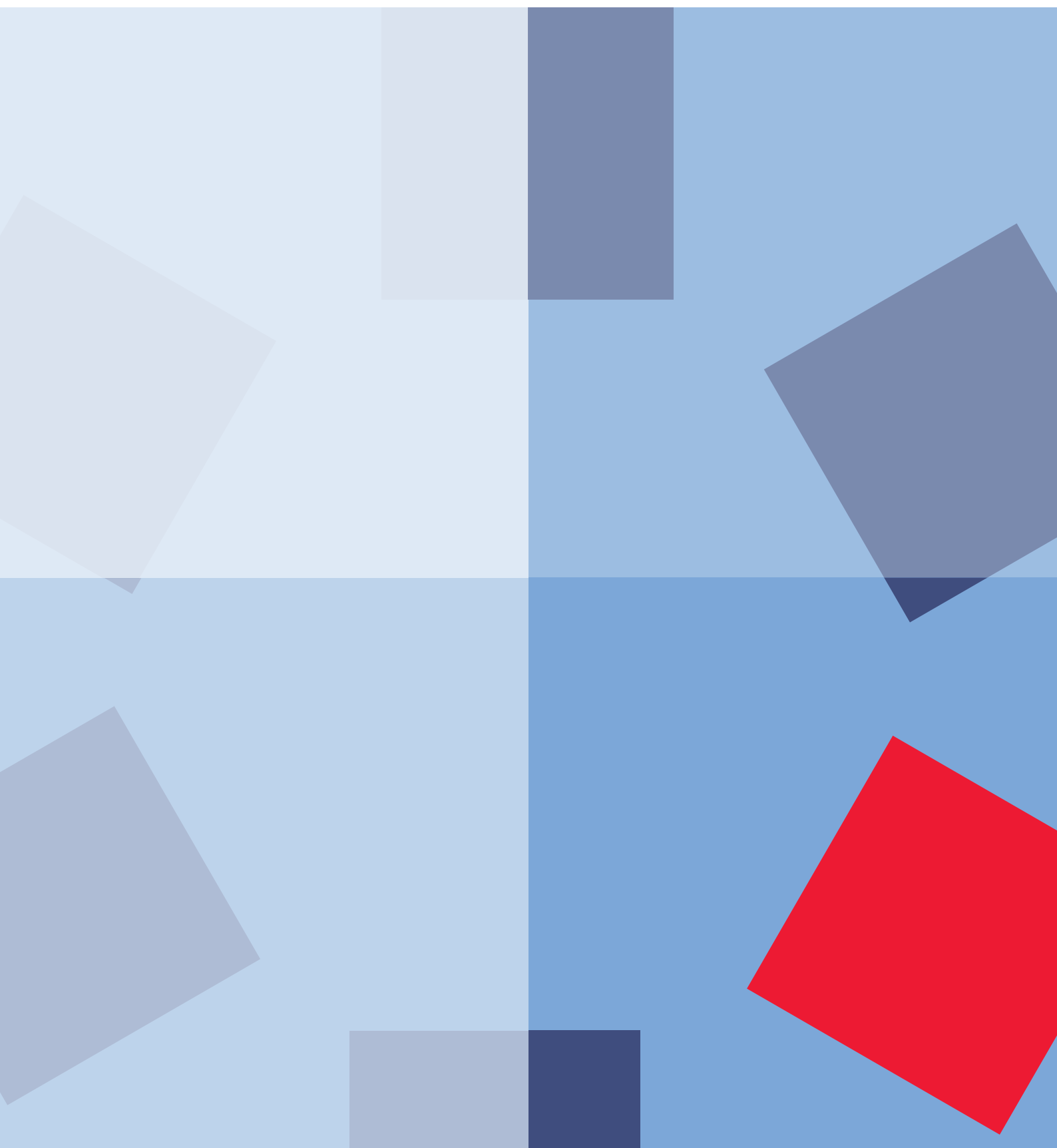


The Data & Marketing
Commission

Enforcing Higher Industry Standards

Annual Report 2022/23



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
- 6** Chief Commissioner's Report
Amerdeep Somal, Chief Commissioner
- 7** Complaints History
- 7** Complaints Statistics
- 8** The Complaint Process –
The DMA Code Principles
- 9** The Value of Risk Assessments
Robert Bond, Industry Commissioner
- 9** Complaints about Direct Marketing
Quinton Quayle, Independent Commissioner
- 10** Industry and Technology views in 2023
– challenges on consent and cookies,
opportunities for data dialogue
Gilbert Hill, Industry Commissioner
- 11** First thoughts from a
new Independent Commissioner
Kate Staples

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 Appeals Commissioner, appointed on 1st January 2023, is Steve Wood, an independent consultant, researcher and writer who was formerly Deputy Commissioner at the Information Commissioner's Office.

The DMC also appointed an Independent Complaints Assessor to consider complaints about the standard of service provided by the DMC. Richard Thompson, an accredited commercial mediator with 25 years' experience in regulation, complaint handling and dispute resolution was also appointed on 1st January 2023.

- › 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 legal challenges, and makes available key trend information on complaints as required.

Minutes of the DMC Board meetings are published on the **DMC website**.

About the Commissioners

The 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.



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, Financial Conduct Authority and Prudential Regulation Authority), Judge of the Asylum and Immigration Tribunal and on the Board of the PHSO (Parliamentary and Health Service Ombudsman). Amerdeep is also incoming Chair of the Law Society of England and Wales from 1st January 2024.

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 several Board roles and her earlier career was as a senior civil servant.



Robert Bond

Industry member

Robert is a Solicitor, Notary Public, Chartered IT Professional and Compliance & Ethics Professional. Robert has over 40 years' experience in the fields of IT, e-commerce, computer games, media and publishing, data protection, information security and cyber risks.

Robert is Head of the Examination Board for the Practitioner Certificate in Data Protection, Past President of the Board of the Society for Corporate Compliance & Ethics, Chairman of the Data Protection Network, a Director of South West Grid for Learning, a Deputy Vice President of the Notaries' Society, a founder member of the Advisory Group on the Governance of Data and AI to the United Nations, a Fellow of the Society of Advanced Legal Studies and a Companion of the British Computer Society.



Gilbert Hill

Industry member

Gilbert is a privacy technologist, entrepreneur and speaker. He was previously CEO at Tapmydata, a VC-funded Web3 startup building wallets for data control and portability. Gilbert advises brands, boards and crypto projects on data strategy and execution as a NED, and he is a Founding Member of the Data Privacy Protocol Alliance.

After a career in Finance, as MD of a London digital agency Gilbert grew fascinated by the relationship between data, digital marketing and regulation, founding Optanon, a pioneering software product in the PrivTech sector, and Cookiepedia, knowledge base for consumer tracking on the Web. These businesses were acquired by OneTrust and he led the deal, migration of legacy clients, team and technology while establishing new operational units across Europe.

On a voluntary basis, Gilbert is Fellow and Senior Tutor on Privacy & Ethics at the Institute of Data & Marketing, and a regular contributor to events and media in the UK and internationally.

**Quinton Quayle**

Senior Independent Director and Independent Commissioner

Quinton has sat on a wide range of boards, with a focus on regulation, health and the legal sector. He has chaired the Remuneration and Appointments Committees of several boards.

He currently serves as Chair/Panel Member of High Speed 2's and East West Rail's "Need to Sell" Panels.

Quinton is a fluent Thai speaker and currently serves as Senior Adviser to Gurin Energy which is investing in renewable energy projects in Asia, including Thailand.

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

**Kate Staples**

Independent member

Kate was the General Counsel & Secretary to the Civil Aviation Authority (CAA) until December 2021, holding the role for over 11 years. Kate was also a Trustee of the Air Travel Trust, of the CAA's pension scheme, and company

secretary to the CAA's two subsidiaries: ASSI Ltd and CAA International Ltd. In February 2023 she took up the role of Director of Governance and Legal Services at the Care Quality Commission.

Before joining the CAA, Kate worked at the Department for Transport, primarily advising on aviation matters, with a short stint in one of the railways teams. Kate did not start off as a public lawyer; in her early career she specialised in high value construction and engineering disputes at a leading City practice.

Kate enjoys the arts, travel, developing her photography skills and following the fluctuating fortunes of Liverpool FC.

Chief Commissioner's Report

by Amerdeep Somal



This is my fourth and final Annual Report from the Data & Marketing Commission. Having served beyond my first tenure I am now moving on with the knowledge that I leave a robust and collegiate Board of Commissioners who will continue to serve the DMC well into an

exciting future.

As we stand today, our remit remains the same but we continue to work towards becoming an ICO accredited Monitoring Body with an enhanced remit to enforce the DMA's GDPR Code of Conduct, through the registration of organisations who sign up to the Code, with ongoing monitoring and the subsequent investigation of complaints. We are hopeful that our Monitoring Body status will be achieved by the end of next year – this of course, is in part, dependent on the approval of legislative changes and in the meantime, we continue to enforce the DMA members' Code and this will remain in place as part of our revised remit.

Complaints have been low this year as in the previous three years and, as I mentioned in my report last year, we do not think that the pandemic can be held entirely responsible for the lower numbers. In general, members are aware of the key message – to put the customer first, and we know that consumers are alert to the fact that their data really matters and they understand the importance of their privacy. As ever, we continue to treat consumers with empathy and we aim to give them a personal experience which will impact their outlook towards privacy and data in a positive way which in turn can only encourage the industry to use its marketing activity as a force for good.

In general, members are aware of the key message – to put the customer first, and we know that consumers are alert to the fact that their data really matters and they understand the importance of their privacy.

There are, however, a few members which do not comply with the principles of the DMA Code. We recently undertook an investigation which highlighted the importance of ensuring vulnerable consumers are treated with care and that members need to have the right customer service processes in place to allow this to happen. We are working with the member to ensure they improve their practice.

Our message, as always, to members of the DMA and, in due course, to organisations who sign up to comply with the new GDPR Code of Conduct is to put the customer first. It is of paramount importance that this key standard is applied now more than ever before, particularly at this time of national uncertainty.

Finally, I would like to welcome our new Independent Commissioner, Kate Staples. Kate was formerly General Counsel & Secretary to the Civil Aviation Authority and is a welcome addition to our Board of Commissioners.

Thank you for reading our 2022-23 Annual Report.

Complaints History

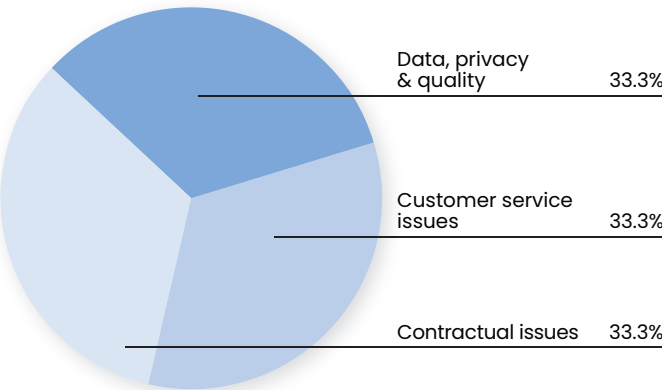
This year the DMC recorded just 33 complaints against businesses in the data-driven marketing sector. The DMC’s Secretariat investigated six consumer and business-to-business complaints involving members and 27 complaints against non-members. The Secretariat referred, where necessary, non-member complaints 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 contacted businesses that lie outside of membership to inform them of their legal commitments and request that they unsubscribe the individual’s email address. There was one formal adjudication 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 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 DMC 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.

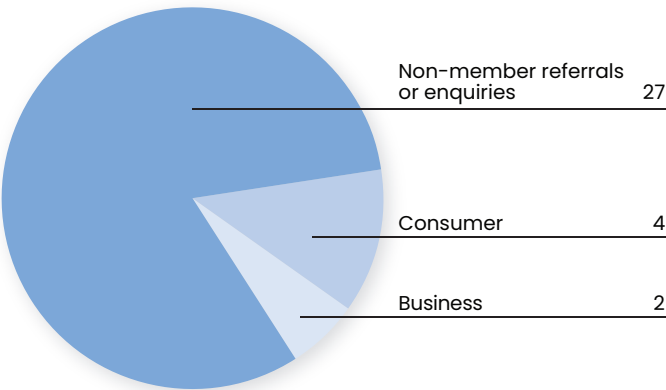
The formal investigation this year led to an adjudication just outside of the 12 month period in question. This related to a complaint received from the daughter of a vulnerable elderly lady. The consumer had returned an unordered coin yet was pursued by debt collection agencies and unable to contact the member. The case identified serious issues with the company’s customer service process. Quinton Quayle, our Independent Commissioner reports on this case further in this Report.

As always, 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 DMC could distribute messages to its membership about Code compliance and how the DMC is interpreting the Code.

General Nature of Complaints
1 July 2022 – 30 June 2023



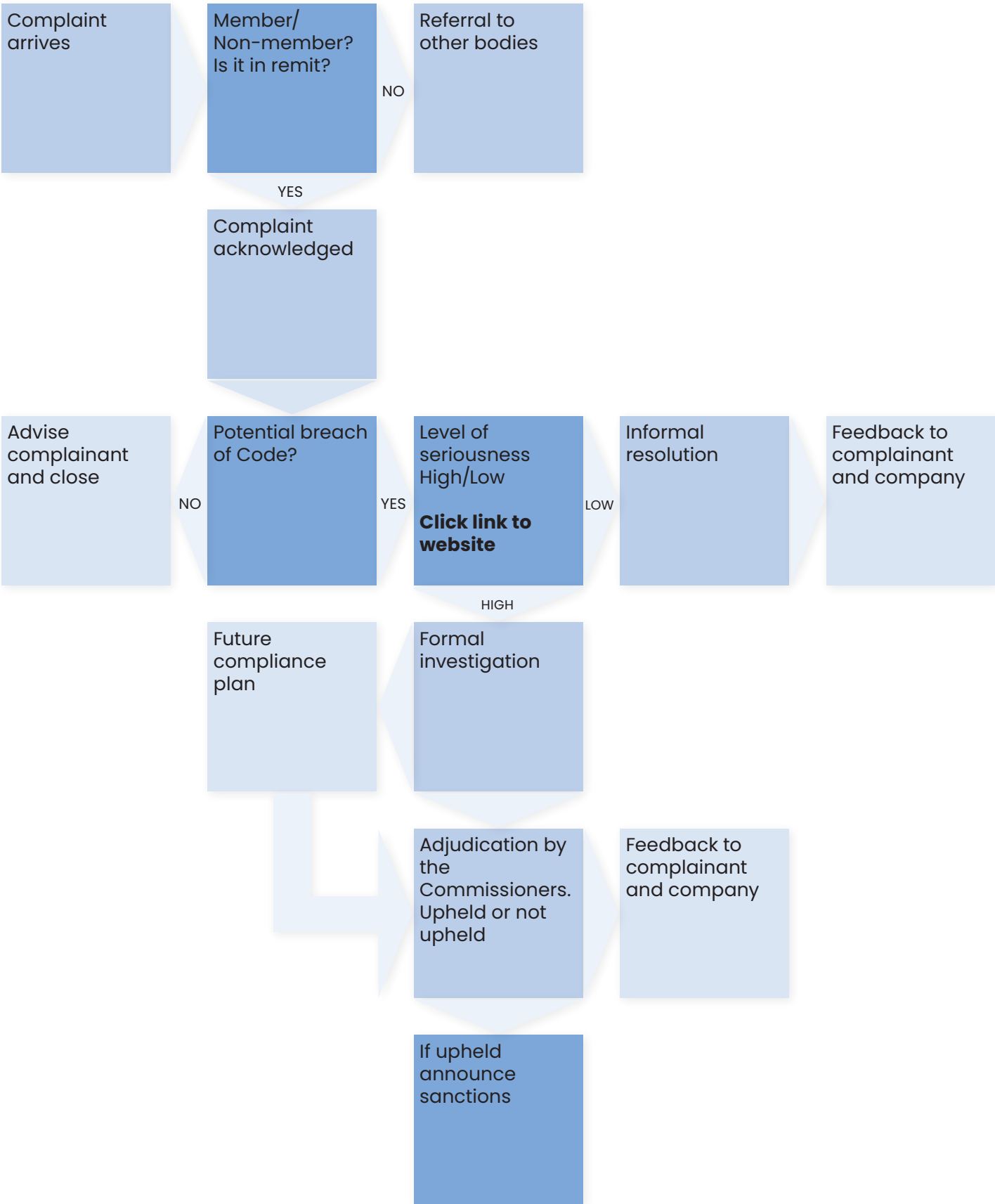
Number of Complaints
1 July 2022 – 30 June 2023



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 Value of Risk Assessments

Robert Bond, Industry Commissioner



In the world of data protection, we have grown used to, or even grown tired of, the requirement to carry out a Data Protection Impact Assessment where we are carrying out high risk processing of individuals' personal data. Five years on from the GDPR, we now face a growing list of assessments that we need to carry out, from Legitimate Interest Assessments, Transfer Risk Assessments, Privacy by Design Assessments, Accessibility Assessments, Children's Code compliance, and now Online Safety, AI and Cyber Resilience....and the list goes on.

Used appropriately, I find that these assessments really do manage risk and not only protect the rights of individuals but also protect the business from reputational and brand damage. Sometimes, the use of a risk assessment at the start of or even at an early stage of a project, can act as a "Stop" sign and cause the project team and compliance to say, "just before we press the button, can we analyse the risks and rewards". Sometimes the old phrase applies: "Just because we can, doesn't mean we should."

*Sometimes the old phrase applies:
"Just because we can, doesn't mean we should."*

Complaints about Direct Marketing

Quinton Quayle, Independent Commissioner



When I joined the DMC in January 2021, I imagined that my main role would be to review complaints about DMA members. In fact, there have been very few complaints recently that have required the personal intervention of Commissioners. Most are very efficiently handled by the Secretary of the DMC via email and are simply reviewed by Commissioners when we meet. Only when a significant issue is raised are complaints subject to formal adjudication by the Commissioners. A recent example is when the DMC investigated a complaint from the daughter of an elderly and vulnerable lady who had received a coin which she said she did not order. She had returned the coin, but her account was still passed to debt collectors.

Only when a significant issue is raised are complaints subject to formal adjudication by the Commissioners.

When Commissioners met the member, they acknowledged that their customer care performance fell short, and that the elderly lady should not have been asked to return the coin. The Board's investigation identified concerns that an internet-led customer service was not always appropriate for elderly consumers and that the return process should be easily accessible to those who do not have digital access, for instance by providing a dedicated telephone line for returns. As a result, the DMC considered that the member was in breach of a number of rules in the DMA Code.

In response, the member expressed willingness to implement changes to bring them into compliance. They told the DMC that a new customer service platform would be put in place and that there would be a more readily accessible telephone service for those who do not have digital access. The DMC asked the company to report back to them on implementation in the Autumn.

Industry and Technology views in 2023 – challenges on consent and cookies, opportunities for data dialogue

Gilbert Hill, Industry Commissioner



It's no exaggeration to say data has transformed the marketing world but raised some serious challenges. Automated practices have made marketing practitioners vastly more productive, but there is a sense that lawmakers and regulators are constantly playing catchup.

Where the 'rubber hits the road' here is the interface between technology and consumers of digital content. In my own experience this boiled down to years of thinking around permissions, policies, and cookie banners.

The aim of all this was to give people control and the information they need to provide informed, freely given consent. Despite playing a role in their original development, I often click through banners impatiently but when I act as part of the DMC team, see why the whole oversight system is so important. It helps prevent harms and distress in real life to some of the most vulnerable groups in our society.

A significant majority of UK internet users want more control over the personal information they give companies but, until a better system is devised, we must focus on making current tools fair and effective. The ICO recently exposed 'dark patterns' in web design for consent solutions such as banners, and an emphasis on the downside to users if they exercise their data rights, known as "biased framing". They are right to be concerned and intend to act on examples of such malpractice in coming years.

As connected devices from cars to hearing aids become more pervasive and AI makes intimate connections between these collection points, companies must look at how they build data dialogue with citizens, rather than simply broadcast their terms. Brand trust should be equal to other KPI's like output, financial results or environmental impact, and the fact the DMC applies and informs our industry's code of practice make this understandable to marketers, while building bridges with sectors who use data on a similar scale. DMC participation in groups ranging from FEDMA through UK data strategy to AI consultations helps our industry apply its expertise in messaging and common-sense best practice and is set to continue as our own remit evolves.

A significant majority of UK internet users want more control over the personal information they give companies but, until a better system is devised, we must focus on making current tools fair and effective.

First thoughts from a new Independent Commissioner

Kate Staples



As a legal professional with some regulatory experience, I was delighted to be appointed as an Independent Commissioner earlier this year. Given my background, I thought I knew a little about data and information issues, but I have been surprised at the degree to which data and

marketing is such a feature of our daily lives. It's everywhere.

Rightly, lawmakers and citizens have high expectations of companies who use data and deploy a range of sophisticated marketing techniques to run their businesses successfully. Those expectations have been distilled into a collection of primary and secondary legislation and associated guidance that can be difficult to navigate. I have long believed, though, that well run businesses will choose to do the right thing because what is good for their customers is good for them too. So, they don't need to be told what to do. And, in that context, the principles that underpin the DMA Code and the standards contained in it are a clear and accessible statement of what good looks like.

In deciding whether a company's actions meet the Code it is vital to have access to experience, expertise and sound judgement. My fellow Commissioners offer all of these in abundance, and I am very grateful to each of them for the welcome and support they have given me.

Together, we considered one formal complaint since I joined the Board this year and I was struck both by the commitment the company's senior team demonstrated to the complaints process and the balance that the Commissioners sought to strike in reaching conclusions. That balance will be important to maintain as and when the DMC assumes responsibilities as a Monitoring Body approved by the ICO in 2024.

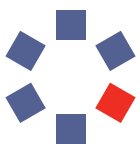
In deciding whether a company's actions meet the Code it is vital to have access to experience, expertise and sound judgement.

The Data & Marketing Commission

Registered Number: 6469055

Registered Office:
Lynton House
7-12 Tavistock Square
London
WC1H 9LT

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



The Data & Marketing
Commission

Enforcing Higher Industry Standards