

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

Meeting Date 26 November 2020, 9.30am

Location Virtual Meeting Room

Present Jon Bartley, RPC LLP, Chair
Cynthia O'Donoghue, Reed Smith LLP
Luke Dixon, Freeths LLP
Sam De Silva, CMS Cameron McKenna Nabarro Olswang LLP
Rhiannon Webster, DAC Beachcroft LLP
Kate Brimsted, Bryan Cave Leighton Paisner LLP
Ross McKean, DLA Piper (UK) LLP
Miriam Everett, Herbert Smith Freehills LLP
Eve-Christie Vermynck, Skadden, Arps, Slate, Meagher & Flom LLP
Tim Hickman, White & Case LLP
Jonathan McDonald, Charles Russell Speechly LLP
Rebecca Cousin, Slaughter and May LLP
Barry Fishley, Weil Gotshal & Manges LLP
Jonathan Kirsop, Pinsent Masons LLP
Giles Pratt, Freshfields Bruckhaus Deringer LLP

1. Welcome

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

2. Apologies

No apologies were received for the meeting.

3. Previous minutes

3.1 Draft minutes from the previous meeting have been circulated. Minutes to be uploaded if there are no comments.

4. Accountability Framework

There has been a brief consultation on the Accountability Framework. The survey mechanism was not detailed. CLLS has put in a few illustrative comments in and provided contact details to be contacted for further rounds of consultations.

The Committee discussed whether the Accountability Framework has been used or whether anyone has received queries from clients on it. The Committee also considered what benefits it brings for clients. The Committee considered it was a good checklist and project management tool at present.

5. Potential collaboration with the Law Society on the consultation for the draft SCCs and EDPB recommendations

The Committee discussed the possibility of a joint response to these consultations with The Law Society. The Committee discussed whether The Law Society's views on the draft SCCs and EDPB recommendations would represent a broader scope of society than CLLS's.

The Committee considered that a collaboration with The Law Society should be considered and contact should be established.

6. Draft EDPB recommendations for supplemental measures for international transfers

The Committee discussed the practical implications of the draft EDPB recommendations and the consultation period. The consultation response on behalf of CLLS will be coordinated by HSF.

6.1 **Third country laws assessments**

The draft EDPB recommendations are outsourcing the risk assessment of third countries' laws to the private sector. The Committee agreed that a risk-based approach would be beneficial, otherwise requesting organisations, irrespective of their size, to conduct objective assessments of the laws of third countries will:

- put a strain on organisations' resources;
- force them to keep their data within the EEA or risk non-compliance; and / or
- create divergence among the decisions made by organisations.

6.2 **Case studies**

The case studies included by the EDPB in its draft recommendations are welcomed, however the Committee noted that they are very detailed and do not allow for interpretation. The Committee noted and discussed the practical implications of the case studies, including data localisation and derogations.

6.3 **Market reaction**

Organisations and their customers will need to create a relationship of trust to ensure customers are comfortable with their data being transferred to a third country.

Organisations may be reluctant to sign up to long term agreements in light of the uncertainty created by the *Schrems II* decision.

7. **Draft SCCs consultation**

The Committee discussed the implications of the draft SCCs and the consultation period. The consultation response on behalf of CLLS will be coordinated by RPC.

7.1 **Repeal of current SCCs**

The Committee discussed the repeal of the current SCCs and the impact on organisations, which will need to bear the administrative and cost burden of repapering their documentation.

7.2 **Discussion**

The Committee discussed:

- the impact on onwards transfers and the added complication of Brexit;
- the issue of data repatriation created by the processor to controller clauses; and
- the enforceability of certain terms in the SCCs.

7.3 **Market reaction**

Global supply chains will need to rethink their transfers and potentially engage new suppliers.

Some clients have also asked law firms to be more transparent about their data transfers, but this has not been very widely encountered.

8. **UK Data Transfers and Brexit**

The Committee briefly discussed the possibility of the UK receiving an adequacy decision before 31 December 2020. The Committee also discussed the impact on UK data transfers if there is an adverse adequacy decision.

9. UK Data Strategy

The Committee discussed preparing a response to the UK Data Strategy consultation, focused on the implications of the rising number of group actions in the UK. The Committee discussed the impact such claims have on individuals, law firms and funders.

No decision was reached whether the Committee would like to respond to the consultation. The Committee requested to see a draft response prior to deciding.

10. Data Trusts

The Chair will share the draft on the commons cooperative once it is finalised and seek everyone's comments.

11. Draft Article 28 template

The Committee considered responding to the draft Article 28 template, however noted that it would not be appropriate responding.

12. AOB

The next meeting of the Committee is due to take place in 2021. Details will be circulated by Luke Dixon.