

Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 10

1st December 2017 | 10:30 – 15:30

Held at MOSL Offices, 16-18 Monument Street, London, EC3R 8AJ

Status of the Minutes: Final

MEMBERS PRESENT

Helyn Mensah	HM	Chair	Gillian Hill	GH	Committee Member (Retailer)
Caroline Gould	CG	Committee Member (Wholesaler)	Louise Fox	LF	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
Nick Rutherford	NR	Committee Member (Wholesaler)	Adam Richardson	AR	Panel Secretary

OTHER ATTENDEES

Elliot Bird	EB	Meeting Secretary (MOSL)	Roland George	RG	Head of Legal (MOSL)
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APOLOGIES

Sally Marshall	Committee Member (Retailer)
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1. Welcome and Introductions

Purpose: For Information

- 1.1. The Chair welcomed the Committee to its 10th meeting, highlighting that it was the scheduled to be the last meeting of the Committee.

2. Minutes and Outstanding Actions

Purpose: For Decision

- 2.1. The Chair suggested that, in order to ensure there was sufficient time for discussion, the minutes from the previous committee meetings be reviewed offline.
- 2.2. The Chair requested that Committee Members send any comments they had on the minutes to the Panel Secretariat following the meeting.

3. Recommendation Report Review

Purpose: For Discussion

- 3.1. The Committee considered the Recommendation Report which set out the proposed changes that the GDPR Issues Committee had determined were required to align the Market Codes with GDPR ahead of its entry into force in May 2018. This was a draft version of the report that would be submitted to the Panel following the final recommendation from the GDPR Issues Committee.
- 3.2. Committee Members discussed again the provisions around acceptable use of Market Personal Data and in particular whether or not such data could be used for the purpose of marketing. It was recalled by the Chair and MOSL that, as noted in previous Committee meetings, the current drafting mirrors what already exists in the Market Codes and therefore will not impose any further restrictions than already exist. Members of the Committee noted that Retailers can use data they have collected for their own purposes, as long as they have sufficient grounds for legitimate processing. In order to further clarify this in the drafting, Committee Members requested that references to the E-privacy scheme regulations, and the caveat around legitimate interest arguments being untested, be removed.
- 3.3. Committee Members were also concerned that the provisions seemed to create a requirement for consistency in Privacy Notices that isn't required by GDPR. However, MOSL informed the Committee that legal advice indicated this provision should be included in order to satisfy the GDPR requirement to have clear data sharing arrangements between Data Controllers. It was also cited that this consistency will also be of benefit to customers, who will find it easier to switch and understand the implications of switching if this consistency exists. The Committee agreed that this clause would remain unchanged.
- 3.4. A Committee Member requested that the Recommendation Report clarified the justification to refuse Data Subject Requests.
- 3.5. A Committee Member highlighted that clauses around Automated Decision Making should be clearer and use the language given under GDPR. Instead of stating that Data Subjects should not be subject to

Automated Decision Making, it should state that they can request not to be subject to a decision solely based on automated processing.

- 3.6. Committee Members requested that the Recommendation Report make it clear that the Committee had considered a position on controls for special categories of data. It was agreed that this should cover the points discussed that access is already heavily controlled and no further controls would be required.
- 3.7. The Committee concluded that it was appropriate that the drafting be silent on liability and indemnity, and that parties would be free to pursue whatever options would ordinarily be available to them under the law if/where faced with a breach.
- 3.8. A Committee Member queried why there were no changes to Trading Party systems or CMOS, as they believed that the change would likely have impacts on both. MOSL highlighted that the change as it was drafted was not setting out any specific system-based solutions. Because no solutions were prescribed within the legal drafting the change is not defined as having system impacts. In response, the Committee Member recognised the points raised but also explained that many Trading Parties have electronic system based solutions for the Operational forms. These parties would be facing system impacts, and therefore this needs to be acknowledged within the change. The Committee agreed to include this element in Trading Party system impacts within the Change Proposal forms.
- 3.9. Following this, the Committee agreed that there should be some form of Working Practice developed to set out the process for the transfer of the Data Subject Rights request forms, or a digital solution which could be reviewed by the Digital Strategy Committee.
- 3.10. The Committee also agreed to a number of specific drafting amendments suggested by Committee Members, which were amended in the Recommendation Report during the meeting.

4. Legal Drafting amendments and Summary

Purpose: For Discussion

- 4.1. The Committee then reviewed the proposed legal drafting for all elements of the solution, as reviewed by the external legal review team. The Committee provided their comments on the proposed solution to be incorporated into the final version to be recommended to the Panel.
- 4.2. A Committee Member requested clarity on whether Trading Parties would be able to request data on processes from other Trading Parties, and if this wasn't the case how Trading Parties would gain mutual assurance around their processes.
- 4.3. The Committee noted that, to demonstrate compliance, the proposal included a requirement to provide information on data protection processes and systems to the Market Operator. The Committee agreed that the most efficient way to meet this requirement would be for such information disclosure to fall under the scope of the Market Audit. This was supported by consultation responses.
- 4.4. The Committee also agreed it was appropriate for a reciprocal arrangement to be in place for the Market Operator to make such information available to any Trading Party on reasonable request.

- 4.5. A Committee Member raised concerns around the provisions in the drafting for MOSL to monitor the Personal Data processed and captured, as well as instructing the implementation of pseudonymisation of Personal Data, as these implied that MOSL would be policing data protection. MOSL could confirm that it would not be policing these provisions, and that they simply reflected requirements under GDPR for Data Controllers.
- 4.6. A Committee Member questioned whether the intention of the provisions was to require Privacy Impact Assessments to be conducted for all changes. It was agreed that Privacy Impact Assessments should only be required where processing of Personal Data is likely to result in a high risk to the rights of Data Subjects or as a means to demonstrate compliance. The Committee agreed that this should be reflected in the drafting.
- 4.7. A Committee Member queried whether the requirements to comply with mandatory guidance from the ICO should be expanded to also include non-mandatory codes of conduct. Another Committee Member highlighted that it is within the gift of organisations whether to agree to follow a code of conduct. The Committee agreed not to reference codes of conduct in the drafting and concluded that it was appropriate for Trading Parties to be required to comply with mandatory guidance only. Parties should be left free to make their own decisions as to whether and how to comply with non-mandatory ICO guidance.
- 4.8. A Committee Member highlighted that the singular Data Subject Rights Request form still could be considered unclear. They felt that the wording on the form requiring mandatory input was confusing, and that it should be made clear that only the relevant sections will be required to be completed. The Committee agreed with the points raised and agreed the change in drafting.
- 4.9. The Committee considered the updated list of Personal Data items, which included a number of recent additions, following a further review from MOSL.
- 4.10. The Committee agreed to review the list of data items, following the meeting, and provide a list of Personal Data items to include and that this list would be illustrative only. Given the potentially wide scope of indirect identifiers amounting to Personal Data and the lack of ICO or court guidance as to the likely parameters of 'indirect personal data', it was also agreed that the list should remain under periodic legal and practical review by the Committee or such other body as determined by the Panel. This was essential not only to ensure that compliance with GDPR was maintained on a continuing basis, but also to enable the removal or reduction of restrictions where it becomes clear these are not required by GDPR or do not fall within its scope.
- 4.11. A Committee Member requested clarity on the provisions that require Trading Parties to pseudonymise Personal Data, and whether this requirement was in excess of GDPR legislation. MOSL and other Committee Members confirmed that it was in accordance with the requirement to hold Personal Data for a minimum amount of time, and that is also was a useful solution in the event that Personal Data cannot be deleted and instead can be Pseudonymised for a similar effect.
- 4.12. The Committee also agreed to a number of minor drafting clarifications suggested by Committee Members, which were amended in the legal drafting during the meeting.

5. Rationale and Recommendation

Purpose: For Decision

- 5.1. The Committee discussed its rationale and recommendations for the final Recommendations Report to the Panel.
- 5.2. As part of their recommendation the Committee agreed it would include a number of additional recommendations, not specifically in relation to the Change Proposals. These included:
 - a recommendation that there was no need for a further industry consultation by the Panel;
 - a recommendation to keep the list of Personal Data items and the legal scope of Personal Data, especially indirect Personal Data, under review;
 - a recommendation that the Purpose of Market Data be reviewed to ensure that the acceptable uses of Market Personal Data are clear, particularly in reference to the use of data for marketing purposes;
 - a recommendation that the disputes process be reviewed in order to provide a dispute process appropriate for the short timescales under GDPR; and
 - A recommendation that work be commissioned in future to set out in detail the provisions for liability of Trading Parties in the context of data protection.
- 5.3. The Committee **AGREED** to recommend the provided draft Recommendation Report and Change Proposals to the Panel, agreeing to the provided rationale of **efficiency, transparency, customer participation, simplicity, cost-effectiveness** and **security**.
- 5.4. It was also **AGREED** that the Chair of the Committee (a Panel Member) would raise the recommended Change Proposals on behalf of the Committee.

6. Any Other Business (AOB)

Purpose: For Information

- 6.1. As this meeting was the last scheduled meeting of the Committee, the Chair thanked the Committee for their hard work towards the achievement of a final recommendation for a Market Codes Change Proposal within the prescribed timescales.
- 6.2. There was no further business and the Chair closed the meeting.