

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Our Vault Limited

Of: Reception Block, Chorley Business & Technology Centre,
Euxton Lane, Chorley PR7 6TE

1. The Information Commissioner ("Commissioner") has decided to issue Our Vault Limited ("OVL") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is being issued because of a serious contravention of regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") by OVL.
2. This notice explains the Commissioner's decision.

Legal framework

3. OVL, whose registered office is given above (companies house registration number: 08142575), 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 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 Telephone Preference Service Limited (“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. Under section 55A (1) of the DPA (as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations

2011 and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015) the Commissioner may serve a person with a monetary penalty notice 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, and

(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.”

10. 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.

11. PECR implemented European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. PECR were amended for the purpose

of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches the PECR regulations so as to give effect to the Directives.

Background to the case

12. OVL is a company that describes itself in Companies house records as an 'insurance agent and broker', and in its notification with the Information Commissioner's Office as a 'lead generator'. It also operates under the trading style Our Insurance Vault.
13. ST&R Limited is a sister company of OVL. Both companies are registered with the Financial Conduct Authority ("FCA").
14. OVL first came to the attention of the Commissioner in November 2015 when a number of complaints were identified about them within a monthly ICO report.
15. An analysis of those complaints made to the ICO online reporting tool regarding unsolicited calls from OVL identified that a total of 42 complaints had been received.
16. In addition, information provided to the ICO by the TPS showed that a further 137 complaints had been received by the TPS from individuals who were registered with the TPS but had received unsolicited direct marketing calls from OVL.
17. As a result of these complaints the Commissioner sent a letter to OVL on 1 February 2016 regarding its compliance with PECR and seeking an explanation for the complaints. The letter included a spreadsheet detailing the complaints received about OVL, and directed OVL to detailed guidance that the ICO has published on PECR.

18. OVL responded by stating they could evidence consent for the calls that had been made. They also confirmed that they held a database of approximately 3.5 million unique records and that they contacted each "client" about three to four times a year. This data had been held for over three years. In April 2015 a further one million records had been purchased from a third party provider.
19. OVL explained that it conducts 'lifestyle survey' calls, and that individuals who consent are transferred over to ST&R Limited, who are authorised by the FCA to sell financial products. It is clear, from a review by the Commissioner of call recordings and scripts provided by OVL, that the calls are aimed at promoting ST&R's products under the guise of research.
20. OVL advised that all data is TPS checked prior to being uploaded on to the dialler but once uploaded no further TPS screening is carried out, and if an individual makes a request to be suppressed they will be placed upon a Do Not Call list ("DNC").
21. On 9 March 2016 a further letter was sent to OVL requesting evidence of consent for the complaints received along with an explanation for the number of repeat calls made to an individual on the DNC list.
22. In its response, OVL confirmed that "over four years the dialler had done over 30 million dials". Of information provided relating to 109 complaints, OVL were unable to evidence consent for 104 who were TPS registered. Five of the individuals had not been TPS registered at the time of the first call but registered at a later date.
23. Over the subsequent 12 months, the Commissioner continued to receive complaints about OVL. Further enquiries of the TPS revealed that during the period 1 April 2016 to 26 April 2017 a further 68

complaints had been made by subscribers who were TPS registered, and a further 9 complaints were made direct to the Commissioner, totalling 77 complaints.

24. Examples of complaints received are as follows:

"Insists I had asked for a call to review my life insurance. As I have told them about 50 times already that I'm not interested, this is unlikely!"

"This is the third call from this organisation. I have set up TCS on this number. The previous time I requested they remove me from their data, obviously no result. Appear to have total disregard for who they call!"

25. On 22 May 2017 another letter was sent to OVL setting out the ICO's concerns about OVL's compliance with PECR, and requesting an explanation for the complaints received by the TPS and the ICO's online reporting tool.
26. OVL provided a spreadsheet detailing the dates and times of calls made and outcome. The spreadsheet revealed that over a 12 month period one individual had been called 19 times. The individual was called three times after advising they were "not interested" before being added to the DNC list, and continued to receive multiple calls after this time. Other individuals continued to receive calls despite suppression requests. OVL failed provide evidence of consent in relation to any of the calls complained about.
27. Call dialler records in relation to two numbers featured in complaints about OVL revealed TPS registered numbers at the time of call were as follows:
- CLI 0333 ****131: 146,699 calls between 1 March 2016 – 7 April 2016 of which 54,923 (37.5%) were TPS registered;

- CLI 01257 ***612: 3,078 calls between 7 April 2016 – 16 June 2016 of which 611 (20%) were TPS registered.
28. On 15 September 2017 the TPS confirmed that OVL has never held or requested a TPS licence.
29. The Commissioner has made the above findings of fact on the balance of probabilities.
30. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by OVL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

31. The Commissioner finds that OVL contravened regulation 21 of PECR.
32. The Commissioner finds that the contravention was as follows:
33. Between 1 March 2016 and 16 June 2016 OVL used a public telecommunications service for the purpose of making 55,534 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the line called was a number listed on the register of numbers kept by the Commissioner in accordance with regulation 25, contrary to regulation 21(1)(b) of PECR.
34. The Commissioner is also satisfied for the purposes of regulation 21 that these calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls and had not given their prior consent to OVL to receive calls.

35. The Commissioner is satisfied that OVL was responsible for the contravention.
36. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

37. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 of PECR by OVL's activities over a 3.5 month period. Between 1 March 2016 and 16 June 2016 OVL made a total of 149,777 unsolicited calls for direct marketing purposes to subscribers, of which 55,534 had been registered with the TPS for more than 28 days. This led to a significant number of complaints about unsolicited direct marketing calls to the TPS and the ICO.
38. In addition, it is reasonable to suppose that the period and extent of the contravention could have been far higher because those who went to the trouble to complain represent only a proportion of those who actually received calls. OVL concede that over a four year period its dialler made over 30 million marketing calls and these calls were not screened against the TPS register once uploaded to the dialler, nor were there sufficient contractual terms in place to ensure the data's veracity where purchased. Based upon the 149,777 calls which were made over a 3.5 month period, an average of 37% were registered with the TPS for more than 28 days.

39. OVL continued to make repeated calls to subscribers even after they had registered with the TPS and/or informed OVL that they did not wish to receive calls.
40. OVL provided subscribers with misleading information regarding the nature of the call, which it described as a 'lifestyle survey'.
41. Despite being given ample opportunity to provide evidence of consent to call to individuals who had registered with the TPS, OVL failed to do so.
42. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

43. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that OVL's actions which constituted that contravention were deliberate actions (even if OVL did not actually intend thereby to contravene PECR).
44. The Commissioner considers that in this case OVL did not deliberately contravene regulations 21 of PECR in that sense.
45. The Commissioner has gone on to consider whether the contravention identified above was negligent.
46. First, she has considered whether OVL knew or ought reasonably to have known that there was a risk that this contravention would occur. She is satisfied that this condition is met, given that OVL relied heavily on direct marketing due to the nature of its business, and the fact that

the issue of unsolicited calls has been widely publicised by the media as being a problem.

47. OVL stated that its data was TPS screened before being uploaded to its dialler, and 25% of its data had been purchased as TPS screened, therefore it is reasonable to assume that OVL were aware of the requirements of PECR and the risk that such a contravention could occur.
48. The Commissioner has also published detailed guidance for companies carrying out marketing explaining their legal requirements 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. Specifically, it states that live calls must not be made to subscribers who have told an organisation that they do not want to receive calls; or to any number registered with the TPS, unless the subscriber has specifically consented to receive calls.
49. The Commissioner initially wrote to OVL in early 2016 regarding concerns over its direct marketing activities, at which time OVL were directed to her guidance on the PECR, yet despite being under investigation OVL continued to make unsolicited direct marketing calls.
50. Finally, the Commissioner has gone on to consider whether OVL failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
51. Reasonable steps in these circumstances would have included ensuring that OVL could evidence consents relied upon to make marketing calls where these were based upon purchased data; having in place a contractual arrangement with any third party data supplier to ensure that the data being purchased met the required threshold for valid

consent; regularly screening data against the TPS register and ensuring that it had in place an effective and robust suppression list.

52. The Commissioner is satisfied that OVL failed to take reasonable steps to prevent the contravention, even after it was notified of the Commissioner's initial investigation in early 2016.
53. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to impose a monetary penalty

54. 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(3)DPA and the procedural rights under section 55B have been complied with.
55. The latter has included the issuing of a Notice of Intent dated 26 April 2018 in which the Commissioner set out her preliminary thinking.
56. The Commissioner has considered whether, in the circumstances she should exercise her discretion so as to issue a monetary penalty. In reaching her final view, the Commissioner has taken into account representations made by OVL dated 2 May 2018 and in other correspondence on this matter, however there is nothing contained therein to dissuade the Commissioner from her preliminary view.
57. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

The amount of the penalty

58. The Commissioner has also taken into account the following **aggravating features** of this case:
- OVL is registered with the FCA since 30 July 2012 as an appointed representative-introducer and individuals would expect that OVL would be aware of their conduct;
 - OVL continued to make live marketing calls despite being aware of the ICO investigation and the reason for it. This has led to further complaints;
 - OVL failed to openly engage with the Commissioner, in particular it failed to provide evidence of consent to make calls to TPS registered numbers despite advising the Commissioner that it could evidence consent.
59. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls 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. This is an opportunity to reinforce the need for businesses to ensure that they are only telephoning consumers who want to receive these calls.
60. Taking into account all of the above, the Commissioner has decided that the amount of the penalty is **£70,000 (Seventy thousand pounds)**.

Conclusion

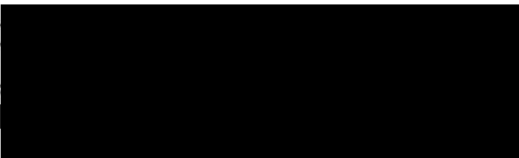
61. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **21 July 2018** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
62. If the Commissioner receives full payment of the monetary penalty by **20 July 2018** the Commissioner will reduce the monetary penalty by 20% to **£56,000 (Fifty 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.
63. 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.
64. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
65. Information about appeals is set out in Annex 1.
66. 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.

67. 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 18th day of June 2018

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)).