

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: Cab Guru Limited

Of: Progress House Rowles Way, Swavesey, Cambridge, United Kingdom,  
CB24 4UG

1. The Information Commissioner ("Commissioner") has decided to issue Cab Guru Limited 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 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

**Legal framework**

3. Cab Guru Limited, whose registered office is given above, is the organisation stated in this notice to have instigated the transmission of unsolicited communications by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.

4. Regulation 22 of PECR states:

“(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—

(a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;

(b) the direct marketing is in respect of that person's similar products and services only; and

(c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.

- (4) A subscriber shall not permit his line to be used in contravention of paragraph (2)."
5. 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)).
6. "Electronic mail" is defined in regulation 2(1) PECR as "any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service".
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 (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,
  - (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 implements European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. PECR was amended for the purpose of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches PECR so as to give effect to the Directives.

### **Background to the case**

10. Cab Guru Limited is the company behind the "Cab Guru Application" (app), a taxi and mini cab comparison app that allows customers to compare fares and pickup times and then to book the selected cab. Cab Guru Limited marketed this service by sending direct marketing text messages, inviting customers to download the "Cab Guru app".
11. Mobile phone users can report the receipt of unsolicited marketing text messages to the GSMA's Spam Reporting Service by forwarding the message to 7726 (spelling out "SPAM"). The GSMA is an organisation that represents the interests of mobile operators worldwide. The Commissioner is provided with access to the data on complaints made

to the 7726 service and this data is incorporated into a Monthly Threat Assessment (MTA) used to ascertain organisations in breach of PECR.

12. Between 27 May 2016 and 5 June 2016, 165 complaints were made to the 7726 service about the receipt of unsolicited direct marketing text messages sent by Cab Guru Limited. In the same period 1 further complaint was made direct to the Commissioner using the ICO Online Reporting Tool.

13. The content of the 165 text messages was identical, save for the code contained within the "<http://onelink.to>" link, as follows:

*"Tap. Compare. Book. Download the new Cab Guru app to get a great deal on your cab: <http://onelink.to/zhktzm> Opt-out? SMS stop to 447860039573"*

14. The complainant who notified the ICO via the Online Reporting Tool stated:

*"I'm sick of opting out of messages I did not opt in to, normally it's from "hacked" phones but this time it was from a named company so they should be accountable. I read everything I sign up to and never allow marketing or my information to be passed to 3rd party's not required."*

15. On 15 June 2016 the Commissioner wrote to Cab Guru Limited, regarding concerns about its compliance with Regulation 22 PECR, and specifically requesting evidence of consent relied upon to instigate its SMS marketing in respect of the 166 complainants.

16. Cab Guru Limited replied on 11 July 2016 explaining that it had undertaken a one-day SMS marketing campaign to inform customers, whose telephone numbers only had been obtained from Cab Guru's associated taxi companies, of their cab comparison app.
17. Cab Guru Limited did not themselves obtain consent from the SMS recipients directly, rather they received the personal data from their associated cab companies, all of whom are shareholders of Cab Guru Limited, and who had obtained the customer details for contact purposes. Cab Guru Limited further stated that "All the customers are asked [by the associated cab companies] for their consent to receive text messages (usually that occurs as part of the initial telephone conversation when the customer orders the cab)".
18. On 12 July 2016 the Commissioner wrote to Cab Guru Limited requesting full details of the associated cab companies and copies of the customer agreements to evidence consent to SMS contact; and details as to the amount of telephone numbers supplied by each of the associated cab companies.
19. Cab Guru Limited explained that whilst there are more than 30 cab companies associated with it, only 5 companies provided any data. This data had been obtained from individuals who already had a business relationship with the fleets.
20. Cab Guru Limited stated that there is no formal written contract/consent between the customer and the cab companies as the text message contact is requested by the customer via the online web booking form or mobile phone apps.
21. Investigations discovered that the associated cab companies incorporated automatic agreement to marketing in privacy policies or

terms & conditions of use for their services. Therefore, the consent to marketing is a compulsory term of use, rather than discretionary.

22. Cab Guru Limited were not able to supply specific details as to how many numbers the associated cab companies had supplied to them as the raw data was destroyed immediately upon execution of the SMS campaign.
23. Cab Guru Limited confirmed that between 27 May 2016 and 05 June 2016 it had sent a total of 706,650 direct marketing text messages promoting the "Cab Guru App".
24. Of the sent messages: 360,373 were delivered; 346,277 failed.
25. The Commissioner has made the above findings of fact on the balance of probabilities.
26. The Commissioner has considered whether those facts constitute a contravention of regulation 22 of PECR by Cab Guru Limited and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

27. The Commissioner finds that Cab Guru Limited has contravened regulation 22 of PECR.
28. The Commissioner finds that the contravention was as follows:
29. Between 27 May 2016 and 05 June 2016, Cab Guru Limited used a public electronic telecommunications service for the purposes of instigating the transmission of 360,373 unsolicited communications by

means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.

30. "Consent" within the meaning of regulation 22(2) requires that the recipient of the electronic mail has notified the sender that he consents to messages being sent by, or at the instigation of, that sender. Indirect, or third party, consent can be valid but only if it is clear and specific enough.
31. In this case the Commissioner is satisfied that Cab Guru Limited did not have the consent, within the meaning of regulation 22(2), of the 360,373 subscribers to whom it had sent unsolicited direct marketing text messages. The Commissioner is satisfied that the exception afforded under regulation 22(3) would not apply in this instance.
32. The Commissioner is satisfied that Cab Guru Limited was responsible for this contravention.
33. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

#### **Seriousness of the contravention**

34. The Commissioner is satisfied that the contravention identified above was serious. This is because between the dates of 27 May 2016 and 05 June 2016, Cab Guru Limited sent a total of 360,373 direct marketing text messages to subscribers without their consent. This resulted in 166 complaints being made.



35. The scale of the contravention could have been considerably larger as Cab Guru Limited had attempted to send 706,650 direct marketing text messages.
36. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

**Deliberate or negligent contraventions**

37. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Cab Guru Limited's actions which constituted that contravention were deliberate actions (even if Cab Guru Limited did not actually intend thereby to contravene PECR).
38. The Commissioner considers that in this case Cab Guru Limited did not deliberately contravene regulation 22 of PECR.
39. The Commissioner went on to consider whether the contraventions identified above were negligent. First, she has considered whether Cab Guru Limited 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 the issue of unsolicited text messages has been widely publicised by the media as being a problem.
40. Furthermore, the Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations 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. In particular it states that organisations

can generally only send marketing texts to individuals if that person has specifically consented to receiving them from the sender.

41. It is therefore reasonable to suppose that Cab Guru Limited knew or ought reasonably to have known that there was a risk that these contraventions would occur.
42. Second, the Commissioner considered whether Cab Guru Limited failed to take reasonable steps to prevent the contraventions.
43. Reasonable steps in these circumstances could have included putting in place appropriate systems and procedures to ensure that it had the specific consent of those to whom it had sent marketing text messages; and adequately recording the source of the data used and evidence of any consent obtained.
44. In the circumstances, the Commissioner is satisfied that Cab Guru Limited failed to take reasonable steps to prevent the contraventions.
45. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

**The Commissioner's decision to issue a monetary penalty**

46. 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.
47. 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 Cab Guru Limited on this matter.

48. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
49. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
50. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending of unsolicited marketing texts 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. The issuing of a monetary penalty will reinforce the need for businesses to ensure that they are only texting those who consent to receive marketing.
51. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

**The amount of the penalty**

52. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£45,000 (forty five thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

**Conclusion**

53. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **9 October 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.
54. If the Commissioner receives full payment of the monetary penalty by **6 October 2017** the Commissioner will reduce the monetary penalty by 20% to **£36,000 (thirty six thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
55. 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.
56. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
57. Information about appeals is set out in Annex 1.
58. 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.

59. 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 6<sup>th</sup> day of September 2017

Signed 

Stephen Eckersley  
Head of Enforcement  
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)).