

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: UK Appliance Cover Limited

Of: Custom House, Station Road, Upminster, RM14 2SU

1. The Information Commissioner ("the Commissioner") has decided to issue UK Appliance Cover Limited ("**UKACL**") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. UKACL, whose registered office is given above (Companies House Registration Number: 12268294) is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.
4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls

promoting a product or service to an individual who has a telephone number which is registered with the Telephone Preference Service Ltd ("TPS"), then that individual must have 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. Regulation 24 of PECR provides:

“(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication –

...

(b) in relation to a communication to which regulation 21 [or 21A] (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).

(2) The particulars referred to in paragraph (1) are –

(a) the name of the person;

(b) either the address of the person or a telephone number on which he can be reached free of charge."

8. 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.
9. Section 122(5) of the 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).
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 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.

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 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.

14. 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.

15. 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

16. UKACL first came to the attention of the Commissioner in August 2020 following a complaint to the TPS about an unsolicited direct marketing call from a particular Calling Line Identifier ("CLI").
17. The Commissioner sent a Third-Party Information Notice ("3PIN") to the Communications Service Provider ("CSP"), [REDACTED] [REDACTED] for the CLI in question on 19 August 2020 requesting the identity of the CLI's subscriber. The response, which was received on 20 August 2020, identified the subscriber as UKACL, and provided a list of CLI's allocated to UKACL with the respective connection dates for those.
18. The Commissioner conducted a search for complaints to the TPS or the Commissioner's own online reporting tool ("OLRT") and found that there had been two complaints to the TPS. The complaints received in relation to calls from the CLI's stated:
 - *collecting a payment [sic] of £398 for 3 years warranty on a tv worth £30. I said my dementia isolating 89 yo [sic] aunt did not want the service, they said there was a cancellation fee. i said send the documents and i will get legal advice, they said that would cost me in the long run, i said do they want my details , and they rang off. Several subsequent calls have rung off when I answered. 09.16 24th July 2020 15.55 21st July 2020 . They are obviously targeting my dementia 89 yo [sic] aunt. They tried to frighten me (and my aunt if she had answered) into paying a ridiculous sum for a warranty that had no economic sense.*
 - *The caller was threatening and coercive and put me in a very difficult situation which I am now having to try and get out of*

19. The Commissioner sent an initial investigation letter by post and e-mail to UKACL on 2 September 2020, setting out her concerns with UKACL's PECR compliance and asking for details of call volumes and information relating to its direct marketing activity.
20. The Commissioner received no response to this letter, or to the chaser letter which was sent on the 7 October 2020. On 26 November 2020 the Commissioner sent a second chaser via special delivery to UKACL's registered office address requesting a response within seven days. This was signed for the following day by 'Sutton', however, no response was received.
21. Resultantly, the Commissioner proceeded to serve an Information Notice on UKACL on 26 November 2020 requesting information deemed necessary for the purpose of determining UKACL's compliance with PECR. The information requested included the trading names used during calls, volume of calls made by UKACL between 1 April 2020 to 31 August 2020, and the number of those calls which connected with a subscriber; evidence that subscribers did not object to the receiving calls in relation to the complaints which had been received by the; and confirmation of any TPS screening carried out by the organisation. Despite the notice being posted via special delivery to UKACL's registered office address and signed for on 27 November 2020 by 'Sutton' no response was received.
22. A further 3PIN was sent by the Commissioner to [REDACTED] on 5 January 2021 to obtain a copy of UKACL's Call Detail Records ("CDR's") for the

CLI's attributed to UKACL between 1 June 2020 and 31 December 2020. These were provided by [REDACTED] on 7 January 2021.

23. The Commissioner subsequently screened the CDR's against the TPS register to establish whether any further calls had been made to TPS registered numbers. Results showed that a total of 39,167 calls had been made to telephone numbers which had been registered with the TPS for not less than 28 days. Out of a total number of 47,461 telephone calls made, this equated to 82.5% of connected outbound calls made during the period.
24. The Commissioner wrote again to UKACL by e-mail on 7 January 2020 explaining that failure to comply with the served Information Notice was a criminal offence and requiring them to contact the Commissioner within seven days. On the same day a Mr Sutton responded to the e-mail. He explained that he had not been in the office since March 2020 due to the Covid-19 pandemic and was unable to answer the Commissioner's questions in full as he did not have the relevant information available. He asked for more time to respond as a result. He advised that UKACL was 'about to fold'. The Commissioner queried how the previous correspondence had been signed for at the registered office and were told that the office is a serviced building.
25. Due to government imposed restrictions the Commissioner informed UKACL on 1 February 2021 that the investigation had been placed on hold temporarily. Following the easing of restrictions, the investigation was resumed on 7 April 2021 with the Commissioner e-mailing UKACL requesting again that the Information Notice be responded to within 14 days. A further copy of the Notice was provided, however, UKACL again failed to respond.

26. The Commissioner sent a final chaser on 27 April 2021 indicating that if UKACL failed to respond that the matter would be considered for prosecution for failure to comply. Mr Sutton responded on 4 May 2021 to explain again that UKACL was in the process of closing and that no more complaints would be received as they had not reopened and did not plan to as a result of the pandemic. He also advised that since a lot of the accounts have been closed down there was very little information that he could provide.
27. The Commissioner sent an end of investigation on 3 June 2021 via e-mail to UKACL. Having done so the Commissioner carried out further checks for additional complaints against UCKACL's CLI's and identified a further seven including the following:
- *Very pushy saying that I had taken out a TV aerial insurance with them and wanting to update payment information. Which I haven't. After I hung up they phoned back repeatedly until I blocked the number. They were very pushy, wouldn't listen and clearly were just after my bank details. I was so concerned I phone my banks fraud team after.*
 - *cold call - to persuade an elderly vulnerable person with old age memory loss to take out unneeded insurance on equipment - and then immediately debit her account. my mother in law (call recipient) is unable to arrange her own affairs, the attitude when we called to insist the transaction was cancelled was quite rude [sic].*
 - *It has made me really ill, they keep calling and have taken money from me. I am an elderly woman*
 - *The call was a scam - they asked for credit card details and became incredibly rude when I started questioning them*

28. It was noted by the Commissioner that the complaints received appeared to name another organisation other the UKACL. The Commissioner contacted [REDACTED] on 4 June 2021 to make enquiries and was informed by return that the CLI's and CDR's in question were allocated to UKACL. UKACL had failed to address this in its responses to the Commissioner but acknowledged the complaints.
29. In respect of the 39,167 unsolicited direct marketing calls attributed to it, UKACL has to date not evidenced that the subscribers receiving them had not objected to receiving its direct marketing calls.
30. The Commissioner is satisfied that the 39,167 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
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 regulations 21 and 24 of PECR by UKACL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

33. The Commissioner finds that UKACL contravened regulations 21 and 24 of PECR.
34. The Commissioner finds that the contravention was as follows:
35. Between 1 June 2020 and 31 December 2020, UKACL used a public telecommunications service for the purposes of making 39,167 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. The Commissioner is also satisfied for the purposes of regulation 21 that these 39,167 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 UKACL that they did not object to receiving such calls
37. 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.
38. 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.
39. 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.

40. UKACL has failed to provide any evidence to the Commissioner that the subscribers who received these calls had notified UKACL that they did not, for the time being, object to such calls.
41. Further, as the complaints indicate, UKACL failed, as required by regulation 24 of PECR, to provide the recipient of the calls with the particulars specified at regulation 24(2) of PECR in that there is evidence that the calls did not accurately identify UKACL as the caller.
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 regulations 21 and 24 by UKACL arising from the organisation's activities between 1 June 2020 and 31 December 2020, and this led to 39,167 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified UKACL that they were willing to receive such calls.
44. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

45. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that UKACL's actions which constituted that contravention were deliberate

actions (even if UKACL did not actually intend thereby to contravene PECR).

46. The Commissioner does not consider that UKACL deliberately set out to contravene PECR in this instance.
47. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 48. Firstly, he has considered whether UKACL 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.
 49. 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 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
50. 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 UKACL would have received a notification from the TPS for each of the complaints being made in this case. That there were

complaints made to the TPS should have made UKACL aware of the risk that such contraventions may occur and were indeed occurring.

51. It is therefore reasonable to suppose that UKACL should have been aware of its responsibilities in this area.
52. Secondly, the Commissioner has gone on to consider whether UKACL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
53. In this case UKACL have provided no information to the Commissioner to assist her investigation and seemingly took no steps to ensure that the data it used was screened against the TPS every 28 days as requested. This is evident from the very high percentage of calls made to TPS registered telephone numbers. This is a basic requirement for any organisation conducting a live marketing campaign. Screening numbers against the TPS register would have reduced, if not eliminated the likelihood of TPS registered numbers being included in UKACL's marketing lists.
54. Reasonable steps in these circumstances may also have included conducting thorough checks on all of the data it was to use for its direct marketing campaigns; or at least obtaining and recording evidence of notification from those TPS-registered individuals whom had indicated that they did not object to receiving marketing calls from UKACL.
55. Given the volume of calls and complaints, it is clear that UKACL failed to take those reasonable steps.

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

The Commissioner's decision to issue a monetary penalty

57. The Commissioner has taken into account the following **aggravating features** of this case:

- The complaints received suggest that there was targeting of vulnerable individuals for financial gain with no evidence to indicate that the services advertised were ultimately being provided. The calls also appeared to be aggressive in nature;
- The actions of UKACL were carried out to generate business and to increase profits, gaining an unfair advantage on those businesses complying with PECR;
- Despite a limited acknowledgement of the Commissioner's correspondence, UKACL failed to co-operate with the Commissioner. This resulted in her issuing a formal Information Notice. Despite this being issued, UKACL still failed to provide a substantive response to her enquiries.

58. The Commissioner does not consider there to be any mitigating features in this case.

59. 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.

60. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. The Commissioner has not received any representations from UKACL in response .
61. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
62. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
63. The Commissioner has attempted to consider the likely impact of a monetary penalty on UKACL but has been unable to do so given the lack of recent publicly available information. UKACL was invited to provide financial representations in response to the Notice of Intent, but failed to do so. The Commissioner considers in the circumstances that a penalty remains the appropriate course of action.
64. 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.
65. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

66. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£100,000 (one hundred thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

67. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **13 April 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.
68. If the Commissioner receives full payment of the monetary penalty by **12 April 2022** the Commissioner will reduce the monetary penalty by 20% to **£80,000 (Eighty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
69. 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.
70. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

71. Information about appeals is set out in Annex 1.
72. 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.
73. 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 14th day of March 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)).