

Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 20

05 March 2020 | 10:00 – 15:15

Etc. Venues, Riverside Building, County Hall, Westminster Bridge Road, London SE1
7PB

Status of the Minutes: Approved

MEMBERS PRESENT

Helyn Mensah	HM	Chair	Kulwinder Johal	KJ	Committee Member (Wholesaler)
Caroline Gould	CG	Committee Member (Wholesaler)	Arabella Prothero	AP	Alternate for Abigail Morgan
David Oliver-Sheppard	DO	Committee Member (Wholesaler)	Trevor Nelson	TN	Committee Member (Retailer)
Michelle Coglean	MC	Committee Member (Retailer)			

OTHER ATTENDEES

Stuart Boyle	SB	Secretariat (MOSL)	Amanda Hinde	AH	Secretariat (MOSL)
George Monea	GM	Secretariat (MOSL)	Andrew Johnson	AJ	General Counsel (MOSL)
Huw Comerford	HC	Secretariat (MOSL)	Tom Daborn	TD	Market Operations Analyst (MOSL)

APOLOGIES

Emma Groves	EG	Committee Member (Retailer)	Abigail Morgan	AM	Committee Member (Wholesaler)
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1. Welcome and Introductions

- 1.1. The Committee Chair welcomed attendees to GDPR Issues Committee meeting 20, in particular AJ and TD.

2. Minutes and Outstanding Actions

- 2.1. The Committee noted that the minutes for GDPR 19 would be approved at GDPR21 (March 2020).

- 2.2. The Committee agreed to close actions:

- G17_A04; G17_A05; G17_A06; G17_A07;
- G18_A01;
- G19_A01; G19_A02; G19_A04; G19_A05; G19_A06; G19_A07

- 2.3. After discussion, the Committee further unanimously:

- agreed to close action G12_A04 and agreed a new action to consider whether an overall FAQ document is required once the final version of the draft report for panel is prepared at the end of this round of the Committee's work. The Committee noted there may also be a need for discreet guidance or FAQ's for the DSRR process but agreed that this would be considered in the context of that work.

G20_A01

- agreed that the Chair, AH and CG would clarify action G14_A14 offline and bring it back for Committee discussion and decision.

G20_A02

- agreed to raise an action for the Secretariat to verify if communications have been sent to Trading Parties advising that Data Protection Officer (DPO) details can be entered on the Trading Party area of the MOSL website.

G20_A03

- agreed to assign an action to AJ to investigate the DPO contacts list to ensure that it is complete, i.e. that DPO/designated contacts for all Trading Parties are listed, and, together with the Secretariat, to investigate a mechanism for verifying the list is correct. AJ agreed to take this forward.

G20_A04

- agreed that the Secretariat should ensure that a reply, acknowledgement or similar mechanism requiring proactive response by DPOs is included in the next communication to all DPOs on the contacts list (likely to be circulation of the updated Market Privacy Notice) as one means of verifying that the contact details used are correct

G20_A05

- agreed to recommend to the Panel that an annual review of the DPO contacts list to ensure its accuracy and completeness should be carried out at the time of the annual review of the Market Privacy Notice. The rationale for this recommendation is that, under Schedule 13 of the MAC, there are cooperation and/or coordination obligations on the MO and Trading Parties in relation to dealing with data subject rights requests and in relation to data security breaches; an accurate and complete DPO contact list, enabling parties to reliably communicate with all relevant DPOs or designated contacts, is essential to this. There is also the obvious over-arching requirement to keep contact details of individuals up to date under the GDPR.

G20_A06

- actioned AJ to investigate if there is existing wording in the licence/codes regarding how Market Data is managed (particularly in relation to data retention) in the event of a market exit (either orderly/disorderly); and if there is nothing, the Committee would consider whether further action is required. If there is wording, the Committee would need to review this for its adequacy and discuss next steps. This may require input from the Panel, the MO and Ofwat. There was also a need to investigate if there are any differences in the design of the provisions depending on whether the exit is orderly or disorderly. AJ agreed to take this forward.

G20_A07

- It was agreed to leave action G19_A11 open without an end date as the Committee's final report to Panel is not yet complete. Furthermore, the Committee agreed to provide its views on this action outside the meeting.

3. Reviewing Standard Processes for DSR Requests

- 3.1. AH presented on this agenda item, recapping previous Committee discussions, noting AJ's advice that MOSL and Trading Parties are joint data controllers and under Schedule 13 of the MAC must cooperate as necessary to deal with Data Subject Rights Requests (DSRR), and seeking the Committee's agreement on the process to deal with DSRRs.
- 3.2. AH outlined possible risks and mitigations for consideration:
 1. **Risk:** a recipient of a DSRR, who cannot deal with the request itself, fails to pass it on the relevant party who can (eg the data owner (DO)) in good time, using up time that party would otherwise have to comply. **Mitigation:** parties to pass on the DSRR to the relevant DO or party within 3BD of receipt;
 2. **Risk:** the DO or relevant party to whom a request is passed is unaware that the request is a DSRR, not a business-as-usual request (for example because a request to rectify or delete data is received via a Standard Process). **Mitigation:** use the DSRR Form to record that a DSRR has been made;
 3. **Risk:** timelines in existing Standard Processes under the market codes exceed the timescales allowed for dealing with a DSRR under the GDPR. **Mitigation:** since the timescales stipulated in

the GDPR take precedence: introduce obligations into Schedule 13 of the MAC which require (a) all parties, when dealing with a DSRR using a Standard Process(es), to expedite any actions required under the process to ensure completion within GDPR timescales; if no Standard Process is used, to take steps as necessary on a case by case basis in order to ensure completion within GDPR timescales;

4. **Risk:** a party whose involvement is required to deal with a DSRR refuses or fails to take action or cooperate. **Mitigation:** consideration of dispute resolution process(es).
- 3.3. Some Committee members queried the steps shown in the flow diagram presented and whether elements were missing. The Chair noted previous Committee discussions, and the need for clarity, as to (a) a DSRR which can be handled using a Standard Process(es), (b) a DSRR for which no Standard Process is applicable and should be handled using the DSR Form specified in the MAC (a new version of which was proposed to sit in Kissflow), and (c) a mechanism for parties dealing with a DSRR to communicate with each other, regardless of whether that request is being handled using a Standard Process or the DSR Form.
 - 3.4. The Committee discussed the need for the flow diagram to show clearly the steps:
 1. where a DSRR can be dealt with by the recipient alone (ie without involving any other party) using a Standard Process (where one is applicable) or not;
 2. where a DSRR requires the involvement of another party (instead of or as well as the recipient) and can be dealt with using a Standard Process; and
 3. where a DSRR requires the involvement of another party (instead of or as well as the recipient) and can be dealt with using the DSR Form (provided no Standard Process is applicable);
 - 3.5. The diagram also needed to be clearer on where Trading Parties have to communicate with each other on the handling of the DSRR and on the need to complete the DSRR by a set time as per GDPR.
 - 3.6. A Committee member questioned when a customer's request should enter the DSRR process and when it should not. The member raised the situation in which a customer called a Retailer to request a change to its meter serial number and queried whether that would be treated as a DSRR by default or whether the customer would have to explicitly ask for it to be dealt with as a DSRR under the GDPR.
 - 3.7. Another Committee member explained that from an organisational point of view, when a request for information or correction etc is received for which an organisation has a standard business process, it would follow that process (likely without recording that it involved personal data), and where the request could not be dealt with via a standard business process, or where it was clear the request was a DSRR request, then it would revert to the organisation's specific DSRR process.
 - 3.8. Discussion ensued as to the handling of requests a part of normal operational or standard processes versus categorising a request formally as a DSRR and handling it via separate process. The consensus was that, in real terms, the bulk of requests - such as simple change of address, for example - were likely happening as part of day to day business activity, rather than being called out specifically as DSRRs. Several Committee members and AJ noted that whether customers were being serviced and their requests met in a timely manner was the overriding concern, whether or not such requests were

labelled as DSRRs. The key was to ensure that the timeframes set in the GDPR were not missed, and this risk needed to be addressed in the solution.

- 3.9. AJ added that the only issue with using a standard process by default would be in a situation in which an entity receives a DSRR, does not recognise it as such and processes the request through its standard process. In the unlikely event that the data subject later realised they could have specified that this was a DSRR (and so required a response within a month, or three), then they could raise a complaint if the standard process meant that dealing with the request had fallen outside the set GDPR timescales. If the data subject complaint to the ICO, the company would likely be able to have a defensible answer to the ICO if this happened on the basis where standard processes were followed and not that a party had just been sitting on it.
- 3.10. Normally, however, the data subject would state they were making a DSRR at the outset, or it would be obvious to the Trading Party that the request needed to be treated as a DSRR. This was largely a matter for Trading Parties to address internally with appropriate training on GDPR.
- 3.11. A Committee member enquired if any of the other members had received a DSRR for rectification, to which the response was negative. It was also noted that the experience review conducted by the GDPR Committee had not returned any information to indicate that Trading Parties had received such requests. Furthermore, HC noted that MOSL itself had only received one DSRR so far, which was to do with a household customer's supply point which was registered incorrectly as a non-household customer's supply point in the Market.
- 3.12. AH explained that the proposed process (initially using Kissflow) would be invoked whenever a DSRR was received that could not be dealt with by the recipient, regardless of whether it could follow a Standard Process or not. The Committee noted that in order to give effect to any request relating to data held in Central Market Operating System (CMOS), regardless of its type (e.g. to delete data/to rectify data), one would need to follow a Standard Process due to CMOS's access constraints.
- 3.13. The Committee considered the 7-step process and flow diagram. The Committee wished AH to produce an amended process flow reflecting its comments and showing clearly the steps to be taken by a recipient Trading Party and by a recipient Trading Party where involvement of another Trading Party was necessary (using a Standard Process or not). The Committee agreed to hold over its approval of the process until sight of these amendments.

G20_A08

- 3.14. The Committee unanimously agreed that if assistance was required from another party, and an applicable Standard Process existed, then that process would be used to action the request, alongside completing the DSRR Form in Kissflow for communication and tracking purposes; if no Standard Process was applicable, then the DSRR Form would be used as the mechanism by which parties recorded the details of the request and the actions necessary to process it, as well as for communication and tracking purposes. The Committee unanimously agreed there was a distinction between use of the DSRR Form to process a DSRR in the absence of a Standard Process and use of the DSRR Form to track the progress of any DSRR, regardless of how it was being processed. The Chair and the Committee noted that use of the same terminology ('DSR Form') to cover both functions was confusing and that using 'DSRR Recording Process' to refer to the tracking aspect might be preferable.

- 3.15. A Committee member questioned the appropriateness of designating the DPO as the person required to deal with DSRRs in the proposed process, as opposed to contract managers, for example. After discussing various options, the Committee unanimously agreed that the person required to deal with DSRRs under the process should be DPOs or designated contacts (which might be the contract manager in some organisations), with parties free to choose which.
- 3.16. The Committee noted that the process needed to be clear on the term “pass on” and in particular on what a recipient was required to do within 3 business days of receipt of the request. The objective was to put other interested Trading Parties on notice of the DSRR as soon as possible in order to facilitate compliance within GDPR timelines. The Committee therefore agreed unanimously that if another Trading Party needed to be involved, then the recipient must fill out details about the DSRR in the ‘DSRR form’ in Kissflow, as well as trigger any applicable Standard Process necessary for dealing with it, within 3 business days of receipt of the request.
- 3.17. The option raised to amend every existing Standard Process to reflect GDPR timescales where dealing with a DSRR was rejected by the Committee as too onerous in terms of resource, changes to CMOS, and onward impact on Trading Party systems. It was also disproportionate given the likely level of personal data in the market and the high-level indication from the Experience Review that numbers of DSRRs were low. The Committee agreed unanimously that, to facilitate compliance, there should instead be an obligation in Schedule 13 requiring Trading Parties, when dealing with a DSRR using Standard Processes, to expedite the Standard Processes to meet the GDPR timeline requirements (exact legal wording to be determined), and to communicate with each other and the data subject if there is risk of missing the deadline.
- 3.18. The Committee agreed that a review of DSRRs handled under Standard Processes should be added as part of the Experience Review watching brief, in order to assess whether any misuse of the process was occurring.

G20_A09

- 3.19. The Committee further agreed that if a data subject raised a request that required access or action on multiple data items (with potentially different data owners), the DPO or designated contact would only need to raise one DSRR form.
- 3.20. The Committee agreed to run two case studies (meter serial number (CMOS Data) and customer telephone number (non-CMOS Data but potentially shared between Retailers and Wholesalers)) against the process, and to include these case studies in the Draft Recommendation Report (DRR) to illustrate how the process works.
- 3.21. The Committee discussed two scenarios where there might be a need for a GDPR dispute resolution process:
1. where the GDPR timeline has not yet expired on a DSRR but the parties are in dispute about the DSRR, eg one party is not cooperating (this might require a quick-fire dispute resolution process to give parties a chance of resolving the dispute and meeting deadline);

2. where the GDPR timeline has already expired and parties are looking to apportion liability in the face of a data subject complaint (where the ICO might already be involved, and where the dispute may already be covered in the existing MAC disputes process).
- 3.22. A Committee member felt that having a disputes process for scenario 1 was not necessary because in reality, if another party was preventing one organisation from completing obligations for GDPR, the organisation would ensure that all justifications have been recorded, and it had done everything it could to assist the data subject, so that if the ICO investigated a complaint, these could be presented as evidence. The Committee member added that in an ideal world, it would be nice to think that there could be a quick-fire dispute resolution process which saw parties resolve the issue around a table, but it was unlikely this would happen because of the time it took to confirm availability and to find arbiters in whom there was confidence. Furthermore, even if a binding decision affecting the Trading Parties had been reached, this did not affect one's obligations to the data subject under the GDPR and the ICO could still intervene anyway.
- 3.23. The Committee noted that the Trading Disputes Committee (TDC) was already planning a review and consolidation of the MAC disputes processes. After further discussion, the Committee agreed:
- to indicate to the TDC that disputes may arise between Trading Parties in relation to DSRRs and/or the DSRR process, and the GDPR Committee would therefore invite cross-dialogue or input on this aspect; and to set a watching brief to review whether a stand-alone Trading Party disputes process for DSRRs is required; to occur in 12 months, once the new TDC's Disputes process was known.

G20_A10

- 3.24. The Committee noted that in 12 months, information on the work of the TDC on the consolidated disputes process, the operation of the new DSRR process, and a further Experience Review would be available to assist the Committee's considerations and assessment of any case for change.

4. Kissflow Overview

- 4.1. TD presented this agenda item, advised the Committee on Kissflow functionality, and answered queries from the Committee in relation to the various additions to the DSRR process that could be included in Kissflow.
- 4.2. The Committee noted that only contract managers and deputy contract managers are given access to Kissflow. If MOSL were to give access to DPO's and designated contacts, as in contemplation, it would come at a cost. TD explained that this would have to be a discussion at a senior level.
- 4.3. The Committee assigned TD an action to investigate the cost of providing Kissflow access to DPO's and designated contacts so that this could be factored into its consideration of the DSRR handling process and any recommendations to Panel.

G20_A11

5. DSRR Form

- 5.1. It was noted that HC has updated the form as per the Committee's previous comments and that the form is still available in SharePoint for the Committee to provide additional comments.

G20_A12

- 5.2. A Committee member requested the form include an 'individual Trading Party reference number' box. The Committee agreed to provide any further feedback on the DSR Form offline.

G20_A13

- 5.3. The Committee noted that the DSRR Form and the process as a whole was limited to dealing with data subjects (ie individuals) exercising their rights, not requests made by police, intelligence agencies or other third-party authorities, which was a different regime under the act. The Committee agreed that this should be noted in the DRR.

G20_A14

6. Draft Committee Report

- 6.1. Due to time constraints, this agenda item was deferred to the next meeting.

7. AOB

- 7.1. The Committee actioned the Secretariat to create a poll with future meeting dates and circulate it to the Committee to ascertain their availability for further meetings.

G20_A15

Actions

- **G20_A01** – Committee to consider the need for a FAQ document at the end of this round of the Committee's work;
- **G20_A02** - Amanda Hinde (AH); Helyn Mensah (HM) and Caroline Gould (CG) to discuss action G14_A14 offline and come back to discuss with the group once a resolution is achieved;
- **G20_A03** – Secretariat to verify if Communications have been sent advising that a link is on the MOSL website with Data Protection Officer (DPO) details;
- **G20_A04** - AJ to investigate the DPO contacts list to ensure that there are no gaps in the list;
- **G20_A05** – AJ to include a mechanism in the Communications sent out to Trading Parties about DPO Contact Details to confirm correct recipients;
- **G20_A06** – Recommend to the Panel to include a watching brief to update DPO Contact lists every 12 months;

- **G20_A07** – Secretariat to investigate if there is existing wording in the licence/codes about how Market Data is managed in the event of Market exit (orderly or disorderly);
- **G20_A08** – AH to produce a flow diagram detailing the steps for both initiating and recipient Trading Parties for the proposed DSR process;
- **G20_A09** – Include a review of DSRRs handled under Standard Processes as part of the Experience Review watching brief;
- **G20_A10** - Set a watching brief to review whether a stand-alone Trading Party disputes process for DSRRs is required; to occur in 12 months, once the new TDC's Disputes process was known;
- **G20_A11** - TD to investigate the cost of providing Kissflow access to DPO's and designated contacts;
- **G20_A12** – Committee members to provide comments on the DSRR form in SharePoint;
- **G20_A13** – Update the DSRR form to include an 'individual Trading Party reference number' box;
- **G20_A14** – Note in the DRR for the DSSR's processes that the DSRR Form and the process as a whole was limited to dealing with data subjects (i.e. individuals) exercising their rights, not requests made by police, intelligence agencies or other third-party authorities, which was a different regime under the act;
- **G20_A15** - Secretariat to create a doodle poll with future meeting dates and circulate it to the Committee for their availability.