

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

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| <b>Date:</b>          | 12/09/2024                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Location:</b>      | The offices of Herbert Smith Freehills at Exchange House, Primrose Street, London                                                                                                                                                                                                                                                                                                  |
| <b>Present:</b>       | Miriam Everett, Herbert Smith Freehills LLP<br>Jon Bartley, RPC ("Chair")<br>Jonathan Kirsop, Pinsent Masons LLP<br>Luke Dixon, Freeths LLP<br>Eve-Christie Vermynck, King & Spalding<br>Rhiannon Webster, Ashurst LLP<br>Rebecca Cousin, Slaughter and May<br>Giles Pratt, Freshfields Bruckhaus Deringer LLP<br>Ross McKean, DLA Piper<br>Kevin Hart, City of London Law Society |
| <b>In attendance:</b> | Angela Chow, Herbert Smith Freehills LLP (Senior Associate)<br>Jeanne Lerasle, Herbert Smith Freehills LLP, as guest minute taker                                                                                                                                                                                                                                                  |

## **1. Welcome**

The Chair welcomed all those in attendance at the meeting of the Committee including guest Senior Associate, Angela Chow, from Herbert Smith Freehills LLP who attended as observer.

## **2. Apologies**

Jonathan McDonald (Osborne Clarke LLP), Jade Kowalski (DAC Beachcroft), Emma Burnett (CMS), Oliver Yaros (Mayer Brown International LLP) and Kate Brimsted (Bryan Cave Leighton Paisner LLP) sent apologies ahead of the meeting.

### 3. Previous minutes

It was reported that draft minutes from the previous meeting held on 16 May 2024 had been circulated. The draft minutes had been reviewed by the Chair and any comments from other Committee members were requested to be provided promptly after the meeting. Subject to that, the approved minutes would be anonymised and uploaded to the CLLS website.

### 4. Specific issues discussed

#### *ICO's last chapter of Gen AI consultation on controllership*

The Committee considered the ICO's last chapter of the Gen AI consultation on controllership, specifically the potential for more joint controllerships to be recognised. The Committee commented that the market response will likely be that developers of generative AI will position themselves as processors and that there is likely to be pushback as clients prefer the separate liability regime and want to avoid the joint controllership label. The Committee noted recent EU case law that recognised different weighted levels of responsibility regarding joint controllership.

#### *Italian regulator's comments at PLB*

The Committee discussed the Italian regulator's comments at PLB where it was commented that GDPR is incompatible with generative AI but that there are no viable alternatives, and the way forward is for the EU to pass appropriate secondary legislation. The Committee discussed that the current framework in place is not adequate for generative AI and regulators need supplemental tools and guidance. The Committee further discussed web scraping and what safeguards need to be applied and how they should be applied.

#### *DRCF's AI and Digital Hub*

The Committee enquired whether anyone had any experience using the DRCF's AI and Digital Hub. One member of the Committee had suggested it to a client, but the matter did not progress any further. The Committee further discussed how this platform could be particularly useful for insurance clients who have an overlap between the FCA and the ICO.

#### *Government's DISD Bill – extent of carryover from DPDI*

The Committee commented that this Bill is unlikely to be the Government's priority as Labour is more focused on cyber, national security and AI even though the latter was not announced in the King's Speech. The Committee noted the danger that the complexity of the Bill may not encourage compliance.

#### *Dutch Data Protection Authority (DPA) fine against Uber*

The Committee discussed the DPA's fine of 290 million euros against Uber for transfers of drivers' data to the US. The Committee noted that Uber will be appealing the decision.

#### *Points arising from practice e.g. "transfer" of marketing consents on asset sale transactions (recent Austrian case); vehicle/aircraft identifiers as personal data.*

The Committee discussed the recent Austrian Supreme Court case where it was ruled that for an asset sale, it was fine for customers to receive communications from the same brand owned by someone else. The Committee commented that customers could be entitled to question why their data now belongs to a different company. The Committee discussed the importance of this point as the value of these deals are in the retention of the customers. The Committee discussed whether this position was informed by the ICO's direct marketing guidance for insolvent sales –

although that guidance has since been removed. The Committee concluded further ICO guidance would be helpful.

*LinkedIn page*

The Committee noted that a Committee member, will update the LinkedIn page.

*Next meeting date and social*

The Committee noted that the next Committee meeting on 28 November 2024 would be scheduled for late afternoon and followed by the social hosted by Osborne Clark. It was noted that the Secretary, will send out the invitations ahead of the next meeting.

## **5. Upcoming meetings**

No upcoming meetings were discussed by the Committee.