

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: Saga Personal Finance Limited

Of: Enbrook Park, Sandgate, Folkestone, Kent CT20 3SE

1. The Information Commissioner ("the Commissioner") has decided to issue Saga Personal Finance Limited ("SPF") 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. SPF, whose registered office is given above (Companies House Registration Number: 03023493) is the organisation stated in this notice to have instigated the transmission of 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 states:

- "(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 service 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 the 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 advertising material which is directed to particular individuals”*. This definition also applies for the purposes of PECR (see regulation 2(2) PECR; and Schedule 19, paragraph 430 and 432(6) DPA18).
6. 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”*.
7. 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”*.
8. “Individual” is defined in regulation 2(1) of PECR as *“a living individual and includes an unincorporated body of such individuals”*.
9. 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”*.
10. “Electronic mail” is defined in regulation 2(1) of PECR as *“any text, voice, sound or image message 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".*

11. 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."*

12. 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.

13. 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.

14. 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**

15. SPF came to the attention of the ICO following several complaints regarding unsolicited email marketing, between the periods of September 2018 and March 2019. The emails stated that they were sent on behalf of SPF by an affiliated company, which has since been identified as [REDACTED] (referred to throughout the investigation as a "Partner").
16. SPF is a subsidiary of Saga Group Limited ("Saga Group").
17. An initial investigation letter setting out the Commissioner's concerns was sent to Saga Group on 10 April 2019. This letter detailed the PECR regulations and requested information including details of Saga Group's Partners/Affiliates, websites from which consent for marketing was obtained together with evidence of that consent, and a description of any due diligence carried out with respect to the data used by Saga Group. Included with the letter was a spreadsheet detailing the complaints which had been received by the Commissioner.
18. On 10 May 2019 a response was received from Saga Group which clarified that the marketing material sent to the complainants was sent

by two Partners on behalf of SPF, and on behalf of another subsidiary of Saga Group.

19. The first of these Partners was confirmed to be [REDACTED], with the second being identified as [REDACTED] (“[REDACTED]”) (collectively referred to hereafter as the “Partners”). It was confirmed that the Partners would send marketing on behalf of SPF using a database of individuals who had opted in to receiving marketing materials from third parties either via the Partners’ websites or via websites operated by their sub-contractors (“Affiliates”). Marketing emails would be sent to individuals either by the Partners or by the Affiliates. Saga Group stated that *“[t]he arrangements with [the Partners] are on the basis that they send out marketing emails in respect of SPF [...] products as instigators”*. It was confirmed that SPF paid their Partners based on the number of leads generated from the marketing, rather than the number of emails sent, and as such the volume of emails sent, and the targeting of those emails and the recipients, is *“under the control of the Partners”*. It was confirmed that SPF would create the content of the direct marketing emails, although it was suggested that this was because some of that content would be subject to regulation by the Financial Conduct Authority (“FCA”). It was also confirmed that since no personal data was being transferred from SPF as part of the arrangement with the Partners, it was determined that no Data Protection Impact Assessment (“DPIA”) was required.
20. The response confirmed that the contracts with the Partners include provisions which *“...acknowledge that they and their Affiliates instigate the sending of the marketing emails and require [the Partners] and their Affiliates to be responsible for obtaining and ensuring that all necessary consents are in place for the purposes of data protection laws (including PECR)”*.



25. The Commissioner calculated that from the evidence provided by Saga Group, █████ sent a total of 2,745,777 emails on behalf of SPF over the period of 14 December 2018 to 2 May 2019, of which 2,714,872 were confirmed as being successfully delivered to recipients.
26. Saga Group were unable to confirm how many of the emails sent by █████ and its Affiliates on SPF's behalf were delivered successfully, however it is known that a total of 28,676,526 emails were sent between 29 November 2018 and 2 May 2019.
27. The Commissioner conducted a review of each of the sites used by the Partners and their Affiliates.
28. In terms of █████ and its Affiliates:
29. The consent statement of █████, trading as '█████', does not specify that the subscriber will receive marketing from SPF. Further, the site's privacy policy provides a link for the subscriber to view █████ '█████' third party 'offers and promotions', however SPF are not specified.
30. The consent statements of █████, trading as █████, do not appear to allow the subscriber to select how they wish to receive marketing and from whom. The site's privacy policy provides a link for the subscriber to view █████ two client lists, however SPF are not specified.
31. '█████', trading as █████, does not allow the subscriber to select how they wish to receive marketing and from whom. The consent statement does not specify that subscriber's details will be passed onto third party companies. The site's privacy policy provides a



link for the subscriber to view [REDACTED] two client lists, however SPF are not specified.

32. [REDACTED], trading as [REDACTED], asks the subscriber to sign up to a newsletter for 'FREE news and money-saving offers for mobiles, energy, broadband, credit cards and more...'. The subscription page does not state that the subscriber will receive marketing from third party companies by signing up to the newsletter. [REDACTED] privacy policy lists sectors from which the third-party companies operate. The privacy policy does list some third-party companies, but SPF are not specified.

33. [REDACTED], trading as [REDACTED], allows the subscriber to specify how they wish to be contacted, but does not specify the third-party companies that may send marketing material. There is a link which allows the subscriber to view a list of [REDACTED] "partners", however the link leads to the company's privacy policy, which only list the sectors in which the company operate. SPF are not stated specifically in [REDACTED] consent statement nor in their privacy policy.

34. [REDACTED], another Affiliate of [REDACTED], owns and operates seven trading sites, these are: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The consent statements and privacy policies for these sites are

- all the same. The consent statements used for these sites allow the subscriber to specify how they wish to be contacted but does not specify the third-party companies that may send marketing material. The privacy policy does not identify any third-party companies and instead lists 48 different sections in which the third-party companies may operate. SPF are not stated specifically in the consent statement

nor in the privacy policy. It is noted that the consent statements ask the subscriber to select their three preferred areas of marketing, however selection of three preferences appears to be mandatory before entry to the site is allowed.

35. In terms of [REDACTED] and its Affiliates:
36. [REDACTED] owns and operates two websites, which they use to obtain individual subscriber details. [REDACTED] use these details to send marketing material on behalf of SPF. One of these sites is '[REDACTED]'. On this site, the user can select the means by which they are contacted, but they are not informed of who they will receive direct marketing from. The privacy policy offers a list of sectors from which the third parties operate and specifies a small number of companies, however SPF are not included.
37. The other site owned and operated by [REDACTED] is '[REDACTED]'. Similarly to '[REDACTED]', the user can select how they wish to be contacted but are not informed of who they will receive direct marketing from. The privacy policy offers a list of sectors from which the third parties operate and specifies a small number of companies, however SPF are not included.
38. [REDACTED] also obtain leads through their affiliate companies. One of which is '[REDACTED]', who own and operate three sites: '[REDACTED]', '[REDACTED]' and '[REDACTED]'. All three of these sites are trading names of '[REDACTED]'. The consent statements and privacy policies for these sites are all the same. The consent statements state that data will be shared with [REDACTED] and gives the subscriber the opportunity to select how they wish to be contacted. The subscriber does not have the opportunity to select who they wish to receive communications from and are not able to select which marketing they wish to receive from

- ██████████. The privacy policies provide a list of sectors from which the subscriber may receive marketing from. SPF is not stated specifically in ██████████ consent statement nor in their privacy policy.
39. Another affiliate used by ██████████ is '██████████', trading as '██████████ ██████████'. On this site the user can select how they wish to be contacted but are not informed of who they will receive marketing from. Signing up to receive marketing from ██████████ and their partners appears to be a precondition for signing up to the website. SPF are not stated specifically in ██████████ consent statement nor in their privacy policy.
40. ██████████ also source subscriber details through '██████████', trading as '██████████'. Their site allows the user to sign up to ██████████ ██████████ newsletter to receive offers. The user can select their preferred method of contact but cannot specify who they wish to be contacted by. A link to view the third-party companies is available, but SPF are not specified. Instead, the subscriber is provided with a list of over 50 sectors from which the third parties operate.
41. '██████████' also obtain consent for ██████████ through their website '██████████'. The consent for this site is specific as the user has the option to select how they wish to receive marketing and from whom, however neither SPF nor ██████████ are stated in their list of "partners". The site's privacy policy also provides an extensive list of third-party companies, however SPF and ██████████ are not stated. The privacy policy further lists an extensive list of sectors from which the third-party companies operate. SPF are not stated specifically in ██████████ consent statement or privacy policy.
42. An end of investigation letter was sent to Saga Group on 5 September 2019.

43. The Commissioner has made the above findings of fact on the balance of probabilities.
44. The Commissioner has considered whether those facts constitute a contravention of regulation 22 of PECR by SPF and, if so, whether the conditions of section 55A DPA are satisfied.

**The contravention**

45. The Commissioner finds that SPF contravened regulation 22 of PECR.
46. The Commissioner finds that the contravention was as follows:
47. The Commissioner finds that between 14 December 2018 and 2 May 2019 there were 2,745,777 direct marketing emails sent to subscribers on behalf of SPF by its Partner ██████, and ██████ Affiliates. Of those, it has been confirmed that 2,714,872 direct marketing emails were received by subscribers.
48. Furthermore, between 29 November 2018 and 2 May 2019 there were 28,676,526 direct marketing emails sent to subscribers on behalf of SPF by its Partner ██████, and ██████ Affiliates. SPF was unable to confirm how many of those direct marketing emails were received, however its Partner ██████ estimated that between 2 – 10% of 'sent' messages could be expected to be 'undelivered'. The Commissioner therefore believes it is reasonable to suggest that 25,808,873 (i.e., 90% of the total number of messages sent by ██████ and its Affiliates) could be expected to have been received by subscribers.
49. The Commissioner finds that SPF instigated the transmission of the direct marketing messages sent, contrary to regulation 22 of PECR.

50. SPF, as the instigator of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those messages had been acquired.
51. During this investigation it has been proposed that the Partners/Affiliates would be the instigators of the direct marketing rather than SPF itself. The Commissioner does not agree with this interpretation of the situation. Whilst the Partners/Affiliates clearly 'sent' the direct marketing communications under contract, those communications included content drafted by SPF. Without SPF's involvement and positive encouragement, those communications would not have been sent.
52. In any event, even if SPF were to maintain that its partners were the instigators of this direct marketing, it is clear that the legislation is worded in such a way that regulation 22 PECR is capable of covering more than one person/organisation involved in either the transmission or the instigation of that transmission.
53. It is noted that SPF relied on 'indirect consent' for its direct marketing, i.e., where the intended recipient had told one organisation that he/she consents to receiving marketing from other organisations. The Commissioner's direct marketing guidance says "organisations need to be aware that indirect consent will not be enough for texts, emails or automated calls. This is because the rules on electronic marketing are stricter, to reflect the more intrusive nature of electronic messages."
54. However, it does go on to say that indirect consent may be valid, but only if it is clear and specific enough. Consent is not likely to be valid where an individual is presented with a long, seemingly exhaustive list of categories of organisations; indeed, under the GDPR this

requirement goes further and states that even precisely named categories of third parties will not be acceptable.

55. Furthermore, 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.
56. 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.
57. 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.
58. The Commissioner is therefore satisfied from the evidence she has seen that SPF did not have the necessary valid consent for the 28,523,745 direct marketing messages received by subscribers.
59. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

**Seriousness of the contravention**

60. The Commissioner is satisfied that the contravention identified above was serious. This is because between 29 November 2018 and 2 May 2019, a confirmed total of 28,523,745 unsolicited direct marketing

messages were received by subscribers, having been sent at the instigation of SPF. These messages contained direct marketing material for which subscribers had not provided valid consent.

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

**Deliberate or negligent contraventions**

62. The Commissioner has considered whether the contravention identified above was deliberate.
63. The Commissioner considers that SPF did not deliberately contravene regulation 22 of PECR.
64. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
  65. Firstly, she has considered whether SPF knew or ought reasonably to have known that there was a risk that these contraventions would occur. She is satisfied that this condition is met.
  66. The Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations under PECR. This guidance gives clear advice regarding the requirements of consent for direct marketing and explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post, or by fax. In particular it states that organisations can generally only send, or instigate, marketing emails to individuals if

that person has specifically consented to receiving them; and highlights the difficulties of relying on indirect consent for email marketing.

67. SPF are registered with the ICO, and therefore ought to have been aware of their responsibilities under the data protection legislation. It is also reasonable to expect that organisations which are involved in direct marketing make sure that they have taken practical steps to understand the regulations, embedding this into their marketing processes. Indeed, The Commissioner believes that SPF were aware specifically of its obligations under PECR as evidenced by an early response to the Commissioner's investigation correspondence which stated:

*"The arrangements with Partners and Affiliates is kept under review as we are keen to ensure that all marketing relating to Saga is compliant with data protection laws, including PECR".*

68. It is therefore reasonable to suppose that SPF should have been aware of its responsibilities in this area.
69. Secondly, the Commissioner has gone on to consider whether SPF failed to take reasonable steps to prevent the contraventions. Again, she is satisfied that this condition is met.
70. SPF signed a contract with its Partners, declaring that the Partners themselves were the instigators of the marketing. PECR compliance was assumed incorrectly to be the responsibility of the Partners, and as such, minimal due diligence was conducted by SPF.
71. SPF did take action to prevent further complaints in 2018, by temporarily suspending all affiliate marketing whilst an internal review was conducted. Some enhanced due diligence and controls were subsequently implemented by SPF, however these were insufficient.



SPF continued to fail to identify that the consent statements were not specific enough in identifying SPF as the organisation about which direct marketing would be received, and the direct marketing was recommenced on the mistaken basis that the Partners were the instigators.

72. In the circumstances, the Commissioner is satisfied that SPF failed to take reasonable steps to prevent the contraventions.

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

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

74. 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.

75. 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 SPF on this matter.

76. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

77. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.

78. The Commissioner has considered the likely impact of a monetary penalty on SPF. She has decided on the information that is available to her, that SPF has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship.
79. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending of unsolicited marketing emails 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. The issuing of a monetary penalty will reinforce the need for businesses to ensure that they are only messaging those who specifically consent to receive marketing.
80. these reasons, the Commissioner has decided to issue a monetary penalty in this case

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

81. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£75,000 (seventy-five thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

### **Conclusion**

82. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **12 October 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.

83. If the Commissioner receives full payment of the monetary penalty by **11 October 2021** the Commissioner will reduce the monetary penalty by 20% to **£60,000 (sixty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
84. 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.
85. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
86. Information about appeals is set out in Annex 1.
87. 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.

88. 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 13<sup>th</sup> day of September 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)).