

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Call Centre Ops Limited

Of: 22 Regent Street, Nottingham, NG1 5BQ

1. The Information Commissioner ("Commissioner") has decided to issue Call Centre Ops Limited ("CCO Ltd") 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").
2. This notice explains the Commissioner's decision.

Legal framework

3. CCO Ltd, whose registered office is given above (Companies House Registration Number: 09749523) 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 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 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, paragraph 430 and 432(6) DPA18).
9. 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.

10. "Individual" is defined in regulation 2(1) of PECR as "a living individual and includes an unincorporated body of such individuals".
11. 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".
12. 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."
13. 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.

14. 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.
15. 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

16. CCO Ltd first came to the attention of the Commissioner in June 2019 after several complaints were received about unsolicited marketing calls from a specific calling line identifier ("CLI").
17. The Commissioner made enquiries with the relevant Communications Service Provider ("CSP") which confirmed that the CLI in question, and a number of others, had been allocated to CCO Ltd.
18. The Commissioner was able to establish that since July 2018 there had been a number of complaints made regarding calls from CLIs attributed to CCO Ltd via both the Commissioner's online reporting tool, and the Telephone Preference Service ("TPS").
19. The Commissioner sent an initial investigation letter to CCO Ltd on 20 June 2019, setting out her concerns with CCO Ltd's PECR compliance,

and asking for details of call volumes and evidence of consent, amongst other information.

20. A response to this initial investigation letter was provide on 10 July 2019, providing details of a "full list of CLI's used by CCO Ltd or connected brands". It was advised that a number of trading names are used during these calls, including CCO Ltd, and [REDACTED]. It was further advised that between 1 July 2018 and 19 June 2019 there were 7,245,269 calls made, of which 3,273,384 connected. In terms of its methods for obtaining data, CCO Ltd advised that it used data purchased from third party lead generation suppliers ("third-party data providers"); and via internal lead generation. Regarding its internal lead generation, CCO Ltd stated: *"When we have made a sale or contact to a customer and established an initial relationship we ask a few profiling questions and gain customer consent to opt them in to future marketing that carries legitimate interest through permissible data initially dialled"*.
21. On 22 July 2019 the Commissioner also sought details of the third-party data providers from whom data was obtained, and any due diligence carried out in relation to consent.
22. CCO Ltd's response of 25 July 2019 provided details of its past and present third-party data providers. To test consent, CCO Ltd explained that has a three-tiered approach including random call sampling, listening to calls where opt-in objections have been identified and surveying customers at random "to verify if they remember agreeing to consent".
23. The Commissioner sought further information in relation to the call volumes and CLI allocation for each of its campaigns / trading names;

in addition to further information regarding the opt-in statements for purchased data.

24. CCO Ltd responded on 1 August 2019 providing details of the call volumes as requested, and details of the opt-in statement used. From the statement provided it was apparent that consent was being sought from individuals during the actual call, after the call had already connected.
25. On 19 September 2019 the ICO contacted CCO Ltd to establish how the various calls made by it were separated. CCO Ltd's response indicated that it makes calls under its own name for communications and utilities, whereas its calls for [REDACTED] relate to insurance products. CCO Ltd further advised that it was currently purchasing data from [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Commissioner subsequently requested details of where these third-party data providers obtained their data from before providing it to CCO Ltd.
26. CCO Ltd provided details of the general 'customer journey' for individuals who provided 'consent' to each of the third-party data providers, and where the third-party data providers obtained its data from. Specifically, it was explained that for [REDACTED], [REDACTED] and [REDACTED], lifestyle surveys are conducted on individuals. For [REDACTED], the first stage is a competition website followed by a lifestyle survey. However, more specific details were not provided.
27. The Commissioner reviewed the 'consent statements' which were presented to individuals during the lifestyle surveys for [REDACTED] [REDACTED] [REDACTED], [REDACTED] and [REDACTED]. These 'consent statements' referred variously to 'leading UK companies', sponsors, affiliates, '3rd parties from the sectors mentioned above'; and also stated that contact may

be made by a range of methods. There appeared to be no specific reference to CCO Ltd.

28. On 18 October 2019 the Commissioner requested further information relating to the sources of data for each of the third-party data providers, call scripts, and call volumes. CCO Ltd responded on 25 October 2019 and provided copies of the requested information.
29. The call scripts used by the third-party data providers suggest that agreement to marketing is a condition of service. Furthermore, individuals do not appear to be given a choice as to which companies they may or may not wish to receive such material from; nor are they able to suggest which method of marketing they may wish to receive.
30. On 4 November 2019 the Commissioner asked CCO Ltd to provide its Call Dialler Records ("CDR"s) for calls made on behalf of [REDACTED] [REDACTED] between 1 May 2019 and 30 October 2019, together with details of the CLIs used.
31. CCO Ltd provided the requested details, including the CDRs which the Commissioner was able to filter to show only connected calls, and which the Commissioner then took steps to have screened against the TPS register. It was possible from this analysis to determine that 159,461 connected calls had been made by CCO Ltd between 1 May 2019 and 30 October 2019 to individual subscribers whose number had been registered with the TPS for not less than 28 days.
32. On 19 December 2019 the Commissioner asked CCO Ltd to provide details of the due diligence conducted on each of the third-party data providers, with a response being provided on 15 January 2020. CCO Ltd provided a range of information regarding its due diligence checks, mostly consisting of each third-party data provider's internal policies, however there was nothing provided to evidence that any checks were

carried out to ensure the adequacy of the consent which CCO Ltd intended to rely on for its direct marketing.

33. The Commissioner wrote to CCO Ltd on 6 March 2020 with an 'end of investigation' email, and later learned that on 10 March 2020 CCO Ltd had appointed a voluntary liquidator.
34. The Commissioner is satisfied that the 159,461 calls were made for the purposes of direct marketing as defined by 122(5) of the DPA 2018.
35. The Commissioner has made the above findings of fact on the balance of probabilities.
36. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by CCO Ltd and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

37. The Commissioner finds that CCO Ltd contravened regulation 21 of PECR.
38. The Commissioner finds that the contravention was as follows:
39. Between 1 May 2019 and 30 October 2019, CCO Ltd used a public telecommunications service for the purposes of making 159,461 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 a single complaint being made over the period of

contravention.

40. The Commissioner is also satisfied for the purposes of regulation 21 that these 159,461 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 CCO Ltd to receive calls.
41. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

42. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by CCO Ltd arising from the organisation's activities over a six-month period, and this led to a substantial number (159,461) of unsolicited direct marketing calls being made to subscribers who were registered with the TPS. Furthermore, CCO Ltd has been unable to demonstrate that it held valid consent for the purposes of these calls.
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 contravention identified above was deliberate.

45. The Commissioner does not consider that CCO Ltd deliberately set out to contravene PECR in this instance.
46. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 47. Firstly, she has considered whether CCO Ltd 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.
 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. It is therefore reasonable to suppose that CCO Ltd should have been aware of its responsibilities in this area.
50. Secondly, the Commissioner has gone on to consider whether CCO Ltd failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
51. The Commissioner's direct marketing guidance 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. It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. The due diligence checks which CCO Ltd have sought to evidence do not appear to have been concerned with the veracity of the data which it was purchasing. If CCO Ltd had properly undertaken the customer journey then it seems reasonable to think that it would have realised that, at the point of consent, it was not possible for individuals to provide specific, informed and freely given consent to receive direct marketing calls from CCO Ltd.

Furthermore, CCO Ltd's responses during the investigation suggest that it may not have actually even been aware of the initial source of the data which it was intending to use – in those cases, where 'consent' is being passed between organisations, it is unlikely to be valid in any event. The Commissioner's Direct Marketing Guidance makes it clear that rigorous checks should be undertaken to ensure that the consent was validly obtained, and clearly extended to them. This does not appear to have happened in this instance.

52. Reasonable steps in these circumstances may also have included asking its third-party data providers for evidence that the subscribers had specifically consented to receiving calls from CCO Ltd; screening the data it intended to rely on against the TPS register itself (regardless of any assurances that might have been given to it by the third-party data providers); and ensuring an effective suppression system was in place for individuals who did not wish to be contacted.
53. Given the volume of calls made in contravention of PECR, it is clear that CCO Ltd failed to take those reasonable steps.

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

The Commissioner's decision to issue a monetary penalty

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

- The actions of CCO Ltd were carried out to generate business and to increase profits, gaining an unfair advantage on those businesses complying with the PECR;
- The company director has over a decade of experience of direct marketing activity, and is expected to have been more acutely aware of CCO Ltd's legal obligations;
- The Commissioner is concerned by the timing of CCO Ltd's appointment of a liquidator which suggests, in part, a possible attempt to evade regulatory action.

56. The Commissioner has taken into account the following **mitigating feature** of this case:

- Whilst some due diligence was carried out by CCO Ltd, it was insufficient to prevent the contravention.

57. 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.

58. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking. The Commissioner has received no representations from CCO Ltd 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.
61. The Commissioner has considered the likely impact of a monetary penalty on CCO Ltd, which she notes is currently in liquidation. She has decided on the information that is available to her, and on the facts of this particular case, that despite the liquidation, a monetary penalty remains an appropriate and proportionate course of action.
62. 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.
63. For these reasons, the Commissioner has decided to issue a monetary penalty in this case

The amount of the penalty

64. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£120,000 (one hundred and twenty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

65. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **12 March 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.
66. If the Commissioner receives full payment of the monetary penalty by **11 March 2021** the Commissioner will reduce the monetary penalty by 20% to **£96,000 (ninety 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.
67. 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.
68. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

69. Information about appeals is set out in Annex 1.
70. 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.
71. 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 9th day of February 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 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

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)).