

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: Leads Work Limited

Of: Suite C Underwood House, 235 Three Bridges Road, Crawley,  
West Sussex RH10 1LU

1. The Information Commissioner ("Commissioner") has decided to issue Leads Work Limited ("LWL") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

**Legal framework**

3. LWL, whose registered office is given above (companies house registration number: 10853169), is the organisation (person) stated in this notice to have transmitted unsolicited communications by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.
4. Regulation 22 of PECR provides that:

“(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.

(2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.

(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where –

- (a) That person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or device to that recipient;
- (b) The direct marketing is in respect of that person’s similar products and services only; and
- (c) The recipient has been given a simple means of refusing (free of charge except for the costs of transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.

(4) A subscriber shall not permit his line to be used in contravention of paragraph (2).”

5. 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.

6. "Electronic mail" is defined in regulation 2(1) PECR as "any text, voice, sound or image sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service".
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. Section 55A 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) states:

"(1) The Commissioner may serve a person with a monetary penalty 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.”

9. 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.
10. PECR implements European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. PECR was amended for the purpose of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches PECR so as to give effect to the Directives.
11. 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**

12. LWL is a lead generation company which operates primarily in the 'multi-level marketing' sector. It generates leads under the Avon brand for the purpose of enlisting downstream recruits, and which are passed directly to independent Avon sales representatives.

13. LWL first came to the attention of the Commissioner in connection with complaints about text messages seemingly sent by Avon Cosmetics Limited ("Avon"). The investigation found that Avon did not send or instigate the texts. LWL were contacted, but not investigated at that time.
14. LWL came to the attention of the Commissioner again during the Covid-19 pandemic, when a significant number of complaints were received about the following text message:

*In lockdown and want to earn extra cash? Avon is now FULLY ONLINE, FREE to do and paid weekly. Reply with your name for info. 18+ only. Text STOP to opt out.*
15. Between 14 April 2020 and 14 May 2020, 835 complaints were received by the 7726 SPAM reporting tool. Significant daily totals of complaints were also seen, including 329 on 13 May 2020, 345 on 14 May 2020 and 370 on 15 May 2020.
16. Given the rapid rise in complaint volumes, and as LWL were known to send messages of this type, the Commissioner contacted LWL by telephone on 13 May 2020, who confirmed that the messages had been sent by LWL. This was subsequently supported by evidence from LWL's mobile network provider.
17. On 15 May 2020, the ICO sent an investigation letter to LWL detailing the Commissioner's concerns regarding LWL's compliance with PECR, and containing a number of enquiries. The letter attached an index of complaints received both by the 7726 SPAM reporting service, and by the ICO.

18. On 4 June 2020, the ICO received a response from LWL. This provided a list of CLI's used by LWL and text volumes, identified the bodies of 19 different texts sent, and confirmation that texts were sent internally through a platform operated by LWL. LWL explained that data was both purchased from third parties and driven to websites such as 'Avon.leadswork.co.uk'. The third parties from whom data was purchased were said to be [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Advertising was also operated extensively on [REDACTED], [REDACTED] and [REDACTED].
19. In response to enquiries about contractual agreements, LWL stated that before working with a partner they 'review their terms and conditions and see the URL where the opt-in will occur', later adding that they also go through the registration process on a test basis to ensure necessary opt-ins were present. No contractual agreements were said to be in place or provided. LWL said that they had generated leads for Avon representatives for a 'very long time'.
20. A review by the Commissioner of the information provided by LWL revealed that its dominant data supplier was [REDACTED], whose data capture website was [REDACTED]. This website consists of a landing page to opt-in, a privacy notice, and an option to unsubscribe. The website states that it is 'part of the [REDACTED], [REDACTED]', which is a company quite distinct from [REDACTED]. LWL is named in the consent statement; by clicking the 'partners' link in the consent statement, individuals are directed to the privacy policy in which LWL are named in the 'marketing service providers' section. A further link to 'direct clients' presents individuals with a further list of 457 distinct organisations from whom individuals may expect to receive marketing, in which LWL is not included. The website does not allow individuals to submit their details without checking 'at least one' marketing channel.

Furthermore, the website is vague and confusing given the discursive and lengthy nature of the consent statement and the extensive list of sectors and companies contained within both it and the privacy policy. For these reasons the Commissioner concluded that consent was not freely given, specific and informed.

21. In response to a request by the Commissioner for evidence of consent, LWL explained that a suppression list was in place should anyone reply 'Stop' to a message. In respect of the customer journey LWL explained that should a customer consent to be contacted by LWL then they are sent an initial message asking whether they want to be contacted by a local Avon representative. If they respond positively then their data is shared with the local representative.
22. LWL provided the Commissioner with a 'GDPR pack' containing a Data Protection Impact Assessment ("DPIA") and a 'company compliance document'. The latter discusses LWL's data protection obligations as a company, and whilst robust for the purpose it sets out to achieve, at no point is PECR referenced. The DPIA, dated 20 October 2019, explicitly refers to PECR and consent, acknowledges that there is a 'degree of public concern over personal data sales', and refers to regulatory action by the ICO.
23. LWL proclaimed their membership of 'S.H.I.E.L.D.' as an indicator of their compliance. This is a scheme operated by a law firm who appear to audit companies' GDPR compliance, and if deemed compliant, they are entered into the scheme. No evidence of due diligence conducted by this law firm on behalf of the company has been provided by LWL.
24. Having reviewed LWL's response, the Commissioner sent a further set of detailed enquiries to LWL on 9 June 2020, attaching evidence of an

additional 8,089 complaints identified through the 7726 SPAM reporting system since the initial enquiries were sent.

25. A substantive response was provided by LWL on 19 June 2020. This included the body of 64 distinct texts sent during the investigation period (over three times the amount identified in LWL's initial response). As was seen from those messages, LWL did not identify itself as the sender. LWL also provided volumes of data purchased since 1 May 2019. Further capture domains were identified. In particular, [REDACTED] was identified as also capturing the data that [REDACTED] supplied. LWL prefaced this by stating that they were previously unaware of this website being a capture domain, and so had immediately enquired as to the compliance and opt-in of this website. It was explained that this website directs individuals to a registration page where their details are inputted, and agreement to the privacy policy obtained. LWL stated that lawyers had been involved in creation of the website's legal framework on behalf of another client, and so were confident it would be compliant.
26. The Commissioner reviewed the privacy policy on [REDACTED] which has granular opt-ins for each channel and a third party opt-in. The policy states that the website is owned and operated by a differently named company than [REDACTED], who sold the data to LWL. The third party opt-in on the registration page contains a link to 'partners' where 16 companies are listed, in which LWL does not appear. LWL does appear in the privacy policy, in a list of 7 'marketing service providers'. A further 442 companies are then listed under 'direct clients' followed by the following statement: "at registration you have the option to opt-in to sponsors of our website". The Commissioner found the consent statements to be vague and confusing. Further, LWL are not named at the point of consent and in view of the extensive list



of companies in the privacy policy, the Commissioner considered that consent was not specific or informed.

27. Data was also stated to be purchased by LWL from '██████████' (██████████), the second largest of LWL's data suppliers, through websites ██████████ and ██████████. These sites share the same vague consent statement, which contains a link to identical privacy policies. The privacy policies contain no distinguishable 'third party policy' and lists approximately 40 companies with whom data may be shared. LWL are not listed in the privacy policy, instead 'UK – Avon' are listed; this listing is hyperlinked to LWL's privacy policy. In representations made to the Commissioner in response to the Notice of Intent, LWL provided a letter from ██████████ which stated that LWL should be considered to fall within the category of 'health and beauty tips'. Given that LWL are not directly named in any list, and the policies are convoluted, individuals could not reasonably be expected to know that LWL were linked to Avon. For the reasons above the Commissioner found that the consent statements did not constitute informed and specific consent.
28. In relation to the volume of texts sent to each data source, LWL stated it was not possible to produce an entirely accurate figure, however provided an approximation of volumes in a further email to the Commissioner dated 24 June 2020. Between 1 May 2019 and 15 May 2020 LWL approximated that it sent in excess of 25 million texts to data sourced from ██████████, ██████████ and ██████████. The vast majority of the texts, as well as the complaints evidenced in the Commissioner's second investigation letter, were related to data supplied by ██████████.

29. A further request for information was sent by the Commissioner to LWL on 26 June 2020 seeking evidence of consent in relation to another 4,703 complaints received through the 7726 SPAM reporting service, information regarding data supplier '██████████', and an accurate number of texts sent through each source between 16 May 2020 and 26 June 2020.
30. LWL's director responded on 3 July 2020, providing further opt-ins. In relation to ██████████ he said the use of this data preceded his time as director, and so would need to contact ██████████ directly or his predecessors for information.
31. LWL went onto verify that between 16 May 2020 and 26 June 2020, a total of 3,486,716 messages were sent, of which 3,327,573 were received. Of these, 3,013,096 texts were sent, and 2,670,140 connected, to data sourced by ██████████ and ██████████ (comprising 1,911,493 to ██████████ data and 758,647 to ██████████ data).
32. On 10 July 2020 LWL supplied the Commissioner with information regarding the '██████████' data source. LWL identified the domains used by ██████████ as ██████████ (also used by ██████████ and previously reviewed by the Commissioner – see para. 20 above) and '██████████'. The latter is operated by ██████████ and its consent statement lists 240 companies who may contact individuals. LWL are not included in the list. The privacy policy does name LWL, but within a list of hundreds of other sponsors. The Commissioner found that consent in those circumstances was not specific and informed.
33. In conclusion the Commissioner considers that LWL relied upon invalid consents to send direct marketing texts to individuals whose data was

sourced by [REDACTED], [REDACTED], and [REDACTED]. LWL's business model is inextricably linked to direct marketing, and whilst it did make some attempt to comply with data protection legislation, it had no discernible policies or procedures relevant to PECR compliance, and any due diligence was insufficient.

34. During the period 16 May 2020 to 26 June 2020, a total of 12,281 complaints from 11,733 individuals about unsolicited texts from LWL were received via the 7726 reporting service. 4 complaints were received through the Commissioner's online reporting tool. The vast majority of complaints (10,570) relate to data sourced by [REDACTED]. It is also noteworthy that LWL began receiving a significant number of complaints from May 2020 onwards, shortly after the UK entered lockdown in response to the pandemic.
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 22 of PECR by LWL and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

37. The Commissioner finds that LWL has contravened Regulation 22 of PECR. The Commissioner finds that the contravention was as follows:
38. Between 16 May 2020 and 26 June 2020 LWL transmitted 2,670,140 texts over a public electronic communications network by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.

39. Organisations cannot generally send marketing texts unless the recipient has notified the sender that they consent to such texts being sent by, or at the instigation of, that sender.
40. The Commissioner is satisfied that the consent relied on by LWL did not amount to valid consent for the purposes of regulation 22 PECR.
41. The Commissioner is satisfied that LWL was responsible for this contravention.
42. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

**Seriousness of the contravention**

43. The Commissioner is satisfied that the contravention identified above was serious.
44. This is because LWL sent 2,670,140 marketing text messages to individuals without their consent, resulting in excess of 10,000 complaints, over a period of 41 days. The volume of texts and complaints over such a short period is substantial. Indeed, the Commissioner would go so far as to say that the ratio of complaints to the volume of data subjects in receipt of unlawful texts far exceeds any contravention she has witnessed to date.
45. It is reasonable to suppose that the volume of contraventions is actually significantly higher, and spanned a broader period of time. LWL approximated that during the period 1 May 2019 and 15 May 2020, it sent 17.23 million texts to [REDACTED] data, 6.43 million texts to [REDACTED] data and 1.37 million texts to [REDACTED] data. All these data

sources have been deemed non-compliant, however as LWL's system overwrites data after a period of time, LWL have been unable to verify these figures.

46. The Commissioner's Direct Marketing Guidance available on the ICO's website states that: "Organisations can generally only send marketing texts or emails to individuals (including sole traders and some partnerships) if that person has specifically consented to receiving them". Point 60 of the Guidance refers to the fact that freely given consent should be demonstrated where it is the "condition of subscribing to a service", however it is apparent that consent is not freely given in the case of data sourced by [REDACTED] [REDACTED] (LWL's largest provider of data) through [REDACTED]', because individuals are not able to register without subscribing to at least one marketing channel.
47. Furthermore, the Commissioner's guidance in relation to PECR states that "making a large number of marketing calls based on recorded messages or sending large numbers of marketing text messages to individuals who have not consented to receive them [...] is likely to constitute a serious contravention of the Regulations".
48. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

**Deliberate or foreseeable contravention**

49. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that LWL's actions which constituted that contravention were deliberate

actions (even if LWL did not actually intend thereby to contravene PECR).

50. The Commissioner considers that in this case that LWL's actions were deliberate, as despite having been notified that it was under investigation by the Commissioner, and given her concerns about LWL's compliance with PECR, LWL has continued its marketing campaign without making any adjustments to its business model. LWL continues to send unlawful text messages even after the investigation was completed, and a Notice of Intent served upon LWL in which its practices were deemed non-compliant.
51. Further, and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent.
52. First, she has considered whether LWL 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 LWL's business model relied heavily on direct marketing.
53. LWL is registered with the ICO as a data controller and as such should be aware of the Regulations. As the sender of the texts it was the responsibility of LWL to ensure valid consent had been obtained prior to their transmission.
54. The Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations 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.

55. Furthermore, the issue of unsolicited marketing has been widely publicised by the media as being a problem.
56. LWL had a DPIA in place dated 20 October 2019 which demonstrates awareness on the part of LWL as to its statutory obligations. It contains the following statement:

*LW have considered the fact that there is a degree of public concern over the sales of personal data. The legislation is clear on the point of consent and the subsequent enforcement action brought by the Regulator (ICO) has reinforced the legislation and demonstrated a clear pathway to take for businesses engaged in the sale of personal data*

This unambiguously references public concern regarding data sales, and an awareness of enforcement action taken by the ICO.

57. It is therefore reasonable to suppose that LWL knew or ought reasonably to have known that there was a risk that these contraventions would occur.
58. The Commissioner has also considered whether LWL failed to take reasonable steps to prevent the contraventions.
59. Reasonable steps could have included seeking appropriate guidance on the rules in relation to electronic direct marketing and ensuring the consent on which it sought to rely on was valid, putting in place contractual arrangements to ensure the veracity of the data, and conducting sufficient due diligence in relation to its data providers.
60. In this case, LWL failed to put in place contractual arrangements with data suppliers despite sourcing significant volumes of data from these suppliers. Any due diligence appears to be minimal and there is a lack of evidence in relation to this. By their own admission, LWL conducted most of their due diligence checks on [REDACTED], by looking

at the website and testing the registration pages, however had these checks been sufficient LWL should have known that the website was non-compliant. In fact, LWL only became aware of a page that sourced a significant amount of [REDACTED] [REDACTED] data when the ICO investigation commenced. LWL purports to rely on their entry to the S.H.I.E.L.D. scheme as reassurance of compliance, however no evidence in relation to this has been provided.

61. LWL appear to have placed great reliance upon due diligence conducted by third parties in relation to data capture websites, and the fact that there had been legal input from lawyers engaged by other organisations who also utilised those same websites. LWL have provided minimal evidence in relation to any due diligence provided by others and appear to have assumed that as others were reliant upon it, then their own business model must also have been compliant. It would have been reasonable for LWL to carry out its own checks as to how consent was being obtained via the websites, notwithstanding any assurances by its third-party data providers – such checks would have alerted LWL to the inadequacy of the consents being obtained via the sites for the purposes of third-party direct marketing. In short, simple reliance on assurances of indirect consent alone without undertaking proper due diligence is not acceptable.
62. Furthermore, LWL has continued to send significant numbers of marketing texts to individuals throughout, and since, the course of the Commissioner's investigation, incurring a substantial amount of complaints. This would suggest that no remedial measures have been taken to prevent further contraventions, and an apparent continuing disregard for its obligations under PECR. Indeed, since August 2020 to the date of this Notice, a further 28,350 complaints about marketing texts from LWL have been received by the 7726 reporting service.



63. In representations made to the Commissioner, LWL states that at no time was it made aware that its practices were non-compliant. The Commissioner views the fact that an organisation is under investigation should be sufficient impetus for that organisation to review its own practices in line with the Regulations. Irrespective of the timing of any awareness on LWL's part, it is apparent that LWL has not heeded the Commissioner's concerns and has continued its campaign in blatant disregard for the Regulations.
64. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

65. The Commissioner has taken into account the following **aggravating features** of this case:
- The texts misleadingly appeared to be sent by Avon. LWL accepts that it deliberately did not identify itself in the body of the texts as the sender so as to not "confuse" recipients, and as such were in breach of regulation 23 of PECR.
  - LWL has continued to run the marketing campaign both during, and since, the Commissioner's investigation and despite the ICO's concerns, without attempting to amend or review its practices. Indeed, all the contraventions which are the subject of this Notice occurred after LWL were notified it was under investigation. Furthermore, LWL has continued to send unlawful marketing texts after the Commissioner completed her investigation on 26 June 2020, and issued a Notice of Intent in which LWL's practices were deemed non-compliant.

- Since August 2020 to the present time, an additional 28,350 complaints have been received by the 7726 SPAM reporting tool about texts sent by LWL.
- LWL sought to capitalise on the pandemic by sending a significant number of text messages relating to, and directly referencing, the ensuing lockdown when the population was at its most vulnerable and advertising the potential financial gains by becoming an Avon representative. 1,698 complaints were received regarding this particular message.
- LWL repeatedly indicated long standing compliance with PECR in its communications with the Commissioner which was blatantly untrue. LWL also failed to be completely transparent during the course of the investigation. For example, when asked to provide details of the body of texts sent by LWL, it initially provided only 19, when it later transpired 65 separate texts were utilised. In representations to the Commissioner, LWL stated that those omitted were simply variants of the original texts however the Commissioner's view remains that LWL were not completely open and transparent in relation to her enquiry.
- Furthermore, LWL failed to inform the Commissioner in its response to enquiries about marketing methods that it also conducted email marketing. The Commissioner has since been made aware that [REDACTED] [REDACTED] [REDACTED] conducted hosted marketing for LWL, and that over a 12 month period had sent 7.5 million emails on LWL's behalf, including activity during the contravention period. Between the contravention period 16 May 2020 - 26 June 2020 the number of emails transmitted was 1,006,000.

66. The Commissioner considers there are no mitigating factors to be considered in this case.
67. 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.
68. This has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking, and invited LWL to make representations in response.
69. The Commissioner has received and considered Representations in response to the Notice of Intent dated 9th & 22nd December 2020, and 5th, 13th & 20th January 2021.
70. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
71. 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 22 of PECR by LWL.
72. 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.

73. The Commissioner has also considered the likely impact of a monetary penalty on LWL and in doing so has reviewed financial evidence supplied by LWL.

**The amount of the penalty**

74. 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**

75. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **1 April 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.
76. If the Commissioner receives full payment of the monetary penalty by **31 March 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.
77. 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.

70. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

71. Information about appeals is set out in Annex 1.

72. 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.

73. 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 1<sup>st</sup> day of March 2021

Andy Curry  
Head of Investigations  
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## **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)).