

# Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 03

6<sup>th</sup> July 2017 | 10:30 – 15:30

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

Status of the Minutes: Final

## MEMBERS PRESENT

Helyn Mensah	HM	Committee Chair	Caroline Gould	CG	Committee Member (Wholesaler)
Louise Fox	LF	Committee Member (Retailer)	Sinead Mulready	SM	Committee Member (Wholesaler)
Sally Marshall	SM	Committee Member (Retailer)	Nick Rutherford	NR	Committee Member (Wholesaler)
James Gilbert	JG	Committee Member (Wholesaler)	Trevor Nelson	TN	Panel Sponsor

## OTHER ATTENDEES

Elliot Bird	EB	Meeting Secretary (MOSL)	Roland George	RG	Head of Legal (MOSL)
Adam Richardson	AR	Market Design Director (MOSL)			

## APOLOGIES

Gillian Hill	Committee Member (Retailer)
Maureen Wilkinson	Committee Member (Retailer)

## 1. Welcome and Introductions

**Purpose: For Information/Decision**

- 1.1. The Chair welcomed Members of the Committee to the third meeting of the GDPR Issues Committee.

## 2. Minutes and Outstanding Actions

**Purpose: For Decision/Information**

### 2.1. Minutes

- 2.2. No Committee Members had any comments on the drafted minutes of the previous meeting.
- 2.3. The Chair had some minor amendments which they agreed to feedback offline.
- 2.4. The Committee **APPROVED** the minutes following the amendments provided by the Chair.

### 2.5. Actions

- 2.6. The Committee Members reviewed the actions from the last meeting and **AGREED** that they could all be closed following the end of the current meeting.

## 3. Data Flows Case Studies

**Purpose: For Decision/Information**

- 3.1. The Committee considered two case studies, submitted by a Committee Member, to explore the effectiveness of the processes in the proposed CSD document. Process diagrams were provided to better demonstrate the processes it would be following.
- 3.2. The Committee requested that the process diagrams be circulated among Committee Members following the meeting.

### **ACTION 03\_01**

- 3.3. MOSL highlighted that the data subject access process and complaints and disputes process were both very similar, and involved MOSL performing a triage and communication function between all relevant parties.
- 3.4. A Committee Member asked where is liability allocated in the instance where a party has uploaded data that is now held by all other Trading Parties and it is asked for it to be erased. Upon exploring this, Committee Members agreed that every party that acts as a data controller (all Wholesalers, Retailers and the Market Operator) would have a responsibility to erase this data from its own systems. In addition, the Market Operator has an obligation to inform all the Trading Parties of the request so that such requests can be actioned by each party.
- 3.5. A further question was raised on how the Market Operator would be aware of who the relevant parties are i.e. who is storing this information in their own systems. Committee Members argued that this was not possible, but that it would be possible to see who had been sent what data. This does not account for whether the company chooses to store a specific data item, but it should at least cover all parties that do choose to store it.

- 3.6. The Committee considered how the Market Operator might circulate notifications between Trading Parties, in the event of a request being made. Committee Members observed that this might be an informal method of communication, such as an email, rather than implementing a new functionality into CMOS to support this. A Committee Member suggested defining a standardised form to support this notification process.
- 3.7. A Committee Member highlighted the importance of investigating whether the right of erasure requires complete erasure of data item, or if moving it out of use would be sufficient. It was noted there may be a requirement to implement a technical solution to allow for erasure.
- 3.8. An action was raised to investigate the requirements of the GDPR in terms of erasure of personal data, and whether there will need to be a technical change to meet this requirement.

#### **ACTION 03\_02**

- 3.9. Committee Members queried whose responsibility it was to ensure actions are completed, following the notification stage of the data access and complaints process, and whether it would be the responsibility of the party receiving the request to coordinate all this information and provide it to the customer. The Committee Members agreed that parties should be responsible for whatever happens to the data they received. Based on this, Trading Parties should be providing notices to customers of who they have notified, of their own actions and the process that will be followed.
- 3.10. A Committee Member queried the process in the case where 1 customer has separate water and wastewater Retailers and Wholesalers, and there is a discrepancy in the data held across those 4 Trading Parties. They argued that it may be difficult to delete or change data items if only one of these parties is made aware of the request. Another Committee Member responded that, although the Trading Party would have an obligation to help that customer exercise their rights, this should be covered by informing the customer that they would also have to contact the other Trading Party.
- 3.11. A Committee Member raised a concern that the required timescales might be challenging to meet, given that all the relevant Trading Parties need to be informed by MOSL after MOSL has been informed by another Trading Party. The Committee agreed that the legal review should consider the required timescales of the GDPR.
- 3.12. Some Committee Members asked for clarification on what the process requires them to feedback to the customer, whether it just requires them to notify the customer of steps they have taken or whether they need to feedback all the responses from every relevant Trading Party. The latter raises concerns as it is potentially very onerous for the Trading Party in question, and means the process will be extended by however long it takes to hear from all Trading Parties. The Committee agreed to request legal advice on this item, so it can determine whether there needs to be a technical solution incorporated into this process or not.

#### **ACTION 03\_03**

- 3.13. The Committee agreed it should be made clear that the party receiving a complaint or request has an obligation to progress the request through the process and to respond to the data subject who made the request. The data subject needs to have a response on what the recipient of the request is doing,

and inform them of the process we follow. A Committee Member suggested that it would not be possible to describe one process for every right under the GDPR, and raised an action for each right under the GDPR to be investigated in the context of the processes outlined in the CSD. The Committee agreed that MOSL should try and simplify processes in the revised CSD drafting, given there are substantial similarities in the process of dealing with complaints and requests for data access rights.

- 3.14. The Panel **NOTED** the presentation from MOSL and the case studies provided by a Committee Member.

## 4. Market Performance Framework

### **Purpose: For Information/Decision**

- 4.1. MOSL provided an overview of the Market Performance Framework, and how it might apply to data protection and the DMP.
- 4.2. It was highlighted that the current Operational and Market Performance Standards make no reference to data protection, but we do also have the market audit which is still being developed to determine what measures it will contain. The MOSL representative suggested that in future the data protection measures could be monitored as part of the market audit, given that the auditor will already produce a range of reports for all Trading Parties.
- 4.3. There was a question posed to the Committee of whether the current arrangements allow for sufficient enforcement of the data protection measures, and Market Performance Standards in general. As it stands it is unclear what can be done by the market, before regulatory action can be taken for a party not complying with the codes and therefore not complying with the conditions of their license. It was agreed that there might be a role for the Panel or its Committees to put interim steps in place to facilitate compliance. However, it was noted that the codes did not currently provide for any explicit sanctions to be applied in the event of a party's non-compliance, save for the (currently suspended) charges associated with underperformance in relation to the relevant performance standards.
- 4.4. A Member of the Committee raised the possibility that assurance could be provided through a self-assessment approach, which would be a possible middle ground from the proposed options. Another Committee Member agreed with the original recommendation that this should be part of the market audit, possibly forming a new section within the market audit. The audit is designed to monitor compliance with the codes, and the proposed solution is part of the codes so this would be the right vehicle for it.
- 4.5. The Committee agreed that the Market Performance Committee (MPC) should consider how assurance should be provided in respect of data protection. From this it should then decide whether this can exist as part of the current arrangements or whether there needs to be some form of separate assurance for GDPR and Data Protection.
- 4.6. It was also agreed that the MPC should consider the sanctions the codes allow use of, and decide whether they are sufficient. From this the MPC can determine any new sanctions that could be

introduced, but the Committee agreed it should aim not to develop specific sanctions that only apply to data protection.

- 4.7. An action was raised to investigate how under performance around compliance with GDPR is tracked, and determine whether there needs to be new or additional provisions in the code.

**ACTION 03\_04**

- 4.8. A Committee Member highlighted it would be important to see what feedback we received from the current market audit. With that information, Trading Parties can feedback what areas are most beneficial and most need the funding.

- 4.9. The Panel **NOTED** the presentation from MOSL.

## 5. Definitions work

**Purpose: For Decision/Information**

- 5.1. A paper was presented to the Committee on requested definitions from the action in the previous meeting, Shared Data, Personal Data, CMOS Data, and the Purpose of data.

- 5.2. An action was raised for the slides to be shared with meeting attendees following the meeting.

**ACTION 03\_05**

- 5.3. Committee Members highlighted that this definitions piece is useful as it helps identify data which is not in scope of the GDPR, Shared Data that exists in CMOS that is not personal.

- 5.4. Committee Members discussed what is meant by Personal Data, and more specifically what data items could be considered Personal Data. This raised issues around the definition of Indirect Personal Data, i.e. something that can be used to identify someone in conjunction with another data item. The Committee agreed that this question could be taken to lawyers as part of a legal review to be commissioned by the Committee.

- 5.5. The Committee identified issues with defining what is meant by Personal Data, particularly If each Trading Party is required to decide this in isolation. The result will mean there will be discrepancies between each Trading Party. The Committee suggested that a document that references all the data items that are Personal Data, to be developed by MOSL or the Panel, would be very useful in this regard. MOSL agreed to consider this and bring back an update to a future meeting.

- 5.6. An action was raised for all the redrafted documents to be reviewed in the context of the widest possible definition of personal data, the Committee agreed with commissioning external resource to complete this action.

**ACTION 03\_06**

- 5.7. The Panel **NOTED** the presentation from MOSL.

## 6. Revised Drafting

### **Purpose: For Decision/Information**

- 6.1. The Committee discussed the proposed drafting for the revised DMP document, provided by MOSL in advance in the meeting. Specifically, the Committee reviewed the proposed CSD document, as this had not previously been reviewed. During this review, the Committee addressed all 6 sections of the CSD individually and suggested specific amendments.
- 6.2. The Committee agreed that MOSL should clarify and tidy up aspects of loose wording in the draft document and look to decrease the duplication across the document.
- 6.3. MOSL suggested that the current section referring to Data Protection Officers and nominated officers could, perhaps, point to the already nominated Contract Managers. The Committee agreed with this, but wanted some provision for Trading Parties to elect nominated officers if they wished to do so. The Committee suggested that the drafting be amended to make it clear that if no nominated officer is provided then it will be assumed the Contract Manager will undertake that role.
- 6.4. A Committee Member raised a suggestion that the requirement for names of nominated officers be removed and instead just require an email address. This would allow for a generic mailbox address to be provided, which avoids business continuity complications when an employee moves from their nominated officer position. The Committee agreed with this suggestion but noted that parties should be required to confirm at least one, named individual.
- 6.5. Another Committee Member highlighted that MOSL is required to circulate details to all Trading Parties who the nominated officers are for each other Trading Party, and asked how MOSL would achieve this. A different Committee Member suggested that the details of these officers could be published on the website, so it could be accessed by all parties.
- 6.6. A Committee Member highlighted that the drafting does not include provisions for alternate legislation parties in different countries must comply with. As indicated by a Committee Member, Scottish firms are required to comply with their own Data Protection law and Fraudulent Online Identities Sanctions Act (FOISA).
- 6.7. The Committee agreed that the processes for Data Subject Rights requests and Complaints and Disputes were sufficiently similar that they could both be consolidated into a single general process. MOSL took this feedback on board for their re-draft of the proposed new DMP.
- 6.8. An action was raised by a Committee Member for MOSL to determine how each of the individual Data Subject Rights would be compatible with the CSD processes. It was agreed this could be commissioned to an external legal source.

### **ACTION 03\_07**

- 6.9. The committee considered if Retailers could indicate in the market data which records should be considered personal data (e.g. That relating to Sole Traders) The Committee concluded it would be too costly and time consuming to reasonably implement and maintain such information.

- 6.10. The Committee raised a concern with the criteria required for a breach to be reported to the Market Operator, currently it is just described as a potential or actual loss of data which is too general. This could categorise a very small and trivial breach that would not be efficient to breach. The Committee suggested this was changed to include the terms material or substantial.
- 6.11. The Committee **NOTED** the drafting provided by MOSL and suggested further amendments as noted above.

## 7. Any Other Business (AOB)

### **Purpose: For Information/Decision**

- 7.1. The Chair proposed to the Committee that, considering the large number of actions and requirements for legal review coming from this meeting, that the upcoming meeting on the 18th July 2017 be postponed. Instead the Committee can meet by teleconference to discuss anything that was not covered this meeting, and then meet again formally at the beginning of August. The Committee agreed to this proposal, and an action was raised for the secretariat to book this into Committee Member diaries.

**ACTION 03\_08**

- 7.2. There was no further business and the Chair closed the meeting.

## Actions:

- A03\_01** The Committee requested that the process diagrams, presented in the case study item, be circulated among Committee Members following the meeting.
- A03\_02** MOSL to investigate the requirements of the GDPR in terms of erasure of personal data, and whether there will need to be a technical change to CMOS to meet this requirement.
- A03\_03** Provide clarification on what the CSD processes require Trading Parties to feedback to the customer, in response to a dispute or access request.
- A03\_04** Investigate how under performance around compliance with GDPR is tracked, and determine whether there needs to be new or additional provisions in the code.
- A03\_05** Panel Secretariat to share slides with meeting attendees following the meeting.
- A03\_06** Redrafted DMP documents to be reviewed in the context of the widest possible definition of personal data.
- A03\_07** MOSL to determine how each of the individual Data Subject Rights would be compatible with the DMP processes.
- A03\_08** Panel Secretariat to book the next 2 meetings and a 1 hour teleconference into Committee Member diaries. Based on availability that they will provide.

The next GDPR Issues Committee meeting is scheduled for: **Date, Time, at:**  
**Holborn Bars**  
**138-142 High Holborn**  
**London**  
**EC1N 2NQ**

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