

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

**MINUTES** of the Committee meeting held at 9.30am on 31 July 2018 at the offices of RPC,  
Tower Bridge House, St. Katharine's Way, E1W 1AA

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**Present:** Jon Bartley, RPC LLP, Chair  
Rebecca Cousin, Slaughter and May  
Tim Hickman, White and Case LLP  
Jonathan Kirsop, Stephenson Harwood LLP  
Ross McKean, DLA Piper (UK) LLP  
Cynthia O'Donoghue, Reed Smith LLP  
Elizabeth Robertson, Skadden, Arps, Slate, Meagher & Flom LLP  
Rhiannon Webster, DAC Beachcroft LLP  
Barry Fishley, Weil, Gotshal & Manges LLP (by dial-in)  
Kevin Hart, City of London Law Society  
David Hobart, City of London Law Society

**Apologies:** Kate Brimsted, Bryan Cave Leighton Paisner LLP  
Jonathan McDonald, Charles Russell Speechly LLP  
Giles Pratt, Freshfields Bruckhaus Deringer LLP  
Sam De Silva, CMS Cameron McKenna Nabarro Olswang LLP

**In attendance:** Harry Collins, RPC

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### **1. Welcome**

The Chair welcomed all in attendance to the inaugural meeting of the Committee.

### **2. Apologies**

It was reported that apologies from the individuals identified above had been received.

### **3. Initial steps for the Committee**

- 3.1 The Committee began by discussing the aim and scope of the future work by the Committee. The Chair suggested that the Committee needs to look forward to potential developments into which it would have input. City of London Law Society (the **CLLS**) representatives pointed out that in the run up to Brexit, it is expected that a wave of new Statutory Instruments (**SIs**) will need to come into force and the Committee could help input into the drafting of such SIs.
- 3.2 The Committee discussed the enthusiasm from the ICO and DCMS in reaching out to law firms for input on data in light of GDPR and Brexit developments. It was noted that both the ICO and DCMS had been in contact with firms and while the ICO

seemed more enthusiastic, both organisations had been reaching out to firms to some extent. The Chair noted that it would be worth the members of the Committee reaching out to contacts within the ICO and DCMS to communicate the availability of the Committee as a resource on such issues and to see if we could get stakeholders to attend a Committee meeting or otherwise engage with us. The Chair also noted that he had emailed a contact at the MoJ who was working on Brexit issues and asked to be put in touch with a counterpart at DCMS.

- 3.3 The Committee then discussed reaching out to contacts on a wider scale and pooling contacts to best utilise the resources of the Committee. It was noted that members of the Committee know Emma Bate, General Legal Counsel at the ICO (former partner at DAC Beachcroft) and could flag the resources of the Committee with Emma. The Chair suggested that the Committee could engage with organisations outside purely legal institutions e.g. Tech UK, the Centre for Data Ethics and Innovation. It was also suggested that the Committee could look to work with trade associations to raise its profile e.g. AMFE, UK Finance.
- 3.4 CLLS representatives noted that other CLLS committees have previously inputted into UK government and EU consultations, plus have run training programmes for junior lawyers moving into their specialist areas. The Committee discussed in depth a potential gap in training relating to data law (they're often not pitched at the right level), and whether the Committee could provide a programme of training, particularly considering the members' practical experience of advising on GDPR. The Committee agreed that, in the light of other upcoming developments, and its limited resources, the Committee should not prioritise this, and it would revisit the possibility of a training programme at a later date.
- 3.5 It was suggested that in the light of Brexit and the need for an adequacy decision, the ICO seems to have taken a conservative approach in some areas (such as the legitimate interest guidance for direct marketing), and that the Committee could provide some balance to the discussion and suggest positions, particularly where guidance is not forthcoming.
- 3.6 The Committee then discussed the possibility of liaising with other similar committees or bodies in other Member States, and noted that several members had colleagues in European jurisdictions who could be contacted to enquire into the existence of such committees. Where possible, it would make sense to work with groups of data protection lawyers in other Member States, particularly if lobbying the EDPB.

#### 4. **The Committee's role within the CLLS**

- 4.1 CLLS representatives informed the Committee about the other committees within the CLLS, the expected number of meetings of the Committee each year, the rules of attendance, and the role of the secretary. It was also noted that some Committees have one meeting a year where a guest speaker is organised, and that meeting is typically opened up to people outside the members to attend, for example to the lawyers in each of the Committee members' teams.

- 4.2 CLLS representatives noted that the last new committee set up by the CLLS was for white collar crime, and has had some good success as a repository of advice, experience and insights for practitioners in that area. Members of the Committee agreed that that committee had indeed been a successful resource for practitioners, and hoped the Committee would provide a similar level of assistance to lawyers working within the data law field.
- 4.3 CLLS representatives then talked the Committee through the roles of the vice-chair and secretary for the Committee. Volunteers for the vice-chair position were requested and it was suggested that both positions would be voted on at the next meeting of the Committee in September. CLLS representatives also informed the Committee about the Society's annual events and the opportunities to be involved with other committees.
5. **AOB**
- 5.1 An agreed set of next steps and action points for the Committee members would be circulated after the meeting.
- 5.2 The Committee discussed a standalone question regarding the members' firms' approach to the Data Protection Officer requirement. The members confirmed that they had taken various approaches depending on the size of their firms and the nature of their practices, but all agreed that each firm needed to elect someone to have accountability for data protection, even if that was not to be a formal Data Protection Officer. The Committee then discussed lawyers being asked by clients to act as Data Protection Officers and the related risks and considerations, plus the difficulty in identifying individuals or organisations to recommend to clients. The Committee noted that the availability and quality of Data Protection Officers is an area it could look into.
- 5.3 The Committee then considered a further question regarding the ePrivacy Regulation and prior consent for business-to-business marketing. It was noted that the draft Regulation appears to have extended the need for consent to all direct marketing, and it is not clear if anyone is lobbying in relation to the issue. It was confirmed that the Direct Marketing Association are lobbying on the issue. The Committee also noted that an extension to B2B marketing, combined with the soft opt-in, could favour incumbents over new market entrants, and potentially lead to a competition law issue.
- 5.4 The Committee discussed a final question regarding the Committee's scope to consider cyber issues e.g. developments relating to the NIS Directive. The Committee agreed that cyber developments were intrinsically linked to data and any relevant developments should be considered by the Committee.

**Next meeting**

6. The next meeting of the Committee will be held during the first two weeks of September 2018 at the offices of Slaughter and May.