

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 Berliner Beauftragte für Datenschutz und Informationsfreiheit (Berlin SA) pursuant to Article 77 of the General Data Protection Regulation, concerning National Pen Promotion 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 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 6 June 2022, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Berliner Beauftragte für Datenschutz und Informationsfreiheit (“the **Recipient SA**”) concerning National Pen Promotion 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 2022.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. The Data Subject received an advertising letter from the Respondent which was addressed using the Data Subject’s full name, which the Data Subject stated was not publicly known.
  - b. On 26 March 2022, the Data Subject submitted an access request, by way of registered post, pursuant to Article 15 GDPR seeking a copy of all information to which they were entitled, including confirmation of where the Respondent had obtained their personal data from.
  - c. The Data Subject did not receive any response from the Respondent and, on 6 June 2022, submitted their complaint to 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 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. On 13 October 2022, the DPC wrote to the Respondent formally commencing its investigation and requesting that it address the concerns raised.
- 8. In its response to the DPC’s investigation, the Respondent acknowledged its failure to respond to the Data Subject’s access request within the statutory timeframe. The Respondent explained that it had identified a weakness in how it treats registered post and that, as a result, the Data Subject’s letter was not transmitted in time to the department in charge of responding to subject access requests. The Respondent further explained that it has since modified the registered letter process *“to ensure prompt digitalisation of such letters and immediate communication to [the] appropriate department”*.
- 9. In addition to the above, the Respondent confirmed that it had, on 11 November 2022, written to the Data Subject directly to apologise for the delay in responding to the request and responding to their access request in full. A copy of this correspondence and a redacted copy of the Respondent’s response to the access request were provided to the DPC. The DPC noted that the Respondent had identified a German company as the source of any personal data not collected directly from the Data Subject.
- 10. In light of the responses provided by the Respondent to the Data Subject’s access request, its explanations for the delay in responding to same, the apology offered to the Data Subject, and information about improvements made to prevent the recurrence of similar issues, the DPC considered it appropriate to conclude the complaint by way of amicable resolution. As such, on 16 January 2023, the DPC wrote to the Data Subject (via the Recipient SA) proposing an amicable resolution to the complaint. In the circumstances, the DPC asked the Data Subject to notify it, within a specified timeframe, if they were 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.

11. On 15 June 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.
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