

Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 22

13 August 2020 | 10:30 – 15:40

Teleconference

Status of the Minutes: Approved

MEMBERS PRESENT

Helyn Mensah	HM	Chair	Kulwinder Johal	KJ	Committee Member (Wholesaler)
Emma Groves	EG	Committee Member (Retailer)	Arabella Prothero	AP	Alternate for Abigail Morgan (Committee Member (Retailer))
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)	Amanda Hinde	AH	Secretariat (MOSL)
Huw Comerford	HC	Secretariat (MOSL)	Carol Sgambaro	CS	Secretariat (MOSL)
Tom Daborn	TD	Presenter (MOSL)	Ethan Fleming	EF	Secretariat (MOSL)

APOLOGIES

Andrew Johnson	AJ	MOSL	Caroline Gould	CG	Committee Member (Wholesaler)
Abigail Morgan	AM	Committee Member (Retailer)			

1. Welcome and Introductions

- 1.1. The Committee Chair welcomed attendees to GDPR Issues Committee meeting 22.
- 1.2. The Chair noted that apologies were received from AM, CG and AJ. It was further noted that the meeting was quorate and that it could proceed to business.
- 1.3. The Chair ran through the main objectives for the meeting:
 - 1.4.1 To review and approve the Change Proposal Form, the MAC legal drafting, the DSRR Record, and the Consultation Paper in respect of the improved process for managing Data Subject Rights Requests (“DSRR”). The aim was to have no residual issues in relation to the change after today’s meeting, however, in the event of any, the Committee would be asked to resolve these by email or, if necessary, via a short telephone meeting.
 - 1.4.2 To understand and review the Kissflow operation of the DSRR Record via software demonstration by TD.
 - 1.4.3 To review the Committee workplan and the expected remaining time commitment for the Committee. The Chair noted that the aim was to bring the DSRR change to the October or November Panel meeting, if possible.

2. Minutes and Outstanding Actions

- 2.1. The Committee approved the minutes of the Committee meeting 21, held on 30 April 2020.
- 2.2. The Committee noted the response papers which had been prepared in advance by AJ pursuant to actions G20_A07 and G21_A03.
- 2.3. The Committee agreed to **close** the following actions:
 - G19_A09.
 - G20_A04; G20_A05; G20_A07; G20_A14.
 - G21_A01; G21_A03; G21_A04; G21_A05; G21_A06; G21_A07; G21_A08; G21_A09; and G21_A10.

3. Reviewing Process for Dealing with DSRRs

- 3.1. AH presented on this agenda item, seeking the Committee’s agreement on the Consultation note, the DSRR Record (in Panel & Kissflow versions), the legal drafting and the Change Proposal form, all of which had been circulated to the Committee in advance of the meeting.
- 3.2. AH referred the Committee to the Consultation note, explaining that the proposed next steps would be to go out to consultation on 20 August and for it to close on 10 September; she noted that the Change Proposal Form, the legal drafting and the DSSR Record (both the Panel and Kissflow versions) would be attached to the consultation note.

- 3.3. AH drew the Committee's attention to sections 3 and 4 of the Consultation note, providing a brief outline of the issue and the proposed solution, respectively.
- 3.4. AH noted that the solution recognised that, in some circumstances, a Trading Party may refuse a request if there are lawful grounds under Data Protection laws to refuse to deal with all or part of a DSRR.
- 3.5. The Committee expressed a concern with regards to the proposed timing for the consultation period, noting that this was a period where a high number of individuals, including those who would potentially be filling out the consultation questions, would be on annual leave. The Committee also noted Covid-19 pressures.
- 3.6. The Chair observed that moving the consultation period would have an impact on other relevant internal and external deadlines relevant to the Committee's work, including when the change might be brought to Panel. A member highlighted that it was essential to maximise the opportunity for industry to respond to the consultation questions, to ensure that Trading Parties were engaged in the process.
- 3.7. The Chair agreed and asked SB to revert to the Committee with alternative dates for the consultation period.

ACTION: G22_A01

- 3.8. Since changing the consultation period would prevent the next meeting being held on 1 October, the Committee workplan would also be reworked accordingly, and an alternative date for the next meeting found.

ACTION: G22_A02

- 3.9 The Chair then asked the other Committee members if they had any comments in relation to the consultation questions. It was noted that the proposed consultation questions were to be considered in the context of whether the proposed solution was an improvement over what currently exists in the Codes.
- 3.10 A discussion was held in relation to who should handle and complete the DSRR Record. The Committee considered whether in addition to the stipulation within the proposed solution that the person best placed to deal with DSRRs should be the Data Protection Officer (DPO) or the designated data protection contact, there should also be a stipulation that a DSRR can be dealt with by someone with data protection expertise and/or training, i.e. that individual did not necessarily have to be the DPO or the designated contact.
- 3.11 The Committee agreed that stipulation should be widened so that the person required to fill out the DSRR Record could be a DPO, a designated data protection contact, or another person with data protection expertise and/or training. The Committee felt that this wording would ensure that individuals dealing with DSRRs or filling out such DSRR Records would have a minimum level of knowledge and/or training in data protection (and thus would provide parties with some reassurance as to the accuracy of this form.), whilst allowing parties some measure of choice.
- 3.12 The Committee agreed that it was important for each individual Trading Party to be allowed to assess and decide, taking into account the requirements of their own organisations, who was the person best placed to deal with DSRRs and the DSRR Record, so long as the selected individual(s) met one of the three categories agreed in paragraph 3.11 above.

- 3.13 The Committee further agreed that there was no need to have a distinction within the legal drafting regarding who would 'complete', 'submit' and 'update' the request.
- 3.14 The following main points were discussed and agreed in relation to the consultation questions:
- 3.14.1 Question 1 – The word 'currently' would be added before 'a market-level risk'.
 - 3.14.2 Question 3 – The word 'initial' would be deleted.
 - 3.14.3 Question 5 – The wording would be amended to make it simple to understand and to reflect that the person best placed to fill out the DSRR Record would be the DPO, a designated contact or some other person with data protection expertise and/or training.
 - 3.14.4 Question 6 – A member noted that the way this question was currently worded could lead to respondents stating that they would require additional users. Therefore, it was agreed that the wording in question 6 would be amended to ask Trading Parties first whether they consider the new process would require their organisations to have additional Kissflow users and then, if so, how many.
 - 3.14.5 Question 8 – wording would be amended and split to ask Trading Parties to first identify what, if any, benefits they consider the proposed change would bring and then, second, to comment on whether those benefits would outweigh the costs.
 - 3.14.6 Questions 2, 4, 7 and 9 – The members were comfortable with these questions as drafted. Therefore, no amendments would be made to them.
 - 3.14.7 Question 10 – if the anticipated timetable for the change alters because of the shift to the consultation window, the date of 15 February 2021 would be amended to reflect this accordingly.

ACTION: G22_A03

- 3.15 AH then sought the Committee's approval in relation to the Change Proposal Form. AH noted that, if approved, this would be raised at the August Panel meeting.
- 3.16 With regards to the legal drafting, AH explained that AJ had made amendments to Schedule 1 to add three definitions which were highlighted within the Consultation note. She also noted that substantial changes had been made to schedule 13 section D part II (Data Subject Rights Requests).
- 3.17 The Committee noted that the comments which AJ had provided in relation to paragraph 2.3 and 2.4 of the legal drafting were self-explanatory and, therefore, the Committee had no questions or comments in relation to these.
- 3.18 The Committee:
- **APPROVED** the Consultation Paper
 - **APPROVED** the Change Proposal form
 - **APPROVED** the MAC legal drafting

- 3.19 It was noted that the approval of the Consultation Paper was subject to it being amended to reflect the points agreed by the Committee in paragraph 3.14 above and the points relevant to it in paragraphs 4.13, 4.14, 5.10, 5.11 and 5.14 below.
- 3.20 It was further noted the Committee's approval of the Change Proposal Form and the legal drafting were subject to these being amended to reflect that the person required to fill out the DSRR Record would be the DPO, a designated data protection contact, or some other person with data protection expertise and/or training.

G22_A04

- 3.21 In addition, the legal drafting, and consequentially the Consultation Paper, would be reviewed to remove confusion/ensure clarity of terminology regarding the possible actions vis-a-vis a DSRR Record (e.g. create it, complete it – i.e. populate with answers to questions, submit it to other parties, update it with actions taken in relation to the DSRR, close – i.e. when the DSRR has been completed and the data subject notified).¹

G22_A05

- 3.22 The revised versions of these documents would be re-circulated to the Committee for final comments by email (or via a call, if consensus could not be reached by email).

4 DSRR Record

- 4.1 HC explained that the aim for this agenda item was to obtain the Committee's agreement on the content of the DSRR Record which was to be used to manage DSRRs.
- 4.2 HC noted that there was only one DSRR Record. However, he further explained it had been rendered in two versions with the same content:
- 4.2.1 the Panel version– which was the DSRR Record rendered in paper format to allow review and approval by Panel from time to time. (NB: although in theory this paper version could be completed by hand and exchanged bi-laterally between parties, the intention was that only the Kissflow version would be used.)
- 4.2.2 the Kissflow version – which was the DSRR Record rendered in digital format to allow multi-party functionality, including tracking.
- 4.3 HC noted that the aim was to circulate both versions with the consultation.
- 4.4 It was noted that a question had previously been received regarding whether there was any category of DSRRs which could not be refused. HC stated that AJ had looked into this question and confirmed that any request could be refused where there was a valid legal basis. Each request would have to be assessed but examples might be:
- 4.4.1 Where the request was manifestly unfounded or excessive.

¹ Please note that these steps did not need to be called out individually or separately.

- 4.4.2 Where a party was unable to adequately verify the identity of the data subject.
- 4.4.3 Where a third party failed to present sufficient proof of authority to make the request on a data subject's behalf.
- 4.5 HC noted that there was a designated complaints section within the original DSRR Form and queried whether or not this should be included in the new DSRR Record given that it did not relate to a type of data subject request.
- 4.6 The Chair commented that one of the advantages of maintaining this designated complaint field might be to provide Trading Parties with visibility that a complaint was ongoing and, therefore, allow any issues to be resolved expeditiously, with the possible benefit of avoiding escalation to the ICO.
- 4.7 A member queried what types of complaint should be included within this complaints field and what level of information should be provided, as there could be confusion as to what constitutes a complaint. The same member concluded that it would be a benefit for all parties to continue to have this designated complaint field and added that it would be important to tailor what information would be included.
- 4.8 Another member stated that the complaints section (section 2H) did not expressly state that the complaint should be regarding the DSRR and, although this was implied, it was important to make this explicit.
- 4.9 A member queried what would happen if a complaint was made subsequent to completion of a request, for instance, because the request was not dealt with adequately.
- 4.10 The Chair noted that on the DSRR Form as it currently exists there was a section for complaints and no stipulation as to when it might be used – so it could cover complaints received contemporaneously to the request and complaints arising subsequent to completion. However, given the paper format, complaints subsequent to the DSRR would require further form of communication with other parties whereas, with the new solution under consideration by the Committee, the DSRR Record would sit in electronic form on Kissflow allowing information on subsequent complaints to be exchanged digitally.
- 4.11 TD stated that Kissflow could be set up in such a way that alerts could be issued to the relevant Trading Parties when a complaint was received, if the Committee wished for that to happen. It was noted that the topic of alerts would be discussed in further detail under agenda item 5 below.
- 4.12 The Committee agreed that in the declaration section there should be a field required to be completed or ticked which confirmed that the person who has dealt with the DSRR meets one of the three categories the Committee established earlier (outlined in paragraph 3.11 above). TD confirmed that this functionality could be added.
- 4.13 The Committee agreed that the following amendments would be made to the DSRR Record:
 - 4.13.1 Section 2H would be clarified to confirm that complaints were in relation to the relevant data subject request(s) being made.
 - 4.13.2 A date when the complaint was received would be added within section 2H.
 - 4.13.3 The complaint box would become "Section 3" instead of "Section 2H". The section numbers thereafter would be renumbered accordingly.

- 4.13.4 The sentence “as soon as practicable but in any event by no later than one month of receipt of the request” would be added to the Due Date question in the Status section.
- 4.13.5 A question seeking confirmation of whether the Data Subject had been notified within one month of receipt of the request of the need for an extension of an additional two months to complete the request. This question would have a yes/no answer: if answered "Yes", the user would be allowed to insert a new due date - representing 3 months from the date of original receipt of the DSSR - against an 'Extended Due Date' field, which would sit under the original Due Date field on the paper form. In Kissflow, the extended date would be automatically calculated and would appear as a new field "Extended Due Date" under the original Due Date field; if answered "No", the user would be advised that extending the Due Date without such notification to the Data Subject was prohibited/impermissible, and Kissflow would prevent the generation of an Extended Due Date field in this instance.
- 4.13.6 A confirmation that the DSRR Record had been filled out by a DPO, designated contact, or some other person/employee with data protection expertise and/or training would be added to the "Declaration Section"

G22_A06

- 4.14 TD agreed to investigate functionality options regarding amending the Due Date where a request is classed as complex and revert to the Committee.

G22_A07

- 4.15 HC stated that a DSRR Record Guidance (“Guidance”) would be produced to provide assistance to Trading Parties. HC asked if two Committee members could volunteer to work with MOSL offline to develop this document.
- 4.16 EG and DO volunteered to become a part of this working group.
- 4.17 In terms of an indicative timeline, SB explained that the Guidance would likely be produced next year, as it would not be produced until the changes had been approved and included within Kissflow.
- 4.18 The Chair noted that the expectation was the Committee would have been released from their duties by next year and, therefore, the suggested timing would not work.
- 4.19 It was agreed that an offline discussion would take place between the Chair, EG, DO and SB regarding how to take the DSRR Record Guidance forward.

G22_A08

5 DSRR Record – Kissflow Overview

- 5.1 TD provided a demonstration of the DSRR Record on Kissflow platform. TD noted that the Kissflow rendering of the DSRR Record was a work in progress and that it would be updated to reflect the Committee’s feedback following the day’s meeting.

- 5.2 TD ran through a video which showed some of the key functionalities of Kissflow, including Kissflow's layout, to give the Committee an overview of what the platform look and function.
- 5.3 It was noted that there were currently no help texts around the fields within Kissflow. However, this would be added during the production cycle.
- 5.4 TD stated that there were nine types of Data Subject Rights Request and nine corresponding boxes which could be selected; once a box was ticked for a particular rights request (eg subject access), Kissflow would bring up the relevant form for that .
- 5.5 A Member asked whether it was possible to select more than one box. TD confirmed that one could select as many as needed (including the same one several times, or all nine at the same time).
- 5.6 TD explained that once a party clicked the submit button and the request had been successfully submitted, an email notification would be sent to the designated contact of each Trading Party.
- 5.7 The Chair reiterated for the Committee the earlier discussion as to the due date and the circumstances in which this could be extended (paragraph 4.14.5 above).
- 5.8 The Chair queried whether, upon completion by a Trading Party of their relevant sections within the form, other Trading Parties involved in the process would or could receive a notification that the form had been updated. TD confirmed that this not currently available, but that it could be included.
- 5.9 The Chair sought the Committee's opinion in relation to whether and who should be the recipient of a notification that a record had been created and/or updated, and noted that this was currently set as being the DPO only.
- 5.10 After a discussion, the Committee agreed that:
 - 5.10.1 it would be for each individual Trading Party to decide which individuals within their organisation would receive notification of a DSRR records. However, those individuals would have to fall within one of the three categories agreed by the Committee in agenda item 3 above (paragraph 3.11).
 - 5.10.2 Notifications that a DSRR Record had been generated should go to multiple recipients, i.e. to all individuals within a Trading Party's organisation nominated by them as falling within the above required categories, up to a maximum of five individuals.
 - 5.10.3 The names of such individuals would be added to Kissflow, but they would not be visible to users.
 - 5.10.4 A register of those recipients (including their email addresses) would be maintained by MOSL within the current DPO register, but in a separate tab. Those individuals' names and email addresses would need to be maintained outside of Kissflow to ensure the process was workable without resort to Kissflow if ever needed.
- 5.11 After a discussion on the types of notifications, the Committee agreed that the following automatic Kissflow notifications should be sent out:
 - 5.11.1 When a DSRR Record was created.
 - 5.11.2 Change in status, for instance, to "in progress" .

5.11.3 When the due date was changed.

5.11.4 When a new recipient was added.

5.11.5 If a complaint was added.

G22_A09

5.12 TD further explained that Kissflow could also allow for the responding party to upload attachments to the DSRR Record. The Chair invited the Committee's views on the subject.

5.13 One member asked for further clarity on what was likely to be attached and what risks this may present. It was clarified that if this functionality became available, any type of document could be uploaded.

5.14 The Committee considered that there should not be an option to upload attachments as the potential benefit (convenience of exchange of potentially relevant docs) was outweighed by the risks, in particular as to the unknown nature of such documents, whether they would themselves carry personal data, and whether there would be a legitimate basis under data protection laws to share such data in any given case. The Committee however agreed to include a question as to whether this option should be allowed in the consultation. The option of reviewing the position in the future based upon experience was noted.

5.15 Subject to the changes and considerations in paragraphs 4.13, 4.14, 5.10, 5.11 and 5.14 above, the Committee:

- **APPROVED** the DSRR Record in Panel and in Kissflow versions

6 Market Privacy Notice

6.1 KJ left at the start of this agenda item; the meeting was therefore no longer quorate, however the matters remaining were not for formal decision.

6.2 HC indicated that AJ sought the Committee's steer on whether the Market Privacy Notice should be split into two documents, i.e. the Market Privacy Notice and the MOSL Privacy Notice.

6.3 The Chair asked for AJ to take on board the late email comments from two Committee members.

6.4 Committee members concurred that the Market Privacy Notice should be split into two separate notices as indicated.

7 Committee Workplan

7.1 The Chair provided an outline of the likely time commitment for the Committee, explaining that the relevant updated papers (following the discussions in the meeting) would be circulated via email for final comments from the Committee. However, if there was significant concern from any Committee member in relation to the revised documents, a short notice telephone meeting would need to be convened to address this.

- 7.2 Once the relevant Committee approvals had been obtained, the consultation would take place and the Chair would liaise with SB and HC to determine onward dates for the final substantive meeting. This final meeting would aim to:
 - 7.2.1 capture the consultation responses and cover any formal responses to the consultation from the Committee in the paper to Panel and then to Ofwat.
 - 7.2.2 approve the final Committee report to Panel.
- 7.2.3 If there were any residual issues following the final meeting, the approach outlined in paragraph 7.1 above would be adopted.

8 AOB

- 8.1 It was noted that a member became aware that the RWG were discussing further requirements (outside of the emergency contacts’ requirement) regarding the sharing of contact details data between Wholesalers and Retailers with the aim of assisting with planned interruptions and water efficiency. The Chair would liaise with Adam Richardson and/or SB to discuss how to deal with this potential issue.

ACTION: G22_A10

- 8.2 HC stated that the final report from the Committee was largely complete and that it had been placed on the SharePoint Site for comments by the Committee members. The Chair noted that there were some outstanding issues with the document which needed to be discussed offline prior to collating the Committee’s feedback on it.
- 8.3 There being no further business, the Chair closed the meeting.

9 Actions

Action Number	Action
G22_A01	SB was asked to revert to the Committee with alternative dates for the consultation period.
G22_A02	Since changing the consultation period would prevent the next meeting being held on 1 October, the Committee workplan would also be reworked accordingly, and an alternative date for the next meeting found.
G22_A03	The following main points were discussed and agreed in relation to the consultation questions: <ul style="list-style-type: none"> • Question 1 – The word ‘currently’ would be added before ‘a market-level risk’.

	<ul style="list-style-type: none"> • Question 3 – The word ‘initial’ would be deleted. • Question 5 – The wording would be amended to make it simple to understand and to reflect that the person best placed to fill out the DSRR Record would be the DPO, a designated contact or someone with data protection expertise and/or training. • Question 6 – A member noted that the way this question was currently worded could lead respondents stating that they would require additional users. Therefore, it was agreed that the wording in question 6 would be amended to ask Trading Parties first whether they consider the new process would require their organisations to have additional Kissflow users and then, if so, how many. • Question 8 – wording would be amended and split to ask Trading Parties to first identify what, if any, benefits they consider the proposed change would bring and then, second, to comment on whether those benefits would outweigh the costs. • Question 10 – if the anticipated timetable for the change alters because of the shift to the consultation window, the date of 15 February 2021 would be amended to reflect this accordingly. • To add a question as to whether parties should be permitted to add attachments to the DSRR Record.
<p>G22_A04</p>	<p>It was further noted the Committee’s approval of the Change Proposal Form and the legal drafting were subject to these being amended to reflect that the person required to fill out the DSRR Record would be the DPO, a designated data protection contact, or some other person with data protection expertise and/or training.</p>
<p>G22_A05</p>	<p>In addition, the legal drafting, and consequentially the consultation paper, would be reviewed to remove confusion/ensure clarity of terminology regarding the possible actions vis-a-vis a DSRR Record (e.g. create it, complete it – i.e. populate with answers to questions, submit it to other parties, update it with actions taken in relation to the DSRR, close – i.e. when the DSRR has been completed and the data subject notified).²</p>
<p>G22_A06</p>	<p>The Committee agreed that the following amendments would be made to the DSRR Record:</p>

² Please note that these steps did not need to be called out individually or separately.

	<ul style="list-style-type: none"> • Section 2H would be clarified to confirm that complaints were in relation to the relevant data subject request(s) being made. • A date when the complaint was received would be added within section 2H. • The complaint box would become "Section 3" instead of "Section 2H". The section numbers thereafter would be renumbered accordingly. • The sentence “as soon as practicable but in any event by no later than one month of receipt of the request” would be added to the Due Date question in the Status section. • A question seeking confirmation of whether the Data Subject had been notified within one month of receipt of the request of the need for an extension of an additional two months to complete the request. This question would have a yes/no answer: if answered "Yes", the user would be allowed to insert a new due date - representing 3 months from the date of original receipt of the DSSR - against an 'Extended Due Date' field, which would sit under the original Due Date field on the paper form. (In Kissflow, the extended date would be automatically calculated and would appear as a new field "Extended Due Date" under the original Due Date field); if answered "No", the user would be advised that extending the Due Date without such notification to the Data Subject was prohibited/impermissible, and Kissflow would prevent the generation of an Extended Due Date field in this instance. • A confirmation that the DSRR Record had been filled out by a DPO, designated data protection contact, or other person/employee with data protection expertise and/or training would be added to the "Declaration Section"
<p>G22_A07</p>	<p>TD agreed to investigate functionality options regarding amending the Due Date where a request is classed as complex and revert to the Committee.</p>
<p>G22_A08</p>	<p>It was agreed that an offline discussion would take place between the Chair, EG, DO and SB regarding how to take the DSRR Record Guidance forward.</p>
<p>G22_A09</p>	<p>After a discussion on the types of notifications, the Committee agreed that the following automatic Kissflow notifications should be sent out:</p> <ul style="list-style-type: none"> • When a DSRR Record was created. • Change in status, for instance, to “in progress”. • When the due date was changed. • When a new recipient was added.

	<ul style="list-style-type: none"> • If a complaint was added.
<p>G22_A10</p>	<p>It was noted that a member became aware that the RWG were discussing further requirements (outside of the emergency contacts' requirement) regarding the sharing of contact details data between Wholesalers and Retailers with the aim of assisting with planned interruptions and water efficiency. It was agreed the Chair would liaise with Adam Richardson and/or SB to discuss how to deal with this potential issue.</p>