

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Pinnacle Life Limited

Of: Suite 207 Atlas House, Caxton Close, Wigan, Lancashire, England, WN3
6XU

1. The Information Commissioner ("the Commissioner") has decided to issue Pinnacle Life Limited ("PLL") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA 1998"). 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. PLL, whose registered office is given above (Companies House Registration Number: 11896017) is the organisation stated in this notice to have instigated the use of a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 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 material 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. PLL is a UK based insurance broker which was incorporated on 21 March 2019 and registered at Companies House under registered number 11896017. PLL has a registration with the Commissioner under reference ZA520055.

17. PLL came to the Commissioner's attention following a review of TPS complaints from December 2021 where the TPS had been unable to identify the organisation making the call. There was a complaint regarding a call from "Pinnacle Insurance" which said:

"We received an unsolicited marketing call saying that they can get us a better deal on life insurance. It was distressing to receive the call and be called by name. This company should not have my details as I have been registered with the TPS for over 10 years."

18. On 25 January 2022, the Commissioner issued a third party information notice to a communications service provider, [REDACTED], in relation to the telephone number that had been complained about.

19. On 14 February 2022, [REDACTED] responded to the third party information notice confirming that PLL was the subscriber. [REDACTED] also provided the Commissioner with a list of telephone numbers that were allocated to PLL at the time of the third party information notice, which were searched on the Commissioner's and the TPS' complaints databases.

20. Between 18 February 2021 and 8 February 2022, the Commissioner had received 17 complaints, eight of the complainants indicated that

they were TPS registered at the time of the call. Between 7 May 2021 and 17 December 2021, the TPS had received four complaints.

21. The complaints data revealed that the calls were primarily made to offer a 'free review' of existing insurance policies. Four complaints raised concerns about inaccurate data, such as an old address. One complainant stated that they continued to be contacted despite asking to be removed from their marketing list. This complaint read as follows:

"Asked for me by name and incorrect address. Said did I have life insurance [sic]. I said yes but [that] I was not interested and [asked them] to remove me from their marketing list at which point he became abusive and called me stupid. I hung up but the same number called me 30 minutes later so I ignored it".

22. The Commissioner has been provided with recordings of the calls, which PLL do not dispute making. For example, on 3 June 2021, PLL contacted a complainant, who had been registered with the TPS since March 2021, stating to be from *"your validation department"*. The complainant states that they do not have life insurance with the caller and the recording ends. On 17 June 2021, the complainant receives another call and again, the caller does not introduce themselves satisfactorily stating to be *"from the assessment department for your life cover"*. On this occasion, the complainant hangs up. There are a further three attempts to contact the same complainant on 23, 24 and 25 June 2021 but the calls do not connect. On 28 June 2021, the complainant is contacted again to which the complainant informs the caller their number is registered with the TPS and that they should not be calling. In a matter of hours, the complainant is called again despite explicitly referencing being registered with the TPS on a previous call.

The recording captures the caller stating "[...] unless you conduct an assessment you're going to continue being called [sic]". The call records show that further calls were made to the complainant on 29 June 2021, 7 July 2021, and 26 July 2021, showing a repeated pattern of contacting a TPS registered individual.

23. Another example of a call to a TPS registered number was made on 8 June 2021:

"Complainant: Sorry I'm not interested thank you

Caller: May I ask why you're not interested in your policy sir?

Complainant: Don't call me again thank you bye

Caller: No problem I will call you all the time then..."

Further attempts were made to call this individual on 11 June, 14 June, twice on 16 June and on 23 June 2021.

24. Another example of a call to a TPS registered number was made on 2 July 2021:

"Caller: But you have been so rude you didn't tell me at least your real name

Complainant: Remove the number

Caller: Yes, I'm saying you didn't tell me Mrs who am I speaking to?

Complainant: I'm not going to tell you my name because you don't need my number just remove my number now

Caller: You want me to call you up later?

Complainant: No I want you to remove my number or else I'm going to report you to the ICO

Caller: Calm down I'm just joking... I'm just joking"

The individual stated that they did not consent to receive this call and that it made them feel *"annoyed and/or anxious"* particularly because of their concern *"that they continue to hold my number"*.

25. Another complainant was contacted where the caller claimed to be from *"the life assessment and reviews team"* calling about an existing life insurance policy on behalf of their *"provider"*. The complainant asks multiple times for the name of the provider but the caller refuses to provide this stating that they *"do not have [the] provider's name... due to the fact that [the caller] works with the whole of the market and because of [the] GDPR that is in place [the complainant is] not allowed to have the provider's details due to the fact that [the complainant] as a customer could chop and change [their] policy whenever [they] like"*. The caller further stated, *"a provider doesn't have to give accurate information due to the fact that it is a review and update of the policy..."*. The complainant requested to speak with the manager and was put through to another individual who reiterated the same response. The complainant informed the caller that they held an old address for him. Further, the caller attempted to mislead the complainant by suggesting that the call is not a marketing call.

26. The extract of the complaint at paragraph 21 was in relation to a call received from a telephone number allocated to PLL on 8 December 2021 at 14:30. [REDACTED] provided the Commissioner with the call records for PLL's account for the month of December 2021, which showed that this complainant was contacted twice on 8 December 2021 and once on 10 December 2021. Although the last two calls do not appear to have been answered, the records show that the individual's telephone number was not removed from the marketing list as requested and despite this, PLL still attempted to contact them.

27. Accordingly, on 4 April 2022, the Commissioner sent an initial enquiry email to PLL enclosing a copy of the complaints that had been received. The Commissioner's email asked about the data sources PLL used to promote their business, how PLL ensures individuals have agreed to receive their calls, whether PLL conducts TPS screening prior to making calls and whether PLL operates an internal suppression list. The Commissioner also asked PLL to provide evidence that the TPS complainants had not objected to receive their calls and for an explanation for the complaints.
28. On 19 April 2022, PLL responded to the Commissioner stating that they purchase the data *"from a data supplier which is all opt in GDPR data"* and that at the time of these calls, they were using a third party to make calls on their behalf who also used *"opt in GDPR data"*. PLL also stated that they previously had a relationship with a company called '██████' but that they no longer work them with.
29. On 26 April 2022, the Commissioner asked PLL further questions in order to understand their relationship with third party organisations. These questions asked for the identity of the data supplier, where the complainants' data came from, the identity of the third party used to make calls on behalf of PLL and whether this relationship is still active, how the third party sourced the data, whether PLL makes marketing calls themselves in addition to using the third party, and for an explanation of PLL's previous relationship with ██████. As PLL's responses did not fully address all of the Commissioner's questions, the Commissioner asked PLL again to provide evidence that each complainant did not object to PLL contacting them on that line, and whether PLL or the third party used to make calls on their behalf, screens the data against the TPS register prior to making unsolicited marketing calls.

30. On 6 May 2022, PLL responded to the Commissioner stating that they purchased the data from [REDACTED]. PLL stated they sometimes contacted individuals using the data from [REDACTED], but that this was not done regularly as PLL primarily relied on leads supplied by other third party lead generators which made calls on PLL's behalf. PLL identified the third party company used to make calls on their behalf was [REDACTED], based in [REDACTED]. PLL stated that [REDACTED] sourced its own data to make the calls and had a sister company, [REDACTED], which was used by PLL *"to generate leads in regard to UK clients reviewing their current protection plans"*. PLL stated that they stopped working with [REDACTED] when they became aware that *"operations weren't done correctly"*. PLL could not provide evidence that the individuals did not object to their calls, stating that this is because *"[they] have [...] not spoke (sic) to these clients no dialled them. They were contacted by a third party source impersonating our company name [...]. We were a complete victim of this"*. Further, PLL stated that they are now a closed and dormant company.
31. In the same email on 6 May 2022, PLL also provided the Commissioner with a copy of a due diligence document which had been completed for [REDACTED] on 18 September 2020. Key sections of the document, such as how customers opt in, were not completed.
32. On 6 May 2022, the Commissioner asked PLL to provide evidence that they had ceased trading and to provide more information to clarify what exactly had happened with [REDACTED].
33. Also on 6 May 2022, as PLL stated that it had not made any of the calls being complained of, the Commissioner sent a further third party

information notice to [REDACTED] requesting a copy of PLL's call records for the period of 5 May 2021 to 5 May 2022.

34. On 10 May 2022, PLL responded to the Commissioner's further queries explaining that it had stopped trading on 20 December 2021 and provided a copy of a letter sent by PLL dated 9 November 2021. The letter was addressed to [REDACTED] and gave 30 days' notice to terminate their Appointed Representative relationship. However, PLL remains active on Companies House and an unaudited financial statement was filed for the company in October 2022.
35. In the same email on 10 May 2022, PLL stated, in response to the Commissioner's question regarding the activity of [REDACTED], that they became aware that [REDACTED] was not operating correctly because *"UK clients were contacting [PLL] complaining they had received a call from us. We constantly advised them it was not us and we would not contact them. We approached the introducer as this was becoming more and more apparent on a daily basis and requested a number of call records; however the introducer/third party becoming (sic) very dubious and ceased any communication with us"*.
36. PLL stated that they reported this issue to [REDACTED] and also provided the Commissioner with a screenshot of an email that PLL had received from the Serious Fraud Office to say that it would not be investigating the matter.
37. Although the director of PLL stated that the company was no longer trading, the [REDACTED] account for PLL showed that reviews were still being posted for PLL in April 2022 and May 2022. Two of the [REDACTED] reviews (dated 23 May 2022 and 19 October 2022) indicated that Pinnacle Protect is continuing to obtain leads using overseas lead

generators that are making misleading claims on the calls. The Commissioner made enquiries with [REDACTED] to find out whether PLL's account was still active.

38. On 20 May 2022, [REDACTED] confirmed that PLL's account was still being used to make and receive calls.
39. On 30 May 2022, [REDACTED] provided the call records covering the period of 5 May 2021 to 5 May 2022 to the Commissioner.
40. On 7 June 2022, the Commissioner sent a formal investigation letter to PLL. The letter outlined the Commissioner's concerns and the regulations and powers available to the Commissioner. The letter also requested information including the volume of connected calls made by PLL over the period of 5 May 2021 and 5 May 2022, the call scripts used, a list of all the third parties used and the contracts in place, as well as an explanation as to why PLL's call accounts and [REDACTED] were still active if PLL was no longer trading.
41. As PLL had denied making the calls being complained of, the complaints were checked against PLL's call records. After removal of the complaints that did not appear in PLL's call records, there were still 10 outstanding complaints. The Commissioner sent PLL a spreadsheet that comprised the details of the complaints and the call records for each call and asked PLL to confirm the data source for each complainant. The Commissioner also asked PLL to provide evidence that the TPS registered complainants had not objected to receive their calls.
42. On 22 June 2022, PLL responded to the Commissioner with an email consisting of several attachments. At least 13 of these documents were

seemingly created by [REDACTED] rather than PLL. 21 of the documents were call recordings. The other attachments included: an order form between [REDACTED] [REDACTED] dated 30 August 2019; an introducer agreement between PLL and [REDACTED] dated 2 May 2020; a PLL fact find document to be completed when conducting a 'fact find' call with a new lead; [REDACTED] documents including a call script, an order form between PLL and [REDACTED] dated 17 September 2021 and terms and conditions for purchasing data; email correspondence from [REDACTED] showing the company requesting certain numbers be suppressed; order forms between [REDACTED] and PLL dated 4 and 5 March 2020; PLL and [REDACTED] [REDACTED] call scripts; a contract between PLL and [REDACTED] dated 12 October 2020 and a due diligence documents completed for [REDACTED] [REDACTED] dated 18 March 2020; a list of what should and should not be done on a call that was branded with PLL's logo; an email dated 21 June 2022 from [REDACTED] which stated that 445,364 connected calls were made between 05 May 2021 and 05 May 2022; and a list of telephone numbers used by PLL.

43. In the same email dated 22 June 2022, PLL stated they did not have or use any trading names as their only activity was conducted as an Appointed Representative for [REDACTED]. However, PLL stated they had worked with several lead generation firms, including [REDACTED] [REDACTED].
44. PLL also explained: "*On a number of occasions it came to light these firms were impersonating [PLL] rather than introducing themselves as a lead generator and us as and [sic) insurance brokerage who reviews protection plans.*" PLL stated they did not make any marketing calls as their call handlers relied on hot key leads from introducers. PLL further stated "*we supplied [the introducers] with opt in GDPR data which*

[PLL] purchased from [REDACTED] so we knew they were using correct GDPR opt in data."

45. In regard to the relationship between PLL and [REDACTED], PLL stated: *"we did marketing through [REDACTED] – requesting reputable lead generation firms to work with us and source us compliant leads in order to reviewing [sic] UK clients personal protection. One of them was [REDACTED] but [we] soon stopped working with them as we were not happy with their calls. We requested call recordings from time to time to make sure they were conducting compliant calls and found at times they were using our name, personating [sic] us and claiming to be calling from [PLL]. Due to this we terminated our agreement. This was done as soon as we found out."*
46. PLL explained their only data source was [REDACTED] and that PLL provided data from [REDACTED] to the introducer companies *"to show good practice in running legitimate legal entities through our dialling system"*. However, in a subsequent response PLL stated *"the data was from [REDACTED] who made the initial calls to clients"*.
47. PLL stated that none of the complainants had been transferred to PLL. However, PLL stated they had *"allowed a couple of our introducers to use our dialler system. This allowed us to have access to their calls to ensure we could carry out compliance checks to ensure the calls they were making were compliant and we could make sure the data they were using was GDPR opt in data as it was loaded onto the dialler system"*.
48. In relation to the Commissioner's query about the PLL call account being active despite stating the company had ceased trading, PLL explained that the account with [REDACTED] was still registered in the

name of PLL, but they were in the process of notifying all suppliers that PLL was no longer trading. PLL informed the Commissioner that all contracts and agreements were going to be renewed in the name of 'Pinnacle Protect Ltd' ("Pinnacle Protect"), which PLL stated they had to do as when they applied to the Financial Conduct Authority ("FCA") for authorisation, the FCA had told them they would need to change their company name.

49. Pinnacle Protect was incorporated on 4 February 2021 and has the same registered office address as PLL. Mr Colin Mark Sobey ("Mr Sobey") is the sole director of Pinnacle Protect and is also a director of PLL.
50. On 6 July 2022, the Commissioner sent PLL further questions including whether ██████████ made calls using data they had obtained themselves and data provided to them by PLL, confirmation of how ██████ obtained personal data and how they obtained consent for PLL to contact the individuals, an explanation of their relationship with ██████████, confirmation of which introducers had access to PLL's call account and over what period and what the content of the 445,364 outbound connected calls would be given that they had said PLL did not conduct any marketing calls.
51. The Commissioner also asked PLL to provide screenshots to demonstrate how the data was obtained if it was obtained via any method other than by the call script provided.
52. The Commissioner also requested PLL provide an explanation of where the data used by ██████ was sourced from, how long PLL has worked with ██████, why the agreement between PLL and ██████ was dated 2 May 2020, but the due diligence document was dated 20 September 2019. These

same questions were also asked regarding [REDACTED] but in respect of the agreement dated 12 October 2020 and a due diligence document dated 18 March 2020.

53. The Commissioner also asked PPL to explain their comment that some of the calls listed in PPL's call records "*did not happen*", how PPL had been able to provide call records for several of the calls they say did not happen, and to clarify which organisation had made the calls if it had not been PLL.
54. The Commissioner's review of the call records provided by [REDACTED] indicated that 1,168,829 connected calls had been made over the contravention period, however, this figure did not match that in the records which [REDACTED] provided to PLL.
55. As a result, on 14 July 2022, the Commissioner had a call with [REDACTED] to clarify this discrepancy, during which [REDACTED] explained that PLL had asked for connected calls whereas the Commissioner was sent all outbound connected calls directly from the carrier, which may include calls to voicemail and/or where individuals had asked for a call back. [REDACTED] explained that the carrier records do not include the way the calls were dispositioned.
56. As such, the Commissioner asked [REDACTED] for a copy of the same connected calls document that had been provided to PLL, and this was provided on 18 July 2022.
57. On 19 July 2022, PLL stated that the 445,364 outbound connected calls consisted of marketing calls from [REDACTED] and welcome and retention calls conducted by PLL with their existing clients. PLL also confirmed that [REDACTED] are both lead generation firms.

58. In respect of [REDACTED], PLL stated they started working together on 20 September 2019 when [REDACTED] used their own dialling system for calls and their agreement was updated on 2 May 2020. PLL also stated that [REDACTED] used PLL's dialler account from April/May 2021 until December 2021.
59. In respect of [REDACTED], PLL started conducting due diligence checks on them on 18 March 2020, they started working together one month later and their contract was reviewed in October 2020. PLL also stated that [REDACTED] used PLL's dialler account from April to May 2021 until November 2021 when they stopped working together.
60. PLL informed the Commissioner that they provided both [REDACTED] [REDACTED] with batches of data that was purchased from [REDACTED], and that both firms also sourced data themselves.
61. PLL provided a copy of two order confirmations from [REDACTED], which was trading as [REDACTED] at the time, to explain how they obtained leads. The first order was dated 20 May 2020 and was for 7,000 leads with the criteria *"life insurance with provider. Homeowner and rent private. Aged 30-34, 35-39, 40-44,45-49, 50-54, 55-59, 60-64"*. The second order was dated 16 September 2021 and was for 5,000 leads with the same criteria. Neither order confirmation outlined how [REDACTED] sourced the data.
62. In relation to evidencing consent, PLL directed the Commissioner to [REDACTED] privacy policy and provided the URL as [REDACTED]. No further screenshots or documents were provided to evidence that the leads purchased from [REDACTED] had proactively not objected to receiving calls from PLL or that the leads had been TPS screened.

63. ██████'s privacy policy included a list of *"Group Companies and Brands"*, one of which was ██████' whose opt in page included a hyperlink to view the partners that may contact individuals. This hyperlink led to a page consisting of 152 organisations but there was no option to restrict calls to particular partners and PLL was not named on the list. Other *"Group Companies and Brands"* included ██████' and ██████' but their links to find out the details of the partners who may contact individuals did not work. To date, PLL has provided no evidence that they were at any time named on one or all of ██████'s websites.
64. ██████'s website states it obtained data via telephone calls and online however, when the Commissioner asked PLL to provide screenshots if data was obtained other than by phone call using the script provided, PLL stated *"not applicable"*. This contradicts the order form, which states that data was generated via ██████.
65. PLL had stated they also purchased data from ██████. The Commissioner was provided with a copy of an order form with ██████ that stated '████████████████████ will deliver to the Partner datasets which have opted-in to receive marketing communications via the ████████████████████ from the Partner". The ████████████████████" was listed as *"phone (telemarketing)"*. The contract stated that the dataset could only be used for marketing communications relating to ████████████████████. The volume of leads was 1,000 and the criteria was *"England & Wales only, aged 40-70, homeowner, current mortgage provider, has taken [an] interest-only mortgage between 2005-2012, [and has] opted in to receive a call from ████████████████████"*. The contract also stated that data was obtained by individuals *"filling out an online user profile [form],*

through online behaviour/machine learning software and online surveys relating to the individual's personal areas of lifestyle and interest. Data criteria are collected via behaviour/machine learning tools and via online surveys in which users answer multiple questions placed on behalf of the Partner."

66. PLL provided a further order form with [REDACTED] which contained the same information as at paragraph 65 but named PLL instead of [REDACTED]. The criteria for data was listed as: *"full mainland UK, aged 25-65, has or does not have life insurance, are interested in a review on their current insurance policy, are interested in possibly getting a life insurance, opted in to receive a call from [PLL]"*.
67. PLL provided a third order form from [REDACTED], dated 31 January 2020, which requested leads aged 25-60 and information about their current insurance provider. This order form did not explicitly state that the data subjects had opted in to receiving a call from PLL, in contrast to the order form mentioned at paragraph 66.
68. PLL provided the Commissioner with a document that showed how customers opt in to receive a call from PLL through [REDACTED]. This showed that individuals were explicitly asked whether they agree to receive a call from PLL to conduct a life insurance review or to provide more information.
69. In relation to the calls which PLL said had not occurred, Mr Sobey stated that *"when [he] went through the dialling system at the calls and times... [he] couldn't locate them"*. Mr Sobey explained the reason why PLL had been able to provide call recordings for calls they had not

made was because PLL had given [REDACTED] access to their call account.

70. Upon review of the connected call document at paragraph 56 above, the Commissioner noted that more calls made using PLL's account had connected than those that had been dispositioned as 'connected'. The Commissioner surmised that some calls must have been dispositioned other than 'connected' which is why it was not included in the connected call records.
71. On 4 August 2022, the Commissioner explained this understanding to PLL, which PLL did not challenge.
72. Also on 4 August 2022, the Commissioner asked PLL further questions in order to clarify how the data was sourced by the third parties and where the data used by [REDACTED] had come from. To date, none of the contracts that PLL have provided make reference to TPS screening, so the Commissioner also asked PLL to confirm whether they purchased data as being TPS screened.
73. On 15 August 2022, PLL stated that [REDACTED] were given data by PLL to make calls, but they also obtained leads themselves, PLL obtained data from [REDACTED] and [REDACTED], PLL only ever purchased TPS screen data and that PLL had created tabs to keep their dialler records separate from the calls made by [REDACTED].
74. PLL also provided with the Commissioner with a document titled 'data protection law', which was branded with [REDACTED]'s logo. The document included a section on how call handlers should respond to queries from data subjects about where their data had been sourced from. Callers were told to say, *"we [sic] got your data from a reputable data supplier*

or you have participated to our telephone survey or online survey a few months back". This indicates that █████ both purchases data and sources leads via marketing survey calls and online. █████'s script did not obtain notification from individuals that they agreed to receive marketing contact from PLL.

75. On 26 August 2022, the Commissioner asked PLL for specific details about some of the documents they had provided. This included a request for a copy of the █████ advert used to generate leads and an explanation of their relationship with █████. The Commissioner also asked PLL about the volume of data purchased from █████ when this was purchased and whether the data was sourced from purely online sources.

76. On 12 September 2022, PLL responded stating:

- they did not have copies of the █████ adverts so they would need to request screenshots from █████.
- PLL had no relationship with █████ and do not know of the company.
- PLL only purchased one batch of data from █████ which was bought in March 2020, and that they gave █████ access to their dialler because █████ was having issues with their own dialler which was causing connection issues and therefore disrupting the supply of leads.
- PLL had conducted due diligence on the data suppliers used by █████, and on █████ which supplied data to █████. PLL further stated they had supplied █████ with approximately 40,000 lines of data.

77. On 4 October 2022, the Commissioner asked PLL several final questions including: whether, prior to buying the [REDACTED] leads, PLL obtained a copy of the [REDACTED] advert used by [REDACTED]; whether any of PLL's other orders were for [REDACTED] leads or if all other leads from [REDACTED] were generated via the telephone survey; how many leads PLL passed to [REDACTED]; and names of the companies that [REDACTED] used to purchase data from. The Commissioner also asked PLL for a copy of the calls made by [REDACTED] over the period of 5 May 2021 to 5 May 2022 or until the date they stopped using PLL's data if that was sooner.

78. On 17 October 2022, PLL responded to the Commissioner stating:

- they never had sight of the [REDACTED] advert used by [REDACTED] to generate leads.
- PLL only submitted one order for [REDACTED] leads from [REDACTED], with all other leads generated via [REDACTED]'s telephone survey.
- PLL provided "2-3 batches of data" to [REDACTED] (the exact volume was not provided).
- the only data supplier that they were aware of [REDACTED] using to source data was [REDACTED], despite the due diligence document stating that [REDACTED] obtain data from "*various opt in data suppliers in the UK*".

79. On 12 December 2022, the Commissioner sent PLL a letter stating that the investigation had ended and that a decision would be made on whether formal enforcement action is appropriate.

80. PLL provided the Commissioner with copies of the call records for the campaigns run off their dialler by [REDACTED]. However, PLL

had stated both organisations had stopped using their dialler at the end of 2021, but both sets of records included calls from 2022.

81. On 27 January 2023, the Commissioner put this discrepancy to PLL. On 3 February 2023, PLL responded:

"We did work with another firm who were known as DNA contact solutions, this firm again was under use of the dialling system, but because previous firms had campaigns set up they continued to use them campaigns as the plug ins where [sic] already formed. This firm always purchased there [sic] own data from [REDACTED], and uploaded to the dialler themselves.

Again, after a small period of time, we ceased all access of any firms using our dialling system due to the nature of complaints received. We treat this as a [sic] oversight and feel very stupid we didn't pick up what these [REDACTED] firms were doing immediately and can't stress how sorry we are for not being able to clamp this immediately.

We ran checks on all firms ensuring they were ico [sic] regulated and fully compliant in line with regulation. We were constantly under the impression data bought and handled by these third party sources was all above board and in line with all regulation. The moment we seen [sic] the ability to be wrong, we did what we could to prevent it."

82. From PLL's response at paragraph 81 above, it appeared to the Commissioner that once a separate call campaign had been set up on PLL's system for one of its introducers to use, this separate campaign tab was then used by at least one other introducer working on behalf of PLL.

83. The Commissioner has relied on the call records totalling 1,168,829 to establish the contravention volume. All calls with a duration of up to three seconds were removed in order to try and mitigate against unanswered calls being included in the call records. This showed that 47,998 calls were made to TPS registered telephone numbers where the call duration was four seconds or more.
84. The Commissioner is satisfied that a minimum of 47,998 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
85. The Commissioner has made the above findings of fact on the balance of probabilities.
86. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by PLL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

87. The Commissioner finds that PLL contravened regulation 21 of PECR.
88. The Commissioner finds that the contravention was as follows:
89. Between 5 May 2021 and 5 May 2022, PLL instigated the use of a public telecommunications service, for the purposes of making a minimum of 47,998 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 four complaints being

made to the TPS and the Commissioner.

90. The Commissioner is also satisfied for the purposes of regulation 21 that these 47,998 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 PLL that they did not object to receiving such calls.
91. 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.
92. 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.
93. 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.

94. PLL has not provided any evidence to demonstrate that the complainants had notified PLL that they did not object to receiving their calls.
95. Further, PLL 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.
96. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

97. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by PLL arising from the organisation's activities between 5 May 2021 and 5 May 2022, and this led to a minimum of 47,998 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified PLL that they were willing to receive such calls, and four complaints being made as a result.
98. Complainants reported that the calls they received by PLL or that were made on behalf of PLL made them feel annoyed and/or anxious. Some of the recorded calls showed that the callers were aggressive, rude and persistent with the individuals.
99. The Commissioner is also satisfied that the contravention was serious due to the frequency of the calls. Complainants reported receiving multiple calls over a short period of time, despite repeated opt-out requests, and this is evidenced in the call recordings.

100. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

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

102. The Commissioner does not consider that PLL deliberately set out to contravene PECR in this instance.

103. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

104. Firstly, he has considered whether PLL 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 PLL relies on live marketing calls as their business model and so it should reasonably have sought to familiarise itself with the relevant legislation.

105. 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 ICO operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.

106. It is therefore reasonable to suppose that PLL should have been aware of its responsibilities in this area.
107. Secondly, the Commissioner has gone on to consider whether PLL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
108. The Commissioner's direct marketing guidance makes clear that organisations acquiring 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. Although PLL provided evidence of some due diligence had been carried out, this was inadequate as the gaps in the information provided by the lead providers were not followed up on.
109. Reasonable steps in these circumstances may also have included recording how individuals were opted in, obtaining the scripts to be used to generate leads by third parties and ensuring TPS screening was in place for the calls being made using PLL's account on their behalf.

110. Given the volume of calls, it is clear that PLL failed to take those reasonable steps.

111. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

112. The Commissioner has taken into account the following aggravating features of this case:

- The predatory nature of the calls instigated by PLL.
- The call recordings demonstrate that the calls were misleading in nature, for instance by claiming to have an individual's existing policy documents to hand or calling from a fictitious life insurance review department.
- Callers were persistent, aggressive, rude at times and blatantly ignored requests from individuals not to be contacted.
- There is at least one seeming attempt to capitalise on the pandemic.
- PLL has allowed a second overseas organisation to use its caller account to make outbound calls, even after finding issues with the calls made by the first organisation.
- ██████████ reviews for Pinnacle Protect indicate PLL has continued to instigate unsolicited marketing calls as a new legal entity, suggesting a pattern of non-compliance by Mr Sobey.
- Mr Sobey informed the Commissioner that PLL is no longer trading however the legal entity remains active on Companies House.

113. The Commissioner has not identified any mitigating features in this case.

114. 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.
115. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made PLL.
116. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
117. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
118. The Commissioner has considered the likely impact of a monetary penalty on PLL. In doing so, the Commissioner has given careful consideration to the representations made by PLL in response to the Notice of Intent. However, the Commissioner has decided that a penalty nevertheless remains the appropriate course of action in the circumstances of this case.
119. 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.

120. 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.

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

The amount of the penalty

122. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£80,000 (eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

123. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **19 March 2024** 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.

124. If the Commissioner receives full payment of the monetary penalty by **18 March 2024** the Commissioner will reduce the monetary penalty by 20% to **£64,000 (sixty four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

125. 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.

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

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

128. 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.

129. 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 15th day of February 2024.

Signed: 

Andy Curry
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)).