



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1685 OF 2023

SIMON MUKABANE OKWOMI.....COMPLAINANT

-VERSUS-

NATIONAL HEALTH INSURANCE FUND.....RESPONDENT

DETERMINATION

(Pursuant to Section 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 Office received a complaint on 15th September 2023 against the Respondent alleging that the Respondent wrongly added people unknown and unrelated to the Complainant as his beneficiaries under his NHIF card and illegally removed his wife as his lawful beneficiary.

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 (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 COMPLAINTS

6. This Office received a complaint from the Complainant on 15th September 2023. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations') from the Complainant who is the aggrieved data subject.
7. The National Health Insurance Fund (hereinafter the 'Respondent' and 'NHIF') is a State Parastatal which provides medical insurance to its member contributors and dependants.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against it *via* a letter dated 16th October, 2023 referenced ODPC/CONF/1/5 VOL 1 (492). In the notification of the complaint, the Respondent was to provide: -
 - a. A response to the allegation made against them by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The measures put in place to observe the Complainant's right to correction of false or misleading data under Sections 26 and 40 of the

Act as read with Regulation 10 of the Data Protection (General) Regulations, 2021;

- d. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant including adoption of the Alternative Dispute Resolution process; and
 - e. Details (in writing) of their technological and organizational safeguards put in place to ensure that such occurrence mentioned in the complaint do not take place again.
9. The Respondent responded to the notifications of complaint *via* a letter dated 20th November 2023.
10. This determination is therefore as a result of analysis of the complaint as received and the responses from the Respondent.

D. NATURE OF THE COMPLAINT

11. The Complainant alleged that the Respondent wrongly added people who are unknown to him as beneficiaries under his NHIF card and illegally removed the name of his wife, a proper beneficiary from the card, and his wife could not pay for her medical expenses using his card.
12. The Complainant stated that the Respondent declined to rectify the wrong names of the beneficiaries hence his wife could not access treatment using his card and he had to pay from his pocket.
13. The Complainant requested for an immediate rectification of the names of his beneficiaries under his NHIF card by deleting or removing the wrong beneficiaries and to enable his spouse to access treatment under his card. He also prayed for compensation from the Respondent for breach of his data.

E. SUMMARY OF EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

14. The Complainant provided demand letters sent to the Respondent demanding for immediate rectification of his data. He also attached a screenshot of his

member data summary indicating his membership details, his dependants, in-patient claims, unprocessed notifications and outpatient visits.

15. The documents submitted by the Complainant indicated that his spouse was listed as a dependant and spouse under the Complainant's cover.

ii. THE RESPONDENT'S RESPONSE

16. In its response, the Respondent indicated that on 9th July 2023, there was an update in its systems to include the Complainant's spouse and the alleged other unrelated dependants under the Complainant's card number. At that time, its ICT systems had not incorporated a validation control to confirm the Complainant's Identification Number (ID no.) when updating dependants.

17. The Respondent therefore alluded that there was a possibility that dependants from a different member ID were inadvertently added to the system resulting to the incorrect dependants on the Complainant's cover. However, the Respondent alleged that there were no subsequent amendments that were made to include another spouse to the Complainant's card.

18. The Respondent alleged that none of the six unrelated dependants accessed medical benefits under the Complainant's card with the benefits exclusively utilized by the Complainant and the declared spouse.

19. With regards to the measures put in place to observe the Complainant's rights to correction of the false or misleading information, the Respondent alleged that a response dated 11th August 2023 was drawn and addressed to the Complainant's advocate providing the course of action to be undertaken to resolve the matter. However, the Respondent stated that the letter was not delivered due to the change of the advocates physical location, but it was eventually delivered *via* the advocate's Whatsapp phone number and the advocate acknowledged receipt.

The Respondent however did not provide proof of these assertions.

20. The Respondent stated that all the unrelated dependants have since been removed from the Complainant's cover and it regrets the error.

The Respondent did not provide proof of this allegation.

21. The Respondent stated that it has put in place stringent control measures to rectify and prevent such discrepancies and that currently, the system includes a confirmation control that prompts users to enter the Complainant's ID no. twice, serving as a validation measures.

The Respondent did not demonstrate these control measures as stated in their response.

22. Further, the Respondent stated that it has integrated their system with the Integrated Population Registration Services (IPRS) for purposes of verification of beneficiaries with ID numbers to submit certified copies of their dependants' birth certificates and ID numbers at their service points for any updated to be carried out.

The Respondent did not provide evidence of this verification system.

F. ISSUES FOR DETERMINATION

23. The following issues fall for determination by this Office:

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

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

24. The Complainant alleged that other unknown beneficiaries were added to his cover hence his spouse could not access the services. However, the screenshot he provided indicated that his spouse was indeed a listed beneficiary under his card. The contention therefore is the alleged illegal addition of the other unknown persons as beneficiaries to his NHIF card cover.

25. The Complainant is a data subject within the definition of the Act as the names of beneficiaries to be included in his NHIF card cover are submitted to NHIF by him, and therefore, he has rights under Section 26 of the Act. Particularly, the Complainant has the right to correction of false or misleading data and to deletion of false or misleading data about him under Section 26 (d) and (e) of the Act.
26. Further, Section 40 (1) (a) of the Act provides for the right of rectification and erasure and states that a data subject may request a data controller or data processor to rectify, without undue delay, personal data in its possession or under its control that is inaccurate or misleading. Section 40 (1)(b) of the Act provides that a data subject may request a data controller or data processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorised to retain, irrelevant, excessive or obtained unlawfully.
27. The Complainant provided demand letters dated 24th March 2023 and 21st July 2023 addressed to the Respondent demanding the immediate rectification of his card and removal of the unknown dependants. The Respondent allegedly failed to adhere to this request hence the complaint lodged to this Office.
28. The Respondent admitted in its response that there was a possibility that dependants from a different member ID were inadvertently added to the system and as a result, incorrect dependants were added to his cover.
29. The Respondent did not prove its assertions that the alleged unrelated dependants were removed from the Complainant's cover and did not demonstrate the measures put in place to rectify and prevent such discrepancies.
30. This Office therefore finds that the Complainant's rights under Sections 26 (d) and (e) and 40 (1) (a) and (b) of the Act were violated by the Respondent.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

31. The Respondent is a data controller and a data processor within the definitions of the Act and therefore has obligations pursuant to the Act.

32. The Respondent has an obligation under Section 25 of the Act to adhere to the principles of data protection while processing the Complainant's personal data. Particularly, the Respondent is obligated under Section 25 (f) of the Act which states that every data controller or data processor shall ensure that personal data is accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified **without delay**.

33. The Respondent did not rectify the inadvertent addition of unlawful dependants on the Complainant's cover up until the intervention of this Office. This was contrary to the provisions of the principles of data protection as envisaged under the Act.

34. Further, Section 41 of the Act as read with Part V of the Data Protection (General) Regulations, 2021 provides for data protection by design or by default. The Respondent indicated that their ICT system had not incorporated a validation control for confirming the Complainant's ID card number when updating dependants hence unknown dependants were inadvertently added to the system.

35. This is an indication that the Respondent's systems do not comply with the provisions of the Act to incorporate data protection by design and by default.

36. From the above, this Office finds that the Respondent did not fulfil its obligations as stipulated under the Act.

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

37. 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.

38. The Complainant requested for an immediate rectification of the names of his dependants under his NHIF card by deleting or removing the wrong beneficiaries and an order for compensation from the Respondent for breach of his data.

39. Having found that the Respondent did not fulfil its obligations under the Act, an Enforcement Notice shall be issued against the Respondent pursuant to Section 58 of the Act.

40. The Respondent indicated that the alleged dependants have since been removed from the Complainant's cover. However, the Respondent did not demonstrate that indeed the Complainant's details in his NHIF card were corrected. An Enforcement Notice to issue to the Respondent in this regard.

41. Whereas he claimed that his spouse was unable to utilise his NHIF cover and as such he had to pay for her medical bill from his pocket, the Complainant did not quantify the amount expended for purposes of compensation. Specific damages need to be pleaded and justified by the person praying for the same. Therefore, this Office is not compelled to make an order for compensation.

11/4

G. FINAL DETERMINATION

42. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable for violating the Complainant's rights and failing to fulfil its obligations under the Act.
- ii. An Enforcement Notice be issued against the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 11th day of December 2023.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

