

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: Pownall Marketing Limited

Of: 4 Adamson House, Towers Business Park, Manchester M20 2YY

1. The Information Commissioner ("Commissioner") has decided to issue Pownall Marketing Limited ("PML") 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 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

**Legal framework**

3. PML, whose registered office address is given above (Companies House Registration Number: 11674329) 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. Regulation 24 of PECR provides:

“(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

8. 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.

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. 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."

11. 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.
12. 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.
13. 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**

14. PML first came to the attention of the Commissioner when it was discovered that a number of complaints had been received by both the Commissioner and the Telephone Preference Service ("TPS") in relation to unsolicited direct marketing calls. It was notable that many of the complaints appeared to be about an organisation which referred to itself as '████████████████████', or '██████', or some variation thereof.
15. Using the Calling Line Identification Numbers ("CLIs") from which the complaints originated, the Commissioner undertook enquiries with the relevant Communications Service Provider ("CSP") to establish the identity of the subscriber. It was revealed that the subscriber of the

CLIs provided was PML, and that there were in fact a total of 61 CLIs in use by this subscriber.

16. Using these 61 CLIs as reference, the Commissioner sought to produce a log of the recent complaints made to the Commissioner/TPS about calls from these lines, noting that almost all complaints expressly concerned claims management and appeared to be about the same organisation.
17. In light of this, the Commissioner sent an initial investigation letter to PML on 2 May 2019, to which an initial response was first received on 30 May 2019 from a compliance consultant who had been instructed to act on PML's behalf.
18. The response indicated that PML acted as a "marketing agent" for another company which called itself [REDACTED] ("[REDACTED]") (discovered later to be an Indian company based in Ghaziabad). [REDACTED] supplied the data that PML would use in its campaigns, and it was said that any leads would be passed back directly to [REDACTED].
19. This response failed however to address the specific questions within the Commissioner's initial letter and so the request for this information was repeated. The Commissioner was subsequently told that only 13 CLIs were used by PML, however the Commissioner noted that these CLIs were provided with 'event dates', the meaning of which was not clear.
20. A copy of a script allegedly used in the direct marketing was also provided, an extract of which stated that:

"...

*My name is ..... and I'm calling from [REDACTED] which is a trading style of [REDACTED], how are you today?*

*The reason for the call today is we believe you have consented to receive a marketing call in relation to a road traffic accident you've been involved in over the last 3 years...is this correct?*

...

*OK, so what I can do for you today to get this explained in as much detail as possible, I can get you through to one of our closers who will run through some simple criteria and if you meet this we can then send you through to a solicitor who can then deal with the claim for you"*

21. This script confirmed to the Commissioner that [REDACTED] was a name which PML were using to identify itself to recipients, and also appeared to contradict what the Commissioner had previously been told in respect of the leads being passed back to [REDACTED] when in fact the script suggested that they would be passed through to a solicitor.
22. Amongst copies of various training documents, a copy of a single page contract/agreement between PML and [REDACTED] was also provided, however this contract was silent as to the requirements of PECR, and provided only a brief, vague assurance that the data being supplied to PML would be compliant with the Data Protection Act 2018 and the General Data Protection Regulation ("GDPR"). It also mentioned that data would be screened against the TPS register, and that payment for services provided by PML would be £6,000 per month.
23. PML confirmed that this brief assurance was the extent of its due diligence in respect of the data it was to use to make its direct marketing calls, stating that PML "was just acting for [REDACTED] and wrongly thought that [REDACTED] was the firm responsible for everything".

24. On 7 June 2019 the CSP provided the Commissioner with a number of spreadsheets detailing the Call Dialler Records ("CDRs") for the 61 CLIs attributed to PML from 1 January 2019. These CDRs were later filtered to give the number of those calls which connected to a subscriber. It was established that between 1 January 2019 and 28 May 2019 there were a total of 554,753 outbound calls, of which 365,369 connected to a subscriber.
25. The Commissioner made further enquiries with PML, specifically in relation to the consents that it purported to rely on in relation to the complaints received; the volumes of calls it believed it had made; and the CLI discrepancy.
26. PML responded to say that it believed it had made 237,356 calls although there was no evidence provided to support this figure; and it maintained that the 13 CLIs it had previously disclosed were accurately listed as the only ones used by PML. PML had at this point taken steps to request evidence of consent from [REDACTED].
27. Noting the dispute regarding the CLIs being attributed to PML, the Commissioner took steps to ascertain the correct number with the CSP which confirmed that the 13 CLIs which PML had insisted were the only ones used by it were in fact CLIs that had been added to an existing account which PML had taken over, and on which there were already a number of CLIs active and allocated for PML's use. The 'event dates' on the 13 additional CLIs, as provided previously by PML, was clarified to mean the dates on which those particular CLIs were added to PML's account.
28. On 28 July 2019, in respect of the request for evidence of consent, PML provided screenshots of four general 'consent statements', cropped and with the domain names not visible. The Commissioner queried this and



received details of three website domains to which three of the four 'statements' provided allegedly belonged. None of these three website domains, either on the website itself or the privacy policy, currently or in any historic version that can be seen online, mentions PML as a body which may contact subscribers. Indeed, two of the websites cited are inactive, and have been so for at least 12 months prior to the incorporation of PML. PML have been unable to provide the Commissioner with any evidence of specific consent.

29. The Commissioner sent an 'end of investigation' letter to PML on 25 September 2019 to advise that the matter would be considered for regulatory action. On 7 October 2019 PML applied to strike the company off the Companies House register. The Commissioner has since successfully objected to this application and, as of this Notice, PML remains an 'active' legal entity.
30. The Commissioner has made the above findings of fact on the balance of probabilities.
31. The Commissioner has considered whether those facts constitute a contravention of regulations 21A and 24 of PECR by PML and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

32. The Commissioner finds that PML contravened regulations 21A and 24 of PECR.
33. The Commissioner finds that the contraventions were as follows:

34. 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.
35. Between 1 January 2019 and 28 May 2019 PML used a public electronic communications service for the purpose of making 365,369 unsolicited calls for direct marketing purposes to subscribers in relation to claims management services, resulting in 63 complaints.
36. 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 PML to receive such calls.
37. Further, PML failed, as required by regulation 24 of PECR, to provide the recipient of the calls the particulars specified at regulation 24(2), instead, seeking to disguise its identity by using [REDACTED], or a variation of such, through which they would not be directly traceable.
38. The Commissioner is satisfied that PML was responsible for the contraventions.
39. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

**Seriousness of the contravention**

40. The Commissioner is satisfied that the contraventions identified above were serious. This is because there have been multiple breaches of regulations 21A and 24 by PML over a 5-month period. Between 1 January 2019 and 28 May 2019, PML made a total of 554,753 calls relating to claims management services to subscribers, 365,369 of these calls were connected. This led to a significant number of

complaints about unsolicited direct marketing calls in relation to claims management services.

41. 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 PML did not have the necessary consent to make these calls.
  
42. PML are not registered with the FCA for the purposes of carrying out regulated activities, and used misleading tactics when making the calls to subscribers, as evidenced by the content of some of the complaint extracts:
  - *"Started by pretending to be from my insurance company saying it was a courtesy call to see how my claim was going."*
  - *"Trying to convince me that there is a payment waiting for me for a sum that is way less than I will be getting for the accident."*
  - *"They do not clearly state what they are trying to do. The "Sales" rep is clearly trying to mislead potential clients to agree to them broking a claim to receive a fee."*
  - *"The caller tried to trick me with false information regarding a biking accident."*
  - *"Company claimed to be working for Hadtings [sic] insurance which was false as I rang Hastings."*
  - *"Claiming to be working on behalf of my insurance company, when I challenged them to who my insurance was with, they hung up."*
  - *"Claimed to be from my insurance (which i checked and nothing to do with them)."*

- *"They purported to be associated with my insurance company."*
- *"Claiming to be working on behalf of my insurance company."*
- *"Company claiming to work on behalf of Association of British Insurers."*

43. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

### **Deliberate or negligent contraventions**

44. The Commissioner has considered whether the contraventions identified above were deliberate. The Commissioner considers that in this case PML did deliberately contravene regulations 21A and 24 of PECR.

45. The ICO has published guidance on its website for companies carrying out marketing explaining their legal requirements under PECR. This guidance, which includes information about the change in legislation regarding claims management calls, states that since the implementation of Regulation 21A into PECR, unsolicited calls for direct marketing purposes in relation to claims management services cannot be made unless the subscriber has specifically consented to receiving the call. There is no evidence that PML has considered its legal obligations in this regard at all, instead relying on vague and general assurances of compliance with other data protection legislation from [REDACTED], its overseas data provider, with no apparent reference to PECR in any of the disclosed documentation from PML. PML appear content to deflect responsibility, stating during the investigation that it believed [REDACTED] were "responsible for everything".

46. PML has advised that the data used for its direct marketing calls was provided directly from [REDACTED], and that there was no due diligence carried out by PML as to the veracity of the data. It is notable that the Commissioner's direct marketing guidance makes clear that organisations utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary consent. It appears that it was only when specifically requested by the Commissioner did PML take steps to contact [REDACTED] to obtain evidence of consent, and was in any event unable to do this, providing instead copies of generic 'consent statements' with no mention of PML's company name. The Commissioner is further concerned that two of the three website domains from which the consents were apparently obtained do not even appear to have been active for over twelve months prior to PML's incorporation and so could not possibly have been used to obtain valid consent. The Commissioner feels the inclusion of this information from PML is little more than an attempt to create the illusion of a business strategy, and if considered in any detail could not have possibly provided PML with any comfort that their direct marketing calls would be lawful.
47. The Commissioner is further alarmed by PML's failure to provide its particulars on its calls, instead using trading names linked to its overseas data provider, which can be seen as nothing less than an attempt to deliberately conceal the true identity of the caller contrary to regulation 24 of PECR.
48. For the above reasons, the Commissioner is satisfied that this breach was deliberate.

49. In the alternative however, the Commissioner has also gone on to consider whether the contraventions identified above were negligent.
50. The Commissioner has considered whether PML 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 calls, particularly in relation to claims management services, has been widely publicised by the media as being a problem, and indeed led to a specific change in the legislation. Given that the very nature of PML's business model appears to be claims management lead generation, it is reasonable to suppose that PML should, and indeed must, have been aware of their responsibilities in this area.
51. Secondly, the Commissioner has gone on to consider whether PML failed to take reasonable steps to prevent the contraventions. Again, she is satisfied that this condition is met. Indeed, it would appear to be the case that PML has failed to take any steps whatsoever to prevent these contraventions, relying instead on vague assurances from its overseas data supplier that it was acting in compliance with the law.
52. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

53. The Commissioner has also taken into account the following **aggravating features** of this case:

- PML appear to have employed misleading sales practices, including allusions to being aligned with legitimate insurance companies, as reported to the Commissioner by subscribers;
  - The purpose of the calls, in generating leads for profit, is a deliberate act for financial gain;
  - There has been a lack of appropriate engagement with the Commissioner by PML, with the information being provided often being questionable and contradictory;
  - PML had attempted shortly after the conclusion of the investigation to have the company struck off the Companies House register. This would appear to be a cynical attempt to avoid regulatory action.
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 the procedural rights under section 55B have been complied with.
55. 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 invited PML to provide representations to the Notice of Intent. No such representations were received.
56. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
57. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.

58. The Commissioner has attempted to consider the likely impact of a monetary penalty on PML. PML has failed to file any company accounts since its incorporation in November 2018 and so, despite her efforts, the Commissioner is unable to accurately assess PML's financial status. However, the Commissioner notes that the director of PML sought to strike the Company off the register at Companies House immediately following the conclusion of the Commissioner's investigation, and has failed to provide any representations either in respect of the contravention or its financial status. In the particular circumstances of this case, the Commissioner considers that a monetary penalty notice is a proportionate and appropriate response to the finding of a serious contravention by PML.
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. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

**The amount of the penalty**

61. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£250,000 (Two hundred and fifty thousand pounds)** is reasonable and proportionate given the



particular facts of the case and the underlying objective in imposing the penalty.

**Conclusion**

62. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **21 January 2021** 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.
63. If the Commissioner receives full payment of the monetary penalty by **20 January 2021** 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.
64. 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.
65. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
66. Information about appeals is set out in Annex 1.

67. 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.

68. 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 14<sup>th</sup> day of December 2020

Andy Curry  
Head of Investigations  
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 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty 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: 0300 123 4504

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

- 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 (Information Rights) are contained in section 55B(5) 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)).