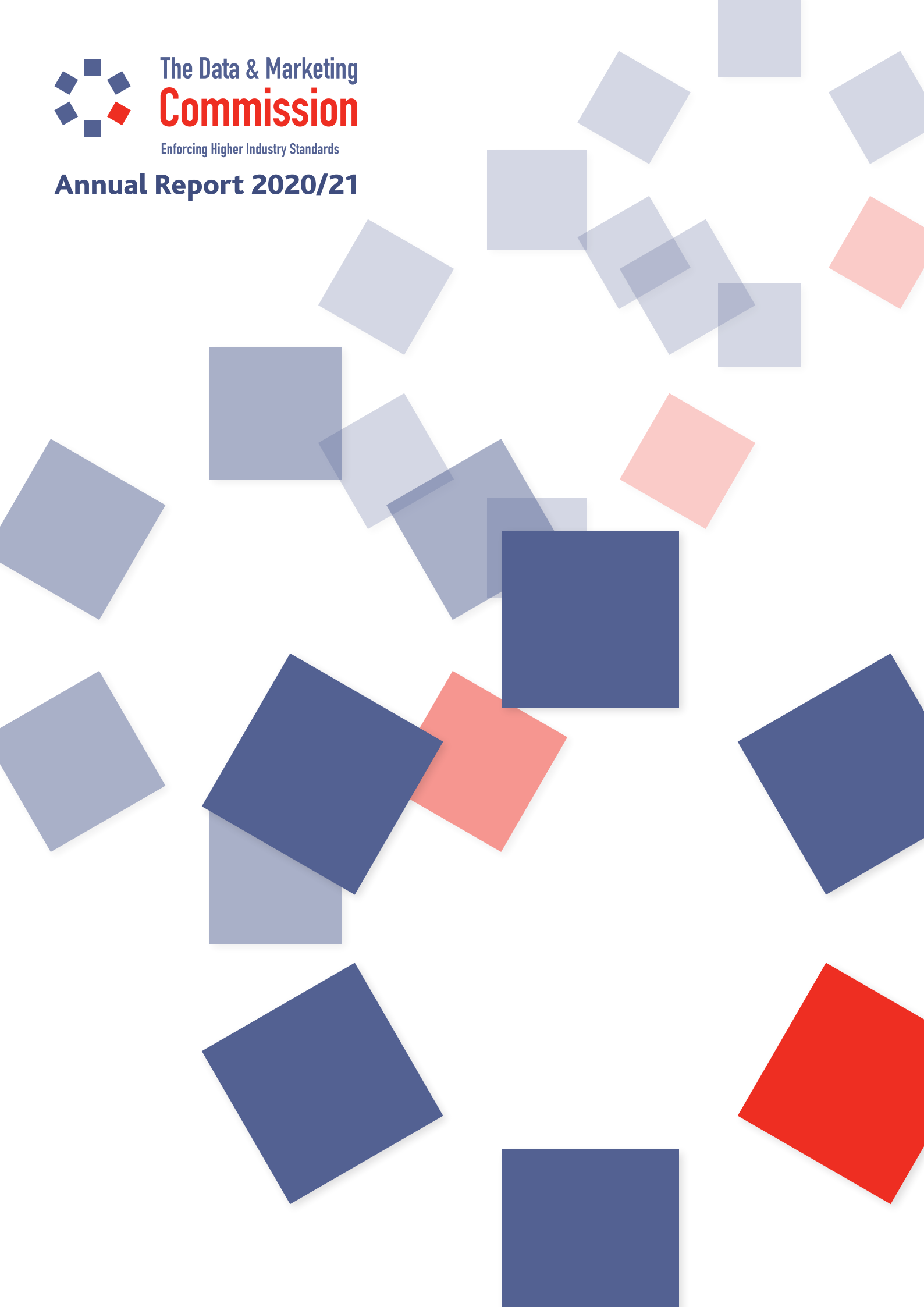


The Data & Marketing
Commission

Enforcing Higher Industry Standards

Annual Report 2020/21



The DMA Code Principles

/ Respect privacy

Act in accordance with your customer's expectations

/ Be honest and fair

Be honest, fair and transparent throughout your business

/ Be diligent with data

Treat your customer's personal data with the utmost care and respect

/ Take responsibility

Act responsibly at all times and honour your accountability

Contents

- 3** About The Data & Marketing Commission
- 4** About the Commissioners
- 5** Chief Commissioner's Report
Amerdeep Somal, Chief Commissioner
- 6** Complaints History
- 6** Complaints Statistics
- 7** The Complaint Process – The DMA Code Principles
- 8** The pandemic effect
Charles Ping, Industry Commissioner
- 9** A pragmatic approach to global data flows
Fedelma Good, Industry Commissioner

About the Data & Marketing Commission

The Data & Marketing Commission (DMC) manages (accepts and hears) complaints made against the activities of the Data & Marketing Association (DMA) members in relation to the DMA Code and considers emerging issues arising from complaints to contribute advice and support to the DMA in enabling higher professional standards.

The DMC is the body which enforces the **DMA Code** and forms part of, and is funded by, the Association and the Advertising Standards Board of Finance (ASBOF). The DMA Code and DMC are established to give effective protection to recipients, users and practitioners of one-to-one marketing, ensuring that companies observe high standards of integrity and trade fairly with their customers and with each other. This is achieved through the investigation of complaints, direct marketing issues and practices. The DMC and DMA have also recognised the potential value of shared research or other action to build marketing understanding, awareness of industry standards and compliance.

The DMC comprises an independent Chief Commissioner, two independent Commissioners and two industry Commissioners. Independent Commissioners serve on a paid basis and industry Commissioners serve on a voluntary basis. Decisions which relate to the adjudication of complaints about a member of the DMA are taken independently by the DMC. In addition to requiring corrective action or operational changes to ensure compliance the DMC can, in any cases of serious wrongdoing, make a recommendation to the DMA Board to terminate a company's membership.

Where the DMC concludes that a member is in breach of the Code the member is entitled to appeal against the ruling. The DMC's current Appeals Commissioner is John Bridgeman CBE TD, who is appointed by the Board of the DMA.

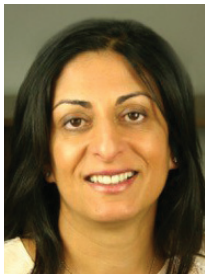
- > The DMC will address any complaints against DMA members where the complaint is within the scope of the DMA Code.
- > If the complaint is not covered by the Code, it is referred to another relevant organisation, for example, complaints which relate to TV advertising are referred to the Advertising Standards Authority.
- > The Secretariat of the DMC aims to confirm receipt of all complaints within two working days and aims to achieve at least 65% satisfaction levels with the action taken by the DMC in relation to cases dealt with by formal or informal procedures.
- > Every complainant is informed of the action taken and/or the outcome of investigations.
- > In addition, the DMC aims to complete 80% of formal adjudications within three months of the first dialogue with a DMA member or any other party and register and progress complaints within seven working days.
- > The DMC aims to have no cases reversed after action by the Independent Appeals Commissioner and no successful judicial reviews or legal challenges, and makes available key trend information on complaints as required.

The DMC will address any complaints against DMA members where the complaint is within the scope of the DMA Code. If the complaint is not covered by the Code, it is referred to another relevant organisation, for example, complaints which relate to TV advertising are referred to the Advertising Standards Authority.

Minutes of the DMC Board meetings are published on the [DMC website](#).

About the Commissioners

The DMC's Commissioners are expected to demonstrate sound judgement and analytical skills and have the ability to digest and make good sense of often complex cases, taking both a big picture and fine detail view. They must have the ability to work and debate effectively and adjudicate, acting objectively on the evidence applying the principles of natural justice. This year, we are delighted to welcome Quinton Quayle to our panel as our new Independent Commissioner.



Amerdeep Somal
Chief Commissioner

Amerdeep Somal is Chief Commissioner at the Data & Marketing Commission. She is the Complaints

Commissioner to the Financial Regulators (Bank of England, FCA and PRA), Judge of the Asylum and Immigration Tribunal and on the Board of the PHSO (Parliamentary and Health Service Ombudsman).

Amerdeep was formerly the Independent Assessor to the Financial Ombudsman Service and Board member at the General Medical Council. She is a former founding Commissioner at the Independent Police Complaints Commission, has held a number of Board roles and her earlier career was as a senior civil servant.



Fedelma Good
Industry member

Fedelma is co-lead of PwC's Data Protection Strategy, Law and Compliance practice in London. The team

operates as part of PwC's global data protection network, providing privacy advice and guidance to some of the world's best-known brands.

Fedelma has contributed to a number of industry working groups over her years in the industry including, for example, those relating to cookies and the development of best practice guidelines for the use of data for marketing purposes. She is recognised particularly for her digital marketing/e-privacy knowledge and her ability to translate complex technical and legal issues into practical, understandable details.

She is former deputy chair of the UK DMA board, is an honorary fellow of the IDM and a frequent presenter at data protection, privacy, e-privacy and information governance conferences across Europe.



Charles Ping
Industry member

Charles is an established leader in data and marketing and is the Managing Director of Winterberry

Group, a specialised management consultancy, and the founder of Charles Ping Associates, advising both clients and agencies on marketing, strategy, leadership and regulation. He has worked at a senior level as a client, a supplier and in the agency world. He was most recently Chief Executive and Chairman of Fuel data and UK Board member of Engine.

Charles is a former Chairman of the Direct Marketing Association and non-Executive Director for the Advertising Board of Finance (the key funding body for non-broadcast advertising self-regulation) and sits on the Governance Board of the Data Protection Network. Outside of work Charles lives in Suffolk and enjoys film, classical music and rebuilding and racing vintage cars.



Karen McArthur
Independent member

An experienced and values driven NED with a portfolio of roles in consumer advocacy and public protection

including Chair of the Waterways Ombudsman, London Travel Watch, Independent Stakeholder Chair for the Heat Trust, an organisation preparing

for statutory regulation, and a member of the integrity panel for Age Check Certification Scheme, which is the first ICO approved certification scheme for the Children's Code.

Additionally, she sits on and chairs professional standards/fitness to practice panels for statutory regulators as well as being an independent member on the Armed Forces Service Complaints panel.



Quinton Quayle
Independent member

Quinton has sat on a number of boards, with a focus on regulation, health and the legal

sector. He currently serves as Non-Executive Director of Cottsway Housing Association and is a Chair/Panel Member of High Speed 2's "Need to Sell" Panel. He also serves as a Public Interest Observer at the Chartered Institute of Taxation.

Quinton is a fluent Thai speaker and currently advises several companies with investments in Thailand, including Prudential, Thai Beverages and Gurin Energy.

Prior to joining the private sector, Quinton was a member of the Diplomatic Service and served as British Ambassador to Romania and to Thailand.

Chief Commissioner's Report

by Amerdeep Somal



This is my second Annual Report from us at the Data & Marketing Commission. The year has incorporated much of the Covid pandemic which has affected all of us, in no small way. In terms of our remit, this has remained the same, to enforce the Data & Marketing Association's Code, yet our role and relationships in the future may change.

We hope, in the coming year, to become an ICO accredited Independent Monitoring Body with a clear remit to enforce a new GDPR Code, through the registration of organisations who sign-up to the Code and the investigation of complaints.

To that end, we have been working closely with a dynamic and forward thinking agency to look at our branding and development. This has led to some lively and interesting discussions in terms of how we are positioned, structured and how we want consumers to reach us and feel assured that their complaints are being dealt with professionally, sensitively and crucially, independently – it is so important that both businesses and complainants can be confident that we will investigate all complaints fairly and transparently.

Let me reassure you that we will continue to enforce the DMA Code and its important message to members – to put the customer first. This is a hero principle of the Code and I have seen, first hand, over this last year, the importance of applying this standard, particularly during such a time of uncertainty and confusion.

Since the introduction of the GDPR, we have seen complaints against members gradually lessen; perhaps, the pandemic is not entirely responsible for the lower numbers of complaints. Surely, some of this is down to increasing awareness of a members' obligation to be transparent, to be clear, to be respectful and this has filtered through to its assurances to customers, that their data does matter. It really matters. Consumers are rightly increasingly aware of current legislation and understand the importance of marketing permissions. It can get complicated though – for example, for mail and telephone marketing, companies may process data under Legitimate Interest which looks at whether there is a fair balance in terms of what a consumer can reasonably expect versus the business benefits – not all marketing has to take place under the basis of Consent.

This is not always an easy message for businesses to deliver to their customers, but I have seen some seriously improved privacy policies in my short time at the Commission, which highlight the art of a good explanation! With that in mind, if customers 'understand' what is going to be done with their data, then complaints will tend to fall as they will have had an opportunity to accept or decline an offer of future marketing.

I look back and remember this year as the year we encountered and managed things we had never experienced before. We were thrown on a voyage of collective self discovery. The year tested customers, the industry and our own culture, values and how we as humans treated one another. We experienced feelings like we never had before. Our rebranding work has channelled our creative response to the new world and we have learnt, through the pandemic to seize an opportunity to reinvent ourselves and where necessary the system. I expect to see a lot more personal stories that will influence our work. Treating customers with empathy, authenticity and giving them a personal experience will impact customer sentiment in a positive way and will encourage the industry to use big data and other technology tools as a force for good.

These are challenging times, not only in terms of the pandemic and its effect on business but with the impact of Brexit and of course the emergence of new technologies – will 2022 be the year which leads the Commission towards a new and even more exciting future? I am collectively optimistic.

Thank you for reading our 2020-21 Annual Report.

The year tested customers, the industry and our own culture, values and how we as humans treated one another.

Complaints History

This year the Commission recorded 84 complaints against businesses in the data driven marketing sector. This low number of complaints is likely to reflect the ongoing periods of lockdown during the Coronavirus pandemic. The Commission's Secretariat investigated 12 consumer complaints and 4 business to business complaints involving members and 68 complaints against non-members. The Secretariat referred, where necessary, non-member complaints to other statutory or self-regulatory bodies and in some cases, particularly for concerns from consumers who were unable to unsubscribe from unwanted emails, the Secretariat made contact with a business that lay outside of membership to inform it of its legal commitments and request that it unsubscribes the individual's email address. There were no formal adjudications necessary this year.

When we look at possible breaches of the DMA Code, we look at whether the issue is specific to the individual complainant or possibly a symptom of a more systemic problem. We examine each case fairly and proportionately and where there are serious breaches of the Code, repeated breaches or ongoing complaints we will progress to a formal investigation which would culminate in an adjudication and an independent review from the Commission Board. There may be some cases which revert to an informal investigation if it becomes clear that the case did not merit a substantive process and formal outcome.

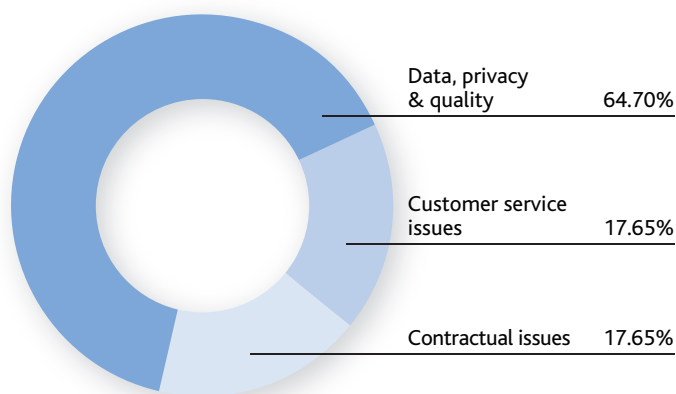
Whilst there were no formal adjudications this year, nonetheless, there were cases which went through a rigorous investigation. One such investigation involved the examination of what constituted a 'service' email versus a 'marketing' message. In this case, the matter was informally resolved – the Commission found that the member had a robust system in place to challenge whether potential messages were service or marketing and these messages were continually reviewed and they took some remedial action in relation to one of their messages to ensure that its purpose was clearer to customers.

Another case related to a door drop delivery which the complainant did not think had been carried out adequately. The Commission's investigation focused on the member's procedures for the provision of evidence and assurance to the clients that the drop had been carried out to order as well as an examination of information the client was given at the point of order. This investigation extended to contact with the independent backchecking company. Again, the processes and procedures in place appeared to be robust and the matter was informally resolved.

We will provide feedback to the DMA following formal cases, particularly if the problems we have seen have become a common practice, or where there may be a case for change in membership or compliance and where the Commission could distribute messages to its membership about Code compliance and how the Commission is interpreting the Code.

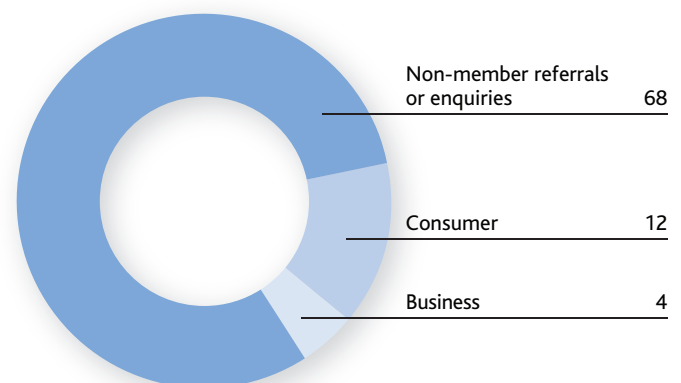
General Nature of Complaints

1 July 2020 – 30 June 2021



Number of Complaints

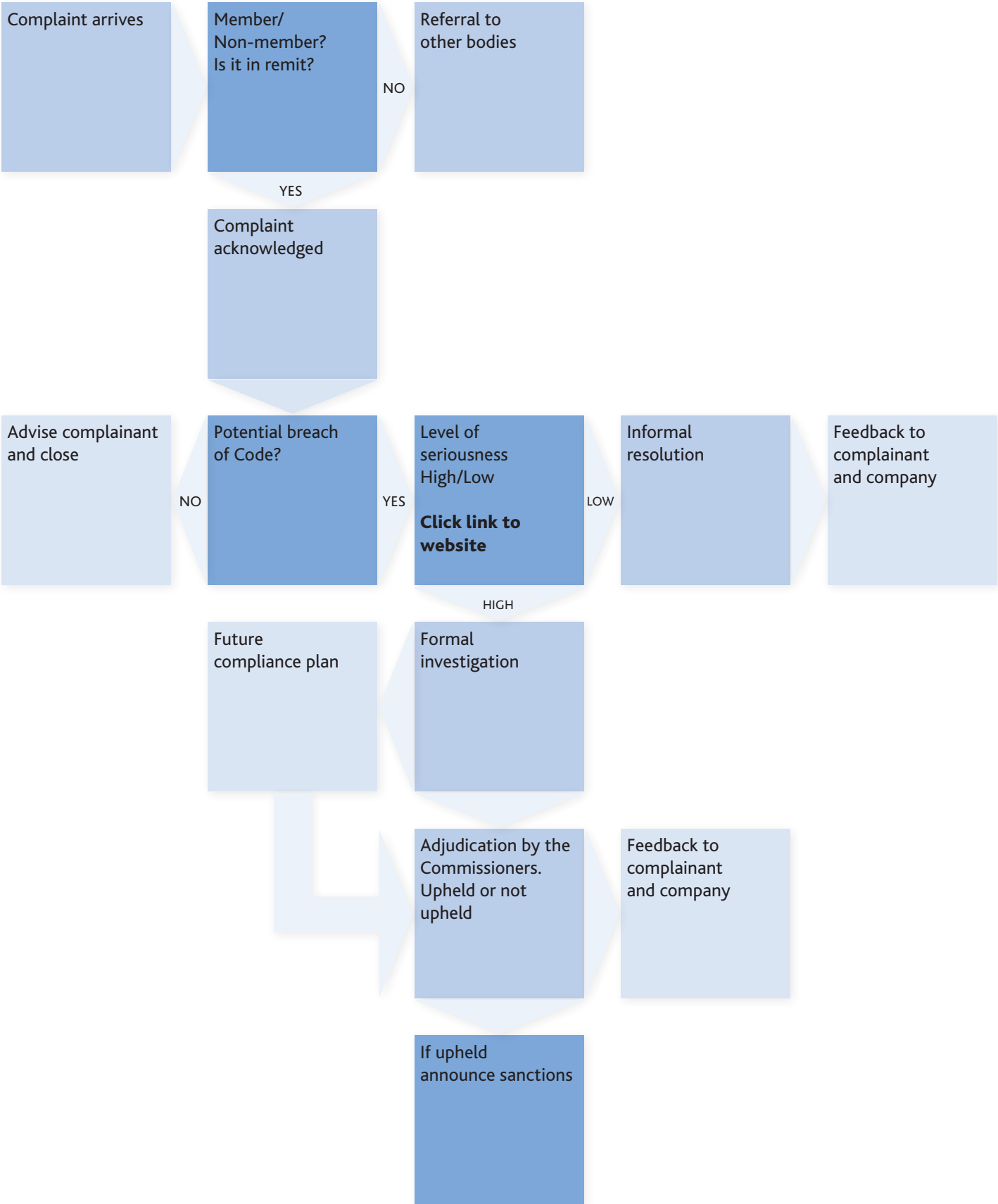
1 July 2020 – 30 June 2021



Non-member complaints are referred to organisations such as Trading Standards, Information Commissioners' Office, OFCOM.

The Complaint Process

The DMC investigates complaints against DMA members involving breaches of the DMA Code. It will investigate any complaint made against a DMA member that relates to one-to-one marketing activity and falls under the scope of the Code. The chart below explains how the DMC handles its complaints.



The pandemic effect

Charles Ping, Industry Commissioner



The past 18 months have been significant in so many ways. The pandemic that is still ongoing around the world changed lives very significantly for a period, and has left some impacts that may be less significant but more long-lasting. The world of retail was gradually moving away from bricks and mortar towards online or hybrid models when Covid arrived and the place for the retailer with no online presence is limited.

Casting our minds back to early in 2020, when shopping was restricted to “essentials” and many retailers were forced to close their doors, shoppers quickly migrated to online. I was repeatedly amused at how every consultancy firm seemed to have a pithy quote such as “5 years ecommerce progress in 5 weeks”. Between the consultant’s sound bites the actual time periods varied, but they always were delivered with the alliterative numbers for PR impact.

The impact on the consumer, and the retail environment, will be more long-lasting than the rhythmically perfect press releases. As shoppers moved online, so did the brands that need to influence shopping behaviour and brand choice. Shopper marketing could no longer rely on instore activities and shelf positioning to gain advantage and had to increase their engagement with the ecommerce and media platforms owned by retailers. This, in turn, has made retailers into media owners as they create the “content” that “visitors” wish to consume. And in this world the visitor to the website, the online shopper, is fully authenticated, linked to an address and a financial profile. This delivers the promise of insight, targeting,

activation and evaluation all happening in a first-party controlled world. It’s almost poetic that this opportunity comes along just as the third-party cookie sets out on its valedictory two-year world tour before being scrapped. The opportunities for brands to reach consumers through these new retail environments allows for insight driven targeting as well as the use of first party data matching through clean room technology. Like all technologies, there’s an element of variation amongst clean rooms but a clean room is a technical environment where data from two or more companies can be matched and evaluated without either party gaining the advantage of seeing the actual match. This will be a key technology for the future use of personal data in advertising and marketing, but like every form of data sharing and collaboration, there are traps for the unwary. It’s worth repeating the mantra “pseudonymisation is not anonymisation” at frequent intervals, as well as understanding the limits of anonymity. The old beer drinking game for film buffs, “Six Degrees and Kevin Bacon” not only shows how wide the repertoire of the UK’s favourite mobile phone salesman really is, but it also shows how connected we can be and it remains instructive for all of us to understand the true meaning of the words “redaction limit”.

And as the economy and world has largely opened up post Covid, the changes that occurred are leaving a residual impact. Shopping is still more digital and less physical than it was in January 2020 – that genie isn’t going back in the bottle so the changes in how brands and retailers use customer data in the post cookie world continues to evolve. As a regulatory body we will continue to interpret the DMA’s principles-based code against these changing purchase paths, technologies and consumer expectations.

And as the economy and world has largely opened up post Covid, the changes that occurred are leaving a residual impact.

A pragmatic approach to global data flows

Fedelma Good, Industry Member



We cannot escape the fact that the ability for personal (and other) data to flow, safely and easily, across geographic boundaries is a fundamental element of our current and future lives. Without these flows the innovation which will continue to transform our lives will be weakened.

Does the collaborative use of data which we have seen arising as a result of the pandemic provide hope for a globally pragmatic approach to enabling these flows to take place with confidence? I remain optimistic [and believe the data and marketing industry can play a key role in making this happen].

When we look back on 2021 the year will no doubt be remembered primarily for the ongoing global Covid pandemic. Other things will of course also stand out: President Biden took office, the Covid delayed Olympics finally took place in Tokyo, COP26 was held in Glasgow and the Brexit transition period ended.

From a privacy perspective it's been a surprisingly eventful year with some pretty important issues coming to the fore, not least of which was the issue of cross-border data flows. When you consider all the toing and froing and changes there have been in the laws which govern these flows, it's hardly surprising that businesses across the world are struggling to find a clear path through.

The Brexit-driven Trade and Cooperation Agreement came into force on 1 January 2021 and changed the basis of UK's relationship with our European neighbours from EU law to free trade and friendly cooperation. However, we had to wait until June for Europe to conclude its assessment of the UK's data protection regime and afford the UK an adequacy decision. This decision meant that flows of personal data from the EU to the UK could continue as before and businesses across Europe breathed a sigh of relief. But this was only a piece of the jigsaw.

In parallel we had the follow up to the Schrems II case¹ the outcome of which had left many organisations re-examining the way they handle personal data transfers and assessing whether the transfer mechanisms they have in place are compliant with EU data protection law.

On June 4, 2021, following a period of consultation, the European Commission adopted two sets of modernized SCCs².

From a privacy perspective it's been a surprisingly eventful year with some pretty important issues coming to the fore.

On June 18, 2021, the EDPB adopted its final recommendations on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data. The final guidance outlined a six-step roadmap to help support data exporters and importers ensure a level of data protection equivalent to that offered in the EU when transferring personal data internationally as well as several important updates including the importance of the third country assessment.

Whilst all this was going on, the world was tackling the Covid pandemic. The figures and statistics relating to the level of infection, vaccination testing results, new treatment regimes... the list goes on, have been our mainstay for nearly two years now. This information could not have been provided to us without cross border data sharing taking place.

To learn from the pandemic, we have to find a way to design and implement a global data flow framework which balances between trust and transparency with data subjects and accountability on the part of those using that data.

I am taking heart from an event that though it got some media coverage, seemed to fly a bit under the radar – the meeting of the Data Protection and Privacy authorities of the G7 member countries which took place on the 7 & 8 September 2021. The meeting took place in the context of the *Roadmap of Cooperation on Data Free Flow with Trust* announced by the G7 Digital and Technology ministers on 28 April 2021. Reading through the notes from the September meeting I was particularly struck by the following: *To uphold information rights in this digital age, data protection and privacy authorities need to become ever more effective at anticipating, interpreting and influencing [such] advances in how data is used. To realise this ambition in a context where data flows seamlessly across borders and business reach customers globally – and build trust and confidence, underpinned by high standards of data protection – requires deeper and swifter international regulatory cooperation.*

I remain optimistic that the lessons learned from the pandemic will help drive this deeper and swifter international regulatory cooperation and that we can look forward to a time in the not-too-distant future when data is used globally with confidence and trust.

¹ On July 16 2020, the Court of Justice of the European Union (CJEU) published its judgment in the Data Protection Commissioner v. Facebook Ireland Limited, Maximilian Schrems (C-311/18) (the Schrems II case). In its judgment, the CJEU declared the EU-US Privacy Shield – one of the primary data transfer mechanisms for the safe and free flow of data between EU and US organizations – invalid. The judgment did uphold the use of Standard Contractual Clauses (SCCs), however, it cast some doubt over this method of transferring personal data outside of the EU.

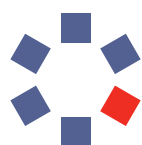
² The SCCs adopted by the Commission cover two use cases – one for use between Controllers and Processors under Article 28 of the GDPR and another for the transfer of personal data to third countries. The two new sets of SCCs are said to align more closely with the GDPR and will "offer more legal predictability to European businesses and help, in particular, SMEs to ensure compliance."

The Data & Marketing Commission

Registered Number: 6469055

Registered Office:
70 Margaret Street
London
W1W 8SS

T: 020 7291 3350
E: dm@dmcommission.com
W: www.dmcommission.com



The Data & Marketing
Commission

Enforcing Higher Industry Standards