

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Complaint Reference Number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Berlin Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning [REDACTED].

Record of Amicable Resolution of the complaint and its consequent withdrawal pursuant to Section 109(3) of the Data Protection Act, 2018

Further to the requirements of Internal EDPB Document 06/2021 on the practical implementation of amicable settlements (adopted on 18 November 2021)

**RECORD OF AMICABLE RESOLUTION FOR THE  
PURPOSE OF INTERNAL EDPB DOCUMENT 06/2021 ON  
THE PRACTICAL IMPLEMENTATION OF AMICABLE  
SETTLEMENTS, ADOPTED 18 NOVEMBER 2021**

Dated the 26<sup>th</sup> day of August 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. On 29 September 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Berlin Data Protection Authority (“the **Recipient SA**”) concerning [REDACTED] (“the **Respondent**”).
2. In circumstances where the Data Protection Commission (“the **DPC**”) was deemed to be the competent authority for the purpose of Article 56(1) GDPR, the Recipient SA transferred the complaint to the DPC on 7 February 2020.

## The Complaint

3. The details of the complaint were as follows:
  - a. The Data Subject contacted the Respondent on 19 September 2019, requesting access to his/her personal data, including the recordings of calls held with the Respondent’s customer support. The Data Subject also complained that the Respondent’s website allegedly did not display its Data Protection Officer (“the **DPO**”) contact details.
  - b. The Data Subject was not satisfied with the response received from the Respondent.

## Action taken by the DPC

4. The DPC, pursuant to Section 109(4) of the Data Protection Act, 2018 (“the **2018 Act**”), is required, as a preliminary matter, to assess the likelihood of the parties to the complaint reaching, within a reasonable time, an amicable resolution of the subject-matter of the complaint. Where the DPC considers that there is a reasonable likelihood of such an amicable resolution being concluded between the parties, it is empowered, by Section 109(2) of the 2018 Act, to take such steps as it considers appropriate to arrange or facilitate such an amicable resolution.
5. Following a preliminary examination of the material referred to it by the Recipient SA, the DPC considered that there was a reasonable likelihood of the parties concerned reaching, within a reasonable time, an amicable resolution of the subject matter of the complaint. The DPC’s experience is that complaints of this nature are particularly suitable for amicable resolution in circumstances where there is an obvious solution to the dispute, if the respondent is willing to engage in the process. In this regard, the DPC had regard to:
  - a. The relationship between the Data Subject and Respondent (being, in this case, an individual consumer and a service provider); and
  - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise his/her data subject rights).
6. While not relevant to the assessment that the DPC is required to carry out pursuant to Section 109(4) of the 2018 Act, the DPC also had regard to Internal EDPB Document 06/2021 on the

practical implementation of amicable settlements, adopted on 18 November 2021 (“**Document 06/2021**”), and considered that:

- a. the possible conclusion of the complaint by way of amicable resolution would not hamper the ability of the supervisory authorities to maintain the high level of protection that the GDPR seeks to create; and that
- b. such a conclusion, in this case, would likely carry advantages for the Data Subject, whose rights under the GDPR would be vindicated swiftly, as well as for the controller, who would be provided the opportunity to bring its behaviour into compliance with the GDPR.

### **Amicable Resolution**

7. The DPC engaged with both the Data Subject (via the Recipient SA) and Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the audio recordings of the telephone conversations between the Data Subject and the Respondent were no longer available, as they were deleted in accordance with the Respondent’s data retention policies. As a result, the Respondent was unable to retrieve and review these recordings. The Respondent also addressed the Data Subject’s concerns relating to its DPO contact details. In the circumstances, the Respondent agreed to take the following action:
  - a. The Respondent stated it was prepared to refund the Data Subject the full amount paid for his/her original booking.
  - b. The Respondent directed the Data Subject to its Privacy Policy and provided information on how its DPO contact details could be obtained from its website.
8. On 16 December 2020, the Respondent informed the DPC that the Data Subject’s complaint appeared to arise from issues relating to an amended booking and a request for a refund. The Respondent informed the DPC that the audio recordings of the telephone conversations between the Data Subject and its agents were no longer available as they were deleted in accordance with its data retention policies. As a result, it was unable to retrieve and review these recordings. The Respondent stated that it was prepared to refund the Data Subject the full amount of paid for his/her original booking.
9. The DPC informed the Data Subject of the proposed resolution via the Recipient SA on 22 June 2021. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if he/she was not satisfied with the outcome, so that the DPC could take further action. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have been amicably resolved.
10. In circumstances where the subject-matter of the complaint has been amicably resolved, in full, the complaint, by virtue of Section 109(3) of the 2018, is deemed to have been withdrawn by the Data Subject.

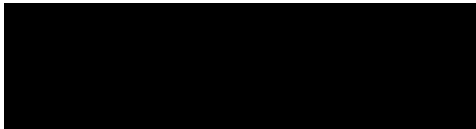
**Confirmation of Outcome**

11. For the purpose of Document 06/2021, the DPC confirms that:

- a. The complaint, in its entirety, has been amicably resolved between the parties concerned;
- b. The agreed resolution is such that the object of the complaint no longer exists; and
- c. Having consulted with the supervisory authorities concerned on the information set out above, as required by Document 06/2021, the DPC has now closed off its file in this matter.

12. If dissatisfied with the outcome recorded herein, the parties have the right to an effective remedy by way of an application for judicial review, by the Irish High Court, of the process applied by the DPC in the context of the within complaint.

Signed for and on behalf of the DPC:



**Sandra Skehan**  
**Deputy Commissioner**