

IRELAND

FRANET Contractor

Ad Hoc Information Report

Data protection: Redress mechanisms and their use

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Patricia Brazil

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Mapping of Redress mechanisms in the area of data protection

Redress Mechanism Number	Type of possible outcomes of procedure	First Instance	Total Number of times this procedure was initiated in 2009	Total Number of times this procedure was initiated in 2010	Total Number of times this procedure was initiated in 2011
1	Investigation of complaint	Data Protection Commissioner	652 ¹	552 ²	908 ³
2	Investigation of ePrivacy complaint	Data Protection Commissioner	262 ⁴	231 ⁵	253 ⁶
3	Prosecution - fine	District criminal court (Summary Trial) Circuit Criminal Court (Trial on Indictment)	9 ⁷ -	11 ⁸ -	5 ⁹ 3 ¹⁰
4	Audit	Data Protection Commissioner	30 ¹¹	32 ¹²	28 ¹³
5	Enforcement Notices	Data Protection Commissioner	4 ¹⁴	9 ¹⁵	10 ¹⁶

¹ Twenty-First Annual Report of the Data Protection Commissioner 2009, page 11, available at www.dataprotection.ie/documents/annualreports/AR2010.pdf accessed 4 May 2012.

² Twenty-Second Annual Report of the Data Protection Commissioner 2010, page 10, available at www.dataprotection.ie/documents/annualreports/2010AR.pdf accessed 4 May 2012.

³ Twenty-Third Annual Report of the Data Protection Commissioner 2011, page 8, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012, and interview with the Office of the Data Protection Commissioner, 17th May 2012.

⁴ Twenty-First Annual Report of the Data Protection Commissioner 2009, page 9, available at www.dataprotection.ie/documents/annualreports/AR2010.pdf accessed 4 May 2012.

⁵ Twenty-Second Annual Report of the Data Protection Commissioner 2010, page 10, available at www.dataprotection.ie/documents/annualreports/2010AR.pdf accessed 4 May 2012.

⁶ Twenty-Third Annual Report of the Data Protection Commissioner 2011, page 9, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

⁷ Twenty-First Annual Report of the Data Protection Commissioner 2009, page 10, available at www.dataprotection.ie/documents/annualreports/AR2010.pdf accessed 4 May 2012.

⁸ Twenty-Second Annual Report of the Data Protection Commissioner 2010, pages 45-60, available at www.dataprotection.ie/documents/annualreports/2010AR.pdf accessed 4 May 2012.

⁹ Twenty-Third Annual Report of the Data Protection Commissioner 2011, pages 41-45, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

¹⁰ Interview with the Office of the Data Protection Commissioner, 17th May 2012.

¹¹ Twenty-First Annual Report of the Data Protection Commissioner 2009, page 20-21, available at www.dataprotection.ie/documents/annualreports/AR2010.pdf accessed 4 May 2012.

¹² Twenty-Second Annual Report of the Data Protection Commissioner 2010, page 19, available at www.dataprotection.ie/documents/annualreports/2010AR.pdf accessed 4 May 2012.

¹³ Twenty-Third Annual Report of the Data Protection Commissioner 2011, pages 21-24, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

¹⁴ Twenty-First Annual Report of the Data Protection Commissioner 2009, page 13, available at www.dataprotection.ie/documents/annualreports/AR2010.pdf accessed 4 May 2012.

¹⁵ Twenty-Second Annual Report of the Data Protection Commissioner 2010, page 13, available at www.dataprotection.ie/documents/annualreports/2010AR.pdf accessed 4 May 2012.

¹⁶ Twenty-Third Annual Report of the Data Protection Commissioner 2011, page 12, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

6	Information Notices	Data Protection Commissioner	2¹⁷	7¹⁸	2¹⁹
7	Sue for damages	District / Circuit / High Court (depending on amount claimed)	Not available	Not available	Not available

¹⁷ Twenty-First Annual Report of the Data Protection Commissioner 2009, page 13, available at www.dataprotection.ie/documents/annualreports/AR2010.pdf accessed 4 May 2012.

¹⁸ Twenty-Second Annual Report of the Data Protection Commissioner 2010, page 13, available at www.dataprotection.ie/documents/annualreports/2010AR.pdf accessed 4 May 2012.

¹⁹ Twenty-Third Annual Report of the Data Protection Commissioner 2011, page 12, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

Detailed information

Redress Mechanism 1 – Investigation of Complaint

- **Legal Basis:** Section 10 of the Data Protection Act 1988 (No. 25 of 1988) as amended provides the legal basis for the Data Commissioner to investigate complaints made by an individual in respect of personal data.²⁰ Section 10(1)(b)(ii) provides that where the Commissioner is unable, within a reasonable time, to arrange for the amicable resolution of the issue by the parties, the Commissioner must notify the parties of a decision.
- **Type of Procedure:** The nature of the procedure is an administrative decision making procedure on the part of the data protection authority.
- **Possibilities of Appeal:** A party unhappy with a decision of the Data Commission may appeal to the Circuit Court within 21 days of the decision. An appeal from the decision of the Circuit Court may be brought to the High Court on a point of law only.²¹ The decisions of the Data Commissioner may also be amenable to judicial review in the High Court.
- **Burden of Proof:** Once satisfied that the complaint made by the complainant is not frivolous or vexatious and suggests a prima facie ground of complaint, the Data Commissioner has an investigatory role, rather than the burden of proof resting with the complainant. The Commissioner has a duty to come to an opinion, on the balance of probabilities, as to whether the Data Protection Acts have been contravened.
- **Available Mechanism to Lower Burden of Proof:** Section 10 of the Data Protection Act 1988 (No. 25 of 1988) as amended confers on the Data Commissioner the power to order individuals to provide such information as is necessary or expedient for the performance by the Commissioner of his functions. Failure to provide information is a criminal offence, however the Act does not provide that the Commissioner may draw evidential inferences from such a failure.
- **Requirement of Legal Representation:** A complainant does not require legal representation in order to make a complaint to the Data Protection Commissioner and in the most cases a complainant would not be legally represented in making a complaint.
- **Availability of Free Legal Advice:** The office and the website of the Data Protection Commissioner provide information to individuals considering making a complaint.²² Other advice services such as the Citizens Information Board²³ and the Free Legal Advice Centre²⁴ may also provide guidance and information.
- **Locus Standi:** Under section 10 of the Data Protection Act 1988 (No. 25 of 1988) as amended, the Data Protection Commissioner may initiate an investigation either on foot of a complaint by an individual or own his or her own initiative. The involvement of the complainant is essentially limited to making the complaint. No other party would have official standing in the procedure.
- **Cost of Procedure:** Information is not available as to the costs of particular investigations, and as each investigation will vary considerably in size and scope so too

²⁰ Section 10 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

²¹ Section 10(1)(b)(ii) and section 26 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at http://www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

²² See www.dataprotection.ie accessed 4 May 2012.

²³ See www.citizensinformation.ie accessed 4 May 2012.

²⁴ See www.flac.ie accessed 4 May 2012.

will the costs involved. In 2011 the Office of the Data Protection Commissioner had a budget of €1.5 million, 35% of which (€525,000) was spent on investigations and prosecutions.²⁵ €144,349 was spent on legal and professional fees in 2011, €670 in 2010 and €283,972 in 2009.

- **Duration of Procedure:** Information is not available as to the average time which investigations take, and as each investigation will vary considerably in size and scope so too will the length of time required. 1161 complaints (including electronic privacy complaints) were opened in 2011 and 1080 were completed.
- **Outcomes:** Of the 908 investigations opened in 2011 the breakdown by area was as follows: 62% Access Rights; 13% Disclosure; 7% Unfair Processing of Data; 5% Unfair Obtaining of Data; 4% Use of CCTV footage; 3% Failure to Secure Data; 1% Accuracy; 1% Excessive Data Required; 1% Unfair Retention of Data; 1% Postal Direct Marketing; 1% Other.
- Of the 908 investigations open in 2011, only 17 formal decisions were made (the rest being resolved amicably without the need for a formal decision). 16 decisions related to the Data Protection Acts and just one related to the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011. Of these, 13 complaints were fully upheld, 1 was partially upheld and 3 were rejected.
- Of the 552 investigations opened in 2010 the breakdown by area was as follows: 56% Access Rights; 14% Disclosure; 14% Unfair Processing of Data; 3% Unfair Obtaining of Data; 3% Use of CCTV footage; 3% Failure to Secure Data; 3% Accuracy; 1% Excessive Data Required; 1% Unfair Retention of Data; 1% Postal Direct Marketing; 1% Other.
- Of the 552 investigations open in 2010, only 14 formal decisions were made (the rest being resolved amicably without the need for a formal decision), all of which related to the Data Protection Acts. Of these, 13 complaints were fully upheld, 1 was partially upheld and none were rejected.
- Of the 652 investigations opened in 2009 the breakdown by area was as follows: 40% Access Rights; 24% Disclosure; 4% Unfair Processing of Data; 7% Unfair Obtaining of Data; 3% Use of CCTV footage; 5% Failure to Secure Data; 3% Accuracy; 3% Excessive Data Required; 3% Unfair Retention of Data; 3% Postal Direct Marketing; 5% Other.
- Of the 652 investigations open in 2009, only 24 formal decisions were made (the rest being resolved amicably without the need for a formal decision), all but one of which related to the Data Protection Acts. Of these, 20 complaints were fully upheld, 2 were partially upheld and 2 were rejected.

Redress Mechanism Number 2 – Investigation of Electronic Privacy Complaint

- **Legal Basis:** Regulation 17 of the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011)²⁶ provides that certain of the enforcement powers of the Data Protection Commissioner conferred by the Data Protection Act 1988, as amended, shall apply also to the Electronic Communications Networks and Services Regulation, including the power to investigate a complaint.

²⁵ Twenty-Third Annual Report of the Data Protection Commissioner 2011, page 6, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

²⁶ European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011) available at www.dataprotection.ie/documents/legal/SI336of2011.pdf accessed 4 May 2012.

- **Type of Procedure:** The nature of the procedure is an administrative decision making procedure on the part of the data protection authority.
- **Possibilities of Appeal:** A party unhappy with a decision of the Data Commission may appeal to the Circuit Court within 21 days of the decision. An appeal from the decision of the Circuit Court may be brought to the High Court on a point of law only.²⁷ The decisions of the Data Commissioner may also be amenable to judicial review in the High Court.
- **Burden of Proof:** Once satisfied that the complaint made by the complainant is not frivolous or vexatious and suggests a prima facie ground of complaint, the Data Commissioner has an investigatory role, rather than the burden of proof resting with the complainant. The Commissioner has a duty to come to an opinion, on the balance of probabilities, as to whether the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 have been contravened.
- **Available Mechanism to Lower Burden of Proof:** Regulation 18 of the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 extends the power conferred by section 10 of the Data Protection Act 1988 (No. 25 of 1988) on the Data Commissioner to order individuals to provide such information as is necessary or expedient for the performance by the Commissioner of his functions, to investigations of complaints made under the Regulations.
- **Requirement of Legal Representation:** A complainant does not require legal representation in order to make a complaint to the Data Protection Commissioner and in the most cases a complainant would not be legally represented in making a complaint.
- **Availability of Free Legal Advice:** The office and the website of the Data Protection Commissioner provide information to individuals considering making a complaint.²⁸ Other advice services such as the Citizens Information Board²⁹ and the Free Legal Advice Centre³⁰ may also provide guidance and information.
- **Locus Standi:** The Data Protection Commissioner may initiate an investigation either on foot of a complaint by an individual or own his or her own initiative once forming the opinion that there may be a contravention. The involvement of the complainant is essentially limited to making the complaint. No other party would have official standing in the procedure.
- **Costs of Procedure:** Information is not available as to the costs of particular investigations, and as each investigation will vary considerably in size and scope so too will the costs involved.³¹
- **Duration of Procedure:** Information is not available as to the average time which investigations take, and as each investigation will vary considerably in size and scope so too will the length of time required.
- **Outcomes:** 262 investigations relating to Electronic Privacy were opened in 200, 231 in 2010 and 253 in 2011. An amicable compromise was reached in the vast majority of cases without the need for a formal decision.

²⁷ Section 10(1)(b)(ii) and section 26 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

²⁸ See www.dataprotection.ie accessed 4 May 2012.

²⁹ See www.citizensinformation.ie accessed 4 May 2012.

³⁰ See www.flac.ie accessed 4 May 2012.

³¹ Interview with the Office of the Data Protection Commissioner, 17 May 2012.

Redress Mechanism Number 3: Criminal Prosecution

- **Range of Outcomes:** On summary conviction of an offence under the Data Protection Acts, a person or body corporate may be liable to a fine of up to €3,000. On conviction on indictment, a person or body corporate may be liable to a fine of up to €100,000.³² On conviction on indictment of a offence under regulation 13(a) or 13(c) of the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2003)³³ a natural person is liable to a fine of up to €50,000 and a body corporate liable to a fine of up to €250,000. For other offences under the Regulations, on summary conviction a person or body corporate is liable to a class up to €5,000, whilst on conviction on indictment a natural person is liable to a fine of up to €50,000 and a body corporate is liable to a fine of up to €250,000.³⁴
- **Legal Basis:** The Data Protection Act 1988 as amended contains a number of criminal offences: (1) requiring someone to make an access request in connection with recruitment, employment or the provision of services (s.4.(13)); (2) failing or refusing to comply with an Enforcement Notice (s.10(9)); (3) failing to comply with a Prohibition Notice (s.11(15)); (4) failing to comply with an Information Notice or knowingly providing false information (s.12(5)); (5) processing data in breach of s.12A(6) of the Act (s.12A(7)); (6) keeping personal data without there being an entry in the register in respect of the data controller (s.19(6)); (7) providing information known to be false and misleading in respect of an entry in the register (s.20(2)); (8) disclosure of data by a data processor with the prior authority of the data controller (s.21(2)); (9) obtaining access to personal data with the prior authority of the data controller (s.22(1)); (10) obstructing or impeding an authorised officer of the Data Protection Commissioner (s.24(6)); (11) disclosure of confidential information by the Data Protection Commissioner or its staff (paragraph 10(2) of Second Schedule).³⁵ In addition, the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2003) includes a number of offences that may be tried summarily by the Data Protection Commissioner or on indictment at the suit of the Director of Public Prosecutions.³⁶
- **Type of Procedure:** Criminal procedure which on summary trial is heard in the District Court or on indictment is heard in the Circuit Court.
- **Possibilities of Appeal:** Appeals from the District Court are by way of a re-hearing in the Circuit Court and that court's decision is then final. Appeals from the Circuit Court are heard by the Court of Criminal Appeal.
- **Burden of Proof:** Each element of the particular offence must be proved by the prosecution beyond a reasonable doubt.

³² Section 31 of the Data Protection Act 1988 (No. 25 of 1988) available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

³³ European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011) available at www.dataprotection.ie/documents/legal/SI336of2011.pdf accessed 4 May 2012.

³⁴ Regulations 4, 13 and 27 of the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011) available at www.dataprotection.ie/documents/legal/SI336of2011.pdf accessed 4 May 2012.

³⁵ Data Protection Act 1988 (No. 25 of 1988) available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

³⁶ Regulation 26 of the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011) available at www.dataprotection.ie/documents/legal/SI336of2011.pdf accessed 4 May 2012.

- **Available Mechanism to Lower Burden of Proof:** Neither the Data Protection Act 1988 nor the European Communities (Electronic Communication Networks and Services) (Data Protection and Privacy) Regulations makes available any particular mechanism to lower the burden of proof.
- **Requirement of Legal Representation:** Summary trials in the District Court may be brought by the Data Protection Commissioner or by the Garda Síochána (national police force), however all summary prosecutions to date have been brought by the Commissioner. Trials on indictment in the Circuit Court are brought at the suit of the Director of Public Prosecutions. There is no requirement that a complainant be legally represented in a criminal prosecution and a complainant cannot initiate or be active in a criminal prosecution on his or her own.
- **Availability of Free Legal Advice:** An impecunious individual defendant to criminal proceedings may apply for legal aid. A complainant or an accused individual may seek information from the office and the website of the Data Protection Commissioner.³⁷ Other advice services such as the Citizens Information Board³⁸ and the Free Legal Advice Centre³⁹ may also provide guidance and information.
- **Locus Standi:** Summary trials in the District Court may be brought by the Data Protection Commissioner or by the Garda Síochána (national police force), however all summary prosecutions to date have been brought by the Commissioner. Trials on indictment in the Circuit Court are brought at the suit of the Director of Public Prosecutions. While civil society organizations may attend trials held in public, there is no provision enabling their active involvement in criminal proceedings. While an individual complainant has no formal participatory role in a criminal prosecution, an individual could obtain an injunction in the civil courts restraining the commission of a criminal offence.⁴⁰
- **Cost of Procedure:** Information is not available as to the costs of particular prosecutions. In 2011 the Office of the Data Protection Commissioner had a budget of €1.5 million, 35% of which (€525,000) was spent on investigations and prosecutions.⁴¹ In many prosecutions the Commissioner has been awarded the costs or a portion of costs of a successful prosecution. Where a guilty plea has been entered, costs awarded are in the region of €900 - €1,000. Where a not guilty plea was entered, costs will vary but awards have averaged €4,000 - €5,000.⁴²
- **Duration of Procedure:** Under section 30 of the Data Protection Act 1988, any summary prosecution of an offence under the Act must be commenced within one year of the alleged offence.⁴³ In contrast, Regulation 17I(4) of European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008 (Statutory Instrument 526 of 2008) provided that summary prosecutions under those regulations may be commenced within two years from the alleged offence.⁴⁴ In the period 2009-2011, all but three prosecutions took place in the District Court and took on average between a year and 18 months to conclude.

³⁷ See www.dataprotection.ie accessed 4 May 2012.

³⁸ See www.citizensinformation.ie accessed 4 May 2012.

³⁹ See www.flac.ie accessed 4 May 2012.

⁴⁰ See the High Court decision in *O'Connor v Williams* [2001] 1 Irish Reports 248, Barron J. May 15, 1996.

⁴¹ Twenty-Third Annual Report of the Data Protection Commissioner 2011, page 6, available at <http://dataprotection.ie/documents/annualreports/AnnualReport2011.pdf> accessed 4 May 2012.

⁴² Interview with the Office of the Data Protection Commissioner, 17 May 2012.

⁴³ Section 30 of the Data Protection Act 1988, available at www.irishstatutebook.ie/1988/en/act/pub/0025/sec0030.html#sec30, accessed 17 May 2012.

⁴⁴ Regulation 17I(4) of European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008 (Statutory Instrument 526 of 2008), available at www.irishstatutebook.ie/2008/en/si/0526.html accessed 17 May 2012.

2011

Case	No. of Charges	Plea / Trial	Outcome	Costs
1	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€2,000 to charity (Probation Act applied)	-
2	4 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€1850 to charity (Probation Act applied)	-
3	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€2,000 to charity (Probation Act applied)	-
4	18 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€7,100 (3 other complaints were settled on the basis of €500 to each complainant and €20,000 to charity.	-
5	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€450	-
6	Data Protection Acts	Guilty Plea – Trial on Indictment	€1,000 to charity (Probation Act applied)	-
7	Data Protection Acts	Guilty Plea – Trial on Indictment	€1,000 to charity (Probation Act applied)	-
8	Data Protection Acts	Guilty Plea – Trial on Indictment	€1,000 to charity (Probation Act applied)	-

2010

Case	No. of Charges	Plea / Trial	Outcome	Costs
1	2 (Data Protection Act)	Guilty Plea – Summary Trial	€1,000 to charity (Probation Act)	Costs
2	2 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€500	Costs
3	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€500	Costs
4	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€3,000 to charity (Probation Act)	Contribution to costs
5	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€300	Costs
6	3 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€1,250	Costs
7	4 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€2,000 (Convictions)	Costs

	Communications Regulation)	Summary Trial	entered on 2 charges only)	
8	12 (Electronic Communications Regulation)	Not Guilty Plea – Summary Trial	Charges dismissed	-
9	12 (Electronic Communications Regulation)	Not Guilty Plea – Summary Trial	Court satisfied that 10 of the 12 charges had been proved. Conviction entered on 2 charges. €2,000	€4,000 contribution
10	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€500	Costs
11	1 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€500	Costs

2009

Case	No. of Charges	Plea	Outcome	Costs
1	2 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€3,250	-
2	3 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€2,250	-
3	4 (Electronic Communications Regulation)	Guilty Plea – Summary Trial	€3,250	-
4	(Electronic Communications Regulation)	Not available – Summary Trial	€7,100 (3 other complaints were settled on the basis of €500 each to complainants and €20,000 to charity.	
5	3 (Electronic Communications Regulation)	Not available – Summary Trial	€9,000	
6	5 (Electronic Communications Regulation)	Not available – Summary Trial	One conviction recorded and fined €2,500 plus €16,000 donation to charity.	Not available
7	13 (Electronic Communications Regulation)	Not available – Summary Trial	One conviction recorded and fined €2,000 plus €24,000 donation to charity.	Not available
8	3 (Electronic Communications Regulation)	Not available – Summary Trial	Donation of €2,000 to charity. Probation Act applied.	Not available
9	15 (Electronic Communications Regulation)	Not available – Summary Trial	Donation of €20,000 to charity. Probation Act applied.	Not available

Redress Mechanism Number 4: Audit

- **Range of Possible Outcomes:** An audit by the Data Protection Commissioner results in the completion of a report. The report is only published with the consent of the audited organisation.
- **Legal Basis:** Section 24 of the Data Protection Act 1988 as amended permits the Data Protection Commissioner to require authorised officers to enter and inspect premises and inspect records relating to data control or processing.⁴⁵
- **Type of Procedure:** Administrative action conducted by the data protection authority.
- **Type of Procedure:** There is no appeal available.
- **Burden of Proof:** The audit does not involve a burden of proof on one party but rather is a fact-finding exercise conducted by the data protection authority.
- **Availability of Mechanism to Lower Burden of Proof:** There is no available mechanism to lower the burden of proof.
- **Requirement of Legal Representation:** There is no requirement of legal representation.
- **Requirement of Legal Representation:** An individual subject to an audit may seek information from the office and the website of the Data Protection Commissioner.⁴⁶ Other advice services such as the Citizens Information Board⁴⁷ and the Free Legal Advice Centre⁴⁸ may also provide guidance and information.
- **Locus Standi:** An audit may only be carried out by the authorised officers of the Data Protection Commission.
- **Cost of Procedure:** The cost of an audit will vary according to the size and nature of the organisation.
- **Duration of Procedure:** The duration of an audit will vary according to the size and nature of the organisation.
- **Outcomes:** 30 audits were conducted in 2009, 32 in 2010 and 28 in 2011.

Redress Mechanism Number 5: Enforcement Notice

- **Range of Outcomes:** If, having concluded an investigation, the Data Protection Commissioner forms the opinion that a person has contravened the Data Protection Act or the Electronic Communication Regulations, he or she may serve an enforcement notice on the person, requiring that the steps specified in the notice are taken within the time specified. Failure to comply with an enforcement notice without reasonable notice is a criminal offence.
- **Legal Basis:** Section 10(4) - (9) of the Data Protection Act 1988 as amended permits the Data Protection Commissioner to issue enforcement notices and provides for related matters.⁴⁹

⁴⁵ Section 24 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

⁴⁶ See www.dataprotection.ie accessed 4 May 2012.

⁴⁷ See www.citizensinformation.ie accessed 4 May 2012.

⁴⁸ See www.flac.ie accessed 4 May 2012.

⁴⁹ Section 10(4)-(9) of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

- **Type of Procedure:** Administrative action conducted by the data protection authority.
- **Possibilities of Appeal:** An appeal of an enforcement notice may be taken to the Circuit Court within 21 days. The decision of the Circuit Court is final, save for the possibility of an appeal to the High Court on a point of law only.⁵⁰
- **Burden of Proof:** In order to issue an enforcement notice the Data Commissioner must have formed the opinion, on the balance on probability, that a person has contravened or is contravening a provision of the Data Protection Acts or the Electronic Communication Regulation.
- In appealing an enforcement notice the burden would be on the appellant to satisfy the Circuit Court that there was no contravention of the Acts such as to justify the making of a notice.
- **Availability of Mechanism to Lower Burden of Proof:** There is no available mechanism to lower the burden of proof.
- **Requirement of Legal Representation:** There is no requirement of legal representation, however an appeal to the Circuit Court would usually require legal representation, particularly where the appellant is a company.
- **Availability of Free Legal Advice:** An individual subject to an enforcement notice may seek information from the office and the website of the Data Protection Commissioner.⁵¹ Other advice services such as the Citizens Information Board⁵² and the Free Legal Advice Centre⁵³ may also provide guidance and information.
- **Locus Standi:** An enforcement notice may only be issued by the Data Protection Commission.
- **Cost of Procedure:** There is no information available as to the cost of an enforcement notice.
- **Duration of Procedure:** Compliance with an enforcement notice cannot be required to take place until the expiry of 21 days in which time an appeal may be brought. There is an exception to this where the Data Protection Commissioner forms the opinion that by reason of special circumstances compliance is urgently required within 7 days.
- **Outcomes:** 4 enforcement notices were issued in 2009 (3 in relation to rights of access and 1 in relation to the right to establish the existence of personal data); 9 were issued in 2010 (6 in relation to rights of access and 3 in relation to the collection, keeping or processing of data) and 10 were issued in 2011, one of which is under appeal (7 in relation to the right of access and 3 in relation to the collection, keeping or processing of data).

Redress Mechanism Number 6: Information Notice

- **Legal Basis:** Section 12 of the Data Protection Act 1988 as amended permits the Data Protection Commissioner to order individuals to provide such information as is necessary or expedient for the performance of his functions.⁵⁴
- **Type of Procedure:** Administrative action conducted by the data protection authority.

⁵⁰ Section 26 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

⁵¹ See www.dataprotection.ie accessed 4 May 2012.

⁵² See www.citizensinformation.ie accessed 4 May 2012.

⁵³ See www.flac.ie accessed 4 May 2012.

⁵⁴ Section 12 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

- **Possibilities of Appeal:** An appeal of an information notice may be taken to the Circuit Court within 21 days. The decision of the Circuit Court is final, save for the possibility of an appeal to the High Court on a point of law only.⁵⁵
- **Burden of Proof:** The Data Protection Commissioner must be satisfied that the issuing of an information notice is necessary or expedient for the performance of his functions.
- **Availability of Mechanism to Lower Burden of Proof:** There is no available mechanism to lower the burden of proof.
- **Requirement of Legal Representation:** There is no requirement of legal representation.
- **Availability of Free Legal Advice:** An individual subject to an information notice may seek information from the office and the website of the Data Protection Commissioner.⁵⁶ Other advice services such as the Citizens Information Board⁵⁷ and the Free Legal Advice Centre⁵⁸ may also provide guidance and information.
- **Locus Standi:** An information notice may only be issued by the Data Protection Commission.
- **Cost of Procedure:** There is no information available as to the cost of issuing an information notice.
- **Duration of Procedure:** The time for compliance with an information notice must be at least 21 days, in which time the person may appeal to the Circuit Court. There is an exception to this where the Data Protection Commissioner forms the opinion that by reason of special circumstances the information is urgently required within 7 days.
- **Outcomes:** 2 information notices were issued in 2009, 9 in 2010 and 2 in 2011.

Redress Mechanism Number 7: Sue for damages

- **Range of Outcomes:** An individual who believes that he or she has suffered damage as a result of a breach of the Data Protection Acts or the Electronic Communication Regulations may sue in the civil courts for damages.
- **Legal Basis:** Section 7 of the Data Protection Act 1988 as amended provides that for the purposes of the law of torts, a data controller or data processor shall, so far as regards the collection by him of personal data or information intended for inclusion in such data or his dealing with such data, owe a duty of care to the data subject concerned.⁵⁹ Regulation 16(2) of the European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011) provides that a person who suffers loss and damage as a result of a contravention of any of the requirements of these Regulations by any other person shall be entitled to damages from that other person for that loss and damage.⁶⁰
- **Type of Procedure:** Civil proceedings in tort / negligence. It is likely that such a claim would include or be ancillary to a claim for damages for breach of the Constitutional right to privacy.

⁵⁵ Section 26 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

⁵⁶ See www.dataprotection.ie accessed 4 May 2012.

⁵⁷ See www.citizensinformation.ie accessed 4 May 2012.

⁵⁸ See www.flac.ie accessed 4 May 2012.

⁵⁹ Section 7 of the Data Protection Act 1988 (No. 25 of 1988) as amended available at www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1988_0025.PDF accessed 4 May 2012.

⁶⁰ European Communities (Electronic Communication Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (Statutory Instrument No. 336 of 2011) available at www.dataprotection.ie/documents/legal/SI336of2011.pdf accessed 4 May 2012.

- **Availability of Appeal:** If the action were taken in the District Court (jurisdiction of up to €6,348) an appeal would lie to the Circuit Court. If the action were taken in the Circuit Court (jurisdiction of up to €38,090) an appeal would lie to the High Court. If the action was taken in the High Court (unlimited jurisdiction) an appeal would lie to the Supreme Court.
- **Burden of Proof:** The plaintiff in such an action would have the burden to prove, on the balance of probabilities, that there was a negligent breach of the duty of care owed to him or her as a result of which damage was suffered.
- **Mechanism to Lower Burden of Proof:** There is no available mechanism to lower the burden of proof.
- **Requirement of Legal Representation:** There is no requirement of legal representation for individuals, although the usual practice would be for legal representative to litigate such cases. A company must be legally represented.
- **Availability of Free Legal Advice:** An individual considering taking an action for damages may seek information from the office and the website of the Data Protection Commissioner.⁶¹ Other advice services such as the Citizens Information Board⁶² and the Free Legal Advice Centre⁶³ may also provide guidance and information.
- **Locus Standi:** It is unlikely that a civil society organisation would be permitted to join in proceedings the purpose of which was a straightforward claim in damages rather than a determination of legal arguments.
- **Cost of Procedure:** No information is available as to the number of any such actions taken in 2009-2011, if any, nor as to their cost or duration. Among practitioners in the area there is a view that the first known case in which damages were awarded for breaches of the Data Protection Acts was on 9 March 2012, when the Circuit Court awarded an individual €15,000 for a breach by an insurance company. It is understood that this judgment is currently under appeal to the High Court.

⁶¹ See www.dataprotection.ie accessed 4 May 2012.

⁶² See www.citizensinformation.ie accessed 4 May 2012.

⁶³ See www.flac.ie accessed 4 May 2012.