

Memorandum of understanding between the Direct Marketing Commission (DMC) and the Committee of Advertising Practice (CAP)

Introduction

CAP operates a Promotional Marketing and Direct Response Panel (PMDRP), which advises the Advertising Standards Authority (ASA) and CAP on promotional marketing and direct marketing. The Panel's terms of reference are presented on the ASA and CAP website (www.asa.org.uk) and they include the requirement for the Panel Chair to:

refer to the Direct Marketing Commission issues of importance, not restricted to assessing conformity with relevant [CAP] Code rules, concerning the processing of personal data for the purposes of a marketer's or a third party's legitimate interests and related matters

This requirement was confirmed in the CAP Regulatory Statement of 6 November 2018, which concluded CAP's 2018 consultation on the collection and use of data marketing, as follows:

CAP will use the Direct Marketing Commission (DMC), an independent industry watchdog, as an expert panel to provide advice to the CAP Executive, the ASA Executive and the ASA Council in cases where "legitimate interests" has been put forward as a basis for processing personal data for the purpose of producing and/or distributing a marketing communication, and related matters. The DMC will operate under a publicly available memorandum of understanding with CAP, and any advice it provides will be taken into account by the CAP Executive, the ASA Executive and the ASA Council but will not be binding on them.

This memorandum of understanding (MOU) records the arrangements in place to manage the interchange of information between the PMDRP and the DMC on issues of importance, not restricted to assessing conformity with relevant CAP Code rules and guidance, relating to the processing of personal data for the purposes of a marketer's or a third party's legitimate interests.

The role of the Direct Marketing Commission

The DMC is the body which oversees and enforces the Direct Marketing Association's Code. The Direct Marketing Association is a trade association for marketers. Its objectives are to advance the interests and protect responsible data-driven marketing. The Code and the DMC give protection to recipients, users and practitioners of the data driven marketing sector. Acting independently (of the DMA) the DMC investigates and adjudicates on reported breaches of the Code by DMA members. If a complaint is not covered by the Code, it will be referred to another organisation, including, potentially, the Advertising Standards Authority, which can enforce standards relating to the processing of personal and other information for the purpose of marketing against all marketers and third parties operating from the UK.

The role of Committee of Advertising Practice and its Promotional Marketing and Direct Response Panel

CAP is the self-regulatory body that creates, revises and enforces the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code), which includes rules on Use of Data for Marketing. CAP operates a Promotional Marketing and Direct Response Panel, which, amongst other things:

- reviews the recommendations of the ASA and CAP Executive on complex or disputed issues relating to promotional or direct marketing;
- on request from complainants, marketers or their representatives, reassesses the Executive's recommendations (before the ASA Council rules) with the findings of the Panel's reassessment being reported to the ASA Council; and
- recommends to CAP the convening of ad hoc Working Groups to oversee textual revisions in circumstances where the Code requires modification or general review etc.

Information to be exchanged between the parties

In accordance with the PMDRP's terms of reference, the Chair of the PMDRP authorises the Secretary of the Panel, who is a member of the CAP Executive, to refer to the DMC, without reference to the PMDRP, issues of importance relating to the processing of personal data for the purposes of a marketer's or a third party's legitimate interests and related matters, not restricted to assessing conformity with relevant Code rules.

Composition of the DMC

The DMC is composed of:

- Chief Commissioner;
- two independent members; and
- two industry members

For issues related to this MOU, the DMC shall also be supported at relevant meetings by:

- the Secretary of the PMDRP or a person appointed by him or her;
- no less than one additional member of the CAP Executive and one member of the ASA Executive; and
- the Chairman of CAP may also attend Panel meetings.

The arrangements should always seek to ensure the DMC Commissioners (in particular) have sufficient opportunity to consider case-related or other material and seek clarification from or highlight issues with the Secretariat

Meetings

The following shall apply to meetings:

- meetings will be arranged as and when required;
- time-sensitive items may be dealt with, in normal circumstances, by telephone conference;
- the quorum for meetings shall be the Chief Commissioner or an independent alternate Commissioner and a minimum of two other Commissioners, of which one must be an industry member;
- DMC members who cannot participate may send comments for the Chief Commissioner or, in his or her absence, someone appointed by him or her; and
- the DMC will manage any potential conflict of interest issues in a manner that is agreeable to the MOU parties.

Agenda and minutes

The agenda is distributed by the Secretary of the PMDRP, ideally at least a week before a DMC meeting, to:

- the Chief Commissioner;
- the Commission Board members
- the Chairman of CAP
- the Chair of the PMDRP; and
- relevant Executive staff.

The minutes are distributed, ideally no more than a week after the meeting to the above.

Review, retention and disposal

The MOU will be reviewed from time to time, but no later than five years after its first publication / last review.

Any proposed amendments to the MOU must be agreed in writing by both parties.

Reviews, particularly in the first year of this MOU should allow the parties to ensure efficient arrangements as between matters of relevance to the DMC and the PMDRP and any trends of note in terms of the nature or volume of issues arising.

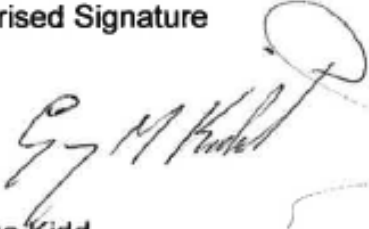
Information must not be retained for longer than is necessary for the purpose for which it has been disclosed.

Information will be disposed of/deleted securely in line with each party's respective record management procedures.

Each party shall bear its own expenses and costs for all negotiations and activities relating to this MoU

Signatories

Authorised Signature



George Kidd
Chief Commissioner
Direct Marketing Commission

Date: 15.05.19

Authorised Signature



James Best
Chairman
Committees of
Advertising Practice

Date: 15.05.19