



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1477 OF 2025

GEORGE WILLIS OTIENO RABUOGI.....COMPLAINANT

-VERSUS-

PLATINUM CREDIT 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 his express consent and/or any other 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

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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 2<sup>nd</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 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 13<sup>th</sup> November, 2025 referenced ODPC/CIE/CON/2/1(801). 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 by the Complainant;
  - b) Relevant materials or evidence in support of the statement of response;
  - c) The legal basis relied upon to process and engage with the complainant's personal data for marketing purposes;
  - d) An elaborate representation of how data subjects can exercise their rights in relation to data protection;



- e) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrences mentioned in the complaint do not take place again;
- f) Any other information.

8. The Respondent failed, refused and/or neglected to respond to the notification of complaint.

#### **D. NATURE OF THE COMPLAINTS**

9. The Complainant alleges that the Respondent has persistently contacted him through unsolicited promotional calls and messages, notwithstanding the fact that he is not a customer of the Respondent, and without having given any prior consent for such communication.

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

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

- 10. The Complainant states that the Respondent sent him unsolicited promotional messages advertising loan products and services.
- 11. He alleges that additional promotional messages were also sent by several individuals identifying themselves as agents of the Respondent agents whom withheld from disclosing their identities.
- 12. The Complainant contended that he has never had any prior dealings with the Respondent or its agents. Furthermore, he alleges that his personal data may have been unlawfully obtained from a third-party source.

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

- 13. At all material times during the course of the investigations, the Respondent failed, refused, and/or neglected to furnish the Office with any statement of response or defense to the allegations raised by the Complainant. Consequently, the Complainant's assertions remain uncontroverted.

*Handwritten signature/initials*

## **F. INVESTIGATIONS UNDERTAKEN**

14. After careful analysis of the adduced evidence on record and the law, the Office established that the Complainant continuously received marketing phone calls from different telephone numbers all promoting and marketing the Respondent's loan services.
15. The Respondent failed to furnish the Office with a statement of response or any documentary evidence demonstrating that it had obtained the Complainant's express consent, or that the Complainant had been duly informed of the collection and intended use of his mobile number for marketing and promotional purposes.

## **G. ISSUES FOR DETERMINATION**

16. In light of the above, the complaint 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 there was a violation of the Complainant's rights under the Act; and
  - iii. Whether the Complainant is entitled to any remedies under the Act.

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

17. In considering this issue, the Office will examine the question whether the Complainant consented to the use of his personal data for direct marketing purposes.
18. Valid consent is a product of conscious decision-making and requires affirmative action. It should be demonstrable and capable of being proven.
19. Section 30 (1) (a) of the Act provides 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.
20. The Act goes further to state the conditions of consent. It states as follows concerning the conditions of consent: -

#### *32. Conditions of consent*



*(1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.*

*(2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.*

*(3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.*

*(4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract. (emphasis ours)*

21. 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.*

22. By constantly calling the Complainant's phone number to market their products to him, the Respondent through its agents were processing the Complainant's personal data for commercial purposes as defined above.

23. 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.”*

24. It is trite that the burden of proof to establish that valid consent was obtained for the processing of a data subject's personal data lies with the data controller. Accordingly, it was incumbent upon the Respondent to demonstrate that its agents, acting as data processors on its behalf, had collected the Complainant's personal data lawfully; duly notified him that direct marketing was among the purposes for which the data was being collected; obtained his express consent prior to contacting him for marketing purposes; and provided a clear and accessible opt-out mechanism. The Respondent failed to discharge this statutory obligation, having not furnished any statement of response or evidence to demonstrate that the Complainant's consent was obtained in accordance with the Act.

25. Based on the foregoing, the Office finds that the Respondent failed to fulfill its obligations under the Act.

## **II. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT.**

26. Section 26(a) of the Act provides for the right to be informed of the use to which a data subject's personal data is to be put. The Respondent, by not informing the Complainant of the use to which his personal data was to be put, at the point of collection of the personal data, violated his right to be informed. The Respondent's agents did not inform him that his personal data was being collected and the use to which it was to be put.

27. From the above, this Office finds that the Complainant's rights under Sections 26(a) of the Act were violated by the Respondent.

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### III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT

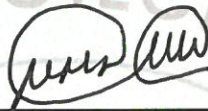
28. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. Further, the remedies are provided for in Regulation 14(3) of the Enforcement Regulations.
29. As a remedy, the Complainant sought the Respondent to cease and desist from contacting him, delete his personal data from the Respondent's systems, databases and any other record and monetary compensation for the violation of his right as a data subject.
30. 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.
31. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.
32. Having found that the Respondent failed to uphold the rights of the Complainant as a data subject as envisaged under Section 26 (a), and the Respondent as a data controller processed the Complainant's personal data for commercial purposes without consent, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 250,000 (Two Hundred and Fifty Thousand Only)**.
33. 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 and the conduct of the Respondent.

### H. FINAL DETERMINATION

34. 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 250,000 (Two Hundred and Fifty Thousand Only)**.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 16<sup>th</sup> day of December 2025.



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

