

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: H.P.A.S. Limited t/a Safestyle UK

Of: Style House, 14 Eldon Place, Bradford, West Yorkshire, BD1 3AZ

1. The Information Commissioner ("Commissioner") has decided to issue H.P.A.S. Limited t/a Safestyle UK ("HPAS") with an Enforcement Notice under section 40 of the Data Protection Act 1998 ("DPA"). The notice is in relation to a contravention of regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") by HPAS.
2. This notice explains the Commissioner's decision.

Legal framework

3. Regulation 21 of the Regulations states –
4. "(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(b) where such notification is withdrawn, the caller shall not make such calls on that line.”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. “Direct marketing” is not defined in PECR. By virtue of regulation 2(2), “direct marketing” is to have the same meaning as in the DPA. “Direct marketing” is defined in section 11(3) of the DPA as

“the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals”.

6. The DPA contains enforcement provisions at Part V which are exercisable by the Commissioner. Those provisions are modified and extended for the purposes of PECR by Schedule 1 PECR.
7. Section 40(1)(a) of the DPA (as extended and modified by PECR) provides that if the Commissioner is satisfied that a person has contravened or is contravening any of the requirements of the Regulations, she may serve him with an Enforcement Notice requiring him to take within such time as may be specified in the Notice, or to refrain from taking after such time as may be so specified, such steps as are so specified.
8. The Commissioner has received 264 complaints via the TPS and from individuals directly who are subscribers to specific telephone lines. The individuals allege that they have received unsolicited marketing calls on those lines from HPAS. Each individual states that they have previously notified HPAS that such calls should not be made on that line and/or have registered their number with the TPS.
9. In the circumstances, the Commissioner is satisfied that HPAS has contravened regulation 21 of PECR in making such calls for direct marketing purposes to subscribers.
10. The Commissioner has considered, as she is required to do under section 40(2) of the DPA (as extended and modified by the Regulations) when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause

any person damage. The Commissioner has decided that it is unlikely that actual damage has been caused in this instance.

11. In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the Act, she requires that HPAS shall within 70 days of the date of this Notice:

- (a) Review all of its telephone marketing data to ensure that it can evidence the consents it relies upon to make marketing calls. Pursuant to the Commissioner's Direct Marketing Guidance the consent must be knowingly and freely given, clear and specific;**
- (b) All such data, where the evidence of specific consent cannot be verified, shall be screened against the TPS register before being used to make marketing calls;**
- (c) Put in place an effective suppression system to ensure that all requests not to be called again received from subscribers are recorded, actioned and retained in place until such a time as positive specific consent to receiving such calls is obtained;**
- (d) Screen all unsolicited calls against that suppression system, and against the TPS register.**

12. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory

Chamber. Information about appeals is set out in the attached Annex 1.

13. Any Notice of Appeal should be sent so that it is received by the Tribunal within 28 days of the date on which this Notice is sent.

Dated the 31st day of July 2017

Signed:

Stephen Eckersley
Head of Enforcement
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

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 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:

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)).