

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 Bayerisches Landesamt für Datenschutzaufsicht (Bavaria DPA) pursuant to Article 77 of the General Data Protection Regulation, concerning Apple Distribution International 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 4<sup>th</sup> day of September 2023



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## **Background**

1. On 9 August 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 of the GDPR with the Bayerisches Landesamt für Datenschutzaufsicht (“the **Recipient SA**”) concerning Apple Distribution International 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) of the GDPR, the Recipient SA transferred the complaint to the DPC on 14 January 2021.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. The Data Subject placed an order using Apple Pay. According to the Data Subject, the Respondent sent the order to an address the Data Subject had not provided when placing the order. The Data Subject later established that both their private and business addresses was stored in their Apple Pay settings. The Data Subject emailed the Respondent on 18 July 2020 seeking an explanation as to how Apple Pay had access to these addresses, as according to the Data Subject, they had not provided these when setting up Apple Pay.
  - b. In their initial reply of 28 July 2020, the Respondent advised the Data Subject that they were investigating the matter. On 30 July 2020, the Respondent emailed the Data Subject with a request to contact them. The Data Subject responded on the same day re-iterating their request for clarification of the concerns raised in their initial email. On 3 August 2020, the Respondent emailed the Data Subject to schedule a call with a member of their development team to review the Data Subject’s account. On 5 August 2020, the Data Subject emailed the Respondent to advise they had not received a call from a member of the team.
  - c. As the Data Subject was not satisfied with the responses received from the Respondent, they lodged a complaint with the Recipient SA on 9 August 2020. On 12 August 2020, the Respondent emailed the Data Subject to apologise for the delay in responding and advised the Data Subject to contact their credit card provider to update their contact details, as the issue appeared to be with the credit card provider and not with Respondent. The Data Subject responded on the same day, noting their dissatisfaction with the Respondent’s reply, including the suggestion that the issue was with the credit card provider, and that their initial queries had not been addressed.
  - d. On 25 September 2020, the Data Subject provided the Recipient SA with a copy of their further exchanges with the Respondent, and advised they were still dissatisfied with the responses 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 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. Further to that engagement, the Respondent clarified to the DPC that:
  - the Data Subject’s private and business addresses were stored on the Data Subject’s device, and were not directly accessible to the Respondent or to the app used to make a purchase. The Respondent also provided additional information, outlining that the merchant or store from which a user makes a purchase only receives

personal data that the customer has reviewed and authorised, via secure measures such as Face ID, Touch ID or the device passcode.

- all shipping suggestions are made to users via their device only - which are under the full control of the user.
  - the response provided to the Data Subject by a member of their customer service team, advising the issue was the credit card provider, was not based on an accurate understanding of the functioning of Apple Pay. Therefore, the Respondent informed the DPC that a member of the executive relations team had reached out to the Data Subject with a gesture of goodwill for this error.
8. In relation to this goodwill gesture, the DPC understands that the Respondent initially made this offer to the Data Subject on 13 November 2020. The Data Subject received this goodwill gesture on 7 May 2021, three months after the initial complaint to the Recipient SA. As far as the DPC is aware, the Data Subject did not make the Recipient SA aware of the fact they had accepted a goodwill gesture from the Respondent.
  9. On 25 January 2023, the DPC wrote to the Data Subject, via the Recipient SA, seeking their views on the information provided by the Respondent. The DPC also requested the Data Subject to notify it, within a specified timeframe, if they were not satisfied with the actions of the Respondent, so that the DPC could take further action. The Recipient SA confirmed that they issued this correspondence to the Data Subject on 1 February 2023.
  10. On 3 April 2023, the Recipient SA informed the DPC that the Data Subject had provided a response, however, they were not clear from the response whether the Data Subject agreed to the amicable resolution proposal. The Recipient SA attempted to contact the Data Subject on 22 February, 14 March 2023 and 20 April 2023 to seek this clarity. On 11 May 2023, the Recipient SA confirmed to the DPC, that no response had been received from the Data Subject.
  11. On 12 May 2023, 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. On 17 May 2023, the Recipient SA confirmed receipt of the DPC correspondence, which had advised that the complaint was deemed withdrawn.
  12. 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**

13. 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.

14. 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:



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Deputy Commissioner  
Data Protection Commission