**MINUTES**

**of the**

**DATA & MARKETING COMMISSION**

**BOARD**

**Wednesday 8th February 2023 at 10.30am**

**The Oriental Club, Stratford Place, London W1 and via Zoom**

**Present:**

Amerdeep Somal, Chief Commissioner (AS)

Quinton Quayle, Independent Commissioner (QQ)

Gilbert Hill, Industry Commissioner – incoming (GH)

Robert Bond, Industry Commissioner (RB) – on Zoom

Karen McArthur, Independent Commissioner (KM) – on Zoom

**In Attendance:**

Mike Lordan, DMA Director External Affairs (ML) - on Zoom

Simon Davey, DMC Independent External Consultant – in part and on Zoom (SD)

Chris Combemale, CEO, DMA – in part and on Zoom (CC)

Suzi Higman, DMC Secretary (SH)

1. **Welcome and apologies**

AS welcomed all. There were no apologies.

1. **IMB application/GDPR Code of Conduct – update:**

GDPR Code **-** Chris Combemale update

CC updated Commissioners on the progress of the GDPR Code of Conduct and DMA application. There had been discussion with the ICO in terms of the Code’s scope – for a Code to be valuable in the marketplace it made sense to include PECR and other data protection legislation, however, to allow for this there would need to be an amendment to Article 40 of GDPR to state that a Code may cover aspects relevant from other legislation. CC was liaising with DCMS and there was an upcoming meeting the following week with the ICO to discuss the scope for Codes of Conduct. This meant that though some revisions to the Code had been progressed following the last informal submission, that work had stopped until there was further clarity. CC thought approval would likely be closer to September.

ICO should assume funding proposal this year was going to be for 6 months as we are with a migration to compliance assessment fee funding with ASBOF continued support and a start to transition around mid-year.

There would be a further DMA informal submission by mid/end February, a wait for ICO comments then onto the formal approval process.

CC said there would also need to be a wider industry consultation and this would take about a month. The ICO had also asked DMA to consider how they may also obtain consumer feedback on the Code. QQ and RB thought this was not necessary as it is the industry that sits behind the code, not the consumer. As long as there is a Seal or kitemark then consumers would trust in that and the programme behind it.

SD updated the Board in terms of the progress of the DMC application. Broadly, the feedback from ICO was positive, there was sufficient documentation. The key issue for DMC was that it could not complete its application until the GDPR Code was finalised. Other items such as the business plan, management accounts and letter from ASBOF were still outstanding but may not be needed as yet. AS confirmed that Charles Ping, former Industry Commissioner had confirmed at the last meeting that ASBOF was prepared to put its support in writing when necessary. SD confirmed that DMC would need at least two weeks after the DMA has submitted its formal application before DMC can submit its formal application due to the outstanding materials required once the GDPR Code is ready.

In summary CC thought if the Code excluded PECR and the Data Protection Act and therefore only gave a partial offering to members, it would be hard to bring the model to market. He hoped that he had found a route to change the legislation.

CC confirmed that in terms of financial support ASBOF remained very supportive.

CC confirmed that there were around 8-12 Codes applying to ICO with some coming close to approval. GH asked if he could talk to prospective companies at this stage – CC and Commissioners were supportive of this approach.

Simon Davey, Independent Consultant update

SD reported on the latest meeting with the ICO on 20th December. The meeting had been with SD, SH and the ICO’s Senior Case Officer (Regulatory Assurance) Michelle Wyatt and Group Manager (Regulatory Assurance, Christine Eckersley.

SD reported (as above) that ICO were broadly happy, there were some works in progress and refinements required but the substantive part of the application was complete. A lot depended on the final version of the Code and documentation eg around the Code Assessor and Self-Assessment tools (for the Compliance & Monitoring contractor) and training materials which could not be completed until the Code was ready for final submission. There was work to do on the DMC website – SD reported that the ICO would like a soft launch of the new DMC website before the formal application goes in and in the next informal round it would be helpful to have a brief outline implementation plan to go alongside the application eg what date it would be built, what date there would be a test site available etc.

There was also some work to be done around the Articles of Association on the agreed draft and the status of the person with significant control which was currently the DMA.

SD reported that the ICO had said the upcoming Experian tribunal might yet have an influence on the Code – however at the moment, it was business as usual.

**Timing:**

The next informal submission for the DMC application would be end-February/early March with a formal submission after the DMA’s formal submission, which was now likely to be much later, post end-June.

SD said DMC also needed to look at what would happen if the DMA was not happy with DMC’s performance either in responsibilities to the DMA Code or GDPR Code – he thought maybe a potential MOU would be required as the ICO would like some clarity.

There was to be some administration tasks required in terms of cleaning up documentation and branding – it may be necessary to secure an intern for this.

SH was chasing up the Terms of Reference for the DMA’s Governance Committee (formerly the Responsible Marketing Group Committee).

SH confirmed that the Board had signed-off on the Sanctions and Thresholds amendments at the last Board meeting in December.

SH/SD would update the Issues Register with more live issues coming through DMC.

The ICO had asked DMC to show it has the skills, expertise and qualifications that the Commissioners and members of staff will need in their respective roles. This is to show the Commissioners and staff are ‘fit for purpose’ beyond what is said in the job descriptions. RB agreed to send over some material (from Society of Corporate Compliance & Ethics) which may help SD. GH pointed out that the DMA’s GDPR Certificate was a helpful qualification and for staff members, the IAPP qualifications were a well understood industry benchmark.

**Action Points:**

* **SH to chase up Terms of Reference for Governance Committee.**
* **SH/SD to update the Issues Register.**
* **RB to provide SD with compliance materials.**

Compliance Assessment + Monitoring Tender – update (Tender document/ABC response, Letter of Intent)

AS updated the Board on the Compliance and Monitoring Tender Submissions. This was to appoint a company who could perform the assessment and monitoring of organisations who want to sign up to the GDPR Code of Conduct.

Five companies had been shortlisted to two organisations. A panel including AS, RB, ML and Jaemie Cameron, new Director, Legal & Compliance at the DMA (replacing John Mitchison) had selected ABC. ABC, a UK media industry body, is a well-established industry owned auditor, and they offer a wealth of experience working with programmes with similarities to the DMC in terms of both structure and content. SH had circulated the submission tender document as well as ABC’s response.

SH had prepared, with ML, a Letter of Intent, for AS to sign.

SH also reported that Jan Pitt at ABC had asked for a meeting to discuss planning and perhaps set up a timeline. It was agreed that AS, ML and SH would meet with ABC and update them on the latest developments with the application and GDPR Code. ABC would also be asked to provide the staff names of those that would be directly involved in the compliance assessments and monitoring. In the meantime SH had prepared, with ML, a Letter of Intent which would be sent to ABC and confirm that a contract would be prepared in due course when the timing was known. SH pointed out that ABC’s input would be required prior to the new body’s launch date as they were to help produce the compliance assessment tools. This would not be possible however until after the GDPR Code was finalised.

**Action Point:**

* **SH to arrange meeting with ABC and send Letter of Intent (SH to ask ABC for names of staff involved in assessments).**

Financial Director/Company Secretary role – Ken Goulding

KG had been due to attend this meeting to offer his financial services to the DMC and had thought this possible as there would be no longer a conflict with DMA. However, he had now retracted the offer due to other work commitments.

It was agreed that it could be possible to split the role into two parts. The Company Secretary role could be undertaken by a DMC Commissioner and a small-medium size firm could take on the accountancy work.

SH would ask KG to lay out the scope of work in terms of time commitment and what sort of qualification and experience we may need and SH would then feed back to the Board.

**Action Point:**

* **SH to ask KG to lay out the scope of work required for the DMC finance position.**

1. **Minutes of last meeting + Matters Arising:**

Minutes – Thursday 8th December

SH had circulated minutes of the last meeting. These were approved. All action points had been completed. SH reported that the new DMC office address was based at Menzies LLP at Lynton House, Tavistock Square. SH had made changes to the letterhead, website etc.

Independence + Impartiality + Funding Risk

*[Conflicts of Interest declarations + DMC Risk Register/Code Risk Monitoring Register]*

There were no conflicts of interest declared for this meeting. All declarations were up to date.

All were happy with the previous changes made to the Registers.

SH agreed to alter the ‘direction’ column in the DMC Risk Register and use an arrow instead.

**Action Point:**

* **SH to make display change to DMC Risk Register.**

1. **DMC updates:**

Complaints: December - January

SH had circulated complaints for the above two-month period. There were two ongoing DMA member complaints and several non-member complaints which had been referred to the relevant bodies. SH was waiting for further evidence from the two member companies, one which required further information on the due diligence undertaken on its suppliers and evidence of consumer sign-up to two third party websites. The other complaint centered on unwanted mail received where the consumer had been informed that he was not on the company’s database (though he did not have a copy of the mailing to evidence this) but then received further unwanted postal marketing which was not addressed to him personally but had his address on the leaflet. SH pointed out the difficulty here when postal marketing was unaddressed. This was discussed further amongst the Commissioners.

General Matters:

* DMA activities:
  + ML reported that the DMA had won a Department for Education (DfE) tender worth around £500k.
  + The DMA’s offices had now closed and DMA was looking for suitable premises.
* DMA Responsible Marketing Committee:

There were no recent minutes available for this committee. SH would circulate once they had been made available.

RB and AS had met with the new Chair of the Committee, Tim Roe. The Committee was to be called the Governance Committee going forward. RB would let Commissioners know if there was anything on the agenda of wider interest.

* AI Working Groups – update: SH had circulated minutes of the last meeting on 29th November.

1. **Any other business**

Date for Diaries: Data Conference 2023 – Tuesday 28th March, 9-2pm, central London.

GH and SH would be attending.

Farewell to Karen McArthur, Independent Commissioner: AS thanked KM for her time and contribution on behalf of the Board and passed on very best wishes for the future.

AS confirmed that Kate Staples, former General Counsel to the Civil Aviation Authority and experienced NED would be joining the DMC as the new Independent Commissioner on 1st March 2023.

The next meeting would be in person – this would be the default position going forward but those unable to attend would be able to join via Zoom. It was agreed to have a lunch after the next meeting in May.

**Future DMC Board Meetings at 10.30am at the Oriental Club**

Wednesday 24 May

Wednesday 6 September

Wednesday 6 December + Xmas Lunch