

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Zuwyco Limited

Of: Showroom 1
Glenfield House
Philips Road
Blackburn
England
BB1 5PF

1. The Information Commissioner ("the Commissioner") has decided to issue Zuwyco Limited ("Zuwyco") 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. Zuwyco, whose registered office is given above (Companies House Registration Number: 12392326), 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 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 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).
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. Zuwyco first came to the attention of the Commissioner in 2020 when an investigation was commenced following receipt of three complaints in respect of unsolicited direct marketing calls about pensions ("the initial investigation"). The initial investigation related to calls from telephone number 01254375003 between 20 May 2020 and 29 May 2020.
17. In order to identify the organisation responsible for these calls the Commissioner issued a third party information notice ("3PIN") to the communications services provider ("CSP") on 4 June 2020. This resulted in confirmation that Zuwyco was the subscriber of 01254375003.
18. An investigation letter attaching a spreadsheet of complaints was sent to Zuwyco on 10 June 2020. The letter outlined Regulations 21 and 24 of PECR and the Commissioner's powers. It requested information and evidence including the consent relied upon to contact the individuals listed in the spreadsheet.
19. Zuwyco's response sought to direct the investigation to its "trading arm", [REDACTED].
20. [REDACTED] was identified as having been called [REDACTED] [REDACTED] during the period of the complaints. This company's directors were the same as Zuwyco's.

21. An investigation letter was sent to [REDACTED] on 12 August 2020. The response dated 7 September 2020 stated that [REDACTED] [REDACTED] was the trading style of [REDACTED] (" [REDACTED]").
22. [REDACTED] subsequently confirmed that it used 01254375003 and the administration services of Zuwyco. The Commissioner's investigation letter was redirected to [REDACTED] on 24 September 2020.
23. Following correspondence with [REDACTED] the investigation letter was re-issued to Zuwyco on 18 December 2020. On 8 February 2021 Zuwyco provided various documents including:
 - A Marketing and Outsourcing Agency Agreement between [REDACTED] and Zuwyco. This was signed on 20 April 2020 by "S Motorwala" and confirmed that Zuwyco was responsible for "call making".
 - A four page Zuwyco-branded document entitled "Telephone marketing" which included details of regulation 21 of PECR and TPS requirements including statements such as "*must not call any subscribers on the TPS register, with any unsolicited telesales information*".
 - A four page Zuwyco-branded document entitled "TPS Policy Procedure", stated to have been created to assist Zuwyco operate a best practice approach. This document referred to PECR and set out detailed requirements in respect of data screening for TPS registration and against an internal do not call list. Zuwyco's directors and managers were stated to be responsible for ensuring that procedures were followed.
24. Documents indicated that Zuwyco provided agents for marketing

campaigns who would make calls using scripts and data provided by Zuwyco's clients.

25. █████ confirmed that Zuwyco was contracted to make solicited calls using trading names including █████ to individuals who had submitted enquiries to █████.
26. Calls were also made on behalf of another company, █████ Limited, a claims management company which had subsequently entered into liquidation.
27. A fact-finding meeting was held on 10 March 2021 and was attended by Sahal Motorwala ("Mr Motorwala"), a director of Zuwyco from formation of the company in January 2020. Mr Motorwala stated that call handlers had used scripts for █████ and █████ interchangeably, as well as not differentiating between the telephone numbers used to make the calls. As such, individuals who submitted an enquiry to █████ may have received calls from █████ numbers and been read the █████ script, and vice versa. Mr Motorwala confirmed that calls had also been made on behalf of two other companies, █████ and █████, neither of which the Commissioner has been able to identify.
28. Although contraventions of PECR appeared likely, it was not possible to establish which calls had been made using the correct scripts, and therefore constituted solicited calls. █████ had ceased trading, █████ contract with Zuwyco had ended and Zuwyco had indicated that it had ceased undertaking work. The initial investigation was therefore closed following a formal compliance meeting on 24 May 2021 during which Zuwyco was provided with guidance on complying

with PECR and an offer to review proposals for future working.

29. On 26 March 2021 [REDACTED] had informed the Commissioner of a complaint received regarding a call from a company called [REDACTED] [REDACTED] using the number 0161 549 1854. This company provided [REDACTED] FCA number when asked. [REDACTED] stated that they had contacted Zuwyco to establish whether they were involved but Zuwyco indicated that they had not been in operation for some time.
30. A 3PIN issued to the relevant CSP, [REDACTED] (" [REDACTED]"), on 18 May 2021, revealed that 0161 549 1854 was allocated to Oceana Marketing of [REDACTED] (" [REDACTED]"). It was not possible to identify this organisation at Companies House, but research indicated that [REDACTED] was the registered office address of [REDACTED], confirmed in the initial investigation to use the trading name "[REDACTED]" and to have the same directors as Zuwyco.
31. On 11 June 2021 Mr Motorwala stated that he had no knowledge of Oceana Marketing but confirmed that [REDACTED] was his home address.
32. A 3PIN submitted to the relevant internet services provider confirmed that the IP address linked to the Oceana Marketing account was registered to [REDACTED] and the business name was Zuwyco. The linked address was Showroom 1, Glenfield Business Park, Philips Road, Blackburn, BB1 5PF (the "Glenfield Premises") (which subsequently became Zuwyco's registered office on 5 May 2022).
33. [REDACTED] confirmed that Mr Motorwala was the contact for payment. Mr Motorwala confirmed that [REDACTED] was his brother and stated

that he would need to speak to him and [REDACTED] to try to understand the position.

34. On 3 August 2021 an information notice was sent to Zuwyco requesting details of Oceana Marketing's business activities. In response Mr Motorwala stated that he was unaware of Oceana Marketing and blamed the issue on an administrative error by [REDACTED]. In support Mr Motorwala provided a copy of an email from [REDACTED] to him dated 3 September 2021 which stated: "*...there has been an administrative error regarding your details being assigned to Oceana Marketing ...this has now been corrected ...*".
35. Upon being asked to explain this error, [REDACTED] stated that in fact Zuwyco had provided the original account details and subsequently asked for them to be changed. An email dated 27 July 2021 from [REDACTED] requested that emails relating to the Oceana Marketing account not be addressed to Mr Motorwala.
36. Correspondence relating to Oceana Marketing was provided by [REDACTED] for the period 12 February 2021 to 27 July 2021. Emails sent in April, May and June 2021 by [REDACTED] requested further calling line identifiers ("CLIs") for "Oceana1".
37. A lease dated 1 June 2020 obtained from Blackburn Council confirmed that the Glenfield premises had been leased by Mr Motorwala on behalf of Zuwyco. On 8 October 2021 the Commissioner's representatives attended the Glenfield premises. The door to the premises contained signs for "Zuwyco" and "[REDACTED]". Parking spaces were designated for directors "NM" and "SM".

38. Call records for the Oceana Marketing account initially indicated that Zuwyco had made 501,945 calls in total, of which 126,602 calls had connected with subscriber numbers that had been registered with the TPS for 28 days or longer.
39. Due to concerns about the reliability of the records obtained from [REDACTED], call records for the period 1 January 2021 to 1 August 2021 ("the contravention period") were obtained from the CSP which allocated numbers to [REDACTED]. These records confirmed that 377,391 connected calls were made using the Oceana Marketing account during the contravention period. Of these calls, 90,380 had been made to numbers that had been registered with the TPS for more than 28 days.
40. As is detailed below, call records were collated again in July 2022 and confirmed that, in fact, during the contravention period, 93,558 calls had been made to numbers that had been registered with the TPS for 28 days or more at the time of the call. However, the increased figure did not result in any change to the enforcement action against Zuwyco.
41. A letter confirming that a further investigation had been commenced was sent to Zuwyco on 8 October 2021. The letter attached details of five complaints received by the Commissioner and two complaints received by the TPS in respect of CLI's allocated to Oceana Marketing during the contravention period.
42. Complaints made via the TPS and ICO reporting tools included the following statements:
 - 12 April 2021: *"Pension mis selling. This company has called at least 7 times since 25 March. Plus many other times since*

January 21. They want me to sign up with them for a % in return for a claim against ██████████ and ██████████. They stated bought [sic] my telephone number from the companies mentioned above who gone into liquidation."

- *27 July 2021: "Female asked me if it was me. I asked who she was and why she was calling. She said she wanted to know if I'd ever transferred my pension. I asked where she got my number from. She said a database. I asked how that number had appeared on that database. She said she didn't know, if [sic] was her first day. I asked her to delete my number from the database. I keep getting these calls about pension transference...". The same complainant received calls on further occasions including 28 July 2021: "Caller asked to speak to me by name. I asked who they were. They said Pensions Claims Team. I asked what they wanted. They said they wanted to know if I'd transferred a pension. I said they should already know that as they'd called me yesterday."*

43. Complaints indicated that callers gave generic company names such as "Pensions Claims Team" rather than identifying Zuwyco or one of its clients on the call.
44. Analysis of Zuwyco's call records confirmed that all but one of the complainants had been called multiple times during the contravention period, with one complainant receiving over 50 calls.
45. By email dated 5 November 2021, Mr Motorwala confirmed that Zuwyco was responsible for Oceana Marketing's activities. To ensure that the account could not be traced back to Zuwyco, Mr Motorwala

stated that [REDACTED] had advised him to set the account up using the details of someone based overseas.

46. Mr Motorwala provided a notepad document stated to contain a transcript of a Whatsapp conversation between him and a [REDACTED] representative. Extracts are as follows:

[22/01/2021, 09:30:13] AK [REDACTED]: Make sure u fill with Indian details Put ur email add and ur contact number

[25/01/2021, 11:50:14] SM®™: yeah like I said, please remove my credentials at your end bro. jzk, otherwise defeats the objective!

[02/02/2021, 14:52:38] SM®™: Salaam bro any chance you can send me a link for what we discussed? Can't seem to find it online.

[26/03/2021, 16:07:58] SM®™: salaam bro, couple of points:

[...] - I need the email on system changing to [REDACTED] please. also, the invoice has my personal address on it... can you remove this from the system please.."

47. In response to the message of 2 February 2021, [REDACTED] replied with a link for a Google search for "IP masking", a technique for concealing an IP address.
48. Mr Motorwala also provided a recording of a Whatsapp call allegedly between him and [REDACTED] on 20 October 2021. During this call, Mr Motorwala stated "*the problem we have is that everything we discussed in terms of setting this up with Oceana to hopefully avoid the ICO...we are at the exact opposite end of the spectrum now*".

49. In response to further enquiries Mr Motorwala indicated:
- Between January and August 2021, Zuwyco's focus was business to business campaigns. Clients included a claims management company, [REDACTED] ("[REDACTED]"), and [REDACTED].
 - Calls were made using personal data supplied by clients and related to matters such as HMRC tax rebates, mis-sold pensions, council tax rebates and climate change levy claims.
 - Zuwyco used the trading names [REDACTED] and [REDACTED].
50. A call script provided in relation to [REDACTED] indicated that calls were stated to be "regarding your pension investment" followed by questions regarding the possibility of a mis-sold pension claim and passing the data subject to a claims handler.
51. An end of investigation letter was sent to Zuwyco on 3 December 2021.
52. In June 2022 an issue was identified concerning the date of telephone number registration with the TPS. In circumstances where a number had been registered with the TPS, de-registered, then registered again, the TPS was returning the original TPS registration date, rather than the most recent registration date. As a result, the TPS was over-reporting contraventions in certain circumstances. This issue was resolved and call records for the contravention period were collated again in July 2022. Analysis confirmed that 96,180 calls had been made to TPS-registered numbers of which 93,558 had been registered with the TPS for 28 days or more at the time of the call. Whilst the number of calls was higher than originally identified, the Commissioner

did not consider that any adjustment to the proposed action against Zuwyco was required.

53. The Commissioner is satisfied that 93,558 calls were made to TPS-registered subscribers during the contravention period from CLIs allocated to Zuwyco. Based upon complaints received and the [REDACTED] call script, the Commissioner is satisfied that these calls were made for the purposes of direct marketing as defined by section 122(5) DPA18.
54. The Commissioner has made the above findings of fact on the balance of probabilities.
55. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by Zuwyco and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

56. The Commissioner finds that Zuwyco contravened regulations 21 and 24 of PECR.
57. The Commissioner finds that the contravention was as follows:
58. Between 1 January 2021 to 1 August 2021, Zuwyco used a public telecommunications service for the purposes of making 93,558 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. This resulted in seven complaints being made to the TPS and the

Commissioner.

59. The Commissioner is also satisfied for the purposes of regulation 21 that these 93,558 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 Zuwyco that they did not object to receiving such calls.
60. 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.
61. 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.
62. 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.
63. The Commissioner has considered the lack of evidence of any

notifications obtained by Zuwyco and is concerned that 93,558 calls were made 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 Zuwyco that they did not object to receiving such calls.

64. It is evident from complaints received that not only did Zuwyco make initial calls in breach of PECR, but also continued to call individuals who had specifically asked not to be contacted.
65. The Commissioner is further satisfied that Zuwyco failed, as required by regulation 24 of PECR, to provide the recipient of the calls with the particulars specified at regulation 24(2) of PECR. In particular, when it did provide subscribers with the name of the caller, it used seemingly interchangeable trading styles which could not be readily identified as Zuwyco or its clients.
66. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

67. 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 Zuwyco arising from activities between 1 January 2021 to 1 August 2021, and this led to 93,558 unsolicited direct marketing calls being connected to subscribers who were registered with the TPS for more than 28 days and who had not notified Zuwyco that they were willing to receive such calls. Seven complaints were made as a result.

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

Deliberate or negligent contraventions

69. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Zuwyco's actions which constituted that contravention were deliberate actions (even if Zuwyco did not actually intend thereby to contravene PECR).
70. The Commissioner considers that in this case Zuwyco did deliberately contravene regulations 21 and 24 of PECR.
71. Concerns about Zuwyco's call making activities were raised by the Commissioner on 10 June 2020 at which point Zuwyco was provided with details of the requirements of regulations 21 and 24 of PECR. Policy and procedure documents provided by Zuwyco on 8 February 2021 further confirmed that that Zuwyco had in-depth knowledge of the requirements of PECR and the TPS register. The initial investigation was ongoing when the Oceana Marketing account was set up by Zuwyco to conduct unsolicited calls and deliberate steps were taken by Zuwyco to evade detection by the Commissioner.
72. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
73. Further, and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements.

74. Firstly, he has considered whether Zuwyco 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.
75. 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.
76. As is set out above, the requirements of PECR were set out to Zuwyco within the Commissioner's initial investigation letter dated 10 June 2020, several months before the contravention period. It is therefore reasonable to conclude that Zuwyco was aware of its responsibilities.
77. Secondly, the Commissioner has gone on to consider whether Zuwyco failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
78. Zuwyco indicated during the investigation that it did not obtain data from individuals directly, and instead relied on data supplied by its clients. The Commissioner's direct marketing guidance makes clear that organisations utilising data provided by 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 parties without undertaking proper due diligence.

79. Zuwyco failed to screen the data provided by its clients against the TPS register and did not conduct any due diligence on the data supplied by its clients. Zuwyco has been unable to produce any evidence that individuals registered with the TPS had informed Zuwyco or its clients that they did not object to receiving the calls made using Zuwyco's lines.
80. Reasonable steps in these circumstances may have included ensuring that it accurately recorded the source of the data it relied upon, together with evidence that individuals had either provided valid notification under regulation 21(4) or were not registered with the TPS. Zuwyco could have carried out TPS checks and maintained records to evidence the same. Furthermore, Zuwyco should have had in place appropriate policies and procedures in respect of its marketing and ensured that the same were followed.
81. Given the volume of calls and the complaints received, it is clear that Zuwyco failed to take those reasonable steps.
82. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

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

- There is evidence that some of the calls made in contravention of Regulation 24 of PECR utilised false trading names and the FCA registration number of a different company.
- The Commissioner considers that Zuwyco's actions were deliberate including persistent denials of involvement in the breach.
- There was an attempt to conceal Zuwyco's marketing activities and breaches of PECR.
- Zuwyco colluded with its CSP in an attempt to evade detection by the Commissioner.
- The volume of calls is likely to be much higher in reality than the numbers referred to above.

84. The Commissioner has taken into account the following mitigating features of this case.

- There are indications that Zuwyco would be unable to withstand a penalty and formal recovery action could be required. Accounts information at Companies House is out of date and Zuwyco's credit rating is adverse. [REDACTED]



85. 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.
86. 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 representations made by Zuwyco on this matter.
87. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
88. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
89. The Commissioner has considered the likely impact of a monetary penalty on Zuwyco. 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.
90. 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.

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

The amount of the penalty

92. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£160,000 (one hundred and sixty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

93. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 9 December 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.
94. If the Commissioner receives full payment of the monetary penalty by 8 December 2022 the Commissioner will reduce the monetary penalty by 20% to **£128,000 (one hundred and twenty eight thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

95. 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.
96. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
97. Information about appeals is set out in Annex 1.
98. 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.
99. 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 9th day of November 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)).