

General Data Protection Regulation (GDPR) Issues Committee

Terms of Reference v2.0

The GDPR Issues Committee has been established by the Panel in accordance with Sections 5.2.1 (p) and Schedule 12 of the Market Arrangements Code (MAC).

Unless otherwise stated, words and expressions that are used in the Terms of Reference (ToR) shall have the meanings and application attributed to them under the MAC and Wholesale Retail Code (WRC).

Changes to the ToR can be proposed to the Panel at any time. All changes to the ToR will be voted on, in line with the Panel operating procedures.

1. Overview

On 25th May 2018, the EU General Data Protection Regulation (GDPR) came into force. The main provisions of the Data Protection Act 2018 (DPA 2018), which repeals and replaces the Data Protection Act 1998, also came into force on that date. The GDPR Issues Committee was established to primarily determine the need for (and nature of) any changes to the market codes to align with the new legislation.

2. Objectives and Principles

The purpose of the GDPR Issues Committee is to review the new legislation, and to identify whether, and if so how, the market codes need to change. The GDPR Issues Committee will take into account any further changes that have occurred post implementation of GDPR in recommendations to the Panel.

The objectives of the Committee are to:

- To determine to which extent, if any, changes are required to align the market codes to the GDPR and the DPA 2018; and
- To make recommendations to the Panel for necessary code changes.

3. Role and Functions

The GDPR Issues Committee shall assess the risks and issues relating to the legislation and will identify any impacts on the market codes. The Panel has delegated the following functions to the Committee, to be utilised as necessary:

- Provide expert advice on the impact of the GDPR and DPA 2018;
- Determine which provisions of the GDPR and DPA 2018 impact on the market;
- Provide detailed and expert impact assessment reports on the GDPR and DPA 2018;
- Provide detailed and expert reports to the Panel and/or the Authority; and
- Make recommendations to the Panel on any changes to the market codes.

4. Membership

4.1 Chair and Secretary

The Market Operator shall appoint the independent Chair of the GDPR Issues Committee (who may be an employee of MOSL), subject to prior consultation with the Panel. The Chair's role will be to chair meetings, facilitate discussions, and encourage consensus but shall have no casting vote.

The GDPR Issues Committee shall have a Secretary who shall be a person provided by the Market Operator. They will be responsible for taking the minutes, agreeing and circulating agendas, scheduling meetings and producing the papers and reports, on behalf of the Committee. The Secretary will also attend meetings to support the activities of the Committee and advise on the market Codes and change control matters.

The Secretary will neither vote nor be a member of the Committee.

4.2 Voting Members

The GDPR Issues Committee shall comprise of eight (8) voting members, made up of the following pool of experts in the field of:

- Wholesalers (with experience in corporate governance/risk, business management and/or IT security); and
- Retailers (both Associated and Unassociated, with experience in corporate governance/risk, business management and/or IT security).

Each GDPR Issues Committee Member shall act impartially and independently of the interests of their employer and of any person or class of persons, in exercising the functions under Schedule 12 of the MAC.

Before being appointed as a GDPR Issues Committee Member, each Member shall provide a Member confirmation to the Market Operator that they agree to being a GDPR Issues Committee Member. Members must also provide a letter from their employer agreeing that they may act as a GDPR Issues Committee Member, in accordance with Schedule 5.7.1 of the MAC.

4.3 Non-Voting Members

The following non-voting members are entitled to attend, to speak but not vote at the GDPR Issues Committee meeting:

- The Chair;
- The Market Operator;
- An observer representing Ofwat; and
- Panel Sponsor.

The Committee Chair may invite any individual to attend a meeting of the GDPR Issues Committee Member in order to speak to particular items on the agenda but they shall have no vote in the Committee.

4.4 Alternates

If a Committee Member cannot attend, the Member may propose an Alternate. The Alternate can be any individual notified to the Secretary in good time before the meeting. Alternates should possess sufficient knowledge and expertise to act as a Member.

Subject to the approval of the Committee Chair, the Alternate may attend the meeting and vote and speak as a Member.

A person appointed as an Alternate is bound by the provisions of the code and this ToR. Alternates must act impartially, in the best interests of the market and should not be representative of or have regard to the interests of anybody or person, including the GDPR Issues Committee Member that appointed them.

If an Alternate attends a meeting as well as their standing GDPR Issues Committee Member, he or she attends only as an Observer and will have no voting rights.

5. Quorum and Decision Making

No business is to occur at the meeting unless a quorum is present. A quorum is a minimum of at least six (6) voting GDPR Issues Committee Members.

GDPR Issues Committee Members must inform the Secretary if they or their Alternate is unable to attend at least five (5) Working Days prior to the meeting.

If a Quorum of GDPR Issues Committee Members has not confirmed attendance, the Chair may determine that the meeting should be cancelled and a notification be issued to GDPR Issues Committee Members no later than five (5) Working Days prior to the meeting. The meeting will be deemed as cancelled if no GDPR Issues Committee Members has notified the Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

In the event that a meeting of the GDPR Issues Committee Members is convened and a quorum is not present within one hour, the meeting will be adjourned and re-scheduled by the Secretary at the earliest convenience.

A meeting shall be quorate if the necessary members are present in person at the meeting or are contactable by telephone conference call.

5.1 Voting Procedure

Votes will not be attributable to individual Members. Any decision made by the GDPR Issues Committee shall be decided by a simple majority of voting Members

When voting on any one decision, each GDPR Issues Committee Member shall be entitled to exercise one (1) vote.

6. Secretariat

The Market Operator will provide Secretariat services and appoint the GDPR Issues Committee Secretary. The Secretary will neither vote nor be a member of the Committee. The Secretary is the officer of the Committee that is responsible for its administration. The Secretary must have integrity and must not only be, but also be seen to be, impartial and free from proximity to vested interests. The work of the Secretary encompasses:

- Convening of GDPR Issues Committee meetings, provision of relevant papers and materials and taking minutes of meetings;
- Maintaining registers of Committee Members, interests, contracts and agreements;

- Communicating with the Panel, Trading Parties and Ofwat on behalf of the Committee;
- Management and administration of the Committee Member appointment processes; and
- Supporting the Committee Chair in ensuring compliance with regulations and obligations by Committee and Panel Members (and the Committee and Panel as a whole).

7. Proceedings of the Meeting

7.1 Frequency of Meetings

The GDPR Issues Committee will meet as and when required, but meetings may be cancelled if there is insufficient business on the agreement of the Committee Chair. In such cases, the Secretary will notify Members (and confirm on the website) that the meeting is cancelled not later than five (5) Working Days prior to the meeting. The meeting will be deemed as cancelled if no GDPR Issues Committee Member has notified the Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

Additional meetings may be held at such a time and place as notified to the members by the Secretary, in accordance with these ToR.

Unless otherwise decided by the Panel, the Secretary shall convene the GDPR Issues Committee meetings by giving notice via email at least five (5) Working Days prior to the proposed meeting, accompanied by publishing an agenda and any non-confidential papers on the website, as necessary. A copy of such notice and papers shall also be sent to any Alternate appointed.

The custom practice is that there will be no late papers issued outside of the agreed meeting notice period. From time to time, there may however be a need for additional matters or late papers, and the approach will be agreed by the Chair on a case by case basis. The Secretary will provide notice to the Committee members and the other persons entitled to receive notice, as soon as reasonably practical. Late papers will only be considered upon the agreement of GDPR Issues Committee members.

7.2 Urgent Meetings

Where the Secretary, with the agreement of the Committee Chair, is of the opinion that an urgent meeting is required, the five (5) Working Day notice period shall be waived.

The Secretary will notify Committee Members by email and/or telephone as soon as reasonably practical prior to the calling of an urgent meeting.

7.3 Meetings via Teleconference

A meeting of the GDPR Issues Committee may consist of a tele- or video-conference between members. A Committee member taking part in such a conference or telephone call is deemed to be present in person and is entitled to vote and be counted in the quorum accordingly.

7.4 Minutes of Meetings

The Secretary shall minute the discussions and resolutions of the meetings, including the names of those in attendance. Draft minutes will be circulated to GDPR Issues Committee Members as soon as reasonably practical after the meeting, where approval will be sought at the next meeting. Following GDPR Issues Committee Members approval, the minutes will be published on the Market Operator's website.

To facilitate transparency, the Secretary will publish a Headline Reports listing the decisions within three (3) Working Days of the meeting. The GDPR Issues Committee has delegated authority to the Committee Chair to approve the Headline report.

The Secretary will also provide regular updates to the Panel on the activities of the GDPR Issues Committee, in the form of a monthly (or otherwise agreed) Committee Report, as determined by the Panel and agreed by the Committee Chair.

7.5 Recording and Broadcasting

For transparency, audio and/or video recording may be made of GDPR Issues Committee meetings. Additionally, the open session of committee meetings may be broadcast by webinar. The agreed policy regarding recording and webinar broadcasting is as approved by the Panel and published on the Market Operator website.

8. Transparency and Confidentiality

The GDPR Issues Committee meetings are open and public. While custom practice will be to allow any person to attend the open session of GDPR Issues Committee meetings, provided that the Secretary is notified and prior consent of the Chair is required (and that such approval will not be unreasonably withheld), exceptions may apply which call for a closed meeting session. Such exclusions include where confidential information will be considered shall be held in confidence.

There is a preference of all agenda items to be taken in open sessions where at all possible.

In the event of closed session papers, the necessary paperwork will be circulated to GDPR Issues Committee Members and will not be published on the Market Operator's website.

9. Conflict of Interest

GDPR Issues Committee Members shall declare in advance any actual or perceived conflict of interest.

In the event of any conflict of interest is declared by a Committee Member, the Member shall notify the Secretary for the matter to be discussed at the next appropriate Committee meeting. At the Committee meeting, the members shall decide the most appropriate course of action.

10. Expenses

Any Committee member who is not employed by the Market Operator can claim reasonable expenses incurred in attending meetings or otherwise conducting business. The agreed Panel and Committee Expenses Policy is published on the Market Operator's website.

11. External Communication

Members may be approached by members of the press or requested to speak at public events either on behalf of the Committee or in personal capacity. The agreed Communication Policy is as approved by the Panel and published on the Market Operator's website.