- foster the company's compliance organization, for example, by establishing a whistleblowing hotline;
- train employees in data protection matters.

Stress test your data protection

Never before has a German supervisory authority stressed so clearly the need for proper data protection management. All companies that process customer or employee data on a large scale should put their organization to the test — the best way to avoid fines and publicity for data protection violations.

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Consumer protection partnership reports on enforcement priorities for 2015

Stephen Groom

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Who: Consumer Protection Partnership, including Competition and Markets Authority, Financial Conduct Authority, National Trading Standards and Citizens' Advice

When: January 2015

Where: Westminster, UK

Law stated as at: 4 February 2015

What happened

The Consumer Protection Partnership (CPP) was formed in 2012. Its members comprise all the key bodies tasked with enforcing and giving guidance on UK consumer protection laws, including laws impacting advertising and marketing. The membership roster includes the Office of Fair Trading's (OFT's) successor body, the Competition and Markets Authority (CMA), the Financial Conduct Authority, National Trading Standards and Citizens' Advice. Formed at the time of the impending scrapping of the OFT, the CPP was intended to help make better, 'joined-up', use of the more limited resources being made available for enforcement of consumer protection laws.

This year's priorities

The CPP's 'Priorities Report 2015' identifies its strategic priorities for scrutiny and action in 2015. It also mentions its previous priorities for 2013–2014.

Targeted scams

Mass marketing scams: Well-known scams included lottery mailings, PPI mis-selling claims services, false competition wins, offers of phoney jobs, and Green Deal and cash voucher scams. Often targeted were

vulnerable or disadvantaged consumers and small and medium-sized enterprises. To help combat this, the CPP organized a ‘Mass marketing scams action plan’ whose actions included training postal staff to spot suspect mailings and, through a dedicated ‘scams team’, organizing the distribution to local authorities of ‘suckers’ lists’ so that the authorities could intervene to warn victims. The data protection implications of this are, to say the least, interesting!

No action on mobiles

Mobile phones and technology: After working with Ofcom on a ‘harms matrix’, the CPP determined that, due to the work of other enforcement authorities in the area, there was nothing the CPP could usefully add.

Confusing accreditation

Home repairs and improvements: One of the concerns here was a wide range of ‘accreditation’ and ‘approved trader’ schemes offering varying levels of protection and access to redress, with consumers having limited means of distinguishing between these and making an informed choice.

A review of these schemes was undertaken in 2014, and Trading Standards is currently developing a draft plan for an umbrella scheme that could provide more transparency, with several leading trader schemes already interested in signing up.

2015 priorities

The key strategic priorities for 2015 are as follows.

Online markets

Leading the way in consumer detriment here were:

- *Subscription traps:* Usually delivered by way of a pop-up window or banner ad on a website and designed to entice consumers into signing up for an apparently low cost or free trial of a product (Raspberry Ketone is a common example). Consumers often do not realize that they have signed up to a costly and recurring monthly payment. A new development has been for these scams to extend beyond physical products, with low-cost help offered by so-called ‘copycat’ sites with an application process, for example, leading to consumers inadvertently signing up to costly monthly newsletters.
- *Use of personal data:* It was not clear to the CPP whether many consumers fully understood how the personal data market worked in the online ecosystem, how it is captured and by whom.
- *Ads on social media and search engines:* Recent research showed that 41 per cent of consumers still cannot distinguish between a natural search result and a paid-for advertisement, while related problems with ‘copycat’ websites charging for services such as applying for an EU E111 European Health Insurance Card, which are freely available from the official site, show that there are continuing opportunities for unscrupulous advertisers to lure consumers onto their sites. On the social media advertising front, the CPP expects a rise in abuse of social media advertising, mirroring the misuse of search engine advertisements seen in the ‘copycat’ website problem. The misuse of Facebook advertising is seen as posing a significant threat, given that Facebook’s user base is even larger than Google’s.

Unfair contract terms

Top of the CPP charts here were:

- *Unfair cancellation terms*: Here the CPP is particularly concerned about onerous terms for cancelling contracts, such as overlong cancellation periods or significant fees in various sectors, including gyms, training courses and mobile phones. CMA Guidance, the CPP Report reminds us, says that consumers should be allowed to leave a contract without penalty if there is an increase in subscription price.
- *Consumer rights at retail level*: A recent Department for Business, Innovation and Skills (BIS) Consumer engagement and detriment survey indicated that, although 82 per cent of UK consumers felt well protected by consumer law, many are not aware of their actual rights. Sixty-seven per cent did not appreciate that, even without a specially bought extended guarantee, they can have a broken down fridge repaired or replaced without charge for up to 18 months after purchase.

UK consumers not informed of rights

In addition, only 43 per cent of consumers were aware that the advertised price of airline flights must include all taxes, fees and charges, while the UK European Consumer Centre (ECC) identified UK retailers as the least likely in the EU to correctly identify the period during which a consumer can have a defective product repaired free of charge. Although this landscape may be improved by the arrival of the Consumer Rights Act (CRA) in October 2015, the CPP says, somewhat ungrammatically, 'There is potential for changes in legislation for consumers to be unclear about their rights'. An awareness programme is promised in the run-up to the CRA coming into force.

Travel

Two areas within the travel sector are identified as particularly problematic:

- *Holiday products*: Timeshares are considered to be an 'emerging threat' by the ECC, with the selling process and exploitation of loopholes in current legislation seen as just two of a number of problems.
- *Car hire*: Common problems here include non-damage-related supplementary charges and vehicle condition.

Quality of services

Here the CPP is particularly concerned about third-party intermediaries, including switching websites, brokers and energy efficiency advice providers, who purport to help consumers get a good deal on financial and essential services. In order to get the best deals, consumers may have to supply data about their previous use of services and there may be no guarantee that that this data will be used responsibly.

Citizens Advice experiences suggest that some of these sites are taking advantage of consumers through the following practices:

- portraying themselves as lenders, rather than brokers;
- passing on personal details to third parties;
- charging for partially completed applications.

Why this matters

The CPP report is an informative bellwether of the current state of the consumer protection landscape — or should we say ‘scamscape’ — as seen by the leading UK enforcement bodies. Clearly the CPP’s members have a busy year ahead. For the full report, including the steps the CPP intends to take to combat these practices, go to <https://www.gov.uk/government/publications/consumer-protection-partnership-priorities-2014-to-2015>.

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CAP publishes ‘online remit update’

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Who: Committee of Advertising Practice (CAP)

Where: England and Wales

When: 9 December 2014

Law as stated at: 12 January 2015

What happened

Committee of Advertising Practice (CAP), which writes the CAP Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code), has published guidance on the extension of the CAP Code’s online remit (ORE). Before the ORE in March 2011, the Advertising Standards Authority (ASA), which enforces the CAP Code, had only regulated online marketing communications where they appeared in space paid for by the advertiser, such as banner ads, and all online promotions.

ORE extends CAP’s remit

The ORE was implemented as a result of the explosion in online advertising through advertisers’ own websites that were mostly not covered by the CAP Code and related changes in advertising practices, with marketing communications increasingly appearing on advertisers’ own social media pages, or incorporating user-generated content (UGC) or using ‘advergames’ to advertise their goods or services. In a related recent development, CAP decided in October 2014 not to extend the ASA’s digital remit to the online marketing of causes and ideas.