

Remedies and liabilities



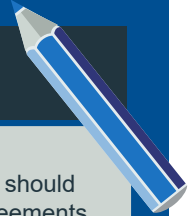
At a glance



- Individuals have the following rights (against controllers and processors):
 - the right to lodge a complaint with supervisory authorities where their data have been processed in a way that does not comply with the GDPR;
 - the right to an effective judicial remedy where a competent supervisory authority fails to deal properly with a complaint;
 - the right to an effective judicial remedy against a relevant controller or processor; and
 - the right to compensation from a relevant controller or processor for material or immaterial damage resulting from infringement of the GDPR.
- Both natural and legal persons have the right of appeal to national courts against a legally binding decision concerning them made by a supervisory authority.
- Individuals can bring claims for non-pecuniary loss, not just for compensation. The potential for group actions to be brought is facilitated.
- Judicial remedies and liability for compensation extend to both data controllers and data processors who infringe the Regulation.



To do list



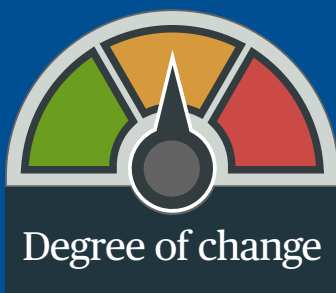
Controllers and their processors should ensure that data processing agreements and contract management arrangements clearly specify the scope of the processor's responsibilities and should agree to mechanisms for resolving disputes regarding respective liabilities to settle compensation claims.



Controllers and processors should agree to report to other controllers or processors that are involved in the same processing, any relevant compliance breaches and any complaints or claims received from relevant data subjects.



Joint data controllers, and controllers involved in the same processing operations, should agree on their respective obligations for data protection compliance, their respective liabilities for data protection breaches and mechanisms for resolving disputes regarding respective liabilities to settle compensation claims.



Complaints to supervisory authorities

The rights of data subjects to complain to supervisory authorities are slightly strengthened as compared to the Data Protection Directive. The Directive obliges supervisory authorities to hear claims lodged by data subjects to check the lawfulness of data processing and inform data subjects that a check has taken place.

Under the GDPR, data subjects whose personal data are processed in a way that does not comply with the GDPR have a specific right to lodge a complaint with supervisory authorities and supervisory authorities must inform data subjects of the progress and outcome of the complaints.

Judicial remedies against decisions of supervisory authorities

Both data subjects and other affected parties have rights to an effective judicial remedy in relation to certain acts and decisions of supervisory authorities.

- Any person has the right to an effective judicial remedy against legally binding decisions concerning him/her, taken by a supervisory authority.
- Data subjects have the right to an effective judicial remedy where a supervisory authority fails to deal with a complaint or fails to inform the data subject within 3 months of the progress or outcome of his or her complaint.

Recital 143 explains that decisions and actions that may be challenged in the courts include the exercise of investigative, corrective, and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. The right does not encompass other measures by supervisory authorities which are not legally binding, such as opinions issued or advice provided by supervisory authorities.

Judicial remedies against data controllers & data processors

Data subjects whose rights have been infringed have the right to an effective judicial remedy against the data controller or processor responsible for the alleged breach. This extends beyond the equivalent provision in the Data Protection Directive, which provides a judicial remedy only against data controllers but not against data processors.

Liability for compensation

Any person who has suffered damage as a result of infringement of the GDPR has the right to receive compensation from the controller or the processor. Under the Data Protection Directive, liability for compensation is limited to controllers only.

The following provision is made for the allocation of liability for compensation between controllers and processors:

- controllers are liable for damage caused by processing which is not in compliance with the GDPR;
- processors are liable only for damage caused by any processing in breach of obligations specifically imposed on processors by the GDPR, or caused by processing that is outside, or contrary to lawful instructions of the controller; and
- in order to ensure effective compensation for data subjects, controllers and processors that are involved in the same processing and are responsible for any damage caused, each shall be held liable for the entire damage. However, a processor or controller that is held liable to pay compensation on this basis is entitled to recover from other relevant parties, that part of the compensation corresponding to their part of the responsibility for the damage.

Whilst the Data Protection Directive refers only to the right to compensation for “*damage*”, the GDPR makes clear that compensation may be recovered for both pecuniary and non-pecuniary losses. This clarification is, however, consistent with current English law interpretation of the meaning of damage for the purpose of compensation claims under the Data Protection Act (see *Google Inc. v Vidal-Hall & Others* [2015] EWCA Civ 311).

The GDPR provides that controllers and processors are exempt from liability if they are “*not in any way responsible for the event giving rise to the damage*”. This exemption appears to be slightly narrower than the exemption that can be claimed under the Data Protection Directive by a controller who can prove “*that he is not responsible for the event giving rise to the damage*”.

Representative bodies

The GDPR entitles representative bodies, acting on behalf of data subjects, to lodge complaints with supervisory authorities and seek judicial remedies against a decision of a supervisory authority or against data controllers or processors. The provision applies to any representative body that is:

- a not-for-profit body, organisation or association;
- properly constituted according to Member State law;
- with statutory objectives that are in the public interest; and
- active in the field of data protection.

Data subjects may also mandate such bodies to exercise on their behalf rights to recover compensation from controllers or processors provided this is permitted by Member State law.

Where empowered to do so by Member State law, such representative bodies may, independently of a data subject's mandate, lodge complaints with supervisory authorities and seek judicial remedies against decisions of a supervisory authority or against data controllers or processors

There is no equivalent provision in the Data Protection Directive.



Where can I find this?

Articles 77-82

Recitals 141-147