



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0750 OF 2025

AORI CHRIS KIPKORIR.....COMPLAINANT

-VERSUS-

PLATINUM CREDIT LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 8(1)(f) and 56 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. The Complainant lodged a complaint on 25th May 2025 alleging that despite making a formal request for data erasure and cessation of contact, he continued receiving unsolicited communication from the Respondent.

B. LEGAL BASIS

2. Article 31(c) and (d) of the Constitution of Kenya provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter known as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter as 'this Office' and/or 'the Office') was established pursuant to Section 5 of the Act and is mandated with the responsibility of regulating the processing of personal data; ensuring that the processing of personal data of a data subject is guided by the principles set out in Section 25 of the Act; protecting the privacy of individuals; establishing the legal and institutional mechanism to protect personal data and

providing data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

4. Section 8(1)(f) of the Act provides that the Office can receive and investigate any complaint by any person on infringements of the rights under the Act. Furthermore, Section 56(1) of the Act provides that a data subject who is aggrieved by a decision of any person under the Act may lodge a complaint with the Data Commissioner in accordance with the Act.
5. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as 'the Enforcement Regulations') which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

C. BACKGROUND OF THE COMPLAINT

6. This Office received a complaint from the Complainant on 25th May, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 19th June 2025 and referenced ODPC/CIE/1/5 VOL II (394). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, it was in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following: -
 - a. A response to the allegations made against it by the Complainant;
 - b. A contact person who can provide further details as regards the complaint
 - c. Any relevant materials or evidence in support of the response;
 - d. Details of how you obtain, store, and process personal data, and whether the complainants consented to the processing of their personal data;

- e. The lawful basis relied upon to process the complainant's personal data;
 - f. An elaborate representation of how data subjects can exercise their rights in relation to data protection.
 - g. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
 - h. Any other relevant information it wishes the Office to consider.
8. The Respondent submitted its response to the Notification of Complaint letter.
9. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The Complaint relates to the allegation that despite making a formal request for data erasure and cessation of contact, the complainant continued receiving unsolicited communication from the Respondent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant stated that the respondent persistently violated his rights under the Act by engaging in unsolicited communication over a two-year period.
12. The Complainant said that on 13th May 2025, he submitted a formal demand letter and a DPG 5 erasure form, citing unlawful processing of his data and requesting a complete cessation of contact.
13. The Complainant adds that despite these submissions, he received a phone call and a text message from individuals identifying as the respondents' agents on 22nd and 23rd May 2025, respectively.
14. The Complainant stated that the Respondent had failed to erase his data, failed to provide confirmation of compliance, and continued to process his personal information without consent.

15. He disputed the Respondent's claim that he agreed to withdraw the complaint, clarifying that while he acknowledged an apology, he never expressed satisfaction or consented to case withdrawal.
16. The Complainant reported a new violation that on 16th July 2025, he received a loan marketing call from an agent named D*****, followed by an apology call from a supervisor named M*****, proving continued unauthorized use of his data.
17. The Complainant expressed concern over the company's access to his employment details and the malicious flagging of his number as spam on Truecaller.

ii. THE RESPONDENT'S RESPONSE

18. The Respondent claimed that the Complainant is not in their database and has never been a customer of Platinum Credit (Kenya) Ltd.
19. The Respondent noted that the contact numbers reported by the Complainant were not linked to their employees or authorized agents and stated that the complainant must provide verifiable proof.
20. The Respondent alleged that unknown individuals were impersonating their brand and that they had initiated police reporting to address the matter.
21. The Respondent stated that all their marketing communications provide a clear opt-out mechanism and that their agents are trained in compliance with the Data Protection Act.
22. The Respondent indicated that they contacted the complainant in good faith and claimed he expressed satisfaction and intended to withdraw the complaint.
23. The Respondent stated they had explained their policies directly to the Complainant and believed the issue was resolved.

F. INVESTIGATIONS UNDERTAKEN

24. In exercising its investigative mandate as provided for in the Act, this Office summoned the Respondent's Busia regional manager, who stated as follows:

- i. She received a report from Platinum credit headquarters HR to explain why her agents were contacting a client without consent on 16th July 2025;
- ii. She found out why the agent contacted the particular person, whom she confirmed was contacted on 17th July 2025;
- iii. She called the Complainant to apologize, but she was not aware that there was a complaint with ODPC.
- iv. Later, the regional manager stated that she received the agent's termination letter from the company's Human Resources department.
- v. She confirms that agents go for data collection, and the hard copy file is sent to the Headquarters.
- vi. Data collection is done individually, whereby an agent can go from one region to another as long as they are doing their work, but the team lead gets the report for each Individual.
- vii. ODPC can retrieve the communication to desist through Data Protection Officer.

G. ISSUES FOR DETERMINATION

25. In light of the above, the following issues fall for determination by this Office:

- i. Whether there was a violation of the Complainant's rights under the Act.
- ii. Whether the Respondent fulfilled its obligations under the Act.
- iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

26. Section 40 (1)(b) of the Act also provides for the right of rectification and erasure and states that a data subject may request a data controller or processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.

27. Further to the above, Regulation 12 (3) of the General Regulations provides that a data controller or data processor shall respond to a request for erasure within fourteen days of the request.

28. The Complainant avers that on 13th May 2025, he submitted a formal demand letter and a DPG 5 erasure form, citing unlawful processing of his data and requesting a complete cessation of contact. The Complainant adds that despite these submissions, he received a phone call and a text message from individuals identifying as the respondents' agents on 22nd and 23rd May 2025, and 16th July 2025 respectively.

29. In that regard, the Office finds that the Respondent failed to erase the Complainant's personal data within the stipulated timelines in violation of Section 40(1)(b).

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

30. The Complainant stated that despite making a formal request for data erasure and cessation of contact to the Respondent, he continued receiving unsolicited communication from the Respondent.

31. Investigations conducted by the Office revealed that the Complainant indeed received numerous communications from the Respondent's agents despite him lodging formal requests to the Respondent to stop any further processing and erase his personal data.

32. Section 30 of the Act gives instances where a data controller or processor can lawfully process personal data and states that, "*a data controller or processor shall not process data unless the data subject consents to the processing for one or more specified purposes or the processing is necessary for the reasons given in subsection (b).*"

33. The conditions of consent are provided under Section 32 of the Act which provides that a data controller shall bear the burden of proof to establish that the data subject consented to the processing of their personal data for a specified purpose.

34. It was upon the Respondent to demonstrate that it obtained express consent from the Complainant before processing his personal data. This burden was not discharged by the Respondent as it failed to prove that it had obtained express consent from the Complainant to process his personal data. Also, the Respondent did not establish any other lawful basis on which it relied upon to process the Complainant's personal data.

35. From the foregoing, this Office finds that in as far as issue no. (ii) is concerned the Respondent failed to fulfill its obligations under the Act. The Respondent unlawfully processed the Complainant's personal data.

III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

36. Under Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. Further, the remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

37. Having considered the merits of the Complaint, the evidence adduced by both the Complainant and the Respondent, and having found that the Respondent did not fulfil its obligations as required by the Act, it therefore, follows that there has been a violation of the Act by the Respondent to that extent.

38. Section 65 (1) of the Act provides for compensation to a data subject and states that a person who suffers damage by reason of a contravention of a requirement of the Act is entitled to compensation for that damage from the data controller. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.

39. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

40. The Complainant claimed for the remedy of compensation against the Respondent. The Respondent did not respond to this prayer for the remedy of compensation.

41. Having found that the Respondent violated the Complainant's right to rectification and erasure the Respondent is hereby directed to compensate the Complainant **KES 250,000/- (Two Hundred and Fifty Thousand Shillings Only)**.

42. Having found that the Respondent processed the Complainant's personal data unlawfully thereby not fulfilling its obligations under the Act, an Enforcement Notice to issue against the Respondent.

H. FINAL DETERMINATION

43. The Data Commissioner therefore makes the following final determination: -
- i. The Respondent is hereby found liable.
 - ii. The Respondent is hereby **ordered to pay the Complainant Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000/=)** as compensation; and
 - iii. An Enforcement Notice is hereby issued to the Respondent.
 - iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 22nd day of August 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**