

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Home Logic UK Ltd

Of: c/o HJS Chartered Accountants, 12-14 Carlton Place, Southampton,
Hampshire, SO15 2EA

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

Legal framework

3. Home Logic UK, whose registered office is given above (Companies House registration number: 09125321), is the person 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 of PECR.
4. Regulation 21 of PECR states:

“(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.

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(b) where such notification is withdrawn, the caller shall not make such calls on that line.”

5. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have registered that that

they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited ("TPS") is a limited company set up to carry out this role. Organisations that 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.

6. Section 11(3) of the DPA defines direct marketing as "the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals". This definition also applies for the purposes of PECR (see regulation 2(2)).

7. Section 55A of the DPA (as amended by the Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2011 and the Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2015) 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, and
- (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."

8. 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.
9. PECR implemented European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. PECR were amended for the purpose of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches the PECR regulations so as to give effect to the Directives.

Background to the case

10. Home Logic UK is a provider of home energy saving solutions and products.
11. Organisations can make live unsolicited marketing calls, but must not call any number registered with the TPS unless the subscriber has specifically told them that they do not object to their calls. In practice, this means that to comply with PECR organisations should screen the list of numbers they intend to call against the TPS register.
12. Between 1 April 2015 and 31 July 2016, 136 complaints were made to the TPS about unsolicited direct marketing calls made by Home Logic UK. All of these complaints were made by individual subscribers who were registered with the TPS.

13. Evidence has now been provided by Home Logic UK which suggests that of the 136 complaints logged with the TPS, 3 complaints arose as a result of calls from companies which were misrepresenting their identity and purporting to be acting as, or on behalf of, Home Logic UK. The Commissioner accepts that these calls were not made by Home Logic UK.
14. Home Logic UK licensed the data used to make its marketing calls from third party providers. Home Logic UK said that the third party data providers had assured it that the data supplied was "opted in" and/or screened against the TPS. However, the contract it had with one of the third party providers made it clear that it was the purchaser's responsibility, ie Home Logic UK, to ensure that the data supplied was screened against the TPS.
15. Home Logic UK informed the Commissioner that it uploaded the data to a dialler system which screened the telephone numbers to be called against the TPS register. However, due to technical issues the dialler system was unavailable for use on 90 days out of 220 between April 2015 and March 2016. On those days Home Logic UK continued to make unsolicited direct marketing calls using the data it had licensed without screening the numbers to be called against the TPS register.
16. Home Logic UK was unable to provide evidence that it had consent to make unsolicited direct marketing calls to the subscribers who had complained to the TPS.
17. Between 1 April 2015 and 31 July 2016 Home Logic UK confirmed that it made 1,475,969 unsolicited direct marketing calls promoting its services.
18. The Commissioner has made the above findings of fact on the balance of probabilities.

19. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Home Logic UK and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

20. The Commissioner finds that Home Logic UK contravened regulation 21 of PECR.
21. Between 1 April 2015 and 31 July 2016, Home Logic UK used a public telecommunications service for the purposes of making 133 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.
22. The Commissioner is also satisfied for the purposes of regulation 21 that these 133 complaints were made by subscribers who had registered with the TPS at least 28 days prior to receiving the calls and they had not given their prior consent to Home Logic UK to receive calls.
23. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

24. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Home Logic UK arising from its activities over a 15 month period, and this led to a significant number of complaints made.

25. In addition, it is reasonable to suppose that considerably more calls were made by Home Logic UK because those who went to the trouble to complain are likely to represent only a proportion of those who actually received calls. Home Logic UK confirmed that it had made 1,475,969 marketing calls between 1 April 2015 and 31 July 2016 and that for a significant period during that time had not itself screened the data it had used against the TPS register.
26. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

27. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Home Logic UK's actions which constituted that contravention were deliberate actions (even if Home Logic UK did not actually intend thereby to contravene PECR).
28. The Commissioner considers that in this case Home Logic UK did not deliberately contravene regulation 21 of PECR.
29. The Commissioner has gone on to consider whether the contravention identified above was negligent.
30. The Commissioner has considered whether Home Logic UK knew or ought reasonably to have known that there was a risk that these contraventions would occur. She is satisfied that this condition is met, given that Home Logic UK relied heavily on direct marketing due to the nature of its

business, and the fact that the issue of unsolicited calls was widely publicised by the media as being a problem.

31. The dialler system used by Home Logic UK, which it claimed screened the telephone numbers to be called against the TPS register was not available for 90 days out of 220 between April 2015 and March 2016. Despite this Home Logic UK continued to make marketing calls without taking any other steps to screen against the TPS register.
32. 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 subscribers who have told an organisation that they do not want to receive calls; or to any number registered with the TPS, unless the subscriber has specifically consented to receive calls.
33. It is therefore reasonable to suppose that Home Logic UK ought reasonably to have known that there was a risk that these contraventions would occur.
34. The Commissioner has gone on to consider whether Home Logic UK failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
35. Reasonable steps in these circumstances could have included (i) asking its third party data provider for evidence that the subscribers had consented to receiving calls from Home Logic UK and (ii) screening the data against the TPS register itself regardless of any assurances that might have been given by the providers of the data.

36. The Commissioner has therefore concluded that Home Logic UK failed to take reasonable steps to prevent the contravention.
37. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

38. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. She is also satisfied that section 55A (3A) and the procedural rights under section 55B have been complied with.
39. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking. In reaching her final view, the Commissioner has taken into account the representations made by the Company on this matter.
40. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
41. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
42. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The issue of unsolicited 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 want to receive these calls.

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

The Amount of the penalty

44. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£50,000 (fifty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

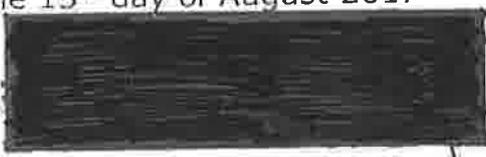
Conclusion

45. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **15 September 2017** 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.
46. If the Commissioner receives full payment of the monetary penalty by **14 September 2017** the Commissioner will reduce the monetary penalty by 20% to **£40,000 (forty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
47. 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.
48. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
49. Information about appeals is set out in Annex 1.
50. 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.
51. 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 August 2017

Signed



Stephen Eckersley
Head of Enforcement
Deputy Information Commissioner
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 48 of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice or variation 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 she ought to have exercised her 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:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- 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 (General Regulatory Chamber) are contained in sections 48 and 49 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)).