

# Minutes of General Data Protection Regulation (GDPR) Issues Committee Meeting 23

22 October 2020 | 10:30 – 15:30

Teleconference

Status of the Minutes: Final

## 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 (Wholesaler))
David Oliver-Sheppard	DO	Committee Member (Wholesaler)	Trevor Nelson	TN	Committee Member (Retailer)
Michelle Coglan	MC	Committee Member (Retailer)	Caroline Gould	CG	Committee Member (Wholesaler)

## OTHER ATTENDEES

Stuart Boyle	SB	Observer (MOSL)	Andrew Johnson	AJ	Presenter (MOSL)
Huw Comerford	HC	Secretariat (MOSL)	Pam Nash	PN	Presenter (MOSL)
Tom Daborn	TD	Presenter (MOSL)	Carol Sgambaro	CS	Secretariat (MOSL)
Amanda Hinde	AH	Secretariat (MOSL)	Farah Ali	FL	Observer (MOSL)

## APOLOGIES

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 23.
- 1.2. The Chair noted that apologies were received from AM. 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, including:
  - 1.3.1 To provide feedback on the consultation's responses in relation to 'CPM033: Improved process for managing Data Subject Rights Requests'. Discussions would focus on the main points of disagreement from the responses received and any actions that may be required to address these.
  - 1.3.2 To review and provide any comments to the watching brief items and the Final Committee Report to Panel.

## 2. Minutes and Outstanding Actions

- 2.1. The Committee approved the minutes of the Committee meeting 22, held on 13 August 2020.
- 2.2. The Committee agreed to **close** the following actions:
  - G19\_A03; G19\_A08; G19\_A11;
  - G20\_A01;
  - G21\_A02; and
  - G22\_A01; G22\_A02; G22\_03; G22\_04; G22\_05; G22\_06; G22\_07; G22\_08; G22\_09 and G22\_A10.
- 2.3 In relation to Action G20\_A01, a brief discussion was held regarding whether a FAQ document would be required. The Committee decided that this document was not essential at this point in time and agreed that this would be considered as part of the watching brief to review the experience of the new DSRR process.
- 2.3. In relation to Action G22\_10. The Chair provided an update on this action confirming that she had spoken with Adam Richardson (MOSL Market Design Director and Panel Secretary). It was noted that the RWG had been looking at the non-household water efficiency ambition for the future and, in that context, it had been looking at the types of data required to obtain a better understanding of water consumption across the market through the sharing of data. This work was at a relatively early stage and consideration of the options on how the data may be accessed and shared was scheduled to begin in November 2020 and continue beyond. The current expectation was that data would be looked at an aggregate level and it was not clear at this stage whether any output from this workstream would raise data protection issues. In light of this update, the Committee agreed no further action was required.
- 2.4. In relation to planned interruptions, it was noted that [CPW099 \(Clarify the responsibilities of Trading Parties during a planned event\)](#) had recently been recommended by the Panel to Ofwat for approval. This change proposal was intended to enhance the clarity of the wording in the operational terms Part D, planned activities and improve the understanding of arrangements between Wholesalers and their

Retailers (for instance, Wholesalers have a responsibility to inform Retailer what works were planned which could affect services; non-household customers must also be informed of this by direct notice, e.g. by mail). Therefore, there were reciprocal duties on parties to cooperate to ensure customers were notified promptly of circumstances that could affect their businesses.

- 2.5. The RWG Good Practice Guide, as part of CPW099, has been updated to specify the kind of information that should be passed from Wholesaler to Retailer. Table 4.2 (details of the properties potential affected) on p.8 of the Guide lists six items, three of which (namely SPID (D2001), Postcode (D5009) and Sensitive Customer (D2005)) are flagged with personal data warnings in CSD0301 as part of the data protection regime in the Market Codes. The Committee took note that whilst the Guide has excluded customer names from the list in recognition of the need for data protection, it does not appear to have been recognised that these three data items carry personal data warning flags and therefore, insofar as they relate to a living individual, may be classed as personal data, meaning they should only be securely shared and dealt with in accordance with data protection laws.
- 2.6. After a discussion, the Committee agreed that it would be appropriate for a communication with a personal data warning in relation to the Guide to be issued to Trading Parties to make them live to the data protection issues in Table 4.2. This communication would be taken to the 24 November Panel, as an appendix to the Final Committee Report for approval by the Panel.

**ACTION: G23\_A01**

- 2.7. If the Panel agrees with such recommendation, the communication would then be issued to Trading Parties after the Panel meeting.

### 3. CPM033 – Consultation Review, Committee Response and DRR

- 3.1. AH presented on this agenda item, seeking the Committee’s feedback on the consultations’ responses for [‘CPM033: Improved process for managing Data Subject Rights Requests’](#). AH also sought the Committee’s feedback in relation to the Draft Recommendation Report (“DRR”) for CPM033 which would be presented to the Panel for recommendation at its 24 November meeting.
- 3.2. The Committee focussed its discussion on those areas which contained a substantive point of disagreement, noting that these were found in relation consultation questions 2, 3, 4, 7, 11 and 12.
- 3.3. **Consultation question 2 asked whether the industry felt that the solution proposed in CPM033 would mitigate the risk or issue of Data Subject Rights Requests (DSRRs) not being completed within GDPR timescales).** 12 out of 13 respondents agreed that the solution would mitigate any such risks. However, one Trading Party felt that this solution would only be appropriate in a ‘controller-controller’ relationship and the data subject should be asked to contact the relevant data controller directly.
- 3.4. The Committee considered that the solution developed in CPM033 was more effective at helping data subjects achieve their aim and aligned with the legal obligation to respond to requests for exercising data subject's rights.
- 3.5. The Committee considered that Trading Parties have a common purpose to assist customers in a data sharing context in line with the GDPR legislation. CPM033 would aim to provide certainty to the

arrangements of responsibilities amongst parties and make it clear that parties have a legal requirement to assist data subjects.

- 3.6. Furthermore, from a customers' journey perspective, having to ascertain who the Data Controller is in a multi-party situation is counter-intuitive and could introduce unnecessary delay into the process. The proposed solution in CPM033 is therefore a suitable solution, in particular as it will provide visibility to all Trading Parties involved and certainty of responsibilities, thereby enabling data protection issues to be dealt within the timeframes stipulated by the GDPR.
- 3.7. **Consultation question 3 asked whether the responsibility for deciding what constitutes a DSRR under the GDPR should rest with the recipient of the request.** It was noted that 12 out of 13 of respondents had agreed that such responsibility should sit with the recipient of the request; whereas, one Trading Party had disagreed. The Trading Party who disagreed thought that the first recipient party ('initiating party') should have to confirm the classification of the request as a DSRR with the relevant Data Controller.
- 3.8. The Committee considered that if the responsibility were to reside with the Data Controller, there was a risk of creating a poor customer experience due to the risk of the request being passed 'back and forth' between Trading Parties for prior agreement.
- 3.9 The Committee further considered that initial assessment of whether a request is a DSRR, and what steps should be taken if it is, formed part of the legal obligations under data protection law and was unaffected by the solution. The first party receiving a request was being required to make early decisions about the channelling of it with the aim of handling it expeditiously within GDPR timeframes. Nothing in the solution prevented receiving parties from making an assessment of whether the request had been correctly addressed to them as data controller (or should be passed on) or whether a request received was a valid one.
- 3.10 In the event a Trading Party believes there are issues regarding the validity of a DSRR, it is open to that party to inform the initiating party and/or the data subject of such issues (eg that the request submitted is not a DSRR) accordingly. Furthermore, the proposed solution does not fetter the ability of parties to limit, restrict or reject a request, or take any other action, provided lawful.
- 3.11 AJ noted that within the MAC there was generic wording that stated that Trading Parties need to work collaboratively. Furthermore, the proposed legal drafting in MAC Schedule 13 Part D, section 2.7(d) left open the ability for parties to refuse to deal with a request on a lawful basis.
- 3.12 **Consultation question 4 asked whether other parties involved in processing a transaction should be able to raise a DSRR Record if they were of the view that a request from another party constituted a DSRR under the GDPR.** 10 out of the 13 respondents agreed with this approach; whereas, 3 respondents disagreed. Those Trading Parties which disagreed felt that the decisions regarding whether a request constituted a DSRR should ultimately sit with the Data Controller whether or not they were the initial recipient of the request.
- 3.13 The Committee felt that there was a misunderstanding amongst the respondents about what the DSRR Record was seeking to do. The DSRR Record was a tool to track and pass on a request to the right Trading Party who would then be able to deal with the request, not to tell parties how to decide if a request was in fact a DSRR.

- 3.14 Under the solution, if a party processing a transaction takes the view that a request being dealt with as BAU is in fact a DSRR which requires another party's involvement, then the correct course is to issue a DSRR Record. Stipulating that only the party who will ultimately deal with the request (eg the Data Owner) can raise the DSRR Record, and that other parties in the chain who first recognise the issue cannot, would inevitably delay the process. Therefore, the Committee agreed and confirmed the solution – ie that other parties in the chain should be able to issue a DSRR Record and send it on; it would then be for recipient party to make their own assessment of the request and decisions as to what they should do accordingly.
- 3.15 **Consultation question 7 asked whether parties should be able to add attachments to the DSRR Record in Kissflow.** 11 out of 13 respondents felt that this would be a positive feature within Kissflow, whereas 2 parties disagreed. Some of those agreeing noted reservations, including that there should be guidance as to what should and should not be attached, that attachments should only be added when relevant, appropriate to the request and in accordance with the data minimisation principle, and that collecting non-relevant information risked sharing personal data erroneously. Of the two respondents who disagreed, one said it could be reviewed at a later date in light of further experience, if it was found to be required, and the other gave no reasons.
- 3.16 AH noted that the option to allow for attachments to be added was a default functionality within Kissflow. However, this could be removed if the Committee deemed appropriate.
- 3.17 TD noted that the Unified Disputes Committee (UDC) would be looking at the Data Privacy Standards around Kissflow as part of their Unified Dispute Resolution process under [CPW092 \(Unified Disputes Process and Committee\)](#). Therefore, there was potential for the GDPR Committee and UDC to perhaps carry out a joint Data Privacy Impact Assessment (DPIA), if the Committee felt this would be appropriate and required.
- 3.18 AJ noted Kissflow had been used for a while and that it was a secure, fully compliant GDPR mechanism of communication amongst trading parties. However, Trading Parties should be discouraged from using Kissflow as a repository for data, or for uploading data which was not required to process and finalise a request. Uploading attachments on to Kissflow should follow the necessity and data minimisation principle under the GDPR.
- 3.19 The Committee proceeded to discuss whether the convenience which this feature could introduce would outweigh the risks that it would pose; and, if so, what steps could be taken to mitigate such risks.
- 3.20 Some Committee members echoed the industry's views that it would be convenient to hold all the information in one place. Given that only staff with data protection training could access the DSRR Record in Kissflow, one should be able to rely on their expertise when processing the data in Kissflow as a mitigating measure. Furthermore, Kissflow was closed system and only specific personnel would have access to it.
- 3.21 Other Committee members were of the view that the convenience aspect of being able to upload attachments did not outweigh the risks which this would bring (due to the unknown nature and content of personal data captured within the DSRR form which would be uploaded). The DSRR Record in Kissflow was intended as a tracking tool to ensure DSRRs progressed within the required timeframe, and not designed or intended to be used for processing purposes. These members felt that allowing attachments

would open the door to additional risks (something which could not be done without a DPIA) and the solution would not meet the data minimisation principle.

- 3.22 The Committee agreed (by four votes to three) that there should not be a functionality to add attachments to the DSRR Record and that this default functionality in Kissflow should be removed. The Committee further agreed that a review of whether attachments should be allowed should be undertaken, in view of the evidence of this solution in operation, in 12 months from the implementation date of CPM033, which would be 15 February 2021 (if approved by Ofwat on time).
- 3.23 In relation to **consultation question 11, which asked respondents whether they agreed that the proposed change better facilitates the Objectives and Principles of the MAC**, it was noted that 12 respondents had agreed and 1 had disagreed with that statement. The party who disagreed felt that this change proposal did not deliver against the principles of efficiency and proportionality, and that accountabilities could become blurred by using this approach.
- 3.24 The Committee considered, on the contrary, that the objective of this change was to clarify responsibilities and timelines between parties and to facilitate the ability of parties to hold each other to account a data sharing context.
- 3.25 In relation to **consultation question 12, which asked whether parties agreed with the proposed implementation date of 15 February 2021**, it was noted that 12 respondents had agreed and 1 had disagreed with the proposed implementation date. The party which disagreed stated that if the change proposal was approved, there should be at least 3-month window to implement it.
- 3.26 AH noted that the change proposal would be presented to Panel for decision at its 24 November meeting. Following this, Ofwat's approval would be sought by early January, giving MOSL 6 weeks to implement the change, given the proposed implementation date of 15 February 2021.
- 3.27 One Committee Member noted, however, that the period from 18 January to 15 February 2021 did not equate to a 6-week window. AH undertook to amend the DRR accordingly.
- 3.28 The Committee noted that the majority of the respondents had indicated that they could accommodate the proposed implementation date of 6 weeks. The Committee agreed that the change should be implemented six weeks after Ofwat's approval.
- 3.29 In relation to section 5.13 of the DRR (entitled "Any Other Comments/Observations"), it was noted that one respondent had commented that the 30-page long form was long and itself could be a risk because of this. The Committee noted, however, that the form would be rendered in an electronic format in Kissflow with "drop down" and "filter" functions meaning irrelevant sections would stay hidden to the person completing it. Only sections relevant to DSRR would need to be completed (and in accordance with data protection laws) The Committee therefore agreed that the DSRR Record as presented was of a suitable size, and was an intuitive and user-friendly solution.
- 3.30 The Committee also reiterated that 3 days for the Data Receiver to create a Record on Kissflow was an adequate amount of time within the context of the one-month deadline, unless extended, dictated under the GDPR.
- 3.31 The Committee confirmed that it had no further points or comments to raise in relation to the remaining sections of the DRR for CPM033.

- 3.32 AH confirmed that, in terms of next steps, the Committee's feedback in relation to the consultation responses would be added to the DRR to reflect the discussions from today's meeting; the final DRR would then be circulated to the Committee members via email for sign off.
- 3.33 The Panel would vote to make a recommendation on CPM033 at its 24 November meeting. The Committee confirmed that it was happy for Secretariat to present this change proposal to the Panel. AP and DO stated that they would be attending the November Panel meeting as observers for that particular agenda item.
- 3.34 The Committee:
- **APPROVED** the DRR for CPM033 as it stands, noting that, a revised version of the DRR (incorporating the discussions from today's meeting) would be circulated via email to the Committee for final sign off.

## 4 GDPR Compliance Audit

- 4.1 AJ introduced PN to the Committee confirming that she was leading from a MOSL perspective on the Panel Audit subgroup.
- 4.2 AJ confirmed the proposed high-level approach to the GDPR Compliance Audit, explaining that PwC would be asked to audit MOSL again for compliance with the GDPR and with its obligations under the MAC. This would be largely focused on addressing any findings from the previous audit to confirm that these had been resolved and, therefore, could be closed.
- 4.3 AJ explained that, for the Market Audit, a hybrid approach was suggested with MOSL undertaking some initial assurance of Trading Parties, focused on their obligations under the MAC. This was recommended to make the best use of PwC's expertise within the constraints of the Market Audit budget.
- 4.4 It was noted that MOSL would lead a desktop audit (including checking online privacy notices), with a questionnaire issued to all DPO's (and equivalent) of all Trading Parties covering the key requirements around compliance with GDPR and the MAC. Based on the findings, concerns raised from questionnaires or lack of responses, PwC would be asked to conduct audits of these higher risk Trading Parties together with a cross section of the market. Circa 5-10 Trading Parties are expected to be audited.
- 4.5 AJ confirmed that some high-level findings were already available in relation to the MOSL Audit GDPR Assurance from 2019, noting that MOSL had been working hard to address the findings from this audit and all actions were either complete or 'on track' status.
- 4.6 A Committee member queried whether the questionnaire would be made mandatory, given that the response rate to consultations on this subject had been less than 20% in the past.
- 4.7 PN and AJ explained that it was not the intention to make the questionnaire mandatory, but the questionnaire would be straightforward to complete, and reminders would be issued to all DPO's when the deadline for completion was approaching.
- 4.8 AJ stated that one of the potential problems with making the questionnaire mandatory was the difficulty in enforcing it where parties did not comply. The most effective way to obtain engagement from DPO's



was to work constructively with them and explain the importance of completing the questionnaire, for example by reminding them that it was in their best interest to fully complete it, as the output from this exercise would inform the market audit.

- 4.9 A Committee member noted that parties who had already conducted their own internal audit might present a different risk to those who had not. Similar points by other Committee members were made in relation to the risk profile potentially presented by smaller versus larger Trading Parties, and those who chose not to respond to the audit questionnaire when circulated versus those who did. AJ and PN noted these points.
- 4.10 In terms of timeline, AJ confirmed that:
- 4.10.1 The questionnaire (which would be agreed between MOSL and PwC) would be issued to all DPOs in November 2020.
  - 4.10.2 The questionnaire responses would be reviewed in December 2020.
  - 4.10.3 PwC would produce a plan for the audit in January 2021, when general trends from questionnaires would also be shared with Panel Audit Sub-Group.
  - 4.10.4 The end of year MOSL GDPR audit would be completed in March 2021, with findings from MOSL GDPR audits and Trading Party audits reported to Panel Audit Sub-Group and MOSL Audit/Risk Committee.

## 5 Watching Brief Review

- 5.1 HC explained that the aim for this agenda item was to seek the Committee's agreement of the items on the watching brief for inclusion within the Final Committee Report and recommendation to Panel.
- 5.2 The Committee confirmed that all items previously agreed by the Committee would remain in the watching brief, including:
- 5.2.1 The Experience Review;
  - 5.2.2 DPO/Designated Contact List;
  - 5.2.3 ICO Data Sharing Code of Practice (CoP);
  - 5.2.4 The Bilaterals Project;
  - 5.2.5 DSRR Dispute Process;
  - 5.2.6 The GDPR Market Audit; and
  - 5.2.7 The Legal Update.
- 5.3 In addition:
- 5.3.1 as discussed under section 2 above, it was agreed that a communication warning of the GDPR compliance issue raised by the RWG Guide would be recommended to Panel;



- 5.3.2 as discussed under section 2 above (Action G20\_A01), it was agreed that the question of whether a FAQ document would be required would be re-considered in the context of Trading Party experience in 12 months-time;
- 5.3.3 finally, as discussed under section 3 above, it was agreed that a review of whether attachments to the DSRR Record should be allowed would also be added as a further watching brief recommendation to Panel;
- 5.4 In terms of timetable, the Committee agreed that all watching brief items recommended would be reviewed in 12 months from the completion of this round of work, namely the 24 November Panel meeting at which CPM033 and the Committee's final report to Panel would be presented, with the exception of the following items:
  - 5.4.1 Items that were related to a change where the Committee had expressly stated that it would want to run a separate timetable.
  - 5.4.2 In the event of material changes to the CoP, where the Committee agreed to undertake a review three (3) months from the date of that a material change being published. AJ confirmed that MOSL would be monitoring for any material changes to the CoP from an MO perspective, and would advise Panel accordingly so that the Committee's review could be triggered.
- 5.5 With regards to the DPO/Designated Contact List, it was noted that it was MOSL's responsibility to keep the list as up-to-date as possible within its powers and the market audit would be used to ensure that the relevant work had been undertaken within the 12-month period.

## 6 Final Committee Report

- 6.1 The purpose of this agenda item was to seek the Committee's agreement in relation the Final Committee Report which had been circulated to members in advance of this meeting, noting that, following today's meeting, a revised version of the Report (incorporating the discussions from today's meeting), would be circulated via email to the Committee for final sign off.
- 6.2 Regarding the list of data items updated in CSD0301, the Committee agreed that a reference would be made that a description of each of the items could be found in the change documents. It was further agreed that 'live' links would be added within the change documents so that parties could obtain further information if they wished to do so. This would avoid adding lengthy descriptions within the report.
- 6.3 One Committee member stated that one of the respondents to the consultation questions had expressed some concerns regarding completing parts of the DSRR Record specifically related to the DSRR due to their lack of experience and expertise in this area. The Committee member stated that these types of questions should have been passed to the DPO within that organisation. The Committee member requested that this be captured within future experience reviews.
- 6.4 It was agreed to note in Section 7.1 of the report the need to receive further engagement from Trading Parties was to ensure there was an appropriate breadth of expertise and experience reflected within consultation (or similar) responses.

- 6.5 The Committee confirmed that they would like for a ‘tick box’ type of declaration to be added to the end of the DSRR form. This declaration box would aim to confirm that the person completing the form would be the DPO, a designated data protection contact, or some other person with data protection expertise and/or training.
- 6.6 The Committee:
- **APPROVED** the Final Committee Report as it stands, noting that, following today’s meeting, a revised version of the Report (incorporating the discussions from today’s meeting), would be circulated via email to the Committee for final sign off.

## 7 Committee Status

- 7.1 The Chair agreed with the Committee that the following would be recommended to the Panel at its 27 October meeting for approval:
- 7.1.1 The GDPR Issues Committee would be suspended subject to the Panel making a recommendation to Ofwat on CPM033 at its 24 November meeting and subject to Ofwat’s subsequent decision on the change. Should both Panel and Ofwat approve CPM033, then the Committee would automatically be discharged. Conversely, in the event the Panel and/or Ofwat return the change for further work, the Committee will reconvene to deal with the issues and/or residual matters raised.
- 7.2 This was considered important to retain the history and knowledge of the Committee in respect of CPM033. The Chair requested that the amended versions of the DRR for CPM033, the watching brief document and the Final Committee Report be circulated to the Committee in a tracked change format reflecting the feedback and discussions from today’s meeting to enable those additions/amendments to be easily reviewed by the members. Any residual issues in relation to the documents which could not be resolved ex-committee would be resolved by meeting, as appropriate. The signed off documents would then be presented at the 24 November Panel meeting.

## 7 AOB

- 7.1 There being no further business, the Chair closed the meeting.

## 8 Actions

Number	Action
G23_A01	AJ to produce a draft one-page communication to be taken to the 24 November Panel meeting, as an appendix to the Final Committee Report for approval by the Panel.