4.1 and 3.3) in the Code which could potentially apply to the issues raised in the recent cases, ie, wealth screening data, tele-matching and data sharing. It was agreed that the DMA Code was sufficient as it stands to interpret any complaints in relation to these issues should they reach the Commission. It was agreed that the Commission, independent of the ICO, would judge a case on its merits, and whilst it would take note of what is happening in the wider data community it was important to make decisions based on each individual case and make its judgement based on fairness in the light of the current climate.

It was agreed that it would be helpful if the DMA in partnership with the DMC could draw up examples of practices which they were likely to consider fair and reasonable and Code compliant and others which might be flagged as problematic and potentially unfair and Code-breaching.

JM also updated Commissioners on the DMA's actions in relation to GDPR. A working party had published a checklist for members to work through to ensure future compliance.

Action Point: GK to raise above suggestion of practice examples with RMC.

b. DMC Database

SH said monies for development and licensing required for the new database/CRM system had now been agreed with the DMA. SH had met with SD recently to progress the specification paper for the new database. This would be finalised as soon as possible

c. DMC promotion – audience

This followed the earlier discussion around the low complaints numbers over the last three months. It was agreed that SH would look at organisations/websites which had previously listed the Commission to ensure this continued.

CP raised the issue of recent non-member complaints referred to the ASA – particularly those which related to unwanted emails - CP questioned whether the Commission Secretariat could deal with these instead of the ASA. SH agreed to progress this approach.

Action Point: SH to take on non-member complaints which would normally be referred to ASA – particularly in relation to unwanted emails.

8. ANY OTHER BUSINESS

Commissioners discussed future 'problem' areas in the industry which could affect consumers. GK reported on a meeting with the ICO in which he raised the issue of car sale/lease mis-selling as being akin to PPI...90% of car sales on some type of lease and return (or buy) deal with the "selling" of a financial service by forecourt car sales staff. GK thought there could be new lead generation activity around this issue, and Commissioners discussed how this message could be usefully serviced – to the DMA or perhaps in our Annual Report.

SH circulated a copy of GK's draft presentation to the DMA Board – with particular reference to the What's Next? page - it was agreed that alongside reference to sector based initiatives such as the BT call blocking mechanism and Royal Mail's interception of spam mail, GK could use this opportunity to share the Commission's thoughts on emerging trends in the dm space, such as the issue of e-receipts by retailers; what the space could look like post GDPR; and how the DMC and DMA should be jointly positioned with the ICO.

9. FUTURE MEETINGS 2017

All 10.30am at the DMA offices.

Thursday 14th September

Thursday 7th December