

Response to the MoJ Call for Evidence on the Review of the Balance of Competences between the United Kingdom and the European Union

Information Rights

Response from the Acromas Group

Introduction

Acromas confines its response to Q4 of the Call for Evidence: “What evidence is there that proposals for a new EU Data Protection Regulation will be advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?” The Call for Evidence itself indicates that the Regulation as proposed by the Commission “may impact negatively” on digital marketing and internet advertising industries with some of the new obligations potentially being “very onerous...There would also be a high cost to business of implementing the proposed administrative and compliance measures. The UK impact assessment estimated that the costs of meeting the requirements of the Commission’s original proposals to UK small businesses would be between £80-£290 million per annum,” (paras. 49 and 52). This omits the costs for medium sized and larger businesses so the impact assessment quoted underestimates the total quantum of damage to the UK economy. The UK’s admirable principle that, “The protection of individuals’ privacy and the pursuit of economic growth should not be attained at the expense of one or the other” (para. 47) is in grave danger of being breached.

Background to Acromas

Acromas operates some of the UK’s most recognisable brands. The Automobile Association provides roadside rescue, insurance and other financial services for British motorists. Saga exclusively services the needs of older people, providing a range of services including holidays, cruises, insurance, financial services and legal advice. Saga Magazine is the UK’s best-selling subscription magazine read by over a million people each month.

Through Allied Healthcare and associated care brands we are the UK’s largest domiciliary care service provider. Our 18,000 care workers deliver 23 million hours of care each year and through Primecare we partner with NHS and other institutions in providing primary healthcare services across the UK. Other brands within the Group include British School of Motoring, DriveTech and Titan Travel.

Together our businesses create employment for some 38,000 people and serve 18 million customers.

Our Attitude Towards Customer Data

We fully support measures that ensure that people properly give consent for their data to be used in appropriate ways for targeted communications and appropriate pricing and tailoring of services. Customer data is at the heart of our business model to tailor products and services for individuals. The proper use and protection of customer data is a top priority for our businesses.

We support the need to harmonise data protection practices across the EU, and to upgrade appropriately existing regulation to recognise the interconnected world of today.

We are concerned that in an effort to curb the consumer data practices of US based social media and web-only businesses, our long-standing customer-focussed businesses and our customers will suffer unintended consequences owing to the proposed Regulation.

As currently drafted the new Regulation will add cost and inconvenience to the consumer across a range of products and services and also add cost and complexity to many highly responsible businesses that properly manage sensitive customer data.

Our businesses are successful because of the high degree of customer satisfaction. This is evidenced both by polling and by exceptionally high levels of repeat business and those willing to personally recommend our services.

Our repeat business and new business is secured partly by personal recommendation, but mainly using a database of 26.4 million people to market direct to existing and prospective customers. We have no evidence whatsoever that our marketing techniques and our use of this data creates any consumer unease (the success of the businesses indicates the opposite).

Good marketing is good customer service. If a company is allowed to apply intelligence to its consumer offers then it is more likely to get it right and offer only what is appropriate. When companies are unable to know their customers and market appropriately it leads to 'junk marketing' which causes customer concern and unease. It would be a retrograde step if this new

Regulation undermined responsible companies and increased the amount of inappropriate marketing. Poor regulation in jurisdictions outside of the European Union is a key driver of 'spam' internet marketing.

The growth of social media and privacy concerns about online data has, quite rightly, led to more attention on this issue. However, it would not be in consumers' interest if concerns centred around the misuse of social media and online information lead to responsible companies being blinded to their customers' needs.

Implications of the Draft Regulation for Acromas

- **Inability to use profile data without consent will impact our risk profiling and fraud detection capability for insurance pricing.**

It is in the interest of every consumer to ensure that fraud and misrepresentation in the insurance industry are minimised. If insurers are made deliberately blind to key pieces of data and are stopped from risk profiling customers correctly then this will lead to higher insurance premiums. It creates greater underwriting uncertainty and makes it easier for individuals and organised criminals to make false and exaggerated claims.

- **Explicit consent will be required for each data processing activity (e.g. data for risk profiling/assessment; quote/acceptance/processing payment details/mailling policy documents; subsequent marketing). This would serious impede the ability to offer bespoke and relevant offers.**

Curtailment of data profiling would render our selection process and marketing far less efficient and would lead to more complaints about 'junk marketing' as at present it is possible to create bespoke lists.

Our experience shows that tailored offers are appreciated by customers. A company may, for example, offer special discounts to customers. At the moment companies are able to efficiently devise campaigns that make appropriate marketing approaches to cohorts of customers. There is no evidence to suggest that this is unwelcome or causes any unease. Making it more difficult for businesses to target and tailor offers will inevitably lead to an increase in 'junk' marketing.

- **We will be forced to adopt new systems and processes for handling management of explicit consent and other actions such as 'right to be forgotten' and SARs.**

Purchase journeys will need to be re-worked for customers so that the sales process will be longer – costing the company and customers time and money. Whilst the explicit 'right to be forgotten' is more onerous than simply suppression since all data held on the subject will need to be deleted, some data may need to be kept for future liability issues and if we forget you, we will also 'forget' that you asked us not to mail you if your details are submitted by a legitimate third party mailing partner. Also the removal of the ability to charge a nominal fee for a Subject Access Requests (SAR) could lead to a surge in mischievous or spurious requests – which is a cost passed on to other customers. A small fee does not put off those with a genuine concern.

- **We may need to re-qualify our database of 26.4 million and introduce new, more detailed, specific consents. This has significant IT system and process issues and is likely to mean we have fewer consenting prospects for marketing purposes.**

This places a huge burden on companies that have long-standing relationships with their customers. Requiring explicit 're-consent' will be expensive and in an aggregate have the effect of increasing cost for all customers.

- **We will be forced to employ a new full time Data Protection Officer (DPO) and other admin paid for by increased charges to customers.**

Our view is that the focus should be on data protection outcomes - securing a proper and proportionate data protection regime. That means a different level of resource depending on the type of data, how it is being handled and by whom. Specifying the outcome required rather than the inputs avoids a tick-box approach to data protection in favour of a more customer-centric approach.

- **Regarding data portability, all subject data held by a data controller can, at request, be provided in a standard format to the subject. This would require system and process changes but more importantly it potentially transfers competitive advantage to other providers.**

Financial Impact Assessment for our Customers

The financial impact of these issues will be very significant and will lead to increased product costs for consumers. Whilst it is not yet fully quantified we expect additional costs will run into many millions of pounds both once off and annually.

We are unaware of any quantified benefits to our customers to counterbalance these costs.

The fraud costs alone would increase motor premiums by some 4% with similar increases for home insurance customers. Other harmful externalities include the extra time people will spend being taken through longer data protection protocols, we estimate that Saga's customers will collectively have to spend 6,800 hours longer on the phone.

Other impacts are that with a reduced ability to focus marketing on receptive audiences then there will be more general direct mail activity, generating concern about 'junk mail'.

A More Appropriate Regime

Acromas would like to see a data protection regime that is fit for purpose, i.e. one that properly protects consumers from new mobile technology and social media intrusion and the monitoring of an individual's activity, when initial consent may have been tangential to the service or prospective services being provided. However, we need a common-sense approach to the general use of customer data so that inappropriate regulation does not impose excessive or unintended burdens on existing businesses or individuals.

These proposals have come about because of a need to clamp down on bad practice, most commonly occurring online via social media and very often originating outside the EU.

The practical effect of the Draft Directive will be to:

- increase the cost for consumers and responsible businesses;
- erode the advantage for businesses who act responsibly and marketing appropriately;
- diminish the ability of businesses to understand and detect fraud;
- curb businesses ability to understand their customers and tailor offers to meet their needs;

We are on record as calling for the adoption of amendments that:

- allows data sharing for fraud detection and fraud minimisation;
- allows profiling of customers to assess risk and to decide appropriate pricing;
- allows businesses and others to target their marketing communication appropriately;

- provides a pragmatic and proportionate approach to the notification of and fining for breaches; and,
- focusses the 'right to be forgotten' on social media, where there appears to be real consumer concern.

Balance of Competences

The rationale behind the Commission's drive to impose these controls on the use of data is to ensure that free market measures enjoy the confidence of individuals whose data is being shared, failing which trade barriers might be created within a developing single market. Part of the problem appears to be that the Court of Justice of the European Union has found that the Draft Directive can apply even where use of data in a particular case has no link to the operation of the free market" (Para. 29) – a stealthy expansion into what should be purely a national competence. The Acromas Group operates businesses almost exclusively within the curtilage of the UK to our UK customer base. So, all the disadvantages we have enumerated above cannot possibly offer countervailing advantages within the wider EU market.

We believe that the risk of damage to our businesses and the wider economy (as is acknowledged by the UK) and the threat to the healthy balance between data protection rights and a growing economy to be so significant that we would prefer the EU's competence in this area to be strictly confined to the operation of the free market in the EU rather than into areas that should under subsidiarity be the province of national competence alone.