



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1501 OF 2025

MARY OGWENA IMMACULATE.....COMPLAINANT

-VERSUS-

MOMENTUM CREDIT LIMITED .....RESPONDENT

### **DETERMINATION**

*Under 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 reinstituted a complaint against the Respondent alleging that the Respondent has continued to send her unsolicited text message despite her objection.

#### **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.

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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 reinstituted complaint from the Complainant on 6<sup>th</sup> October 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 27<sup>th</sup> October 2025 and referenced ODPC/CIE /CON/2 / 1 (785). In the Notification of 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 this Complaint;
  - c. Provide any relevant materials or evidence in support of their response above;
  - d. The Contractual agreement with the Complainant, if any;
  - e. Details of how they collected, stored, and processed the Complainant's personal data, and whether she consented to the processing of her personal data;

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- f. The lawful basis for denying the Complainant her right to object to the processing of her personal data;
  - g. The mitigation measures adopted or being adopted to address the Complaint to the Satisfaction of the Complainant, if any;
  - h. Any other information you wish the Office to Consider
8. The Respondent responded to the Notification of Complaint letter *vide* a letter dated 28<sup>th</sup> November 2025.
9. This determination is therefore 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 Complainant reinstituted the complaint against the Respondent on the basis that notwithstanding her express objection, the Respondent has persistently continued to send her unsolicited text messages.

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

##### **i. THE COMPLAINANT'S CASE**

11. The Complainant avers that the Respondent violated her rights under the Act by subjecting her to continuous and unwanted marketing text messages, which she states caused her significant emotional distress and anxiety. She notes that the nature, frequency, and persistence of the messages amounted to harassing conduct rather than ordinary commercial communication.
12. According to the Complainant, between 25<sup>th</sup> February and 28<sup>th</sup> May 2025, she received in excess of fifty (50) unsolicited promotional text messages on her mobile phone from persons acting on behalf of the Respondent. She further avers that she has never been a customer of the Respondent and did not at any time grant consent expressly or impliedly for the Respondent or its agents to process her mobile phone number for marketing or promotional purposes.
13. The Complainant states that upon receiving the messages, she explicitly instructed the Respondent's agents to cease all further communication. However, despite this express objection, the Respondent continued to send the

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unsolicited promotional messages. She asserts that this persistence demonstrates a deliberate and sustained course of conduct, as opposed to an isolated or inadvertent error.

14. The Complainant notes that the unsolicited promotional messages persisted beyond May 2025 and continued up to and including 10<sup>th</sup> September 2025, thereby aggravating the infringement and prolonging the distress occasioned to her. She maintains that the Respondent's continued processing of her personal data, in the face of clear objection, constituted a systemic disregard of her rights as a data subject.

15. The Complainant prays for the following remedies.

- a. The Respondent immediately cease all communication with her regarding the loan to which she is not privy.
- b. The Respondent compensates her for the breach of her privacy, unlawful processing of her data, and the psychological distress caused by their persistent and threatening behavior.

16. The Complainant provided screenshots of the said messages and phone calls as evidence.

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

17. The Respondent submitted a response to the notification of complaint in a letter dated 28<sup>th</sup> November 2025.

18. The Respondent categorically denies the allegations made by the Complainant and avers that its position is premised on a comprehensive internal investigation and a review of all relevant communications and documentation relating to the complaint.

19. The Respondent states that none of the mobile phone numbers from which the Complainant alleges to have received the marketing messages belong to its active or authorised representatives. It maintains that the numbers identified by the Complainant are not associated with the Company's official communication channels.

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20. Further, the Respondent notes that the impugned marketing messages were not transmitted through the Company's official systems. Accordingly, it avers that the Complainant's personal data has neither been processed by the Company nor stored within its marketing database.
21. On this basis, the Respondent distances itself from the alleged messages and contends that the communications appear to have originated from individuals who are not affiliated with the Company in any capacity. Nevertheless, and in an effort to address the complaint the Respondent states that it has initiated external investigations into the persons purporting to market in the Company's name and has simultaneously rolled out stringent remedial measures.
22. The Respondent further avers that, in ensuring compliance with the Data Protection Act, 2019, it has implemented and continues to maintain robust internal data protection controls.
23. In this regard, the Respondent notes that it has in place a Data Privacy Policy and an Employee Code of Conduct aligned with the Act. It states that any breach of these instruments attracts disciplinary action, including the issuance of warning letters or termination of employment.
24. Additionally, the Respondent avers that all its marketing activities are conducted in compliance with the Act and are preceded by formal requests for consent from prospective clients who expressly indicate their willingness to be contacted for marketing purposes.
25. The Respondent states that its marketing communications are undertaken exclusively by its official marketing team through bulk SMS platforms, which incorporate opt-out mechanisms, thereby enabling data subjects to withdraw consent at any time.
26. Further, the Respondent notes that it has established additional mechanisms for the withdrawal of consent, accessible through its website. These include forms for the erasure of personal data and for restriction or objection to processing.

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27. Moreover, the Respondent avers that it has implemented access-control safeguards that restrict the ability to access and export customer data strictly to authorised personnel.

28. Finally, the Respondent states that it conducts regular and mandatory data protection training for all employees and service providers on data subjects' rights and its statutory obligations under the Act. It notes that records of such trainings are maintained. In addition, the Respondent avers that it has a Business Continuity Plan in place to ensure the backup, recovery, and integrity of personal data in the event of an incident or breach.

29. The Respondent provided the following documents as evidence:

- a) Privacy Policy.
- b) Standard Contract entered into with digital borrowers.

### **iii. THE COMPLAINANT'S REJOINDER**

30. The Complainant avers that the Respondent's reply reflects an attempt to evade accountability and deflect responsibility. She notes that the Respondent's position, that the communications were sent by "unaffiliated" or "rogue agents," does not absolve it of liability.

31. The Complainant submits that, under the law, an entity is accountable for actions carried out on its behalf, including those by intermediaries, and that the communications explicitly promoted Momentum Credit products and services. She further contends that it is implausible for unrelated third parties to independently promote these products without affiliation or benefit to the Respondent.

32. According to the Complainant, the individuals sending the communications appear to act with ostensible authority and form part of the Respondent's wider commercial network, including employees, agents, or subcontractors. She notes that the Respondent benefits financially from these marketing activities and therefore cannot disclaim responsibility for the use of personal data in facilitating them.

*NA*



33. The Complainant highlights the Respondent's own admission that the messages seem to have originated from individuals marketing in the name of the Company, and avers that this indicates the Respondent has not maintained adequate control over its brand, agent network, or data collection channels. She submits that this lack of control constitutes a failure to implement appropriate technical and organizational measures, contrary to Section 41 of the Data Protection Act.

34. The Complainant contends that the Respondent's Independent Sales Agent model incentivizes aggressive marketing while attempting to contract out of liability, and that any contractual clause seeking to exclude statutory liability is invalid. She notes that the Respondent's claim that her data is not under the Company's marketing database" is a semantic distinction with no practical effect, as the use of her number by authorized or purported agents constitutes processing under the Act, regardless of the device or location.

35. The Complainant avers that, despite the Respondent's assertions that "stringent measures" were implemented and investigations initiated, she continued to receive promotional messages and calls as recently as 10<sup>th</sup> September 2025, with evidence including screenshots and call logs. She submits that this demonstrates.

- The ineffectiveness or absence of corrective measures;
- the Respondent may not be acting in good faith; and
- that the alleged investigations may not be genuine.

36. Finally, the Complainant contends that the Respondent cannot disclaim responsibility for the conduct of its sales agents, particularly where a commission-based model is used, and notes that the defense presented indicates a systemic failure to supervise its data processors and agent network.

## **F. ISSUES FOR DETERMINATION**

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

- i. Whether the Respondent violated the Complainant's rights under the Act and attendant Regulations.

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- ii. Whether the Respondent fulfilled its obligations under the Act and the attendant Regulations.
- 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**

38. Section 26(c) of the Data Protection Act, 2019 grants a data subject the right to object to the processing of all or part of their personal data. Section 36 reinforces this right by requiring a data controller or data processor to act on such objection without delay.

39. The Complainant avers that her mobile phone number was used for marketing purposes and that, upon receiving unsolicited promotional messages, she explicitly objected to such processing and instructed the Respondent's agents to cease further communication. She states that despite this objection, the marketing messages continued over an extended period.

40. The Respondent denies having processed the Complainant's mobile phone number and further avers that the Complainant has never been its client. However, this Office notes that the promotional messages expressly referenced the Respondent's services and were sent in a manner consistent with the Respondent's marketing activities. Further, call records placed before this Office show that the messages originated from an agent engaged by the Respondent in the course of its marketing operations. In the absence of evidence to the contrary, the acts of the agent are attributable to the Respondent.

41. Notably, the Respondent did not place before this Office any evidence demonstrating that, once the objection was raised effective steps were taken to block, or delete the Complainant's contact details from its marketing systems, as required under Section 36 of the Act. The Respondent also failed to demonstrate that the continued messages were sent independently of its authority or outside the scope of its engagement with the agent.

*[Handwritten signature]*



42. On the contrary, the evidence shows that the Complainant continued to receive unsolicited promotional messages after raising her objection which objectively demonstrates that the objection was not acted upon. The persistence of the messages following an express objection is sufficient proof that the processing did not cease as required by law.

43. In light of the above the continued processing of the Complainant's personal data following her objection demonstrates that the Respondent failed to respect the Complainant's right under Section 26(c) and failed to act on the objection in accordance with Section 36 of the Act.

## **II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT**

44. In addressing this issue, the Office will address the following questions –

- a. Did the Respondent establish a lawful basis for processing the Complainant's personal data?
- b. Did the Respondent process the Complainant's personal data for marketing purposes ?

Did the Respondent establish a lawful basis for processing the Complainant's personal data?

45. The Respondent is a data controller as per the definitions of the Act and is therefore mandated to fulfil its obligations as such under the Act.

46. Section 30 of the Act provides for the lawful basis of processing personal data and states that a data controller or data processor shall not process personal data, unless the data subject consents to the processing for one or more specified purposes or the processing is necessary for the purposes listed in sub-section 1 (b). The Respondent failed to establish that the Complainant has consented to the processing of her personal data or that Section 30(1)(b) of the Act applied to the processing.

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47. The Complainant indicated that she did not consent. The Complainant avers that she did not consent to the use of her personal data for marketing purposes. She further states that she was never a client of the Respondent, and no evidence was provided to show any lawful basis for the processing. The continued processing of her personal data for marketing purposes therefore constitutes a violation of Section 30 of the Act.

48. In light of the above, the Respondent Processed the Complainant's personal data without consent or lawful justification, in violation of Section 30.

Did the Respondent process the Complainant's personal data for marketing purposes?

49. Section 37(1) of the Data Protection Act, 2019 provides that personal data shall not be used for commercial purposes unless the data subject has given **express consent** or the use is otherwise authorized under a written law, and the data subject has been informed of the intended use at the time of collection.

50. Further regulation 14(1) of the Data Protection (General) Regulations, 2021 clarifies that personal data is used for commercial purposes where it is employed to advance commercial or economic interests, including promoting products or services, inducing another person to engage in a transaction, or otherwise effecting a commercial activity, directly or indirectly.

51. In the present case the Complainant's mobile phone number was used to receive unsolicited promotional messages advertising the Respondent's products and services. The Respondent did not provide any evidence that the Complainant was informed about this intended use or that she had consented to it. No signed or recorded consent was produced, and the Complainant has never been a client of the Respondent.

52. Furthermore, the Respondent relied on denials and internal policies rather than demonstrating that the Complainant's personal data was lawfully used for marketing. The continued sending of marketing messages constitutes commercial use of the Complainant's personal data without her consent.



53. Therefore, the Respondent failed to establish a lawful basis for processing the Complainant's personal data for commercial purposes. The evidence shows that the data was used to promote the Respondent's products, in contravention of Section 37(1) of the Act and the commercial use principles set out in Regulation 14(1) of the General Regulations.

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

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

55. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides 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. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

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

57. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right under Section 26 (c) was infringed upon by the Respondent.

58. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Five Hundred Thousand (Kshs. 500,000)** for the unlawful processing of personal data for commercial purposes.

59. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

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## G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Five Hundred Thousand (Kshs. 500,000)** as compensation.
- iii. An Enforcement Notice to hereby be 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 2<sup>nd</sup> day of January 2026.



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

