

MINUTES
of the
DIRECT MARKETING COMMISSION
on
Thursday 14th September 2017
at
The DMA offices

Present:

George Kidd, Chief Commissioner (GK)
Fedelma Good, Industry Commissioner (FG) – in part
Dr Simon Davey, Independent Commissioner (SD)
Charles Ping, Industry 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

RH had given apologies for absence.

Congratulations to two Commissioners: FG was to join PWC's legal, compliance and cyber security team in November and CP had been promoted to Chairman of Fuel.

2. APPROVAL OF MINUTES OF 11th May 2017

The final minutes had been circulated to the Commissioners prior to the meeting. These had been approved apart from a minor change which SH would correct. The minutes would be posted on the DMC website.

SD asked if the revised Door Drop guidance referred to in the last minutes had been issued to all door drop suppliers as agreed. SH would follow this up.

Action Point: SH to contact Phillip Ricketts, Chair of DMA Door-Drop Committee

3. MATTERS ARISING

(a) Fax Preference Service statistics

At the last meeting FG had asked for statistics on the Fax Preference Service. This had been circulated to the Board. FG had noted a previous complaint against a non-member company which had sent a fax to a consumer – to receive a printed fax costs money and FG was concerned that this was area for which there was little or no guidance. It was

agreed that SH would raise this with the DMA and ask that they let us know if any help from the DMC was required.

Action Point: SH to liaise with DMA re FPS.

4. RESPONSIBLE MARKETING COMMITTEE – update

(a) Minutes of last RMC meeting

SH had circulated minutes of the last two meetings.

(b) DM Code – fit for purpose/conversation

The Code and its position as being 'fit for purpose' had been raised at a RMC meeting. Discussion at the RMC meeting had been around the potential for the Code to be used as an aid to help business heads transform their businesses and culture, with the upcoming GDPR as a conversation starter. The Commissioners thought that the Code, as a manifestation of a set of objectives and ethics, could aid transformation sooner than later, but with the upcoming GDPR as a single reflection amongst others, rather than as sole reason for transformation.

(c) DM Code/consent timescales

SH circulated comments made by Commissioners in response to the RMC's draft memo to the DMA Board in relation to the transition of timescale changes and the agreement 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. GK and Commissioners agreed that there should be a joint agreement with the DMA on any transition period required for members to instigate the new guidance. GK reported that he would be meeting with the RMC Chair, Skip Fidura and John Mitchison at the DMA to discuss any transition arrangements.

CP said he would like to have a practical clarification on what constitutes 're-affirmed' consent.

Action Point: GK to meet with Skip Fidura and John Mitchison to discuss the above points.

5. DMC/DMA REVIEW

(a) Grounds of Appeal – update

GK reported that he had asked the RMC to reinstate the appeal ground in relation to ensuring the proportionality of sanctions - this was to be 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. GK said that the proposal had been accepted by the DMA. SD asked that this agreement was re-stated to the RMC so that they were clear about the DMC's final decision.

Action Point: GK to re-state appeal ground provision to RMC.

(b) Commissioner Effectiveness Evaluations

GK, FG, RH and SD had completed their forms. CP had yet to complete his. GK and SH would set aside time to go through the salient points raised in the forms for future discussion.

Action Point: GK/SH to discuss evaluation forms. CP to complete his form.

6. **COMPLAINTS**

(a) Summary of complaints: May – August 2017

SH had circulated a monthly summary of complaints over the last four months.

One case related to a consumer who had received an unwanted postal mailing from an energy company. His details had been procured by a member company and passed on within a datafile to its client in the energy business. It transpired that though the consumer's record was already on the member's suppression list, the client company had not utilized the suppression because it was not aware that the Code name on the datafile given to the records to be suppressed signified that they were not for marketing. The Commissioners noted that whilst the client had not utilized the file correctly, there was a concern that the member company had not sufficiently explained the technical process around the application of the suppression file to its client. The member was to revisit its campaign processes to prevent this happening again. Commissioners agreed that this could be a useful case study for the DMC's Annual Report.

SH reported on a member company in the data sector. There had been two recent complaints, one from a consumer who said he had requested to be unsubscribed numerous times from emails and still received unwanted business emails. The member had stated that they could not find the individual's email address on any database and the individual did not send the Secretariat a copy of one of the emails received nor confirmation of the email address used so this could not be evidenced. However, there was a second complaint against the same member from another individual who had asked to be removed from business emails in 2016 and had had four correspondences with the company requesting removal. The company said they had recently changed email sending platforms and although they uploaded their suppression list the consumer had still received an email. SH reported however, that, despite reminders, the Secretariat was still awaiting a response as to why the four requests made by the individual to be suppressed had not been previously actioned. A third complaint against the same member had also been received from a small company which had paid for a database of business contacts, but had since discovered it was downloadable free elsewhere on a government website. Following further details from the complainant, SH would progress this with the member and report back to the Commissioners in due course.

(b) Update on informal investigation

SH updated Commissioners on a recent investigation against a member. The case involved a consumer who was on the TPS register and who had received an unwanted call from a claims company. It transpired that the consumer had provided 'recent' consent over the telephone for his data to be passed from an off-shore supplier (via the member company, acting as a data broker and sponsor of questions on the off-shore supplier's lifestyle survey) to the claims company. There had, however, been little assurance provided to the Commission, that the off-shore supplier was entitled to call the consumer in the first place given he had been on the TPS register for over 11 years.

The Commissioner did not think that it was within the 'spirit' of the Code for members or their agents to make marketing calls to people on the TPS register where the member or member's sub-contractor does not know the source of the data or the nature of the alleged consent to marketing calls, even if the party called did give consent to further marketing during a call which, itself, may have been in breach of TPS rules.

It was agreed that a meeting would be set up with Commissioners, the DMA's John Mitchison and the member company to discuss whether this approach could operate within the DMA Code framework.

7. GENERAL MATTERS

(a) **GDPR/e-Privacy**

Commissioners discussed GDPR and the role of the DMC in the production of guidance issued by the DMA before the deadline of May next year. The DMC was not responsible for the provision of guidance as this would be actioned by the DMA, but Commissioners wanted the opportunity to have sight of any planned guidance/materials in advance of publication and release to the membership. It was agreed that GK would contact the DMA Chief Executive to discuss when and how the DMC should be involved so that there was an opportunity to have an input prior to publication.

Action Point: GK to liaise with Chris Combemale on GDPR strategy for guidance.

(b) **DMC Database**

The new database/CRM system had now been agreed with the DMA – SD would progress this as soon as possible. SH confirmed that it was not urgent at the present time, and though it did need updating, the current system was still workable. SH would let SD know if it became critical.

(c) **Annual Report – content and communications**

GK had drafted a potential article for the Annual Report.

It was agreed that each Commissioner would write an article by 5th October. SH agreed to email the Commissioners with the subjects agreed.

(GK) – Self-regulation rather than statutory regulation – referring to GDPR.

(CP) – Companies who chase audiences for their own gain not the consumer's gain- don't do it just because you legally can – keep in line with customer expectations.

(SD) – Business transformation – if you do the minimum you will lose everything advantageous – keep in mind the Code and its principles.

(FG) - The GDPR as a legal requirement but realising the individual is at the centre – it's about how we treat people and their data.

(RH) – tbc

Action Point: SH to circulate subject ideas for articles. Commissioners to complete by 9th October.

8. ANY OTHER BUSINESS

SD declared a potential conflict of interest as he was to join a Chartered Institute of Marketing charity special interest group. All agreed there was no conflict in his role as an Independent Commissioner.

FG asked if there were any concerns from Commissioners on whether her upcoming role at PWC conflicted with her role as an Industry Commissioner. SH checked the DMC's Articles which stated that an industry Commissioner was a "Commissioner who is an employee or officer of a member of the Association or is considered by the Appointments Committee to have expertise in the direct marketing industry". All agreed FG remained in a position to have a place on the Commission Board as Industry Commissioner.

9. FUTURE MEETINGS 2017

Thursday 7th December, 10.30am