

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Northern Gas & Power Ltd

Of: Baltic Place East Tower, South Shore Road, Gateshead, NE8 3AE

1. The Information Commissioner ("**the Commissioner**")¹ has decided to issue Northern Gas & Power Ltd ("**Northern Gas**") 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 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("**PECR**").
2. This notice explains the Commissioner's decision.

Legal framework

3. Northern Gas, whose registered office is given above (Companies House Registration Number: 08430003) 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 a subscriber who has a telephone number which is registered with the Telephone Preference Service ("**TPS**") or Corporate Telephone Preference Service ("**CTPS**"), then that subscriber must have given their consent to that company to receive such calls.

¹ References to "the Commissioner" in this notice include the Commissioner's Office and individuals therein (as applicable).

5. Regulation 21(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. Regulations 21(2)-(5) of PECR provide that:

"(2) A subscriber shall not permit his line to be used in contravention of paragraphs (A1) or (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—

- (a) the subscriber shall be free to withdraw that notification at any time, and*
- (b) where such notification is withdrawn, the caller shall not make such calls on that line."*

7. Under Regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them

that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The TPS is a limited company which operates the register on the Commissioner's behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.

8. Section 122(5) of the Data Protection Act 2018 ("**DPA 2018**") defines direct marketing as "*the communication (by whatever means) of any 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 Schedule 19 paragraphs 430 and 432(6) DPA 2018).
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. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".
11. 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*".
12. Section 55A DPA (as applied to PECR cases by Schedule 1 of 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.*

13. 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 Commissioner's website. Further to Schedule 1 of PECR (as variously amended), Regulation 2 of the Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribed that the amount of any penalty determined by the Commissioner must not exceed £500,000.
14. The PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. The PECR were subsequently amended and strengthened. The Commissioner will interpret the PECR in a way which is consistent with their overall aim of ensuring high levels of protection for individuals' privacy rights.
15. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA 2018: see paragraph 58(1) of Schedule 20 DPA 2018.

Background to the case

16. Northern Gas was incorporated on 5 March 2013. Northern Gas is a subsidiary of the Global Procurement Group Limited. Northern Gas principally brokers commercial energy contracts between commercial energy users and various energy providers.
17. Northern Gas first came to the attention of the Commissioner in respect of the contravention of regulation 21 of PECR during the Commissioner's wider investigation into scams and exploitative marketing surrounding the COVID-19 pandemic. The Commissioner identified a complaint from the owner of a caravan park who alleged that she had received an unsolicited direct marketing call to her business landline number from Northern Gas on 21 April 2020, despite that number having been registered with the TPS since 4 November 2006.

- a. The complainant reported the following regarding the caller:
"Gave me to understand first he was from Northern PowerGrid asking about half hour meters. Here to help us given Covid 19. That made me suspicious and I asked him again what the company was and he said Northern Gas & Power. I asked for the number and he gave me 0191-4789579 (his, ██████████) and company 0845-6435432. I told him that I had asked Northern Gas and Power many times never to call us again. He said that they did not have a list of numbers not to call. When I asked, he said that they had heard of TPS and GDPR. I asked why they were calling us given TPS and GDPR and he said it was 'to help us'. He said that he would speak to IT about blocking our number."
 - b. The complainant further explained that the call made her annoyed and/or anxious, for the following reasons: *"I have spoken to this company many many times asking them never to call us again. ██████████ We get so many of these calls that they make me really angry and I am likely to have a non-positive response to a real potential customer. They are also spuriously saying that given Covid 19. they are here to help us."*
18. Searches of the TPS complaints spreadsheets revealed that between 1 May 2019 and 30 April 2020 the TPS had received 103 complaints about unsolicited direct marketing calls from Northern Gas. 14 of these complaints were from subscribers whose telephone numbers were registered with the TPS, while 89 complaints were from subscribers whose telephone numbers were registered with the Corporate Telephone Preference Service ("**CTPS**"). The spreadsheets also showed that the TPS had written to Northern Gas on at least 84 occasions and that the company had responded on at least 24 occasions, stating that it used Creditsafe for list screening.
 19. Searches of the complaints received via the Commissioner's online reporting tool revealed a total of 62 complaints about Northern Gas over the same period. 44 of the complaints were from subscribers whose telephone numbers had been registered with the TPS or CTPS for more than 28 days. 29 of the complainants said that the calls made them annoyed and/or anxious. Complainants reported receiving

repeated calls despite opt-out requests and complaints to the Commissioner and TPS. They also complained of rude and aggressive callers who claimed that the rules did not apply to them.

20. The following are examples of some of the comments made by complainants, illustrating Northern Gas' apparent contravention of regulations 21(1)(a) and (b) of PECR (as to which see further below):
- a. *"I asked if he had been given permission to contact this company, and he advised me that it was his right to cold call whoever he wanted."*
 - b. *"The person called to be connected with the person in charge of utilities payments. Our company does not deal with utilities payments in our building and after the 5th occasion telling them this I now have to make a complaint. Our single line needs to remain free for the service we provide our clients."*
 - c. *"A chap called saying he has been in regular contact with us and was told to call back in August about our Gas & Electricity. I informed him that we have previously asked a number of times to be taken off their database after calls that we considered harassing. In fact, we have reported them to the ICO on a previous occasion."*
 - d. *"We have told this company several times before not to call us and remove us from their database, they are a nuisance. We even had an email from them confirming that they would stop calling us but it continues. They just ignore our request and keep calling us."*
 - e. *"This company constantly ring us about energy, sometimes twice a day from various numbers. We tell them we're not interested and ask them politely to remove our data in accordance with the GDPR Regulations but they continue to call. This has been going on for months now!"*
 - f. *"Caller (████) has previously been told that we are not allowed to put him through to speak to our Directors regarding our energy supply last night, despite his forceful attempt to*

persuade us that he would be allowed to! Rang back again this afternoon and was told again but still insisted that he be put through. Our female employee who took the call was made nervous/anxious by his forceful (could be described as aggressive) nature so she had to just hang up as he will not take no for an answer"

- g. "Telesales dept phoning me on my private mobile number trying to sell me energy supply for the company I work for. I have taken literally dozen [sic] of calls from this company, each time I ask them to remove myself and my company from the call list, this never happens. It's now getting stressful."*
- h. "Call our business on average 10-20 times a week. Twice so far today. Have repeated asked them to remove the number and have even spoken to management on the phone who say this has been done and it continues. PLEASE can something be done about this!"*
- i. "He wanted to know who in the company is responsible for the energy supplier. I replied that this number is on the TPS and he shouldn't be calling us. He said while I have you on the phone can you tell me who is responsible for the energy supplier. I started to repeat that we are on the TPS and to ask him to remove the number from his call list, but he hung up."*
- j. "We receive maybe 3 or 4 calls a day from NGP, every day. We repeatedly tell them that we're not interested, but they never stop and then get rude when you won't direct their call to the person in charge of the energy."*
- k. "Asking about our energy contracts. I told them we are not talking calls as we are in a contract and then they asked for more details which was not given. I asked to be removed from any list they had and to stop calling to which they replied that they did not have a list. I said not to call again and GDPR regulations means you need our permission to call. To which they just laughed and said it does not apply. Call was then terminated. This company calls every couple of weeks."*

- l. *"Very chummy voice '██████' asking about our electricity and gas supply. I asked him if he had hears [sic] of TPS or GDPR. He said he had, but that we were on Google and so that gave him the right to contact us. I said that it didn't and that we were on TPS and they shouldn't be cold calling us. I started asking for details about the company and he hung up. We have started to get a rash of these calls in the last couple of days."*

- m. *"constant cold calls and emails from this company despite telling them numerous times we have no desire to do business with them, calls from withheld numbers, landline numbers, mobile numbers as well as emails from them. We have politely asked for them to remove our details from their contact database however they are still ringing at least once a day, this is becoming harassment as many of the staff who call us are rude and borderline abusive when we tell them that we are not interested."*

- n. *"Offering an energy consultancy service. I told them we were signed up to CTPS she said she was not selling anything. I said it applies to sales and marketing and that I had asked to be removed from their database on previous occasions."*

- o. *"They were asking us the change our electricity and gas supplier. They called today, last week and the week before. They call me every month. I tell them that I am not interested and the lady today said that the only way we would stop receiving the calls would be to take up their service. I explained that we were registered with TPS and the manager Sven said as we have a website with our number on we got it from there. Sven said he would remove the details but I have asked for this several times."*

- p. *"wanted to talk to us regarding out suppliers told them we were part of TPS they said that didn't matter as they got our number off google - I explained that number is for sales to come into the business not unsolicited called. quite rude."*

q. *"Calling to switch our gas and electricity. I advised I was registered with the tps and she said 'if I checked every number with the tps I wouldn't be able to make any calls"*

21. On 11 May 2020, an initial investigation letter was sent to Northern Gas informing them of the complaints received by the Commissioner and the TPS. The letter outlined the requirements of PECR and the enforcement powers available to the Commissioner. Northern Gas was requested to answer a number of questions by 1 June 2020.

22. Following two short extensions, Northern Gas provided a substantive response on 11 June 2020. In particular, the letter of 11 June 2020 included the following:

a. Northern Gas described its history and growth.

b. The letter provided:

"Our management team is always implementing and upgrading systems to cope with this rapid growth. To that end, we have now developed a formal business management structure, a large and growing human resources department and, within the last year, a legal department to advise us about how best to achieve regulatory and legal compliance with all matters that affect our business activities.

Even prior to your communication, and in the spirit of our continued development, we had begun to investigate, understand and react to the PECR and its requirements. Whilst our review is as yet unfinished, we have made rapid and significant progress and we very much look forward to concluding our work with your kind support and guidance."

c. Northern Gas explained that it did not use call scripts:

"The nature of our business model (and the services that we attempt to sell) means that we do not adopt any particular call scripts. Essentially, on any individual call, the intention is to identify who at the potential customer has authority to enter into their energy supply contracts, to make contact with that

individual, to explain what products we offer and to secure their authority to look at their options for their next energy supply contract(s)."

- d. Northern Gas explained that between 1 May 2019 and 30 April 2020 its two UK offices (in Gateshead and Leeds) had made a total of 4,327,858 calls, of which 4,246,990 calls connected. The vast majority of calls were made from the Gateshead office.
- e. To the Commissioner's request to provide the source of the data used to promote Northern Gas' business, Northern Gas stated:

"Our business model, by its very nature, is intended to be extremely flexible to support the differing needs of our various customers and potential customers. Whilst the list cannot be absolutely prescriptive, we can confirm that our sources primarily comprise:

o Data obtained directly from customers – this is our primary source of business in that we aim to create long-term relationships with our customers, brokering their successive energy contracts for years to come, whilst also providing energy consumption management tools, advice and reports to help them improve their energy consumption patterns;

o Google (and other search engine) searches – this is a method by which we attempt to identify potential new customers. Our account managers will research an industry sector, a geographic location or any other means that might help them to discover a commercial entity that might be interested in our services;

o Business directories and lists – here we acquire contact lists from organisations that maintain those lists. We understand those lists to have been properly screened and the commercial entities upon them to have consented to their inclusion upon such lists. Hence, they have consented to our contact; and

o Sourced from Creditsafe – a specific method of the above category.”

- f. Northern Gas distinguished between its process for obtaining consent when information was obtained directly from customers and its reliance on third party vendors as follows:

“□ If information is obtained directly from customers, how do you ensure that they have consented to receiving marketing calls.

Our customers sign a letter of authority, without which we cannot approach the energy providers and we cannot provide our services to them. As part of that process, their authority lasts for a specified time and it must be maintained and renewed in order to ensure that they continue to instruct and authorise us. Hence, when it comes time to broker a renewal of their energy supply contract(s), we either have their continued letter of authority to act for them, or we must (and do) cease.

□ If information is purchased from third parties, what contractual obligation do you rely on in relation to the use of that information and do you carry out any due diligence checks in relation to the list providers to establish whether the product is as described (e.g. opt-in data where the subscriber has consented to third party use).

The data that is bought by us is acquired specifically as telephone marketing data. As such, it is required to have been fully screened and to feature only those businesses that have properly consented to their inclusion upon the list and for the purposes of receiving contact by our business (or others like us).”

- g. As to screening data against the TPS and CTPS registers prior to making unsolicited marketing calls and the operation of suppression lists, Northern Gas stated:

"o The primary calls are made to existing customers (for whom we have their up to date letter of authority) and to commercially acquired lists (which have been screened prior to inclusion upon that list).

o We already have measures in place to remove or block any numbers listed on the TPS from our CRM system, whenever that is flagged. This includes customers who are not on either list but which simply identify to us that they do not wish to hear from us with an offer of our services.

o We ask our sales teams to ensure that the remaining numbers not of existing customers or sourced from commercial lists (as discussed above) are routinely and specifically checked against the TPS or CTPS as appropriate.

...

We do have an internal suppression list, which comprises every single number that falls into this category.

...

We do rely on our sources, such as suppliers and Creditsafe, to screen their marketing lists against the TPS and CTPS. For our brokers who use Google to source their customers, they have been provided with the relevant information regarding the TPS and their responsibilities under it. Therefore, the onus is currently on them to make sure they are screening every number against the TPS and CTPS. However, we are always looking to improve this process and our IT team are currently working on a system to automate this process."

- h. As to the number of complaints received by the Commissioner and the TPS, Northern Gas stated:

"We conduct up to half a million calls per month; the number of complaints appears to be relatively low in comparison. That said, our intention is to achieve zero complaints and we are rapidly reviewing and improving our systems so as to achieve that objective; a process that started before your first communication with us.

It appears that our systems have allowed a small number of errors to be made, but those systems are being interrogated, improved and tested as we speak. We have every confidence that this is an historic issue and one that we shall entirely address with our current efforts."

- i. Northern Gas described a then recent update to its procedures:

"We have updated our Customer Relationship Management system with a "Mark as TPS" button, should any of our intended calls happen to be TPS / CTPS registered. This instantly flags that fact, allowing our employees to avoid contact with such companies by stint of such registered number(s)"

23. Northern Gas additionally provided copies of its calling notice and training documents. All employees were required to sign the calling notice, which stated:

"All employees must ensure they comply with the Privacy and Electronic Communications Regulation, the Telephone Preference Service (TPS) and the Corporate TPS (CTPS) when it comes to calling potential customers and/or businesses.

The TPS is a central register of individuals who have opted out of receiving live marketing calls. The CTPS works in the same way as the TPS, but for companies and other corporate bodies. You must screen all numbers against the TPS and the CTPS before commencing any call.

*To screen your numbers, please visit
https://www.tpsonline.org.uk/register/am_i_registered^[2]*

² The link in the notice directs employees to the 'Am I registered?' page on the TPS website. This is a search tool designed for individuals to confirm their own TPS registration status. There is a daily limit on the number of searches that can be carried out using this tool. The search tool is not regarded as a substitute for a valid TPS licence.

You may contact someone who is listed on either the TPS or the CTPS if they have provided consent for you to contact them.

Further, we have a suppression list of companies who have requested that they are removed from our systems and do not wish to receive any calls. You should not be making calls to any numbers on this list and should screen all numbers against this list before you commence any call.

All calls are monitored and if you are making unsolicited calls to numbers listed on our internal suppression list, the TPS or CTPS you may be subject to disciplinary action."

24. On 23 June 2020, the Commissioner emailed Northern Gas stating:

"I understand that Northern Gas and Power relies on its employees and data suppliers to ensure that its telephone marketing lists are screened against the TPS and CTPS.

You should be aware that it is the 'instigator' of the calls (ie the organisation whose products or services are being promoted) who is responsible for compliance with regulation 21 of PECR. Even if someone else actually makes the calls or supplies the marketing list, you are still responsible, as you are 'instigating' those calls.

The ICO has published detailed guidance on PECR. This can be found on our website (www.ico.org.uk) by following the links 'For Organisations' and 'Electronic communications and marketing'.

In order to determine the scale of the contravention and whether Northern Gas and Power took reasonable steps to prevent it, I would be grateful if you would provide me with the following information:

** call detail records showing all connected outbound calls made by the company between 1 May 2019 and 30 April 2020, including the number called, date and time of the call and call duration;*

** copies of contracts and/or invoices from your data suppliers showing that the data was purchased as TPS screened;*

- * details of any due diligence checks carried out on the data suppliers or the data;*
- * evidence that the complainants had consented to calls from Northern Gas and Power;*
- * confirmation as to whether or not the company holds a TPS licence;*
- * details of any remedial actions taken in response to complaints received by the TPS and ICO.*

I would be grateful if you could provide this information within 14 days of the date of this email. If you have any questions, please do not hesitate to contact me."

25. Northern Gas responded on 15 July 2020.
- a. Northern Gas explained that it historically relied upon warranties from their third party data suppliers that lists were fully screened against the CTPS / TPS. Northern Gas provided a link to the frequently asked questions section on Creditsafe's website which contained the following question and answer:

"Q: "Does the TPS Flag include CTPS registered telephone numbers, as well as TPS?"
A: "Yes. The TPS flag shown on the Creditsafe website covers both TPS and CTPS registered telephone numbers. Therefore any telephone number that has a TPS flag as YES is either TPS, CTPS registered or both."
 - b. Northern Gas maintained that the statement on Creditsafe's website formed part of the legal terms of the contractual arrangements between Northern Gas and Creditsafe. Northern Gas, however, failed to provide a copy of the actual contract or any other due diligence checks which it had undertaken.
 - c. Northern Gas clarified that had now purchased its own TPS licence such that it was no longer reliant on warranties from third party data suppliers.

- d. Northern Gas stated the following with regard to evidence of complainant's consent to calls:

"We have previously submitted our records that a few of those numbers (fewer than ten) in fact had active Letters of Authority by which we were instructed to provide their energy brokering services. This included contacting those customers again in an attempt to broker their energy supply contracts for their next energy supply period.

For the remainder, whilst some of those numbers appeared more than once within the data, the fact is these numbers were called and we have no further proof that they gave us any specific exemption from their registration at the CTPS / TPS."

- e. As to the remedial actions taken by Northern Gas in response to the complaints received by the Commissioner and the TPS, Northern Gas stated:

*"We have been extremely proactive both to identify and understand the issue and to ensure that we have taken any and all steps to remedy the issue.
We discuss above our method of checking against the CTPS / TPS.*

We now have a state of the art system for blocking all TPS registered numbers as well as any simply requested to be blocked by the end party without any CTPS / TPS formality. Given the technological advances that we have made to enforce the CTPS / TPS lists we expect to be able to eliminate any non-customer calls made to a CTPS / TPS registered number."

26. Northern Gas additionally provided a link to a dropbox containing call detail records. These consisted of 51 separate spreadsheets covering various date ranges. As to the spreadsheets:

- a. The calls from Northern Gas' Leeds office were split across two spreadsheets: one covering the period 1 March 2019 to 30

September 2019 and the other covering the period 1 October 2019 to 30 April 2020. These two spreadsheets listed a total of 340,768 calls.

- b. The two spreadsheets were sent to the TPS for screening, which revealed that 60,641 of the 340,768 calls were to numbers that had been registered with the TPS or CTPS for more than 28 days.
 - a. Further analysis of the remaining spreadsheets revealed that they included both marketing and non-marketing calls, calls from company directors, overseas calls, calls to freephone numbers, internal calls, and unanswered calls. However, they did not include some of the marketing calls that were the subject of complaints to the Commissioner and the TPS.
27. On 24 August 2020, amongst other things, the Commissioner requested Northern Gas to confirm how many of the 4,246,990 connected calls made between 1 May 2019 and 30 April 2020 were direct marketing calls and to provide call detail records for those calls.
28. On 27 October 2020, Northern Gas responded to the Commissioner's email.
- a. Northern Gas stated in the covering email: *"The headlines are that we have essentially eliminated any breaches of the CTPS and are working with the manufacturer of our software in order to further develop a market leading programme that will benefit not only us but many other businesses like us. That programme identifies all CTPS numbers and physically prevents them from being called from our telephone systems. Only where we obtain the customer's express permission can we then override the CTPS block."*
 - b. However, Northern Gas did not provide the requested information. Instead, Northern Gas provided a report entitled "NGP CTPS Call Statistics for ICO" ("**the NGP Report**") which included the following table of "CTPS Call Statistics" showing call statistics for the period March 2020 to September 2020. The data was extracted directly from the [REDACTED] phone system

database as primary source. That data was matched with the CTPS dataset and filtered to exclude multiple calls to the same number, calls of less than 3 seconds or longer than 60 seconds and calls to numbers listed in their CRM system.

<i>Month</i>	<i>Total Calls (3.4M total)</i>	<i>CTPS Calls (Filters Applied)</i>	<i>% CTPS (from Total Calls)</i>
<i>March 2020</i>	<i>39,748</i>	<i>318</i>	<i>0.800%</i>
<i>April 2020</i>	<i>274,030</i>	<i>1,211</i>	<i>0.442%</i>
<i>May 2020</i>	<i>345,243</i>	<i>1,566</i>	<i>0.454%</i>
<i>June 2020</i>	<i>593,399</i>	<i>2,272</i>	<i>0.383%</i>
<i>July 2020</i>	<i>804,380</i>	<i>1,424</i>	<i>0.177%</i>
<i>August 2020</i>	<i>646,388</i>	<i>16</i>	<i>0.002%</i>
<i>September 2020</i>	<i>741,552</i>	<i>15</i>	<i>0.002%</i>

- c. The NGP Report explained that in March 2020, Northern Gas moved away from a local Avaya phone system that was limited to the office network to a more modern and flexible system based on the █████ phone system. This was a necessary reaction to the sudden COVID-19 pandemic which had enabled its workforce to work from home in an effective, secure, and controlled Voice over Internet Protocol ("█████") telephony system. The previous Avaya phone system provided a native outgoing call blocking feature which was used to block numbers effectively. Northern Gas had planned to use the █████ outgoing rules to block CTPS calls automatically; however this feature did not work well and had performance impacts on its operations. Only critical numbers were blocked in limited amounts due to outgoing rules limitations.
- d. Northern Gas nevertheless took a number of steps to ensure that CTPS calls were not made using the █████ system. Those steps included but were not limited to: the staff induction programme, the training materials and programmes, and the tool-box talks and management efforts. At the same time, Northern Gas put its effort into researching third party solutions that would offer the flexibility to use the CTPS database and allow for further custom blocked numbers for

exclusive sales reasons while not affecting system performance.

- e. In August 2020 the [REDACTED] Do Not Call (“DNC”) third party product was selected and deployed to the live [REDACTED] phone system following several days of testing. After using this tool for some weeks, Northern Gas identified improvements in its usage and block handling. Northern Gas contacted the [REDACTED] development team who were very positive and open to implement these enhancements for the benefit of all users of the product.
- f. The NGP Report concluded that the introduction of the [REDACTED] [REDACTED] addon had been very effective in controlling CTPS calls. It acknowledged that there was still room for improvement and outlined some of the issues Northern Gas was working on in order to eliminate CTPS calls completely.

29. The Commissioner reviewed the NGP Report, concluding that it did not accurately reflect the number of contraventions of the PECR. The spreadsheets concerning Commissioner and TPS complaints were interrogated further, revealing that between August 2020 and November 2020 there had been at least 59 complaints about unsolicited direct marketing calls from Northern Gas. Those complaints suggested that Northern Gas was continuing to make unsolicited direct marketing calls in contravention of regulations 21(1)(a) and (b) of PECR.

30. Accordingly, on 9 December 2020, the Commissioner emailed Northern Gas.

- a. The Commissioner set out her concerns as to the accuracy of the NGP Report.
- b. The Commissioner requested Northern Gas to provide unfiltered call detail records showing all 3,444,740 calls made by Northern Gas between March 2020 and September 2020.
- c. The Commissioner explained that searches of the Commissioner and TPS complaints databases revealed that,

between August and November 2020, the Commissioner and TPS received at least 59 complaints about unsolicited direct marketing calls from Northern Gas, including 40 complaints from businesses whose telephone numbers were registered with the TPS or CTPS. Many of these complaints were from businesses who had previously notified Northern Gas that they did not wish to receive such calls.

d. The Commissioner also reminded Northern Gas of her enforcement powers.

31. On 10 February 2021, Northern Gas responded. Northern Gas requested further details of *"the August to November 2020 complaints (suggested to be 40 CTPS/TPS complaints and 19 non-CTPS/TPS requests not to be called)."* Northern Gas further stated:

"□ Our records show that we did not call CTPS / TPS registered numbers from our system, so if there are calls being made on our behalf, they would logically not be from our system. We would thus like details to check if our system is failing or if it is being circumvented, etc.

□ Equally, for those not registered but asking us not to call, we would wish to research if/ why/ how the request not to be called is being expressed but not being actioned; when our method to block numbers is so simple and is so stringently enforced."

32. On 11 February 2021, the Commissioner sent Northern Gas a spreadsheet containing details of complaints received by the Commissioner and TPS between 1 August 2020 and 31 January 2021. 76 complaints were received in that period. The Commissioner noted: *"All of the calls listed in the spreadsheet appear to have been made in contravention of regulation 21(1)(a) and/or regulation 21(1)(b) of PECR."*

33. On 17 March 2021, Northern Gas responded to the Commissioner's email as follows:

"Thank you for your continued patience whilst we addressed these further matters that you brought to our attention in your email below.

When you first contacted us, it allowed us to study and report upon our calls data from March to September 2020.

Our previous efforts ensured that we now automatically block all TPS / CTPS registered numbers and that they cannot be called from our telephone system. We then added additional (and simplified) methods to ensure that any customer who asks not to be called by us can easily be blocked; supported by training for our staff to ensure these new methods are adopted.

In your email, however, you noted that between August and November 2020, the ICO and TPS received at least 59 complaints about unsolicited direct marketing calls from NGP.

Whilst this of course overlapped with our own study (August and September 2020) and so repeated data already addressed by our remedies, you observed that our extensive improvements made to date still allowed a few exceptions to occur. We have studied all of the further complaints and can report three further improvements that have now been made.

** The first category we call "block evasion", where the TPS / CTPS registered number is successfully blocked on our system, but it appears the block could be avoided by using an international dial code. Hence our system blocked 0191 numbers but not 0044 191 numbers. This issue has been fixed by our paying ██████████ to add a country code blocking feature to all TPS / CTPS registered numbers for us. This block evasion issue has now been resolved.*

** The second category we call "residential TPS", where we initially focussed upon blocking the CTPS registered numbers (since our purpose is to contact commercial entities and not domestic energy customers). We then realised that a tiny fraction of those commercial entities we contacted would be sole traders and partnerships, such that they could potentially use their domestic number as a business number. We have now*

imported and blocked the entire TPS in addition to the CTPS. This residential TPS issue has now been resolved.

** The third category we call "not blocked / custom blocking", where customers who are not TPS / CTPS registered specifically ask us not to contact them. Although we introduced the above methods to ensure that any customer who asks not to be called by us can easily be blocked; supported by training for our staff, we have improved our blocking flows methods and these are now typically blocked in under two hours from request. We have further plans to improve the not blocked / custom blocking methods by developing an internal system that sales managers would be able to use themselves. We are confident that the not blocked / custom blocking issue has now been resolved, but we continue to develop even more user-friendly solutions to this remaining issue.*

As it stands, NGP believes that all these elements can be considered as resolved, which together cover all of the numbers / issues in the further 59 complaints sent to us by the ICO.

Whilst we are convinced that these further measures shall now be entirely effective, if any further issues come to light or if you think we can do anything more to ensure our future compliance, we would be pleased to receive your support and guidance."

34. On 23 March 2021, the Commissioner emailed Northern Gas to confirm that he had completed her enquiries and would go on to consider whether formal enforcement action was appropriate. Northern Gas was invited to submit, by 30 March 2021, *"any relevant evidence, or information regarding your policies, procedures and training programmes, and which you have not yet supplied to this office"*.
35. On 24 March 2021, Northern Gas provided further information in respect of the third category identified in its email of 17 March 2021, stating:

"I write to relay the fact that we have now developed an internal system that sales managers would be able to use themselves and the poster copied below details the further steps that we have taken. That poster has been circulated nationally by email and the

new method has been a feature of our recent training to all of sales. You will notice that it is now as simple as pressing a button and that we have emphasised it is a disciplinary offence to fail to do so when asked to."

36. The poster in question stated: "*If anyone requests their number to be blocked from the system you **MUST** use the **BLOCK** button in **360** or **send an email to IT** with the telephone number and the reason to block to ensure it is blocked system-wide. **Failure to follow the above could lead to disciplinary action.**" [Emphasis original]*
37. Further searches of the Commissioner and TPS' complaints spreadsheets, conducted on 6 April 2021, revealed that between 1 February and 30 March a further 32 complaints were received about unsolicited direct marketing calls from Northern Gas. The complaints included calls to both TPS and CTPS registered numbers, as well as to subscribers who had specifically notified Northern Gas that they did not wish to receive such calls. For example, a subscriber, whose telephone number had been registered with the TPS since 2005, complained as follows:
- "They are a [sic] energy supplier or broker, and when I said we do not want their service they hang up and call again the next day. When I have asked to be removed from their call list they hang up and call again the next day. We are small but very busy care home, and do not wish to spend time with these calls especially considering these busy COVID times for us."*
38. An additional complaint was received in February 2021. The complainant reported that it continued to receive over five marketing calls per day from Northern Gas, despite having notified Northern Gas by email in May 2020 and January 2021 that it did not wish to receive such calls and requesting the removal of its details from Northern Gas' system. Those emails had been sent to the directors of Northern Gas.
39. The Commissioner is satisfied that the calls made by Northern Gas and which were subject to complaints to the TPS/CTPS were all made for the purposes of direct marketing as defined by section 122(5) DPA18.

40. The Commissioner has made the above findings of fact on the balance of probabilities.

The contravention

41. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Northern Gas and, if so, whether the conditions of section 55A DPA are satisfied.
42. The Commissioner finds that Northern Gas contravened regulation 21 of PECR. The Commissioner finds that the contravention was as follows:
43. Between 1 May 2019 and 31 March 2021, Northern Gas used a public telecommunications service for the purposes of making 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 337 complaints being made to the TPS and the Commissioner in respect of Northern Gas.
44. Additionally, as set out above, during the same period Northern Gas used a public telecommunications service for the purposes of making unsolicited calls for direct marketing purposes to subscribers where the called line was that of a subscriber who had previously notified the caller that, for the time being, such calls should not be made on that line, contrary to regulation 21(1)(a) of PECR.
45. The Commissioner is also satisfied for the purposes of regulation 21 that these unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and who for the purposes of regulation 21(4) had not notified Northern Gas that they did not object to receiving such calls
46. For such notification to be valid under regulation 21(4), the individual must have taken a clear and positive action to override their TPS registration and indicate their willingness to receive marketing calls from the company. The notification should reflect the individual's choice about whether or not they are willing to receive marketing calls.

Therefore, where signing up to use a product or service is conditional upon receiving marketing calls, companies will need to demonstrate how this constitutes a clear and positive notification of the individual's willingness to receive such calls.

47. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.
48. Further, the notification must demonstrate the individual's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of regulation 21(4) if individuals are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
49. Northern Gas has been unable to demonstrate that the TPS subscribers called had given such prior notification in the vast majority of cases. In particular, the Commissioner and the TPS received a total of 337 complaints over a 23 month period, from subscribers whose telephone numbers were registered with the TPS or CTPS or who had previously notified Northern Gas that they did not wish to receive such calls.
50. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

51. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Northern Gas arising from the organisation's activities between 1 May 2019 and 31 March 2021, leading to an unknown number of unsolicited direct marketing calls being made to subscribers who were registered with the TPS or CTPS and who had not provided valid consent. The Commissioner and TPS received a total of 337 complaints from subscribers whose telephone numbers were registered with the TPS or CTPS or who had previously notified Northern Gas that they did not wish to receive such calls over the 23 month period as a result (averaging 15 complaints per month).

52. Based on his experience of like incidents of unsolicited direct marketing calls, the Commissioner is of the view that the number of complaints is likely to represent only a small proportion of the actual number of breaches. Northern Gas has stated that it made up to half a million calls per month. Whilst the Commissioner is unable to confirm precisely how many calls were made in breach of PECR, by way of an indication of scale of the likely breaches, the Commissioner has established that 60,641 of the 340,768 calls made by the Leeds office over a 14 month period were made to telephone numbers that were registered with the TPS or CTPS, amounting to 18% of the calls made by that office.
53. The contravention was also serious due to the frequency and content of the calls. Complainants reported receiving multiple calls over a short period of time, despite repeated opt-out requests and complaints to the Commissioner and TPS. They also complained of rude and aggressive callers who claimed that the rules did not apply to them. Many of the complainants reported that the calls made them annoyed and/or anxious. Some of the complainants said they were being called on their personal mobiles and this was adding to the stress caused by COVID-19. Others said the calls were disrupting their business and tying up lines used by customers.
54. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

55. The Commissioner has considered whether the contravention identified above was deliberate. The Commissioner does not consider that Northern Gas deliberately set out to contravene the PECR in this instance.
56. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
57. Firstly, he has considered whether Northern Gas knew or ought reasonably to have known that there was a risk that this contravention would occur. He is satisfied that this condition is met, as follows.

58. 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. Specifically, it states that live calls must not be made to any subscriber 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 Commissioner operates a telephone helpline. The Commissioner's communications about previous enforcement action where businesses have not complied with PECR are also readily available.
59. Northern Gas has been in existence since 2013 and operates a business model which predominately includes direct marketing. As such, it should have been aware of the requirements of the PECR. Indeed, Northern Gas demonstrated that they knew about the legal requirements of the PECR in their instructions to staff to ensure that they screened against the TPS.
60. The TPS notified Northern Gas of at least 84 complaints that it had received over the period of the contravention and this should have made Northern Gas aware of the risk that such contraventions may occur and were indeed occurring.
61. It is therefore reasonable to suppose that Northern Gas should have been aware of its responsibilities in this area.
62. Secondly, the Commissioner has gone on to consider whether Northern Gas failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
63. Northern Gas has conceded that it only recently has "*begun to investigate, understand and react to the PECR and its requirements*". Even as late as June 2020, Northern Gas' review was unfinished. In such circumstances, Northern Gas' compliance with the PECR was far too delayed and inadequate.

64. Moreover, Northern Gas relied upon generic assurances from its third party data suppliers that its lists were fully screened against the TPS and CTPS. Northern Gas did not agree and implement specific contractual arrangements, supported by appropriate due diligence checks, to ensure compliance with the PECR. The Commissioner's direct marketing guidance makes clear that organisations acquiring or utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary consent. It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence.
65. In circumstances in which an organisation buys or rents a marketing list from a list broker or other third party, the Commissioner's Direct Marketing Guidance at §179 identified that checks of the following nature might fall within the scope of reasonable due diligence obligations:
- "- Who compiled the list? When? Has it been amended or updated since then?*
- When was consent obtained?*
 - Who obtained it and in what context?*
 - What method was used – eg was it opt-in or opt-out?*
 - Was the information provided clear and intelligible? How was it provided – eg behind a link, in a footnote, in a pop-up box, in a clear statement next to the opt-in box?*
 - Did it specifically mention texts, emails or automated calls?*
 - Did it list organisations by name, by description, or was the consent for disclosure to any third party?*
 - Has the list been screened against the TPS or other relevant preference services? If so, when?*
 - Has the individual expressed any other preferences – eg regarding marketing calls or mail?*
 - Has the seller received any complaints?*
- Is the seller a member of a professional body or accredited in some way?"*

66. Northern Gas failed to implement an effective TPS screening system, relying instead on a search tool designed for individuals that has a daily limit of 3 searches per IP address per day. The Commissioner's Direct Marketing Guidance at §189 identified that: "*Organisations should generally screen an in-house marketing list against the TPS register before making any marketing calls.*" The Guidance further provides: "*Bought-in call lists should be screened against the TPS. It will be very difficult to use bought-in lists for text, email, or automated call campaigns as these require very specific consent (either where the specific organisation is named or it is within a precisely defined category of organisation).*" §126 of the Guidance clarifies that the requirement to screen lists against the TPS applies in respect of business-to-business calls: "*The same rules apply to marketing calls made to businesses. Sole traders and partnerships may register their numbers with the TPS in the same way as individual consumers, while companies and other corporate bodies register with the Corporate Telephone Preference Service (CTPS). So organisations making business-to-business marketing calls will need to screen against both the TPS and CTPS registers.*"
67. Northern Gas failed to take appropriate and swift remedial action in response to complaints from subscribers and correspondence from the Commissioner and TPS. This is evidenced by the fact that complaints continued to be received throughout the course of the Commissioner's investigation.
68. Given the volume of calls and complaints and the matters identified above, it is clear that Northern Gas failed to take appropriate and reasonable steps. The Commissioner is therefore satisfied that condition (b) of section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

69. The Commissioner has taken into account the following **aggravating features** of this case:
- a. Reports noted the pressurising and persistent nature of the calls in question, including when a cessation of further calls had been requested.

- b. The calls in question caused an unnecessary degree of interruption to businesses and their trading activity, in particular during the difficult trading conditions of the Coronavirus pandemic.
 - c. The aim of the calls in question was to generate financial gain by way of an increase in profits arising from further business.
 - d. Northern Gas only responded to complaints upon the commencement of the Commissioner's investigations, rather than upon their prior notice of the same.
70. The Commissioner has taken into account the following **mitigating features** of this case:
- a. Northern Gas has now confirmed that it has purchased its own TPS licence and call screening/blocking software (albeit the latter has been subject to technical failures).
71. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. He is also satisfied that the procedural rights under section 55B have been complied with.
72. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by Northern Gas on this matter.
73. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
74. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
75. The Commissioner has considered the likely impact of a monetary penalty on Northern Gas. He has decided on the information that is available to him that Northern Gas has access to sufficient financial resources to pay the proposed monetary penalty without causing

undue financial hardship and that a penalty remains the appropriate course of action in the circumstances of this case.

76. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. This is an opportunity to reinforce the need for businesses to ensure that they are only telephoning consumers who are not registered with the TPS and/or specifically consent to receive these calls.
77. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

78. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£75,000 (75,000 pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.
79. Further and for avoidance of doubt, the Commissioner regarded the mitigating factor identified at paragraph 70(a) above as warranting a reduction of the penalty from £80,000 to £75,000.

Conclusion

80. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **18 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.
81. If the Commissioner receives full payment of the monetary penalty by **17 January 2022** 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.

82. 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.
83. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
84. Information about appeals is set out in Annex 1.
85. 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.
86. 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 15th day of December 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 he ought to have exercised his 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)).