

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Yes Consumer Solutions Limited

Of: Office 3, 6th Floor, Intergen House, 65-67 Western Road,
Hove, England, BN3 2JQ

1. The Information Commissioner ("the Commissioner") has decided to issue Yes Consumer Solutions Limited ("YCSL") 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. YCSL, whose registered office is given above (Companies House Registration Number: 10596925) 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 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 & Schedule 19 paragraphs 430 & 432(6) DPA18).
9. Prior to 29 March 2019, the European Directive 95/46/EC defined 'consent' as *“any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed”*.

10. Consent in PECR is now 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*".
11. An "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. 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.”

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 Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of that Act).

Background to the case

17. YCSL's Companies House listing describes its nature of business as 'Other telecommunications activities'. It is understood that YCSL purport to offer equity release services and call blocking services on a

subscription basis. It first came to the attention of the Commissioner following an internal review of complaints data in October 2019 where it was apparent that a number of complaints had been received about unsolicited direct marketing calls from YCSL.

18. Amongst those complaints the Commissioner noted the following of particular concern:

"I am writing on behalf of my father who received the call. He is an elderly, vulnerable gentleman who is easily taken advantage of, and has been plagued in recent years by cold callers selling him all types of insurance.. so that he had more than a dozen insurance policies, with multiple cover on the same devices, etc. YesConsumer phoned unsolicited & sold my father a product for £149.99. Luckily, the family is now wise to this & able to complain & demand refunds[...]" (sic)

"This company called my 87 year old father attempting him to sell him a package which blocks calls, ironic I know. He is registered with TPS." (sic)

"They wanted me to pay £1.50 per week to stop nuisance calls, I told them I was registered on TPS, they said they would ring back." (sic)

"They've called 5 to 6 times, twice today. We've said that we weren't interested and not to call but they still do. When my wife said we'd report them they claimed they couldn't be reported" (sic)


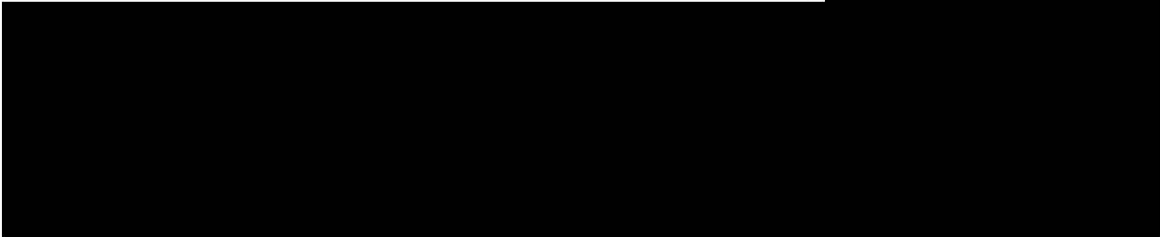


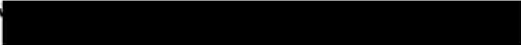


19. In light of these complaints, the Commissioner sent an initial investigation letter to YCSL on 29 October 2019 setting out the Commissioner's concerns and asking that YCSL provides details about, inter alia, the Calling Line Identifiers ("CLI"s) it used, volumes of calls

over a prescribed period (29 October 2018 – 29 October 2019), and evidence of consent for any direct marketing calls made. Evidence of thirteen complaints received about YCSL was also provided, although the full details of one of these complaints was not visible¹.

20. A response was received on 20 November 2019 by email, whereby YCSL confirmed that eleven of the twelve complaints visible from the Commissioner's correspondence were "previous users of [YCSL's] services". YCSL advised that it had made 1,394,611 outbound calls between 29 October 2018 and 29 October 2019, with 48,978 being made to "existing customers". YCSL confirmed that it would screen all data obtained from third-party data providers against the TPS (which, the Commissioner was told, accounted for 1,345,633 of the outbound calls made by YCSL).
21. YCSL further confirmed details of the CLIs that it would use during its calls and stated that it would use two trading names during its calls: 'Yes Consumer Solutions' and 'Block Those Calls'.
22. On 17 August 2020, during a call between YCSL and the Commissioner, further information was requested regarding YCSL's data purchasing, and due diligence checks.
23. YCSL responded on 28 August 2020 confirming that it had acquired the customer database of a separate company ('Yes Media Solutions Limited') in February 2017 as part of an asset purchase. Contact to this database would be to "provide ongoing technical support and to offer upgrades of services", and the method of contact would be determined by the information held for each individual. It is understood that YCSL's references throughout the investigation to its

¹ The Commissioner has since obtained evidence that no fewer than twelve of these thirteen complaints concerned calls made to telephone numbers which had been registered with the TPS for at least 28 days at the time which they received a call.

"existing customers" is in fact a reference to individuals whose data had been obtained from Yes Media Solutions Limited.

24. YCSL further confirmed that, in relation to data obtained from its third-party data providers, it would always request 'opt-in policies' and assurances that checks had been carried out against the TPS register. Furthermore, YCSL would conduct its own TPS checks. YCSL provided three sample "supplier source opt-in policies" in Microsoft Word format (".docx"), although the Commissioner notes that it was not made clear which of their third-party data provider these scripts were provided on behalf of.
25. On 3 September 2020 the Commissioner made further contact with YCSL and requested information regarding the identity of its third-party data providers, and details of the websites used by them, together with call dialler records ("CDR"s) for the period of 29 October 2018 to 29 October 2019.
26. A response was received on 24 September 2020 confirming that YCSL had requested "opt-in compliance" from all of the third-party data providers used between 29 October 2018 to 29 October 2019. YCSL provided details of ten third-party data providers: 

27. Of these, two were still being used by YCSL with their 'compliance info' being provided 
).
28. In relation to , YCSL provided a '
' headed document titled 'Full Compliance Pack', which had

been updated in September 2019. The Commissioner noted that '[REDACTED] [REDACTED]' was a data broker, and that the three "supplier source opt-in policies" which had been provided by YCSL on 28 August 2020 had all been directly lifted from template scripts within this document, which may or may not have been used by '[REDACTED] [REDACTED]' affiliates when collecting data. No information was provided about what affiliates/websites would be used to collect the data which was subsequently obtained by YCSL.

29. In relation to '[REDACTED]', a Microsoft Powerpoint document was provided purporting to show the customer journey for an individual using its website ([REDACTED]). Whilst this website's 'sign-up' page appears to allow individuals a choice of direct marketing methods, it does not appear to allow individuals the ability to select which, if any of the 'partners' and/or sectors it may wish to receive "offers and marketing" about. In any event, further down the page, directly above the sign-up button, and apparently regardless of any earlier preferences expressed by an individual, the page script states: "*We will also share your registration information with trusted third-party partners for marketing and advertising purposes. For more details about them [...] please see our Privacy Policy*". The Privacy Policy lists forty-three sectors, and provides a link to its full list of 'direct clients'. No evidence has been provided that YCSL are/were listed here, although it appears that individuals signing up to [REDACTED] are in any event automatically opted-in to have their information shared with [REDACTED] "trusted third-party partners".
30. Of the eight remaining third-party data providers, the Commissioner was told that one of the third-party data providers was unable to provide the required information as it had been destroyed "due to GDPR regulation" ([REDACTED]). The required

information was awaited from four of the third-party data providers

[REDACTED]
[REDACTED]; with the remaining three either being dissolved ([REDACTED]), no longer in existence ([REDACTED]), or "unable to contact" ([REDACTED]). The Commissioner was told that via these ten named third-party data providers, a total of 210,472 records were supplied to YCSL between "October 2018 to October 2019".

31. YCSL did not provide a list of its CDRs, supplying instead an email response from its 'Dialler Provider' [REDACTED] stating that "this is not an option". It has since been explained by YCSL that the reason it provided the email from [REDACTED] was that it was unable to retrieve the requested information itself.
32. In an effort to obtain the CDR information for calls made by CLIs attributed to YCSL, the Commissioner sent a Third-Party Information Notice ("3PIN") to YCSL's Communications Service Provider ("CSP"), [REDACTED].
33. The response indicated that there were thirteen CLIs allocated to YCSL over the relevant period, of which seven were used to make calls. The Commissioner noted that the seven CLIs stated to be in use correlated with CLIs that YCSL had confirmed it had used at the outset of the investigation.
34. From these seven CLIs it was determined that there was a total of 442,414 calls made, with 188,493 being registered with the TPS for not less than 28 days prior to receiving a call.
35. The Commissioner sent a further email to YCSL on 13 October 2020 to ask if the remaining third-party data providers had provided the

'compliance info' that YCSL had been waiting for, and to ask if copies of the relevant privacy policies/consent statements could be provided.

36. The Commissioner also requested details of the purpose of the calls made from each of the seven CLIs which the Commissioner understood had been used by YCSL for outbound calls over the relevant period.

37. In its response on 20 October 2020 YCSL was unable to confirm what the numbers were used for, but speculated as to what they may have been used for. YCSL also provided links to four separate privacy policies for some of its third-party data providers, but confirmed that no further information had been received from them. YCSL subsequently provided an email from one of its third-party data providers [REDACTED] which confirmed that data had been obtained via [REDACTED]. With this email, YCSL also provided a copy of a privacy policy which was allegedly used at the time, albeit the privacy policy was in the name of [REDACTED] which is stated to be a trading name of [REDACTED].

38. From the information provided throughout the investigation, where possible the Commissioner sought to examine the third-party data providers used by YCSL in further detail:

39. [REDACTED] obtained data via [REDACTED]
[REDACTED] obtained data via [REDACTED]; [REDACTED]
[REDACTED] obtained data via [REDACTED]; [REDACTED]
[REDACTED] obtained data via [REDACTED]; [REDACTED]
[REDACTED] obtained data via [REDACTED]
(although the information provided by YCSL suggested that [REDACTED]
[REDACTED] may also obtain data from affiliates).

40. Regarding [REDACTED] which obtained data via [REDACTED], the Commissioner has been provided only with a

privacy policy for [REDACTED] which it is inferred that individuals would have seen when providing their details on [REDACTED]. YCSL are named in [REDACTED] privacy policy, although it's not clear how or why individuals' using the [REDACTED] site would have accessed this policy, or what information they were told at the point they signed up to [REDACTED].

41. Regarding [REDACTED] which obtained data via [REDACTED], it is apparent that individuals were automatically opted-in to have their information shared with [REDACTED] "trusted third-party partners".
42. Regarding [REDACTED] which obtained data via [REDACTED], the Commissioner had sight of the privacy policy which did not specifically name YCSL but listed over thirty sectors.
43. Regarding [REDACTED] which obtained data via [REDACTED], YCSL are named within the site's Privacy Policy however to view it an individual would have to search through the many listed sectors which [REDACTED] would share data with, and then click on the relevant 'Utilities' sector. Individuals would then see YCSL named together with thirteen other organisations in that sector. There appears to be no way however for an individual to select which, if any, of the sectors or organisations they may wish to be contacted by, or the method by which they may wish to be contacted.
44. Regarding [REDACTED] which is understood to have obtained data via [REDACTED], and from unspecified affiliates, the Commissioner has been provided with no information to suggest that individuals whose data was obtained by [REDACTED]

██████████ or its affiliates provided valid consent to be contacted by YCSL.

45. Having reviewed these websites, the Commissioner found that in all but one (██████████) YCSL were not named as an organisation about which subscribers may receive direct marketing². Where YCSL were named (i.e. in ██████████), it is apparent that subscribers were required to drill down into the 'Utilities' listed partners within the privacy policy to see it; and that individuals appeared to be automatically opted-in to receive third party direct marketing.
46. The Commissioner was provided with a link to the privacy policy of ██████████ ██████████ but noted that YCSL had said no data was purchased via this source.
47. The Commissioner was not provided with website/privacy policy information for ██████████
██████████
██████████
48. On 30 October 2020 YCSL sent a further email to the Commissioner advising that it was now able to determine what each of the CLIs used during the relevant period was used for. Two were used for 'Outbound Call Blocking Campaign'; two were used for 'Outbound Equity Release Campaign'; two were used for 'Specific Agent Queue'; and one was listed as 'Potential Unused Number – Outbound Equity Release Training'.
49. The Commissioner made further contact with YCSL on 4 December 2020, referring back to the call volumes that YCSL had provided at the

² Whilst YCSL were also apparently named in ██████████ privacy policy, it's not clear what relationship ██████████ has with ██████████ where the privacy policy was apparently used, or whether it is in fact the privacy policy that individuals using that site would have been presented with.

outset of the investigation and asking for confirmation of how many of the calls made had connected with a subscriber. YCSL's response of 11 December 2020 confirmed that between 29 October 2018 and 29 October 2019 there had in fact been 1,448,671 calls made, of which 388,796 connected.

50. The Commissioner is content however to rely on the information provided by YCSL's CSP (██████) that there were a total of 442,414 calls made by YCSL over the relevant period using the seven CLIs known to have been attributed to it, of which 188,493 calls were connected with subscribers who had been TPS registered for not less than 28 days.
51. Furthermore, given the nature of the calls made, the Commissioner is satisfied that these 188,493 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
52. The Commissioner has made the above findings of fact on the balance of probabilities.
53. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by YCSL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

54. The Commissioner finds that YCSL contravened regulation 21 of PECR.
55. The Commissioner finds that the contravention was as follows:
56. Between 29 October 2018 and 29 October 2019, YCSL used a public telecommunications service for the purposes of making 188,493

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 twelve (12) complaints being made to the TPS and the Commissioner.

57. The Commissioner is also satisfied for the purposes of regulation 21 that these 188,493 unsolicited direct marketing calls were made to subscribers who had not given YCSL specific consent to contact them and who had been registered with the TPS for not less than 28 days prior to receiving the calls.
58. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

59. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by YCSL arising from the organisation's activities over a twelve-month period, and this led to a substantial number of unsolicited direct marketing calls (188,493) being made to subscribers who were registered with the TPS, and whom YCSL did not have valid consent to contact.
60. During the investigation YCSL stated that all new data is purchased via third parties, and that it does not currently obtain data directly from individuals. The Commissioner understands that the data used by YCSL for its unsolicited direct marketing calls would be obtained from a

number of third-party data providers which it is appropriate to distinguish now:

61. Firstly, YCSL obtained a dataset from Yes Media Solutions Limited during that company's liquidation process. Yes Media Solutions Limited's sole director at the time of that company's liquidation is the same individual who is now the sole director of YCSL. Whilst the two are distinct legal entities, YCSL have used data obtained from Yes Media Solutions Limited to engage in unsolicited direct marketing calls. YCSL have failed to evidence how individuals whose data had been purchased via an insolvency practitioner for Yes Media Solutions Limited in February 2017 have provided valid consent to be contacted by YCSL for the purpose of direct marketing.
62. Secondly, YCSL states that over the period of 29 October 2018 to 29 October 2019 it obtained a total of 210,472 individuals' records via ten named third-party data providers. Having attempted to review the privacy policies for the websites used by these third-party data providers, the Commissioner is concerned that it was not possible for an individual to give valid consent via these sites to be contacted by YCSL for direct marketing purposes.
63. Despite claiming to check data against the TPS register, the Commissioner has evidence that 188,493 unsolicited direct marketing calls were received by subscribers who had been registered with the TPS for not less than 28 days.
64. YCSL has accepted in representations that it did not screen the dataset which it obtained from Yes Media Solutions Limited, and it has claimed that the 188,493 unsolicited direct marketing calls were made to individuals whose data was contained within this dataset only.

65. It states that all data obtained via its other ten third-party data providers was indeed screened, however the Commissioner has been provided with no evidence either during the investigation or during the process of representations which proves the veracity of this claim. Rather, the Commissioner has been provided with evidence which simply purports to demonstrate that some checks were carried out on behalf of YCSL, but not the particulars of those checks.
66. In the absence of such evidence, the Commissioner is unable to be satisfied that the unsolicited direct marketing calls made to individuals were made solely to those whose data had been obtained via Yes Media Solutions Limited.
67. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

68. The Commissioner has considered whether the contravention identified above was deliberate.
69. The Commissioner considers that in this case YCSL did deliberately contravene regulation 21 of PECR. YCSL's sole director is known to the Commissioner, with one of his previous companies having been subject to an investigation for suspected unlawful direct marketing prior to filing for voluntary insolvency. Despite these prior interactions between YCSL's director and the Commissioner, YCSL appear to have been content to be wholly reliant on indirect consent and would appear to have conducted minimal due diligence on the data it purchased. Indeed, the Commissioner takes the view that the creation of YCSL, the use of data obtained from the director's former company, and the

similar trading name used by the two, indicates an apparent 'phoenixism' of the director's former company, which is in creditors voluntary liquidation.

70. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
71. Firstly, she has considered whether YCSL 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.
72. 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.
73. 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 YCSL would have received a notification from the TPS for each of the complaints being made in this case, indeed YCSL appear

to have acknowledged during the investigation that such notifications were received and “addressed internally”. Such notifications should reasonably have made YCSL aware of the risk that such contraventions may occur and were indeed occurring.

74. Further, the director of YCSL is an individual who has been involved in previous correspondence with the Commissioner regarding company obligations under PECR when engaging in direct marketing. It is not feasible to suggest that YCSL were unaware of the inherent risks in such activity.
75. It is therefore reasonable to suppose that YCSL should have been aware of its responsibilities in this area.
76. Secondly, the Commissioner has gone on to consider whether YCSL failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
77. The data relied on by YCSL was wholly bought-in from third parties, i.e. from Yes Media Solutions Limited, and ten additional third-party data providers which it engaged the services of between October 2018 and October 2019. This constitutes reliance on indirect consent, since YCSL will have had no previous contact with those individuals it intended to contact. The Commissioner’s direct marketing guidance makes clear that organisations utilising bought-in 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.

78. Reasonable steps in these circumstances may also have included requesting evidence from its third-party data providers for evidence that subscribers had specifically consented to receiving direct marketing calls from YCSL; no such evidence has ever been provided. YCSL should have also taken steps to screen any purchased data against the TPS register to ensure that it was not making unsolicited direct marketing calls to those who had specifically registered to avoid such calls; the fact that so many calls were made to individuals registered with the TPS for not less than 28 days suggests that such checks were not carried out, or at the very least that such checks were not carried out as rigorously as they should have been. The Commissioner also notes evidence from the complaints of repeated calls being made to subscribers despite objections, which suggests that YCSL's internal suppression list was inadequate and ineffectively applied.
79. Given the volume of unsolicited direct marketing calls received, it is clear that YCSL failed to take reasonable steps to prevent the contravention.
80. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

81. The Commissioner has taken into account the following **aggravating features** of this case:
- The Commissioner is concerned by the evidence of persistent/repeated calls and evidence that YCSL provided misleading information to

individuals, specifically that its product (i.e. call blocking services) would prevent unsolicited calls;

- Whilst YCSL engaged with the Commissioner's investigation, she is concerned that its responses were obstructive and lacking in sufficient content to assist the Commissioner's investigation. In particular, YCSL maintained incomplete records, poor audit trails, and were unable to provide satisfactory responses regarding data obtained from third-party data providers.
82. 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.
83. 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 YCSL on this matter and remains satisfied that a monetary penalty notice is an appropriate course of action.
84. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
85. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
86. The Commissioner has considered the likely impact of a monetary penalty on YCSL. She has decided on the information that is available to her that a penalty remains the appropriate course of action in the circumstances of this case.

87. 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.
88. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

89. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£170,000 (one hundred and seventy 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 **27 August 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 **26 August 2021** the Commissioner will reduce the monetary penalty by 20% to **£136,000 (one hundred and thirty-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.
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 29th day of July 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: 0203 936 8963
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)).