

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 the Bavarian Data Protection Authority 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 12 MAY 2022**

**Dated** the 21st day of October 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## **Background**

1. On 21 December 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Bavarian Data Protection Authority (“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) GDPR, the Recipient SA transferred the complaint to the DPC on 11 March 2021.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. On 17 November 2020, the Data Subject submitted an access request to the Respondent, seeking access to their personal data.
  - b. The Data Subject was not satisfied with the response received 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 his/her 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, it was established that the Data Subject's account had been suspended due to a violation of the Respondent's Service Agreement. In the circumstances, the Respondent took the following action:
  - a. The Respondent agreed to share the specific reasons for the Data Subject's account suspension with the DPC, on a confidential basis.
8. On 31 May 2021, the DPC outlined the complaint to the Respondent, noting that they sought a copy of all their personal data. On 19 August 2021, the Respondent confirmed to the DPC that the Data Subject's account was suspended for a violation of its Services Agreement, and provided the DPC with the specific reasons for the Data Subject's account suspension on a confidential basis. The Respondent confirmed that its customer support team had reviewed the Data Subject's appeals of its decision to suspend their account, but that the suspension had been upheld.
9. On 8 September 2021, the DPC contacted the Data Subject via the Recipient SA. The DPC informed the Data Subject that it had sought clarification from the Respondent in relation to the Data Subject's account suspension, including information on the investigation carried out, the decision-making process which led to the Data Subject's account suspension, and whether the Data Subject had exercised any appeal mechanism. The DPC informed the Data Subject that it had reviewed the reasons for their account suspension provided by the Respondent and that it was satisfied that it had complied with its obligations under Article 15 GDPR. The DPC noted that it was now clear that the remaining aspects of the complaint related solely to the manner in which the Respondent had enforced its terms and policies, an issue not falling within the scope of the GDPR or the 2018 Act. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if he/she was 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.
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.

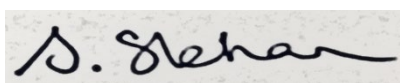
### **Confirmation of Outcome**

11. For the purpose of Document 06/2022, 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.

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:

A handwritten signature in black ink, appearing to read 'S. Skehan', on a light-colored rectangular background.

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**Sandra Skehan**

**Deputy Commissioner**