

Thursday 11 July
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/ Virtual: Legal and Policy Update



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/ Welcome

Chris Combemale, CEO, DMA



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/ The Reform of Data Protection Law for Marketing

Chris Combemale, CEO, DMA





Respect privacy



Be honest
and fair

100101
001011
101001

Be diligent with
data



Take
responsibility

Our code of conduct advocates for a customer centric approach to build trust and deliver marketing effectiveness.

DMA / The driving
Data & Marketing Association force of intelligent
Association marketing

The demise of DPDI

- Report stage scheduled in House of Lords for 10 and 12 June
 - 3 and a half years of consultation
 - DMA chaired Business Advisory group for Secretary of State
 - Key reforms to GDPR, PECR and DPA2018 that were important to marketers
 - Last minute additions at report stage in Commons created controversy
- Election called 22 May
- Opportunity to pass the bill during wash-up failed
 - Main issue benefits fraud provisions that were last minute additions at report stage in Commons
- Other Bills passed during wash-up
 - Digital Markets and Consumer Bill (DMCC)
 - Media Bill
 - Contaminated blood compensation Bill
 - Post Office compensation Bill
 - Leasehold and freehold reform Bill

The Labour government

- Peter Kyle: Secretary of State Department of Science Innovation and Technology
 - Chris Bryant: Minister in DSIT and DCMS including data and digital
 - Baroness Maggie Jones chief whip in Lords plus DSIT and DBT roles
- Expanded role for DSIT
 - Transforming public services and fuelling economic growth through science and technology
 - Unite efforts in the digital transformation of public services under one department
 - Government Digital Service (GDS)
 - Central Digital and Data Office (CDDO)
 - Incubator for AI (i.AI)
- King's Speech 17 July
- An AI and Data Protection Bill?? A Data for Growth Bill??

DMA proposal: a Data for Growth Bill

1. Reforms that establish greater certainty for legitimate Interests as a lawful basis, particularly attracting and retaining customers
2. Reforms that clarify how data can be better use to support scientific research and technology development
3. Reforms that reduce bureaucracy for small business
4. Reforms that enable Smart Data schemes to be introduced in appropriate sectors
5. Reforms that reduce the consent requirements for non-intrusive cookies
6. Reforms that update the law to enable beneficial update of automated decision making like AI while maintaining strong safeguards
7. Reforms that create a more flexible international data transfer regime
8. Reforms that support use of the email soft opt-in for non-commercial organisations
9. Reforms that modernise the structure of the ICO and ensure it considers the impact on innovation and competition
10. Reforms that clarify transparency requirements for publicly available data sources such as the Open Electoral Register
11. Reforms that establish Codes of Conduct in PECR and may be contained in the same document as a GDPR Code of Conduct.
12. Reforms that do not risk adequacy in the EU

Labour Policy Forum on Data Protection

- Ensure our world-class researchers and businesses have **the data and computing infrastructure** they need to compete internationally
- Harness data for the public good and introduce robust regulation that **opens up data** while enshrining consumer rights
- Maintain Britain's **data adequacy status** meaning our data protection rules are deemed equivalent to those in the EU
- Make it easier for public services to adopt innovative technologies by removing barriers to data-sharing and smart procurement.
- Use new capabilities in data analysis and AI to deliver better public services and improve people's quality of life, and ensure society is fairly rewarded for the data it generates, built on frameworks and institutions that build public trust and uphold the privacy and security rights of UK citizens, including in the workplace
- Ensure we have cyber resilience and security against rogue states and other hostile actors
- Harness technology for public good, **ensuring the UK is the best place in the world for safe and responsible technology**, building the world's most competent regulatory environment for AI and automation and supporting a thriving and effective AI and automation assurance ecosystem
- Ensure that the regulatory environment appropriately and proportionally mitigates the potential harms that AI could cause by taking a **principles-based approach to tech and AI**
- Explore whether the companies developing the underlying **'foundation models'** that power specific AI tools and applications should also be subject to regulation
- Act quickly to **set the standards for safe and responsible AI**

DMA Engagement with new government

- BAG open letter published 2 July 2024
- Media and PR support
- Letters to Peter Kyle and Chris Bryant
- Letters to DSIT officials



techUK



ADVERTISING
ASSOCIATION

STRICTLY EMBARGOED

1 July 2024

Open letter sent to:
The Conservative Party
The Labour Party
Scottish National Party
Liberal Democrats

Leading business groups and industry leaders call for modern forward-looking approach to data

Ahead of the UK's general election on 4 July, we are writing as leading business associations, industry leaders and experts to call the next Government to seize the opportunity to modernise the UK's data protection framework.

A progressive and innovation-friendly regulatory environment that maintains strong privacy protection standards while delivering digital trust and legal certainty, will encourage economic growth, more innovative and effective public services, the easier use of data for research and public good, and greater flexibility in a more complex global environment for data transfers. This will in turn support the UK's ambition to achieve global leadership in trusted and responsible data-driven innovation and artificial intelligence.

This is why the plans to reform the UK's data regulation framework, developed over a period of three years, and in consultation with almost 3,000 stakeholders (including the undersigned organisations who contributed to the policy development through the Government's Business Advisory Group), have garnered wide support.

The next Government therefore has an opportunity to enact positive reform that strikes the right balance between encouraging innovation for economic and societal growth, while maintaining the high standards of personal data protection needed to build trust in the new digital age, so that the UK retains its adequacy determination with the European Union, which remains of utmost importance to businesses across all sectors.

Building on the momentum to reform the UK's data regulatory framework is an excellent opportunity to demonstrate the government's recognition of the importance of a regulatory environment that supports responsible innovation. This will give businesses the confidence to invest in the UK, positioning the country ahead of other jurisdictions.

/ Proportionality: Recital 4 GDPR

“The processing of personal data should be designed to serve mankind.

The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality.

This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, **freedom to conduct a business**, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.

/ Proportionality: Legitimate Interest in DPDI

Article 6.1.f

Processing shall be lawful only if and to the extent that at least one of the following applies

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

DPDI Amendment:

For the purposes of paragraph 1(f), examples of types of processing that may be processing that is necessary for the purposes of a legitimate interest include—

- (a) processing that is necessary for the purposes of **direct marketing**,
- (b) intra-group transmission of personal data (whether relating to clients, employees or other individuals) where that is necessary for internal administrative purposes, and
- (c) processing that is necessary for the purposes of ensuring the security of network and information systems.

/ Proportionality: Recital 47 GDPR

The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. **Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller** in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks. The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. **The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.**

/ DPDI: Definition of Direct Marketing

Amendment to GDPR and PECR to ensure definition of Direct Marketing in DPA2018 is consistent across all UK data protection legislation

“The communication (by whatever means) of advertising or marketing material which is directed to particular individuals”

/ DPDI: The Soft Opt-in for email marketing

Non-commercial organisations will be treated the same as commercial organisations

Non-commercial organisations can send emails and texts to a person without consent if:

- You've collected the individual's information directly
- You're selling or negotiating to sell one of your own products or services
- You're sending marketing to offer your similar goods or services
- You give the customer a chance to opt-out at the time you collect their data and in every subsequent communication

The contact details of the recipient *must have been obtained from the individual in the course of that person expressing an interest or providing support for the objectives of the organisation*

/ DPDI: Cookies

The government's objectives were to reduce the number of cookies consent banners as they have effectively become meaningless.

Clause 79(2)a-d of the DPDI Bill would have extended the circumstances under which cookies or other technologies could be used to store or access information on people's devices without their express consent

- * Statistical purposes for own use
- * Enhance website functionality
- * Security and software updates
- * Emergency assistance

The net effect of these exemptions is that websites who use cookies for first party relationships only and do not take advertising should be exempt from cookie banners, especially B2B websites and pure ecommerce sites

/ DPDI: Market Research Provisions

Research provisions provide greater clarity to enable scientific research in academic and commercial setting. Covers product development and market research

- *processing for the purposes of any research that can reasonably be described as scientific, whether publicly or privately funded and whether carried out as a commercial or non-commercial activity...*
- *...includes processing for the purposes of technological development or demonstration, fundamental research or applied research, so far as those activities can reasonably be described as scientific...*
- *...processing of personal data for statistical purposes are references to processing for statistical surveys or for the production of statistical results where— (a) the information that results from the processing is aggregate data that is not personal data, and (b) the controller does not use the personal data processed, or the information that results from the processing, in support of measures or decisions with respect to a particular data subject to whom the personal data relates....”*

/ DPDI: Codes of Conduct in PECR

Articles 40 and 41 of GDPR establish collaborative regulation on data protection for the first time and delegate authority to industry trade associations and monitoring bodies

“The Commissioner shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of this Regulation”

PECR must be amended to enable Industry Codes of Conduct and Monitoring Bodies. A PECR Code of Conduct must be contained in the same document as a GDPR Code of Conduct

DMA is working with ICO on a Code of Conduct for Direct Marketing contingent on amendment to PECR

The Data and Marketing Commission will be appointed the Independent Monitoring Body to investigate and adjudicate complaints against Code Signatories

/ DPDI: New objectives for ICO

The primary objectives of the ICO are to secure an appropriate level of data protection and to promote public trust and confidence in the processing of data

In doing so, the ICO must consider:

- a. the desirability of promoting innovation**
- b. the desirability of promoting competition**
- c. the importance of preventing investigating detecting and prosecuting criminal offences
- d. the need to safeguard the public and national security

Change from corporation sole to a corporate body called Information Commission. Chair and non-executive members appoint and scrutinise CEO and executive members.

Panels of industry experts to review ICO Codes of Practice

/ DPDI: Enforcement and Fines

Fines for breaches of PECR amended to match GDPR

Applies to nuisance calls, texts and emails.

Up to 4% of global turnover or £17.5 million (previously up to £500,000)

/ EU Adequacy

DMA members made maintaining adequacy their number one priority in the consultation.

DPDI builds on existing legislation and should not risk adequacy

The European Court of Justice has consistently ruled:

1. That any interest that is legal may be a legitimate interest
2. That no member state may limit the scope of legitimate interests
3. That the processing must be necessary to pursue the legitimate interest
4. That the processing proportionate and is balanced with any risk to the individual

A particularly powerful opinion is that of Advocate General Bobek in the Fashion ID case and in particular paragraphs 122 and 123. Bobek concludes “I would agree that marketing or advertising can, as such, constitute such a legitimate interest.”

Data Protection Authorities in Austria and Italy have approved GDPR Codes of Conduct that base the processing of third-party data for print channels and B2B data on legitimate interests.

/ Implications for Marketers – Experian Case

Andrew Mills, Legal Director UK&I, Experian



Experian & ICO

Upper Tribunal Case / Presented by Andrew Mills, Legal Director UK&I

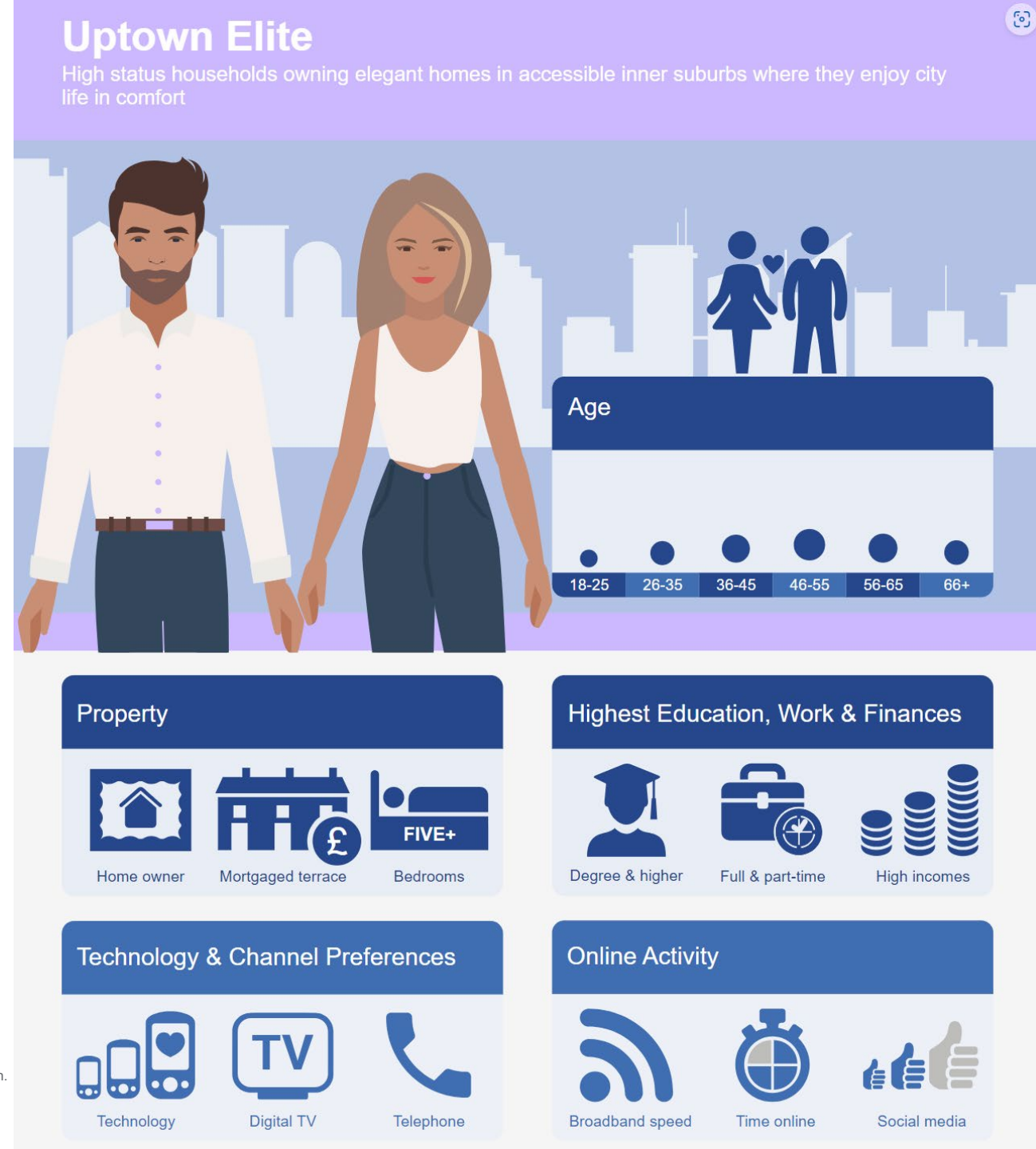
11 / June / 202



Mosaic®

Our geodemographic classification system

- This is known as segmentation
- This can help clients understand their customers' likely characteristics, how to find more like them, where to best place new stores and the best ways of advertising to their target audience



Other databases

ConsumerView

Database containing most UK adults

- Modelled attributes provide a likely value, such as property band value
- Propensities identify likelihood of an individual displaying a characteristic, typically between 0 (not likely) and 1 (most likely). Examples:
 - Has a stocks & shares ISA
 - Owns/has access to a smart TV
 - Visits theme parks

ChannelView

An internal “linkage” database

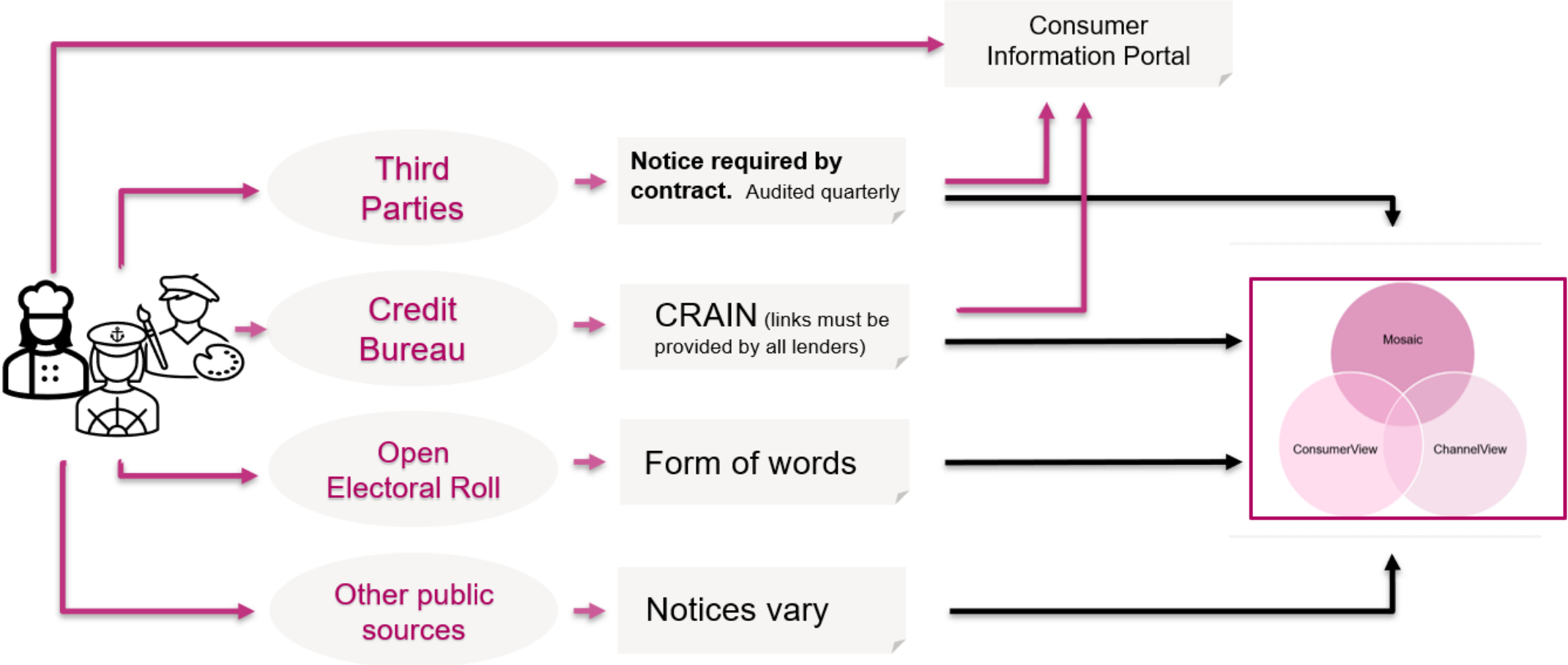
ConsumerView

The most descriptive and comprehensive view of UK Consumers



Data sources and transparency

Three main groups of sources of personal data



Credit Reference Industry joint information notice

We believe unique in being an industry information notice, launched 2018

[Consumer](#) [Small Business](#) [Business](#)

[Data Privacy](#) [About Experian](#) [Careers](#) [Global Sites](#)



[About Us](#) [Data Privacy](#) [Legal](#) [Contacts](#)



Credit Reference Agency Information Notice (CRAIN)

Version: 1.1 Adopted: 26 March 2020

[Legal](#) / [CRAIN](#) / [Index](#)

To download this page as a PDF [click here](#)

In Brief

We are credit reference agencies and we play a key role in the UK's financial ecosystem. This document explains how we obtain, process and share personal data about consumers and businesses.

This section briefly summarises the key processing activities common to the credit reference agencies. For more detail, please refer to the rest of this document. In addition, we recommend reviewing each credit reference agency's own information notices, which explain the specific processing activities of that credit



Our Consumer Information Portal – the CIP

Launched early 2018 and continuously improved since

The screenshot displays the Experian Consumer Information Portal (CIP) website. The top navigation bar includes links for Consumer, Small Business, Business, Data Privacy, About Experian, Careers, and Global Sites. The main navigation menu features links for About Us, Data Privacy, Legal, and Contacts, along with a search icon. The CIP section is active, with sub-links for Introduction, How we use your data, Your data rights, Who uses our services, and How we protect your data. An 'Opt out' button is visible in the top right. A modal window titled 'Article 14 Notice: what you need to know.' is centered on the page, containing text about data processing and a 'Read More' button. The background shows a woman wearing glasses and a headset, suggesting a customer service or support context.

Consumer Information Portal

[Introduction](#) [How we use your data](#) [Your data rights](#) [Who uses our services](#) [How we protect your data](#) [Opt out](#)

Article 14 Notice: what you need to know.

Experian Marketing Services obtains and processes personal data. You can find out lots more about these activities and how they impact consumers (like you) and society by accessing our Consumer Information Portal. Alternatively, if you wish to view a summary of the important information that you should be aware of in relation to Experian Marketing Services, please click the button below to access our Article 14 summary notice.

[Read More](#)

Our commitment to data privacy and transparency

Data has the power to improve and ease our lives. It connects us in ways that are good for everyone – individuals, organisations, and society.



Third party suppliers

We have third party supplier minimum transparency standards

We audit them

Very clear to individuals what they are signing up to – before they enter their information

Gardeners Club
Join us now...

Title*

Mr Mrs Miss Ms Mx

First Name* Last Name*

Email* Phone*

Postcode

Postcode

Date of birth*

DD MM YYYY

By clicking the registration button below you agree to join the Gardeners Club confirming that you have both read and understood Web-Clubs Privacy Policy which explains the different processing activities relating to your registration information. By ticking these boxes, you also:

Agree to receiving email newsletters and marketing promotions from Web-Clubs detailing selected companies that we believe will be of interest to you.

Agree that Web-Clubs third party companies may contact me with more interesting offers by:

Post Phone

Email SMS

You can opt-out of these messages or oppose to the sharing of your data at any time. For more details please see our [Privacy Policy](#) which also explains the types of companies who may contact you, the companies we may share your information with and the way they may use the information you have provided today as well as in the past.

Using & sharing your data for direct marketing purpose: We will share your data with Marketing Services Providers, including Experian, who use it to create profiles of you and others to help organisations better understand their customers and find others like them. They will also use your data for marketing, targeted advertising, measurement & identity resolution purposes and share your data with their customers for marketing purposes. Marketing Services Providers will profile you by combining the data we share with information they receive from other sources. They analyse this to predict your likely behavioural characteristics, preferences and circumstances. Combining your data with information from other sources also helps Marketing Services Providers to check the accuracy of the data they hold about you, and ensure it is up-to-date (known as "validation"). This may also involve updating the data we share with Marketing Services Providers about you, such as your IP address, with information they receive from other sources to make sure it remains accurate. Marketing Services Providers share your data primarily to help organisations find offers, products and services that are appropriate and likely to be of interest to their customers; and communicate those to their customers more effectively. To understand more please click [here](#). Be assured that any such parties will use your data in accordance with the Data Protection Act 2018 and other applicable law relating to privacy.



Electoral roll

Secondary legislation under the Representation of the People Act sets “form of words” on annual canvass

Privacy statement

We collect information under the legal basis of a task carried out in the public interest, as set out in the Representation of the People Act 1983 and related regulations. We look after personal information securely and follow data protection legislation.

If you opted-out of the open register we will only use the information you give us for electoral purposes, including matching it against other sources of data to support the electoral register. If you are currently registered, where applicable, we have processed your data correctly. We will not give personal information to anyone else, unless we have to by law. The law requires us to share your information with candidates, political parties and campaigners for democratic engagement purposes and credit reference agencies to check your identity when you apply for credit.

If you have not opted-out of the open register your name and address can be bought by anyone and used for lots of purposes, including direct marketing.

The Electoral Registration Officer is the Controller. They must have a policy document known as a privacy notice setting out how they process personal data. Refer to the privacy notice at



Assessment notice

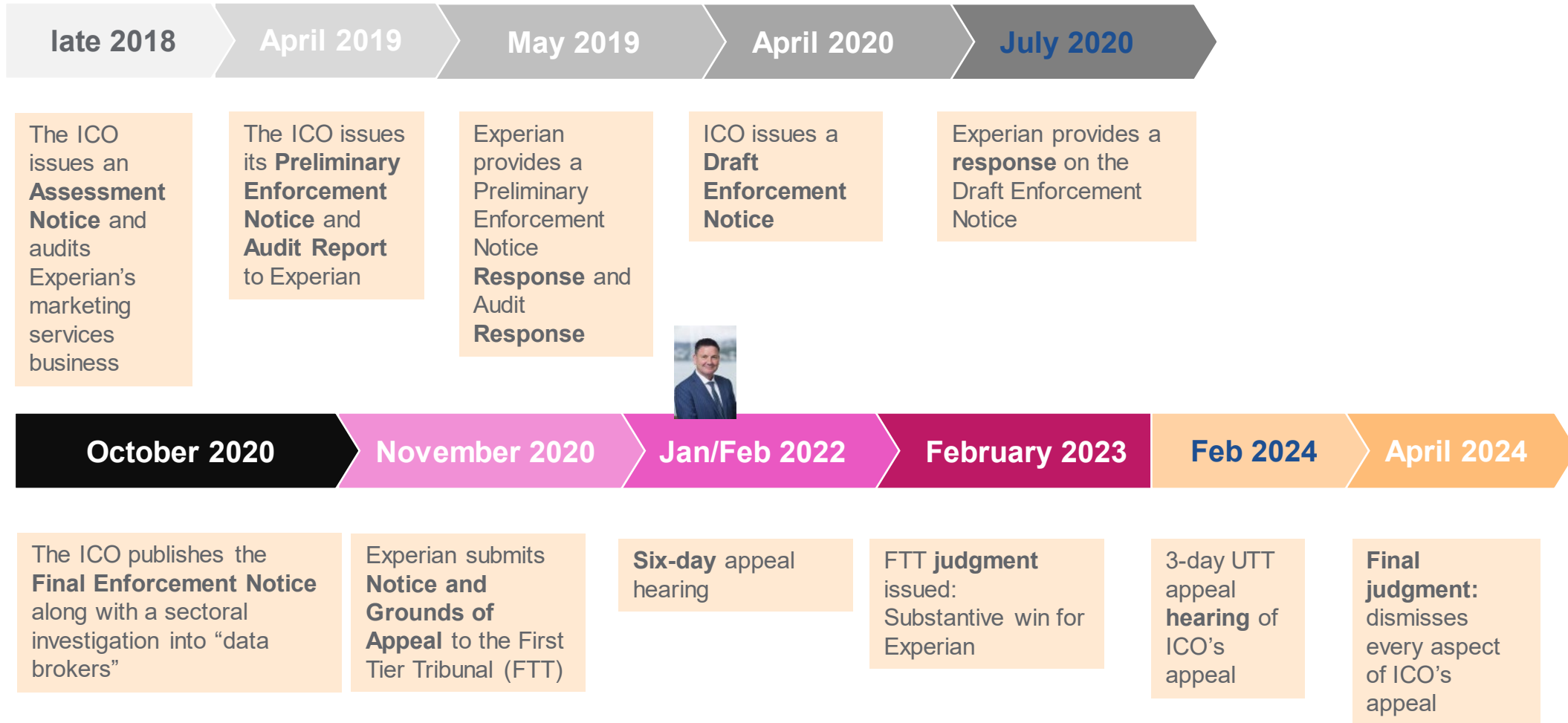
Approach with caution – early warning indicator

- We had been subject to previous audit processes without enforcement
- Satisfactory outcomes
- BUT all pre-GDPR
- Don't assume that the regulator will understand your business
- Anticipate that an assessment notice could mean that you end up in litigation
- Appeals to the First Tier Tribunal are a full merits-based review and so highly valuable
- Tribunal must pay careful attention to the findings of the ICO as an expert regulator, but evidence can be key
- The First Tier is the only opportunity in any litigation to set out the facts



The timeline

Six years



ICO's core complaints

Unprecedented approach from the ICO that has proven to be overstepping

Category A – the Consumer Information Portal (CIP)

- Revise CIP to provide “at a glance” info
- Put “surprising” information higher than the 3rd level
- Make CIP intelligible (don't use words like “insight”)
- Include intelligible information about data sources, onward disclosure & outcomes

Stop using any data derived from our credit bureau for any direct marketing purposes without consent

Category B – notification

- Written notification to all data subjects where we sourced data from third parties [approx. 50m]
- Stop processing if no notification

Category C

- [lawful basis switching irrelevant by trial]
- Stop processing where “objective” LIA cannot be said to favour our interest
- Review compliance of our suppliers and stop taking data if they do not meet the standards imposed on us
- Stop processing data from suppliers if no evidence that they meet those requirements



Outcome of appeals

A short summary

First Tier Tribunal

- FTT swept aside all original EN
- Single, much narrower substitute EN
- We must notify those people whose data we only sourced from public records
- Our CIP and other transparency mechanisms meet GDPR standards
- ICO's witness admitted in x-exam that some of his evidence was wrong, misleading & perverse
- LI is an acceptable processing ground
- No one likely to suffer any damages from our actions that could justify a claim

Upper Tier Tribunal

- FTT judgment could have been better written
- Dismissed each the ICO's grounds of appeal
- No interference with any of the FTT's findings
- ICO accepted:
 - The negative assessment of their witness's evidence
 - Modelled data is less intrusive than "actual" data
 - Benefits resulted from our processing
 - It was unlikely that any person suffered damage and distress from our processing



Key take away 1

Transparency

Whilst being fact specific...

Layering is OK

You don't need to spell out downsides in preference to benefits

Third parties can deliver transparency on your behalf

Testing using survey data can be helpful

You don't need to force people to read your transparency notices

People have a choice

GDPR requirement is to provide information



Key takeaway 2

Public record data

Traditionally seen as a low-risk data source

Just because data is public doesn't mean that anyone can use it for any purpose

The “form of words” for the electoral roll is insufficient

Case now says users of public records need to provide transparency

Difficult & costly for organisations (but that's no barrier if that's your business model)

The substitute enforcement notice provides for notifications at source for public record data



Key takeaway 3

Legitimate interests

Legitimate interests can be a valid processing ground for direct marketing purposes

In practice, your balancing test should take into account:

All your transparency practices for your data processing activities

The benefits to data subjects not just the risks

The likely impact or harm

The ICO is not best placed to assess whether a controller has got the balancing test right on an LIA





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/ Q&A



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/ Closing comments

Chris Combemale, CEO, DMA



/ Summary comments

- “In addition, in his cross-examination **Mr Hulme accepted that the scenarios set out in his witness statement as to how people would be distressed by the data processing were incorrect** to the extent that he accepted his evidence in his witness statement was **“completely wrong, completely misleading and perverse”**.”
- “We accept also that in reaching a decision, the Commissioner and this panel must have regard to the regulatory decisions in **respect of the economy, the environmental impact and positive benefits for the consumers of processing** (which appear from Mr Hulme’s evidence not to have been taken into account in the enforcement notice).”
- **“We are satisfied that the Information Commissioner got the balance wrong in terms of proportionality in exercising her discretion because the Information Commissioner had fundamentally misunderstood the actual outcomes of Experian’s processing”**

/ Skills Development

A critical principle of data protection legislation is that teams are trained and aware of their responsibilities

All DMA skills development are built on the ethical framework of the DMA Code and an ethos of best practice developed “by the industry for the industry”

Funding secured from the Department for Education to run skills bootcamps for Digital Marketing Strategy including modules on legal obligations

90% funding for SME employees and 70% funding for corporates.

Digital Marketing Strategy

Master the art of crafting top-notch, omnichannel campaigns on our **Digital Marketing Strategy Skills Bootcamp**.

100 hours of learning led by a **seasoned marketing professional**, who is joined by **subject matter expert** guest speakers.

You'll learn how to plan campaigns that meet strategic objectives, set budgets, analyse and measure results, and optimise the performance of each digital channel.

On successful completion of the course you'll be awarded a certificate in Digital Marketing Strategy accredited by the IDM.



“I have **newfound confidence** in my marketing ability. I now offer insight and knowledge to my team that I previously lacked the confidence to suggest.”

Katy Bishop
Content Marketing Assistant

Starting at
ONLY
£296



Scan the QR code
for more information

With the government funding
up to 90% of the course cost,
places start at **just £296**



DMA member benefits summary

Strengthen your team, shape your industry, and put your customers first, by joining Europe's biggest data and marketing association.

Resources

- Exclusive member only content with learning content endorsed by our institute, the IDM
- Access over 250 bite-sized learning modules, available online 24/7.
- Subsidised training programmes
- Enjoy member-only discounts on all training options, including accredited diplomas and masterclasses.
- Legal and compliance support
- Get one-to-one advice from our in-house experts.
- Cutting-edge data insights
- Stay ahead of industry trends, with guidelines, benchmarks, frameworks industry reports, and data from over 1,200 DMA award-nominated campaigns.

Relationships

- **Join a thriving community**
Connect with over 27,000 members, from marketing leaders to next-gen innovators from brands, agencies, and service partner companies.
- **Network with industry experts**
Make valuable connections with professionals, from small businesses to large enterprises.
- **Lead industry changes**
Help shape the future of data and marketing through our councils, committees, and taskforces.
- **Set industry standards**
Contribute to a community that promotes ethical, diverse, and responsible industry standards we can all be proud of.

Representation

- **Put your customer first**
We know you respect your customers' privacy. We'll support and enable you to be diligent with data.
- **Shape data protection laws**
Join us in our work with UK and EU authorities, to protect and advance the data and marketing industry.
- **Build an inclusive industry**
Support our work with organisations like PurpleGoat and Outvertising, to foster diversity and unbiased representation in marketing.

/ Feedback Link

