

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with Commission Nationale de l'Informatique et des Libertés pursuant to Article 77 of the General Data Protection Regulation, concerning [REDACTED].

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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements (adopted on 18 November 2021)

**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 19<sup>th</sup> day of August 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. On 13 July 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with Commission Nationale de l'Informatique et des Libertés (“the **Recipient SA**”) concerning [REDACTED] (“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 19 March 2021.

## The Complaint

3. The details of the complaint were as follows:
  - a. The Data Subject emailed the Respondent on 02 July and 03 July 2020 to advise that he had lost access to his existing account when downloading the application to his new mobile phone.
  - b. On 05 July 2020, the Respondent advised the Data Subject that as it appeared that he already had an account using the same phone number they had to delete the first account, as users are not allowed to have two accounts using the same telephone number for safety reasons. The Respondent advised the Data Subject that the original account could not be restored and apologised for any inconvenience.
  - c. The Data Subject was unhappy with this response and alleged he had not been adequately informed about the Respondent’s approach to data retention and retention periods, and requested this information pursuant to Article 13 GDPR. The Data Subject advised the Respondent that he was seeking access to his former profile and the associated data, as it takes time to become [REDACTED]’ again on this app.
  - d. The Data Subject did not receive any response from the Respondent to that request.

## 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 data subject rights and to obtain transparent information for the exercise of those 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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements, adopted on 18 November 2021 ("**Document 06/2021**"), 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 the Respondent in relation to the subject matter of the complaint. Further to that engagement, the Respondent provided a detailed response to the DPC explaining how they comply with Article 13 GDPR, and how according to their Terms of Use and Community Guidelines, members cannot maintain more than one account.
8. On 07 September 2021, the DPC issued correspondence to the Recipient SA for onward transmission to the Data Subject outlining the Respondent's response and offer to resolve the matter. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if he was not satisfied with the information provided, so that the DPC could take further action.
9. On 23 November 2021, the DPC issued a reminder correspondence to the Recipient SA enquiring if there was any response from the Data Subject. On 15 December 2021, the Recipient SA responded to the DPC that there had been no response received from the Data Subject. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint was deemed to have been amicably resolved.

10. 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.

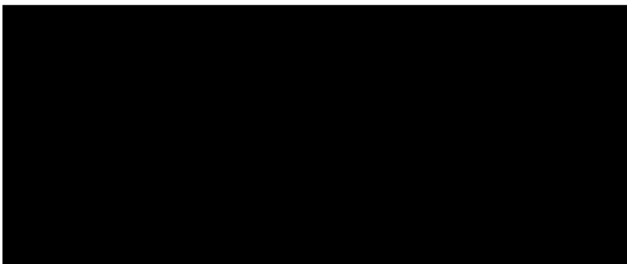
**Confirmation of Outcome**

11. For the purpose of Document 06/2021, 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 06/2021 the DPC has now closed off its file in this matter.

12. 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