

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Home Sure Solutions Ltd

Of: Unit E10a & 10b Knoll Business Centre,
325-327 Old Shoreham Road,
Hove,
England,
BN3 7GS

1. The Information Commissioner ("the Commissioner") has decided to issue Home Sure Solutions Ltd ("HSSL") 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. HSSL, whose registered office is given above (Companies House Registration Number: 11389563) 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. 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 and paragraphs 430 & 432(6) to Schedule 19 of the 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. HSSL first came to the attention of the Commissioner in September 2020 following a number of complaints about unsolicited direct marketing calls relating to home emergency cover (i.e. white goods warranties, maintenance, and insurance services) from a particular Calling Line Identity ("CLI").
16. The Commissioner issued a third-party information notice ("3PIN") to the relevant communications service provider, [REDACTED], trading as [REDACTED], who confirmed in response that the CLI in question was allocated to HSSL. [REDACTED] proceeded to provide details of other CLIs also allocated to HSSL's account between 1 July 2020 and 17 September 2020, and provided records of the outbound calls made from those CLIs during that time. Using this information, the Commissioner was able to identify six complaints arising from the CLIs attributed to HSSL between 1 July 2020 and 17 September 2020, together with a number of complaints which referred expressly to HSSL by name from the same CLIs falling outside of this prescribed period.

17. The Commissioner also carried out a provisional screening exercise of HSSL's Call Dialler Records ("CDR"s) over the prescribed period, as provided by [REDACTED], against the TPS register. Results showed that there were 114,285 calls made to subscribers, of which 71,736 were made to telephone numbers which had been registered with the TPS for not less than 28 days.
18. Concerned that HSSL's practices may be in contravention of PECR, the Commissioner sent an initial investigation letter to HSSL on 15 December 2020 requesting inter alia information as to HSSL's direct marketing activity.
19. The Commissioner received no response to this letter, or to the chaser letter which was sent on 12 January 2021.
20. The Commissioner therefore proceeded to serve an Information Notice on HSSL on 26 January 2021 requesting information deemed necessary for the purposes of determining HSSL's compliance with data protection legislation. The information requested included the volume of calls made by HSSL between 1 March 2020 to 30 September 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 Commissioner/TPS in relation to HSSL's direct marketing activity; and confirmation of any TPS screening carried out by the organisation.
21. HSSL provided a substantive response on 1 March 2021, and apologised for the delay in providing the requested information. Within its response it was confirmed that HSSL does not obtain data directly from individuals, rather it obtains it from a third party named as [REDACTED] [REDACTED] (which is understood to be a trading name of [REDACTED] [REDACTED]) (the "third-party data provider"). In addition it was

confirmed that HSSL does not hold specific consent for the calls made; it relies on the third-party data provider to hold this. Furthermore, it stated that it does not screen data against the TPS register, however it requests that its third-party data provider screens the data prior to purchase. HSSL provided some screenshots of emails between itself and its third-party data provider from February 2020 regarding the purchase of data and TPS checks.

22. The Commissioner sent some follow-up queries to HSSL later that day requesting evidence of the 'consent statements' provided to individuals when their data was collected; evidence of any due diligence conducted with respect to the third-party data provider; and a copy of its contract with the third-party data provider.

23. HSSL responded that day to reiterate that, as it does not collect the data from individuals directly, it does not have copies of the 'consent statements'. It also confirmed that it does not have a contract with its third-party data provider, but made reference to its earlier response to the Commissioner where it had included screenshots of various email exchanges with that third-party data provider as purported evidence of due diligence. Within one of those email screenshots its third-party data provider provided prices for data which met HSSL's criteria (UK Homeowners; aged 60+; landline numbers), stating "*All Telephone Numbers will be TPS and Live Number checked on the day of output*"; this screenshot is undated so it is not clear when these prices were provided to HSSL. Another screenshot dated 5 February 2020 contained text from the third-party data provider stating that "*Consumers opt in, predominantly from online transactions. This could be from [REDACTED], [REDACTED] or anywhere else you can think of. It's common for consumers to be adamant that they have never opted in but when checks are made low and behold they did. They just don't recall it. If you get anyone causing you problems relating to this, get the*

consumer to email [REDACTED]. This is then sent directly by us to the source of the data, who then deal with the consumer directly. We do not get involved, and neither should you. [...] We do not take calls on this matter, because we simply do not know the answers! [...] Same goes for the TPS ones, and it'll be handled."

24. The Commissioner sent a further email to HSSL on 2 March 2021 advising that he would expect HSSL, as part of its due diligence, to possess evidence of the consent / 'consent statements' being relied upon for its direct marketing campaign. Furthermore, a contract, or purchase agreement regarding the acquisition of data should be provided as a matter of course. The Commissioner therefore requested evidence of the 'consent statements' themselves, and any formal agreements between HSSL and its third-party data provider.
25. HSSL's response later that day advised that it "*[feels it] did due diligence by asking for confirmation from the company that all information was obtained correctly and followed all guidelines*". HSSL also explained that it reviewed the third-party data provider's terms and conditions on its website which it stated included the "ICO logo". HSSL said that it felt it could trust the company as a "GDPR regulated business". As for any confirmation that the data was compliant, HSSL stated that it "*took [the third-party data provider's] word for this*".
26. HSSL also reaffirmed that there were no contracts with its third-party data provider, and that it would just be invoiced for the data it purchased (although no copies of these invoices were provided).
27. In response, the Commissioner advised HSSL on 3 March 2021 that it does not provide approval to any organisation for its business practices. The Commissioner advised HSSL that it should take steps to provide copies of the 'consent statements' which would have been

visible to individuals at the point when the third-party data provider obtained their data.

28. HSSL responded to say that it was *"unaware that [it] had to obtain confirmation of consent from every lead purchased from the company. [It does] not have this information and have never been given it by the [third-party data provider]. HSSL confirmed that it was "no longer purchasing data or contacting prospective clients"*.
29. The Commissioner sent an 'end of investigation' letter to HSSL on 3 March 2021.
30. The Commissioner served a further 3PIN on 8x8 on 28 April 2021 in an attempt to establish the volume of calls made by HSSL which were received by subscribers. The response received on 10 May 2021 confirmed that a total of 344,099 connected outbound calls were made by HSSL between 3 March 2020 and 30 September 2020.
31. The Commissioner conducted an independent screening of the CDRs provided by ██████ to discover that of the 344,099 outbound calls made within that period, 229,483 calls were made to numbers which had been registered with the TPS for not less than 28 days at the time they received the call.
32. The Commissioner is satisfied that the 229,483 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
33. The Commissioner has made the above findings of fact on the balance of probabilities.

34. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by HSSL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

35. The Commissioner finds that HSSL contravened regulation 21 of PECR.
36. The Commissioner finds that the contravention was as follows:
37. Between 3 March 2020 and 30 September 2020, HSSL used a public telecommunications service for the purposes of making 229,483 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.
38. The Commissioner is also satisfied for the purposes of regulation 21 that these 229,483 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 HSSL that they did not object to receiving such calls.
39. 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.

40. 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.
41. 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.
42. HSSL has failed to provide any evidence that the subscribers had not objected to its unsolicited direct marketing calls, which it made having purchased data from a third-party data provider following mere assurances of veracity. Furthermore, HSSL has failed to provide any satisfactory evidence of due diligence being conducted in respect of the data which it was choosing to purchase. There is no evidence at all before the Commissioner to demonstrate that the individuals who received these unsolicited direct marketing calls from HSSL had provided notification that they did not object to receiving such calls from it. HSSL also failed to conduct any checks of its own against the TPS register.
43. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

44. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by HSSL arising from the organisation's activities between 3 March 2020 and 30 September 2020, and this led to 229,483 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified HSSL that they were willing to receive such calls.
45. The individuals who received these calls had their data collected from unidentified sources, and sold on by a third-party data provider for use by HSSL. The Commissioner is satisfied that individuals receiving these calls, who themselves had no prior relationship with HSSL, could not reasonably have expected to receive calls from HSSL, and had indeed registered with the TPS with a view to eliminating the possibility of receiving such unsolicited calls.
46. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

47. The Commissioner has considered whether the contravention identified above was deliberate.
48. The Commissioner does not consider that in this instance that there is sufficient evidence to find that HSSL deliberately set out to contravene PECR.
49. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

50. Firstly, he has considered whether HSSL 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. HSSL purchased data from a third-party data provider which was ambiguous as to the source of the data being used, and dismissive of the potential intrusion on individuals' privacy. HSSL should have been alerted by its third-party data provider's cavalier attitude towards compliance and ought to have been suspicious about precisely where the data was being obtained from. Instead, it was content to purchase data which had been obtained from undisclosed sources, and relied on simple assurances that the data had been checked against the TPS register.
51. 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.
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 HSSL would have received a notification from the TPS for each of the complaints being made in this case. The Commissioner was able to establish that there were a total of nine complaints made to the TPS alone over the period of the contravention; the notification

which HSSL would have received for these complaints, in the Commissioner's submission, should have made HSSL aware of the risk that such contraventions may occur and were indeed occurring.

53. It is therefore reasonable to suppose that HSSL should have been aware of its responsibilities in this area.
54. Secondly, the Commissioner has gone on to consider whether HSSL 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. HSSL failed to carry out anything approaching satisfactory due diligence, and was instead content to rely on assurances by a third-party data provider. HSSL says that it was reassured by the presence of an 'ICO logo' on the third-party data provider's website, but conducted no independent checks with the ICO to check the validity of this; if it had done so the Commissioner would have been able to advise HSSL that it does not endorse particular organisations. Furthermore, HSSL does not know (and took no substantive steps to establish) the original source of the data which it purchased, and failed to conduct its own TPS checks (which it would be recommended to have done despite any assurances provided by its third-party data provider).

56. The Commissioner guidance also advises that, in terms of the expected due diligence when purchasing data, a reputable list broker should be able to demonstrate that the marketing list being sold is reliable, by explaining how it was compiled and providing full details of what individuals were told at the point when their details were taken. If the seller cannot provide this information, a buyer should not use the list. It would be prudent for a buyer to have a written contract in place confirming the reliability of the list, as well as making its own checks. HSSL failed to ensure that a contract, or indeed any formal arrangement, was in place with its third-party data provider, and failed to carry out its own checks.
57. Given the volume of calls, it is clear that HSSL failed to take these, or indeed any, reasonable steps.
58. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

59. The Commissioner has taken into account the following **aggravating features** of this case:
- The Commissioner is concerned by the 'pressured sales' tactics and apparent mis-selling of products and services which subscribers had clearly not anticipated receiving.
 - HSSL acted in contravention of PECR to generate cashflow and profit, gaining an unfair advantage on those organisations which complied with the legislation.

- HSSL were quoted a price by its third-party data provider for data relating to individuals that were aged 60+; this criteria appears to have been specified by HSSL. The Commissioner is worried that this demonstrates the deliberate targeting of a potentially vulnerable portion of society.
60. The Commissioner does not consider that there are any **mitigating features** in this case.
61. 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.
62. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. HSSL did not provide any representations in response to the Notice of Intent.
63. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
64. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
65. The Commissioner has considered the likely impact of a monetary penalty on HSSL. HSSL was invited to provide financial representations in response to the Notice of Intent, but failed to do so. The Commissioner 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.

66. 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.
67. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

68. 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

69. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **14 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.
70. If the Commissioner receives full payment of the monetary penalty by **13 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.

71. 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.

72. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

73. Information about appeals is set out in Annex 1.

74. 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.

75. 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)).