

**CITY OF LONDON LAW SOCIETY DATA LAW COMMITTEE
(THE “COMMITTEE”)**

Date:	23 November 2023, 9.30 am.
Location:	The offices of Skadden, Arps, Slate, Meagher & Flom (UK) LLP, at 22 Bishopsgate, London.
Present:	Jon Bartley, RPC LLP (“Chair”) Luke Dixon, Freeths LLP Cynthia O'Donoghue, Reed Smith LLP Jonathan Kirsop, Pinsent Masons LLP Kate Brimsted, Bryan Cave Leighton Paisner LLP Eve-Christie Vermynck, Skadden, Arps, Slate, Meagher & Flom (UK) LLP Rhiannon Webster, Ashurst LLP Rebecca Cousin, Slaughter and May Giles Pratt, Freshfields Bruckhaus Deringer LLP Miriam Everett, Herbert Smith Freehills LLP Jonathan McDonald, Osborne Clarke LLP Ross McKean, DLA Piper LLP
In attendance:	Liam Lambert, Skadden, Arps, Slate, Meagher & Flom (UK) LLP, as Guest minute taker.

1. Welcome

The Chair welcomed all those in attendance at the meeting of the Committee.

2. Apologies

Kevin Hart, (City of London law Society (“CLLS”)) and Miriam Everett (Herbert Smith Freehills LLP) sent apologies ahead of the meeting.

3. Previous minutes

It was reported that draft minutes from the previous meeting held on 14th September 2023 had been circulated. The approved minutes will be anonymised and uploaded to the CLLS website.

4. CLLS Chairs meeting

4.1 *New committees*

It was reported that the CLLS AI Committee is being set-up with the function of acting as both a dedicated committee on the topic of AI and to act as a touchpoint for cross-committee liaisons, with representatives from other CLLS committees feeding information into and out of the committee. This AI Committee will coordinate AI-specific content from a range of practice areas.

It was noted that the Committee member from (CMS Cameron McKenna Nabarro Olswang LLP) has been accepted onto the AI Committee and has stepped down from the Committee and that the Committee member from Skadden Arps, Slate, Meagher & Flom (UK) LLP (“Skaddens”) has been selected as the formal liaison between the AI Committee and the Committee. A standing agenda item will be added to future meetings for the Committee member from Skaddens to provide feedback on the progress and actions of the AI Committee.

It was noted that if members of the Committee have any views on the AI Committee, they should feed them back to the Chair. Where discussions of the Committee touch upon AI, the Committee will need to coordinate with the AI committee to provide feedback on the discussions held.

4.2 *Further Liaisons*

CLLS wants to set up a liaison between the main CLLS committee and each of the practice group and topic committees. This liaison will act as a bridge between the main committee and the practice group committees. It was reported that the liaison with the Committee is a representative from Charles Russell Speechlys and that the Chair has asked her to join the next meeting of the Committee.

5. Discussions on the IAPP Europe Data Protection Congress in Brussels (“IAPP DPC”)

The Committee noted that the IAPP DPC and similar conferences provide opportunities to network with fellow data and legal professionals, discuss topical issues and share in thought leadership. The Committee discussed attending the IAPP conference in Brussels and sessions which were of particular interest.

5.1 *Over-collection of data and protecting the rights of individuals*

This was attended by several Committee Members. It was noted that there was the potential for companies, when seeking to achieve a business objective, to over-collect and over-process data and that this could adversely impact particular categories of individuals, such as in relation to special category of personal data, including ethnicity and sexuality. The Committee noted that the use of Privacy Enhancing Technologies (“PETs”) could assist in achieving objectives and reduce the possibility for over-collection and over-processing.

5.2 *AI Panels*

The Committee discussed the themes of AI present at the IAPP DPC and considered that clients are seeking advice on data-related AI issues. It was noted that client requests have resulted in members of the Committee seeing their roles expand to cover the data and privacy issues presented by AI due to the fact that there is increasing overlap of these areas. The Committee discussed where AI governance should sit within a business and whether the task falls to a dedicated AI officer role or within the expanded remit of a Data Protection Officer.

The Committee noted that the proposed EU AI Act will impact businesses' approach to internal governance.

6. AOB

6.1 Case law, enforcement and trends

6.1.1 Standard Contractual Clauses ("SCCs") in short-form for companies and entities within Europe

The Committee noted that there have been no updates on the short-form version of the EU SCCs. It was discussed that there are only so many data and privacy experts within the EU legislative process and that there are other priorities for legislative resources. It was also noted that SCCs themselves are not an issue for entities transferring data to other entities governed by the GDPR. Due to this, the Committee noted that this was not likely to be a key enforcement priority.

6.1.2 UK ICO Issues Statement on the Use of Cookies

It was reported that the ICO had issued a statement on the use of cookies on November 21, 2023, requiring websites to provide users with fair choices over whether or not to be tracked for personalised advertising.

The Committee discussed the enforcement of the ICO on issues of data and privacy compliance, including on cookies practices and the differences in approaches to enforcement between the ICO and other European supervisory authorities. The Committee also discussed the ongoing challenges businesses face as a result of some of the recent enforcement trends in the EU.

6.1.3 DSARs and ICO enforcement

The Committee discussed the ICO's recent approach to DSARs and how DSARs interact with the requirements of legal privilege.

6.1.4 ICO appeal of the Clearview AI Inc decision

The Committee discussed the ICO's attempt to seek permission to appeal the Clearview AI Inc ruling issued by the UK's information rights tribunal. It was reported that the appeal will be based on the argument that the Tribunal in the case had incorrectly interpreted the law when finding Clearview's processing was beyond the reach of UK data protection law on the basis that Clearview's services were provided to foreign law enforcement agencies.

The Committee discussed the trend of reduction in ICO fines upon appeal and the ICO's current approach to enforcement in comparison with other UK regulatory bodies, including the Competition and Markets Authority.

6.1.5 International Data Transfers

The Committee discussed the EU-U.S. Data Privacy Framework ("DPF") as a data transfer mechanism under the GDPR. Several committee members noted that some vendors would self-certify under DPF and then additionally paper data transfer agreements including SCCs. It was identified that if a company decides to both self-certify under the DPF and use the SCCs as an additional transfer mechanism, they would still be required to undertake a transfer impact assessment ("TIA").

The Committee also discussed companies providing EU-only locally hosted services, including the guarantee that support staff would be based in the EU, and whether this would provide an adequate solution to the challenges of international data transfers.

6.2 *The Committee Shadowed by Associates*

The Committee discussed whether it would be beneficial to have a team of associates that would shadow the Committee and support the Committee in its functions. It was reported that other practice area and topic committees are also discussing this.

Members of the Committee discussed that this would build awareness of the CLLS committees in the junior/mid-level ranks of the legal profession and provide capacity to the existing CLLS committee members for support, as well as providing opportunities for associates to both feedback to the Committee on relevant trends and developments in their work and learn from experienced members of the Committee.

7. **Upcoming meetings**

It was agreed subsequent to the meeting that the next Committee meeting would be held on 1st February 2024 at Slaughter and May's offices.