**MINUTES**

**of the**

**DATA & MARKETING COMMISSION**

**BOARD**

**Wednesday 6th September 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 (GH)

Robert Bond, Industry Commissioner (RB)

Kate Staples, Independent Commissioner (KS)

**In Attendance:**

Suzi Higman, DMC Secretary (SH)

Mike Lordan, DMA Director of External Affairs (ML)

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

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

1. **Welcome and apologies**

AS welcomed all. There were no apologies and all consented for the Zoom elements of the meeting to be recorded.

1. **Minutes of last Meeting + Matters Arising**
2. **Minutes of Thursday 24th May and Action Points**

SH had circulated a copy of the last minutes and these were approved.

All action points had been progressed. However, SH was still awaiting the Terms of Reference for the DMA’s Governance Committee and had been assured that this was in progress. Some remaining action points were to be raised later in the meeting.

1. **Independence + Impartiality + Funding Risk**

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

No conflicts of interest were declared.

QQ pointed out that the DMC Risk Register contained 17 risks and in due course it may be useful to consolidate some of the risks thereby reducing the number slightly. AS thought insufficient resources should be higher up the table. SH agreed to make some changes and send to QQ to check he was happy with the changes.

QQ had taken on a role on the panel of East West Rail. SH confirmed that his Register of Interests form had been updated accordingly.

Action Point:

* SH to amend DMC Risk Register as above and revert to QQ.

1. **Complaints**
2. **Breakdown of Complaints May - July**

SH had circulated casework summaries for complaints in May, June and July. These had primarily been against non-DMA members. SH informed the Board about a recent complaint, not included in the attached papers but to be included in the monthly report later that week, which related to a complaint against a member, which operated an affiliate marketing network. The complaint related to unwanted emails and the complainant’s wish to unsubscribe which had not been actioned. RB agreed to join SH on any information gathering meeting with the member in question. The complainant had also expressed concern about reaching the DMC via the DMA website. He had not found details of the DMC in a prominent position. SH had fed this back to the DMA who were in the process of producing a new website and would also consider changes to the current website. The complainant had also pointed out the importance of making it clear that consumers could also telephone the DMC to make their complaint and this was important for those that were unable to complete online forms. Although this was already reflected on the DMC website, SH had made two changes to give further clarity and this point would also be taken on board when approving copy for the new DMC website.

KS pointed out that business models were becoming ever more complicated and this could be a risk factor. SH would consider this in relation to the DMC Risk Register.

Action Point: SH to amend DMC Risk Register to accommodate KS point above.

1. **Formal adjudication**

SH confirmed that an adjudication letter had been sent to the member and the adjudication statement was now live on the DMC website. There had been no appeal. SH would chase the member as to date there had been no response.

KS pointed out that the recent adjudication highlighted a potential issue in the wording around vulnerable consumers in the Code, which currently states “*members must not exploit the credulity, lack of knowledge or inexperience of any consumer – and take particular care when dealing with children and other vulnerable consumers”.*

The Board discussed whether there could have been anything different in terms of process, which may have better served the Commission during the adjudication process. GH thought it would have been helpful for the Board to have sight of technical documents in terms of the member’s infrastructure and processes. SH agreed to consider this going forward.

Action Point: SH to chase the member as above.

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

CC updated the Board on latest timings in relation to the submission of the DMA’s GDPR Code.

The ICO would not be reviewing the Code until the Bill was certain and the best estimate was that Royal Assent would be by end of March 2024. The DMA hoped to complete their next informal review between the latest ICO feedback (which had not yet been received) and the end of March with a view to formally submitting as soon as Royal Assent is achieved.

CC also reported on the Experian case. The First Tier Tribunal had ruled generally in Experian’s favour and the ICO had now appealed to the Upper Tribunal.

KS asked what ‘plan B’ was – CC said the Bill would likely proceed – there was strong support on the key provisions from the various political parties. Any risk of aborting the process was very low but it was important that the Code included PECR regulations. The DMA were undertaking a full campaign launching end September to support the passage of the final phases through parliament.

1. **IMB Application: Simon Davey, External Consultant**

SD reported that from CC’s latest timing, it appeared that formal approval could potentially be achieved mid-end June 2024. He reminded Commissioners that the DMC IMB application has to trail the Code submissions. The application form had yet to be finalised by the ICO, though it looked as though it was likely to have a slightly lighter touch with a move towards less documentation required. However, the new application form would require a whole re-working of the ‘working document’ that DMC had been working to currently. SD reported that he would be meeting with SH in the autumn to spend some time re-shaping the application and documentation. There were still some outstanding items needed for the application, examples were website content and Terms of Reference for the Governance Committee but still outstanding was an MOU – i.e. to cover situations where for example, the unlikely scenario, in which the relationship broke down between DMC and DMA as Code Owner or if the ICO said the new scheme was not working – the MOU would provide opportunities to raise issues before any ultimate decisions were taken.

SD pointed out the risk that he might not be able to continue working on the IMB project next year due to changes in his personal circumstances.

1. **Compliance and Monitoring Assessments (ABC appointed)**

SH reported that a meeting was to be held the day after this meeting with ABC the audit company selected to run the compliance and monitoring aspects of the new DMC. SH confirmed that they had been kept up to date on the latest timing. It was thought that they may make a start on some of the assessor tools, but this would be very early stages as until the GDPR Code was finalised then the assessor tools could not be completed. The DMA’s Director of Legal and Compliance, Jaemie Cameron would also be attending the meeting along with SD.

d. **Financial Director/Company Secretary role – Scope of Work by Ken Goulding**

ML left the room at this point due to a conflict of interest. SH reported that we had received one quote so far for the work and would welcome a second quote. Both GH and RB thought the quote seemed about right and was not ‘surprising’. However, a second quote was needed and RB offered a contact, which he would send to SH.

Action Point: SH to follow up RB’s contact.

1. **DMC new website – update**

SH said the initial copy had been written by Michael Sturrock who had now left the DMA. The copy was with CC who was yet to make comments. SH said once CC had reported back, the copy would be sent to Commissioners for feedback.

Action Point: SH to chase CC for website copy comment.

1. **DMC messaging for Commissioners to share**

At the last meeting it had been agreed that GH would prepare messaging for the Commissioners on who we are and what we do, with a look to the future as the new IMB. GH had prepared a short 30 second message, which he shared with Commissioners. He would send this round as a Google Doc for comment.

Action Point: GH to share messaging with Commissioners for comment.

1. **Experian Tribunal and Appeal – update (RB)**

RB shared his views with Commissioners on the outcome of the tribunal.

RB also referred to a paper recently produced by the ICO and Competition Marketing Authority (CMA) about on-line architecture, that is, the way in which organisations present their offerings. There are many examples of the way that companies use technology and visuals to nudge people towards consenting to tracking cookies for example. RB reported that there would be a lot more interest taken in these types of potentially deceptive practices. RB said DMC should be aware that there would be more complaints from consumers about their personal data and what companies are doing with it on their systems etc.

1. **General updates**
2. **DMA activities – update**

ML reported that the ICO was going out to tender for the TPS in October/November. Also, confirmed that the DMA had won two large contracts for DfE training.

1. **DMA Governance Committee [formerly Responsible Marketing Committee]**

SH had circulated minutes from the last three meetings of the Committee.

1. **AI Working Groups**

GH was attending these meetings and found them helpful for keeping ahead of information about AI and its implications for our industry.

1. **DMC appraisals – update**

AS had set up one-to-one catch up meetings for appraisals, which DMC was obliged to arrange every 12 months. As the SID, QQ was to appraise AS and took feedback from Commissioners last year which he would repeat this year. This would be anonymised for AS.

1. **DMC annual report**

SH explained the process behind the yearly production of the report. SH would contact Commissioners for them to suggest ideas for content and a deadline by which the contributions should be sent to SH for inclusion in the report. RB said his contribution would be on “the value of risk assessments”.

Action Point: SH to liaise with Commissioners re Annual Report contributions.

1. **Any other business**

GH queried whether ABC was aware of the latest timing plan for the IMB project. SH assured GH that they were kept up to date on a regular basis.

QQ left the room due to a conflict of interest. ML left the room for a Commissioner only topic to be discussed.

AS asked the Commissioners whether they would formally approve QQ’s renewal for a further three-year term starting 1st January 2024. All approved.

AS informed the Board that she was the recommended candidate for the Local Government Social Care Ombudsman. This was subject to a pre-appointment scrutiny committee on 18th September and if appointed it would likely be commencing January 2024. There was further discussion at this point about the ramification for the Chief Commissioner position should this role be offered.

**Future Board Meetings 2023 – 10.30am at the Oriental Club, Boardroom**

Wednesday 6 December + Xmas Lunch (in person)