

CITY OF LONDON LAW SOCIETY - DATA LAW COMMITTEE
(THE "COMMITTEE")

Meeting Date 14 September 2023, 9.30am
Location Weil, Gotshal & Manges LLP, 110 Fetter Lane Office and Virtual Meeting Room
Present

Rhiannon Webster (Ashurst LLP)
Kate Brimsted (Bryan Cave Leighton Paisner LLP)
Luke Dixon (Freeths LLP)
Rebecca Cousin, (Slaughter and May) (Vice Chair)
Eve-Christie Vermynck (Skadden, Arps, Slate, Meagher & Flom LLP)
Sam De Silva (CMS Cameron McKenna Nabarro Olswang LLP)
Barry Fishley (Weil, Gotshal & Manges LLP)
Tim Hickman (White & Case LLP)
Giles Pratt (Freshfields LLP)
Jonathan Kirsop (Pinsent Masons LLP)
Jade Kowalski (DAC Beachcroft LLP)

Jonathan McDonald (Osborne Clarke LLP) attended on basis of previous membership of Committee, pending confirmation of his individual membership of the City of London Law Society.

Guest minute taker: Claudia Sousa (Weil, Gotshal & Manges LLP)

1. Apologies

Jon Bartley (RPC) (Chair), Cynthia O'Donoghue (Reed Smith LLP) and Ross McKean (DLA Piper LLLP) sent apologies ahead of the meeting for not being able to attend the meeting.

2. Welcome

The Vice-Chair (standing in for the Chair) welcomed all those in attendance at the meeting.

3. Previous minutes

It was reported that receipt of draft minutes from the previous meeting was pending and that the minutes would be circulated as soon as they were received.

4. EU-US Data Privacy Framework / UK-US Data Bridge

On 10 July 2023, the European Commission adopted an adequacy decision for the EU-US Data Privacy Framework. It came after 18 months of negotiations following the invalidation of its predecessor, the EU-US Privacy Shield. The UK government has agreed a new legal framework for facilitating personal data transfer from the UK to the US. The new 'data bridge' would extend the EU-US Data Privacy Framework.

The Committee members noted that they have not experienced a great deal of comment from clients relating to the new EU-US Data Privacy Framework and the UK-US Data Bridge. However it was noted that some clients had maintained their certifications under the US Privacy Shield framework in the hope that they can be easily transitioned to the new framework.

The Committee members have not had clients requesting to migrate to the new EU-US Data Privacy Framework or the UK-US Data Bridge. Several Committee members believe that this is because of the uncertainty that surround the new frameworks given known and expected challenges to them. In addition to Max Schrems having stated he will challenge the framework, a French politician has also challenged the EU-US Data Privacy Framework and it is believed that more challenges may arise in the future. It was queried why an organisation would want to

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get rid of the EU SCCs they have put in place or the UK Addendum or UK IDTA simply to use the new frameworks when the new frameworks are coupled with risks.

The Committee members also questioned whether the UK would be able to continue to rely on the UK-US Data Bridge if the EU's challenge invalidates the use of the EU-US Data Privacy Framework. Questions were raised as to whether this would result in the UK acting as a funnel to transfer EU data to the US. Although it was agreed that such a situation would seem unlikely, and the EU would not approve of this, there are many questions that need to be answered before any law firms approach clients advising that the new frameworks be used to instead of SCCs/IDPA/Addendum.

5. UK Binding Corporate Rules

In July 2022, the Information Commissioner's Office ("ICO"), issued new guidance on applying for and receiving approval regarding UK Binding Corporate Rules ("BCRs"). The Committee Members noted that the guidance has not assisted with applying for and receiving approval for BCRs. Rather, it is still taking a very long time for the ICO to approve BCRs, taking up to 18 months in certain instances.

The ICO have notified the public that a UK addendum to the guidance will be published in due course (by autumn 2023), to assist in applying for the BCRs.

One fundamental change which has come about is that an entity can now self-certify itself if it already has existing BCRs in place. Such entity would simply have to tick a box noting that it already has BCRs in place, and that it would be renewing the BCRs on behalf of all BCRs members. Once such box has been ticked, the approval would be automatic, and would grant such entity approval for three years. The Committee members noted that one of the issues with the self-certification route is that it is hard for one sole entity to have the legal power to bind all entities that form part of the BCRs.

As a general comments, Committee members i felt that BCRs are too expensive and time consuming to put into place and therefore most members do not see interest from clients in adopting this route..

6. ICO Reprimands for Data Breaches

The Committee members discussed their experiences with the ICO when reporting a data breach, and the approach that the ICO is taking with reprimanding entities for data breaches.

The Committee considered whether it should liaise with the ICO on this matter. It was agreed not to contact the ICO at the moment.

7. ICO guidance on Employee Health Data

At the end of August 2023, the ICO published new guidance aimed at employers to help them understand their data protection obligations while handling employee health information.

The Committee members agreed that employers who were already in compliance with their obligations would not need to do anything differently. The Committee members also noted that the guidance was very clear in setting out what employers *must* do as well as what they *should* do. The guidance also addresses two main questions which the Committee members tend to get from clients; one being whether an employer can rely on consent to process health data, and two, what other grounds employers could rely upon to process health data.

8. PETS – ICO guidance / what we see re implementation of these

The ICO released guidance on privacy-enhancing technologies ("PETs"). The first part of the guidance is aimed at DPOs and those with specific data protection responsibilities in larger organisations and focuses on how PETs can help achieve compliance with data protection laws.

The second part of the guidance is intended for a more technical audience, and for DPOs who want to understand more details about the types of PETs that are currently available. This second part also explains the risks and benefits of using PETs.

The Committee discussed the difficulty of drafting policies on the use and implementation of PETs, in particular as such policies would be very security focused.

9. Consultation – ICO's guidance on biometrics

The ICO is producing guidance on biometric data and biometric technologies. The first phase of the guidance has been published for consultation, and the second phase will include a call of evidence early next year.

The Committee agreed that each Committee member should collate views on the guidance and submit it to the ICO. Responses to the consultation need to be provided by 20 October 2023. The Committee members believe that publishing the Committee's thoughts on the guidance would assist the ICO in understanding the practical impact of the guidance on organisations and individuals, and to ensure that the ICO addresses all grey areas surrounding biometric data, such as how biometric data will be used in public places.

10. AOB

The Committee members agreed to monitor consultations and other items into which the Committee may wish to provide input.

10.1 *AI specialist team*

The Law Society is looking to set up an AI specialist committee by the end of October 2023, with the aim of having the AI specialist committee in place in time for the AI Safety Summit which is taking place on the first and second of November at Bletchley Park.

The AI specialist team will not only be made up of partners but is also open to associates with the requisite level of knowledge.

10.2 *IP Committee*

The IP committee are looking for potential chairs. Please recommend any individuals (who are at partner level) to be the chair.

10.3 *LinkedIn*

The Committee's page on LinkedIn now has two sub-sections; one titled 'commercial' and another titled 'training'. Currently the Committee members are trialling the sub-sections and seeing how much traffic is being drawn to the pages. If these pages are a success and of use to the Committee members and followers of the page, then other committees will also introduce the sub-sections for other committees. The aim of these sub-sections is to create a forum where people can provide feedback and input on particular areas.

10.4 *Lecture on Rule of Law*

The annual City of London Law Society lecture is being held jointly with Gray's Inn, at Gray's Inn on 8 November 2023 and will be on 'The Rule of Law? Does it really matter to commercial lawyers?'. The lecture is free to attend and will include a panel discussion. Please encourage people to attend.

10.5 *Upcoming meetings*

The next Committee meeting will be held on 23 November 2023.