

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: D M Design Bedrooms Limited

Of: 1 Deerdykes Place, Westfield Industrial Area, Cumbernauld, Glasgow
G68 9HE

1. The Information Commissioner ("Commissioner") has decided to issue D M Design Bedrooms Limited ("D M Design") 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.
2. This notice explains the Commissioner's decision.

Legal framework

3. D M Design, whose registered office is given above (Companies House Registration Number: SC089938) 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 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 given their consent to that company to receive such calls.

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. 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 set up by the Commissioner to carry out this role. 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.
8. 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)).
9. 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.

10. 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.
11. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of that Act).

The contravention

12. The Commissioner finds that D M Design has contravened regulation 21 of PECR.
13. The Commissioner finds that the contravention was as follows:
14. Between 1 April 2017 and 30 November 2017, D M Design used a public telecommunications service for the purposes of making 1,661,607 unsolicited calls to unique numbers 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 a total of 99 complaints being made to the TPS and the Commissioner.
15. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,661,607 unsolicited direct marketing calls were made to

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 D M Design to receive calls.

16. The Commissioner has considered, as she is required to do under section 40(2) of the DPA (as extended and modified by PECR) 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.
17. 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 D M Design shall within 35 days of the date of this notice:

Neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where the called line is that of:

(a) a subscriber who has previously notified D M Design that such calls should not be made on that line; and/or

(b) a subscriber who has registered their number with the TPS at least 28 days previously and who has not notified D M Design that they do not object to such calls being made.

18. 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.
19. 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.

Further Guidance

20. In addition to the above, The Commissioner would note at this point that following the established contravention which forms the basis of this Notice, further complaints appear to have been logged in respect of unsolicited calls allegedly made by D M Design. Therefore, in addition to the terms of this Notice with which it must comply, D M Design is referred to The Commissioner's Guide to Privacy and Electronic Communications Regulations: <https://ico.org.uk/for-organisations/guide-to-pecr/> which it is encouraged to incorporate into its business practices to improve general compliance with PECR, and to prevent future enforcement action.

Dated the 23rd day of November 2018.

Stephen Eckersley
Director of Investigations
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 an enforcement 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:

General Regulatory Chamber
HM Courts & Tribunals Service
PO Box 9300
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)).