

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: EB Associates Group Limited

Of: 585a Fulham Road,
London
SW6 5UA

1. The Information Commissioner ("the Commissioner") has decided to issue EB Associates Group Limited ("EBAG") 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 21B of the Privacy and Electronic Communications (EC Directive) Regulations 2003.
2. This notice explains the Commissioner's decision.

Legal framework

3. EBAG, whose registered office is given above (Companies House Registration Number: 08093318) is the organisation stated in this notice to have instigated the use of a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing in relation to occupational pension schemes or personal pension schemes contrary to regulation 21B of PECR.

4. Regulation 21B paragraph (1) of PECR provides that:

"(1) A person must not use, or instigate the use of, a public electronic communications service to make unsolicited calls to an individual for the purpose of direct marketing in relation to occupational pension schemes or personal pension schemes, except where paragraph (2) or (3) applies."

5. Regulation 21B paragraphs (2), (3), and (4) provide that:

"(2) This paragraph applies where—

- (a) the caller is an authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme; and*
- (b) the called line is that of an individual who has previously notified the caller that for the time being the individual consents to such calls being made by the caller on that line.*

(3) This paragraph applies where—

- (a) the caller is an authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme;*
- (b) the recipient of the call has an existing client relationship with the caller on the line and the relationship is such that the recipient might reasonably envisage receiving unsolicited calls for the purpose of direct marketing in relation to occupational pension schemes or personal pension schemes; and*

(c) *the recipient of the call has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of the recipient's contact details for the purpose of such direct marketing, at the time that the details were initially collected and, where the recipient did not initially refuse the use of the details, at the time of each subsequent communication.*

(4) *A subscriber must not permit the subscriber's line to be used in contravention of paragraph (1)".*

6. Regulation 21B paragraph 5 materially states that:

"(5) In this regulation—

(a) *"authorised person" has the meaning given in section 31 of the Financial Services and Markets Act 2000;*

(b) *"direct marketing in relation to occupational pension schemes or personal pension schemes" includes—*

(i) *the marketing of a product or service to be acquired using funds held, or previously held, in an occupational pension scheme or a personal pension scheme,*

(ii) *the offer of any advice or other service that promotes, or promotes the consideration of, the withdrawal or transfer of funds from an occupational pension scheme or a personal pension scheme, and*

(iii) *the offer of any advice or other service to enable the assessment of the performance of*

an occupational pension scheme or a personal pension scheme (including its performance in comparison with other forms of investment);

- (c) "existing client relationship" does not include a relationship established at the instigation of the caller primarily for the purpose of avoiding the restriction in paragraph (1); and*
- (d) "occupational pension scheme" and "personal pension scheme" have the meanings given in section 1(1) of the Pension Schemes Act 1993."*

7. Section 122(5) of the Data Protection Act 2018 ("DPA18") defines direct marketing as *"the communication (by whatever means) of advertising or marketing 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).
8. 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"*.
9. From 29 March 2019 until 1 January 2021, consent in PECR was defined 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. EBAG first came to the attention of the Commissioner during a wider investigation into organisations which appeared to be making unsolicited direct marketing calls to individuals regarding pension schemes.

18. During this wider investigation the Commissioner became aware of an organisation which would engage in such unsolicited calls to individuals and would relay the data of any individuals who agreed to a pension review on to EBAG.
19. Noting that these calls appeared to be carried out at the instigation of EBAG, the Commissioner sent an initial investigation letter to EBAG on 26 September 2019 to highlight her concerns that there may be issues with EBAG's compliance with PECR and to request further information in relation to its marketing activity.
20. A response was received on 7 October 2019 which advised that it had contracts in place with two Introducer Appointed Representatives ("IARs") who introduce to it individuals who are looking for a financial review¹. EBAG expressed the view that it *"does not make any unsolicited marketing calls or carry out any marketing activities"*; the first contact it has with an individual is to confirm or attend a pre-arranged review meeting. It also explained that it conducts due diligence on the data it receives to ensure compliance with PECR.
21. The Commissioner asked for further information on 7 October 2019 relating to the client referral process, due diligence checks and confirmation of all of EBAG's IARs.
22. EBAG responded on 14 October 2019 claiming that *"none of the Appointed Representatives make calls on behalf of EB Associates Group Limited. Any calls made by IAR firms are made as an individual business entity and only once an interest in a financial review has been established would EB Associates Group Limited be introduced, when arranging a face to face meeting"*.

¹ The Commissioner knows these IARs to be [REDACTED]

23. EBAG further provided details of its purported due diligence checks on its IARs. These checks, provided in '.docx' format, appeared somewhat limited to publicly available (i.e. 'Companies House') details regarding the company/director, and details of where the IAR may obtain 'opt in' data. There is no reference to any due diligence conducted on the data provided to EBAG. The metadata of each document shows that they were created on 14 October 2019, i.e., shortly before being sent to the Commissioner.
24. The Commissioner subsequently requested details of any "incentives" that EBAG would provide to its IARs for passing data on to it; and details of a typical individual's 'customer journey'.
25. EBAG responded to this request on 24 October 2019 and provided details of the customer journey. It explained that the first step is for an initial verification call to be made (by the IAR) to an individual to obtain a "robust opt in" prior to determining whether they are eligible for advice (from EBAG). If an individual is eligible, a meeting is arranged with a representative from EBAG.
26. In respect of any incentives, EBAG explained that the IARs (referred to also as 'introducers') are "*paid a fixed fee of between £300 - £750 for a referral*".
27. EBAG also explained that its IARs would obtain its data from two sources: [REDACTED] would obtain data from [REDACTED], and [REDACTED] would obtain data from [REDACTED].
28. On 25 October 2019 the Commissioner requested details of any due diligence checks completed on the data received from its IARs, together with copies of any call scripts which the IARs use when engaging on campaigns for EBAG. The Commissioner also wished to

understand how consent was obtained for the initial calls made by the IARs.

29. EBAG's response of 29 October 2019 explained that the IARs conduct their own due diligence on the data suppliers (from whom they obtain the data to be used in the campaigns) and that copies of the due diligence checks are sent to EBAG.
30. EBAG explained that "*[a]n assessment of the privacy notice is conducted to ensure the correct company name is listed and clients can reasonably be expected to understand that they are consenting to be called from the company in question*". It was further stated that IARs "*are under contract not to amend their data source and are under obligation to conduct full due diligence on their data supplier and adopt full responsibility for this*".
31. EBAG confirmed that it does not provide call scripts to its IARs.
32. An 'end of investigation' letter was sent to EBAG on 15 July 2020.
33. Despite EBAG's reference to there being contracts between itself and its two IARs, no such contracts were provided during the course of the Commissioner's investigation.
34. The Commissioner's investigations into the two IARs engaged at various points by EBAG over the period of 11 January 2019 and 30 September 2019 revealed that a total of 107,003 connected calls were made by the IARs. The Commissioner is satisfied that the calls made by the IARs over this period were all made in relation to occupational pension schemes or personal pension schemes as defined at Regulation 21B(5) PECR and were all made at EBAG's instigation, with a view to referring any leads on to EBAG.

35. The Commissioner has reviewed the websites which were understood to have been used by the IARs' data suppliers. It is from these websites that the data suppliers obtained the data which would be used by the IARs for the purposes of making unsolicited direct marketing calls offering EBAG's services.
36. [REDACTED] used the following websites:
37. [REDACTED] – This website describes itself as [REDACTED]. It appears that users are unable to proceed with this site without providing consent. There is no evidence that either [REDACTED] or EBAG were listed as a third party on the site at the time data was obtained.
38. [REDACTED] and [REDACTED] – Agreement to providing consent appears to be a condition of use of these sites. Furthermore, the communication methods and third-party companies are all bundled together so an individual cannot choose how they wish to be contacted and by which organisations.
39. [REDACTED] used the following websites:
40. [REDACTED] and [REDACTED] – All three consent statements appeared identical, and whilst they did ask for consent for postal, email and telephone marketing, there was no way for an individual to choose whether to opt in to third party marketing separately. Instead, it appeared that the consent statement makes it clear that an individual would have their details shared with selected third parties. There is a link to an opt out page however this was not specific and did not allow an individual to make an informed decision about which organisations they wished to receive marketing from.

41. The Commissioner has made the above findings of fact on the balance of probabilities.
42. The Commissioner has considered whether those facts constitute a contravention of regulation 21B PECR by EBAG and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

43. The Commissioner finds that EBAG has contravened regulation 21B of PECR.
44. The Commissioner finds that the contravention was as follows:
45. The Privacy and Electronic Communications (Amendment) (No. 2) Regulations 2018, which came into force on 9 January 2019, amended PECR to insert Regulation 21B which restricts calls made for the purposes of direct marketing in relation to occupational pension schemes or personal pension schemes.
46. The Commissioner is satisfied that EBAG positively encouraged its IARs to make calls on its behalf as evidenced by them being paid a fixed fee of between £300.00 and £750.00 for each referral made to it. The marketing campaign was initiated by EBAG; [REDACTED] and [REDACTED] were commissioned by EBAG to engage in direct marketing in order to generate leads. The very fact that EBAG conducted (on its case) some due diligence on the IARs and insisted on high standards of regulatory compliance shows that it was consciously engaging the IARs to carry out direct marketing – this is also borne out by EBAG's disclosed communications with [REDACTED] and [REDACTED] expressly about direct marketing and the (then impending) cold-calling ban. Accordingly, the

Commissioner takes the view that the calls made by the IARs over the period of contravention were made at the instigation of EBAG.

47. The calls instigated by EBAG constitute 'direct marketing in relation to occupational pension schemes or personal pension schemes' within the definition of regulation 21B(5)(b)[iii] PECR. Specifically, Regulation 21B(5)(b)[iii] includes "*the offer of any advice or other service to enable the assessment of the performance of an occupational pension scheme or a personal pension scheme (including its performance in comparison with other forms of investment)*".
48. To engage in such calls it is a requirement of regulation 21B PECR that the caller be an 'authorised person or a person who is the trustee or manager of an occupational pension scheme or a personal pension scheme'.
49. Regulation 21B(5)(a) PECR states that "authorised person" has the meaning given in Section 31 of the Financial Services and Markets Act 2000 ("FSMA"). Section 31(1) FSMA lists the categories of persons who would constitute "authorised persons".
50. The calls carried out on EBAG's behalf were carried out by IARs which are not included in the list of categories of 'authorised persons' at Section 31(1) FSMA..
51. However, the Commissioner accepts that EBAG would meet the necessary criteria to be considered an 'authorised person' as defined by section 31(1) FSMA, and that in the circumstances, whilst it instigated calls to be carried out by non-authorised entities, it would be capable of satisfying the requirement of Regulation 21B(2)(a) and/or 21B(3)(a).

52. The Commissioner is not however satisfied that EBAG or the IARs making the calls had the valid consent of those who were called, or that they had an existing customer relationship with them, as required by regulation 21B(2)(b) and 21B(3)(b).
53. During the course of the Commissioner's parallel investigations into EBAG's IARs it was discovered that [REDACTED] would obtain data from [REDACTED] – matching the information provided by EBAG - which used three sites to collect the data used for its calls: [REDACTED], [REDACTED] and [REDACTED]. The investigation into [REDACTED] discovered that it too obtained data via websites, specifically: [REDACTED], [REDACTED], and [REDACTED]. The Commissioner notes a discrepancy in that EBAG stated that [REDACTED] obtained its data via [REDACTED], whereas the Commissioner's investigation into [REDACTED] found that it obtained data via [REDACTED]. In any event, the Commissioner notes from the 'due diligence' form which EBAG provided in relation to [REDACTED] that its '*example of website used to get opt in data*' cites [REDACTED] as a source website and so is satisfied that the data is likely to have originated from the same sources as disclosed to the Commissioner by [REDACTED].
54. 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.

² Although it is understood that data obtained via this website was not used by [REDACTED] following the introduction of Regulation 21B PECR.

55. 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.
56. 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.
57. In this instance, EBAG instigated direct marketing calls to individuals who had provided their details via six competition/offer websites.
58. EBAG has not provided evidence of specific consent for the calls that it instigated. The Commissioner has however sought to review the sites from which consent would have been obtained by its IARs. She takes the view that the point at which consent was obtained via [REDACTED] and [REDACTED] it is clear that there is an apparent option for individuals to select the means by which they may wish to receive direct marketing. However, before being able to proceed, individuals are required to agree to the relevant website’s privacy policy, with the privacy policies themselves dictating the way marketing will be sent, apparently regardless of any preferences selected by the individual. Furthermore, individuals are denied the ability to select which of the listed sectors or organisations they may wish to receive that marketing from, which implies that the individual must agree to receive marketing from all. In this way, any consent relied upon by EBAG for the calls made by [REDACTED] cannot be said to have been appropriately specific or freely given.

59. Looking at the competitions websites used by ■■■, it is apparent that an individual cannot enter a competition without providing consent to marketing. There is no way for an individual to freely consent to receive a specific method of marketing or to receive marketing from individual third parties as listed. Accordingly, EBAG would be unable to evidence valid consent for the calls made to these individuals by its IAR in relation to pension schemes.
60. The Commissioner has established that between 11 January 2019 and 30 April 2019 there were 106,987 connected calls made by ■■■ at the instigation of EBAG; with a further 16 calls being made (capable of being evidenced by complaints) between 2 February 2019 and 30 September 2019 by ■■■ at the instigation of EBAG.
61. The Commissioner is therefore satisfied that, between 11 January 2019 and 30 September 2019, EBAG instigated the use of a public electronic communications service for the purpose of making 107,003 unsolicited calls for the purposes of direct marketing in relation to occupational pension schemes or personal pension schemes contrary to regulation 21B of PECR.
62. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

63. The Commissioner is satisfied that the contravention identified above was serious. This is because between 11 January 2019 and 30 September 2019 there were 107,003 unsolicited direct marketing calls made to subscribers in relation to occupational pension schemes or personal pension schemes, with those calls being instigated by EBAG

when it did not hold valid consent, or have an existing customer relationship with the subscribers.

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

Deliberate or negligent contraventions

65. The Commissioner has considered whether the contravention identified above was deliberate. The Commissioner does not consider that EBAG deliberately set out to contravene PECR in this instance.
66. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
67. Firstly, the Commissioner has considered whether EBAG 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, not least because the issue of unsolicited calls in relation to occupational pension schemes or personal pension schemes has been widely publicised by the media as being a problem, so much so that it prompted recent legislative change to prohibit the making of such calls unless certain conditions are met. It is reasonable to suppose that any organisation wishing to carry out such activities should, and indeed must, be aware of its responsibilities in this area.
68. The Commissioner has published detailed guidance on her website for those carrying out direct marketing calls for the purposes of pension schemes, explaining the strict criteria under which such calls can be made. This guidance explains such calls must not be made relation to

pension schemes unless the person calling is a trustee or manager of a pension scheme or a firm authorised by the Financial Conduct Authority, and the individual being called has specifically consented to such calls or has a defined existing client relationship.

69. Whilst the Commissioner accepts that EBAG was itself authorised with the Financial Conduct Authority, and could accordingly satisfy the requirement of Regulation 21B(2)(a) and/or 21B(3)(a), neither EBAG nor its IARs held valid consent for the calls made; nor did they have an existing client relationship with the individuals being called. It would be reasonable to expect an organisation to be aware of the risks of engaging in such direct marketing calls when it could not satisfy these requirements.
70. Secondly, the Commissioner has gone on to consider whether EBAG failed to take reasonable steps to prevent the contraventions. Again, she is satisfied that this condition is met.
71. Reasonable steps in these circumstances may have included completing sufficient due diligence so that it could demonstrate valid consent for the calls being made to individuals at its instigation, and ensuring appropriate records of that consent so as to be able to demonstrate it if required. It would not be appropriate for EBAG to seek to deflect the responsibility for such checks on to the third parties when the legal obligation falls on itself to hold valid consent.
72. Given the volume of calls made in contravention of Regulation 21B PECR, it is clear that EBAG failed to take adequate reasonable steps.
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. The Commissioner has taken into account the following **aggravating features** of this case:

- EBAG had sought to generate leads for the purpose of financial gain, with its actions ultimately being in contravention of PECR.
- The ICO produces clear guidance via its website on the rules of direct marketing. In addition it also operates a helpline should organisations be unsure and require further clarification. The Commissioner also notes the significant amount of advice circulated by the FCA on the implementation of regulations covering pension cold-calling ban. As EBAG are an 'Authorised Person' the organisation should have been fully aware of their legal obligations.
- The Commissioner takes the view that EBAG instigated the marketing campaign and employed the services of IARs whilst knowing the cold-calling ban was in place, as a way to circumnavigate PECR. Neither ██████ nor ██████ would have made the calls if EBAG had not initiated them and offered financial inducements for generating leads.

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

- EBAG sought advice from a third-party compliance consultancy when engaging its IARs with a view to ensuring compliance with PECR, however that advice was insufficient.

76. 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.

77. 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 EBAG on this matter.
78. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
79. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
80. The Commissioner has considered the likely impact of a monetary penalty on EBAG. She has decided on the information that is available to her that EBAG has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship.
81. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls, particularly in relation to pension schemes, is a matter of significant public and parliamentary 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 meet the strict criteria to engage in such activities and are only telephoning consumers who specifically consent to receive these calls.

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

The amount of the penalty

83. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£140,000 (one hundred and forty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

84. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **5 January 2022** 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.
85. If the Commissioner receives full payment of the monetary penalty by **4 January 2022** the Commissioner will reduce the monetary penalty by 20% to **£112,000 (one hundred and twelve thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
86. 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.
87. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
88. Information about appeals is set out in Annex 1.
89. 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.
90. 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 November 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)).