

ADMINISTRATIVE APPEALS BOARD  
ADMINISTRATIVE APPEAL NO. 21/2020

BETWEEN

GREG GREEN

Appellant

and

PRIVACY COMMISSIONER FOR  
PERSONAL DATA

Respondent

Coram : Administrative Appeals Board  
Mr. Chua Guan-hock, SC (Deputy Chairman)  
Mr. Chin Shing-hoi  
Miss. Angelina Agnes Kwan

Date of Hearing : 9 February 2021

Date of Handing down Written Decision with Reasons : 13 April 2021

DECISION

**A. Introduction**

1. By Notice of Appeal dated 25 June 2020, the Appellant appeals against the Respondent's Decision dated 1 June 2020 ("the Respondent's Decision") deciding to terminate further investigation referred to below as unnecessary.

2. For ease of reference, this Decision is arranged as follows :-

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## **B. Background**

3. In essence, the background may be briefly summarised :-

3.1 On 22 July 2018, the Appellant was at the Park’N Shop (“PNS”) at Fanling Town Centre when unfortunately he was injured (at around 3:45 p.m.) by a sharp edge which ripped his shirt at arm level, and caused injury to his arm.

3.2 In a state of some shock, he was approached by PNS staff who took down his name, telephone number, and age. It appears the staff who approached him did not speak good English and :-

a. There was no mention of whether the information he provided would be processed by PNS in-house, or by a professional adviser; and

- b. It appears he did not sign any form consenting to the processing of his data by any PNS' adviser or loss adjuster, or for what purpose.

PNS staff completed a Customer Accident Report in Chinese (p.487 bundle).

- 3.3 The following day, PNS engaged a loss adjuster Crawford (Hong Kong) Limited ("**Crawford**") to act on its behalf in liaising and negotiating with the Appellant. Crawford wrote to the Appellant on 31 July 2018 concerning the accident and any loss and damage suffered. There followed written and telephone communications, Crawford acting through its Mr. Leo Kwok. The Appellant complains that Crawford did not provide him with a data privacy statement, or one which he signed, and that he had no confidence in Crawford.
- 3.4 The Appellant during his negotiations and written communications with Crawford and PNS alleged among other things, "gross negligence" or "negligence" by PNS (p.377 of bundle) which caused his injury; he requested a medical examination; and compensation for damage to his shirt and personal injury.
- 3.5 The negotiations for compensation for the ripped shirt ranged between \$350 to \$500. By the Appellant's email dated 2 August 2019 to the Respondent (who he had contacted before that stage), he sought the sum of HK\$7,800 - without breakdown, and without making clear whether this sum was for damage to his shirt, or personal injury, or both. At the hearing, the Appellant says he had consulted lawyers, and his dispute with PNS (and presently with the Respondent) has been expensive and stressful.

- 3.6 There is various correspondence over several months between the Appellant, PNS' Customer Service Department (“**CSD**”), and Crawford. The Appellant sought to be provided with : (a) audio recordings of any telephone conversations between him and them; (b) photographs taken of his arm and shirt, and (c) who had received and used his personal data. At the hearing, the Appellant said he had concerns on the use of his personal data, especially as he claimed he had been the victim of identity theft in the past.
- 3.7 The Appellant made a complaint to the Respondent by form dated 21 January 2019 under the *Personal Data (Privacy) Ordinance* Cap. 486 (“**the Ordinance**”).
- 3.8 From the contemporaneous documents, the Respondent sought to and did liaise with the Appellant, PNS, and Crawford. The Respondent sought to assist all concerned to settle the dispute both concerning any compensation for personal injury and the torn shirt, and the Appellant’s data protection complaints.

There is no serious dispute that it is in the public interest for parties to settle their differences without litigation if possible, or fighting their case to the end.

- 3.9 While the Appellant raised many concerns and points in his correspondence and at the hearing, his main points were :-
- a. He was not informed that his data would be provided to a “third party”, let alone that his data would be transferred to Crawford as a “rogue third party” (Appellant’s email of 2 July 2019).

- b. While there were settlement discussions which referred to his “claim”, he had not filed or lodged any written claim - which he asked PNS and CSD for “proof”, repeatedly.
- c. PNS and Crawford did not give him confidence that they were properly using and processing his personal data, and he did not sign any privacy or data statements with either of them.

3.10 On the contemporaneous documents, the Appellant’s data was :-

- a. returned by PNS to the Appellant on about **9 and 12 April 2019** (pg. 527 bundle); and
- b. destroyed by Crawford on about **6 June 2019** (pg. 581 bundle).

The Appellant did not take issue with these events and dates.

3.11 PNS has since improved its procedures by preparing and implementing an improved written form (“**Customer Information Sheet (For Store Accidents)**”) in English and Chinese. Its specific provisions include that personal information provided in the form is “on a voluntary basis” and :-

- a. “will be used and returned by [PNS] for handling your case”; and
- b. “may be transferred to our loss adjusters and insurers (who are under a duty of confidentiality to us) for the same purposes”.

3.12 The Respondent's Decision dated 1 June 2020 summarised its position (at para 25) having regard to the relevant circumstances and the remedial measures referred to above :-

“we now decide that our investigation of your complaint should come to an end under s.39(2)(d) of the Ordinance.”

3.13 Following the Respondent's Decision, the parties lodged the following documents :-

- (1) The Appellant's Notice of Appeal dated 25 June 2020 which alleged the Respondent made “factual errors”, and took into account “irrelevant information”;
- (2) The Respondent's Statement dated 19 October 2020;
- (3) The Affirmations of the Appellant and his wife Li Li Mei dated 3 and 2 December 2020 respectively; and
- (4) The Appellant's Response dated 6 December 2020 to Respondent's Statement.

3.14 Before the hearing, skeleton submissions were lodged by the Respondent dated 1 February 2021. No written argument was lodged by the Appellant. From the Appellant's Notice of Appeal and points raised in his letters and documents, and at the hearing, we deal with the issues as follows.

### **C. Issues**

4. Three main issues arise :-

- (1) Whether PNS was entitled to use the services of Crawford as loss adjuster as its agent acting on PNS' behalf ("**the Agency issue**"), without specifically informing the Appellant.
- (2) What was the purpose of the Appellant providing his data to PNS, and by PNS to Crawford? ("**the Purpose Issue**")
- (3) Whether given all relevant circumstances including : (a) the return of the Appellant's data by PNS, (b) Crawford destroying his data received, and (c) PNS' remedial measures in implementing its revised Customer Information Sheet (For Store Accidents), further investigation by the Respondent is necessary? ("**the Necessity issue**").

5. Having carefully considered and weighed up, all the arguments raised by the parties and all relevant circumstances, we focus on these major issues, rather than every point raised.

#### **C1. Agency Issue**

6. The Appellant contends that he was not told by PNS that a "third party" would have access to or process his data or how it would be handled; he did not sign any form for the provision or use of his data by a "third party"; and he had no confidence in the handing of his data by PNS and Crawford.

7. The Respondent (and PNS) contended that PNS was entitled to use the services of Crawford loss adjusters as PNS' agent and acting on its behalf, to assist and advise PNS, and to liaise with the Appellant.

8. We are not persuaded by the Appellant that the Respondent's stance is wrong in law, and on the facts. Given the unfortunate damage to the Appellant's torn shirt and his injured arm :-

- (1) It was reasonable for him to provide and PNS to receive and process, the data in question. It was reasonably foreseeable objectively, that the data would be used or processed by PNS in-house, or by a professional adviser acting as its agent and on its behalf.
- (2) PNS was not obliged to deal with the matter in-house. It is not uncommon for loss adjusters or insurers to be engaged to provide professional advice and assistance when there is damage to property or persons, and an actual or potential dispute arises. Applying well established agency principles and in law, Crawford was acting at all material times as PNS' agent and on its behalf, and was not a "third party". In this respect, we consider that the Appellant's main argument in this respect is fundamentally flawed in law, and on the facts. It also ignores common sense.
- (3) The Appellant asserted that he used the services of a lawyer and complained this was expensive and stressful. Although not legally trained, on his own case, he had access to legal advice. While such advice is subject to legal professional privilege, we have seen *no* serious suggestion nor evidence, that he was advised (if at all) that :  
(a) Crawford was a "third party" and not an agent, (b) PNS was not



entitled to engage a loss adjuster to act as its agent and on its behalf. We consider his argument (regrettably repeated at the hearing) that Crawford was a “rogue third party” (pg. 405 of bundle) to be a wild allegation, and completely without foundation and merit.

## **C2. Purpose Issue**

9. The Appellant next argued that although the correspondence from PNS, Crawford, or the Respondent referred to a “claim”, he had not filed or made any written “claim” – and repeatedly asked PNS, Crawford, and the Respondent for “proof” of such a claim. He also argued that it was unnecessary for his full name and personal details to be disclosed for the purposes of negotiation or payment.

10. The Respondent (and PNS) contended that although the Appellant did not lodge a claim in writing or legal proceedings, he expressly alleged “negligence” or “gross negligence” by PNS, which caused him injury : see his emails of 14 December 2018 and 12 April 2019. And that it was reasonable and sensible for his personal details to be provided and processed – at least for PNS and Crawford as loss adjuster to be satisfied they were negotiating with, and would make any payment to, the correct person.

11. We prefer the Respondent’s common sense position. It is axiomatic that it is in the public interest for disputes to be settled without lodging a legal claim if possible, or fighting a claim all the way. Indeed, the Appellant’s *own* preference stated at the hearing was that disputes should be settled without such eventualities. Moreover, as we stated during the hearing, a “claim” can be oral and/or in writing. And he himself had made express allegations in writing, of “negligence” and “gross negligence” (pgs. 230, 377 of bundle). As such, it was reasonably

foreseeable objectively, that given the unfortunate damage to his shirt and personal injury :-

- (1) Some compensation would naturally be *expected* – whether or not asked, or any claim in writing was made. Indeed, it would be surprising if compensation was not requested or demanded, whether expressly or implicitly from the circumstances.
- (2) It was reasonable and common sense for PNS (and Crawford) to use the data for these straight forward purposes :-
  - (a) to ensure they were dealing with and identifying, the correct person; and
  - (b) to ensure any compensation was paid to and received by the correct person.
- (3) During the hearing, as we stated it is common for a person’s name and personal details to be requested for proper purposes, usually to verify identity. There is *no* suggestion that : (a) it was unusual for the Appellant’s personal details to be provided to PNS voluntarily, or (b) PNS (or Crawford) *had* misused his personal data, and if so how.
- (4) Indeed, on the documentary evidence, the Appellant also sought from PNS in November and December 2018 a “medical examination” and “follow up treatment” (pgs. 228, 230, 501, 503 of bundle). In these circumstances, there is no sensible ground for arguing any

contravention of Schedule 1 of the Ordinance Principle 1.1, on Data Protection Principles which provides :-

“(1) Personal data shall not be collected unless –

- (a) the data is collected *for a lawful purpose* directly related to a function or activity of the data user who is to use the data;
- (b) subject to paragraph (c), the collection of the data is *necessary for or directly related* to that purpose; and
- (c) the data is *adequate* but not excessive in relation to that purpose.” (emphasis added)

- (5) In view of the above, the Appellant’s repeated requests for “proof” from the Respondent and PNS that he had made a “claim” (as opposed to having a “potential claim”, pg. 549 of bundle) was regrettably, playing games with all concerned.
- (6) The Appellant also contended he had suffered a “wound” but not an “abrasion” (Appellant’s Response dated 6 December 2020, pg. 549 bundle). But this distinction is irrelevant to the issues on appeal.

### **C3. Necessity issue**

12. The Appellant argues that further investigation should continue, notwithstanding PNS’ return of the data, and Crawford destroying the same (para 3.10 above). He lacked confidence in their data protection, and alleged he was a victim of data theft in the past.

13. The Respondent (and PNS) contended that PNS has improved its protection of personal data largely by revising and implementing its “Customer

Information Sheet (For Store Accidents)”. Further investigation is unnecessary, and given the remedial measures referred to above. As such, terminating the investigation is well within the Respondent’s discretion under s.39(2)(d) of the Ordinance which provides :-

“(2) the Commissioner *may* refuse to carry out or *decide to terminate an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case ...*

(d) any investigation or ***further investigation is for any other reason unnecessary.***” (emphasis added)

14. We accept the Respondent’s argument. In our view, the matter is well within the Respondent’s wide discretion. And within the plain words and legislative intent of s.39(2)(d) – that the Respondent has a discretion to terminate an investigation if it forms the opinion that investigation is “*for any ... reason unnecessary*”. This provision was expressly cited in the Respondent’s Decision dated 1 June 2020.

15. It is also noted that first, while the Appellant sought a “full investigation”, this was not only unnecessary, but much time and effort has *already* been expended by all parties to the underlying dispute, and the Respondent. Indeed, the Respondent incurred substantial time and effort beyond the call of duty, by seeking to negotiate an overall settlement and liaising with all concerned. Second, insofar as the Appellant seeks an apology, this is inherent in any negotiations concerning compensation, and is likely to have been made at the time of the unfortunate accident.

16. For the avoidance of doubt, we have carefully considered all the documents and matters raised by both sides. The Respondent has considered all relevant factors, and did not take into account any irrelevant factor. The Appellant has failed to discharge its onus of showing that the Respondent was wrong, let alone that any such error justifies reversing its Decision. We consider that the Respondent's exercise of discretion was reasonable and fair in all the circumstances. We also apply the well established principle that on an appeal, courts (and tribunals) do not usually deal with appeals which are or have become academic, or hypothetical. In this case, the Appellant's data has already been returned and destroyed by PNS and Crawford respectively (para 3.10 above). Moreover, PNS has implemented its improved Customer Information Sheet (For Store Accidents) (para 3.11 above).

#### **D. Conclusion**

17. For all these reasons, the appeal is dismissed.

18. We regret that some of the Appellant's arguments have verged on the frivolous and vexatious. In particular, he continued to argue at the hearing, that Crawford was "a rogue third party" – a wild allegation completely without foundation. As mentioned, while the cost of a new replacement shirt ranged between \$350 to \$500, he sought compensation of \$7,800 *without breakdown* – without making clear whether this was compensation for damage to his shirt, or personal injury, or both. His refusal to give any breakdown gave rise to a legitimate concern that he sought to be a nuisance and to harass PNS and the Respondent. Any future settlement negotiations would involve the Appellant and PNS, and are not the Respondent's concern. There is also the matter of asking for "proof" repeatedly that he had made a "claim", thereby playing games with all concerned.

19. The Respondent did not seek costs, and the Appellant was fortunate in this respect. We make the usual order before this Appeals Board that there be no order as to costs.

20. We thank both sides for their assistance.

(signed)

Chua Guan-hock, SC

(Deputy Chairman)

Administrative Appeals Board