

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 Dutch Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning Meta Platforms Ireland 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 2nd day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 6 February 2020, [REDACTED] (“**the Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Dutch Data Protection Authority (“**the Recipient SA**”) concerning Meta Platforms Ireland 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 20 October 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject submitted an access request to the Respondent following receipt of a notification that their Instagram account password had been changed without their knowledge. However, the Data Subject was unable to regain access to their account following the instructions provided by the Respondent in their correspondence. The Data Subject sought to regain access to their account.
 - b. The Data Subject was not satisfied with the Respondent’s response.

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 the Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the Data Subject’s account displayed signs that it may have been compromised. In the circumstances, the Respondent took the following actions:
 - a. The Respondent agreed to grant the Data Subject access to the requested account, provided that the Data Subject could supply a secure e-mail address and complete its verification procedure; and
 - b. Following the successful completion of its verification procedure, the Respondent confirmed to the DPC that the Data Subject had regained access to their Instagram account.
8. On 1 February 2021, the DPC wrote to the Respondent outlining the Data Subject’s complaint, noting that the Data Subject had made numerous unsuccessful attempts at regaining control of their account. On 15 February 2021, the Respondent responded to the DPC, outlining its processes regarding how users can regain access to their accounts, and also noting that once the Data Subject provided the necessary information to verify their identity it would be able to assist further.
9. On 27 April 2021, the DPC forwarded correspondence to the Recipient SA for the attention of the Data Subject, outlining the substance of the Respondent’s response. The DPC noted that the Data Subject needed to provide a secure e-mail address, which was not previously associated with any of the Respondent’s other services, and complete the Respondent’s verification procedure to progress further. The letter was again resent to the Recipient SA on 29 December 2021.
10. On 13 April 2022, the DPC received correspondence from the Data Subject via the Recipient SA. In their correspondence, the Data Subject highlighted that while they did not recall the Respondent offering them an option to regain access by providing a secure alternative e-mail and completing verification, they considered that it was an acceptable option for amicable resolution. On 29 April 2022, the DPC wrote to the Respondent, providing it with the Data

Subject's response and asking it to reach out to the Data Subject directly, in order to assist the Data Subject in regaining access to their account.

11. On 12 May 2022, the Respondent provided the DPC with a copy of the correspondence it had exchanged directly with the Data Subject. In its correspondence to the Data Subject, the Respondent noted that it had conducted a review of their account and found evidence that suggested it might have been compromised. The Respondent outlined how the Data Subject could progress regaining access to their account by providing a secure e-mail address. On 7 June 2022, the DPC wrote to the Data Subject via the Recipient SA, providing them with a copy of the correspondence received from the Respondent. The DPC highlighted to the Data Subject that they would need to supply a secure e-mail address, which was not previously associated with any of the Respondent's services. After which, the Respondent would be able to verify their identity and assist with regaining ownership of their account. In the circumstances, the DPC asked the Data Subject to notify it, within two months if they were not satisfied with the outcome, so that the DPC could take further action. On 8 June 2022, the DPC received confirmation from the Respondent that the Data Subject was able to complete the verification process and had successfully regained access to their account. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have been amicably resolved.
12. On 6 October 2022, 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.
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