



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0767 OF 2025

JUSTINE NYACHIO MAKANA.....COMPLAINANT

-VERSUS-

MYCREDIT LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Sections 8(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 alleges that the Respondent processed and/or continues to process his personal data for marketing purposes without a lawful basis.

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 '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 (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 28th May, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was the 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 referenced ODPC/CIE/CON/2/1 (395). In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, the Respondent was asked to provide this Office with the following:
 - a) A response to the allegations made against them by the Complainant;
 - b) A contact person who would provide further details regarding the complaint
 - c) Details of how the Respondent obtains, stores and processes personal data and proof of consent of such processing by the Complainant.
 - d) Any relevant material and/or evidence in support of the statement of response
 - e) Detailed procedure of how data subjects exercise their data protection rights.
 - f) Mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
 - g) Any other information they wished the Office to consider.

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8. The Respondent expressed willingness to settle the matter through Alternative Dispute Resolution, which was duly facilitated by this Office upon the Complainant's consent; however, following the failure of the ADR process, the matter reverted to this Office for determination, and despite being notified, the Respondent failed to provide any further response.

D. NATURE OF THE COMPLAINTS

9. The Complainant contends that the Respondent unlawfully processed his personal phone number by sending unsolicited promotional and marketing messages without his consent. He asserts that the said messages did not contain an opt-out mechanism as mandated under the Act, thereby denying him the opportunity to exercise his statutory right to object to such processing.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleges that on 29th January 2025, the Respondent persistently sent copious unsolicited promotional messages without providing an opt-out mechanism.
11. The Complainant states that due to the lack of the opt-out option, he was unable to unsubscribe and consequently suffered harassment and distress from persistent promotional messages and unwanted calls made by the Respondent's agents.
12. The Complainant pleads that the Respondent, in its capacity as a data controller, violated his personal data rights despite being fully cognizant of the obligation on data controllers and processors to obtain express consent and inform data subjects of the purpose for which their data is to be processed.

ii. THE RESPONDENT'S RESPONSE

13. The Respondent expressed willingness to settle the matter through Alternative Dispute Resolution, which was duly facilitated by this Office upon the Complainant's consent; however, following the failure of the ADR process, the matter reverted to this Office for determination.

14. The Respondent submitted its statement of response on 15th August 2025.
15. The Respondent alleges that the Complainant's case is premised on a single screenshot of a message sent on 29th January 2025 and no further evidence of communication exists.
16. The Respondent avers that the Complainant delayed in raising the complaint for over seven (7) months.
17. The Respondent further asserts that the Complainant failed to exhaust his statutory rights, including the right to be forgotten, before escalating the matter to the Office.
18. The Respondent states that, had the Complainant withdrawn his consent in January 2025, MyCredit would have promptly deleted his data.
19. Notwithstanding, the Respondent maintains that it allegedly deleted the Complainant's data from its system, and therefore he "is forgotten."
20. The Respondent accordingly prays that the complaint be discontinued for failure by the Complainant to exhaust available remedies before approaching the Office.
21. The Respondent further avers that the telephone numbers relied upon by the Complainant (0743 9** 5**, 0720 6** 7**, 0798 5** 9**, 0720 3** 3**) are not its official contact numbers.
22. The Respondent asserts that it only operates through two registered and verifiable numbers, namely 0799 707 100 and 0111 054 490, managed by its call centre staff comprising ten (10) employees.
23. The Respondent denies that the Complainant has adduced proof that he was ever contacted through its official channels.
24. Following internal investigations, the Respondent established that the persons who sent the alleged messages are independent brokers promoting loan products for multiple financial institutions, including MyCredit, in return for commissions.
25. The Respondent avers that these brokers acted independently for their own gain and without any authority or instruction.

26. The Respondent further states that it is not aware of how these brokers obtained the Complainant's personal data.
27. The Respondent vehemently distances itself from the conduct of the brokers, contending that the Complainant ought to have lodged complaints directly against them.
28. The Respondent further alleges that the Complainant improperly directed his complaint against it rather than pursuing the true perpetrators.
29. The Respondent contends that, upon receipt of the notice of complaint, it took proactive measures to reach out to the brokers and cautioned them against continuing the complained-of practices.
30. The Respondent also alleges that the Complainant has not produced evidence showing that he made efforts to require the brokers to desist from contacting him. Accordingly, the Respondent maintains that liability cannot properly attach to it.

F. ISSUES FOR DETERMINATION

31. In light of the above, the complaint, the Respondent's responses and evidence adduced together with the investigations conducted, the following issues fall for determination by this Office:
- i. Whether the Respondent fulfilled its obligations under the Act;
 - ii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

32. In considering this issue, the Office will examine whether the Complainant consented to the use of his personal data for direct marketing purposes.
33. Section 25(a) of the Act provides, that every data controller or data processor shall ensure that personal data is processed in accordance with the right to privacy of the data subject and processed lawfully, fairly and in a transparent manner in relation to any data subject.

34. Section 37(1) of the Act states that, *"a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person –*

a) Has sought and obtained express consent from a data subject; or

b) Is authorised to do so under any written law and the data subject has been informed of such use when collecting the data from the data subject."

35. Regulation 14(1) of the General Regulations provides the interpretation of 'commercial purposes' and provides that for the purposes of Section 37(1) of the Act, *a data controller or data processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting directly or indirectly, a commercial transaction.*

36. By sending messages to the Complainant's phone number to market their products to her, the Respondent was processing the Complainant's personal data for commercial purposes as defined above.

37. Regulation 15 of the General Regulations sets out the permitted commercial use of personal data and states that, *"a data controller or data processor may use personal data, other than sensitive personal data, concerning a data subject for the purpose of direct marketing where—*

a) the data controller or data processor has collected the personal data from the data subject;

b) a data subject is notified that direct marketing is one of the purposes for which personal data is collected;

c) the data subject has consented to the use or disclosure of the personal data for the purpose of direct marketing;

d) the data controller or data processor provides a simplified opt out mechanism for the data subject to request not to receive direct marketing communications; or

e) the data subject has not made an opt out request.”

38. Pursuant to Section 29 of the Data Protection Act, the Respondent bears a statutory duty of notification. It was incumbent upon the Respondent to demonstrate that it had lawfully collected the Complainant's personal data, duly notified the Complainant that such data would be processed for purposes of direct marketing, and obtained his express consent prior to using the data to market its products and services.

39. Further, the Act imposes an additional obligation on data controllers and processors who engage in direct marketing to ensure that any such communication provides a clear and simplified opt-out mechanism to enable the data subject to withdraw from further marketing at any time.

40. From the evidence adduced before this Office, the impugned message did not provide an opt-out mechanism as expressly required under Regulation 15(e) of the Data Protection (General) Regulations, 2021. Consequently, the Respondent failed to discharge the burden of proof in demonstrating either that it had obtained the Complainant's prior consent to process his personal data for commercial purposes, or that it had provided him with a simplified opt-out mechanism.

41. In view of the foregoing, the Office finds and holds that the Respondent failed to fulfil its obligations under the Data Protection Act and the attendant Regulations.

II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT

42. Pursuant to 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.

43. As a remedy, the Complainant sought an order directing the Respondent to immediately cease any further processing of his personal data and further prayed for an award of monetary compensation for the unlawful processing and the harm suffered.

44. Section 65(1) of the Act provides, that a person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or the data processor. Section 65(2) provides, a data controller involved in processing of personal data is liable for any damage caused by the processing.

45. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.

46. Having found that the Respondent processed the Complainant's personal data for commercial purposes without a lawful basis as against Section 37 as read together with Regulation 15(e) of the General Regulations of the Act, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 50,000 (Fifty Thousand Kenya Shillings)**.

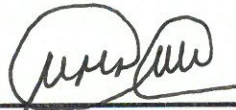
47. In so doing, this Office takes into account the nature and extent of violation with regard to unlawful processing of the Complainant's personal data.

G. FINAL DETERMINATION

48. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is ordered to compensate the Complainant **KES 50,000 (Fifty Thousand Kenya Shillings)**.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 25th day of August 2025



Immaculate Kassait, MBS
DATA COMMISSIONER