



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1363 OF 2025

FRANCIS JAMES KIOKO.....COMPLAINANT

-VERSUS-

TOWER SAVINGS & CREDIT
COOPERATIVE SOCIETY 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 a 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

rk

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 11th September, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from 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 19th September, 2025 referenced ODPC/CIE/CON/2/1(682). 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 and a contact person who could provide further details;
 - b) Any 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;
 - d) Details of how they obtain, store, and process personal data, and whether the complainant consented to the processing of their personal data;

- e) An elaborate demonstration of how data subjects can exercise their rights
- f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant
- g) Any other information

8. The Respondent furnished the Office with its statement of response dated 9th October 2025.

D. NATURE OF THE COMPLAINT

9. The Complainant alleges that the Respondent collected and processed his personal data for commercial purposes without his express consent or any other lawful basis thereof. He further claims that despite having exercised his right to objection to processing, the Respondent continued to send him marketing messages.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant claims that the Respondent, either directly or through its agents, repeatedly sent him direct marketing and promotional messages despite his having exercised his right to object
11. The Complainant alleges that between September 2024 and May 2025, he received repeated promotional messages from Tower Savings and Credit Co-operative Society Limited (the Respondent) despite never being a member. He states that the Respondent persistently referred to him as a member and even unilaterally attempted to enroll him into a new product known as the Tower Sacco Holiday Account on 6th November 2024.
12. The Complainant states that the Respondent aggressively marketed short-term loans. He asserts that these unsolicited communications amounted to unlawful direct marketing.
13. The Complainant pleads that on 5th December 2024, he formally objected to further processing of his personal data by writing to the Respondent via email, requesting

116

removal of his phone number from all marketing lists and associated accounts. Despite this, the Respondent continued sending promotional messages, including one dated 20th May 2025 urging him to update a mobile banking application.

14. The Complainant contends that the Respondent processed his data unlawfully, unfairly and in a non-transparent manner, and without any evidence of consent or legitimate interest.
15. The Complainant avers that the Respondent failed to notify him of the collection and intended use of his personal data contrary to Section 29 of the Act. He states that he only discovered the unauthorized processing after receiving numerous marketing messages and later learning that he had been signed up for a financial product without his knowledge.
16. The Complainant asserts that his right to object was infringed. He adds that the provided opt-out mechanism was non-functional and that the Respondent neither ceased processing within fourteen days nor demonstrated any overriding legitimate interest.

ii. THE RESPONDENT'S RESPONSE

17. The Respondent pleads it lawfully collects personal data directly from the data subjects.
18. The Respondent avers that the phone number in contention was provided voluntarily by a member on 19th November 2019 during onboarding, and was expressly listed as the primary contact on the duly completed and signed membership application form. The number was collected directly from the data subject, and there was no dispute or indication at the time of registration regarding its legitimacy or ownership.
19. The Respondent asserts that the phone number was collected and processed lawfully, fairly, and transparently as part of its KYC and member registration procedures. The data created a legal obligation upon the Sacco to meet regulatory requirements relating to member communication, including mandatory notices such as general meetings, failure of which would expose the Sacco to sanctions.

Handwritten signature/initials

20. The Respondent contends that the member application form was executed prior to the enactment of the Act, and the consent obtained at the time was implied and sufficient for informing the member of Sacco activities. The Sacco could not reasonably have foreseen that ownership of the phone number would later transfer to a different individual.
21. The Respondent states that processing of the number was partly necessary for the performance of a contract to which the original data subject was a party. The Sacco reasonably relied on the accuracy of the information provided, and no notification of change, dispute, or correction was made until the complainant raised the objection.
22. The Respondent pleads that upon receiving the Complainant's objection, it immediately obscured and discontinued the phone number from its systems to prevent further communication. The subsequent message transmitted on 20th May 2025 occurred due to an inadvertent system inclusion during a bulk communication to registered mobile-banking members, which error was promptly remedied.
23. The Respondent asserts that all messages processed prior to the objection were lawful under Section 32(3) of the Data Protection Act, which states that withdrawal of consent does not affect the lawfulness of prior processing. The Sacco could not have anticipated the Complainant's later acquisition or ownership of the number tied to the member's account.
24. The Respondent contends that it maintains a visible, clear, and functional opt-out mechanism which enables data subjects to exercise their right to object to direct marketing. Any concerns regarding functionality were addressed with the service provider, and the Sacco remains satisfied that the mechanism operates as intended.
25. The Respondent avers that it has complied with Section 40 of the Act by discontinuing use of the phone number while retaining the member's data strictly for storage and regulatory purposes in line with Section 34(2). Given its ongoing obligations to the account holder and the potential need to defend future legal claims, retention of the original member application form, including the phone number, remains lawful and necessary.

F. ISSUES FOR DETERMINATION

26. 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:

- 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

27. Section 25(b) of the Data Protection Act requires every data controller or data processor to ensure that personal data is processed lawfully, fairly, and in a transparent manner in relation to the data subject. The obligation is continuous and applies throughout the lifecycle of data processing.

28. The evidence indicates that the personal data in dispute was voluntarily provided directly by the original owner of the mobile phone number, an account holder with the Respondent, during onboarding and registration. The phone number was expressly listed as the member's primary contact in accordance with KYC, CBK and Sacco regulatory requirements. At the point of collection, there was no dispute or indication of inaccuracy, nor any notification that ownership of the number would later change. The Respondent therefore collected the data in a lawful, fair, and transparent manner consistent with Section 25(b) of the Act.

29. At the time, the processing was necessary to fulfil statutory obligations inherent in the management of a Sacco membership account, including issuance of mandatory notices and communication relating to member services. These purposes fall squarely within the lawful bases for processing recognized under Section 30 of the Act.

30. Upon receipt of the Complainant's objection, the Respondent acted promptly and restricted further processing of the disputed number. This conduct is aligned with Section 34(1)(d), which obligates a data controller to restrict processing where a data subject objects, pending verification of the contested data and assessment of

nk

competing legitimate interests. The Respondent's immediate discontinuation of the processing therefore constituted compliance with the statutory safeguard.

31. The Respondent's conduct also met the requirements of Section 34(2) of the Act, which permits continued retention of restricted data solely for storage, legal compliance, defense of legal claims, or protection of another person's rights. By halting active communication and retaining the number only in connection with regulatory obligations to the original account holder, the Respondent's processing fell within the limited and lawful parameters set by the Act.
32. However, the Complainant asserts and the Respondent concedes that a system error during bulk communication resulted in an inadvertent message being dispatched on 20th May 2025 despite prior restriction. Although the Respondent remedied the error immediately and fully discontinued the number thereafter, this incident constitutes processing contrary to the restriction already in force.
33. Section 41(1) of the Act imposes a proactive duty upon data controllers and processors to implement technical and organizational measures that give effect to data protection principles in an effective manner; and integrate necessary safeguards into all processing operations. The issuance of a message to a restricted number demonstrates a deficiency in the Respondent's technical and organizational measures. The failure to prevent accidental communication indicates that the Respondent's systems may not have been sufficiently robust to ensure compliance by design and by default, as contemplated under Section 41 of the Act.
34. In view of the foregoing, the Office therefore finds that the Respondent lawfully collected and initially processed the personal data and acted promptly in restricting processing upon objection, in accordance with Section 34. However, the inadvertent transmission of a message after restriction reveals a lapse in the Respondent's technical and organizational measures, falling short of the standard imposed by Section 41 of the Act. While the Respondent's immediate remedial actions are noted, the system failure underscores partial non-compliance with the requirement to implement safeguards capable of preventing unauthorized or erroneous processing.

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

35. Once a data subject voluntarily provides a phone number and designates it as a primary contact during account opening, the Respondent is entitled to rely on the accuracy of that information. Consequently, the Respondent could only become aware of the inaccuracy once the Complainant objected to the processing. Upon receiving this notification, the Respondent acted appropriately by restricting processing.
36. In accordance with Section 36 of the Act, a data subject is entitled to object to the processing of their personal data at any time, unless the data controller or data processor demonstrates the existence of a compelling legitimate interest that overrides the data subject's rights and freedoms, or where such processing is necessary for the establishment, exercise, or defense of a legal claim.
37. Further, Section 40 of the Act obligates a data controller or data processor, upon request, to rectify without undue delay personal data that is inaccurate, outdated, incomplete, or misleading; or to erase or destroy personal data that is no longer authorized to be retained, is irrelevant, excessive, or was unlawfully obtained.
38. The Complainant exercised his right under Section 26(c) and 36 of the Act to object to the processing of his personal data. Following this objection, the Respondent placed a restriction on further processing of the personal data pending verification, consistent with the requirement under Section 34(1)(a) of the Act, which mandates that a data controller or data processor shall restrict processing where the accuracy of the data is contested, for a period sufficient to enable the verification of its accuracy. The Respondent has demonstrated that upon receipt of the objection, processing ceased and verification procedures were initiated.
39. The Respondent further explained that, notwithstanding the restriction in place, an isolated and inadvertent communication was dispatched on 20th May 2025 due to a system error associated with bulk messaging functionality. The Respondent clarified that the error was immediately identified, fully remediated, and corrective technical safeguards were implemented to prevent recurrence. The Respondent also asserts that prior to the said system error, no marketing communications or promotional

outreach had been directed to the Complainant, and the Complainant has not furnished any evidence in contrary to this position.

40. Having examined the Respondent's conduct both prior to and subsequent to the Complainant's objection, the Office finds that the Respondent substantively upheld the Complainant's right to object. Save for the isolated system error which was promptly rectified, their actions were consistent with the statutory framework governing the rights of the data subject.

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

41. 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.
42. Having found that the Respondent duly upheld the right of the Complainant as a data subject as envisaged under Section 26(c), 36 and 40 of the Act, and in consideration of the Respondent's technical and organizational measures, falling short of the standard imposed by Section 41, it then follows that the Respondent is in violation of its obligation as a data controller.
43. 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 notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.
44. In light of the above, the Office hereby orders for an enforcement notice to be issued to the Respondent. In so doing, this Office takes into account the lack of technical and organizational safeguards measures to integrate necessary safeguards in their processing operations.

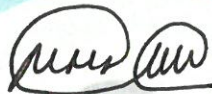
11/11

G. FINAL DETERMINATION

45. 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. An Enforcement Notice to issue to 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 15th day of December 2025



Immaculate Kassait, SC, MBS
DATA COMMISSIONER