

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 the 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 INTERNAL EDPB DOCUMENT 06/2021 ON
THE PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS, ADOPTED 18 NOVEMBER 2021**

Dated the 30th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 23 January 2019, [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 26 July 2019.

The Complaint

3. The details of the complaint were as follows:
 - a. Following the receipt of a number of unsolicited mail advertisements from the Respondent, the Data Subject contacted the Respondent, on 3 December 2018, to make an access request under Article 15 of the GDPR. The Data Subject then sent a reminder on 4 January 2019, noting that they would raise a complaint with their local supervisory authority if they did not receive any response.
 - b. The Data Subject noted that the Respondent replied on 9 January 2019, confirming that the Data Subject had been removed from their mailing list, and that, if they wished, the Data Subject could return any samples to them for destruction. The Data Subject replied to the Respondent, on 18 January 2019, noting that the Respondent did not provide a response to their access request. The Data Subject further requested that the Respondent clarify how it obtained their personal data. The Respondent did not reply to the issues raised by the Data Subject.
 - c. As the Data Subject was not satisfied with the response received so far from the Respondent, regarding the specific concerns raised, the Data Subject lodged a complaint with the Recipient SA on 23 January 2019.

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 their 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 5 September 2019, the Respondent informed the DPC that, on foot of being contacted by the DPC, they contacted the Data Subject directly and provided them with a copy of their personal data, pursuant to the initial access request lodged by the Data Subject. This included information relating to the source of the personal data of the Data Subject.
8. As part of the amicable resolution process, the DPC thereafter engaged in correspondence with the Data Subject, via the Recipient SA, to provide them with the information obtained from the Respondent and to seek an amicable resolution to the complaint. In this regard, the DPC issued correspondence to the Recipient SA, for onward transmission to the Data Subject, on 12 February 2020, 24 March 2020, 26 August 2020 and 29 January 2021. In particular, the Data Subject was advised in the course of this correspondence that it appeared that their access request had now been complied with, and it was further highlighted that the requested information regarding the source of the personal data of the Data Subject was contained within the response to their request. The Data Subject was also previously advised that the Respondent had erased their data from their mailing list.
9. However, the DPC received a number of responses from the Data Subject, on 7 March 2020, 16 June 2020, 13 January 2021 and 17 March 2021, confirming the Data Subject did not agree to the amicable resolution of their complaint, on the basis of the information provided by the

Respondent. The Data Subject also raised further queries in relation to the handling of their request by the Respondent. Specifically, the Data Subject noted that they had not raised an erasure request with the Respondent, but rather they had sought information as to how the Respondent acquired their personal data. The Data Subject further highlighted the delay in the response to their access request.

10. 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 engaged directly with the Data Subject and an amicable resolution had been reached. 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.
11. 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.
12. On 7 October 2022, and in light of the foregoing, the DPC wrote to the Recipient SA noting that the DPC considered the complaint to have been amicably resolved and withdrawn in accordance with section 109(3) of the Act and that it would conclude the case and inform the Respondent.
13. 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

14. 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.
15. 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:

A handwritten signature in black ink that reads "Tony Delaney". The signature is written in a cursive style with a large, prominent 'T' and 'D'.

Deputy Commissioner

Data Protection Commission