

# Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 04

18th July 2017 | 14:00 – 15:00  
Held on Teleconference,

Status of the Minutes: Final

## MEMBERS PRESENT

Helyn Mensah	HM	Chair (Independent)	Sally Marshall	SM	Committee Member (Retailer)
Hugh Laurie	HL	Alternate Committee Member (Wholesaler)	Louise Fox	LF	Committee Member (Retailer)
Sinead Mulready	SM	Committee Member (Wholesaler)	Maureen Wilkinson	MW	Committee Member (Retailer)
Caroline Gould	CG	Committee Member (Wholesaler)	Gillian Hill	GH	Committee Member (Retailer)
Nick Rutherford	NR	Committee Member (Wholesaler)	Trevor Nelson	TN	Panel Sponsor
James Gilbert	JG	Committee Member (Wholesaler)			

## OTHER ATTENDEES

Elliot Bird	EB	Meeting Secretary (MOSL)	Rebecca Mottram	RM	Market Design Lead (MOSL)
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## APOLOGIES

Adam Richardson	Market Design Director (MOSL)
Roland George	Head of Legal (MOSL)

## 1. Welcome and Introductions

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

- 1.1. The Chair welcomed Committee Members to the meeting and highlighted that the purpose of the meeting was to review the remaining strawman drafting that the Committee were unable to complete at the last meeting.

## 2. Review Strawman Part 1 – Market Arrangements Code (MAC) Section 15

### **Purpose: For Decision**

- 2.1. MOSL informed the Committee that the focus of the review was on the change marked drafting made to Section 15 of the MAC (Data Protection). It was noted that the blue text represented the first revisions made and the red text highlighted the changes made following initial Committee feedback at a previous meeting.
- 2.2. A Committee Member raised a question about whether there was overlap of the provisions in the MAC and Schedule 13. The Chair and MOSL advised that items generally are in the MAC to give them the necessary force, whilst additional detail is provided in the schedule to aid Trading Parties' understanding. It was discussed that any areas of duplication will be identified during the review.

*The Minutes will be laid out to capture the discussion of each clause of the drafted documents, to follow the format of the meeting.*

### **MAC, Section 15: Data Protection**

- 2.3. **Section 15.1.1:** The Committee provided no comment on the removal of this section.
- 2.4. **Section 15.1.2:** Committee Members provided several comments on this clause, and highlighted that this will likely change depending on what is decided in terms of the best format for the provisions, for example whether they are set out in the MAC, CSD, MAC Schedule or any supporting guidance. Committee Members clarified that they will not require Trading Parties to comply with guidance published by the Market Operator (MO), or the ICO, unless it is statutory guidance. MOSL therefore agreed to amend this clause and its subsections accordingly.
- 2.5. **Section 15.1.3:** The Committee agreed not to provide comments on this section, as no amendments had been made to the previous MAC drafting.
- 2.6. **Sections 15.2.1 – 15.2.5:** The Committee agreed this section did not require any amendments.
- 2.7. **Section 15.2.6:** MOSL posed a question to the Committee on whether this section should refer to Personal Data, as well as CMOS and Shared Data. The Committee agreed that a legal review was sought on the definition of Personal Data. MOSL agreed to seek legal review on this item as an action.

### **ACTION 04\_01**

- 2.8. **Section 15.2.7:** The Committee agreed, following a further review of this section, that the term responsible was more appropriate than the term liable. However, another Committee Member felt

there needed to be an inclusion on what the party would be responsible for. MOSL agreed to submit this item for legal review as an action.

#### **ACTION 04\_02**

- 2.9. **Section 15.2.8:** A Committee Member highlighted a point of inconsistency in this section, where it seems that the term data owner is used interchangeably with Data Controller. The Committee agreed that the drafting should be consistent in its use of terms and that this should be changed to Data Controller. It was further noted that all drafting should be reviewed to ensure consistent use of terminology and further still, where definitions are used that they are capitalised.
- 2.10. **Section 15.2.9:** Committee Members suggested that this section might be better placed in the CSD or Schedule 13, as it refers to safeguards against data losses and breaches which is covered in the Schedule 13. Another Committee Member felt that as it related to a standard that must be adhered to, it may be most appropriate in the MAC. Another Committee Member raised concerns that this section did not provide enough detail on what was required of Trading Parties, and suggested that some of the required technical and organisational measures set out in GDPR, could be included. It was suggested by a Committee Member that these more detailed provisions should be included in the Schedule 13, and that this section could then point to. The Committee agreed that a legal review be undertaken to determine how best to set out these requirements in the MAC and Schedule 13. MOSL took an action to include this in the legal review.

#### **ACTION 04\_03**

- 2.11. **Section 15.2.10:** MOSL asked the Committee whether the use of immediately (in part a) and promptly (in part b) was appropriate in this clause. The Chair highlighted that the Committee had agreed previously that the use of immediately in this document was not appropriate. Committee Members instead suggested that the document uses language in line with the GDPR, which in this case could be 'without undue delay' or 'as soon as reasonably practical'. The Chair highlighted that it was important for the final provision to prescribe some form of time frame, but agreed that this was not something the Committee could prescribe at present. Instead, it was suggested that this be included in the legal review, to determine the appropriate terminology. An action was raised for this to be included in the legal review in order to determine the appropriate timeframes.

#### **ACTION 04\_04**

- 2.12. **Sections 15.2.11 – 15.2.13:** MOSL noted that these three sections may be duplicating what was already set out in CSD007 – *Market Incident Management*, and therefore MOSL would review and determine whether these should be removed. The Committee agreed to this, on the assumption that there will be a cross-check to determine whether these clauses repeat existing provisions.
- 2.13. **Section 15.3.1 – 15.3.3:** MOSL asked the Committee whether these three sections should explicitly set out the GDPR and Data Protection articles, or whether it would be better to provide a more generalised clause that links to the definitions. A Committee Member asked if the references to the articles have been tested for whether they will be upheld legally. The Chair could confirm, it will be shared with lawyers to make sure that it is fit for purpose. A Committee Member suggested that the

position of the clause be more flexible, to allow for the inclusion of any new relevant articles in the future. MOSL took an action to include this in the legal review.

#### **ACTION 04\_05**

- 2.14. **Section 15.3.4 – 15.3.5:** The Committee had no comments on these sections.
- 2.15. **Section 15.3.6:** The Committee were asked whether this section would be more appropriate as part of Schedule 13, under ‘Security and Training’, rather than included in the MAC. The Committee agreed it should be removed and form part of Schedule 13.
- 2.16. **Section 15.3.7:** MOSL suggested that this section should also be subject to legal review, based on it explicitly setting out GDPR articles, similar to that of sections 15.3.1 - 15.3.3. The Committee agreed, and noted that any changes will need to reference the use of data to only be for emergency medical planning reasons, as was recommended by the PIA.
- 2.17. **Section 15.3.8:** The Committee had no comments on this section.
- 2.18. **Section 15.3.9:** MOSL asked the Committee whether it felt this clause was appropriate in its current place, or if it would be better placed in Schedule 13 under ‘Privacy Notices’. It agreed that all provisions for privacy notices should be together, and that they should be in the MAC, on the basis of the importance of the obligations. The Committee also suggested removing the requirement for all Trading Parties to be consistent with the Market Operator’s privacy notice, as it implies they all need to be the same which would not be practical. Instead it is suggested the drafting be amended to state ‘consistent as possible’, or similar words. However, it was requested that the lawyers provide a view on the appropriate wording.
- 2.19. **Section 15.3.10:** The Committee agreed this section would be more appropriate as part of Schedule 13, under ‘Security and Training’.
- 2.20. **Section 15.3.11:** Committee Members highlighted that this seems to repeat the content of Schedule 13, and therefore questioned the relevance of it. Committee Members agreed that the drafting be amended to: ‘Each Party to the MAC shall have in place appropriate technical and organisational security measures as set out in Schedule 13’, and then parts a-d be removed.
- 2.21. **Section 15.3.12:** MOSL asked the Committee on the final clause, which referred to marketing of data in CMOS, specifically whether they felt it was sufficient to prevent the use of data for marketing. The Committee agreed that guidance from the Authority was needed on exactly how marketing is defined, and what they are trying to achieve by preventing it. Committee Members also had comments on part (b) which raised potential issues for Retailers where they would be responsible for data in the market data set, uploaded by Wholesalers, which they do not necessarily have any control over. The Committee agreed that clarity from the lawyers was required as part of the legal review.

#### **ACTION 04\_06**

- 2.22. The Committee had no comment on the definitions but requested that they be reviewed by the lawyers as part of the legal review.

#### **ACTION 04\_07**

### 3. Review Straw Man Part 3 – MAC Schedule 13

**Purpose: For Decision**

- 3.1. The Committee reviewed the drafting for the newly proposed Schedule 13 of the MAC, which had taken the place of the previously proposed Guidance Document.
- 3.2. A Committee Member suggested that the legal review considered where the best location for the privacy notices would be, given the previous discussion about it being moved to the MAC. MOSL took an action to include this in the legal review.

**ACTION 04\_08**

- 3.3. A Committee Member suggested that the legal review investigates whether the schedule requires any items from ICO statutory guidance, or given that we ask parties to comply with it anyway, whether we are overly duplicating items from the statutory guidance. MOSL agreed to take this away as part of the legal review.

**ACTION 04\_09**

- 3.4. In relation to Access Control, a Committee Member requested that this section needed to refer to what data categories this section related to, for example was it CMOS data or Shared Data. The Committee agreed this was unclear and requested that this be considered in the legal review and it be made clear in the drafting which data is covered by provisions in this Schedule.
- 3.5. The Committee agreed to change the terminology Market Operators System Use Policy to refer to the Acceptable Use Policy, subject to the legal review determining whether they are equivalent documents. MOSL took an action to include this as part of the legal review.

**ACTION 04\_10**

- 3.6. The Committee agreed that environmental, access, network and physical security should be reordered in the document and considered together, as they are all relevant to one another. However, it was advised that they should all remain as separate sections. MOSL agreed to incorporate this into the drafting.
- 3.7. Committee Members raised a question on whether the segregation of duties section is required, given that it seems to duplicate the system management section. The Committee noted that, given the segregation of duties is not required by the legislation, it was too onerous to include this as a requirement. The Committee agreed that this requirement be removed, subject to determining if it was required in GDPR legislation.

### 4. Any Other Business (AOB)

**Purpose: For Information/Decision**

- 4.1. Due to the meeting overrunning the Committee were not able to review the entirety of Schedule 13. The Chair asked the Committee to review the Schedule following the meeting, and provide comments to the Panel Secretariat for the inclusion of the re-draft of Schedule 13.

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

### Actions:

- A04\_01** MOSL to seek legal review on the appropriate definition of Personal Data.
- A04\_02** MOSL to seek legal review on the responsibilities of Trading Parties as outlined in the GDPR, and what should be included in the MAC.
- A04\_03** MOSL to seek legal review on information, data safeguards and data loss, with a view to determine what level of detail will need to be provided in the provisions.
- A04\_04** MOSL to seek legal review on the appropriate timeframes to respond to requests and alert the MO in the case of data breaches.
- A04\_05** MOSL to seek legal review on whether the MAC Section 15 Drafting on Conditions for Processing and Sharing Data, and whether the current drafting is too prescriptive or sufficiently so.
- A04\_06** MOSL to seek legal review and guidance from the Authority on the using data for marketing clause, to determine whether the current drafted provisions are sufficient to prevent it and exactly how marketing is defined in this context.
- A04\_07** MOSL to seek legal review on the new Definitions provided in the MAC Section 15 Drafting, to ensure they are all sufficient.
- A04\_08** MOSL to seek legal review on how best to represent the Privacy Notices across all the drafted documents, and their ideal position.
- A04\_09** MOSL to seek legal review to ensure that items in Schedule 13 Drafting are not being needlessly repeated from the ICO statutory guidance.
- A04\_10** MOSL to investigate whether the Acceptable Use Policy it has published is an equivalent document to the Market Operator Systems Use Policy, as mentioned in the DMP.
- A04\_11** Committee to provide their comments to the Panel Secretariat for inclusion in Schedule 13's re-draft.

The next GDPR Issues Committee meeting is scheduled for:

**10th August 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**