

# Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 21

30 April 2020 | 10:30 – 15:30

Teleconference

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 Coglan	MC	Committee Member (Retailer)			

## OTHER ATTENDEES

Stuart Boyle	SB	Observer (MOSL)	George Kelly	GK	Secretariat (MOSL)
Huw Comerford	HC	Secretariat (MOSL)	Amanda Hinde	AH	Secretariat (MOSL)

## APOLOGIES

Andrew Johnson	AJ	MOSL	Abigail Morgan	AM	Committee Member (Retailer)
Emma Groves	EG	Committee Member (Retailer)			

## 1. Welcome and Introductions

- 1.1. The Committee Chair welcomed attendees to GDPR Issues Committee meeting 21.
- 1.2. The Chair noted apologies from AJ who was not able to attend the meeting.
- 1.3. The Chair ran through the objectives for the meeting:
  - 1.3.1. To close any outstanding actions.
  - 1.3.2. To determine whether to approve minutes here, and if so, with any additional comments.
  - 1.3.3. To gain the Committees views on the review for the DSR form process.
  - 1.3.4. To discuss the DSR form and any changes which must be made.
  - 1.3.5. To discuss AOB.
- 1.4. The Chair stated that there will have to be agreement of dates for the next two meetings taken via doodle-poll offline. This was agreed to be done Post-meeting.

**ACTION: G21\_A01**

- 1.5. The Chair then ran through the meeting etiquette, since it was the first held exclusively via Teams in light of the Covid-19 threat.

## 2. Minutes and Outstanding Actions

- 2.1. The committee agreed to **close** the following actions;
  - G14\_A14; G20\_A02; G20\_A03; G20\_A06; G20\_A08; G20\_A09; G20\_A10; G20\_A11; G20\_A12; G20\_A13; G20\_A15;
- 2.2. There was a discussion regarding action G20\_A03. HC noted that the email communication was sent but it wasn't clear whether the link on the website was included in the email sent to trading parties regarding updating their DPOs. HC suggested it might be wise to reissue another email. The Chair stated that the detail of this action may have been met by AJ's work under G20\_A04. This had to be confirmed by AJ however. The Chair suggested to close G20\_A03 and open a new action for reissuing communications which would be dependent upon whether AJ had identified any gaps in the DPO list in the course of his work necessitating communications to be issued in any event. This was agreed.

**ACTION: G21\_A02**

- 2.3. One member queried whether the market codes may have been breached due to the fact the review of the Market Privacy Notice has not been published on time, with regards to action G19\_A09. A discussion ensued as to when in the year the review must be completed under the codes, and whether breach was likely if the review had been started within the window specified (if not completed and published). It was agreed that this should be queried with AJ.

**ACTION: G21\_A03**

- 2.4. HC noted that the target date for action G20\_A05 had to be updated as it has been missed now since AJ was not attending this meeting. The Chair noted that this had to be posed to AJ to determine if indeed this had been missed, and if so, to update the date.
- 2.5. HW noted that no comments on the previous minutes (19 and 20) had been received since last the meeting and invited comments or queries.
- 2.6. One member had a comment regarding section 3.7 in meeting 19 minutes. They suggested an update from the wording 'sensitive data' to 'special category data'. The Committee agreed with this change.
- 2.7. The Committee agreed to approve the minutes from both GDPR meetings 19 and 20 once the update to GDPR 19 had been made.

### 3. Reviewing Process for Dealing with DSR Requests

- 3.1. AH presented on this agenda item, seeking the Committee's agreement on the process for dealing with Data Subject Rights Requests (DSRRs). In particular where a Trading Party has received a DSRR and is unable to fully deal with the request themselves and having given due regard to the GDPR timescales and the data sharing context in the water retail market.
- 3.2. AH briefly presented the terminology of the proposed solution, as well as the proposed solution options. The Committee was asked to consider amalgamating the existing DSRR Form and the intended DSRR Progress Record (to be used for tracking the steps a party takes to fulfil a DSRR) into one form simply called the 'DSRR Record'. AH noted that the new 'DSRR Record' could be divided into three sections, (a) a 'details Section' which provides details of the request, (b) a 'processing/handling section' where parties set out how the request is to be dealt with (eg which standard process has been initiated, or, if no standard process applies, a description of what is necessary), and (c) a 'tracking section' where parties provide updates on progress of the request, information on any delays, and when the request has been completed and the data subject notified.
- 3.3. The Chair noted that the existing DSRR Form, which is used in the absence of a standard process, currently contains the details of the request being made (section 'a' above), how DSRRs are currently handled (point 'b' above) but does not include a tracking request section (section 'c' above). The Chair asked the Committee to consider whether the DSRR Form and DSRR Progress Record should be combined into one form (the 'DSRR Record'). Different aspects of the DSRR Record would then be completed depending on which sections were applicable in the individual circumstances. For example, if a standard process was initiated, the form would be completed only to describe the request, identify which standard process was initiated, and track the actions taken. On the other hand, if no standard process was applicable, all sections of the DSRR Record would be required to be filled out including steps required to deal with the request the absence of a standard process.
- 3.4. A member noted there are two types of forms being discussed, one being the DSRR Form approved by the Committee in 2018 and the other being the new DSRR Record. The Chair noted the difference between the forms and confirmed that the aim of this meeting is for the Committee to come to a clear understanding and agreement of what the DSRR handling process should be, and what form/forms should be used to facilitate the new process agreed. Separate to this, the Chair noted that the

Committee will need to decide whether an interim measure was necessary as the DSRR Form currently within KissFlow differed from the version previously approved by Panel.

- 3.5. A member stated that they were unclear as to the impact on Trading Parties to complete the DSRR Record, and noted that there would be implications on resources if Trading Parties had to complete forms which had not been required previously. The member then questioned whether the intention was for the Trading Party to fill out a DSRR Record if the request could be dealt with by themselves. The Chair reminded that the Committee had envisaged the form would only be used where the request could not be dealt with by a Trading Party by itself (ie the assistance of other parties was required), and there had been no indication Committee that the Committee wished to depart from this, although this possibility was open to it.
- 3.6. To aid the discussion, AH referred the process diagram illustrating the new process in graphic form. A Committee member queried why the slide presented was different from the slide in the papers. AH clarified that this was because the diagram in the slide showed the process where there was just a single form (the DSRR Record) as opposed to the originally anticipated two (DSRR Form and DSRR Progress Record).
- 3.7. The Committee then noted that it remained unclear from the diagram whether a party dealing with a request on its own was to fill out a DSRR Record or not, and whether in doing so it could use its own internal processes and/or any standard process needed to interact with CMOS, as applicable. The aim was to make things as clear and simple/straight forward as possible.
- 3.8. After discussion, it was agreed that it needs to be made explicit in the drafting and in the process diagrams, by addition of a notice or function box, that where the request can be dealt with unilaterally without outside assistance then, for the avoidance of doubt, Trading Parties are not required to complete a DSRR Record, and could use whatever processes it deemed fit.

**ACTION: G21\_A04**

- 3.9. Another member stated their view that the DSRR Record ought to be split into multiple sections to save time in filling out large expanses of the form simply for tracking where there is a standard process in place. The Chair noted the Committee had thus far agreed that where a standard process had been instigated, the need was for a Trading Party to identify that this had been done for the purpose of a DSRR (not business as usual), and to have a facility to track progress of the request. Further, the three different elements of the DSRR Record had already been agreed by the Committee - the suggestion being posed here was whether to combine these aspects into one form.
- 3.10. A member requested clarification as to why the standard operational forms were not adapted to include a tick box to state they are a DSRR. The Chair reminded that in the January GDPR Committee meeting, members were informed that 500-1000 man-hours would be needed to review the standard operational forms, amend the market codes for each of the standard process relevant to each standard operational form, and to overlay the GDPR timescales for DSRRs within each standard process; moreover that trading parties would then need change their own systems to align. The Committee had decided that this was disproportionate in terms of resource and impact, and that it would instead create a new standalone DSRR process with an overarching obligation to expedite actions to meet the GDPR timeline, even where using a standard process.

- 3.11. The member further pointed out that a Trading Party might find it difficult to make the assessment of whether the DSRR can be completed by standard processes and therefore take the ‘path of least resistance’ and say the request falls under a non—standard process to avoid doing upfront analysis and ‘de-risk’ the process to save time and effort. Another member responded, noting it may still not be possible to meet the timescales required for GDPR whether or not a standard process was used, but that having a tracking process that keeps track of GDPR timescales, may help parties to expedite individual DSRRs that would otherwise be lost in the mix of other requests. The member continued to explain that this concern of ‘abuse’ was raised during a previous meeting, however the GDPR requirements were there regardless and should be followed . The Chair observed that this (i.e. how and by what process to handle a DSRR) was a judgement which had to be made by trading parties under MAC Schedule 13 as it currently stands.
- 3.12. The Chair noted that the aim of the Committee was to create a framework which gives compliance the highest possible likelihood. The Chair further noted that it was within the Committee’s gift, in the context of the next experience review, to seek to understand Trading Parties behaviours around use of the DSRR process, and to consider future process improvements if any abuse were established.
- 3.13. The Committee agreed (by a vote of five for, and one against) to include this as a watching brief item.

**ACTION: G21\_A05**

- 3.14. AH sought agreement on, and the Committee unanimously agreed that there should be a single form with all the elements outlined by AH, including tracking (see paragraphs 3.2 to 3.9 above).
- 3.15. AH then presented the case studies which the Committee requested the secretariat to produce to test the proposed solution . AH asked the Committee to confirm, as the GDPR Article 12 requires a response to the Data Subject on the DSRR without undue delay, whether the instigating party should be the party to set the deadline for the request to be completed. Members agreed unanimously that this should be the case.
- 3.16. AH then sought the Committee’s decision as to when an action has been taken, what the timescale is for the party to update the DSRR Progress Record with such actions. One member asked if there were logistical issues which would prevent this from occurring on the same Business Day (BD). Some members stated that if individuals did not have access to KissFlow there could be a delay of one BD or so. One member questioned the risk if there was a delay. It was noted that delays at the end, may result in the deadline being overshot. After discussion, the Committee unanimously agreed that a timescale of ‘as soon as reasonably practicable but, in any event, no later than 3BD’ was suitable. The Chair noted that this, together with the drafting, would be subject to legal advice.
- 3.17. The Committee agreed that in between receiving a request and completing it, if a party becomes aware that it will hit a delay, it should issue (via the DSRR Record tracking section) communications surrounding the detail of this delay to all affected parties, and the data subject.
- 3.18. The Committee further discussed and agreed on the below:
- that the party (Wholesaler/Retailer/Market Operator) which takes the final step (representing the Request being completed) should be the one to respond to the data subject (customer);

- that the timescale to update the DSRR Progress Record with the fact that the request has been completed and a response issued to the data subject should be 'as soon as reasonably practicable but, in any event, no later than 3BD'.

3.19. AH presented two case studies that the Committee had requested in order to test the new process. AH then noted several elements in the DSRR process previously discussed, asking for confirmation of agreement on each :

- 3.21.1. Parties must update the DSRR Record as soon as reasonably practical but, in any event, by no later than 3BD of completing the request, or notifying the data subject that the cannot be dealt with, together with the reasons why. This was agreed.
- 3.21.2. Since parties are joint data controllers, it is not essential for the first recipient of the request to seek the data subject's consent to transfer of the DSRR to other relevant parties who are necessary for the handling of the request. This was agreed.
- 3.21.3. The GDPR "clock" stops ticking when the data subject has received a substantive response from the relevant trading party. The party who provides this response does not have to be the first recipient party initially contacted by the data subject. This was agreed.
- 3.21.4. Again, as every Trading Party is a joint data controller, any Trading Party can identify that a request from a customer is a DSRR and therefore raise a DSRR Record if it cannot be dealt with unilaterally. This applies even if that party is not the first recipient, and the party who was did not do so. This was agreed.
- 3.21.5. A Committee member noted that this could occur when a Trading Party deduced via the information it received on the standard process form that it was not an ordinary request but a DSRR. The Committee agreed that the date provided on the standard process form ought to be the date at which the "GDPR clock" begins. The Chair queried how the new trading party (triggering the new DSRR process) would then obtain contact details of the data subject. One member stated that the contact details of the customer ought to be included on the standard process form. In considering whether the process was robust enough to deal with this situation, one member stated that there was enough information in the standard forms to populate fields needed (eg customer premises and contact details) in the DSRR Record; it was also possible for a DPO to contact another DPO to obtain any other information required. All Committee members agreed with this.
- 3.21.6. "Recipients" that are not market participants (e.g. third-party brokers who receive a DSRR) are not considered as joint data controllers and are excluded from this entire process. No member had any comments with regards to this assumption.

3.20. AH then presented the 10 proposed consultation questions. The Committee were invited to comment on these.

3.21. One Committee member stated that some recipients of the consultation may not know what a DSRR is, and so a definition may be required. Another member noted question five ('Who in your organisation would be responsible for raising DSRR Forms?'). They stated that the question should clarify whether it means 'who' as in a named person, or the role of that person. After discussion, it was decided that the

wording should be changed to something along the lines of ‘who in your organisation would be responsible for creating a DSRR Record and dealing with a Data Subject Rights Requests according to this new process (for example, your DPO, contract manager, designated contact, etc)?’.

- 3.22. One member queried when the consultation was planned in for. SB advised this had not been confirmed, however the current thinking, taking into account the programme of upcoming consultations, was to issue the consultation in June 2020.
- 3.23. Another member queried question six (‘If DSRR Records are raised using Kissflow, how many additional users would your organisation require? If there were an additional cost to the industry for this, what would be a reasonable cost per additional user per year?’). They stated trading parties would be unlikely to know what a ‘reasonable cost’ was in this context and instead suggested asking ‘do you think you need to involve DPOs to carry out this process, and therefore have access to KissFlow? If yes, then do you agree with the cost?’
- 3.24. Another member stated that it might be useful to provide the context of how DSRRs are handled currently as per MAC Schedule 13. The Chair agreed that AH should include this ‘context setting piece’ regarding how DSRRs are handled and where in the MAC they sit in the consultation paper.

**ACTION: G21\_A06**

- 3.25. The Chair stated that more in depth review of the questions from Committee Members would be advisable once the consultation package was drafted. In the meantime, it was agreed that AH would update the consultation questions using the comments gathered and circulate it for further Committee comments ahead of the next GDPR meeting.

**ACTION: G21\_A07**

3.26. The Committee:

- **APPROVED** the proposed process for dealing with DSRR, subject to changes made from this meeting’s comments and any further comments once the full set of consultation papers were seen;
- **NOMINATED** AP on behalf of the Committee as the Change Proposer.

## 4. DSR Form

- 4.1. The Committee was invited to provide its comments and questions on the amended draft DSRR Record. All Committee comments (including any received offline) and the various points of process which had been agreed during meeting would then be incorporated by HC into a revised draft.

**ACTION: G21\_A08**

- 4.1.1 One member queried whether the tracking section should be at the beginning, or at least somewhere ‘front and centre’ for ease and efficiency, or perhaps a mechanism for easy access of that section. Another member suggested having a ‘reporting’ function, where it can easily be seen which sections are completed and what stage the request is at. It was noted that there are



many ways of these aims logistically; the secretariat would analysis this in preparing the solution.

- 4.1.2 Another member requested clarification on what section 10 ('complaints from Data subjects') on the form might be. The Chair noted that this had been included by DLA Piper and agreed by the Committee when the original form was designed. It allowed the user to record a complaint from a data subject about the recognised rights or deal with a complaint from a data subject unrelated to a DSRR, however unlikely this situation may be.
  - 4.1.3 Another member questioned the naming of the form, it was not a DSR form but a DSRR Record and this should be referenced as such throughout. The Chair requested this be taken offline and for AH to ensure consistency throughout.
  - 4.1.4 Yet another member queried (for consideration) whether the reference to provision of 'details' was correct in section 2, or if it was asking for the user simply to identify rather than detail the request.
  - 4.1.5 Finally, the Chair ran through a number of her own observations on the draft to be included for the Committee's consideration of the next iteration of the new DSRR Record.
- 4.2. HC stated – in answer to a query as to how this process would work if there were multiple parties involved (i.e. 2 Wholesalers and 2 Retailers) –that the process could be designed to work however the Committee within Kissflow. The Chair noted that since the DSRR Record was being designed independently of any particular software, nothing should be designed into the KissFlow rendering which isn't contained and approved in by the Committee in the paper format. HC agreed with this point.
- 4.3. HC then updated the committee as to the costs involved in giving the DPOs or designated contacts of all trading parties access to Kissflow, noting that the cost is billed to MOSL in US\$ and so would vary with exchange rates. The Committee noted this cost seemed reasonable. It was suggested that AH ought to include this cost in the consultation form when asking Trading Parties views on whether DPOs should be the ones to respond to DSRRs and therefore whether they require access to KissFlow.

**ACTION: G21\_A09**

## 5. AOB

- 5.1. One member noted that they had received a consultation regarding adding data fields into T101, and queried whether this had been reviewed by MOSL in the context of GDPR. HC clarified that the additional fields added to the T101 data flow are data items which already exist in CSD 0301, they are not new. HC added that a MOSL Internal Impact Assessment, which includes an assessment of any legal issues (such as GDPR), is undertaken on all changes raised. The Chair noted that this was also the purpose of the Committee in setting periodic watching brief reviews.
- 5.2. The Committee returned to the issue of the differences between the version of the DSRR Form rendered in Kissflow and that approved by the Panel as part of the original solution (which can be updated from time to time, without code change, to allow flexibility). The committee considered three options for resolving this issue:



- 5.2.1. have KissFlow corrected to match the Panel approved DSRR form;
  - 5.2.2. \take no action given the whole form was shortly to be overhauled in the context of the Committee’s DSRR change proposal; or
  - 5.2.3. take down what is in KissFlow currently, but leave the original approved form available to Trading Parties on the MOSL website until the new change superseded.
- 5.3. The Chair noted that DSRR Forms have to be submitted via secure means under the MAC, and that this requirement will still apply even if the KissFlow version is taken down.
- 5.4. The Committee agreed unanimously on option 3 above and required the secretariat to verify that the form on the MOSL website was the approved version.

**ACTION: G21\_A10**

- 5.5. HC queried whether members would change their minds to option 1 above if it could be done quickly. Members declined this and noted that if MOSL had extra resource to set to correcting the KissFlow version to match the approved DSRR Form, then this could be done at its time and cost, and then revisited by the Committee. The present decision was however Option 3.
- 5.6. There was no further AOB, so the Chair closed the meeting.

## 6. Actions

Action Number	Action
<a href="#">G21_A01</a>	HC to send out a doodlepoll for preferred dates of the next two GDPR meetings.
<a href="#">G21_A02</a>	AJ to identify gaps in the DPO list in the course of his work necessitating communications to be issued, and if there were gaps, to reissue communications.
<a href="#">G21_A03</a>	AJ to determine whether the market codes had been breached due to the Market Privacy Notice review not being published on time, and whether breach was likely if the review had been started within the window specified (if not completed and published)
<a href="#">G21_A04</a>	AH to determine whether it needs to be made explicit in the DSRR drafting and process diagrams (by addition of a notice or function box) that where the request can be dealt with unilaterally without outside assistance, Trading Parties are not required to complete a DSRR Record, and could use whatever processes it deemed fit.
<a href="#">G21_A05</a>	AH to include a watching brief item regarding seeking understanding of Trading Parties behaviours around use of the DSRR process.

<p><a href="#"><u>G21 A06</u></a></p>	<p>AH to include a ‘context setting piece’ regarding how DSRRs are handled and where in the MAC they sit in the consultation paper.</p>
<p><a href="#"><u>G21 A07</u></a></p>	<p>AH to update the consultation questions using the comments gathered and circulate it for further Committee comments ahead of the next GDPR meeting.</p>
<p><a href="#"><u>G21 A08</u></a></p>	<p>HC to incorporate the Committee’s comments/questions on the amended draft DSRR Record and the various points of process which had been agreed during meeting into a revised draft.</p>
<p><a href="#"><u>G21 A09</u></a></p>	<p>AH to include cost (in US\$) in the consultation form when asking Trading Parties views on whether DPOs should be the ones to respond to DSRRs and therefore whether they require access to KissFlow.</p>
<p><a href="#"><u>G21 A10</u></a></p>	<p>MOSL secretariat take down what is in KissFlow currently, but leave the original approved form available to Trading Parties on the MOSL website until the new change superseded, as well as to verify whether the verify that the form on the MOSL website was the approved version.</p>