

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: DialADeal Scotland Ltd

Of: Unit 10, 70 Strathclyde Street, Glasgow, G40 4JR

1. The Information Commissioner ("the Commissioner") has decided to issue DialADeal Scotland Ltd ("DialADeal") with an enforcement notice under section 40 of the Data Protection Act 1998 ("DPA 1998"). The penalty is being issued because of a serious contravention of Regulation 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. DialADeal, whose registered office is given above (Companies House Registration Number: SC609006) 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 contrary to Regulations 21 and 24 of PECR.
4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. 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."*

5. Under Regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified the Information Commissioner's Office ("ICO") 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 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.
6. In general terms, Regulation 21 paragraph (1)(b) provides that companies cannot make unsolicited calls for direct marketing purposes to telephone numbers on the TPS register, unless the individual associated with the number has given their consent to receive such calls.
7. 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."*

8. Regulation 21 paragraph (A1) provides that companies making calls for direct marketing purposes must not disguise their identity. Paragraph (A1) states:

"A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making calls (whether

solicited or unsolicited) for direct marketing purposes except where that person—

(a) does not prevent presentation of the identity of the calling line on the called line; or

(b) presents the identity of a line on which he can be contacted.”

9. Regulation 24 of PECR concerns the information which must be provided when, *inter alia*, a business makes marketing calls which Regulation 21 applies to. Regulation 24 provides, insofar as relevant:

“(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.”

10. Section 122(5) of the Data Protection Act 2018 ("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 (see regulation 2(2) PECR and paragraphs 430 & 432(6) to Schedule 19 of the DPA 2018).
11. 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*".
12. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".
13. 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*".
14. The DPA 1998 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.
15. Section 40(1)(a) of the DPA 1998 (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.

16. 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.
17. The provisions of the DPA 1998 remain in force for the purposes of PECR notwithstanding the introduction of the DPA 2018: see paragraph 58(1) of Schedule 20 to the DPA 2018.

The contravention

18. The Commissioner finds that DialADeal contravened Regulations 21 and 24 of PECR.
19. The Commissioner finds that the contraventions were as follows:
20. Between 11 August 2019 and 12 March 2020, DialADeal used a public telecommunications service for the purposes of making 558,250 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 527 complaints being made to the TPS and the Commissioner.
21. The Commissioner is also satisfied for the purposes of regulation 21 that these 558,250 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 DialADeal to receive calls.

22. Further, DialADeal 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. Rather, DialADeal used various generic trading names (including "First Home Improvements", "Green Alliance", "Green Allowance Team", "Green Allowance Scheme", "Green Funding Team", "A1 Energysave", "Boiler Funding Solutions", "ECO Green UK", and "Home Advice Group") and/or did not identify itself.
23. When engaging in its direct marketing calls, DialADeal used not only a range of 214 valid CLIs, but also used 19 invalid presentation CLIs on which the recipients of the calls could not contact DialADeal. For these reasons, the Commissioner is concerned about DialADeal's compliance with Regulation 21(A1) of PECR but has not sought to take specific enforcement action against it for this breach in this instance.
24. The Commissioner notes DialADeal's submissions towards the end of the Commissioner's investigation that it did not engage in any such direct marketing, however these claims are not borne out by the evidence provided by DialADeal's CSP.
25. 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 likely that damage or distress has been caused in this instance, not least in view of the number and content of the complaints received.

26. **In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires DialADeal to take the steps specified in Annex 1 of this Notice.**

Right of Appeal

27. 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 24th day of August 2021.

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

ANNEX 1

TERMS OF THE ENFORCEMENT NOTICE

DialADeal shall within 30 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 DialADeal that such calls should not be made on that line; or
 - (b) a subscriber who has registered their number with the TPS at least 28 days previously and who has not notified DialADeal that they do not object to such calls being made.
- Furthermore, where a public electronic communications service is used for the transmission of a communication for direct marketing purposes, DialADeal shall ensure that the recipient of the communication is provided with:
 - (a) the name of the person; and if the recipient so requests,
 - (b) either the address of the person or a telephone number on which he can be reached free of charge.

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)).