

MINUTES
of the
DIRECT MARKETING COMMISSION
on
Thursday 16th February 2017
at
The DMA offices

Present:

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

In Attendance:

Suzi Higman, Secretary, Direct Marketing Commission (SH)

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. APPROVAL OF MINUTES OF 23rd November 2016

The final minutes had been circulated to the Commissioners prior to the meeting. These had been approved but a couple of minor amendments were suggested.

Action Point: SH to amend minutes as suggested.

3. MATTERS ARISING

There were no matters arising.

4. RESPONSIBLE MARKETING COMMITTEE – update

GK updated Commissioners on recent discussions at the DMA's Responsible Marketing Committee meeting 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. GK referred to the RMC minutes in January which had been circulated (along with the December minutes) to the Commissioners.

The Commission had at its last meeting looked at the role of the DMC and it had been agreed that the DMC should be the custodian of guidance proposed by the DMA and agreed by DMC as a basis for future adjudications but that the DMC should not be presented as author and owner of the guidance. It had been agreed the DMC should have close regard for guidance

issued but that its duty was to apply the Code and it should retain the discretion to interpret the Code as it thought right in individual circumstances. The DMC had a continued responsibility to feedback to the DMA with its views and observations, to ensure issues of concern, such as whether exemptions (alongside specific marketing channels) should be applied. The DMC would seek to satisfy itself it was comfortable with the final form of words in the proposed guide on age and use of data when the DMA had a finished form of words to share. The Secretariat had since produced a flowchart outlining a process of approval on DMC Policy/Code interpretation which had been shared with the DMA.

SH reported that the DMA's understanding of the RMC meeting was that there would be an amendment to the Code which would reference consent timescales but would be unlikely to reference 'specific' timescales rather a more general reference to 'advised' timescales or similar wording – the DMC would then be able to apply its own judgement on a case-by-case basis.

Commissioners thought the existing Code provided 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, and that this would be supplemented by any additional guidance or "policy" from the DMA setting out their views on age and data use.

Commissioners noted the flowchart re policy approval and Code interpretation (see above) did not extend, as drafted, to amendments to the Code itself. Commissioners believed amendments to the Code should be the product of careful collective consideration.

FG suggested that in the first instance, we obtain the RMC's terms of reference to see what role the DMC should be playing on the RMC. It was suggested that GK should then write to the RMC's Chair on behalf of the DMC setting out its views.

Action Points:

- **SH to obtain the Responsible Marketing Committee's terms of reference**
- **SH to upload the DMC Process of Approval for Code/Policy interpretation onto Dropbox**
- **GK to write note to Skip Fedura, Chair of the RMC**

5. DMC/DMA REVIEW

a. Grounds of Appeal

Following the last meeting, SH had circulated comments from Commissioners and DMA legal on the revised grounds for appeal. This was discussed further and all approved FG's suggested amendments made in an email of 14th January.

GK would write to the DMA with the suggested revised appeal grounds.

It was also agreed that it would be helpful to add, alongside our 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 would help ensure that Commissioners re-visit everything seen in an investigation and whether any other points should be considered. Questions FG thought we should ask were whether there is any technological, commercial or other aspect of the case that raises issues over the Commission's ability to apply the Code, and whether the case raises issues over the general marketing, commercial, contractual or other behaviours in the sector in question which may be relevant to the adjudicatory decision.

Overall the checklist might consider, a) how effective the Commission is in its process – does the defined process need any changes, b) how effective is the clarity of its communications to the individuals involved, c) how effective is the Code in terms of standing up to scrutiny in the context of each case.

RH confirmed the new process post adjudication which was the circulation of notes (taken by an independent note-taker) together with the recommendation of breaches alongside the aggravating and mitigating factors and the proposed sanctions. There may then be an opportunity to have a Skype meeting to discuss further where appropriate.

In conversation over new evidence as grounds for appeal the Commissioners recognised a situation could, in theory, arise where the Secretariat became aware itself of significant new information with a bearing on an adjudication in the period between the hearing and confirmation of the terms of the adjudication and its communication to the member. They agreed the Secretariat was under a duty to bring this information to the attention of the Chair of the hearing and for that person to take a view on whether the ruling could proceed or whether the matter would need to be stayed pending further consideration.

Action Points:

- **GK to write to DMA re suggested new grounds for appeal**
- **SH/GK to prepare checklist.**

b. DMC job descriptions:

SH had circulated a job description for the Industry Commissioner role – this had been revised by CP. A few amendments were suggested. It was agreed that the purpose and role for the Independent, Industry and Chief Commissioner roles would be placed on the DMC website.

Action Point: SH to make suggested changes to Industry Commissioner job description and to place the purpose and role sections of each job description on the DMC website.

6. COMPLAINTS

Before SH reported on complaints over the last three months, SD said he wanted to flag the Commissioners' duty of care to the Secretariat when dealing with difficult complainants. SH agreed that any specific concerns about particular individuals would be raised if more support was required.

a. Summary of complaints: November/December/January

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

The three months of complaints had highlighted in particular one complainant who was arguing a point of law over the role of a data processor/data controller when handling personal data. The complainant was targeting a number of DMA members. SH reported that DMA legal were aware and had advised the complainant on a number of occasions. The Secretariat had pointed out that the issues raised were a matter of law and could be rightly raised with the regulator. The Commissioners agreed with this approach.

Another complaint related to an individual who had received a call from a finance company and had been told that his data had been collected by a DMA member for lead generation purposes. The complainant's number was not on the TPS register. The complainant had questioned whether or not the member had in fact called him and requested a recording of the survey call. On receipt of the call recording, the complainant alleged that the call was fabricated, that the identity of the individual called was not confirmed and that there was inadequate consent for passing on to third parties. SH reported that she had liaised with the DMA compliance team on the matter and taken their advice in terms of the script. Though the complainant was not on the TPS register, the script had highlighted problem areas around clarity and consent. It was agreed that SH would contact the member to advise them that the issues found may form an important part of any future DMA compliance audit. It was also agreed that it would be helpful for the Secretariat to feedback areas of concern generally to

the DMA so they could in turn inform its external compliance advisors to help identify problem areas.

Action Points:

- SH to contact member to highlight issues found.
- SH to update DMA with general feedback from complaints to share with external auditors.

b. Update on informal case

SH reported on an informal case which had related to a door drop delivery of 12,000 leaflets. The delivery was carried out by the members' sub-contractor. The complainant was not satisfied that the delivery had been carried out, and though mapped screenshots (of tracking) highlighting the delivery areas had been sent to the complainant, this was after he had received the members' Certificate of Completion. The investigation had highlighted some anomalies and inconsistencies in the members' written materials which they were in the process of updating in relation to the types of validation offered. The Secretariat had proceeded to a formal position though following a Skype meeting with GK, had taken the decision to revert to an informal decision with a formal reminder of obligations under the DMA Code to ensure sub-contractors comply with the Code and take responsibility for the consequences of non-compliance and maintain adequate records to demonstrate compliance with the Code.

SH and GK had thought that in order for a client to be reassured as to whether or not a delivery has been properly carried out, then it would help if validation of delivery was provided to a client at the same time as evidence of completion, so in this case, had the Certificate of Completion been provided at the same time as evidence of delivery this may have been more reassuring to the client. The member had been advised to look at ways in which the provision of tracking information to constitute evidence of delivery could be made possible not only at an earlier stage but ideally in the form of digital evidence rather than screenshots.

It was thought that concerns around the industry standards of 'validation on request' was a collective industry wide issue and that we should inform the DMA's relevant committee of the DMC's findings and reflections to challenge whether DM companies in membership should be clear that validation, however good it is, should exist and be made available. All agreed with this approach. CP noted that the Responsible Marketing Committee were currently discussing door drop matters.

Action Point: SH/GK to prepare letter to relevant DMA council

c. Adjudication – update

The adjudication at the end of January related to complaints received 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. SH reported that the letter of adjudication had now been sent to the member and circulated a draft letter of feedback to the DMA. This, apart from a few minor amendments was approved. SH said she had prepared a draft website statement and GK and RH would revert as soon as possible with comment.

SD pointed out the importance of keeping all 'formal' letters to the DMA in one place for ready access. SH said she would set up a separate folder containing these letters.

Action Points:

- SH to send approved letter to DMA
- SH to post website statement as soon as possible following approval from GK/RH

7. GENERAL MATTERS

a. DMA activities

SH updated Commissioners as John Mitchison was unable to attend the meeting. The DMA Data Protection 2017 event was taking place the following Friday – Commissioners were aware of this and most if not all were attending. A Charity Commission/ICO event was to take place the following week - ICO would be issuing their guidance on consent at the event and SH said this would be live-streamed on the ICO website. SD asked if he could have a copy of any DMA guidance on fundraising regulation. The newly revised DMA compliance process was now active and underway. The latest rulings by the ICO relating to third party consent and profiling had been included in the DMC's monthly report summaries and were available on the ICO website.

b. DMC Database

SH said the total monies for development and licensing required for the new database/CRM system had been agreed. This was now to be approved by the DMA's budget committee which was meeting on 20th March. SD reported that he had talked to a potential developer and this project should come within budget. SD would meet with SH for a 'sanity' check once he had completed the full spec for the database.

8. ANY OTHER BUSINESS

SD mentioned that there were some outstanding items from the DMC Review meeting last Summer and he thought performance evaluations were an item that we had not yet covered. SH said she would pull out the notes of that meeting and liaise with GK.

9. FUTURE MEETINGS 2017

All 10.30am at the DMA offices.

Thursday 11th May
Thursday 14th September
Thursday 7th December