

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Poxell Ltd

Of: Dept 7899, 196 High Road, Wood Green, London, N22 8HH

1. The Information Commissioner ("the Commissioner") has decided to issue Poxell Ltd (Poxell) with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. Poxell, whose registered office is given above (Companies House Registration Number: 12319694) is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 and 24 of PECR.
4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls promoting a product or service to an individual who has a telephone

number which is registered with the Telephone Preference Service Ltd ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it.

5. Regulation 21 paragraph (1) of PECR provides that:

"(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where-

(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or

(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26."

6. Regulation 21 paragraphs (2), (3), (4) and (5) provide that:

"(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by

that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not make such calls on that line.”

7. Regulation 24 of PECR provides:

“(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication –

...

(b) in relation to a communication to which regulation 21 [or 21A] (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).

(2) The particulars referred to in paragraph (1) are –

(a) the name of the person;

(b) either the address of the person or a telephone number on which he can be reached free of charge.”]

8. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The TPS is a limited company which operates the register on the Commissioner's behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.
9. Section 122(5) of the DPA18 defines direct marketing as "*the communication (by whatever means) of advertising or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR & Schedule 19 paragraphs 430 & 432(6) DPA18).
10. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".
11. A "subscriber" is defined in regulation 2(1) of PECR as "*a person who is a party to a contract with a provider of public electronic communications services for the supply of such services*".
12. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –

(a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,

(b) subsection (2) or (3) applies.

(2) This subsection applies if the contravention was deliberate.

(3) This subsection applies if the person –

(a) knew or ought to have known that there was a risk that the contravention would occur, but

(b) failed to take reasonable steps to prevent the contravention.

13. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.
14. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.
15. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

Background to the case

16. At all material times, Poxell operated as a construction and installation company. They specialise in energy saving products and services such as double glazing, doors and solar panels as well as resin driveways.

17. Between 31 March 2022 and 20 July 2022 ("the contravention period"), Poxell's sole director was Marcel Kellman who was appointed director on 11 February 2022. His correspondence address is listed as [REDACTED]
[REDACTED]
18. The Commissioner's online research established that Poxell operates the website www.poxellhomeimprovements.co.uk. The website explains that Poxell provides services such as resin driveways, windows and solar panels with the aim of improving energy efficiency and reducing household bills.
19. Poxell first came to the attention of the Commissioner in April 2022 as part of an investigation formed to assess and analyse complaint trends in relation to the energy and home improvements sector.
20. In May 2022, the Commissioner identified a number of complaints from individuals who stated they had received calls from an organisation about driveways using several numbers prefixed with 013027.
21. On 19 May 2022, the Commissioner sent a third party information notice to the communications service provider [REDACTED]
[REDACTED] to obtain subscriber information about the numbers prefixed 013027.
22. In response, [REDACTED] confirmed that all of the numbers were assigned to the subscriber Marcel Kellman of Poxell Home Improvements. [REDACTED] also provided call data records for the contravention period. These records showed Poxell made a total of 3,024,744 connected calls. Of these calls, 2,647,805 were made to

numbers that had been registered with the TPS for more than 28 days at the time of the calls.

23. [REDACTED] response also confirmed that the numbers were allocated to Poxell on 24 March 2022, with new numbers being allocated at regular intervals (up to two new numbers per month during the contravention period).
24. The Commissioner identified a total of 203 complaints made to the TPS between 31 March 2022 and 20 July 2022.
25. Within the same period, a total of 210 complaints were submitted via the Commissioner's Online Reporting Tool ("OLRT").
26. The following complaints are extracts from the TPS and OLRT:

"Driveway repairs, windows, doors, solar, insulation. The man sounded very scripted and was reeling off a lot of things that I potentially could have. When I said I wasn't interested he continued to list things."

"Driveways. The frequency of these automated AI calls and types of calls are increasing. I did not consent to them and do not want them."

"Automated call for a new driveway, in the area soon. Register and we'll call you back with an appointee slot. This has now been going on (3-4 times a week) for weeks. Not requested, regular nuisance call."

"Recorded voice - claimed to be John from The Driveway Centre. It could not handle an answer other than 'yes' or 'no', so it hung up."

"Driveway improvement. I am not sure if it was a real person or a clever computer programme. The person appeared to answer my questions in general terms but then fell back on the same pattern with which they had introduced themselves. He would not give me the full address but said they were based in Southampton. I believe he was setting me up for remaking my drive. He asked me how old the drive was."

"Resin driveways, I have had over 20 calls from them in the last couple of months, I do not know how to stop them. It appears to be an automated salesperson that can answer your questions trying repeatedly to book an appointment for a sales rep to come and see me."

"I manage the care of a vulnerable 95 year old widow with severe dementia and no memory. I am trying to keep her safe, and worry if she answers one of these calls, she will give out her name and address."

"I have had calls like this before and it is getting exceedingly irritating. I did not ask to be called by them. It is cold calling and should be banned. About half of calls received are scam calls and I have far more important things to do than to answer them. They prey on the elderly and vulnerable and in these days of clever people it should be possible to get them barred from the telephone networks."

"Driveway. 'John' has called over 40 times. I am sure this is a scammer. Barring numbers does not work as he uses a new one. Is there anyway I can put a stop to this other than changing my number or individually keep barring each new number?"

"A very aggressive man wanting to sell a resin driveway. Also called 30/05/22 at 10.01 02/05/22 at 14.27. My elderly father received the call. He is also recovering from a stroke, and it caused him distress."

"Hi, this is John calling from the Driveway Centre. I understand you have a driveway at the property. We're doing a promotion.... I hung up every time before the message continued any further. It was pre-recorded but sounded very natural and convincing as a real person."

"Called himself John - Asked if I had a driveway and offered a promotional discount for a Show Home When asked how he obtained my number he said his company works with the Renewable Energies Database which recorded my number when I had home improvements done - But I have had none done and my number is unlisted. Have now blocked the number."

"'John' from (supposedly) The Driveway Centre based in Southampton called and asked if I still had a driveway (I've never had one). I asked where he'd got my number from, and he said a database of householders that had had eco-energy improvements. I asked who they'd bought that from, but he wouldn't answer and terminated the call."

27. On 13 June 2022, an initial investigation letter along with a spreadsheet of complaints was sent by email to Poxell. The letter outlined Regulation 19, 21 and 24 of PECR, the Commissioner's powers and requested further information to ascertain Poxell's compliance with the legislation. No response was received by the deadline date of 4 July 2022.
28. On 5 July 2022, a further email was sent to Poxell explaining the response was overdue, and the Commissioner had still not received the information requested. The Commissioner asked for the information to be supplied by 19 July 2022.
29. On 11 July 2022, the Commissioner left a voicemail message for the director, Marcel Kellman, to ascertain if he had received the correspondence and asked him to return the call as a matter of urgency. No response or telephone call was received.
30. On 28 July 2022, the Commissioner sent further letters to Poxell's registered office and the director's correspondence address stating they had attempted to contact the organisation on several occasions, and to date had not received a response. The letter advised Poxell that an information notice could be issued as a last resort if the information was not provided by the deadline date. The Royal Mail tracking information showed both letters were delivered and signed for. No response was received to the letters.
31. On 15 August 2022, the Commissioner attempted to contact Poxell by telephone with no success.

32. On 25 August 2022, Information Notices were sent to Poxell's registered office and correspondence address requesting information to assess the organisation's compliance with the legislation. The cover letter also reminded Poxell that failure to respond would amount to a criminal offence. Poxell failed to provide a response to the Information Notices.
33. On 27 September 2022, the Commissioner issued a third party information notice to [REDACTED] to request copies of correspondence with Poxell.
34. On 28 September 2022, [REDACTED] responded providing email correspondence and the following payment information:

"Poxell Limited, [REDACTED]

*The sender of this payment is [REDACTED]
www.poxellhomeimprovements.co.uk*

35. The email correspondence provided indicated that, in August 2022, [REDACTED] terminated their agreement with Poxell and ceased providing services for failure to pay.
36. On 6 October 2022, the Commissioner sent chaser letters to Poxell, requesting a response within seven days of receipt of the letter. The letter to the registered office was delivered and signed for on 7 October 2022 by [REDACTED]. The letter to the correspondence address was returned to the sorting office and not collected by the addressee. No response was received by the deadline date.

37. The Commissioner is satisfied that the 2,647,805 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
38. The Commissioner has made the above findings of fact on the balance of probabilities.
39. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by Poxell and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

40. The Commissioner finds that Poxell contravened regulations 21 and 24 of PECR.
41. The Commissioner finds that the contravention was as follows:
42. Between 31 March 2022 and 20 July 2022, Poxell used a public telecommunications service for the purposes of making 2,647,805 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the called line was a number listed on the register of numbers kept by the Commissioner in accordance with regulation 26, contrary to regulation 21(1)(b) of PECR. This resulted in 203 complaints being made to the TPS and a further 210 complaints being made directly to the ICO through the ICO Online Reporting Tool.

43. The Commissioner is also satisfied for the purposes of regulation 21 that these 2,647,805 unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and who for the purposes of regulation 21(4) had not notified Poxell that they did not object to receiving such calls.
44. For such notification to be valid under regulation 21(4), the individual must have taken a clear and positive action to override their TPS registration and indicate their willingness to receive marketing calls from the company. The notification should reflect the individual's choice about whether or not they are willing to receive marketing calls. Therefore, where signing up to use a product or service is conditional upon receiving marketing calls, companies will need to demonstrate how this constitutes a clear and positive notification of the individual's willingness to receive such calls.
45. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.
46. Further, the notification must demonstrate the individual's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of regulation 21(4) if individuals are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
47. Poxell has not provided any evidence to indicate that they received valid notifications.

48. Further, Poxell failed, as required by regulation 24 of PECR, to provide the recipient of the calls with the particulars specified at regulation 24(2) of PECR.
49. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

50. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulations 21 and 24 by Poxell arising from the organisation's activities between 31 March 2022 and 20 July 2022, and this led to 2,647,805 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified Poxell that they were willing to receive such calls, and 413 complaints being made as a result.
51. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

52. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Poxell's actions which constituted that contravention were deliberate actions (even if Poxell did not actually intend thereby to contravene PECR).

53. The Commissioner considers that in this case Poxell did deliberately contravene regulations 21 and 24 of PECR. Marcel Kellman was appointed director of Poxell in February 2022, and soon after the organisation obtained several telephone lines. By purchasing several telephone lines they were able to use a technique called 'snowshoeing' which is used by non-complaint call centres to spread complaints over several numbers to evade detection.
54. Poxell failed to identify themselves, allow their number (or an alternative contact number) to be displayed to the person receiving the call or provide a contact address or freephone number if asked.
55. The Commissioner made several attempts to contact Poxell, including issuing an Information Notice, which were unsuccessful in eliciting a response. After receiving the initial investigation letter, Poxell continued to make unsolicited direct marketing calls until their account was terminated by their communications service provider.
56. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
57. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
58. Firstly, he has considered whether Poxell knew or ought reasonably to have known that there was a risk that this contravention would occur. He is satisfied that this condition is met, given that Poxell relied on direct marketing due to the nature of its business, they should

reasonably have sought to familiarise themselves with the relevant legislation and that Poxell failed to engage with the Commissioner's investigation.

59. The Commissioner has also published detailed guidance for companies carrying out marketing explaining their legal requirements under PECR. This guidance explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax. Specifically, it states that live calls must not be made to any subscriber registered with the TPS, unless the subscriber has specifically notified the company that they do not object to receiving such calls. In case organisations remain unclear on their obligations, the Commissioner operates a telephone helpline. The Commissioner's communications about previous enforcement action where businesses have not complied with PECR are also readily available.
60. It is therefore reasonable to suppose that Poxell should have been aware of its responsibilities in this area.
61. Secondly, the Commissioner has gone on to consider whether Poxell failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
62. The Commissioner's direct marketing guidance makes clear that organisations acquiring or utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary notifications for the purposes of regulation 21(4). It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due

diligence. Poxell has provided no evidence to demonstrate that they undertook proper due diligence.

63. Reasonable steps in these circumstances may also have included: screening data against the TPS register every 28 days; maintaining clear records of notifications received; ensuring that they had an effective and robust suppression list in place; providing suitable training to staff; and performing regular reviews of their marketing databases to ensure that the data remains fit for purpose.
64. Given the volume of calls and complaints, it is clear that Poxell failed to take those reasonable steps.
65. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

66. The Commissioner has taken into account the following aggravating features of this case:
 - Poxell appear to have deliberately targeted vulnerable individuals.
 - Poxell used multiple CLIs to avoid detection in a method referred to as 'snowshoeing'; and
 - Poxell failed to engage with the Commissioner's investigation.
67. The Commissioner does not consider there to be any mitigating features of this case.
68. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. He is

also satisfied that the procedural rights under section 55B have been complied with.

69. The latter has included the issuing of a Notice of Intent, dated 22 July 2023, in which the Commissioner set out his preliminary thinking. No representations were made by Poxell in response to that Notice.
70. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
71. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
72. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. This is an opportunity to reinforce the need for businesses to ensure that they are only telephoning consumers who are not registered with the TPS and/or specifically indicate that they do not object to receiving these calls.
73. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the

proposed intervention on the wider business community, both in terms of deterring non-compliance and economic benefits to legitimate businesses.

74. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

75. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£150,000 (one hundred and fifty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

76. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **5 September 2023** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
77. If the Commissioner receives full payment of the monetary penalty by **4 September 2023** the Commissioner will reduce the monetary penalty by 20% to **£120,000 (one hundred and twenty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
78. There is a right of appeal to the First-tier Tribunal (Information Rights) against:

- (a) the imposition of the monetary penalty and/or;
- (b) the amount of the penalty specified in the monetary penalty notice.

79. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

80. Information about appeals is set out in Annex 1.

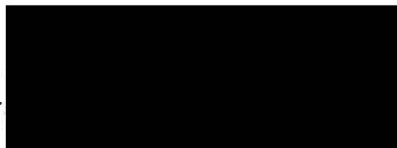
81. The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified within the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not been paid;
- all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
- the period for appealing against the monetary penalty and any variation of it has expired.

82. In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Dated the 3rd day of August 2023

Signed ...



Andy Curry
Head of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.

2. If you decide to appeal and if the Tribunal considers:-

a) that the notice against which the appeal is brought is not in accordance with the law; or

b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber
HM Courts & Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Telephone: 0203 936 8963

Email: grc@justice.gov.uk

a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.

b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.

4. The notice of appeal should state:-

a) your name and address/name and address of your representative (if any);

b) an address where documents may be sent or delivered to you;

c) the name and address of the Information Commissioner;

d) details of the decision to which the proceedings relate;

e) the result that you are seeking;

f) the grounds on which you rely;

g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;

h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time

and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in section 55B(5) of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).