

# Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 01

08 June 2017 | 10:30 – 15:30

Held at Holborn Bars, 138-142 High Holborn, London, EC1N 2NQ

Status of the Minutes: Draft

## MEMBERS PRESENT

|                   |     |                           |                 |     |                             |
|-------------------|-----|---------------------------|-----------------|-----|-----------------------------|
| Helyn Mensah      | HM  | Chair                     | James Gilbert   | JG  | Wholesaler Committee Member |
| Louise Fox        | LF  | Retailer Committee Member | Caroline Gould  | CG  | Wholesaler Committee Member |
| Gillian Hill      | GH  | Retailer Committee Member | Sinead Mulready | SMu | Wholesaler Committee Member |
| Sally Marshall    | SMa | Retailer Committee Member | Nick Rutherford | NR  | Wholesaler Committee Member |
| Maureen Wilkinson | MW  | Retailer Committee Member |                 |     |                             |

## OTHER ATTENDEES

|                 |    |                   |               |    |                         |
|-----------------|----|-------------------|---------------|----|-------------------------|
| Elliot Bird     | EB | Meeting Secretary | Hugh Laurie   | HL | Observer (Thames Water) |
| Sarvesh Nair    | SN | Presenter (MOSL)  | Trevor Nelson | TN | Panel Sponsor           |
| Adam Richardson | AR | MOSL (Presenter)  |               |    |                         |

## APOLOGIES

|     |     |
|-----|-----|
| N/A | N/A |
|-----|-----|

## 1. Welcome and Introductions

### Purpose: For Information

- 1.1. The Chair welcomed the Committee Members to the first meeting of the GDPR Issues Committee.
- 1.2. The Chair informed the Committee that a member, Elisa Zamora, had left her employer and would not be taking up the seat to which she had been appointed.

## 2. Terms of Reference

### Purpose: For Information

- 2.1. The Committee was presented with the Terms of Reference for the General Data Protection Regulation (GDPR) Issues Committee previously agreed by the Panel, for its information.
- 2.2. A Committee Member raised a question concerning whether the timetable provided would allow for changes to be implemented into CMOS, should any be required. MOSL agreed that it would be important to identify any potential changes as soon as possible to facilitate timely implementation of any required changes.
- 2.3. The Committee **NOTED** the Terms of Reference provided by the Panel.

## 3. History and Background of MAC005/CPM002

### Purpose: For Information

- 3.1. The Committee received a presentation on the history of Data Protection discussions between Trading Participants and the Interim Codes Panel, preceding the Committee being established. This included the proposed Data Management Protocol (DMP), and Change Proposal **CPM002** (previously known as **MAC005**). There was also discussion around the privacy impact assessment (PIA) undertaken by DACBeachcroft on Data Protection and the DMP, the Data Protection Act and the impending General Data Protection Regulation.
- 3.2. A Committee member asked if the PIA that occurred a year ago was still valid, given that more guidance has been provided by the Information Commissioners Office (ICO) since then. The group agreed that the document was a good basis to ensure compliance, but that, it may seek further advice if needed during its work.
- 3.3. A Committee Member asked whether the scope of the GDPR Issues Committee was only data inside the central market system (CMOS), or whether it also included any data that MOSL holds itself. MOSL clarified that the data protection provisions relate to data that is exchanged and held in relation to the delivery of code obligations, this includes the data in CMOS.
- 3.4. Members of the Committee who had previously been on the Data Protection Working Group were noted that the security standards laid out in the DMP were not specified in the Data Protection Act (DPA). In their view, companies will always make their own risk based decisions on how much security they will implement to comply with the conditions of the DPA.

- 3.5. Committee members were asked to provide their opinions on the DMP, and issues their organisations identified with it. The Committee came to a consensus that the DMP went beyond the requirements of the DPA.
- 3.6. The Committee **NOTED** the presentation and the history of **MAC005/CPM002** and the DMP.

## 4. Overview of GDPR

### **Purpose: For Information**

- 4.1. The Committee Members were presented with an overview of the General Data Protection Regulation (GDPR), which covered its key areas and its differences to the current DPA.
- 4.2. A Committee Member asked whether MOSL would be considered a data controller or data processor, under the framework of the GDPR. MOSL indicated that it considered it appropriate to consider itself a data controller.
- 4.3. A Committee Member highlighted that it was important to consider the transfer of data between Wholesalers and Retailers, not just into and out of CMOS.
- 4.4. The Committee **NOTED** the presentation on the GDPR.

## 5. Achieving the Committee Objectives: Next Steps

### **Purpose: For Discussion**

- 5.1. The Committee discussed the purpose of the DMP, and the work plan of the Committee going forward. It also considered at high level how the DMP might be amended.
- 5.2. The Committee agreed that the DMP, or its replacement, should give mutual assurance to all Trading Parties when they communicate with each other. It should ensure that every party understands what their role is and where liability falls if there is a breach.
- 5.3. The Committee noted that it was usual for data controllers to put in place a data sharing agreement and that this was one of the functions of the DMP.
- 5.4. The Committee felt that it was appropriate that the Market Arrangements Code contained some data protection provisions, rather than relying on the general legal requirement to comply with the DPA or the GDPR.
- 5.5. The Committee considered a confidential consultation with the industry to determine the challenges Trading Parties were facing in relation to data protection however it was uncertain whether this would be beneficial for the Committee considering its objectives and principles.
- 5.6. The consensus of the Committee was that the DMP and MAC005 should be refined to be as light touch as possible and amended to accommodate the GDPR. Within this, it should be made clear that MOSL and all Trading Parties are Data Controllers in common and will act in accordance with the legislation and several minimum standards.

- 5.7. The Committee agreed that it may be useful to consider whether Annex 1 of the DMP be used as the basis for guidance and reviewed against the guidance published by the Information Commissioner's Office (ICO).
- 5.8. The Committee noted that the right of erasure (arising under the GDPR) may require a process to be documented to set out how customer requests (made via Retailers) would be effected across the data sets held by the Market Operator, Wholesalers and other Retailers. It was noted that this might require an amendment to CMOS and was something to be considered by MOSL.
- 5.9. The Committee also discussed whether the provisions of the GDPR would require Trading Parties to appoint a Data Protection Officer.
- 5.10. Committee Members considered the concerns raised by Trading Parties and the ICP in considering MAC005.
- It was noted that Trading Parties had previously considered the 'use of data' clause, which prevented the use of data for anything other than code compliance, was too restrictive and limiting.
  - Other respondents to the ICP consultation on MAC005 said that the requirement for background checks in Annex 1 was disproportionate and particularly onerous.
- 5.11. The Committee agreed to review the separate elements of the DMP considering the discussions noted above for the next Committee meeting.
- ACTION 01\_01**
- 5.12. MOSL agreed to circulate the meeting minutes for the ICP's meeting on 14/02/17, the slide presentation from the meeting, the latest version of the DMP, and the PIA.
- ACTION 01\_02**
- 5.13. MOSL agreed to draft a straw-man extension to the MAC and a guidance document, for the Committee's feedback at the next meeting.
- ACTION 01\_03**
- 5.14. The Committee **AGREED** for MOSL to develop a proposal for a new inclusion in the MAC and a guidance document for the Committee's review at the next meeting.

## 6. Any Other Business (AOB)

### **Purpose: For Information**

#### 6.1. The Committee:

- **AGREED** that 5 days' notice was sufficient for Committee paper submissions.

- **AGREED** that they planned to attend all future meetings in person, rather than make use of teleconference facilities.
- **REQUESTED** that the Secretariat re-arrange the last 2 Committee meetings, and that Committee members provide them with their availability.

**ACTION 01\_04 and 01\_05**

6.2. There was no further Business and the Chair closed the meeting.

**Post meeting note:** The Chair raised an action for MOSL to produce a framework of agreed approach and process for the Committee going forward.

**ACTION 01\_06**

### Actions:

- A01\_01** Committee Members to review the separate elements of the DMP considering the discussions noted above and review these at the next meeting as candidates to preserve in a revised, lighter touch, DMP.
- A01\_02** MOSL to circulate the meeting minutes for the ICP's meeting on 14/02/17, the slides from the GDPR Issue Committee meeting, and the PIA.
- A01\_03** MOSL to draft a straw-man extension to the MAC and a guidance document, for the Committee's feedback at the next meeting.
- A01\_04** Secretariat to re-arrange the last 2 Committee meetings to better accommodate the Committee's availability.
- A01\_05** Committee Members to provide their availability to the Secretariat, to facilitate the re-arranging of the last 2 Committee meetings.
- A01\_06** The Chair raised an action for MOSL to produce a framework of agreed approach and process for the Committee going forward.

The next GDPR Issues Committee meeting is scheduled for:

**22 June 2017, 10:30 – 15:30, at:**

**Holborn Bars**

**138-142 High Holborn**

**London**

**EC1N 2NQ**

**The nearest tube stations are Chancery Lane, Farringdon and Holborn**