

# Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 02

22<sup>nd</sup> June 2017 | 10:30 – 14:00

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

Status of the Minutes: Final

## MEMBERS PRESENT

Helyn Mensah		Chair	Maureen Wilkinson		Committee Member (Retailer)
Caroline Gould		Committee Member (Wholesaler)	Sally Marshall		Committee Member (Retailer)
Nick Rutherford		Committee Member (Wholesaler)	Gillian Hill		Committee Member (Retailer)
Hugh Laurie		Committee Member (Wholesaler)	Trevor Nelson		Panel Sponsor
Louise Fox		Committee Member (Retailer)			

## OTHER ATTENDEES

Elliot Bird		Meeting Secretary	Adam Richardson		Presenter (MOSL)
Sarvesh Nair		Presenter (MOSL)			

## APOLOGIES

James Gilbert		Committee Member (Wholesaler)

## 1. Welcome and Introductions

### **Purpose: For Information**

- 1.1. The Chair welcomed members of the Committee to the second Committee meeting.
- 1.2. The Chair discussed with the Committee the need for 2 extra meetings, to cover the workload the Committee has. The Committee agreed these additional meetings would occur in future subject always to need.

## 2. Process and Principles Framework

### **Purpose: For Information**

- 2.1. The presentation from MOSL set out the Principles and Objectives of the Wholesale Retail Code (WRC) and how they would apply to the work of the GDPR Committee, as well as the proposed Process and Principles Framework document.
- 2.2. An action was raised to provide the Committee with a summarised version of the principles and objectives in the WRC, as they would be relevant to the Committee, it being an extension of the Panel.

### **ACTION 02\_01**

- 2.3. In relation to the proposed work plan in the Process and Principles Framework, a Committee Member asked if the Committee itself would be leading a Consultation or whether the Panel would lead it on their behalf. It was confirmed that there are provisions for the Committee to lead its own consultation, and the Chair encouraged the Committee Members to do so if appropriate and with the aim of removing or limiting the need for further consultation by the Panel (although the ultimate decision would be for the Panel).
- 2.4. Another Committee Member commented that the timetable as it stands seems very tight, and asked whether there was potential for it to be elongated. The MOSL representative commented that the timetable did seem restrictive, especially to allow for any system changes required in CMOS. However, they also commented that the timetable given by the Panel was for an initial recommendation with a more detailed assessment following that recommendation.
- 2.5. A Committee Member asked what was the scope of detail the Committee should consider when reviewing the straw man proposal, and whether there would be discussions of component changes within CMOS. The MOSL representative confirmed that the group is not expected to cover that level of detail, but any processes it can identify will aid the work of MOSL when they determine what the CMOS implications might be.

## 3. Straw-Man DMP Proposal

### **Purpose: For Information**

- 3.1. MOSL provided a straw man document for new Data Protection provisions to replace the previous proposal of the Data Management Protocol (DMP) and drafting changes in Section 15 of the MAC. As part of this draft, the provisions of the DMP were divided amongst the MAC, a new CSD document and

a Guidance document. The MAC covering the high-level obligations, the CSD covering procedural items and then anything further is included in the guidance.

- 3.2. The Committee also went through a colour coded version of the DMP, which indicated where the individual clauses of the DMP had been relocated to.
- 3.3. A Committee member requested clarity on the scope of this proposed document, specifically whether it was designed to cover bilateral Trading Party relationships as well as data contained in CMOS and MOSL itself. The Chair confirmed that the intention was to cover both bilateral relationships and data held by MOSL and in CMOS, and if the Committee felt it didn't achieve this then the appropriate changes can be made.
- 3.4. A Committee Member asked what authority the proposed Guidance Note had, given that it was guidance they didn't expect that it had any authority and Trading Parties would decide whether to comply or not. The presenter clarified that currently there is a suggested clause in the MAC provisions that requires Trading Parties to comply with MOSL Guidance, but recognised that this conflicted with the normal understanding of what Guidance was.
- 3.5. The Committee raised an action for a future meeting to go through their data flows in the context of case studies to make sure the overall solution set out is sufficient. Committee Members agreed to provide these case studies for the next meeting.

#### **ACTION 02\_02**

- 3.6. While covering, the colour coded, change marked version of the DMP a Committee Member commented that the process for handling requests under the environmental information regulations 2004 does not go into enough detail. Particularly in their specific case being subject to the Freedom of Information act as a public body, and being subject to different laws in Scotland.
- 3.7. It also became apparent that the DMP document being reviewed had been superseded by a slightly amended version. An action was raised for the Secretariat to circulate the most recent version.

#### **ACTION 02\_03**

- 3.8. A Committee Member raised an issue related to the scope, purpose and use of data as the definition in the draft seemed to extend to all data downloaded from the Market Operator Systems. As it was possible that non-personal data could be downloaded from the system, it appeared from the definition that this non-personal data would also need to comply with data protection provisions. The Member gave the example of billing customers, which is done through CMOS reports, but the codes only allow data to be used in compliance with the codes. This does not include the billing of customers. Although, Committee Members suggested that operation of the market could be covered by the codes.
- 3.9. The Chair highlighted that the Committee will at some point need to give a position on whether the market data should be usable for other purposes, such as marketing.
- 3.10. 3.10. Committee Members disagreed with the proposed removal of Section 55 in the colour coded DMP, recognising that this provision was a recommendation of the Privacy Impact Assessment (PIA) and therefore shouldn't be removed. The draft will be amended accordingly.

- 3.11. The Committee agreed that, the most efficient way to tackle the proposed drafting was to consider which provisions are extraneous and therefore could be removed. The Committee agreed to cover amendments and feedback from the Committee Members in the feedback agenda item.
- 3.12. Committee Members questioned the suggestion to remove the Senior Management Commitment Section of the DMP because it will be necessary for the sake of auditing. Other Committee Members responded that they did not feel it was necessary and could be removed, these members were in the majority but a consensus was not agreed.
- 3.13. Committee Members felt that the Personnel Security Section was too prescriptive and went into too much detail. Instead it should follow the Information Commissioner's Office guidance that there is no one size fits all approach, and that it should just require staff who access CMOS and market data to undergo necessary training.
- 3.14. An action was raised for MOSL to investigate what items in the CMOS data catalogue could be considered personal data.

#### **ACTION 02\_04**

- 3.15. A Committee Member suggested that instead of being completely removed, the section that deals with subcontracting could be included within the personnel security section. Related to this, a Committee Member highlighted that Section 58 of the DMP already mentions contractors requiring sufficient qualifications to access CMOS data, which covers it in addition to the subcontracting section.
- 3.16. A Committee Member asked for clarity on how middleware providers are affected by these provisions, as they are not Trading Parties but will possibly have access to some if not all the market data set. It was queried who is responsible in the case of a breach of these middleware providers shared data, is it the provider themselves or the Trading Parties individually who shared the data. Several Committee Members felt confident there would be provisions for this, as the relationship described is between a Data Processor and Data Controller which will be covered in the relevant section of the DMP and the GDPR.
- 3.17. The Committee suggested that there should be guidance on working with TPI's given the potential issues with Data Protection relationships, and the wide variety of different TPI's Trading Parties may associate with.

## 4. Committee Feedback on DMP

### **Purpose: For Information**

- 4.1. The Chair invited the Committee to discuss the comments it had on the straw man proposal from MOSL to replace the DMP, and requested that the Committee go through the detail, keeping in mind where items could be delete, refined or improved.
- 4.2. A Committee Member highlighted that there is equivalent drafting across the MAC and the Business Terms but these changes only refer to the MAC, so the changes will need to be replicated in the Business Terms.

#### **ACTION 02\_04**

- 4.3. Committee Members disagreed with the suggested clause that Trading Parties should comply with guidance issued by MOSL. It was noted that it seems unreasonable to require that Trading Parties comply with all ICO guidance when it is likely that not all of it will be relevant to them. Therefore, it was suggested the drafting be changed to "Trading Parties must comply with mandatory guidance from ICO".
- 4.4. A request was made by the Committee that the definition of the central systems service provider be revisited and if incorrect or not currently in existence a change should be made.
- 4.5. Committee Members raised questions around inconsistencies on irregular use of the term Data Controllers to refer to Trading Parties thereby creating ambiguity. MOSL agreed to correct these inconsistencies.
- 4.6. A Committee Member asked what was meant by the statement that Trading Parties will be responsible for the consequences of its own failure to comply, and whether there was any form of punishment implied from MOSL. The MOSL representative confirmed that it doesn't have measures to enforce these types of measures although, potentially they could prevent further transfer of SPIDs to the party in question and enact a performance rectification plan.
- 4.7. The Committee suggested several specific amendments for the proposed new Section 15 of the MAC which included removal of clauses and amendment of clauses. MOSL agreed to update the red lined version of Section 15.
- 4.8. A question was raised by Committee Members whether the provisions will need to reference both the DPA and the GDPR, given that the GDPR won't necessarily be enacted by the time this drafting is implemented. The Committee confirmed that it did not feel the need to reference the DPA in the document, and that if GDPR isn't enacted when the changes are agreed then they will be withheld until the GDPR is enacted. The Committee concluded that there was no need to reference both the DPA and the GDPR.
- 4.9. An issue was raised that the DMP is potentially misleading, as it suggests there is no requirement to comply with the DMP if the data has not come from CMOS directly i.e. receiving market data from another source. MOSL representatives could not speak for the intention of DACBeachcroft when it drafted the DMP, but they believed the intention was to allow Trading Parties to use their own data that they have been collecting in any way they see fit. A matter to clarify.
- 4.10. A Committee Member raised a concern that they felt the current proposal is just a rearrangement of the previous DMP, and that very few of the provisions have been removed as we agreed in the last meeting. The MOSL representative and the Chair recognised this was the case, but stated items currently moved to the Guidance document we're candidates for removal, a matter which the Committee could determine when reviewing that part of the proposal.
- 4.11. An action was raised for MOSL to provide clarification on the definitions of Personal, Shared and CMOS data and clearly define the purpose of said data.

**ACTION 02\_05**

- 4.12. A Committee Member suggested that some of the items currently in the Guidance are possibly of slightly greater importance, such as the provisions on Malware protection, which can't afford to be

completely removed if we do not decide to produce guidance. It was suggested that in addition to what has already been produced, there should be a draft annex for the MAC which contains necessary items that are currently in the Guidance document. MOSL agreed to provide this in the provision of the next draft.

- 4.13. A Committee Member asked whether there was a requirement that referred to the concept of mutual assurance and how we plan to ensure it. Within this there were more specific questions on how MOSL ensures parties are compliant, how MOSL plans to police this, and how will they be brought back to the right conditions when they are not. The MOSL representative recognised this as an issue but highlighted that performance rectification plans, and when they will be enacted, is currently being discussed by the Market Performance Committee. Thus, this issue would likely fall under its remit, although there was potential to suggest a joint piece of work when relating specifically to Trading Parties performance in GDPR compliance. An action was raised to investigate the work of the Market Performance Committee and determine whether something additional needs to be added to cover performance and rectification in specific relation to Data Protection compliance.

**ACTION 02\_06**

- 4.14. There were questions from the Committee on the appropriateness of processes for requesting access to data, some members suggested that the process wasn't required if no one was planning to release data upon request. Although, it was raised that some Trading Parties will be subject to the Freedom of Information act and must provide that information when requested, but it was agreed that these parties will still do this but they need to ensure they disclose to parties when their information is shared.
- 4.15. A Committee Member raised an issue about the right of erasure and customer data, as customers may request data is removed but if that data is being uploaded by multiple parties then no party can ensure that item is removed from the Central System. It was suggested that issues like this could be better defined by running through case studies on data flows.
- 4.16. A Committee Member suggested there would be benefits if the Committee could see a summary of each of the individual data rights, as currently we are considering them as a group of data rights and they may each apply to different conditions.
- 4.17. A Committee Member asked whether we will need to produce forms for the defined processes. In response, the MOSL representative clarified that MOSL should just provide guidance on what information they require from Trading Parties, rather than suggesting a specific form. They also explained that it will be easier to decide whether a new form is needed when it is clear what information will be required.
- 4.18. MOSL recorded the feedback and specific amendments provided by the Committee and agreed to provide a second draft of the proposal documents, including a new annex for the MAC, for the next Committee meeting.

**ACTION 02\_07**

## 5. Any Other Business (AOB)

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

- 5.1. A Committee Member asked whether they would receive more notice for review of Committee documents before the meeting in future, as the notice provided made it difficult to review the documents effectively. The Chair confirmed that in future the Secretariat would aim to provide more notice.
- 5.2. The Committee agreed to add 2 additional meetings to the Committee timetable.
- 5.3. Committee Members agreed to the draft minutes as they were circulated to them prior to the meeting.
- 5.4. There was no further business and the Chair closed the meeting.

### Actions:

- A02\_01** The Secretariat to provide a summarised version of the Objectives and Principles in the WRC to Committee Members.
- A02\_02** Committee Members agreed to provide case studies for use in a data flows exercise in the next meeting.
- A02\_03** Secretariat to provide Committee Members with the most recent version of the colour coded DMP document.
- A02\_04** MOSL to investigate the CMOS data catalogue to determine which items within the market data set could be considered Personal Data.
- A02\_05** MOSL to provide clarification of the definitions of Shared, Personal and CMOS data and clear definition of the purpose of these types of data.
- A02\_06** Investigate the work of the Market Performance Committee, and determine whether they will be making provisions for Market Rectification Plans in the event of not complying with Data Protection agreements.
- A02\_07** MOSL to develop a second draft of its proposals for Data Protection in the MAC, CSD and Guidance, and include an additional annex in the MAC.

The next GDPR Issues Committee meeting is scheduled for:

**10:30 – 15:30**

**Holborn Bars**

**138-142 High Holborn**

**London**

**EC1N 2NQ**

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