

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

<b>Meeting Date</b>	12 May 2022, 9.30am
<b>Location</b>	Virtual Meeting Room
<b>Present</b>	Jon Bartley, RPC LLP (“Chair”) Kate Brimsted, Bryan Cave Leighton Paisner LLP Rebecca Cousin, Slaughter and May Luke Dixon, Freeths LLP Miriam Everett, Herbert Smith Freehills LLP Kevin Hart, CLLS Jonathan McDonald, Charles Russell Speechly Ross McKean, DLA Piper LLP Cynthia O’Donoghue, Reed Smith LLP Giles Pratt, Freshfields Bruckhaus Deringer LLP Rhiannon Webster, Ashurst LLP Matthew Rous, City of London Law Society
<b>In attendance</b>	Olivia Hill, Freeths LLP

**1. Welcome**

The Chair welcomed all those in attendance at the meeting and welcomed Matthew Rous as the new Chair of the CLLS.

The new Chief Executive of the City of London Law Society introduced himself and thanked the Committee for the opportunity to meet everyone virtually. He intends to support the communication between various committees.

**2. Apologies**

Eve-Christie Vermynck (Skadden, Arps, Slate, Meagher & Flom LLP), Sam De Silva (CMS Cameron McKenna Nabarro Olswang LLP), Jade Kowalski (DAC Beachcroft LLP) and Barry Fishley (Weil, Gotshal & Manges LLP) sent apologies ahead of the meeting.

**3. Previous minutes**

It was reported that draft minutes from the previous meeting held on 9 February 2022 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 Chair attended the March CLLS Chairs’ meeting. There was discussion in that meeting around whether a separate digital law committee should be formed, particularly given recent developments in cryptocurrency and blockchain. It was noted that if members of the Committee have a view on this they should feed them back to the Chair.

It was reported that two new committees have been formed: an Environment, Social and Governance (“ESG”) committee and an Arbitration committee. The chairs and vice-chairs of each committee are due to be appointed in the next main committee meeting at the end of June. Following the meeting, the chairs will advertise for committee members including on

LinkedIn and law firms' portals. It was noted that Committee members should inform the Chair if they have colleagues to recommend for the roles.

It was reported that the ESG committee will be more flexible in terms of the seniority of its members. It was noted that committee members are usually lawyers at partner level, however it is recognised that credible ESG subject matter specialists may be lawyers at a more junior level.

It was reported that the CLLS is considering its communications strategy. It was reported that the CLLS has set up showcase pages on LinkedIn for the Commercial Law committee and Training committee to encourage firm interaction with thought leadership pieces and opinions etc. These pages will be trialled as a pilot to see whether they are being engaged with. If they are successful, the CLLS may consider setting up pages for the other committees. It was noted that the link to the Commercial committee page would be shared with the Committee.

#### 4.2 *International Regulatory Strategy Group ("IRSG") Data Committee meeting*

It was reported that the IRSG presented to the CLLS on 11 May 2022. The IRSG is keen to explore a link with the Committee, however nothing has been agreed to date in relation to a joint work product. It was suggested at the meeting that a thought leadership paper could be produced focusing on the interplay between ESG and data/cyber.

It was reported that the new Financial Conduct Authority leader on artificial intelligence ("AI") also presented to the CLLS. The presentation focused on Singapore as opposed to EU regulation, however it was noted that the UK is unlikely to see a legislative response to the EU AI Act due to a lack of appetite for formal regulation.

The Committee discussed where AI sits within the CLLS committee framework. It was noted that AI is considered by the Commercial Law committee who have the umbrella status to lead in this area, although the Data Law committee could feed into the wider commercial work e.g. with respect to consultations. It was suggested that a separate committee for AI could be set up at a later date if necessary.

#### **5. Response to ICO consultation on Regulatory Action Policy, Statutory Guidance on Regulatory Action and on PECR powers**

The Committee was thanked for its work on the response to the ICO consultation on Regulatory Action Policy, Statutory Guidance on Regulatory Action and on PECR powers, led by Slaughter and May. The Committee will wait to hear the outcome of the consultation.

#### **6. Potential response to ICO consultation on Anonymisation, Pseudonymisation and PETS – Chapter 3**

It was reported that the deadline to respond to the ICO consultation on Anonymisation, Pseudonymisation and PETS – Chapter 3 is in September. The Committee discussed whether a sub-group should be formed to work on the response over summer.

#### **7. Data Reform Bill**

It was reported that it was announced in the Queen's Speech on 10 May 2022 that the Data Reform Bill is expected to come into force this summer, although limited details on the bill were given during the speech.

It was reported that a round table event will be held on 25 May 2022 with the Department for Digital, Culture, Media and Sport ("DCMS") to discuss privacy laws after publication of the bill.

It was reported that cookies requirements will be a significant subject in the bill, and over 3000 responses were received to the 'new direction' consultation.

The Committee discussed that, when the DCMS' response to the consultation is published, the Committee may take a view that they should prioritise review of that rather than focusing on the anonymisation chapter. The Committee agreed to discuss the response that it should make via email once the response from the DCMS has been published.

## **8. New EU/US transfer framework**

It was reported that there was an announcement in March as part of the Ukraine coverage about a proposal for replacement for transatlantic data shield. It was reported that a two-tier review process is being considered, including a data protection review court for data subjects and an improved remedial process for EU complainants in relation to use of their data in the US. The Committee await further details of this.

## **9. Information Commissioner event**

It was reported that members of the Committee met with John Edwards (UK Information Commissioner). The Information Commissioner expressed that he was keen to steer the ICO on a lighter touch approach to enforcement except where there is demonstrable harm to individuals.

It was reported that the ICO are considering a strategy for informing individuals which track their complaint is on i.e. whether the ICO are treating the complaint as serious or minor.

## **10. AOB**

### **10.1 *Case law, enforcement and recent trends***

The Committee discussed that recent cases of ICO enforcement have been focusing on texting and email, however no new focus points have emerged as a result of these cases.

The Committee reported that they have seen increased instructions relating to DSARs and clients are often pushing for two-month extensions, on the basis that the ICO will not engage with pre-litigation DSARs. The Committee discussed that DSARs more commonly have a litigation motive than a privacy motive, particularly in an employment context, in an attempt to reach settlement.

The Committee discussed PECR breaches and noted that they are usually easier to investigate because there is an obvious failure to comply, but other breaches are more nuanced.

The Committee noted that this approach to enforcement was reflective of the Information Commissioner's comment in relation to a focus on strategic enforcement. It was reported that there would be a significant chapter in the new direction consultation on enforcement.

#### *Update on Data Committee event with the Information Commissioner*

It was reported that a Committee member had discussed arranging an event with John Edwards and this may be organised for September / October 2022. The Committee member had emailed the Law Society in order to collaborate with them on the event. It was reported that a "save the date" would be circulated and advertised.

### **10.2 *Internal governance in law firms***

The Committee discussed internal data protection governance in law firms. It was noted that some firms had data protection managers, some firms had risk and compliance or information security teams with data specialists in and some firms asked fee earners to support on privacy matters.

### 10.3 *DSARs and the privilege exemption*

The Committee discussed that some claimants were trying to inconvenience law firms by submitting DSARs and they relied on the exemption that client information was privileged. It was noted that the SRA guidance suggests that an entire client file would be subject to confidentiality and privilege, so can take a blanket approach.

The Committee discussed whether it was common practice to share cyber forensic reports with the ICO. It was reported that this is commonly done but not always, and any report that is shared is well-curated and focused on facts narrowly relating to the incident. It was reported that the ICO is actively requesting organisations to consider whether information is privileged.

### 10.4 *Data Transfer Impact Assessments ("DTIA") and the International Data Transfer Agreement ("IDTA")*

The Committee reported fewer instructions in relation to DTIA projects following recent guidance. It was reported that the Committee has most commonly seen US data importers using them to evidence to the regulator that the analysis has been carried out.

It was reported that the DPA in Austria is taking an absolutist approach to DTIAs, with a recent decision on Google Analytics expressly considering and then discounting proportionality. It was considered in that case that chapter 5 should not be interpreted as a risk-based approach. The Committee reported that a similar approach was being adopted in Germany.

The Committee discussed a potential thought leadership piece, as it may be helpful and timely to put forward arguments to support proportionality as fundamental principle of European law / consumer protection law. It was discussed that taking a conservatist approach by other regulators in Europe seems to be a misapplication of limited resources that would be better applied where there is a genuine risk of harm to consumers.

### 10.5 *Upcoming meetings*

It was reported that the CLLS Annual General Meeting would be held on 18 June 2022 with a drinks reception to follow.

It was reported that the next Committee meeting would be held on 15 September 2022.