

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

Minutes of the Committee meeting held at 8.30am on 15 May 2019 at the offices of Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London, EC1Y 4AG (the “Meeting”)

- Present:**
- Jon Bartley, RPC LLP, Chair
 - Edward Sparrow, City of London Law Society
 - Kevin Hart, City of London Law Society
 - Tim Hickman, White & Case LLP
 - Kate Brimsted, Bryan Cave Leighton Paisner LLP (by dial in)
 - Jonathan Kirsop, Stephenson Harwood LLP (by dial in)
 - Giles Pratt, Freshfields Bruckhaus Deringer LLP (by dial in)
 - Rhiannon Webster, DAC Beachcroft LLP
 - Miriam Everett, Herbert Smith Freehills
 - Luke Dixon, Addleshaw Goddard LLP
 - Rebecca Cousin, Slaughter and May
 - Cynthia O'Donoghue, Reed Smith LLP (by dial in)
 - Jonathan McDonald, Charles Russell Speechly LLP
 - Eve-Christie Vermynck, Skadden, Arps, Slate, Meagher & Flom LLP
 - Sophie Moore, Addleshaw Goddard LLP
- Apologies:**
- Elizabeth Robertson, Skadden, Arps, Slate, Meagher & Flom LLP
 - Ross McKean, DLA Piper (UK) LLP
 - Barry Fishley, Weil, Gotshal & Manges (London) LLP
 - Sam De Silva, CMS Cameron McKenna Nabarro Olswang LLP
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1. Welcome

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

2. Apologies

Formal apologies were received from Elizabeth Robertson, Ross McKean, Barry Fishley and Sam De Silva.

3. Minutes from the previous meeting

The minutes from the last meeting were circulated on 14 May 2019. Committee members to review and provide comments. Final version to be tabled and approved at a later date.

4. Welcome to Ed Sparrow, the new Chair of the City of London Law Society

- 4.1 The Committee welcomed Ed Sparrow to the meeting. The Committee discussed the current role of the City of London Law Society (**CLLS**), both historically and moving forward. The Committee discussed the need to spread the word more widely about the type of work the CLLS Committees are doing. Previously, the CLLS sent a quarterly CLLS newsletter to all CLLS Committee chairs. The CLLS is now planning to send these to all Committee members, with a view to extend distribution to all law firms in the future.
- 4.2 The CLLS is also considering how it can become more accessible to younger lawyers. The Committee discussed the fact that this is made difficult by the fact that the Committees are generally made up of more established lawyers, and the CLLS does not organise many socials. The CLLS used to form part of The City of London Solicitor's Company, (the **Company**) but has since split. The Company is more active on the social side, whilst the CLLS serves more of a professional representative function. There is still a large overlap between the CLLS and the Company at a management level.
- 4.3 The Committee discussed some of the other legal organisations the CLLS meets with. For example, the CLLS meets with the SRA on a quarterly basis. In particular, the CLLS Training Committee has been working with the SRA on the upcoming Solicitors Qualifying Examination (**SQE**) to address the weight currently being given to probate in the SQE as compared to contract or tort. The CLLS Regulatory Law Committee is also working with the SRA on the SRA handbook. The CLLS meet with the Law Society, the GC100 and the Legal Services Board on a regular basis.
- 4.4 The Committee discussed the key areas in which the CLLS focuses its efforts. On Brexit, the CLLS have set up two Committees – the Brexit Law Committee advising the Ministry of Justice on the effect of Brexit on the legal systems, and the Mutual Market Access Working Group advising BEIS on the effect on the legal profession. There is concern that the advice isn't having any impact, with the CLLS being advised by civil servants that the fate of Brexit is in the hands of the politicians. As such, the CLLS is also looking to consider how it can influence EU regulators post-Brexit.
- 4.5 The Committee considered how to better engage with the European Law Institute (**ELI**), noting that part of the ELI's mission statement had been to influence EU data regulation. The Committee aims to pick a couple of topics on which to engage with the ELI. The Committee has agreed that Committee members will conduct some further investigation into ELI's work, and will inform ELI of some of the Committee's current work. Data economy was a topic which the Committee thought ELI may wish to engage with the Committee on.
- 4.6 The Committee also noted the CLLS's focus on social mobility. The CLLS recognise that current social mobility efforts are rather fragmented, with both charities and law firms acting independently, but undertaking overlapping work. CLLS's plan is to map what people are doing so that there is more output against the current spend. The Committee noted that unfortunately a lot of firms were not willing to share publically the CSR work they are doing (for instance, those working on Grenfell had not wanted to publicise their work). It was discussed that pro bono CSR professionals tended to proud of what they do and are bit coy about changing their practices. However, it was acknowledged that it makes sense to share best practice. The Committee noted that there were some great examples of social mobility initiatives out there, such as the Stephen Lawrence and City Horizon programmes.

- 4.7 The Committee discussed the current expectation on law firms to resolve the problems of access to justice and diversity, noting that law firms need to be seen as part of the solution rather than the problem. Once Brexit is resolved, the CLLS believe that there is going to be a lot more focus on City law firms. The CLLS wants to encourage City law firms to work more collaboratively on access to justice and diversity initiatives. The Committee also discussed the view held by some that City law firms were the source of the problem in terms of getting solicitors to become High Court judges. The Committee also discussed a recent paper highlighting how the lack of the solicitor representation has more to do with the fact that the job isn't seen as attractive and the application being weighed against solicitors. The Committee noted that if current initiatives to improve access for solicitors come to nothing, it will confirm the assumption that solicitors aren't wanted.

5. Proposal to appoint Luke Dixon as Committee Secretary

Motion to appoint Luke Dixon as Committee Secretary tabled and approved. The Committee to discuss the scope of Committee roles separately.

6. Report on Committee member meeting with the Chair of the Centre for Data Ethics and Innovation

- 6.1 Committee members met with Roger Taylor, Chair of the Centre for Data Ethics and Innovation (the **Data Centre**), in April 2019. The Committee members reported that the centre is currently focusing on advertising and transparency, including artificial intelligence (**AI**) and decision making. The Committee discussed its aim to engage Data Centre by asking them to participate in things that the Committee are doing and confirming who else they were talking to.

- 6.2 The Committee discussed Trevor Phillips's (former chairman of the Equality and Human Rights Commission) criticism of Cambridge University's slavery enquiry. The Committee discussed alternatives that Cambridge University could investigate using AI; for example, how algorithms used by insurance and credit agencies are often biased against people from BAME groups and how this requires further investigation.

- 6.3 The Committee discussed how a lot of their day-to-day work outside the Committee involved requests for advice inside quite a tight regulatory framework, such as the GDPR. The Committee considered whether their role could move to having a more "data ethics" focus, in light of the current interest in the AI debate. However, the Committee did not think that data ethics is going to be a huge challenge for law firms at the moment. Law firms don't use client data from a development perspective; however, this could change as law firms start to use more advanced technology. In the litigation space, AI is already being used to analyse large volumes of documents, but AI does not affect law firm marketing at the moment.

- 6.4 The Committee discussed how they would benefit from having a Committee member or external attendee with greater technological expertise. Committee members to consider appropriate contacts. The Committee considered whether they could have a more informal role within the Committee of tech specialist, who would act not from the perspective of data, but business development more generally. The Committee decided it would be better, as a Committee, to focus on AI algorithms generally, rather than just the data aspects of law tech.

7. ICO - Artificial Intelligence Citizens' Juries

- 7.1 A Committee member attended the February 2019 Citizens' Juries event. The jury

was made up of members of the public. The Committee member's responsibility was to explain the current law relating to AI; however, due to the focus of jury questioning, the talk was diverted to data protection. The results of the jury meeting will be published c. 29 May 2019. These results will feed into guidance which will be published by the ICO, the Alan Turing Institute and Manchester University on how organisations should explain AI to users. The Committee members discussed its aim to engage with the Alan Turing Institute moving forward.

8. Potential engagement with DCMS, Dan Wiles (Head of International Data Engagement and Evidence)

8.1 The Committee noted how Dan Wiles may be amenable to coming along to one of the Committee meetings. He has asked the Committee to circulate the meeting minutes so that he has more of a flavour of what is being discussed.

9. Contact from Aimée Burnham at the Global Exports and Investment section of the Economic Development Office of the City of London Corporation – possibility for cooperation

9.1 Committee members to pick up with Aimee Burnham to further explore the possibility for cooperation.

10. Brexit developments – e.g. Huawei controversy: any perceived risk to adequacy decision?

10.1 The Committee members noted that they hadn't seen much further news on Brexit from a data perspective. However, the Committee thought the publication of the Keeling Schedule on the changes to the Data Protection Act 2018 affected by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 were useful. A Committee member had had a client asking about the Huawei issue but this had been more from a 5G, rather than from an adequacy perspective. The Committee hadn't seen anything from its European partners.

11. Potential projects for committee e.g. ICO's auditing framework for AI

11.1 The Committee discussed the EDPP that took place on 16 May 2019. Its meeting agenda did not feature anything on the territoriality topic about which the Committee provided information. Otherwise, there was nothing in the agenda which the Committee thought it should imminently comment on.

11.2 The Committee noted that the ICO consultation on "Age appropriate design: a Code of Practice for Online Services" was due to finish at the end of May. Committee members to feedback over email should they wish to comment.

11.3 Committee to consider possibilities for a new AI focused project, as discussed above.

11.4 Committee to consider if it has any comments on the "Online Harms White Paper" from a data perspective. Three Committee members to take the piece away and feedback via email.

12. Report on Commercial Law Committee's recent event with Adidas legal team – potential for Data Law Committee to emulate?

12.1 Jonathan Davey of Addleshaw Goddard helped the CLLS Commercial Law Committee arrange for Katherine Rosevare, General Counsel and Alex Herrity, Senior Manager, both of Adidas, to lead a CLLS event. The event encouraged junior

attendance and centred on current Adidas tech initiatives and what the Adidas team expect from their private practice lawyers. The Committee discussed how engaged the junior lawyers were, noting that the talk had run over by an hour. The Committee also noted that the CLLS Commercial Law Committee are planning another event for later this year, and the CCLS Construction Law Committee are planning a 3-day seminar in the summer.

- 12.2 The Committee discussed their interest to emulate the Commercial Law Committee event with a view to holding an event in September/October 2019. It was said that Committee members should use materials produced internally towards CLLS training sessions and consider within their teams appropriate speakers for an event. The Committee members discussed the possibility of using a panel of the Committee members' clients, perhaps including someone from a regulator. The Committee discussed appropriate themes such as data, AI or tech more generally. Committee members decided to organise the event over email with a follow-up meeting (separate to the normal quarterly meeting) closer to the time. The Committee planned to engage associates in their firms to promote the event.

13. General discussion re. other developments: legislation, case law, guidance

- 13.1 A Committee member raised that they had been in discussion with an ICO contact as regards ICO guidance on controllers and processors. The Committee had a number of misgivings about the current ICO guidance (in particular, around the joint controller provisions). The Committee decided that they will collect these views to share with the contact, before inviting that contact to attend a Committee meeting to discuss. A Committee member volunteered to put together some initial bullet points to share with the Committee.
- 13.2 The Committee noted IBPS's recent book release on data processing agreements. The Committee discussed the fact a lot of companies still haven't completed their data processing agreement contract variation projects ; businesses are wanting to send out stock data progressing agreements without adapting the agreements on a bespoke basis.
- 13.3 The Committee discussed the upcoming update to the privacy regulation. Committee members had heard that its release may be delayed, or that the regulation might never be updated.
- 13.4 The Committee considered the recent incident where a German regulator undertaking a cookie compliance sweep of internet sites found that they were all non-compliant. These websites are now being investigated on a case by case basis. However, a Committee member raised the point that Germany never enacted the privacy law so it's not the best example of overall compliance with the applicable laws. The Committee also noted the fact that a lot of the guidance in this area is still being developed; for instance, the ICO is currently updating its cookie policy.
- 13.5 The Committee also discussed briefly an ECJ case on cookies, whose ruling was more aligned with the Austrian / German view than the ICO. The Committee thought this was unusual as ICO's stance is usually the more conservative. The ECJ had ruled that paywalls were not required, but it was unclear what the position was on consent.
- 13.6 The Committee also discussed a data anonymisation case (The University of Bristol v

John Peters and the Information Commissioner¹). The Tribunal held that anonymised clinical trial data is not exempt from disclosure under FOIA 2000. In this case, the extent to which clinical data was "sufficiently anonymised" played a key role in the Tribunal's decision. The Tribunal applied the "motivated intruder" test in deciding that a party does not have to be "certain" that the release of requested data would not lead to re-identification. Instead, the University of Bristol should have considered the "likelihood" of re-identification in deciding whether to disclose the data to Mr Peters (the requester).

14. AOB

- 14.1 The City of London Solicitors' Company AGM will be held at 5.30pm on Monday 17 June at Tallow Chandler's Hall, Dowgate Hill, London, EC4R 5SH.
- 14.2 There was no other business to be discussed by the Committee and the Meeting was closed.

¹ EA/2018/0142