

Compliance Newsletter

February 2020

Compliance News for Customer People

This Month's Headlines

- Marketers' nervousness about the ICO's [draft Direct Marketing Code of Practice](#) grows
(And is the 3rd party data market doomed?)
- The UK's freedom of data exchange with the EU should be fine after the Brexit transition period. Unless it's not...
- The [Post Office](#)'s accessibility services' billing failings result in a £175,000 [Ofcom fine](#)
- [Ovo](#) fined £9m for customer billing and transparency errors
- [ASA](#) slams [Ryanair](#) for 'green-washing' - and shows a confused approach to the F*** word

Compliance is good for you! In small doses.

Read up on the compliance and regulation changes that matter to you & your business. Read on!

If you can't avoid compliance and regulation, then why not get a better understanding of it? Better informed, you can meet the compliance challenges when acquiring, retaining and servicing customers.

It's been a busy month, so there's lots to cover. Welcome to the ninth issue:



Information Commissioner's Office



Direct Marketing Code

As we discussed in January's newsletter, the biggest issue for people involved in Marketing and Customer Experience is the ICO's [Draft Direct Marketing Code of Practice](#). After the current period of consultation, the finalised Code will be adopted and, in effect, become the practical guide to the GDPR and the 2018 Data Protection Act.

Now that experts have absorbed all 123 pages of the Code, concerns are growing about what it might mean for current marketing practices. Here is the [latest summary](#) from the DMA's John Mitchison, highlighting his and some DMA members' concerns. And Janine Paterson of www.jplegalassist.co.uk has written a [series of pieces](#) dissecting the Code and highlighting some similar issues. The consultation is open until 4th March, so have a read and share your thoughts with the ICO.

Email directmarketingcode@ico.org.uk

Some of the areas of concern that have been identified in the draft Code include challenges to the future of the 3rd party data market and the use of 'lookalikes' and other staples of social media marketing.

A big change to the rules around either of these areas will have a massive impact on some organisations' ability to acquire and retain customers



The ICO and Adtech

There is quite a debate raging about the ICO's approach to the adtech world and its regulation post GDPR. The German, French and Irish data protection regulators have fined and threatened to tackle the alleged abuses of the big players, like Google and Facebook, but the ICO is taking a more softly-softly approach. Many observers, especially those focused on individuals' data privacy rights, say that the ICO is being *too soft*. Whereas [the ICO says](#) it has called time on the sector's unacceptable practices (especially Real Time Bidding) and that time is running out for it to clean up its act.

In fairness to the ICO, it should be acknowledged that the adtech world is incredibly complex and confusing (see [PubNative's](#) 2019 illustration of the mobile adtech market, above).

In a not-unrelated move, Google has announced that it is removing 3rd party cookies totally in 2 years' time. Google present that as an attempt to 'clean up' the market, but others see it as a move to achieve even greater market dominance. Azeem Azhar argues that [big tech is becoming pro-regulation](#) simply to underpin the big platforms' power. Here's what the ever-stimulating [Gilbert Hill reckons](#).

NB Of course, irrespective of what the ICO does or doesn't do, the CMA's [digital marketing investigation](#) may still lead to a significant crackdown on Google, Facebook and others.



Age Appropriate Design Code

The ICO's Age Appropriate Design Code – presented to parliament and almost certain to be adopted this Spring - provides a 15 part Code of Practice to protect children online. Interestingly, the Code includes a specific ban on the use of smart “nudge” techniques to encourage children (defined as under 18s) to share personal data and lower their data privacy levels. Best start with this high-level summary in which a key question will be “is your online service likely to be accessed by children?”.

There will be a 12 month implementation period in which marketers and UX designers try to square the circle of increasing the protection of children without holing lots of business models...

This [flowchart](#) produced by the ICO is a great way to start to work if and how you may be affected by the Code

Adequacy or Inadequacy? Too Early to Tell...

The EU working group tasked with investigating whether to give the EU adequacy status for UK data protection regime (which is vital for UK-EU data transfers to continue in the near term, after the end of the Brexit transition period at the end of the year) has reported that [it could be possible to do so by the end of the year](#) - but only if both parties agree and cooperate...

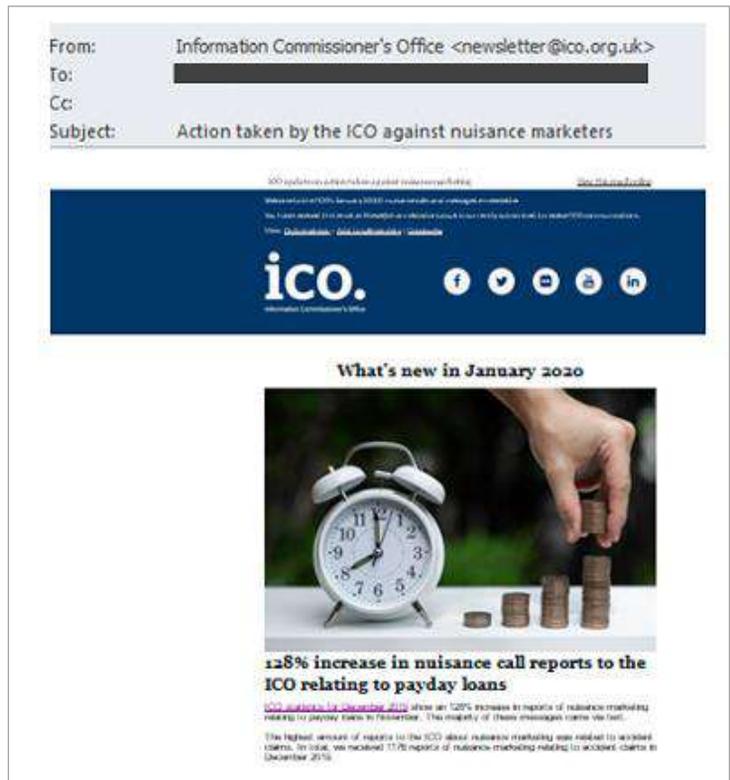
Thanks to [Privacy Laws & Business](#) for highlighting this report.

ICO Enforcement Actions

There have been no enforcements in the commercial world, this month.

ICO: Regulation with Added Spin?

Finally, the ICO's latest monthly 'Action taken by the ICO against nuisance marketers' email shows that even the Information Commissioner's Office can't resist a good headline. The email trumpeted a "128% increase" in Pay Day Loan marketing complaints. Quite true, but in reality that was only an increase from 18 to 41 - less than 1% of total complaints received.



Marketing, eh? You just can't escape from it



The Insolvency Service

The Insolvency Service

Young Forever Limited was [wound up in the public interest](#) earlier this month in the High Court of Justice.

The Insolvency Service conducted confidential investigations after it received complaints about Young Forever's trading practices.

The company sold vitamins and healthcare supplements through cold calling members of the public who were either elderly or vulnerable. Young Forever used call centres based in India, falsely claiming it was linked to government bodies, healthcare providers or the NHS. The company marked up its products by over 1000%.



The Competition and Markets Authority (CMA)

As ever, there has been a flurry of announcements and updates on investigations by the [CMA](#). Here's a selection:

After an investigation, the purchase of [Entertainment One](#) by games & toys company [Hasbro](#) has been approved, opening up the possibility of unlikely future My Little Pony & Peppa Pig brand crossovers.



Guitar company Fender has been [fined £4.5m for price fixing](#) after it was found to have been pressuring online retailers to sell at or above a set price (and attempting to conceal its activities from the CMA).



After starting an investigation into [Google's](#) proposed purchase of data analytics firm, [Looker](#), the CMA has now waved it through.



Ofcom has [fined](#) the Post Office £175,000. Communication Providers (CPs) like the Post Office's landline and mobile service, are obliged to offer customers with disabilities access to [Relay Services](#) (such as speech-to-text and text-to-speech facilities). The Post Office did this, but from 2013 to 2018 it didn't provide its disabled customers with the related adjustment in their bills to account for additional time taken when using Relay Services.

Ofcom's [Quarterly Complaints](#) data show that poor complaint handling performance, rather than intrinsic technical problems, continue to dog [Virgin](#), [TalkTalk](#) and [Vodafone](#).

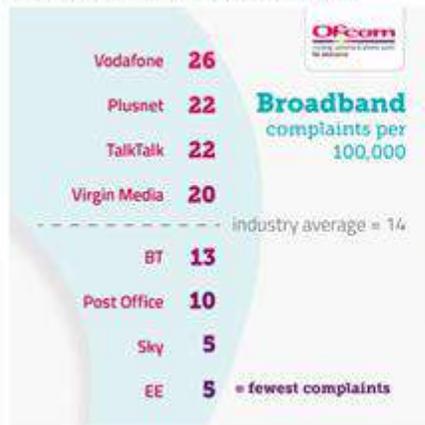
Landline telephone complaints per 100,000 customers



Pay-monthly mobile complaints per 100,000 customers



Home broadband complaints per 100,000 customers



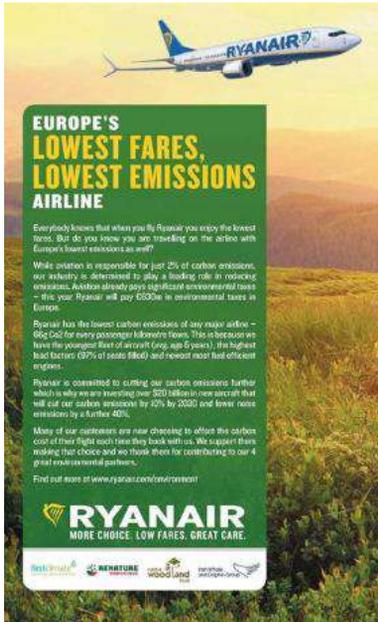
Pay TV complaints per 100,000 customers





The ASA (Advertising Standards Authority)'s [recent rulings](#) allow us to ponder

- What's 'green-washing' and what's not
- The F*** word and possible corporate bullying



[Ryanair's](#) press, TV & radio ads featuring their 'Lowest fares, Lowest Emissions' claim have all been [banned from re-use](#) by the ASA.

Although the ASA accepted Ryanair's evidence that it had the lowest CO2 emissions per passenger mile of any major European airline, it felt that the ads fell foul of the restrictions on unintentionally making "implied claims" which might lead people to think that Ryanair was intrinsically – not just relatively – environmentally friendly.

Women's razor brand, [FFS](#), has been ordered to stop using its full name and strapline 'Friction Free'. The ASA ruled that no razor could be considered 'friction free', despite FFS' defence that 'friction free' referred to their online subscription model, not the physical razor. After the ruling, FFS tetchily commented: *"we will refer to the brand only in its shorter format, FFS. This is how most consumers refer to us already and it also rather neatly expresses our views on the situation"*



It's ironic that after last month's sanctioning of [Brewdog](#) for its "motherf____" adverts, a brand has now been pushed into going by "FFS". And it's notable that the successful complaint against FFS / Friction Free (a 20 person London start-up) came from its \$67bn turnover rival, [Procter & Gamble](#)

ofgem



[Ovo Energy](#) has agreed to pay a £8.9m fine for issuing inaccurate or incomplete information to customers, and for under and overcharging customers due to IT issues. Ovo accepted that, for a period of over five years, failings in its IT systems and compliance processes resulted in 500,000 customers receiving inaccurate or incomplete information - and then failing to report the situation once it became aware of it.

Ofgem observed that Ovo ‘...did not prioritise putting these issues right whilst its business was expanding’. Ovo is now the UK's second largest energy supplier.

NATIONAL TRADING STANDARDS

Protecting Consumers
Safeguarding Businesses

The owner of the [ASK restaurant chain](#) has been [fined £40,000](#) for preparing its top price Aragosta e Gamberoni (lobster and king prawns) pasta dish with a mixture that was only 35% lobster, plus 34% white fish and 31% something else that presumably was edible but not at all fishy. This was picked up by a Swansea trading standards officer on a routine visit.

PSA

Phone-paid Services Authority

Just one new tribunal adjudication from the PSA since last month. Uinate Ltd has been nominally [fined £170,000 and barred from offering phone-paid services](#) - the company ceased trading some months ago. Uinate promoted a Crowd Offers service, chargeable at £3 per month. Amongst other transgressions, Uinate offered subscribers a weekly offers email - despite not capturing customers' email addresses!



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CHANNEL DOCTORS

Before you go

Are we covering the regulatory bodies and areas that keep you awake at night? **Who and what else would you like to see covered in subsequent monthly newsletters about the world of regulation and compliance as it affects customer engagement?**

Let us know at hello@channeldoctors.co.uk

The Small Print

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