

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 Microsoft Ireland Operations 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 3rd day of November 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 5 May 2022, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 of the GDPR with the Bayerisches Landesamt für Datenschutzaufsicht (“the **Recipient SA**”) concerning Microsoft Ireland Operations 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 20 June 2022.

The Complaint

3. The details of the complaint were as follows:
 - a. On 11 February 2022, the Data Subject received an email from the Respondent, within which they were informed that they would need to create a new Microsoft account, so that they could continue to play the Minecraft game. Within this correspondence, the Respondent also informed the Data Subject that this migration to a Microsoft account needed to occur by 10 March 2022.
 - b. On 11 February 2022, the Data Subject responded to the Respondent, contesting the reasoning for this, and requesting that their access to the game in question remain, without having to create a Microsoft account. On 16 February 2022, the Data Subject received a response from the Respondent, directing them to information on the migration of accounts.
 - c. In further correspondence to the Respondent on 3 May 2022, the Data Subject contested the legality of this migration to a Microsoft account under the GDPR. The Data Subject also noted that they attempted to create an anonymised account, but were unsuccessful, and therefore the migration did not occur.
 - d. As the Data Subject did not receive a response from the Respondent, they lodged a complaint with the Recipient SA.

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, on 4 January 2023, the Respondent provided information in respect of this account migration. In this regard, the Respondent noted that certain information, such as email address, selected password, country, and date of birth were requested for user safety, and to ensure compliance with relevant child privacy regulations. Within this same response, the Respondent also noted that users were notified about the migration in advance and given several months to complete the migration. Those who did not migrate were notified they would lose access to play Minecraft Java Edition. The Respondent also noted that the Data Subject could still migrate account ownership, and restore access to their game. The Respondent also offered a full refund of the game if the Data Subject did not wish to migrate account ownership, as a proposal for amicable resolution.
8. After further engagement, on 26 January 2023, the Respondent provided a revised amicable resolution proposal with an improved gesture of goodwill.
9. On 21 March 2023, the DPC wrote to the Data Subject via the Recipient SA, providing the information as set out above. This letter sought the Data Subject’s views on the Respondent’s improved proposal, requesting that the Data Subject notify it within a specified timeframe if

they were not satisfied with the proposal of the Respondent, so that the DPC could investigate the matter further.

10. On 19 June 2023, the Recipient SA confirmed that it had not received a response from the Data Subject to this amicable resolution proposal and gesture of goodwill. In the circumstances, the DPC thereafter requested that the Respondent contact the Data Subject directly to see if they wished to accept the gesture of goodwill.
11. On 14 July 2023, the Respondent also confirmed to the DPC that it had not received a response from the Data Subject to this gesture of goodwill proposal. On foot of this response, the DPC thereafter requested that the Respondent would respectfully honour the gesture of goodwill made to the Data Subject, should they provide a response at some point in the future.
12. On 19 July 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 6 September 2023, the Recipient SA confirmed receipt of the DPC correspondence, which had advised that the complaint was deemed withdrawn.
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 "Tom Delaney". The signature is written in a cursive style with a large, prominent 'D'.

Deputy Commissioner
Data Protection Commission