



JERSEY DATA PROTECTION AUTHORITY MEETING

Held via video conference due to COVID-19 outbreak.

MINUTES

Authority Meeting 9:00 – 12:00, 30 November 2021
Chair Present. Jacob Kohnstamm (JK)
Voting Members Present. Paul Routier (PR) Gailina Liew (GL) Helen Hatton (HH) Clarisse Girot (CG) David Smith (DS)
Apologies for Voting Members.
Non- Voting Members Present. Paul Vane – Information Commissioner (PV) Anne King – Operations Director & Corporate Secretary (AK)
In Attendance by Invitation.
Guest Speaker

Decisions/Recommendations	
1.0	Meeting agenda approved.
	R&HRC
2.1	Decision/approved - JDPA approved 2.9% pay award based on the 2021 cost of living increase. Pay will be reviewed on annual basis.
2.1	Decision Approved – all pay matters to be discussed and reviewed annually.
2.1	Decision Approved - JDPA Remuneration –next review is due July 2024.
	Governance Committee
	Decision Approved - To consider interests and actual conflicts on an agenda-by-agenda basis.
1.0	Decision Approved – regarding subcommittees R&HRC meet 2 x per annum, ARC each time before a JDPA meeting and possibly a couple additional meetings in relation to audit requirements may be needed.

Action Items	
1.2	Action point - APK to amend standard JDPa agenda to have Declaration of Interests as a standalone item and 'in Camera' session as a numbered agenda item.
1.2	Action point - AK to ensure that Declaration of Interests are in the Annual Reports.
1.3	Action point – AK to change action point No. 6 in the August minutes.
1.3	Action point – finance manager to better reflect JDPa remuneration in 2022.
1.4	Action point – AK to amend minutes.
2.1	Action Point - Executive to clarify year-end financial situation for 2021 and the impact on 2022.
	R&HRC
2.1	Action point – the executive to carry out a review in 2022 to gauge the appropriateness of health insurance
	Governance Committee
2.1	Action point – JDPa to review Conflicts of Interest Policy and send comments to GL & AK.
2.1	Action point - CG to write to JK & GL re her role and possible conflicts of interest.
2.1	Action point - to share any emerging risks and trends and send to GL & AK.
2.1	Action point - PV & GL to consider speakers for JDPa on relevant 'horizon scanning topics'
2.1	Action point Governance Committee to consider frequency of meetings.
3.0	JOIC Update –Information Commissioner and Operations Director.
3.2	GPA Resolution Action point - PV to look into the IEEE standard setting body.
3.2	GoJ Grant/Fee Update Action Points - Executive to provide additional information to cover: <ul style="list-style-type: none"> o FoI – we need to provide financial information as to the funding of our FoI work. o Why don't we think the current funding model from GoJ is appropriate? What does a good funding model deliver?
3.2	GoJ Grant/Fee Update Action Point - JK/PV/AK to meet virtually to be fully prepared for the delayed Partnership meeting on 9 Dec 2021.
3.4	Data Stewardship Update Action point - PV will update further at next Authority meeting.
3.6	International Transfers Action Point – PV to write a paper covering next steps forward regarding international transfers. Action Point - DS recommended that JDPa members send in comments to PV.
4.0	Other Business
4.1	ESG Action Point – AK to write a short paper on proportionate actions, with feasibility and practical solutions.
4.2	Article 30 Action Point – AK to write a short paper setting out three or four bullets when and if the JDPa use the process and power. Also to clarify the what the power is and to address what other DPAs do. Action Point – Article 30 to be on main JDPa meeting agenda.
4.3	Business Plan 2020/21 Performance Progress including issues and accomplishments. Action Point – AK to set up a meeting for JDPa to discuss 2022/23 Business Plan. Action Point – AK to provide relevant data in charts/graphics etc.



	Item	Action
1.0	<p>Call to order and approval of the agenda.</p> <p>The Chair opened the meeting and welcomed members.</p>	<p>Decision - Agenda approved.</p>
1.2	<p>GL requested that the agenda have standard items;</p> <ul style="list-style-type: none"> • Declaration of Interests • (X.X) Authority 'In-Camera' Session. <p>CG explained her role in the policy forum/think tank, which does not represent members interests. The JDPA agreed that CG's role does not represent a conflict of interest.</p> <p>The Authority approved the agenda.</p>	<p>Action point - AK to amend standard JDPA agenda.</p> <p>Action point - AK to ensure that Declaration of Interests are in the Annual Reports.</p>
1.3	<p>Review of action points – the JDPA were happy with the action points except point 6.0 which needs changing as the JDPA did not request that they be referred to as consultants. The action point to be changed to 'Finance Manager to evaluate if it possible to refer to JDPA member costs as JDPA remuneration, for these to be separate to any other costs for the purposes of complete transparency.'</p> <p>The JDPA are concerned that a mismatch between the existing standard accounting technology and the external presentation of accounts as this does not provide a clear picture. JDPA remuneration needs to be very clear and transparent.</p> <p>The Chair advised that the Partnership meeting has been postponed as the Assistant Minister is unavailable today. The meeting is now scheduled for the 9 December 2021.</p>	<p>Action point – AK to change action point.</p> <p>Action point – finance manager to better reflect JDPA remuneration in 2022.</p>
1.4	<p>Minutes</p> <p>The JDPA requested that changes are made to the August minutes.</p>	<p>Action point – AK to amend minutes.</p>



2.0	<p>Authority Governance, Operations and Procedures.</p> <p>Committee updates and recommendations from each Committee Chair.</p> <p>2.1 Audit & Risk</p> <p>HH (ARC Chair) advised the JDPA that the meeting priority was to focus on 2021 audit. HH confirmed that the auditors are prepared and ready to start.</p> <p>The end of year financial position was also discussed, and PV was asked to prepare a paper for this meeting.</p> <p>The JDPA discussed at length the year-end financial situation and the appropriate course of action.</p> <p>JK requested that he is given a very clear picture ahead of the Partnership Meeting on 9 December 2021. It is important for the JDPA to clearly state its ambitions and contribution to the local economy.</p> <p>GL and AK have reviewed the risk matrix and are working to simplify the risk matrix, but report that there is nothing of significance to note.</p> <p>Remuneration and HR Committee</p> <p>PR (RHRC Chair) reported that the meeting focussed on 4 main items.</p> <ol style="list-style-type: none"> 1. New JOIC team roles in January 2022 2. Pay award 2022 3. Engagement Survey 4. JDPA Remuneration <p>Two new starters are joining the team on 4 January 2022, one in an account's role and a new caseworker.</p> <p>The RHRC asked the JDPA if they support a 2.9% pay award to reflect the 'Cost of Living' figure published in September 2021. Although the budget allows for a 2% increase the RHRC felt it appropriate to award the 2.9%. JK asked what is the Government's approach for their staff? PV advised that there are multiple pay</p>	<p>Action Point - Executive to clarify year-end financial situation for 2021 and the impact on 2022.</p> <p>Decision/approved - JDPA approved 2.9% pay award based on the 2021 cost of living increase. Pay will be reviewed on annual basis.</p> 

	<p>negotiations within Government which means that there are multiple pay awards.</p> <p>HH reflected on salary discussion about 18 months ago – HH raised a concern that an annual increase should not be expected but rather reviewed annually to consider affordability and appropriateness.</p> <p>Engagement Survey – this was an informal but insightful process to explore with an external specialist the current satisfaction of the staff. One key area raised by the survey was health insurance for staff. It was agreed that the executive to carry out a review in 2022 to gauge the appropriateness of health insurance.</p> <p>JDPA Remuneration – it is important for the JDPA to know when the next review is due to be carried out. July 2024 is the next occasion for a review.</p> <p>Governance</p> <p>GL (GC Chair) highlighted that the Conflicts of Interest Policy is due for review and asks that Members review the policy which is available on SharePoint. GL felt that the policy covers off the main points but cautions about some of the wording as it may make the policy impractical.</p> <p>GL advised that one action from the Governance meeting was for Member’s bios to be updated to ensure transparency.</p> <p>CG new role was discussed – it was agreed that CG will send a formal note to JK & GL so the Governance Committee and the JDPA can formally respond to CG regarding any potential conflicts. At this time, it is believed that there is no conflict posed by CG think tank role.</p> <p>Horizon scanning – GL asked members to consider any emerging trends that the JDPA should take consideration of.</p>	<p>Decision Approved – all pay matters to be discussed and reviewed annually.</p> <p>Action point – the executive to carry out a review in 2022 to gauge the appropriateness of health insurance</p> <p>Approved - JDPA Remuneration –next review is due July 2024.</p> <p>Approved - To consider interests and actual conflicts on an agenda-by-agenda basis.</p> <p>Action point – JDPA to review Conflicts of Interest Policy and send comments to GL & AK.</p> <p>Action point - CG to write to JK & GL re her role and possible conflicts of interest.</p> <p>Action point - to share any emerging risks and trends and send to GL & AK.</p> <p>Action point - PV & GL to consider speakers for JDPA on relevant 'horizon scanning topics'</p>
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PR asked the Members if there should be a review how the separate committees are working – do we meet too often or not often enough?

Members briefly discussed meeting frequency.

JK asked if each committee chair can review how each committee is operating.

DS raised a concern that as the committees do more and more are they straying into the office and executive work?

JK asked PV for his honest views – PV is concerned that the volume of meetings requires substantial administrative support which is placing significant workload on a very small team, which in turn means that less time is spent on operational matters and core activities. PV went on to say that the executive value the JDPA input and help with activities. PV reminded the Members that proportionality is key.

PR suggested that it is important that we have the correct structure.

JK reminded Members that we are a small organisation and therefore we can keep in touch easily and items can always be added to the JDPA agenda.

HH suggested that the role of minute taking be delegated to other team members.

2 key questions

1. What is the right level of governance overview?
2. How do we manage workload?

Approved - RHRC meet 2 x per annum, ARC each time before a JDPA meeting and possibly a couple of additional meetings in relation to audit requirements may be needed.

Governance Chair to review.



3.0	JOIC Update –Information Commissioner and Operations Director.	
3.1	<p>Adequacy Update</p> <p>We have been advised that Adequacy is on track for a positive decision before the end of the year. The European Commission had initially taken issue with our exemptions for Corporate Finance and Management Forecasting, concerned that they prevented data subjects from properly exercising their rights under the Law.</p> <p>JOIC provided an explanation as to how the exemptions work in practice and produced guidance, which is on the website.</p> <p>There are certainly no indications that the outcome of their review will be anything other than a positive assessment.</p>	
3.2	<p>GPA Resolution</p> <p>Over the last 20 months PV has represented the Authority on the GPA (Global Privacy Assembly) Covid-19 Working Group. This has been an extremely valuable experience and one jurisdiction opted to use our guidance as a template as opposed to the UK or Ireland.</p> <p>The working group is now changing to focus on data sharing. PV asked the JDPA how the JDPA progress and mobilise any GPA resolution in Jersey.</p> <p>Who should we speak to? How do we raise the importance of the GPA and its decisions? Jersey has never sponsored a Resolution of the GPA before, so this is uncharted territory for us.</p> <p>The JDPA recognise that our role in the international arena is very important and being part of the global DP family. The JDPA requested that PV look into the IEEE standard setting body.</p>	<p>Action point - PV to look into the IEEE standard setting body.</p>
3.2	<p>GoJ Grant/Fee Update</p> <p>Following a meeting in August with the Minister, the JDPA met and agreed a 3-year budget forecast for Government, which was then submitted to Government.</p>	

	<p>At that meeting we discussed the policy development process, particularly in light of June 2022 election and the impact of Purdah (which takes effect in April 2022), length of consultation processes (internal & external stakeholders and arms-length organisations), and the fact that we may not have the same Ministers next year. We discussed the Law drafting timetable.</p> <p>Any changes in funding will also need to be factored into the Government Plan, and there is a need to align with those timetables.</p> <p>PV advised the JDPA that Government stated that unlikely to see any change in grant/fee mechanism until 2024. This is based on the need to apply for the 2023 grant in Oct 2022, depending on the length of time required for law drafting it may even be more practical to assume 2025 for new fee mechanism which ties in with the end of the current Government plan (2022-2025).</p> <p>Action Points -JDPA to provide additional information to cover:</p> <ul style="list-style-type: none"> ○ FoI – we need to provide financial information as to the funding of our FoI work. ○ Why don't we think the current funding model from GoJ is appropriate? What does a good funding model deliver? <p>Our plan is to have a way forward by the Spring Partnership meeting.</p> <p>PV added that currently there are two strands of financial conversation with Government (1) Partnership and current obligations (2) Fee discussion and changing the mechanism.</p> <p>JK highlighted that he was unaware of the two separate conversations and requested additional information. JK urges the executive to be steering towards a political decision ahead of the elections. PV supports JK aim to maintain momentum.</p>	<p>Action Points - Executive to provide additional information to cover:</p> <ul style="list-style-type: none"> ○ FoI – we need to provide financial information as to the funding of our FoI work. ○ Why don't we think the current funding model from GoJ is appropriate? What does a good funding model deliver? <p>Action Point - JK/PV/AK to meet virtually to be fully prepared for the delayed Partnership meeting on 9 Dec 2021.</p> 
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<p>3.4</p>	<p>Data Stewardship Update</p> <p>The JOIC was invited to participate in the Digital Jersey data stewardship feasibility project along with representatives from the technology, legal and public sectors.</p> <p>Jersey has a globally recognised and long-established Trusts industry, as well as relatively new legislation in Foundations. The working group have been examining the possibility of whether either structure lends itself to the concept of data stewardship, or whether a new opportunity exists for Jersey as to whether something similar could provide a unique economic opportunity for Jersey.</p> <p>The project is looking at the concept of data stewardship itself, market opportunities for Jersey, enabling technologies, legal structures, privacy issues and the international environment.</p> <p>PV will update further at next Authority meeting.</p>	<p>Action point - PV will update further at next Authority meeting.</p> 
<p>3.5</p>	<p>Convention 108 & GoJ</p> <p>The Council of Europe Convention 108 was one of the first legally binding international instruments in the field of data protection, developed in 1981.</p> <p>In 2018 C-108+ was developed, which is an updated version of the original C-108 and Additional Protocol designed to modernise the original convention, which of course was well out of date.</p> <p>There are currently 55 countries who have signed up to C-108, however the GPA International Conference raised the subject of C-108 and C-108+, noting that not many countries had yet ratified C-108+.</p> <p>PV advised the JDPA that Jersey is not listed as one of the countries as possibly under UK umbrella – but since Brexit what is the position.</p> <p>It should be noted that –</p>	

- Jersey cannot sign up to a treaty 'in our own right', only the UK can do this on our behalf. We do enter into some treaties under entrustment from the UK, but that route would not be available in this instance.
- If this was something Jersey/JDPA wanted to do, then Government Internal Relations suggest trying to get in touch with the relevant policy team in the UK to see what their plans are.
- There is a lot of work in getting to the point where Jersey/JDPA request extension of a treaty (compliance matrix, LOD sign off etc.), so if UK planning to sign up in foreseeable future, work could start on establishing Jersey's compliance now.
- PV has made contact with the UK ICO to establish what their plans are in terms of C-108+, we are awaiting a reply from them.

3.6 **International Transfers – Roundtable Workshop Outcomes & Action Points**

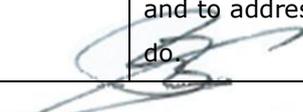
Following JDPA August meeting and the Round Table discussion, one of the actions was whether the Authority is minded to adopt the Standard Contractual Clauses.

With the assistance of Jersey Finance, we set up a working group to gather industry comments and we met in September to discuss.

We asked the working group 3 main questions:

- Identify whether the financial services industry in Jersey is experiencing issues or barriers with regard to the transfers of personal data to third countries;
- Understand the level of risk placed upon international transfers by Jersey financial services businesses;



	<ul style="list-style-type: none"> o Gather the views and comments of the financial services industry in Jersey in respect of the workability of the revised EU SCCs. <p>There were several comments and issues raised, particularly around the administrative burden caused by compliance with the SCCs, as they stand. They indicated that simple, clear but detailed guidance was preferred and that it would be useful to incorporate both the EU and UK approaches.</p> <p>Concerns were raised about the impact of Transfer impact Assessments being too onerous and burdensome on businesses but pointed to the UK template as a good starting point.</p> <p>The preferred route from industry would be for the Authority to adopt the EU SCCs with a Jersey addendum, which incorporates the UK approach as well.</p> <p>The next steps are for the Authority to approve the proposed direction in principle, PV to develop a project timetable and work with the Working Group to develop an addendum that meets their needs as well as guidance on their application.</p> <p>We would look to revert to the Authority for formal approval once the addendum was complete.</p> <p>CG directed PV to the New Zealand DPA website where a SCC builder process exists.</p>	<p>Action Point – PV to write a paper covering next steps forward regarding international transfers.</p> <p>Action Point - DS recommended that JDPA members send in comments to PV.</p>
4.0	<p>Other Business</p>	
4.1	<p>ESG Paper</p> <p>The JDPA urged the executive caution in over committing and making our ESG activities disproportionate and too onerous.</p>	<p>Action Point – AK to write a short paper on proportionate actions, with feasibility and practical solutions.</p>
4.2	<p>Article 30</p> <p>The JDPA requested that the executive review when and if the JPDA use the powers available under Article 30 of the DPA(J)L 2018.</p>	<p>Action Point – AK to write a short paper setting out three or four bullets when and if the JDPA use the process and power. Also to clarify the what the power is and to address what other DPAs do.</p> 

	<p>4.3 JDPA & Big Tech Paper</p> <p>CG reiterated that she does not perceive any conflicts with her thank tank role and this topic.</p> <p>CG thanked the executive for an interesting paper. She commented that the territorial effect is impacting on DPAs and Big Tech. The issue of feasibility is critical.</p> <p>PV raised that if there is a Big Tech complaint which arrived at JOIC – do we have jurisdiction and is it ongoing elsewhere. PV gave the example of Luxembourg DPA and Amazon.</p> <p>JK – it is good to consider but difficult to act, joint working is prudent considering resource implications.</p> <p>HH highlighted that it is also prudent to consider the environmental impacts of a tech company based in Jersey and the perception of our Authority.</p> <p>4.2 Business Plan 2020/21 Performance Progress including issues and accomplishments.</p> <p>The JDPA requested a paper to show the connect between Paul’s ‘State of the Privacy Nation’ presentation in August and the plan.</p> <p>JK suggested that the JDPA look at the paper from page 7 onwards.</p> <p>JDPA to review the BP. GL commented that she felt the metrics/measurements in the Business plan were not aligned with a regulator. GL requested case data.</p> <p>4.3 Financial Performance Q3 2021</p> <p>PR asked if these documents go to Government – the executive confirmed that the documents meet with Government expectations.</p>	<p>Action Point – Article 30 to be on main JDPA meeting agenda.</p> <p>Action Point – AK to set up a meeting for JDPA to discuss 2022/23 Business Plan.</p> <p>Action Point – AK to provide relevant data in charts/graphics etc.</p> 
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	Any Other Business HH commended the executive on the privacy debate they hosted in October. HH said that it was innovative, active involvement from attendees, clever and unusual format.	
	The meeting closed at 12:14	
	The Authority held an in-camera session.	

Authority 'In-Camera' Session

