

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Easylife Limited

Of: 94 Orchard Gate, Greenford, England, UB6 0QP

1. The Information Commissioner ("the Commissioner") has decided to issue Easylife Limited ("Easylife") with a monetary penalty of £130,000 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. Easylife, whose registered office is given above (Companies House Registration Number: 05221840) is the organisation stated in this notice to have instigated the use of a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.

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

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

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

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

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

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

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

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

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

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

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

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

7. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited (“TPS”) is a limited company which operates the register on the Commissioner’s behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.

8. Section 122(5) of the Data Protection Act 2018 (“DPA18”) defines direct marketing as “*the communication (by whatever means) of advertising material or marketing material which is directed to particular individuals*”. This definition also applies for the purposes of PECR (see regulation 2(2) PECR & Schedule 19 paragraphs 430 & 432(6) DPA18).

9. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
10. A "subscriber" is defined in regulation 2(1) of PECR as *"a person who is a party to a contract with a provider of public electronic communications services for the supply of such services"*.
11. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:
- "(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –*
- (a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,*
 - (b) subsection (2) or (3) applies.*
- (2) This subsection applies if the contravention was deliberate.*
- (3) This subsection applies if the person –*
- (a) knew or ought to have known that there was a risk that the contravention would occur, but*
 - (b) failed to take reasonable steps to prevent the contravention.*
12. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the Information Commissioner's Office's ("ICO") 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. Easylife Limited ("Easylife") is a company which sells household products through catalogues. The brand was founded in 1992, and Easylife was incorporated on 3 September 2004 (at that date "Easylife Group Limited"). Easylife has one active director registered at Companies House, Mr Gregory Grant Caplan, who is the Chief Executive Officer. Mr Caplan is also a director of "Easylife Holdings Limited", which is registered as a person of significant control of Easylife.
16. On 20 November 2018, the Daily Mail newspaper published an article describing how, amongst other things: an 87-year-old customer was signed up to a £59.99-a-year Easylife motoring club offering discounts on car maintenance when they did not even have a car; a 76-year-old was bombarded with calls pressuring her into joining its Easylife Supercard service discount card, after which £69.99 was taken from her bank card; and an 80-year-old who could not drive was signed up to the £59.99 Easylife motoring club. On 27 November 2018, the Daily Mail

published a follow-up article stating that it had been inundated with complaints from dozens of Easylife customers and concerned relatives, following which Easylife was refunding all customers whom the newspaper had highlighted, although Easylife maintained that it had abided strictly by all relevant legal rules¹.

17. In 2019, the National Trading Standards Intelligence Team referred Easylife to the Commissioner, due to Easylife's non-compliance with consumer protection law, which had led to Easylife being the subject of a voluntary undertaking under the Enterprise Act. As a result of his enquiries, the Commissioner held a compliance meeting with Easylife on 3 June 2019 regarding data protection concerns arising from its email activity, data alliances, deletion of data, data retention policy, product sales, call centre operations, data controller registration and complaints which the Commissioner had received. The very nature of a compliance meeting is to raise awareness and concerns about data protection practice and the Commissioner considers that a prudent business entity, in the context of recent regulatory contact with the Commissioner, would subsequently undertake an appropriate due diligence exercise before embarking on an unprecedented course of conduct, which would have brought to its attention the clear guidance contained in the Commissioner's publicly available Direct Marketing Guidance².

18. Easylife came to the attention of the Commissioner again during an investigation into a different company, [REDACTED] ("[REDACTED]"), which commenced on 11 May 2020, concerning unsolicited marketing calls relating to funeral plans.

¹ The Commissioner discovered these articles in the course of open-source research during the ensuing investigation.

² See para 84 of the Upper Tribunal's judgment in *Leave.EU Group Limited, Eldon Insurance Services Ltd v Information Commissioner* GIA/918/920/921/922/923/2020.

19. On 29 June 2020, as part of its investigation into [REDACTED], the Commissioner issued a Third-Party Information Notice to '[REDACTED]' ('[REDACTED]') for the period 1 May 2019 to 29 June 2020 for call detail records ("CDRs").
20. It emerged that [REDACTED] was also conducting marketing calls for Easylife relating to 'Easylife Clubs', each offering subscription to a service. Joining was incentivised by a trial period during which, for a small postage fee, the individual would be offered a voucher, such as a £10 petrol voucher in respect of the motoring club. If the individual did not cancel the subscription during the trial period, then a more expensive membership commenced, usually costing between £60 and £80 a year. Therefore, on the basis the basis that Easylife may be instigating unlawful direct marketing calls, the Commissioner commenced an investigation into Easylife under regulation 21 of the PECR.
21. The Commissioner's investigation discovered that, between 12 August 2020 and 2 December 2020, four complaints had been upheld against Easylife by the Advertising Standards Agency, the self-regulatory body of the advertising industry of the United Kingdom, concerning Easylife making medicinal claims for unlicensed products or making misleading claims about its products.
22. The Commissioner had evidence to believe that between 1 August 2019 and 19 August 2020 ("the relevant period"), individuals submitted six (6) TPS and sixteen (16) ICO complaints about unsolicited calls attributed to Easylife.
23. Each of the six TPS complaints received between 1 August 2019 and 19 August 2020 concerned unsolicited live marketing calls. Complainants

reported that these calls were persistent despite requesting not to receive such calls.

24. Each of the 16 complaints to the Commissioner also concerned unsolicited live marketing calls. The complaints included individuals who had felt angry, concerned, upset, anxious, threatened, disrupted, annoyed, distressed or harassed in response to the calls; an elderly hearing-impaired individual registered with the TPS who had been unable to hear most of the call; and an individual who had been mis-sold two subscriptions and required a family member's help to arrange a refund.
25. On 19 August 2020, the Commissioner sent Mr Caplan, in his capacity as Director of Easylife, an initial investigation letter into potential contraventions of regulation 21 PECR. The Commissioner set out his concerns, explained the Commissioner's remit and powers, sent an appendix of the complaints which the Commissioner and the TPS had received, and requested further information from Easylife, in a specific and detailed list, for the relevant period.
26. On 21 September 2020, the Commissioner received a response from Mr [REDACTED], Director of [REDACTED] on behalf of Easylife. He attached a document dated 17 September 2020, which stated that Easylife only conducted email and telephone marketing to previous customers, whose data was obtained through a sale. He explained that Easylife did not collect evidence of consent from individuals to whom it marketed, but instead relied on a soft opt-in, customers were given the option to opt out of marketing at the point of registration, and that on the telephone if a customer requested no further marketing, the call operator would then start a process to exclude that customer. Individuals who were registered with the TPS were

treated in the same way.

27. The Easylife privacy policy which [REDACTED] provided contains a reference to the PECR and the soft opt-in, which demonstrated that Easylife was aware of the PECR³.
28. Easylife provided comments on the complaints which the Commissioner had shared and, in regard to the six complaints which had been made directly to the TPS, stated, "Calls are not screened against the TPS."
29. The 31-page 'Easylife Inbound & Outbound Training Manual' which [REDACTED] sent the Commissioner contained no mention of the PECR or the TPS. The 'Easylife Group List Owner Compliance' questionnaire supplied by Easylife to the Commissioner contained details of Easylife's database and screening procedures. That document stated that the list was screened quarterly against "goneaways" and "deceased" but was not screened against the TPS.
30. On 21 September 2020, the Commissioner requested further information from Easylife.
31. Easylife made a partial response on 28 September 2020. Easylife stated that it had made an error in its previous answers and during the period 1 August 2019 to 18 August 2020, the number of records provided in relation to Easylife Clubs was 818,000, whilst 105,411 was the number of calls which had been made for 'Easylife Health', of which 44,702 were answered. [REDACTED] also provided the scripts for four of the marketing

³ NB, the "soft opt-in" is a term of reference to regulation 22(3) PECR. It does not apply for the purposes of regulation 21 PECR.

campaigns.

32. On 29 September 2020, the Commissioner replied, persisting with his request for copies of all scripts; asking for the catalogue purchase page in a legible format; and requesting regular updates on progress of collection of the outstanding information.
33. Easylife sent a further response on 30 September 2020.
34. On 2 October 2020, the Commissioner emailed [REDACTED] with further requests for information.
35. Easylife replied on 9 October 2020. Having seen the 'Easylife Health' script, the Commissioner considered that the purpose of the campaign was to identify individuals with a certain health condition, based on a product which they had purchased, and to cross-sell them other products, and this raised concerns whether Easylife was unlawfully profiling its customers and inferring health data, which is special category data. The outbound contract with [REDACTED] dated 1 October 2019 referred to consumer protection regulation and the GDPR but was silent on the PECR. Easylife agreed to provide data to [REDACTED] daily, which would remain the property of Easylife. Although Easylife had redacted the cost of the data in the contract, the Commissioner had knowledge of it from its investigation into [REDACTED]. Since the Commissioner knew that [REDACTED] paid Easylife [REDACTED] for each sales lead and renewals were paid for separately, and the Commissioner knew that Easylife had provided 818,000 records to [REDACTED] during the contravention period, he calculated that Easylife's revenue from the outbound contract was at least [REDACTED].

36. The Commissioner issued a further Third-Party Information Notice to [REDACTED] on 12 October 2020 in respect of the period 30 June 2020 to 11 October 2020.
37. On 15 October 2020, the Commissioner replied to Easylife, stating that many of the proposed contractual changes seemed sensible but observing that the primary points of concern to anyone instigating telemarketing through a third party should be avoiding contravening regulation 21 of the PECR, by ensuring that the third party does not call individuals on the TPS register without explicit prior consent to do so nor call individuals who had requested not to be called.
38. Since Easylife had not collected any notifications from any customers who did not object to the instigation of telephone marketing, the Commissioner needed CDRs to establish how many calls had been instigated by Easylife to TPS-registered individuals. The Commissioner considered the responses from [REDACTED] to the Third-Party Information Notices which it had issued on 29 June 2020 and 12 October 2020. On 26 October 2020, the Commissioner issued a further Third-Party Information Notice to [REDACTED].
39. [REDACTED] and the Commissioner then spoke by telephone and [REDACTED] emailed in regard to their discussion on 30 October 2020. Easylife admitted, for the first time, that by requiring customers to opt out by sending an email or by calling a freephone number, they had not been complying with "ICO guidelines". In further correspondence on 19 November 2020, Easylife admitted that no primary monthly catalogues sent during the investigation period had contained an opt-out box. Easylife stated that it did not want to be competitively disadvantaged compared to others in its sector. Nevertheless, the two magazine inserts

provided by [REDACTED], apparently issued within the contravention period, did contain opt-out boxes. Easylife stated that Easy Life Group were on course to process one million orders, of which 60% were telephone orders. Easylife said that only an unspecified proportion of the orders were new customers.

40. Having learnt that 60% of Easylife's business was through telephone orders, the Commissioner requested the inbound order script, in order to establish what notification options and privacy information the majority of Easylife's customers were presented with when they called to place an order and their data was collected.
41. On 11 December 2020, the Commissioner pressed Easylife to provide the script and advised Easylife of the Commissioner's power to issue an Information Notice. On 16 December 2020, Easylife stated that there was no inbound script but that a prompt appeared in the Customer Relationship Management ("CRM") system saying, "We sometimes make our mailing list available to carefully selected organisations whose products may be of interest to you. If you would not like to receive mailings from our partners, please tell us now." There was no such prompt in relation to Easylife's own marketing. By telephone, Easylife informed the Commissioner that it did not collect opt-in notifications nor offer opt-outs from marketing on its inbound calls from customers, however, Easylife later used the customer data which it collected for marketing purposes. Easylife responded formally confirming this, but asserting that "customers will have seen the opt-out options on whatever prompted them to be recruited as customers, that led them to call and place an order." Easylife proposed changes and stated that a new CRM wording was being implemented.

42. On 18 December 2020, the Commissioner wrote to Easylife to say that he had completed his enquiries and would now consider whether formal enforcement action was appropriate, and giving Easylife seven further days in which to provide any further relevant evidence on its policies, procedures and training programmes. He also offered Easylife an opinion, as requested, on the proposed new wording. The Commissioner again explained the law to Easylife and again referred Easylife to his Direct Marketing Guidance: the proposed wording would not be compliant, because it attempted to offer an opt-out to all marketing channels, whereas in order to conduct telephone marketing to TPS-registered individuals, prior consent was necessary.
43. On 23 December 2020, Easylife sent the Commissioner a further response. In particular, Easylife stated, "In terms of compliance, now that the ELG is aware that it cannot contact a TPS registered customers (sic) by telephone without prior opt-in, it will in future, use the TPS file and only contact customers who are not registered."
44. Using the information which it had obtained from the three Third-Party Information Notices and the information which Easylife had provided, the Commissioner established which calls [REDACTED] had made at the instigation of Easylife in the period 1 August 2019 to 19 August 2020. He determined that there had been 2,276,095 connected calls made on Easylife's behalf, of which 1,205,017 were to numbers which had been registered with the TPS for not less than 28 days.
45. The Commissioner also identified that a relevant CLI had been resold by [REDACTED] and [REDACTED], to whom a Third-Party Information Notice was then issued on 11 November 2020. Further investigation discovered that from this additional CLI, over the relevant period there were

236,304 connected calls made on Easylife's behalf, of which 140,715 were to numbers which had been registered with the TPS for not less than 28 days.

46. In total, between calls conducted by ██████ ("█████") (including calls for which for ██████ used ██████ and ██████ as the communications service provider) and ██████, Easylife instigated 2,512,399 connected calls to individuals between 1 August 2019 and 19 August 2020 of which 1,345,732 were to individuals registered with the TPS. Easylife continued to instigate calls throughout the Commissioner's investigation, continually contravening regulation 21 of the PECR. Complaints continued to be received by the Commissioner and the TPS during the investigation. After Easylife received the initial investigation letter on 19 August 2020, specifically between the period of 20 August 2020 and 30 October 2020, a further 16 complaints were received by the Commissioner and a further eight complaints were received by the TPS concerning Easylife.
47. The Commissioner is satisfied that the 1,345,732 calls made to TPS-registered numbers were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
48. The Commissioner has made the above findings of fact on the balance of probabilities.
49. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Easylife and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

50. The Commissioner finds that Easylife contravened regulation 21 of PECR.
51. The Commissioner finds that the contravention was as follows:
52. Between 1 August 2019 and 19 August 2020, Easylife instigated the use of a public telecommunications service for the purposes of making 1,345,732 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. The Commissioner originally believed that this resulted in six complaints being made to the TPS and 16 complaints being made to the Commissioner, however, having reviewed the complaints data in response to Easylife's Representations of 29 July 2022 ("the Representations"), the Commissioner now realizes that this contravention resulted in ten complaints being made to the TPS and 15 to the ICO.
53. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,345,732 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 Easylife that they did not object to receiving such calls.
54. 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.

55. 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.
56. 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.
57. The Commissioner has considered the lack of evidence of any notifications obtained by Easylife and has concluded that 1,345,732 calls were made at the instigation of Easylife, in each case to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and who in each case for the purposes of regulation 21(4) had not notified Easylife that they did not object to receiving such calls.
58. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

59. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of

regulation 21 by Easylife arising from the organisation's activities between 1 August 2019 and 19 August 2020, which was a prolonged period of time, and this led to 1,345,732 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified Easylife that they were willing to receive such calls, and 25 complaints being made to the TPS and the Commissioner as a result (10 to TPS and 15 to ICO).

60. Easylife instigated a total of 2,512,399 calls to individuals between 1 August 2019 and 19 August 2020 of which 1,345,732 were to individuals registered with the TPS. Regulation 21 of the PECR is clear that a person must not instigate use of a public electronic communications service for the purpose of making unsolicited direct marketing calls to TPS-registered subscribers unless the subscribers have notified the person that they are willing to receive such calls. Easylife did not collect any notifications of whether individuals were willing to receive direct marketing calls and, as such, the calls to individuals registered with the TPS were in contravention of regulation 21 of the PECR.
61. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

62. The Commissioner has reconsidered, in light of Easylife's Representations, the question of whether the contravention identified above was deliberate. In the Commissioner's view, this means whether Easylife's actions which constituted that contravention were deliberate actions (even if Easylife did not actually intend thereby to contravene PECR). In light of the Representations made by Easylife,

the Commissioner does not consider that Easylife deliberately set out to contravene regulation 21 of PECR in this instance.

63. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
64. Firstly, he has considered whether Easylife 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, for the following reasons.
65. The PECR have been in force since 2003 and Easylife has been incorporated since 2004, although its brand has existed since 1992. Regulation 21 is clear that a person must not instigate the use of a public electronic communications service for the purposes of making unsolicited direct marketing calls to an individual who is registered with the TPS unless the individual has notified the company that they are willing to receive the calls. A company of the size and age of Easylife, which is so active in and reliant on direct marketing as its primary business model, should be fully aware of and compliant with direct marketing law. Any company conducting live call direct marketing should take appropriate and necessary organisational steps to comply with the PECR.
66. After receiving Easylife's Representations, including that Easylife had not been able to confirm receipt of any communication of complaints from the TPS during the relevant period, the Commissioner undertook further checks. The Commissioner has checked the TPS system and established that the TPS received 20 complaints about Easylife in the period 20 October 2015 and 27 February 2019, the TPS sent at least 13

letters to Easylife's Sittingbourne, Kent address, and Easylife responded to the TPS in respect of six of the letters, stating that Easylife had evidence of consent in regard to complaints in 2017. Easylife's awareness of TPS complaints prior to the relevant period is another reason for the Commissioner's conclusion that Easylife knew or ought reasonably to have known that there was a risk that this contravention would occur.

67. Easylife was under intense public scrutiny by regulators including the Commissioner and Trading Standards since 2019 at the latest. Any company which had been under such scrutiny should have taken steps necessary to comply with all regulations, and should also have taken steps to become aware of risks of contravention.
68. Further, the Commissioner believes that Easylife was aware of PECR both because of his 2019 compliance meeting with Easylife and because PECR was referred to in Easylife's own privacy policy.
69. In regard to the ongoing contravention during the relevant period, the Commissioner has taken into consideration the following. Where it is able to identify the organisation making the calls, it is standard practice of the TPS is to contact the organisation making the calls on each occasion that a complaint is made, and the TPS records these complaints as "valid issued" complaints. Where it is unable to identify the organisation making the calls, the TPS obviously cannot contact the organisation to notify it about the complaint, however, the TPS maintains a record of the complaint as "valid non-issued" complaints. After receiving Easylife's Representations, including that Easylife had not been able to confirm receipt of any communication of complaints from the TPS in regard to the six TPS complaints which had been drawn

to Easylife's attention during the Commissioner's investigation, the Commissioner undertook further checks. The further checks established that during the relevant period, the Commissioner received 15 complaints about Easylife and the TPS received ten complaints about Easylife. The Commissioner has disregarded a complaint to the Commissioner received during the relevant period but relating to a telephone call received on 10 July 2019. The ten TPS complaints included the six complaints which the Commissioner had drawn to Easylife's attention during his investigation. In respect of two of the TPS complaints, the TPS wrote to Easylife at its London address but received no response. In respect of four of the TPS complaints, the TPS wrote to [REDACTED] as the organisation identified as making the calls on behalf of Easylife. In respect of four of the complaints, the TPS was unable to identify the organisation making the calls. Therefore, the Commissioner reasonably believes that Easylife was probably aware of six TPS complaints made during the contravention period, directly from the TPS in two instances and indirectly via [REDACTED] in four instances. Becoming aware, directly or indirectly, of even one complaint should have made Easylife alert to the risk that contraventions of PECR may occur and were indeed occurring.

70. Also, the Commissioner had 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 organisations can make live unsolicited marketing calls, but must not call any number registered with the TPS unless the subscriber (i.e. the person who gets the telephone bill) has specifically told them that they do not object to their calls. In case organisations remain unclear on their obligations, the

Commissioner operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available. The Commissioner's investigation has established that Easylife had received no notifications from the individuals that despite their registration with the TPS, they were willing to receive marketing calls from Easylife.

71. It is therefore reasonable for the Commissioner to conclude that Easylife should have been aware of its responsibilities in this area.
72. Secondly, the Commissioner has gone on to consider whether Easylife failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
73. Through a fundamental misunderstanding, Easylife failed to comply with the PECR at its most basic level, because it did not collect notifications of which TPS-registered individuals were willing to receive marketing calls from Easylife, nor did it screen or require screening against the TPS of the numbers to which it instigated calls. Easylife should have taken the reasonable step of undertaking TPS checks before conducting its direct marketing telephone campaigns.
74. Easylife had appointed [REDACTED] as its Data Protection Compliance Officer between 1 June 2017 and 11 June 2018, prior to the relevant period. From 11 September 2018, Easylife had appointed [REDACTED] as its Data Protection Consultant and he was in post during the relevant period. Nevertheless, the Commissioner takes into account the fact that there is no evidence that either [REDACTED] or [REDACTED] were ever specifically asked by Easylife to advise about direct marketing telephone campaigns. Further, [REDACTED] contract expressly stated that he could

not be relied on to provide legal advice. Yet, there is no evidence that Easylife ever undertook any TPS checks or sought legal advice in regard to its direct marketing telephone campaigns. The Commissioner considers that taking legal advice on its direct marketing telephone campaigns was a reasonable step to prevent the contravention, which Easylife failed to take.

75. The Commissioner has concluded that Easylife's contravention was negligent and it was negligence of the highest order.
76. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

77. In consideration of the seriousness of the contravention, the duration of the contravention, the nature of the breach, and having regard to comparator cases, the Commissioner initially considered that an appropriate starting point for the penalty would be £180,000. This was later reduced in the Notice of Intent to £150,000 having regard to the relevant aggravating/mitigating features in the case.
78. Upon receipt of Easylife's representations, the Commissioner has amended his findings to take a view that Easylife's breach of PECR was negligent in nature rather than deliberate. This shift shall be reflected in the final penalty amount, together with the following relevant aggravating/mitigating features.
79. The Commissioner has taken into account the following **aggravating features** of this case:

- The contraventions of Easylife have had an adverse impact on potentially vulnerable individuals. Some complaints refer to individuals being bombarded with calls. Evidence illustrates that Easylife's marketing was aggressive in nature.
- The Commissioner is mindful that Easylife attended a compliance meeting with the Investigations department of the ICO on 3 June 2019, after which it would have been reasonable for Easylife to seek advice on its direct marketing telephone campaigns and PECR

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

- The Commissioner gave consideration to the concurrent ICO investigation into contraventions of the GDPR by Easylife, and the significant penalty which has been proposed in relation to those actions. The Commissioner notes the importance of maintaining public confidence in the scheme under which individuals can decline to receive unsolicited marketing calls, and maintains that a penalty for the breach of PECR is appropriate, and has decided not to disproportionately penalise Easylife.
- The Commissioner took into consideration the remedial measures of which Easylife informed the Commissioner in its Representations, including the introduction of TPS screening, appointing a new telemarketing partner, and introducing a new data management system. However, the Commissioner does not accept that the remedial measures which Easylife stated that it had taken have necessarily had an appropriate impact on the risk of further

contravention of PECR. In particular, the Commissioner was not satisfied that Easylife had implemented a suitable and robust CRM system which was reviewed to ensure compliance with PECR and which was suitable for a responsible company with the number of customers which Easylife had.

81. Having regard to all of the above factors, the Commissioner believes that a penalty of **£130,000** (one hundred and thirty thousand pounds) is appropriate.
82. 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.
83. 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 Easylife on this matter.
84. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
85. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
86. The Commissioner has considered the likely impact of a monetary penalty on Easylife, including taking the Representations into account. 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.

87. 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.
88. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the proposed intervention on the wider business community, both in terms of deterring non-compliance and economic benefits to legitimate businesses.
89. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

90. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£130,000** (one hundred and thirty thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

91. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **4 November 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.
92. If the Commissioner receives full payment of the monetary penalty by **3 November 2022** the Commissioner will reduce the monetary penalty by 20% to **£104,000** (one hundred and 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.
93. 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.
94. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

95. Information about appeals is set out in Annex 1.
96. 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.
97. 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 4th day of October 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)).