

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: LTH Holdings Ltd

Of: Unit G4 Capital Business Park, Parkway, Cardiff, United Kingdom  
CF3 2PY

1. The Information Commissioner ("Commissioner") has decided to issue LTH Holdings Ltd ("LTH") 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. LTH, whose registered office is given above (Companies House Registration Number: 09571314) 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 which operates the register on the Commissioner's behalf. 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 Data Protection Act 2018 (“DPA18”) 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 paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
9. Consent in PECR is defined, from 29 March 2019, by reference to the concept of consent in Regulation 2016/679 (“the GDPR”): regulation 8(2) of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. Article 4(11) of the

GDPR sets out the following definition: *“consent’ of the data subject means 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. Recital 32 of the GDPR materially states that *“When the processing has multiple purposes, consent should be given for all of them”*. Recital 42 materially provides that *“For consent to be informed, the data subject should be aware at least of the identity of the controller”*. Recital 43 materially states that *“Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case”*.
11. *“Individual”* is defined in regulation 2(1) of PECR as *“a living individual and includes an unincorporated body of such individuals”*.
12. 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”*.
13. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) 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,*
- (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.”*
14. 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.
15. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.
16. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

### **Background to the case**

17. LTH are a telephone marketing company. They operate a multitude of calling campaigns, selling a variety of products under different trading names.

18. LTH came to the attention of the Commissioner due to a complaint received relating to funeral plans. A TPS-registered individual had received a call from 'Serenity Funeral Plans' which noted the rising cost of funeral plans.
19. The 'Serenity Funeral Plans' website is accompanied by a paragraph which explains that it is a trading name of LTH.
20. The Commissioner noted that a number of complaints had been received between 1 May 2019 and 11 May 2020 about calls relating to these funeral plans, and on 12 May 2020 she sent an initial investigation letter to LTH setting out her concerns and asking a number of questions regarding LTH's campaigns. Attached to this initial investigation letter was an appendix of the TPS/ICO complaints that had been received to date.
21. LTH's response provided, *inter alia*, details of the campaigns it had carried out, the source of data for those campaigns, the Calling Line Identifiers ("CLI"s) used for its calls, the scripts used by it as its various trading identities during the calls, and the connected call figures.
22. It recorded that 29 campaigns had been carried out using 19 CLIs during the periods in question. The data used had been provided from various sources, chiefly [REDACTED] (" [REDACTED]"), and [REDACTED] [REDACTED] (" [REDACTED]") (referred to hereafter collectively as the "third-party data providers"), which obtain data via multiple sources, i.e. online and paper catalogues, as well as 'internal sales / internal data'.
23. In response to the Commissioner's request for evidence of consent for the complaints, LTH provided a spreadsheet which provided the name of the third-party data provider from which the data had been

obtained, and details of the individual's orders with those third-party data providers. LTH also provided an extract from the 'privacy statement' used by one of its third-party data providers (specifically [REDACTED]) which advised individuals that their personal information would be processed/retained for "certain legitimate Interests" [sic].

24. LTH confirmed that it does not screen the data that it relied upon for its direct marketing calls against the TPS register, with an explanation that "the clients provide the instructions on TPS records".
25. Further, in terms of the data that it purchased from third-party data providers, in response to the Commissioner's request for details of any contractual obligations and due diligence on the data, LTH responded simply saying: "Any purchased third party data provided by data suppliers is checked", however no additional information was given save for a later reference to an internal suppression list.
26. LTH provided some internal training documents, however there was nothing provided which specifically related to PECR training or guidance.
27. The Commissioner sent further enquiries to LTH on 15 June 2020, particularly requesting copies of any existing contracts with third-party data suppliers, and further details about the consent that LTH relied on to make its direct marketing calls, together with any details of its due diligence.
28. On 26 June 2020 a response was provided however it notably failed to address the Commissioner's request for contracts. LTH did provide extracts from the Privacy Policies of the third-party data providers and sought to provide an explanation of its relationship with [REDACTED],

stating that it “conduct[s] calling on behalf of [REDACTED] and sell[s] [its] own products that have been produced with [REDACTED]”.

29. LTH also provided an explanation for those calls made using ‘internal data’, describing this as “[c]ustomers who have purchased one of the products sold with [REDACTED] or other partners and then opted in for other products that are available with other partners[...]”.
30. In terms of its due diligence, LTH explained that the third-party data provider will “only provide data from sources that have been contracted to be called”. LTH explained that as a second check it would then check the data against a suppression list.
31. The Commissioner sent further queries to LTH on 30 June 2020 asking for, amongst other things, information about [REDACTED], and details about the sources from which [REDACTED] obtains the data which it subsequently provides to LTH. The Commissioner again asked for copies of applicable contracts with the third-party data providers, and also requested further details about LTH’s data purchasing and evidence for the further complaints which the Commissioner had since discovered from the CLIs identified by LTH.
32. LTH responded on 7 July 2020 providing responses to the Commissioner’s queries. It identified eleven catalogues which [REDACTED] would obtain data from which it would subsequently relay to LTH for its direct marketing campaigns.
33. In addition, a contract was provided between [REDACTED] and LTH dated 1 October 2019, explaining that LTH would provide telemarketing services for [REDACTED], and detailing the various campaigns to be undertaken by LTH using data provided by [REDACTED]. The contract did not make any reference to PECR, or to data protection legislation at all. With regards to the request for evidence of consent for the additional



complaints, LTH provided a spreadsheet listing the data source (████████), with 'Product Purchase' in the 'Consent Type' column. LTH also provided details of how much data it had purchased from its third-party data providers in 2020, and details of its Communications Service Provider ("CSP").

34. The Commissioner went on to consider the opt-ins for each of the various sources used by LTH's third-party data providers to obtain data.
35. LTH's first third-party data provider, ██████████, collects consent online at one of its two checkout pages. Its checkout page for individuals who wish to create an account gives individuals the option to opt-in to email marketing from ██████████, and to opt-in to products/offers by post from third parties. Individuals wishing to checkout as guests are given no options to opt-in to, or opt-out of, marketing. Regardless of whether the individual checks out as a guest, or has an account, both checkout pages contain embedded text which advises individuals that: *"We may also telephone you offering services like our Motor Club, Lotto, Gardening Club, Book Club, Supercard, Health Club and other leisure services that we very carefully select. We may also email you special offers and promotions. We work with other companies to understand what sort of products and services you might like so we can aim to contact you only about things you will be interested in."* Individuals are not given the ability to agree to, or decline, this further advertising material at the point when they place an order with ██████████ and are required to log into an account to amend their details, which would not appear possible for individuals checking out as a 'guest'.
36. LTH's second third-party data provider, ██████████, collects consent through its eleven catalogues, which each have very similar consent statements:

37. '██████████' offers just one pre-ticked box stating: "keep me up to date on news and exclusive offers", directly beneath a box where an individual would input their email contact information, which states "For order confirmation" in brackets. The individual's telephone number is taken further down the form, but again this states: "For shipping updates" in brackets. There is no option for individuals to agree to direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.
38. '██████████' offers a series of opt-out boxes for contact methods for direct marketing from ██████████, however under where it says: "Pass your contact data to other companies", there is only one box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.
39. '██████████' offers a series of opt-out boxes for contact methods for contact from ██████████, however its checkout later states that it would like to pass individuals' contact data to "other companies in the Charity, Financial, Travel and Mail Order sectors" for "details of their products, services, offers and competitions" and there is only one box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.
40. '██████████' offers a series of opt-out boxes for contact methods for direct marketing from ██████████, however its checkout then states that ██████████ would like to

pass individuals' contact data to "other companies in the Charity, Financial, Travel and Mail Order sectors" for "details of their products, services, offers and competitions" and there is only one opt-out box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.

41. '██████████' offers a series of opt-out boxes for contact methods for direct marketing from ██████████, however its checkout then states that Personal Choice would like to pass individuals' contact data to "other companies in the Charity, Financial, Travel and Mail Order sectors" for "details of their products, services, offers and competitions" and there is only one opt-out box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.
42. '██████' offers a series of opt-out boxes for contact methods for direct marketing from ██████, however its checkout then states that ██████ would like to pass individuals' contact data to "other companies in the Charity, Financial, Travel and Mail Order sectors" for "details of their products, services, offers and competitions" and there is only one opt-out box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.
43. '██████████████████' offers a series of opt-out boxes for contact methods for contact from ████████████████████, however its checkout then states that ████████████████████ would like to pass individuals'

contact data to "other companies in the Charity, Financial, Travel and Mail Order sectors" for "details of their products, services, offers and competitions" and there is only one opt-out box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.

44. '██████████' offers a series of opt-out boxes for contact methods for contact from ██████████, however its checkout then states that ██████████ would like to pass individuals' contact data to "other companies in the Charity, Financial, Travel and Mail Order sectors" for "details of their products, services, offers and competitions" and there is only one opt-out box for "post". There is no option for individuals to agree to electronic direct marketing from third parties, to select which third parties, if any, they might wish to be contacted by, or to select the method by which they might consent to being contacted.
45. The Commissioner was unable to identify the three remaining catalogues from the information provided by LTH and so on 9 July 2020 sought further details from LTH regarding these, and regarding how many campaigns an individual whose data was obtained via ██████████ might expect to be called about. The Commissioner also asked LTH to provide evidence that the individuals who provide 'consent' to its third-party data provider catalogues are indeed consenting to receive unsolicited direct marketing calls from LTH.
46. LTH responded on 17 July 2020 advising that in respect of the three remaining catalogues, the Commissioner "would need to get in contact with ██████████ to request the domain names". LTH confirmed that, regarding the data from ██████████, it would call the individuals "on multiple campaigns as agreed with ██████████". LTH also stated,

regarding consent, that it "acts as a third party contractor for [REDACTED] and [calls] to sell clubs on their behalf."

47. LTH identified that data was also collected from the paper catalogue of [REDACTED], and a copy of the whole catalogue page / privacy policy was requested by the Commissioner.

48. A screenshot was subsequently provided with the following 'privacy promise':

*"As customers or subscribers, we will send you our catalogues and information by post or email and may telephone offering services or products such as our Health Motor, Supercard or Gardening clubs. If you would prefer not to receive these communications let us know (see below) or simply unsubscribe from any of the communications you receive at the time.*

*We would also like to pass your name and address to other companies in the Charity, Financial, Leisure, Travel and Mail Order Sector so they can contact you with details of their products, services, offers and competitions. You can opt-out at anytime by either calling our customer service line or by contacting us at [REDACTED]"*

49. On 7 August 2020 the Commissioner sought details of the call volumes for calls made by LTH from 1 May 2019 to 12 May 2020, together with details of any 'opt-out' script read to individuals when ordering products from [REDACTED] via telephone.

50. LTH responded on 17 August 2020 explaining that it did not hold [REDACTED] telephone order script and that the Commissioner would need to contact [REDACTED] directly for this. LTH confirmed that between 1 May 2019 and 12 May 2020 it had made 1,542,069 direct marketing calls, of which 1,197,717 connected to an individual subscriber.

51. In order to establish the Call Dialler Records ("CDR"s) for the connected calls, and to establish the number of those calls which had been made to individuals who had been listed on the TPS register for not less than 28 days prior to receiving a call, the Commissioner sent a third-party information notice to LTH's CSP.
52. From the response provided, it was established that there had in fact been 2,614,015 connected calls made from CLIs attributed to LTH between 1 May 2019 and 12 May 2020. Of these connected calls, the Commissioner was able to identify that 1,414,519 were to individuals who had been registered with the TPS for not less than 28 days at the time they received the call. In reaching this figure the Commissioner has removed those calls for which there is evidence that they were not unsolicited.
53. The Commissioner understands that LTH would contact individuals whose data had been obtained by its third-party data providers with a view to communicating further advertising material to them, and is therefore satisfied that all 1,414,519 unsolicited calls were made for the purposes of direct marketing as defined by section 122(5) of the Data Protection Act 2018.
54. The Commissioner has made the above findings of fact on the balance of probabilities.
55. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by LTH and, if so, whether the conditions of section 55A DPA are satisfied.

**The contravention**

56. The Commissioner finds that LTH contravened regulation 21 of PECR.
57. The Commissioner finds that the contravention was as follows:
58. Between 1 May 2019 and 12 May 2020, LTH used a public telecommunications service for the purposes of making 1,414,519 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.
59. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,414,519 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 LTH to receive calls. These calls resulted in a total of 41 complaints over the period of contravention.
60. For consent to be valid it is required to be "freely given", by which it follows that if consent to marketing is a condition of subscribing to a service, the organisation will have to demonstrate how the consent can be said to have been given freely. LTH have been unable to do this. For both of LTH's third-party data providers, the data of individuals who purchased a product from one of their sites was passed to LTH for use in further direct marketing campaigns, without those individuals being given a genuine choice about whether to consent to such marketing from LTH.
61. Consent is also required to be "specific" as to the type of marketing communication to be received, and the organisation, or specific type of organisation, that will be sending it. The Commissioner is concerned,

particularly in respect of the consents obtained by ■■■, that individuals were not able to select the method by which they might wish to receive direct marketing, or even from whom they may consent to receive it.

62. Consent will not be "informed" if individuals do not understand what they are consenting to. Organisations should therefore always ensure that the language used is clear, easy to understand, and not hidden away in a privacy policy or small print. Consent will not be valid if individuals are asked to agree to receive marketing from "similar organisations", "partners", "selected third parties" or other similar generic description.
63. LTH did not have valid consent, and nevertheless engaged in direct marketing to individuals who had been registered with the TPS for not less than 28 days.
64. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

### **Seriousness of the contravention**

65. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by LTH arising from the organisation's activities over a twelve-month period, and this led to 1,414,519 unsolicited direct marketing calls being made to subscribers who were registered with the TPS. These 1,414,519 unsolicited calls led to a total of 41 complaints being made over the period of contravention, with 19 being made to the Commissioner, and 22 being made directly to TPS.



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

**Deliberate or negligent contraventions**

67. The Commissioner has considered whether the contravention identified above was deliberate.
68. The Commissioner does not consider that there is sufficient evidence to find that LTH deliberately set out to contravene PECR in this instance.
69. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
70. Firstly, she has considered whether LTH knew or ought reasonably to have known that there was a risk that this contravention would occur. This is not a high threshold, and she is satisfied that this condition is met.
71. The Commissioner has 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. 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. The Commissioner has also published detailed guidance on consent under the GDPR. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about previous enforcement

action where businesses have not complied with PECR are also readily available

72. 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 LTH would have received a notification from the TPS for each of the complaints being made in this case. That there were 22 complaints made to the TPS alone over the period of the contravention should have made LTH aware of the risk that such contraventions may occur and were indeed occurring.
73. It is therefore reasonable to suppose that LTH should have been aware of its responsibilities in this area.
74. Secondly, the Commissioner has gone on to consider whether LTH failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
75. 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 is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence.
76. LTH did not check any data against the TPS register, despite the Commissioner's clear direct marketing guidance [at paragraph 108] that: "*[t]o comply with PECR organisations should screen the list of numbers they intend to call against the TPS register*".

77. LTH have been unable to produce any internal training documents to demonstrate any regard for lawful direct marketing practices, or indeed for compliance with PECR.
78. Furthermore, LTH have been unable to evidence the existence of any contractual terms between itself and █████, and the Commissioner is not persuaded that the contract in place between LTH and █████, which itself is dated 1 October 2019 (i.e. after the direct marketing campaigns had commenced), contained any provision for consideration of data protection legislation, or for the protection of individuals rights.
79. Indeed, it appears to the Commissioner that beyond checking data against its own suppression list, LTH failed to carry out any due diligence on the data whatsoever prior to initiating its various campaigns.
80. Given the volume of calls and complaints, it is clear that LTH failed to take sufficient reasonable steps to prevent the contravention.
81. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

82. The Commissioner has taken into account the following **aggravating features** of this case:
  - The Commissioner is concerned that LTH's primary audience for its direct marketing appears to be older people, given the references to funeral plans within a number of the complaints, and the Commissioner's

general understanding about the third-party data providers' traditional customer bases;

- The Commissioner also has consideration of online reports that LTH adopted aggressive, coercive, and persuasive methods in its direct marketing;
  - The Commissioner notes that the current owner of the business is now disqualified from acting as a director;
  - Despite providing superficial responses to the Commissioner's various correspondence, the Commissioner is satisfied that LTH failed to cooperate with her investigation. This finding is based on LTH's tendency to refer the Commissioner to the third-party data providers for some information, rather than taking steps to obtain it itself, which is particularly notable given that it was information which a company would reasonably be expected to be in possession of when engaging in such direct marketing campaigns. Furthermore, LTH failed to provide accurate call figures when asked to do so.
83. 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.
84. 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 has taken into account the representations made by LTH on this matter.

85. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
86. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
87. The Commissioner has attempted to consider the likely impact of a monetary penalty on LTH but has been unable to do so given the lack of recent publicly available information. LTH was invited to provide financial representations in response to the Notice of Intent but failed to do so. The Commissioner considers in the circumstances that a penalty remains the appropriate course of action.
88. 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 are not registered with the TPS and/or specifically consent to receive these calls.

### **The amount of the penalty**

89. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£145,000 (one hundred and forty-five thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

## **Conclusion**

90. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **6 July 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.
91. If the Commissioner receives full payment of the monetary penalty by **5 July 2021** the Commissioner will reduce the monetary penalty by 20% to **£116,000 (one hundred and sixteen thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
92. 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.
93. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
94. Information about appeals is set out in Annex 1.
95. 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.

96. 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 3<sup>rd</sup> day of June 2021.

Andy Curry  
Head of Investigations  
Information Commissioner's Office  
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SK9 5AF

**ANNEX 1**

**SECTION 55 A-E OF THE DATA PROTECTION ACT 1998**

**RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER**

1. Section 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)).