

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Solar Style Solutions Limited

Of: 15a Yarm Street, Stockton on Tees, TS18 3DS

1. The Information Commissioner ("Commissioner") has decided to issue Solar Style Solutions Limited ("SSSL") 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.
2. This notice explains the Commissioner's decision.

Legal framework

3. SSSL, whose registered office is given above (Companies House Registration Number: 07674048) 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 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 122(5) of the DPA 2018 defines direct marketing as “the communication (by whatever means) of any advertising material which is directed to particular individuals”. This definition also applies for the purposes of PECR (see regulation 2(2) PECR and Schedule 19 para 430 & 432(6) DPA18).
9. Under section 55A (1) of the DPA (as amended by PECR 2011 and the Privacy and Electronic Communications (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. SSSL is an organisation specialising in the installation of renewable energy technology, with an emphasis on solar panels.
14. SSSL first came to the attention of the Commissioner in October 2018, when a particular Caller Line Identity ("CLI") was identified in the ICO's 'Monthly Threat Assessment' ("MTA") as being a CLI used by one of the organisations responsible for generating the most complaints for that month via the TPS. The same CLI appeared in the MTA for March 2019.
15. The Commissioner served a Third Party Information Notice ("3PIN") on the Communications Service Provider ("CSP") on 7 May 2019 for that CLI in order to establish the identity of its subscriber. The Commissioner also sought details as to any other CLIs being used by that subscriber over a prescribed period.
16. The CSP responded to confirm that the CLI quoted belonged to SSSL and identified a full range of CLIs allocated to the company. The CSP provided call volumes and call detail records ("CDRs") for the period 28 February 2019 to 6 May 2019.
17. The Commissioner carried out a thorough search of the complaints logged against those CLIs between 13 February 2018 and 29 April

2019 to both the TPS and the Commissioner's Online Reporting Tool ("ORT"). A total of 123 complaints were logged.

18. Some of the complaints contained comments such as the following:

- "It is primarily a disruption rushing to the phone only to discover it is an unsolicited call, and then annoying to discover that no matter how many times you ask to be removed from a list (and promises made to do so) that the calls keep coming. It annoys me that they have our number. Where did they get it, who sold it to them?"
- I told them - immediately I wasn't interested. This was the second or third call I've received from the same number this week."
- "I'm fed up of the interruptions as I'm in the middle of writing a thesis on an advanced energy saving measures! This salesperson was trying to convince me they could save me money by installing PV Solar Cells. They obviously hadn't checked the TPS register as she stated they could remove me from their database after I told her this number was on the TPS!"
- "Solar paneling (sic). The company uses multiple numbers to try and contact and despite numerous requests to remove my number from database and explain TPS registration the calls do not stop. This has been going on for over one year. They 'claim' to be ringing for someone of a different name [.....]' but this is just a ploy to try and engage the homeowner in a conversation about solar panels."

19. The Commissioner sent an initial investigation letter to SSSL on 22 May 2019 setting out her concerns regarding their compliance with PECR, and asking a number of questions in respect of their practices and

policies. The letter contained an appendix of complaints, and requested details of consent to call the complainants.

20. SSSL responded to the Commissioner's initial enquiries on 18 June 2019. In brief, SSSL explained that it uses 11 CLIs (later confirming that only one was used for the purpose of making outbound calls); that it used the trading name "The Energy Efficiency Team at Solar Style UK" during calls"; that the data it used for the purposes of its direct marketing came through a variety of sources including door to door marketing, existing customers and data purchased from a third party provider; that where data was acquired directly from customers a contact permission form was signed; that data from its provider was purchased in "good faith" and on the basis of the provider's terms and conditions contained in a footer to email exchange regarding purchase of a marketing list which stated: *".....consists of information sourced from consented online and offline lead generation and surveys. The data collected is compliant with all current applicable laws and regulations surrounding the use of third party data"*.
21. The correspondence did concede a level of naivety on the part of SSSL, saying: *"...in the past purchased what we (sic) believed naively to be TPS screened data and we haven't followed our own process in making sure this was done"*. It referred to the fact that the call monitoring system had suffered neglect by previous owners. The correspondence also referenced a new process actioned by SSSL following the Commissioner's investigation letter, including purchase of a TPS licence and screening call lists against the TPS register.
22. The Commissioner issued a further letter to SSSL on 26 June 2019 requesting details of the contract held with its third party data provider, how consent is obtained via canvassing, any due diligence

performed on third party data, further details of the new process implanted by SSSL and an explanation of how SSSL considered the call monitoring system to have previously been neglected.

23. The subsequent response from SSSL dated 3 July 2019 revealed that there was in fact no existing contract, instead stating that "*all data was purchased in good faith*". Consent was collected from the door at point of first contact. The responding director indicated that the majority of data purchased preceded his appointment as director, and that SSSL no longer used their previous provider, swapping to a different provider in relation to which terms and conditions and a GDPR compliance pack were supplied.
24. SSSL further confirmed that it had purchased a TPS licence on 5 June 2019 and that it had begun to screen data from 17 June 2019. Evidence of subscription was provided. It explained that as the previous owners of the company were in arrears with the CSP, the phone system was not updated and therefore not working to its full potential. It was anticipated that the new system, which enabled TPS checks, would be implemented within 4 weeks (subsequently the commissioning date was confirmed as week commencing 26 August 2019) and copies of communications with the CSP were provided in support. SSSL advised that its website was also being updated with a new privacy policy.
25. The Commissioner proceeded to serve a further 3PIN on the CSP on 5 July 2019 to obtain call records for SSSL in relation to the CLI used to make outbound calls. The CSP advised that despite calls having been made since 13 February 2018, owing to their retention policy the only dates for which CDRs could be provided were between 1 January 2019 and 29 April 2019 ("the relevant period").

26. The CDRs provided to the Commissioner were then relayed to the TPS to establish how many of the numbers dialled belonged to subscribers who had been registered with the TPS, and the dates of their registration.
27. In its response, the TPS confirmed that during the relevant period there had been 188,665 outbound calls made to subscribers, of which 126,019 were made to subscribers who had been registered with the TPS for not less than 28 days at the time they received a call. This translates to 66.8% of all calls made.
28. The Commissioner is satisfied that these calls were made for the purposes of direct marketing as defined by section 122(5) DPA18.
29. During the relevant period a total of 29 complaints were received by the TPS and ORT, some of these alluding to multiple calls having been made to the same subscriber.
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 regulation 21 of PECR by SSSL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

32. The Commissioner finds that SSSL contravened regulation 21 of PECR.
33. The Commissioner finds that the contravention was as follows:

34. Between 1 January 2019 and 29 April 2019, SSSL used a public telecommunications service for the purposes of making 126,019 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the called line was a number listed on the register of numbers kept by the Commissioner in accordance with regulation 26, contrary to regulation 21(1)(b) of PECR. This resulted in 29 complaints being made to the TPS and the Commissioner.
35. The Commissioner is also satisfied for the purposes of regulation 21 that these 126,019 unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and they had not given their prior consent to SSSL to receive calls.
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 by SSSL arising from the organisation's activities over a 4 month period, and this led to a substantial number of unsolicited direct marketing calls being made to subscribers who were registered with the TPS, and a significant number of complaints being made as a result. Calls to TPS registered numbers comprised 66.8% of the total call volume over the relevant period.
38. SSSL provided evidence (supported by their CSP) that the organisation had made 758,138 calls between 13 February 2018 and 29 April 2019,

although the CSP was unable to provide CDRs for the entire period. It is entirely reasonable to suppose, given that 66.8% of calls were made to TPS registered numbers during the relevant period, and SSSL operated under the same business model, that a similarly significant proportion of those calls over a broader period of time were to TPS registered numbers. Indeed, the Commissioner received a significant amount of complaints about unsolicited marketing calls from SSSL in that period.

39. The 126,019 unsolicited direct marketing calls made between 1 January 2019 and 29 April 2019 were made from CLIs which were being used by SSSL. This information has been obtained from SSSL's CSP and is reasonably relied upon by the Commissioner. These calls were not screened against the TPS register, nor is there any evidence of consent being provided to SSSL from the individual subscribers. There is no evidence of any contractual terms between SSSL and their data providers, or of any due diligence checks being carried out to ensure the veracity of the data being obtained. In short, SSSL have failed to provide the Commissioner with any evidence to demonstrate an intention to comply with PECR.
40. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

41. The Commissioner has considered whether the contravention identified above was deliberate.
42. The Commissioner does not consider that SSSL deliberately set out to contravene PECR in this instance.

43. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
44. Firstly, she has considered whether SSSL 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 SSSL relied apparently entirely 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. Given that it set out to embark on a direct marketing campaign, SSSL should reasonably have sought to familiarise itself with the relevant legislation.
45. 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.
46. The Commissioner's direct marketing guidance also makes clear that organisations acquiring 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. The Commissioner has been provided with no evidence that any such

checks were undertaken, rather SSSL claim to have been assured of the data's veracity at the point of purchase but have failed to carry out any of their own checks. This would fail to satisfy the Commissioner's requirement for due diligence.

47. Standard practice of the TPS is to contact the organisation making the calls on each occasion a complaint is made. It is therefore reasonable to believe that SSSL would have received a notification from the TPS for each of the complaints being made in this case. That there were 14 complaints made to the TPS alone over the period of the contravention should have made SSSL aware of the risk that such contraventions may occur, and were indeed occurring.
48. It is therefore reasonable to suppose that SSSL should have been aware of its responsibilities in this area.
49. Secondly, the Commissioner has gone on to consider whether SSSL failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met. Reasonable steps in these circumstances may have included asking its third party data providers for evidence that the subscribers had consented to receiving calls from SSSL, screening the data against the TPS register itself regardless of any assurances that might have been given by the providers of the data, and ensuring that it had in place an effective and robust suppression list. Given the volume of calls to TPS registered numbers, and the nature of complaints, it is clear that SSSL failed to take those steps.
50. There is also no evidence that, prior to the Commissioner's intervention, SSSL sought to consult the Commissioner's guidance, or to familiarise itself with the relevant legislation. By its own admission

SSSL did not seek to undertake any steps to ensure the integrity of the data it was purchasing, and has provided no evidence that the protection and privacy of subscribers was factored into the purchase of data with its providers. Additionally, it does not appear that there were any discernible policies or procedures in place for staff, nor was there any contractual arrangement in place between SSSL and its data provider. SSSL have explained these omissions away as 'naivety' on its part, however the Commissioner takes the view that such a reckless approach towards compliance with the law falls far short of the expected standard, and cannot be said to be anything other than negligent. Any internal suppression list operated by SSSL was ineffective given that complaints referred to multiple calls despite requests by subscribers for their details to be removed from the database.

51. The Commissioner takes the view that SSSL failed to take reasonable steps to prevent the contravention.
52. Whilst the Commissioner notes that SSSL has taken remedial measures to prevent future contraventions, including purchase of a TPS licence, screening calls against the TPS register, implementation of a new telephony service, inclusion of a privacy policy on its website and data protection training for its staff, these are a reactive approach to the Commissioner's investigation, in the absence of which contraventions would likely have continued.
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. The Commissioner considers there are no aggravating features to be taken into account in this case.
55. The Commissioner also considers there are no mitigating features of this case which would serve to reduce the amount of the penalty. Whilst significant remedial measures have been undertaken by SSSL these were reactive to the Commissioner's investigation. The current directors state they only became aware of the contraventions following purchase of the company, however this is indicative that no due diligence was conducted, either in relation to the DPA or more generally upon purchase of the entire business practice.
56. 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.
57. This has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking, and invited SSSL to make representations in response. In view of the current pandemic, SSSL had previously agreed to accept service of any Notices, and the Commissioner has a delivery receipt confirming service of the Notice of Intent on 15 December 2020.
58. SSSL has not provided the Commissioner with any Representations in response to the Notice of Intent.
59. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

60. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty. She has decided that a monetary penalty is an appropriate and proportionate response to the finding of a serious contravention of regulation 21 of PECR by SSSL.

61. 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.

62. The Commissioner has considered the likely impact of a monetary penalty on SSSL. The Commissioner notes that SSSL is currently subject to a CVA which is demonstrative that the company has encountered financial difficulties. The Commissioner was initially minded to propose a penalty of £100,000, however reduced the proposed amount by £10,000 taking into account the financial information available to her as at the date of the Notice of Intent. SSSL was invited to provide further financial representations and any evidence of financial hardship, in response to the Notice of Intent, however it has not availed itself of the opportunity to do so.

The amount of the penalty

63. Taking into account all of the above, the Commissioner has decided that the amount of the penalty is **£90,000 (Ninety thousand pounds)**.

Conclusion

64. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **25 February 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.
65. If the Commissioner receives full payment of the monetary penalty by **24 February 2021** the Commissioner will reduce the monetary penalty by 20% to **£72,000 (Seventy two thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
66. 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.
67. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

68. Information about appeals is set out in Annex 1.
69. 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
 - period for appealing against the monetary penalty and any variation of it has expired.
70. 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 25th day of January 2021

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 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 (Information Rights) 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)).