

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: UK Platinum Home Care Services Limited

Of: 71-75 Shelton Street
Covent Garden
London
WC2H 9JQ

1. The Information Commissioner ("the Commissioner") has decided to issue UK Platinum Home Care Services Limited ("Platinum Home Care") 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. Platinum Home Care, whose registered office is given above (Companies House Registration Number: 12485614) 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 contrary to regulation 21 of PECR.

4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls promoting a product or service to an individual who has a telephone number which is registered with the Telephone Preference Service Ltd ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it.

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

"(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where-

(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or

(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26."

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

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

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

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

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

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not make such calls on that line.”

7. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited (“TPS”) is a limited company which operates the register on the Commissioner’s behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.
8. Section 122(5) of the Data Protection Act 2018 (“DPA18) defines direct marketing as *“the communication (by whatever means) of advertising or marketing material which is directed to particular individuals”*. This definition also applies for the purposes of PECR (see regulation 2(2) PECR & Schedule 19 paragraphs 430 & 432(6) DPA18).

9. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
10. 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"*.
11. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –

 - (a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,*
 - (b) subsection (2) or (3) applies.*

(2) This subsection applies if the contravention was deliberate.

(3) This subsection applies if the person –

 - (a) knew or ought to have known that there was a risk that the contravention would occur, but*
 - (b) failed to take reasonable steps to prevent the contravention.*
 12. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.

13. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.
14. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

Background to the case

15. Platinum Home Care is a company which offers a range of policies for home appliances such as boiler, central heating and electrical appliance breakdown cover. It has a website presence at www.platinumhomecareuk.co.uk. The homepage of this website states that the company provides "*specialist warranties*". However, the company's terms and conditions which were provided to the Commissioner as part of this investigation stated that what is provided by the company is a "*service agreement*", rather than an insurance policy and that the company is therefore not registered with the Financial Conduct Authority.
16. Platinum Home Care first came to the attention of the Commissioner in September 2020, when data pertaining to complaints about unsolicited live marketing calls was reported by the TPS. From searching the TPS register, the Commissioner established that there were several complaints that Platinum Home Care had made unsolicited live direct marketing telephone calls that appeared to be in breach of regulation 21 of PECR. Two call line identities ("CLIs") were identified from these

complaints – 020 3813 7761 and 020 3813 7763. The company name used during these calls was said to be “Platinum Home Care”.

17. Further investigation of complaints made to the Commissioner’s online reporting tool (“OLRT”) identified three additional CLIs attributed to Platinum Home Care. These were 01253 807391, 01253 807341, and 020 3813 7778. An investigation of complaints made to the TPS and ORLT against these CLIs led to the identification of further complaints indicating that Platinum Home Care had instigated a marketing campaign using live calls to TPS registered recipients in contravention of regulation 21.

18. Using Third Party Information Notices, the Commissioner made enquiries with communication service providers for these CLIs. This led to the identification of a total of 64 CLIs allocated to the same subscriber. The subscriber details provided by communication service providers are:
 - Name: Yugeshan Govender
 - Company: [REDACTED]
 - Address: [REDACTED]
 - [REDACTED]

19. The Commissioner’s open source search into Mr Govender identified him as (at that time) the sole director of Platinum Home Care. From these additional CLIs, a total of 48 complaints were identified between 10 February and 8 October 2020. Subsequent Companies House searches revealed that the company was incorporated on 26 February 2020 and several complaints occurred before that date. However, in 5 of those complaints the calls are clearly attributed to the company using the “Platinum Home Care” trading style. A further 6 complaints were identified after the full list of CLIs used by Platinum Home Care

was provided to the Commissioner as part of the company's response to the Commissioner's investigation.

20. The following are examples of complaints received via the OLRT or TPS:

- *"A call from "Monica" oh (sic) Platinum Home Care offering washing machine insurance. She knew my name, phone number, and that I was over sixty but did not know what washing machine I had, when purchased, or even if I had one at all. When questioned on these matters she hung up."*
- *"Wanted to discuss extending my washing machine warranty which was "due to run out". I don't have a washing machine warranty but played along to waste her time. Told her my washing machine caught fire. She then offered to sell me extended warranties for £95 to include a cooker and microwave. I asked more about the company she was calling from (with the intention of reporting them to you) and she said Platinum Home Care and that they have a website."*
- *"Aggressively demanding to speak to [REDACTED] who is not the name on my account, and being incredibly rude when told no"*
- *"A man calling from a noisy, busy room asked for me by name. He told me he was called John and was calling from Platinum Home Care because my washing machine was coming to the end of its warranty. I have no connection with Platinum Home Care, the guarantee on my washing machine ran out many years ago, and the name the man used is my maiden name, under which I work, but is not the name I use to buy white goods or other things for the home I share with my partner. I was therefore*

totally sure that he was calling for nefarious reasons and was able to tell him to just go away."

21. A further complainant reported that a product had been sold to her 91-year-old mother-in-law who suffers from dementia. The complainant had found out about the sale when correspondence was received by her mother-in-law thanking her for purchasing the plan. The complainant stated that she had immediately contacted the company which was named Platinum Homecare, to make them aware of her mother-in-law's mental state. The complainant stated that the company had refused to deal with her complaint and that at the company's insistence her mother-in-law was required to call the company to insist on cancellation and request a refund. The complainant stated that the money was returned but that as a direct result of this incident she has now obtained lasting power of attorney over her mother-in-law's finances.
22. On 6 October 2020, the Commissioner sent a letter to the organisation addressing concerns regarding Platinum Home Care's compliance with regulation 21. The letter outlined the use of live telephone calls for direct marketing purposes and required Platinum Home Care to provide evidence that each of the individuals that had made a complaint did not object to receiving Platinum Home Care's marketing calls.
23. On 23 October 2020, a lawyer from Evalian Limited (a data protection and information security consultancy) ("Evalian") responded to the Commissioner's letter on behalf of Platinum Home Care.
24. The response confirmed that Platinum Home Care had instigated the calls in question and that the company had made 1,789,786 calls in the

relevant period, of which 1,078,872 had connected for one second or more. The Commissioner is satisfied that of the 1,078,872 connected calls, 589,518 were answered (54.7% of all connected calls). The Commissioner is also satisfied that 412,556 of those calls were to recipients that had been registered with the TPS for more than 28 days at the time of receipt of the call (38.2% of all connected calls & 70% of all answered calls). The Commissioner is satisfied that the 1,078,872 connected calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18. The Commissioner analysed the full list of CLIs dialled during the campaigns between 4 March and 8 October 2020. This analysis showed that 61.9% (668,727) of the CLIs dialled by the company during the campaign were registered to the TPS.

25. Platinum Home Care's response further stated that, prior to the commencement of the Commissioner's investigation, the company had not routinely screened calls to UK numbers against the TPS, but that it did operate an internal suppression or 'do not call' list. It stated that Platinum Home Care staff who made the calls underwent a 5-day training package which covered products, sales, compliance and systems including the use of the do not call list. The response further stated that the company had engaged the services of Evalian as a data protection consultant, who had devised data protection and privacy policies for the company and that these policies would be incorporated into staff training. Evalian subsequently confirmed to the Commissioner that Platinum Home Care had no data protection policy in place at the time of the direct marketing campaigns.
26. Platinum Home Care explained that data used by the company to make the calls was purchased from four third party suppliers, namely [REDACTED]

██████████ ("██████████"); ██████████; ██████████
██████████ ("██████████"); and ██████████ ("██████████").

27. In explanation for the number of complaints raised against the company, Platinum Home Care's response stated that 30 of the 40 complaints referred to in the Commissioner's letter related to data which had been supplied by a single supplier, ██████████, and that the company would no longer obtain data from this source unless ██████████ could provide sufficient assurances.
28. Documentation provided in relation to Platinum Home Care's arrangement with ██████████ showed that the company had contracted to purchase data related to warranties for washing machines. The contracts stipulated "*special instructions*" specifying that the call recipients within the data should be homeowners, non-TPS registered and over the age of 60.
29. Documentation provided in relation to ██████████ showed that Platinum Home Care purchased data for call recipients over the age of 60 who were either non-TPS registered or TPS registered recipients. A document entitled "██████████ *Terms and Conditions*" dated 20 October 2019 stated that the ██████████ does not guarantee the accuracy of the data it supplies.
30. Documentation provided in relation to ██████████ comprising invoices for October 2020 showed the targeted age group was recipients aged 60-80 and included a specification for "*Landline ONLY*".
31. Platinum Home Care also provided a copy of its calling script. The call script did not contain any reference to a vulnerable customers policy or to questions intended to identify potentially vulnerable customers.

31. The Commissioner has made the above findings of fact on the balance of probabilities.
32. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Platinum Home Care and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

33. The Commissioner finds that Platinum Home Care contravened regulation 21 of PECR.
34. The Commissioner finds that the contravention was as follows:
35. Between 4 March and 8 October 2020, Platinum Home Care instigated the use of a public telecommunications service for the purposes of making 412,556 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.
36. This resulted in more than 50 complaints being made to the TPS and the Commissioner.
37. The Commissioner is also satisfied for the purposes of regulation 21 that these 412,556 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 Platinum Home Care that they did not object to receiving such calls.

38. 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.
39. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting into marketing communications generally, unless it is clear that this will include telephone calls.
40. 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.
41. Platinum Home Care has not provided evidence of subscribers notifying them that they did not object to receiving such calls and failed to undertake proper due diligence checks on the data before use.
42. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

43. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Platinum Home Care arising from the organisation's activities between 4 March and 8 October 2020, and this led to 1,789,786 unsolicited direct marketing calls being made, of which 1,078,872 connected, 589,518 were answered and 412,556 of those answered calls were to TPS registered individuals who had not notified Platinum Home Care that they were willing to receive such calls. The company's campaign led to more than 50 complaints being made to the TPS and the Commissioner.
44. A large percentage of the call recipients were TPS registered. Platinum Home Care failed to screen the calls against the TPS register or to conduct proper due diligence checks into the source of the data or notifications given. There is clear evidence of distress caused to at least one elderly victim and their family in this case.
45. The Commissioner is therefore satisfied that condition (a) from section 55(A) (1) DPA is met.

Deliberate or negligent contraventions

46. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Platinum Home Care's actions which constituted that contravention were deliberate actions (even if Platinum Home Care did not actually intend thereby to contravene PECR).

47. The Commissioner considers that in this case, Platinum Home Care did deliberately contravene regulation 21 of PECR. The making of unsolicited telephone calls for direct marketing purposes to individuals who are signed up to the TPS without securing the necessary notifications for the purposes of regulation 21(4) is a deliberate act. Platinum Home Care deliberately made a total of 1,789,786 marketing calls over a 7-month period, of which 1,078,872 connected. 412,556 calls which were answered were to TPS registered recipients. On behalf of Platinum Home Care it was said that its director Mr Govender was ignorant of UK regulations at the time that the calls were made. However, in his role as CEO of YMS Contact Centre Mr Govender has run a call centre which for 8 years has specialised in marketing calls to countries including the UK.
48. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
49. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
50. First, he has considered whether Platinum Home Care 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 stated above, Mr Govender has run a call centre based in South Africa which for a number of years has specialised in marketing calls to countries including the UK. When operating in this field companies and their staff are reasonably expected to be conversant with the applicable regulations.

51. The Commissioner has also 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 notified the company that they do not object to receiving such calls. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.
52. Standard practice of the TPS is to contact the organisation making the calls on each occasion a complaint is made. It is therefore reasonable to believe that Platinum Home Care would have received a notification from the TPS for each of the complaints being made in this case. That there were more than 50 complaints made to the TPS alone over the period of the contravention should have made Platinum Home Care aware of the risk that such contraventions may occur and were indeed occurring.
53. It is therefore reasonable to suppose that Platinum Home Care should have been aware of its responsibilities in this area.
54. Secondly, the Commissioner has gone on to consider whether Platinum Home Care failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
55. The Commissioner's direct marketing guidance makes clear that organisations utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data

was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary notifications for the purposes of regulation 21(4). It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. Platinum Home Care failed to undertake proper due diligence checks on its data suppliers, failed to screen calls against the TPS register, failed adequately to train staff in relation to PECR and DPA issues, and failed to detail any formal data protection policies. These were all steps which would have been reasonable for Platinum Home Care to take.

56. Given the volume of calls and complaints, it is clear that Platinum Home Care failed to take those reasonable steps.
57. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

58. The Commissioner has taken into account the following **aggravating** features of this case:
 - Platinum Home Care deliberately targeted people over the age of 60 for its direct marketing campaign, a group especially likely to include vulnerable people.
 - Platinum Home Care's direct marketing campaign was a deliberate action undertaken for its own financial gain.

- The Commissioner's guidance has either been ignored or not acted upon. The Commissioner produces clear guidance online on the rules for direct marketing. The current regulations have been in existence for a considerable amount of time. The Commissioner also operates a helpline should organisations be unsure or require further clarification.

59. The Commissioner has taken into account the following **mitigating** features of this case:

- Platinum Home Care readily engaged with the Commissioner's investigation.
- The Commissioner's investigation did not find evidence of a pattern of poor regulatory compliance by Platinum Home Care.
- Platinum Home Care did not attempt to evade regulatory action commenced by the Commissioner.
- The Commissioner is also mindful that Platinum Home Care has committed to taking steps to ensure future compliance with the regulations, albeit that the Commissioner has not yet received tangible evidence that these steps have been taken other than a draft Data Protection Policy dated 21 October 2020.

60. 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.

61. 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 Platinum Home Care on this matter.

62. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
63. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
64. The Commissioner has considered the likely impact of a monetary penalty on Platinum Home Care. He has decided on the information that is available to him, that a penalty remains the appropriate course of action in the circumstances of this case.
65. 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 indicate that they do not object to receiving these calls.
66. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

67. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£110,000 (one hundred and ten**

thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

68. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **22 February 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.
69. If the Commissioner receives full payment of the monetary penalty by **21 February 2022** the Commissioner will reduce the monetary penalty by 20% to **£88,000 (eighty eight thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
70. 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.
71. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
72. Information about appeals is set out in Annex 1.

73. 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.

74. 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 **21st** day of **January** 2022.

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)).