

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: Brazier Consulting Services Limited

Of: 7 Victoria Court, Bank Square, Leeds, West Yorkshire, LS27 9SE

1. The Information Commissioner ("Commissioner") has decided to issue Brazier Consulting Services Limited ("BCS") with an enforcement notice under section 40 of the Data Protection Act 1998 ("DPA"). The notice is in relation to a serious contravention of Regulation 21A of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. BCS, whose registered office is given above (Companies House Registration Number: 10531983) 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 in relation to claims management services contrary to regulation 21A of PECR.

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

“(1) A person must not use, or instigate the use of, a public electronic communications service to make unsolicited calls for the purposes of direct marketing in relation to claims management services except in the circumstances referred to in paragraph (2).”

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

“(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being the subscriber consents to such calls being made by, or at the instigation of, the caller on that line

(3) A subscriber must not permit the subscriber's line to be used in contravention of paragraph (1).”

6. Regulation 21A paragraphs (4), and (5) materially state that:

“(4) In this regulation “claims management services” means the following services in relation to the making of a claim—

- (a) advice;
- (b) financial services or assistance;
- (c) acting on behalf of, or representing, a person;
- (d) the referral or introduction of one person to another;
- (e) the making of inquiries.

- (5) In paragraph (4), "claim" means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made—
- (a) by way of legal proceedings,
 - (b) in accordance with a scheme of regulation (whether voluntary or compulsory), or
 - (c) in pursuance of a voluntary undertaking.
7. Prior to 29 March 2019, the European Directive 95/46/EC defined 'consent' as "any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed".
8. Consent in PECR is now defined, from 29 March 2019, by reference to the concept of consent in Regulation 2016/679 ("the GDPR"): regulation 8(2) of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. Article 4(11) of the GDPR sets out the following definition: "'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her".
9. 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".
10. Section 122(5) of the DPA 2018 defines "direct marketing" as "the communication (by whatever means) of any advertising material which

is directed to particular individuals". This definition also applies for the purposes of PECR.

11. 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.
12. 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.
13. PECR implements Directive 2002/58/EC, and Directive 2009/136/EC which amended the earlier Directive. Both the Directive and PECR are "*designed to protect the privacy of electronic communications users*": *Leave.EU & Eldon Insurance Services v Information Commissioner* [2021] UKUT 26 (AAC) at paragraph 26. The Commissioner seeks to interpret and apply PECR in a manner consistent with the purpose of the Directive and PECR of ensuring a high level of protection of the privacy of individuals, and in particular the protections provided from receiving unsolicited direct marketing communications which the individual has not consented to receive.
14. 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

15. The Commissioner finds that BCS contravened regulation 21A of PECR.
16. The Commissioner finds that the contravention was as follows:
17. Regulation 21A was brought into force on 8 September 2018 and requires that persons/organisations hold consent from subscribers in order to make calls relating to claims management services.
18. Between 1 February 2019 and 31 July 2019, BCS used a public electronic communications service for the purpose of making 11,489,873 unsolicited calls for direct marketing purposes to subscribers in relation to claims management services. This resulted in 316 complaints being made to the TPS and the Commissioner.
19. The Commissioner is satisfied for the purposes of regulation 21A that these calls were made to subscribers who had not given their prior consent to BCS to receive such calls.
20. The Commissioner is satisfied that BCS was responsible for these contraventions.
21. 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 or distress. The Commissioner has decided that it is unlikely that damage has been caused in this instance, but notes the distress prevalent in some of the complaints received about BCS activities.

22. The Commissioner is accordingly minded to exercise her powers under section 40 of the Act to serve an Enforcement Notice requiring BCS to take specified steps to comply with regulation 21A of PECR. The terms of such Notice are set out in Annex 1 of this Preliminary Notice.
23. **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 BCS to take the steps specified in in Annex 1 of this Notice.**

Right of Appeal

24. 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 2.

Dated the **25th** day of **June** 2021

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

ANNEX 1

TERMS OF THE PROPOSED ENFORCEMENT NOTICE

BCS shall within 30 days of the date of this notice:

- Except in the circumstances referred to in paragraph 21A (2) of PECR, BCS must not use, or instigate the use of, a public electronic communications service to make unsolicited calls for the purposes of direct marketing in relation to claims management services. Those circumstances are where the called line is that of a subscriber who has previously notified BCS that for the time being the subscriber consents to such calls being made by, or at the instigation of BCS.

ANNEX 2

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
Telephone: 0203 936 8963
Email: grc@justice.gov.uk

- The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent

4. 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)).