

## Post Implementation review

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# Post Implementation Review of CPM033: Improved process for managing Data Subject Rights Requests

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<b>Purpose of Paper</b>	Information
<b>Classification</b>	Public
<b>Synopsis</b>	This paper sets out the Post Implementation Review findings for CPM033.

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- RECOMMENDATION** The Code Change Committee is invited to:
- **NOTE** the findings outlined in this document.
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**Paper Author: Amanda Hinde**

## 1 Change Overview

Following the Brexit transition period, the provisions of the General Data Protection Regulation EU 2016/679 (GDPR), which came into force on 25 May 2018, were incorporated directly into UK law, with some amendment for a UK-only context. The 'UK GDPR' sits alongside the Data Protection Act 2018 (DPA 2018).

The Panel established the GDPR Issues Committee to assess the compatibility of the Wholesale Retail Code (WRC) and Market Arrangements Code (MAC) against the DPA 2018 and GDPR, and determine what changes would be needed to enable industry compliance. As part of its original to the Panel in December 2017, the GDPR Issues Committee recommended a watching brief to review the then newly inserted data protection provisions with timescales imposed under GDPR<sup>1</sup>.

Article 12(3) of the UK GDPR states that Data Controllers shall provide information to Data Subjects on the action arising from a request without undue delay and within one month of receipt of the request. Section 15.2 of the MAC states that the Market Operator and each Trading Party who uploads or accesses Market Personal Data in Market Operator Systems or holds any Market Personal Data in their own systems are defined as Data Controllers. As such, the Market Operator and Trading Parties are legally jointly liable for managing a Data Subject Rights Request ('DSRR').

The GDPR Issues Committee reviewed the interactions between parties for dealing with Data Subject Rights Requests (DSRRs) and identified three risks in the way interactions had been codified which might compromise compliance and effective handling of a DSRR within the GDPR deadline. These are:

1. Failing to pass on a DSRR from the original recipient of the request to the actioning party in good time
2. Actioning parties being unaware that a request is a DSRR
3. Standard Processes exceeding GDPR prescribed timescales

CPM033 was raised by the GDPR Issues Committee in September 2020 to mitigate the above risks. CPM033 improved the process for multi-party handling of DSRRs and created the DSRR Record to request and track progress on DSRRs where more than one party was involved. A digital form of the DSRR Record was also created in Kissflow<sup>2</sup> to be used in preference to the paper format.

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<sup>1</sup> [CPW029 & CPM007: 'GDPR and Data Protection Provisions Updates'](#) Attachment 8

<sup>2</sup> Kissflow is a workflow management system that Trading Parties and MOSL can use to communicate with each other.

A full account of CPM033, including the detailed case for change, costs, proposed benefits and Trading Party views, is set out in the [Final Recommendation Report \(FRR\)](#). Ofwat approved CPM033 on 9 March 2021 and it was subsequently implemented on 14 May 2021. Ofwat’s decision can be accessed [here](#).

## 2 Post Implementation Review

### 2.1 Approach

Table 1 identifies the key benefits proposed by CPM033, and methods to assess their delivery.

Proposed Benefit	Assessment method
<b>Transparency:</b> This change provides the Market Operator and Trading Parties clarity of process and responsibilities for managing a Data Subject Rights Request, and thus reduces the potential for dispute.	Survey Data Protection Officers (DPOs) to see if they are aware of the new DSRR process.
<b>Customer participation:</b> This change facilitates the handling of DSRRs within the timeframes required by the GDPR, thus reducing the risk of a customer (Data Subject) complaint in this regard.	Use data in Kissflow to measure how many times the DSRR Record was used in the past 12 months.  Survey DPOs to see if they have received any DSRRs which involved working with other Trading Parties or MOSL.
<b>Proportionality:</b> This change presents a proportionate solution for managing Data Subject Rights Requests that require multi-party participation, without assessing and redesigning all the Standard Processes to fit into the GDPR timescale.	Not measured for the post-implementation review as it was covered in the Final Recommendation Report.

Table 1: CPM033 proposed benefits and assessment methods.

### 2.2 Findings (14 May 2021 – 3 November 2022)

#### ***Nomination of at least two qualified contacts for the handling of DSRRs***

- Each Trading Party is required to nominate at least two qualified contacts (Data Protection Officer (DPO) and/or some other person with relevant data protection expertise and/or training) for the handling of DSRRs. Of the 71 Trading Parties in the market, 22 Trading Parties responded to MOSL's request to nominate DSRR contacts.

### ***Survey of DPOs***

- 38 Trading Parties responded to the GDPR survey that was issued on 9 February 2022.
- Two Trading Parties (Southern Water Services, ConservAqua) were not aware of the DSRR process initiated in 2021.
- Southern Water Services stated that they are a separate data controller and they manage their own DSRR risks. (Note that Section 15.2.2 of the Market Arrangements Code states that each Trading Party is also a Data Controller of any Market Personal Data that it uploads to the Market Operator Systems, accessed and/or held on that Trading Party's systems. This makes Trading Parties who access the same Market Personal Data joint data controllers.)
- ConservAqua said all DSRR notifications are forwarded to two specific members of staff who would then respond in the correct manner.
- None of the Trading Parties that responded to the survey had received DSRRs which involved working with another Trading Party or MOSL.

### ***Kissflow usage***

- There has been no usage of the DSRR Record in Kissflow since the DSRR Record was implemented.

## **3 Conclusions and lessons learnt**

### ***Addressing market risks***

CPM033 was raised because the GDPR Issues Committee identified three risks in the market which might compromise data controllers' (parties in the market) ability to deal with DSRRs which might lead to parties becoming non-compliant and face financial and reputational impacts. The three risks are:

1. The original recipient of the request failing to pass on a DSRR to the actioning party
2. Actioning party being unaware that it was a DSRR

3. No timescales set and tracked to facilitate the relevant actioning parties to complete the DSRR within the GDPR timescales

By implementing a process for passing on DSRR requests, through the set-up of the DSRR Record in a secure system (Kissflow was the workflow system used by the market at that point in time), all parties in the market can pass on DSRRs where required to do so.

### ***Transparency***

Two out of 38 Trading Parties surveyed were not aware of the DSRR process. As this represents a minority, it implies that the code change CPM033 was sufficiently publicised.

### ***Customer Participation***

During the consultation conducted between 10 September 2020 and 24 September 2020 as part of the impact assessment for CPM033, 12 of the 13 respondents (8 wholesalers, 4 retailers and CCW) agreed that there was a market-level risk that DSRR managed between Trading Parties may not be completed within GDPR timescales. 12 of the 13 respondents also agreed that CPM033 will mitigate the risk as there will be a formal process to follow and to hold Trading Parties to account.

It was stated in the Final Recommendation Report of CPM033 that customers who are also Data Subjects (e.g. sole traders) will benefit from the added clarity in how market participants will process their DSRR in a timely manner. This cannot be verified because the DPO survey indicated there have not been any data subject rights requests which require a multi-party effort.

### ***Proportionality***

Although the DPO survey results and Kissflow show that there has been no usage of the DSRR Record, CPM033 was needed to facilitate regulatory compliance, particularly for smaller Trading Parties who might not have the infrastructure to manage multi-party DSRRs.

The solution in CPM033 was the lowest cost method identified at the time. The alternative was to review and change all the existing market processes to distinguish a DSRR from a routine business request and execute it within GDPR timescales. Changing all existing processes was deemed to be disproportionate in cost and effort given the low number of DSRRs received at that time. This

post-implementation review confirms that the frequency of DSRRs remains low and therefore the approach in CPM033 was correct.

## 4 Way forward

MOSL is in the process of migrating workflows in Kissflow to the query management system, My MOSL. Moving processes across to My MOSL is part of MOSL's overall Channel Management programme for the website to become the 'single front door' for trading parties to access MOSL's services. My MOSL was launched in May 2022 and workflows are being migrated in phases.

Migrating the DSRR Record to My MOSL, will cost approximately £7,260<sup>3</sup>. Given that there has been zero usage of the DSRR Record on Kissflow to date, MOSL has decided to return to a paper version of the DSRR Record once MOSL's licence for Kissflow ceases in February 2023. The paper version of the DSRR Record<sup>4</sup> will be available for download on MOSL's website, and Trading Parties will be required to transmit it to each other using secure means.

Whilst the GDPR Issues Committee had requested for the DSRR Record to be in electronic form, the market codes do not specify any medium, as long as the DSRR Record is transmitted via a secure method of transfer and in the form of the DSRR Record template. Therefore no change to the market codes is required to implement this approach.

## 5 Recommendation

The Code Change Committee is invited to:

NOTE that the risks identified in CPM033 have not occurred due to the absence of DSRRs requiring action by multiple parties. Therefore:

- The probability of the risks identified in the Final Recommendation Report turned out to be very low
- The anticipated benefits have not been realised
- With hindsight, following a low-cost approach was justified although the lower cost 'do nothing' option may also have been justified.

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<sup>3</sup> The migration work would involve roles such as business analyst, developer and subject matter expert.

<sup>4</sup> Defined in [CPM033](#) attachment 3 and approved by the Panel on 24 November 2020.

If the change had not been raised ('do nothing') it would have avoided the cost of assessing, consulting and developing the solution. That would not mitigate the risks but as they have not materialised, with hindsight that might have been a better choice.

For future change proposals, the CCC may wish to weigh up the costs between raising a change to fully mitigate a known risk (which in CPM033's case involved clarifying the interactions between parties for dealing with DSRRs and using an electronic system to facilitate those interactions), against raising a change to partially mitigate the risk (omitting the use of the electronic system) and against doing nothing (accepting that the risk could happen and its impact).

## 6 Glossary

<u>Key Term</u>	<u>Definition</u>
Data Controller	the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;
DSRR	A Data Subject Rights Request is any communication received by a Party from a Data Subject seeking to exercise a Data Subject Right in relation to Market Personal Data
DPA	Data Protection Act 2018
DPO	Data Protection Officer
DSRR Record	means the form referred to in the Market Arrangements Code Schedule 13 which shall be published by the Market Operator from time to time. This form will be reviewed and agreed by the Panel
Kissflow	Workflow management system used to initiate, transmit and close off DSRR Record
Market Personal Data	Personal Data either: (a) stored in, accessed through or downloaded from Market Operator Systems; and/or (b) Personal Data shared between Parties as required by the Market Arrangements Code or the Wholesale-Retail Code