

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Domestic Support Limited

Of: Office 1, Arun Business Centre Littlehampton Marina
Ferry Road
Littlehampton
West Sussex
BN17 5DS

1. The Information Commissioner ("the Commissioner") has decided to issue Domestic Support Limited ("DSL") 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. DSL, whose registered office is given above (Companies House Registration Number: 08916306) 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 Data Protection Act 2018 ("DPA18") defines direct marketing as "*the communication (by whatever means) of advertising or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR and paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
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. DSL first came to the attention of the Commissioner following the identification of a particular Calling Line Identifier ("CLI") which was linked to complaints made to the TPS and the Commissioner's own Online Reporting Tool ("OLRT") between January 2020 and June 2020.
17. The Commissioner sent a Third-Party Information Notice ("3PIN") to the Communications Service Provider ("CSP"): [REDACTED] (" [REDACTED] ") for the CLI in question on 15 July 2020 requesting the identity of the CLI's subscribers. The response, which was received on 7 September 2020, identified the subscriber as DSL, and provided a list of CLIs allocated to DSL with the respective connection date for those CLIs.
18. The Commissioner conducted a search for complaints to the TPS/OLRT in relation to the CLIs disclosed, and found that there had been three complaints to the TPS and two complaints to the OLRT spanning 14 January 2020 and 17 June 2020, however none of those complaints named DSL as the caller, rather they identified the caller as "Homeforce", "Homeforth", or some similar variation, with the calls seemingly involving the advertising of insurance products.
19. The Commissioner sent a further 3PIN to [REDACTED] on 8 December 2020 to establish the Call Detail Records ("CDR"s) for the CLIs attributed to DSL between 1 January 2020 and 31 July 2020. A response was received that day from [REDACTED] which provided the CDRs. It was apparent from the information provided that during the relevant time there were eight CLIs allocated to DSL which were being used to make calls: 441237875012; 443301138650; 443301139250; 443301139950; 443330113350; 443330115850; 443330147628; and 443330147629.

20. The complaints received in relation to calls from these CLIs between 1 January 2020 and 31 July 2020 included the following:

- *When challenged as to whether they were already my service provider the girl admitted this was a courtesy call. I then asked if she was aware of and [sic] registered with TPS, she stated probably so I explained to her the company would be reported for unsolicited call to a number registered with TPS*
- *Cannot find them on the internet. Tried putting in Homeforth, also Holmfirth, could not find anything. Tried Companies House but nothing. Tried ringing number, but company does not receive calls on the number they used. I have registered with TPS in 2005 and still getting a load of cold calls, please stop them*
- *We should not be receiving unsolicited sales calls. We are savvy enough to refuse them; people who are older or less savvy run the risk of being conned into taking unnecessary insurance cover*
- *Wanting to give discount on my plumbing and drainage insurance, which I did not have with this company. they asked for a password and it I would suspect have gone further if I hadn't intervened....I could see where this conversation was going. Probably asking next for bank details*

21. The Commissioner calculated the number of calls which had originated from CLIs attributed to DSL between 1 January 2020 and 31 July 2020 and established that there had been 89,959 calls made in total.

22. The Commissioner conducted Open-Source Research into DSL and identified a website which could be linked to the company: *www.domesticsupport.co.uk*, however by 14 December 2020 this website no longer appeared to be active.
23. The Commissioner sent an initial investigation letter to DSL at its registered office address on 17 December 2020. This letter was returned to the Commissioner on 8 January 2021 marked 'return to sender'.
24. Using information obtained via the Commissioner's Intelligence Department, the Commissioner was able to ascertain the residential addresses for two company directors, and on 28 January 2021 he sent investigation correspondence to the individuals in their capacity as directors for DSL repeating the questions first asked in his correspondence of 17 December 2020. These letters were 'signed for' on 29 January 2021.
25. On 2 February 2021 a response was received from *admin@domesticsupport.co.uk*. This response did not address the Commissioner's specific questions, but instead made broader statements in respect of the Commissioner's enquiries. The response stated that DSL purchased data from third parties that "*had already pre-screened it for TPS*". DSL also stated they would "*then compare it to the in-house suppression list to further remove any numbers for TPS, and for all other reasons. Finally, Domestic Support would then use a paid-for online TPS screener to complete our own TPS screening. Domestic Support felt confident that this three-level approach would ensure that any and all numbers that were on TPS would be removed*". DSL stated that it "*no longer makes any sales or marketing calls whatsoever. The only calls that are made by Domestic Support are to*

administer existing customers with their existing products that they hold with us, or to call existing customers back upon their request. This has been the case since 31st August 2020". DSL was unable to confirm details of the CLIs used, stating that "We believe that the company numbers on your attached letter could have been from a previous phone system via [REDACTED]. Unfortunately the director that dealt with [REDACTED], was the named person on the account, and all the associated telephone numbers, has now left Domestic Support. As such we cannot gain entry into this now cancelled and removed phone system to confirm these".

26. Further enquiries were sent to DSL on 3 February 2021, repeating the questions which remained unanswered, and also asking for additional information including about the sources of the data used for DSL's calls at the relevant time. The Commissioner also asked for an explanation of why calls emanating from CLIs attributed to DSL appeared to have named "Homeforce" (or similar), noting that the Directors themselves are 'persons with significant control' of a company called 'Homeforce Services Ltd' (which at the time of the alleged contravention shared the same registered office address of DSL). The Commissioner wished to understand the relationship between the two entities.
27. In its response DSL confirmed that it was indeed unable to provide details of the CLIs used at the time, or details of the volume of calls made by DSL between 1 January 2020 and 31 July 2020. DSL did however confirm that it used two Third-Party Data Providers to obtain the data which would have been used for its calls ("[REDACTED]" and "[REDACTED]" – referred to hereafter collectively as the "Third-Party Data Providers"), but failed to identify the sources from which those Third-Party Data Providers actually obtained the data.

28. DSL advised that “[c]urrent telephone numbers used and in service are: 01243 839590. Existing customers can call us (inbound only) on 0844 41 45 202, which links to this phone number. The 01243 839590 phone number is held by [REDACTED]”.
29. In response to the Commissioner’s request for any contracts between DSL and its Third-Party Data Providers, and details of its due diligence checks, DSL simply stated that “[t]he [Third-Party Data Providers] provided us with data pre-screened for TPS. We then removed any data from our suppression list, and then performed our own TPS check, thus giving any data a three-level check for TPS and other reasons”. No contracts were provided.
30. In answer to the Commissioner’s request for an explanation of the relationship between DSL and Homeforce Services Ltd, DSL stated that it “has not ever shared any data with any company for any reason whatsoever, nor will it do so in the future”.
31. The Commissioner asked some follow-up questions relating to, inter alia, the consent held for its direct marketing calls, the domains used by the Third-Party Data Providers, and the relationship between DSL and Homeforce Services Ltd (noting the unsatisfactory response received previously). In response DSL stated “[r]egarding consent to make the calls: We would previously purchase data from the data companies provided in the previous email, these providers assured us that they are TPS compliant, and that all numbers were screened from TPS. Following this we would perform two further checks, by way of comparison with our suppression list, and then a further TPS check with an online provider. As we would only use data once as per our contract agreement with the data provider(s) the data was then removed from all our systems. This means that I cannot unfortunately

therefore give you details of the specific data company that provided us with the specific numbers detailed in your correspondence, as we have removed all the records from that time. I trust this makes sense".

32. DSL failed to provide details of the domains used by its Third-Party Data Providers and, in response to the Commissioner's request for a copy of the consent statements which individuals would have been presented with, DSL said simply *"we do not collect data, any and all data previously used by Domestic Support Ltd was obtained from data companies"*. Regarding the relationship with Homeforce Services Ltd, DSL stated *"Domestic Support Ltd and Homeforce Services Ltd are not directly linked, Homeforce Services Ltd is a different and separate venture, which is looking to provide online household services"*. No explanation was given for why calls emanating from CLIs attributed to DSL appeared, from the complaints received, to be identifying themselves as "Homeforce", with DSL stating just that it *"did its utmost to ensure that nobody registered with TPS was called for any reason whatsoever, by way of the checks previously mentioned. Whilst Domestic Support Ltd was undertaking tele-marketing our staff were fully trained to ensure that the customers knew exactly who was calling, and checks were performed to ensure this was upheld"*.
33. The Commissioner issued separate 3PINs on 10 February 2021 to the CSPs for the two numbers disclosed in DSL's response: [REDACTED] (regarding the CLI: 01243839590), and [REDACTED] (regarding the CLI: 08444145202).
34. In subsequent correspondence, DSL said of its two known Third-Party Data Providers that "[REDACTED] strictly comply with ICO code, DMA code of practice and the EU Communications Act [...]"; and "[REDACTED]: Underwent a full data audit, link to which is attached, which we fully

researched before purchasing any data. This fully details consent given by data subjects. The research we performed, coupled with ICO, DMA and GDPR certified logos and details ensured we were purchasing compliant data for use. [REDACTED] DSL

separately attached a copy of a standard factsheet in relation to its first Third-Party Data Provider, and an unsigned invoice dated 25 August 2020 (i.e., outside of the period of contravention) for the purchase of 3,000 records of homeowners aged between 55 and 75.

35. On 11 February 2021 the Commissioner received a response from [REDACTED] in relation to his queries of 10 February 2021, specifically regarding the CLI: 01243839590. [REDACTED] identified the subscriber of that CLI as [REDACTED] (which the Commissioner notes at the time of the alleged contravention shared the same registered office address as both DSL and Homeforce, and has the same two directors as DSL).
36. On 12 February 2021 the Commissioner received a response from [REDACTED] in relation to his queries of 10 February 2021 specifically regarding the CLI: 08444145202. [REDACTED] confirmed that the subscriber to this CLI was DSL.
37. Noting DSL's earlier claim that it had ended its contract with [REDACTED], the Commissioner sent [REDACTED] a request for details of the end-date of CLI allocation for those CLIs identified on 8 December 2020. [REDACTED] response of 16 February 2021 indicated that the end date for 17 of the 23 CLIs first identified on 7 September 2020 as being allocated to DSL was 31 October 2020; 6 of the 23 CLIs remained allocated to DSL until 31 January 2021.

38. On 18 February 2021 the Commissioner repeated his request to DSL for details of the sources used by the Third-Party Data Providers when obtaining the data which would be purchased by DSL.
39. Until 26 March 2021 DSL was unable to provide any substantive response to the Commissioner's enquiries, citing a lack of cooperation from its Third-Party Data Providers. When DSL did provide a response it included an extract of an email response it had received from one of its Third-Party Data Providers ([REDACTED]) which stated that:

"[t]he lawful basis for processing was legitimate interest.

[REDACTED] is a reseller of one of the larger data aggregators in the UK. They source the data from a variety of sources, predominantly websites. As per GDPR everyone that signs up is informed of how their data will be used. The exact websites and our data aggregator is commercially sensitive information.

All records were TPS checked on output and licenced to you for a single use within 3 months of 20/08/2020."

40. On 28 April 2021 the Commissioner sent an 'end of investigation' letter to DSL. However, on 10 May 2021 a further request for information was sent to DSL requesting evidence in respect of its TPS checks. DSL responded the same day to advise that it used an online provider called [REDACTED]. Following a request for copies of service invoices between DSL and [REDACTED] between the period of 1 January 2020 to 31 July 2020, DSL provided an invoice dated 13 January 2020 for '[REDACTED]' in the sum of £1,152, and an excel spreadsheet purporting to show two payments: the one

from 13 January 2020 and an additional payment of £436 on 12 March 2020.

41. The Commissioner contacted [REDACTED] to request details of the checks carried out on DSL's behalf. [REDACTED] initially responded to advise that an account could be found using the relevant email and postal addresses provided by the Commissioner, but that the company name on the account differed from DSL. The Commissioner advised that DSL may have used a different trading style, and asked for information "using any or all of the identifiers" which the Commissioner had provided. [REDACTED] subsequently provided a spreadsheet which showed that it had charged for the processing of 80,318 'records' between 13 January 2020 and 2 June 2020. It is not clear what identifiers were used by [REDACTED] in reaching the figure provided within the spreadsheet, i.e. whether these 80,318 records were checked specifically on behalf of DSL, or one of the other organisations with links to DSL's directors which resided at the same registered office address.
42. Notwithstanding these checks, an examination by the Commissioner of the 89,959 calls made from the eight CLIs specifically attributed to DSL by its CSP, [REDACTED], between 1 January 2020 and 31 July 2020, revealed that 69,133 calls were made to subscribers whose telephone number had been registered with the TPS for not less than 28 days.
43. On 29 September 2021 the Commissioner sent a further set of enquiries to DSL, with evidence of the 69,133 calls which were alleged to have been made to TPS-registered subscribers from DSL's CLIs, inviting DSL to provide an explanation for them.

44. In response, DSL stated that it could not confirm whether it made the calls, but that *"Domestic Support Ltd are the only company or organisation to have used the above mentioned CLIs, and certainly no other organisation had access to that particular phone system. This suggests that Domestic Support Ltd did make these calls, as it would be impossible for any other company to use the CLIs"*. DSL was asked to explain again why 'Homeforce' was named by the complainants, to which it responded that *"As it was only Domestic Support Ltd that used the aforementioned CLIs we cannot directly explain why a complainant used a different company name, however we can, from experience, suggest that many customers do from time to time not record the correct information"*.
45. In respect of the 69,133 unsolicited direct marketing calls attributed to it, DSL has to date been unable to evidence that the subscribers receiving them had not objected to receiving its direct marketing calls.
46. The Commissioner is satisfied that the 69,133 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
47. The Commissioner has made the above findings of fact on the balance of probabilities.
48. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by DSL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

49. The Commissioner finds that DSL contravened regulations 21 and 24 of PECR.
50. The Commissioner provisionally finds that the contravention was as follows:
51. Between 1 January 2020 and 31 July 2020, DSL used a public telecommunications service for the purposes of making 69,133 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.
52. The Commissioner is also satisfied for the purposes of regulation 21 that these 69,133 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 DSL that they did not object to receiving such calls.
53. 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.
54. 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.

55. 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 from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
56. Whilst there is evidence to suggest that DSL, or at least one of the separate legal entities which held DSL's registered office address as its own at the time, were carrying out some TPS checks on data, there is no explanation provided for why CLIs which DSL accepts were in use exclusively by itself at the material time were used to make 69,133 unsolicited calls to individuals who had been registered with the TPS for not less than 28 days.
57. DSL has been unable to provide any evidence that the subscribers who received these calls had notified DSL that they did not, for the time being, object to such calls. Indeed, it is apparent from the Commissioner's investigation that DSL is unaware of precisely where the data which it purchased was even sourced. Following a prompt from the Commissioner, DSL took steps to liaise with its Third-Party Data Providers to obtain details of the domains/websites used, and evidence of notification that subscribers did not object to calls. The result of those enquiries was a single response from one of the Third-Party Data Providers stating that "*The exact websites and [its] data aggregator is commercially sensitive information*". The Commissioner's direct marketing guidance is clear [at paragraph 106] that "*Organisations should [...] make sure that they keep clear records of exactly what someone has consented to. In particular, they should*

record the date of consent, the method of consent, who obtained consent, and exactly what information was provided to the person consenting. They should not rely on a bought-in list unless the seller or list broker can provide these details. Organisations may be asked to produce their records as evidence to demonstrate compliance in the event of a complaint."

58. The Commissioner is therefore satisfied that there is evidence of 69,133 unsolicited direct marketing calls being made by DSL to subscribers who had been registered with the TPS for not less than 28 days, and who had not previously notified DSL that they did not object to receiving such calls.
59. Further, as the complaints indicate, DSL failed, as required by regulation 24 of PECR, to provide the recipient of the calls the particulars specified at regulation 24(2) of PECR in that there is evidence that the calls from DSL's CLIs identified the caller as a variation of 'Homeforce': a separate legal entity to DSL.
60. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

61. 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 DSL arising from the organisation's activities between 1 January 2020 and 31 July 2020, and this led to 69,133 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified DSL that they were willing to receive such calls. A total of 5 complaints were

received in relation to DSL's activities over the relevant time, with the complaints suggesting that DSL provided inaccurate information as to its identity.

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

Deliberate or negligent contraventions

63. The Commissioner has considered whether the contravention identified above was deliberate.
64. The Commissioner considers in this case that DSL did deliberately contravene regulations 21 and 24 of PECR. It is noted that despite some checks being carried out, there is sufficient evidence to suggest that DSL conducted a large number of unsolicited direct marketing calls to TPS-registered individuals, and made no apparent effort to establish that those individuals did not object to receiving such calls. The Commissioner is particularly concerned that the apparent use of different company names during its calls suggests that DSL was deliberately attempting to deceive individuals as to its identity.
65. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
66. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
67. Firstly, he has considered whether DSL knew or ought reasonably to have known that there was a risk that this contravention would occur.

This is not a high bar, and he is satisfied that this condition is met.

68. 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.
69. 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 DSL would have received a notification from the TPS for each of the complaints being made in this case. That there were three complaints made to the TPS alone over the period of the contravention should have made DSL aware of the risk that such contraventions may occur and were indeed occurring.
70. It is therefore reasonable to suppose that DSL should have been aware of its responsibilities in this area.
71. Secondly, the Commissioner has gone on to consider whether DSL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
72. 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. It was not until the Commissioner began his investigation, and pressed DSL to provide details of the data sources, that DSL took steps to engage with its Third-Party Data Providers to obtain this information. These attempts were unsuccessful, so it is clear that at the time of purchasing the data DSL cannot have had any awareness of the circumstances under which the data was obtained from individuals, and could not therefore have been assured that they would have agreed to be contacted by DSL.

73. Reasonable steps in these circumstances may also have included conducting thorough TPS 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 it intended to contact prior to engaging in its direct marketing calls.
74. Given the volume of calls in contravention of Regulation 21 PECR, it is clear that DSL failed to take those reasonable steps.
75. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

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

- The Commissioner is concerned by the sole data-purchase invoice which was produced during the investigation which showed that DSL was purchasing records for homeowners specifically aged between 55 and 75 years old, which would indicate that older individuals were being targeted. The fact that this invoice post-dates the period of contravention has been considered by the Commissioner, however he considers that DSL's earlier general practices can be inferred by its content.
 - DSL acted deliberately in contravention of PECR with a view to generating an increase in profit and turnover.
 - DSL's co-operation with the Commissioner was lacking at points in that it failed to thoroughly answer the Commissioner's specific questions, requiring further follow-up investigations.
77. The Commissioner notes the evidence that DSL did appear to screen some data against the TPS register via a third-party, however he does not consider that this constitutes mitigation for the contravention which took place.
78. 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.
79. 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 DSL on this matter.

80. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
81. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty
82. The Commissioner has considered the likely impact of a monetary penalty on DSL Using publicly available information, and the representations made by DSL in response to the Notice of Intent. 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.
83. 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.
84. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

85. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£80,000 (eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

86. 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.
87. If the Commissioner receives full payment of the monetary penalty by **12 April 2022** the Commissioner will reduce the monetary penalty by 20% to **£64,000 (sixty-four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
88. 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.
89. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
90. Information about appeals is set out in Annex 1.

91. 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.

92. 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
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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)).