

Extract – Notes on telephone conversation between ICO (David J Evans) and IAB (8 October 2008).

- While we don't expect their code to indulge in a lengthy explication of whether certain bits of information are personal data, the draft code needs to be absolutely clear that members will, in following the code, often be going further than DPA98 and PECR might otherwise require. Without this clarity, they risk members deciding to sign up to the code but still being resistant to policy decisions which the law does not oblige them to take.
- The code is quite repetitive – Nick explained that they have undertaken a substantial redraft and the amount of repetition has been reduced. That said, we both agreed that a certain amount of banging the important points home (eg transparency) doesn't do anyone any harm but they have reduced it down to transparency and choice/consent
- They are worried that OFCOM and to a certain extent ICO will be very concerned to push them towards 'opt-in'. I explained that the alternative they have plumped for – 'consent' – is no less problematic. What ICO is interested in is for consumers to be made aware of what is going to happen and that they are given a meaningful (as well as practical) level of choice over how ads are served to them.
- Specific point on their approach to health data – they have prohibited the creation of segments relating to critical illness but not any other health information. I mentioned that in data protection terms there is no such distinction drawn (even though as a regulator we may sensibly interpret infertility as being more sensitive than a broken toe).
- Suggested that they urge caution in the use of segments which may by the nature of the content attract young children even while appreciating that they may not want the prohibition on under 13s being specifically targeted to be extended at all.