



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1476 OF 2025

GEORGE WILLIS OTIENO RABUOGI.....COMPLAINANT

-VERSUS-

PREMIER 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 2nd 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 31st October, 2025 referenced ODPC/CIE/CON/2/1(822). 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) A contact person who can provide further information;
 - c) Proof of consent from the Complainant
 - d) Any relevant materials or evidence in support of the statement of response;
 - e) Detailed procedure of how data subjects exercise their data protection rights;
 - f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;

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- g) Any other relevant information.
8. The Respondent responded to the allegations made against it *vide* a letter dated 26th November 2025.

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 alleges that the Respondent through its agents, have been sending to his personal mobile number promotional messages advertising the Respondents loans and other products/services.
11. The Complainant states that he has never dealt with the Respondent nor its agents before or during the period he has been in receipt of these promotional messages.
12. He further identifies the telephone numbers that have consistently been used to send these promotional messages as 0742***654, 0700***001, 0727***362, 0757***227, 0792***579.

ii. THE RESPONDENT'S RESPONSE

13. The Respondent in its statement of response stated that it only collects personal data directly from a data subject and acquires express consent in order to send marketing communication.
14. Additionally, that all marketing messages from the company are sent exclusively through the "PremierInfo" as the sender ID and each message contains a clear and free opt – out option to ensure that data subjects can easily exercise their rights.
15. It concedes that the Complainant is not its client and has never obtained a loan facility from the Company thus it has never collected his personal data. Consequently,

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through its systems it has not issued any marketing communication to the Complainant.

16. The Respondent submits that it identified two numbers belonging to two of its independent sales agents.
17. That upon receipt of the Complaint, it terminated the contracts with the 2 (two) independent sales agents identified. as A****s K****ka M**mi, 0742****654, and Chr****ne O**ga N**ge, 0700****415.
18. The Respondent submits that the agents are responsible as Data Controllers for any personal data they independently collected and processed outside the Company's documented instructions.
19. Additionally, it stated that the Complainant did not raise any complaint or request for clarification with the company regarding the processing of his personal data by the agents in question prior to lodging the complaint. Moreover, that any attempt to engage with the Complainant directly in order to clarify and address his concerns were futile.

F. INVESTIGATIONS UNDERTAKEN

20. After careful analysis of the adduced evidence on record and the law, the Office established that the Complainant continuously received promotional and marketing messages from different agents marketing the Respondent's products.
21. The Respondent acknowledged that two of the identified numbers belonged to its independent sales agents. However, the Respondent did not furnish the Office with documentary evidence clarifying whether the Complainant's express consent had been obtained, or whether 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

22. 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:

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- 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

23. In considering this issue, the Office will examine the following questions –

- a. Was there a valid data controller and data processor contract?
- b. Did the Complainant consent to the use of his personal data for direct marketing purposes?

Was there a valid data controller and data processor contract?

24. The Respondent states that it engages independent sales agents to market its products to potential customers. Furthermore, they aver that the Respondent mandates these contracted independent agents to obtain explicit consent before marketing its products to individuals.

25. The Respondent states that two of the telephone numbers used to call the Complainant have been identified to belong to one of its independently contracted sales agents and disciplinary process was initiated against such agent including termination of the agreement between itself and the agent.

26. Section 2 of the Act defines a data controller as a person or entity who, either alone or jointly with others, determines the purpose and means of processing personal data. A data processor is defined as a person or entity that processes personal data on behalf of the data controller.

27. Section 25 of the Act imposes specific obligations on the data controller, including ensuring that personal data is processed lawfully, fairly, and transparently. The data controller must also ensure that personal data is collected for specified, explicit, and legitimate purposes, and is not further processed in a manner incompatible with those purposes.

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28. Section 42 of the Act requires that where a data controller contracts a data processor to process data on its behalf, there must be a written contract in place that governs the relationship. The contract should outline the data processor's obligations, including the scope and purpose of the processing, and ensure that the data processor complies with the data protection principles under the Act.

29. Importantly, Section 42 of the Act emphasizes that the data controller retains full responsibility for ensuring the lawful processing of data, even when a processor is involved. Section 42(2) of the Act provides; that where a data controller is using the services of a data processor the data controller shall opt for a data processor who provides sufficient guarantees in respect of organizational measures for the purpose of complying with Section 41 (1). This provision clarifies that contracting a data processor does not absolve the data controller of liability for any violations of the Act. The data controller remains accountable for ensuring that the data processor complies with the required standards.

30. Regulation 24 of Data Protection (General) Regulations, 2021 provides, that subject to Section 42(2)(b) of the Act, a data controller shall engage a data processor, through a written contract and the contract shall include the following particulars –

a) processing details including –

- i) the subject matter of the processing;*
- ii) the duration of the processing;*
- iii) the nature and purpose of the processing;*
- iv) the type of personal data being processed;*
- v) the categories of data subjects; and*
- vi) the obligations and rights of the data controller*

b) instructions of the data controller;

c) duty on the data processors to obtain a commitment of confidentiality from any person or entity that the data processors allow to process the personal data;

d) security measures subjecting the data processor to appropriate technical and organizational measures in relation to keeping personal data secure;

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- e) provision stipulating that all personal data must be permanently deleted or returned on termination or lapse of the agreement, as decided by the data controller; and*
- f) auditing and inspection provisions by the data controller.*

31. The Respondent did not furnish the Office with an Independent Sales Agent Agreement executed between itself and the alleged independent sales agents.
32. It is trite that a valid data controller data processor agreement ought to state: the subject matter of the processing, the duration of the processing, the nature and purpose of the processing, the type of personal data being processed, the categories of data subjects, and the obligations and rights of the data controller concerning the processing of personal data. The absence of such agreement indicates a significant failure to comply with the statutory requirements.
33. Additionally, Section 42(2) of the Act requires a data controller engaging a data processor to ensure that the processor provides sufficient guarantees on technical and organizational measures to comply with the Act.
34. The Respondent relied upon an Agents Data Protection Basics Training Acknowledgement form executed by the Agents in support of its statement of response. However, pursuant to Section 42(2)(b) as read together with Regulation 24 of Data Protection (General) Regulations, 2021, this acknowledgement form does not suffice as a valid data controller data processor agreement falls short of these statutory requirements.
35. Consequently, the Office finds that the Respondent, as the data controller, remains accountable for ensuring that the processing of mobile numbers for marketing purposes complies with the Act and the attendant Regulations. The attempt to shift liability to an independent marketing agent is therefore legally ineffective, and the agreement does not meet the requisite threshold under Section 42 of the Act as read with Regulation 24 of the Data Protection (General) Regulations, 2021.

Did the Complainant consent to the use of his personal data for marketing purposes?

36. The Respondent in support of its statement of response to the Office submitted its customer database that showed that the Complainant was not captured as its customer in its system database. The Complainant has averred that he is neither a client nor a customer of the Respondent and the complaint was solely based on unsolicited marketing.

37. Having found that the independent sales agents were acting on behalf of the Respondent, the Respondent had an obligation to establish a lawful basis for the processing of the Complainant's personal data for commercial purposes.

38. 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."*

39. Valid consent is a product of conscious decision-making and requires affirmative action. It should be demonstrable and capable of being proven.

40. 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.

41. 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.

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(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)

42. 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.*

43. By constantly sending promotional messages to 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.

44. 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.”

45. 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 credible evidence to demonstrate that the Complainant's consent was obtained in accordance with the Act.

46. 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.

47. 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.

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

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

49. 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.

50. 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.
51. 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.
52. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.
53. 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)**.
54. 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.
55. Furthermore, Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of Enforcement and Penalty notices.
56. Having found that the Respondent did not fulfill its obligations provided for under the Act, the Office hereby orders that an Enforcement Notice be issued against the Respondent.

H. FINAL DETERMINATION

57. 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. An Enforcement Notice to issue against 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 16th day of December 2025.



IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER