

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Reliance Advisory Limited

Of: Topley House, 52 Wash Lane, Bury, BL9 6AS

1. The Information Commissioner ("Commissioner") is minded to issue Reliance Advisory Limited ("Reliance Advisory") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is being issued because of serious contraventions 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. Reliance Advisory, whose registered office is given above (Companies House Registration Number: 09888100) 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. Consent is defined in Article 4(11) the General Data Protection Regulation 2016/679 as “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”.
8. 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”.
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.
12. 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).

Background to the case

13. Reliance Advisory first came to the attention of the Commissioner following the receipt of a number of complaints from subscribers in relation to a number of Calling Line Identities (“CLI’s”). The complainants indicated that the calls were made by Reliance Advisory or what appeared to be a linked organisation, registered at the same business address and sharing two of the same company directors.
14. Between 1 January 2019 and 30 June 2019, the ICO received 85 complaints about unsolicited direct marketing calls made by Reliance Advisory.
15. The Commissioner, through enquiries with the relevant Communications Service Provider (“CSP”), was able to establish that the CLI’s in question were allocated to Reliance Advisory. However, several of CLI’s appeared to be allocated to both Reliance Advisory and its linked company.
16. The Commissioner sent an initial investigation letter to Reliance Advisory on 10 December 2019, setting out her concerns with the organisation’s compliance with PECR, enquiring about its relationship with the linked company and requesting information which would assist in her investigation.
17. In its responses to the Commissioner on 10 January 2020 and 19 February 2020 Reliance Advisory described itself as a lead generation company for claims management services. It confirmed that the data used for its calls was purchased from a third party data provider. In response to the Commissioner’s request for evidence of consent for the complaints received, Reliance Advisory stated that it was unable to provide each individual specific opt in due to the length of time since the data was purchased. It advised they could only request details of

the consents within 30 days and therefore they were unable to provide evidence of the specific consent in relation to the complaints.

18. Open source research was conducted by the Commissioner on the website from which Reliance Advisory advised the consents would have been obtained from. It was apparent that the means by which consent was obtained did not allow for it to be freely given, specific, or informed. In order to sign up to the site, users are required to provide their name, address, email address, telephone number, and date of birth. The website includes a consent statement and tick box, which states:

"I consent to allowing xxx to process your registration and to use the data you supply to show you targeted offers and marketing communications from our partners. You have read and agree to the terms and conditions & privacy policy. I consent that our partners and their partners may contact me by email, phone, SMS or post."

Individuals are unable to proceed to click the "next step" button without providing consent at this point. Furthermore, individuals are not able to select which sectors or individual companies they wish to provide consent to. Clicking on the "partners" link shows Reliance Advisory are listed as a partner, along with 7 other companies under the "Claims Compensation" header. In total, 151 partners are listed on the site. Therefore, users would be consenting to receive correspondence from not only the 151 named partners, but their partners as well.

19. The complaints received by the Commissioner relating to CLIs allocated to Reliance Advisory include:

- *"My bank had informed me that I had a refund, wanted my address and bank details. Knew my name. Made me very uncomfortable."*
 - *"I was working, and I am fed up with a spate (the last 14 days) of these calls. I challenged how he got my number; he said it was in his database. I told him he was in breach of GDPR, to which he responded he was regulated by the Ministry of Justice. I told him he was still in breach of the law; he asked if I was covered recently by GDPR and did I opt out. I responded, 'its the law, everyone is covered, and there is no requirement for me to 'opt out'' He put the phone down." [sic]*
 - *"I don't know as the first time they called I couldn't hear them properly, they just mumbled. I've tried blocking their number, but they keep calling."*
 - *"They call when my baby is asleep and wake her up. They disrupt my day. My husband is in the military and can rarely call me, when they call, I think it's him and then I'm disappointed it's them again."*
 - *"I've been receiving calls from this number (and similar ones - Manchester code) for a while. My number is on the TPS service and has been for some time. I spoke to a 'Kieran' who, when I said that my number was registered with TPS and that I have complained, laughed and said 'I very much doubt you have'. They are in breach of GDPR regulations having my details and continuing to call."*
20. Reliance confirmed to the Commissioner on 4 February 2020 that a total of 15,119,545 calls were made to new potential customers

between 1 January and 30 June 2019. 1,197,390 of these calls were connected.

21. The Commissioner is satisfied that 1,197,390 calls were all made for the purposes of 'claims management services' as defined at Regulation 21A(4) PECR.
22. The Commissioner has made the above findings of fact on the balance of probabilities.
23. The Commissioner has considered whether those facts constitute a contravention of regulation 21A of PECR by Reliance Advisory and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

24. The Commissioner finds that Reliance Advisory contravened regulation 21A of PECR.
25. The Commissioner finds that the contraventions were as follows:
26. 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.
27. Between 1 January 2019 and 30 June 2019, Reliance Advisory used a public electronic communications service for the purpose of making 1,197,390 unsolicited calls for direct marketing purposes to subscribers in relation to claims management services. This resulted in 85 complaints being made to the TPS and the Commissioner.

28. 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 Reliance Advisory to receive such calls.
29. The Commissioner is satisfied that Reliance Advisory was responsible for these contraventions.
30. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

31. The Commissioner is satisfied that the contraventions identified above were serious. This is because there have been multiple breaches of regulation 21A by Reliance Advisory over a six month period. Specifically, between 1 January 2019 and 30 June 2019 made a total of 15,119,545 calls relating to claims management services to subscribers, 1,197,390 of these calls were connected. This led to a significant number of complaints about unsolicited direct marketing calls in relation to claims management services.
32. The legislation is clear that TPS registration is not a relevant consideration in respect of such calls. A subscriber must have 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. The Commissioner is satisfied that Reliance Advisory did not have the necessary consent to make these calls.
33. Reliance Advisory used aggressive tactics when making the calls to subscribers, as evidenced by the content of some of the complaint extracts:

- *"Asking about PPI she said has been given information about my PPI (not true). I told her she shouldn't be calling and she became very rude. I told her that I hadn't given permission for PPI calls and it was illegal. she became rude and loud" [sic]"*
 - *"They have called me approximately 5 times over the past few weeks, every time they call I ask them to take me off their system as I am not interested. I told them this time I will be making a complaint to the ICO, which they then went on to say that I can't do that because I hang up on them. So this time I left my phone on the side until they hung up."*
 - *"They are trying to get me to claim PPI from an address I moved from 6 years ago. They refused to give details from where they got my details and refused to confirm they had my details removed from the system. They were aggressive and refused to answer questions about where my details have come from."*
 - *"The call concluded with the operator telling me to 'F*** off' after I told her I was not interested."*
 - *"I receive 3 or 4 calls a day from this number. I have asked them to stop calling and now they are calling 3 or 4 times a day. I have just lost my mum and have told them to stop but they have been making more calls." [sic]*
34. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

35. The Commissioner has considered whether the contraventions identified above were deliberate. In the Commissioner's view, this means that Reliance Advisory's actions which constituted that contravention were deliberate actions (even if Reliance Advisory did not actually intend thereby to contravene PECR).
36. The Commissioner does not consider that Reliance Advisory deliberately set out to contravene PECR in this instance.
37. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 38. Firstly, she has considered whether Reliance Advisory 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, not least because the issue of unsolicited calls in relation to claims management services has been widely publicised by the media as being a problem, so much so that it prompted recent legislative change to prohibit the making of such calls unless certain conditions are met. It is reasonable to suppose that any organisation wishing to carry out such activities should, and indeed must, be aware of its responsibilities in this area.
 39. The Commissioner has published detailed guidance on her website for those carrying out direct marketing calls for the purposes of claims management services, explaining the strict criteria under which such calls can be made. This guidance explains such calls must not be made in relation to claims management services unless the individual being called has specifically consented to such calls or has a defined existing client relationship.

40. Secondly, the Commissioner has gone on to consider whether Reliance Advisory failed to take reasonable steps to prevent the contraventions. Again, she is satisfied that this condition is met. Whilst evidence provided by Reliance Advisory suggests that some steps were taken to ensure that its data providers obtained valid consent for the purposes of direct marketing calls it should have been apparent that further consent was required to make calls in relation to claims management services.
41. The Commissioner is of the view that if Reliance Advisory had familiarised itself with the relevant legislation and guidance and set its due diligence checks accordingly, it would have realised that it could not lawfully make unsolicited direct marketing calls for the purposes of claims management services.
42. Given the volume of calls and complaints, it is clear that Reliance Advisory failed to take those reasonable steps.
43. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to impose a monetary penalty

44. 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.
45. The latter has included the issuing of a Notice of Intent dated 4 August 2020 in which the Commissioner set out her preliminary thinking.

46. 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 Reliance Advisory Limited dated 28 August 2020 however there is nothing contained therein to dissuade the Commissioner from her preliminary view.
47. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

The amount of the penalty

48. The Commissioner has taken into account the following **mitigating features** of this case:
- Reliance Advisory appear to have employed aggressive and rude practices as reported to the Commissioner by subscribers. The complaints detail how subscribers received persistent and repeated calls resulting in several calls, multiple times per day. This demonstrates a high degree of intrusion into the privacy of subscribers;
 - The purpose of these calls was to generate leads. The making of the calls of this nature will always be for financial gain as the company will profit for any business resulting from the calls.
 - Advice and Guidance is published on the Commissioner's website and is also available via the Commissioner's Advice Services. The restriction on unsolicited claims management calls was widely publicised within the industry and the wider media. As such, it is highly unlikely that the directors and otherwise responsible persons were not aware of their regulatory obligations.

49. 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.
50. Taking into account all of the above, the Commissioner has decided that the amount of the penalty is **£250,000 (Two hundred and fifty thousand pounds)**

Conclusion

51. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **27 November 2020** 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.
52. If the Commissioner receives full payment of the monetary penalty by **26 November 2020** the Commissioner will reduce the monetary penalty by 20% to **£200,000 (Two hundred thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
53. 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.
54. Any notice of appeal should be received by the Tribunal within 28 days
of the date of this monetary penalty notice.
55. Information about appeals is set out in Annex 1.
56. 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.
57. 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 27th day of October 2020

Andy Curry
Head of Investigations
Regulatory Supervision Service
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Wilmslow
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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)).