



## OFFICE OF THE DATA PROTECTION COMMISSIONER

IN THE SUO MOTO INVESTIGATION NO. ODPC/SM/0010/2025

ON

CAPITAL SACCO LIMITED.....RESPONDENT

***(DETERMINATION ON THE SUO MOTO INVESTIGATION BY THE OFFICE OF THE DATA PROTECTION COMMISSIONER ON PERSONAL DATA PROCESSING PRACTICES BY CAPITAL SACCO - MERU)***

### **DETERMINATION**

*(Pursuant to Section 8(1)(f), 9(1) (a), 56 and 57 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)*

#### **A. INTRODUCTION**

1. On 24<sup>th</sup> March 2025, the Office instituted a *suo moto* investigation, being, ODPC Suo Moto Investigation NO. ODPC/SM/0010/2025, on its own initiative into Capital Sacco and taking cognizance of the public interest generated by the entity's personal data processing activities.

#### **A. LEGAL BASIS**

1. 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.
2. 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

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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.

3. Section 9(1)(a) of the Act provides that the Office shall has the power to conduct investigations on its own initiative, or on the basis of a complaint made by a data subject or a third party.
4. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaint 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.

#### **B. BACKGROUND OF THE INVESTIGATION'**

5. Capital Sacco (hereinafter the 'Respondent') is a credit financing facility offering loans to members of the public. The facility primarily, and to a large extent, processes high volumes of personal data from its clients seeking its services.
6. Concerns relating to the processing and use of the collected data have arisen. These concerns include inappropriate use of images as personal data collected, violation of the data subjects' rights, and inappropriate processing of the data collected.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the *suo moto* investigations vide a letter dated 24<sup>th</sup> March 2025 and referenced ODPC/CIE/CON/2/1/(175). In the notification, the Respondent was asked to provide this Office with the following:
  - a) A response to the alleged violations made against them;
  - b) The lawful basis relied upon to process customers data i.e. taking photos including using them for commercial purposes;
  - c) How they ensure compliance with duty to notify requirement;
  - d) Mechanisms put in place to afford data subjects rights;
  - e) Mechanisms put in place to ensure compliance with the data protection principles;



- f) Evidence of having incorporated appropriate mechanisms for age verification and consent in order to process personal data for a child;
  - g) A contact person who can provide further details as regards this investigation;
  - h) Provide any relevant materials or evidence in support of their response above; and
  - i) The mitigation measures adopted or being adopted to address the alleged violations and to ensure that such occurrence mentioned do not take place again.
8. On 14<sup>th</sup> October 2025, the Office conducted a site visit at the Respondent's premises.
9. This determination is therefore as a result of an analysis of the investigations conducted by the Office.

### **C. NATURE OF THE INVESTIGATION**

10. The Office conducted investigations into publicly available information regarding potential violations of the Act by the Respondent. The investigation focused on the Respondent's processing activities, particularly its indiscriminate classification and use of customers images for promotional and marketing purposes without notifying data subjects, obtaining their consent, or informing them of their rights. Additionally, the Respondent retained this personal data for undefined periods without implementing adequate safeguards.

### **D. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

#### **i) THE SUO MOTO INVESTIGATION**

11. According to preliminary investigations by the Office, there was potential noncompliance in the Respondent's processing operations, particularly on how the Respondent used, handled and stored personal data in its custody as a data controller. The alleged violations against the Respondent were communicated to the Respondent vide the notification referenced hereinbefore and included: -
- a) Processing of personal data without a data handlers registration certificate contrary to Section 18 of the Act.
  - b) Unlawful processing of data subjects personal data including taking photos of customers without consent contrary to Section 30 of the Act.

- c) Processing of personal data relating to children by posting their photos on their Instagram pages contrary to Section 33 of the Act.
- d) Failure to process personal data in a transparent manner and failure to fulfil the duty to notify contrary to Sections 25(b) and 29 of the Act.
- e) Failure to put in place mechanisms to allow data subjects exercise their rights contrary to Section 26 of the Act.
- f) Processing of personal data contrary to the principles of data protection as set out in Section 25 of the Act.
- g) Use of personal data to advance commercial interests contrary to Section 37 of the Act.

## **ii) THE RESPONDENT'S RESPONSE**

- 12. The Respondent submitted its statement of response to the notification of the *suo moto* investigation via letter Ref: CSL/CEO/2025/65 dated 30<sup>th</sup> October 2025.
- 13. It averred that it is duly registered as a Data Controller under certificate number *Cert No. 110-\*\*\*\*-DA40*, in compliance with the registration requirements under the Act.
- 14. The Respondent stated that it relies on legal obligation and the vital interests of the data subject as the lawful basis for processing personal data. It further submitted that it also relies on consent as a lawful basis for taking and using images of its SACCO members, noting that consent is sought from mature adults for the processing of minors' personal data, particularly in relation to social media platforms such as Instagram.
- 15. The Respondent asserted that it complies with the lawfulness, fairness, and transparency principles by informing data subjects of the purpose of data collection, how the data will be used, stored, and whether it will be shared with third parties.
- 16. The Respondent submitted that it has implemented mechanisms to enable data subjects to exercise their rights under the Act. These mechanisms include opt-out mechanisms, as well as voluntary and free rights to access their data.
- 17. The Respondent further asserted that it has put in place mitigation measures including, but not limited to, consent forms, complaints forms, application forms, opt-

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out forms, opt-out messages, and requests for information statements, to ensure compliance with the Act and protection of data subject rights.

## **E. INVESTIGATIONS UNDERTAKEN**

18. The Office conducted a site visit at the Respondent's premises on 13<sup>th</sup> October, 2025.

19. Analysis of the evidence on record established that:

- i. The Respondent is duly registered as a data controller in compliance with Section 18(1) of the Act as read together with Regulation 4(1) of the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021.
- ii. The Respondent owns the subject website and a Facebook page with a similar name.
- iii. The Respondent collects and processes images of adults and minors for commercial purpose by way of publishing on its website and Facebook page.
- iv. No proof of consent was provided.

## **F. ISSUES FOR DETERMINATION**

20. In light of the above, the issues that falls for determination by this Office is

- i. Whether the Respondent has complied with the Act and its attendant regulations.
- ii. Whether there are any remedies to issue with respect to the *suo moto* investigation.

## **I. WHETHER THE RESPONDENT HAD COMPLIED WITH THE ACT AND ITS ATTENDANT REGULATIONS.**

21. Section 25 of the Act provides for the principles of data protection as follows: -

- a) *Processed in accordance with the right to privacy of the data subject;*
- b) *Processed lawfully, fairly, and in a transparent manner in relation to any data subject;*
- c) *Collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes;*
- d) *adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
- e) *collected only where a valid explanation is provided whenever information relating to family or private affairs is required;*

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- f) 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;*
- g) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*
- h) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.*

22. Section 30 of the Act provides the permitted grounds for processing of personal data as either the data subject's consent or where processing is necessary for specific purposes, including the performance of a contract, compliance with a legal obligation, protection of vital interests, carrying out tasks in the public interest or under official authority, pursuing legitimate interests that do not override the rights and freedoms of the data subject, or for recognized research, journalistic, artistic, literary, or scientific purposes.

23. It further requires that personal data be processed only in line with the purpose for which it was originally collected, and that any further processing remains compatible with that purpose. Any processing without a lawful basis or outside the scope of the original purpose constitutes a breach of the Act and exposes the data controller or processor to liability and statutory sanctions.

24. Section 29 of the Act provides that, a data controller or data processor shall, before collecting personal data, in so far as practicable, inform the data subject –

- (a) the rights of data subject specified under section 26;*
- (b) the fact that personal data is being collected;*
- (c) the purpose for which the personal data is being collected;*
- (d) the third parties whose personal data has been or will be transferred to, including details of safeguards adopted;*
- (e) the contacts of the data controller or data processor and on whether any other entity may receive the collected personal data;*
- (f) a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data;*



*(g) the data being collected pursuant to any law and whether such collection is voluntary or mandatory; and*

*(h) the consequences if any, where the data subject fails to provide all or any part of the requested data.*

25. It's trite that where a data controller or processor opts to rely on consent as the lawful basis for processing of images the same ought to comply with Section 32 of the Act provides for conditions of consent.
26. Section 33 of the Act provides that every data controller or data processor shall not process personal data relating to a child unless consent is given by the child's parent or guardian; and the processing is in such a manner that protects and advances the rights and best interests of the child.
27. Regulation 14(2)(b) of the Data Protection (General) Regulations, 2021 provides, a data controller or data processor is considered to use personal data to advance commercial interests where personal data is used for direct marketing displaying an advertisement on an online media site.
28. Section 37 of the Act provides, a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person has sought and obtained express consent from a data subject; or is authorized 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.
29. Additionally, Regulation 13(2)(b) and (c) of the Data Protection (General) Regulations, 2021 provides that where the data subject is a child, a data controller or data processor shall ensure that profiling of a child that is related to direct marketing is prohibited, and, the parent or guardian is informed of the inherent risks in processing and the safeguards put in place.
30. The Respondent submitted that it relies upon on written consent to use personal data to advance commercial interests. However, it was unable to demonstrate this assertion. The Respondent failed to provide evidence of duly executed consent(s) forms of the persons displayed on its website and social media pages for the use of personal data (images) obtained for commercial purposes.

31. Furthermore, the Respondent failed to demonstrate that it incorporates age verification mechanisms prior to collection, processing and further use of minors' images for commercial purposes.
32. Notably, the Respondent's failed to demonstrate how it fulfils the duty to notify data subjects of the about their rights, the nature of the data being collected, the purposes of processing, third-party disclosures, and the consequences of withholding data. An act which violates the principles envisages under Section 25(a), (b), (c),(d) and (e).
33. In light of the foregoing, the Respondent has failed to demonstrate that its processing of personal data, particularly images for commercial purposes, complies with the statutory requirements under the Act. Consequently, the Office finds that the Respondent is unable to demonstrate compliance with the Act,

**II. WHETHER THERE ARE ANY REMEDIES TO ISSUE WITH RESPECT TO THE SUO MOTO INVESTIGATION.**

34. Pursuant to, Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021; having found that the Respondent did not fulfill its obligations provided for under the Act, the Office hereby orders for an enforcement notice to be issued.
35. In so doing, this Office takes into account the nature and extent of violation with regard to unlawful processing of minors' personal data contrary to the Act and the conduct of the Respondent.



## G. FINAL DETERMINATION

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

- i. The Respondent is hereby found non-compliant in respect of this *suo moto* investigation.
- ii. An Enforcement Notice be and is hereby issued to the Respondent.
- iii. The Respondent has the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 9<sup>th</sup> day of January 2026



**IMMACULATE KASSAIT, SC, MBS**  
**DATA COMMISSIONER**

