

THE DATA SUBJECT'S RIGHT TO LODGE A COMPLAINT WITH THE RELEVANT AUTHORITY UNDER THE NDPR



The SokoLoan Saga

INTRODUCTION

Information Technology is increasingly becoming the new norm in our clime as both private and public bodies are migrating their businesses online. The increasing migration of business online has prompted the drive of private and public bodies for service delivery through digital systems.

With the emergence of data protection regulations in the international clime geared towards security of lives and property and ensuring the integrity of commerce and industry in the volatile data economy, the Nigerian Information Technology Development Agency (NITDA) issued the Nigerian Data Protection Regulation (NDPR) to regulate/ guide the processing of personal data of data subjects.

Governing Principles of NDPR

The following are the basic governing principles of data processing as codified in the regulation;

Personal Data is to be collected and processed in accordance with specific, legitimate and lawful purpose and the Data Subject must consent to such the processing.

A concurrent duty of care is imposed on anyone in possession of the Personal Data of a Data Subject or entrusted with while processing such Personal Data.

Anyone in possession of the Personal Data of a Data Subject or entrusted with the same is held accountable for his acts and omissions in respect of data processing, and in accordance with the principles contained in the Regulation.

Rights of Data Subject to Lodge Complaint

The NDPR also sets down the rights of Data subjects amongst which is the right to lodge a complaint with the relevant authority once such rights have been infringed upon and the right to withdraw consent at anytime without affecting the lawfulness of the processing based on consent before its withdrawal- **Article 3.1 (7)(i) and (j)**.

In Nigeria today with the emergence of various online lending/loan platforms and the incessant disparaging messages forwarded by these platforms to contacts of their obligors, one begins to question the legality of such actions and its implications if any.

The well-known Latin maxim Ubi jus, ibi remedium – simply put means 'where there is a right, there is a remedy'. This postulates that where law has established a right there should be a corresponding remedy for its breach.

This right of laying a complaint to the relevant authority under the NDPR was recently exercised by a Data subject who laid a complaint against Soko Lending Company Limited " Sokoloan" to NITDA through his Solicitors Bloomgate Solicitors on Monday, 11th November 2019 for unauthorized disclosures, failure to protect customers' personal data and defamation of character as well as carrying out the necessary due diligence as enshrined in the Nigeria Data Protection Regulation (NDPR). According to one of the complainants, when the Data Subject failed to meet up with his repayment obligations due to insufficient credit in his account on the date the direct debit was to take effect, the company unilaterally sent privacy invading messages to the complainant's contacts.

FINDINGS BY NITDA

NITDA as part of its due diligence process, commenced investigation over the alleged infractions of the provisions of the NDPR. Investigation revealed that complainants' contacts who were neither parties to the loan transaction nor consented to the processing of their data have confirmed the receipt of such messages.

NITDA therefore found SokoLoan and its entities to be in violation of the following legal provisions:–

1. Use of non-conforming privacy notice, contrary to **Article 2.5 and 3.1(7) of the NDPR;**
2. Insufficient lawful basis for processing personal data, contrary to **Articles 2.2 and 2.3 of the NDPR;**
3. Illegal data sharing without appropriate lawful basis, contrary to **Article 2.2 of the NDPR;**
4. Unwillingness to cooperate with the Data Protection Authority, contrary to **Article 3.1 (1) of Data Protection Implementation Framework;**
5. Non-filing of NDPR Audit reports through a licensed Data Protection Compliance Organization (DPCO), contrary to **Article 4.1(7) of the NDPR.**

SANCTIONS BY NITDA

In view of the foregoing, NITDA sanctioned Sokoloan by;

1

Imposing a monetary sanction of Ten Million Naira (N10,000,000) on Soko Lending Company Limited.

2

Directing that no further privacy invading messages be sent to any Nigerian until the company and its entities show full compliance with the NDPR.

3

Directing the company to pay for the conduct of a Data Protection Impact Assessment by a NITDA appointed DPCO on its operation; and placement on a mandatory Information Technology and Data Protection oversight for 9 months.

4

Depositing the criminal aspects of the investigation with the Nigeria Police to determine if the executives of the company are liable to imprisonment for violating Section 17 of the NITDA Act, 2007

The sanction imposed on Sokoloan further reinforces NITDA's stance in reminding Nigerian businesses and data controllers of their obligation to engage NITDA-licensed Data Protection Compliance Organizations (DPCO) to guide them towards compliance with the data protection law.

It also strengthens the confidence of Data Subjects that not only do they have a right to a remedy but also the assurance that such rights are well protected.

Referenced Materials

- NITDA Act 2007
- NDPR 2019
- <https://nitda.gov.ng/nitda-sanctions-soko-loan-for-privacy-invasion/>



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