

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with Berlin Commissioner for Data Protection and Freedom of Information, concerning National Pen Promotional Products Limited.

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 EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0 (adopted on 12 May 2022)

**RECORD OF AMICABLE RESOLUTION FOR THE
PURPOSE OF EDPB GUIDELINES 06/2022 ON THE
PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS VERSION 2.0
(ADOPTED ON 12 MAY 2022)**

Dated the 30th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 8 March 2018, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Berlin Commissioner for Data Protection and Freedom of Information (“the **Recipient SA**”) concerning National Pen Promotional Products Limited (“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 25 June 2019.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject had received postal marketing from the Respondent and thereafter requested, on 1 February 2018, that the Respondent erase their personal data and cease to send them postal marketing.
 - b. As the Data Subject was not satisfied with the response received from the Respondent regarding the concerns raised, the Data Subject lodged a complaint with the Recipient SA on 8 March 2018.
 - c. The Respondent thereafter advised the Recipient SA, on 19 April 2018, that the Data Subject was registered with the Respondent due to an order that they had made. The Respondent confirmed that the Data Subject’s personal data had been deleted and they would not receive any further advertisements by mail or phone calls.
 - d. The Data Subject thereafter contacted the Recipient SA to make a further complaint on 15 October 2018. The Data Subject noted that they had received further postal marketing from the Respondent and wished for their personal data to be erased.

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 EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0, adopted on 12 May 2022 (“**Document 06/2022**”), 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 in an effort to facilitate an amicable resolution. On 8 September 2020, the Respondent informed the DPC that the Data Subject’s personal data had been deleted and that it was carrying out no further processing of the Data Subject’s personal data. The Respondent had also earlier confirmed to the Recipient SA, on 15 March 2019, that the Data Subject had received further postal marketing due to a technical programming error, which had since been resolved.
8. As part of the amicable resolution process, the DPC provided this information to the Data Subject, via the Recipient SA, on 13 November 2020. However, on 1 February 2021, the Data Subject provided further comments to the DPC, via the Recipient SA, and noted that they did not agree to the amicable resolution proposed at that time.
9. The DPC thereafter engaged in further extensive discussions with the Respondent to explore the matter further and to seek an amicable resolution to the complaint of the Data Subject. Following these discussions, including with regard to the responsibilities of the Respondent as a Data Controller under the GDPR, the Respondent advised the DPC, on 24 August 2022, that it had reached an amicable resolution with the Data Subject. The Respondent thereafter provided the DPC with a copy of a settlement agreement between the parties, on 5 September 2022, whereby the Respondent had additionally provided compensation to the Data Subject for working time incurred in bringing the complaint.

10. The DPC received notification from the Recipient SA, on 19 September 2022, that the Data Subject had informed the Recipient SA, on 12 September 2022, that an amicable resolution had been agreed and the proceedings should be discontinued.
11. 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 Act, is deemed to have been withdrawn by the Data Subject.

Confirmation of Outcome

12. For the purpose of Document 06/2022, 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 06/2022 the DPC has now closed off its file in this matter.
13. 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:



Deputy Commissioner

Data Protection Commission