

Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 06

01st September 2017 | 10:30 – 11:30

Held at teleconference,

Status of the Minutes: Final

MEMBERS PRESENT

Helyn Mensah	HMe	Chair	Sally Marshall	SM	Committee Member (Retailer)
Hugh Laurie	HL	Committee Member (Wholesaler)	Maureen Wilkinson	MW	Committee Member (Retailer)
James Gilbert	JG	Committee Member (Wholesaler)	Trevor Nelson	TN	Panel Sponsor

OTHER ATTENDEES

Adam Richardson	AR	Market Design Director (MOSL)	Roland George	RG	Head of Legal (MOSL)
Elliot Bird	EB	Market Analyst (MOSL)	Sarvesh Nair	SN	Legal Analyst (MOSL)
Hazel Moffatt	HMo	Partner	Joanna Clark	JC	Legal Director (DLAPiper)
Eleanor Tunnicliffe	ET	Partner			

APOLOGIES

Caroline Gould	Committee Member (Wholesaler)
Nick Rutherford	Committee Member (Wholesaler)
Louise Fox	Committee Member (Retailer)
Gillian Hill	Committee Member (Retailer)

1. Welcome and Introductions

Purpose: For Information/Decision

- 1.1. The Chair began by welcoming Hazel Moffatt, Eleanor Tunnicliffe and Joanna Clark to the Committee meeting, who were attending on behalf of DLAPiper and DACBeachcroft who are undertaking the legal review of the data protection provisions.
- 1.2. It was noted by the Chair that the quorum for members attending the meeting had not been met, so the members present were unable to make any decisions on behalf of the Committee. This was not thought to be too pressing an issue, given that the meeting was mostly an education piece on the legal review.

2. Minutes and Outstanding Actions

Purpose: For Decision

2.1. Minutes

- 2.2. The group provided no comments on the minutes of the previous meetings, and approval was deferred because quorum had not been met.

2.3. Actions

- 2.4. Representatives from MOSL provided an update on the Committee's actions and it was agreed that they would remain open, as they relied upon the result of the legal review.

3. Legal Review Progress Update

Purpose: For Information

- 3.1. The legal review team from DACBeachcroft (DAC) and DLAPiper (DLA) provided the Committee with a presentation to update them on the progress of the legal review that they have been undertaking.
- 3.2. DAC and DLA explained that they had Reviewed the proposed Section 15 of the MAC, a proposed additional schedule in the MAC, and a new CSD focusing on processes in respect to Data Protection. The purpose of this review being to determine whether they complied with the GDPR framework, and existing data protection requirements.
- 3.3. The legal review team provided an overview of GDPR and the need to document interactions between parties and explained that they had approached the review in the context that the Market Operator and Trading Parties were data controllers in common.
- 3.4. The legal review team confirmed the approach was to keep the MAC drafting light and take the interface processes from the draft CSD and the guidance schedule we had developed as the basis for a 'governance document' that would be tied into the code from the MAC drafting. They explained this was because:
 - The draft CSD sits somewhat oddly with other CSDs which are very procedural from a systems/Codes perspective - by contrast this is a compliance process;

- They tend to the view that it's neither required nor necessarily helpful to put a detailed "behind the scenes process" (which relate to processes initiated by third party individuals separate to the parties to the Code) in the Codes;
- A CSD will be more inflexible to change which is unhelpful given that GDPR remains a moving target with guidance from ICO still awaited,
- It would be preferable to keep all of these processes within one additional governance document (albeit supplemented by an external facing high level Subject Access Request policy - which would be needed in addition to the Codes in any event)
- Having regard to the principle of "privacy by design and default" which is inherent in GDPR they think it would be appropriate for some of the requirements (e.g. around rectification/correction, erasure, retention etc) which are already principles within the Codes (see e.g. CSDs 0301; 0104 etc) to be dealt with within those their current homes (i.e. adding material specific to personal data to those documents) rather creating an isolated standalone document for them.

3.5. The legal review team provided an explanation of the Governance documents, and highlighted that they will refer to articles of the GDPR that parties must comply with to comply with GDPR as a whole.

3.6. In addition, it was requested that committee members give consideration to the implications on the proposed text of:

- automated decision-making (table rows 45 and 46)
- the implications of GDPR on the use of free-text fields (row 21)
- the implications arising for handling sensitive data and associated processes (rows 12-17, 57 and 59)

3.7. An action was raised by the Chair for the legal review team to provide a divided-up version of their table indicating their questions and concerns for discussion, so that it indicated who should be investigating each point. The legal review team agreed to provide this alongside their draft.

ACTION 06_01

3.8. Committee Members were asked to provide their comments on the drafting the legal review team had provided for the MAC Section 15, with a deadline of Monday 4th August. It was also raised as an action to inform Committee Members who had not attended the meeting of this.

ACTION 06_02 and ACTION 06_03

3.9. Members of the Committee requested that the legal review team could provide some guidance on what is considered personal data and indirect personal data.

3.10. MOSL and the legal review team agreed to take the question of indirect personal data offline. The Committee Members in attendance highlighted this issue, drawing attention to the fact that at the extreme, combined with the right of erasure this might suggest data subjects could request that the majority of information in the central system be erased.

4. Any Other Business (AOB)

Purpose: For Information

4.1. There was no further business and the Chair closed the meeting.

Actions:

- A06_01** Legal review team to divide the circulated table of discussion points to indicate who is responsible for the answering of which questions, i.e. MOSL, Committee or legal team.
- A06_02** Committee Members to provide their comments to the Panel Secretariat on circulated documents from the legal review team by Monday 4th September 2017.
- A06_03** Panel Secretariat to circulate a reminder to all Committee Members to provide their comments on the provided legal review documents by Monday 4th September 2017.

The next GDPR Issues Committee meeting is scheduled for: **06th October 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