

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Allapplianceservices UK Ltd

Of: Atlas Chambers, 33 West Street, Brighton, East Sussex
United Kingdom BN1 2RE

1. The Information Commissioner ("the Commissioner") has decided to issue Allapplianceservices UK Ltd ("AUKL") 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. AUKL, whose registered office is given above (Companies House Registration Number: 11516479) 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 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 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. AUKL is an appliance repair company, incorporated in 2018, which provides repairs of home and kitchen appliances. AUKL offer protection plans under which customers pay a premium in exchange for repair cover in case of an issue with their home/kitchen appliances.
16. On 30 March 2021, the Commissioner received a referral from the Financial Conduct Authority ("FCA"), which had itself received a complaint from an individual understood to be aged between 55 and 64 years old (the "FCA Complainant"). The FCA Complainant reported that on 1 February 2021 they had received an unsolicited call from a company regarding the renewal of a washing machine insurance policy. The FCA Complainant suggested that during the call they were misled by the company, which claimed that it was in fact the individual's current policy provider, when it was later discovered that it was not¹. During the call,

¹ AUKL strongly denies that it misleads individuals and has suggested in its representations to the Notice of Intent that this instance was likely a misunderstanding.

the caller took a sum of money from the FCA Complainant after taking their debit card details, but did not provide a payment reference number. Later, on 10 February 2021, having received insurance paperwork from this company, and upon realising that they were insured by another company already, the FCA Complainant attempted to cancel the policy and seek a refund. They called the company back using the number detailed on the insurance documents – 0203 4413093. Those documents named the company as 'All Appliance UK', with a footnote stating that "*All Appliance UK is a trading style of ALLAPPLIANCE SERVICES UK Ltd*". The FCA Complainant was told that his policy would be cancelled, however despite numerous follow-up calls and letters from the FCA Complainant, by the time of their complaint to the FCA, their money had not been refunded.

17. Following this referral, the Commissioner conducted research to see whether any complaints had been logged with the TPS which identified AUKL or its trading style. Two such complaints were located, with one providing the Calling Line Identifier ("CLI") of 0203 4413093, and the second identifying a CLI of 0333 4438517.
18. An initial investigation letter was sent to AUKL on 28 June 2021, setting out the Commissioner's concerns with AUKL's compliance with PECR, and providing copies of the TPS complaints logged. The letter requested *inter alia* details of any CLIs used by AUKL, together with details for the volume of calls made/connected over a particular period; details of how data used for those calls was sourced; copies of any data protection policies and contractual arrangements with third-party data providers; evidence that the recipients of its calls had provided valid notification (i.e. consent) to receive those calls, etc.

19. The Commissioner also sent Third Party Information Notices ("3PINs") on 29 June 2021 to the relevant Communications Service Providers ("CSP's") for the two CLIs identified as being linked to AUKL. The relevant CSP for the 0333 4438517 was [REDACTED] ("[REDACTED]"); and the relevant CSP for 0203 4413093 was [REDACTED] ("[REDACTED]").

20. Regarding the enquiries undertaken with [REDACTED]:

- a. [REDACTED] responded on 29 June 2021 and stated the CLI 0333 4438517 was allocated to [REDACTED] ("[REDACTED]").
- b. The Commissioner wrote to [REDACTED] on 30 June 2021 and received a response on 6 July 2021, identifying the subscriber of 0333 4438517 since 1 May 2021 as AUKL, although it was subsequently confirmed by [REDACTED] on 4 July 2022 that this CLI was in fact allocated to AUKL from 5 January 2021. This response also provided two further CLIs which had been allocated to AUKL since 2018: 0203 6349887 and 0144 4642998.
- c. From the Call Dialler Records ("CDRs") provided by [REDACTED], it has been possible to establish that from the CLIs allocated to AUKL, there had been 211,487 connected calls made by AUKL between 1 January 2021 and 28 June 2021, of which 99,313 were to subscribers who had been registered with the TPS for not less than 28 days².

21. Regarding the enquiries undertaken with [REDACTED]:

² The total of 99,313 was deduced by the Commissioner in July 2022 after he had conducted a final check against the TPS register. Initially, owing to an administrative issue with the TPS screening portal provided by the Data & Marketing Association, the total of connected calls made to TPS-registered subscribers had been believed to be 98,801.

- a. [REDACTED] responded on 29 June 2021 stating the CLI 0203 4413093 was allocated to [REDACTED] (" [REDACTED] ").
 - b. The Commissioner sent a 3PIN to [REDACTED] on 29 June 2021, with a response being received the same day stating that "*[t]he number on the order [0203 4413093] doesn't show up but it could be a DDI number [...] A Direct Dial In (DDI) is a phone number which is also referred to as a virtual phone number*".
22. The Commissioner made separate enquiries with the individual who had complained to the TPS, on behalf of her mother, about receiving a call from 0203 4413093 on 15 February 2021. The individual responded to advise that her mother's, i.e. the complainant's, CSP was [REDACTED] (" [REDACTED] "), and that a separate report had been logged regarding the call from 0203 4413093 with Trading Standards. The details of that complaint report were shared with the Commissioner, and indicated that a sum of money had been taken by AUKL from the complainant's bank account, with it being noted that the complainant "*didn't really remember*" what the payment was for, and that she "*felt [AUKL] were bothering her, so gave them her credit card details to stop them from pestering her*". The Complainant's daughter contacted AUKL by letter and telephone and later received a refund, having explained that her mother did not require their services, and that being 85 years old and after having recently suffered a stroke she had "*struggled with these decisions*". The Complainant's daughter advised that at the time of speaking with AUKL, she didn't realise that her mother had been "*signed up to the call preference service [i.e. the TPS] for a few years*", and so should not have received such unsolicited direct marketing calls in any event. A copy of the correspondence to/from AUKL was also provided identifying AUKL and the CLI 0203 4413093. In light of the information

received from [REDACTED], and the suggestion that 0203 4413093 was a DDI number, it appears likely that the daughter reported the CLI 0203 4413093 as the number which called the Complainant as it was the number shown on the paperwork which the Complainant received from AUKL following the call.

23. The Commissioner duly issued a 3PIN to [REDACTED] on 15 July 2021 requesting details of any CLIs which had called the Complainant between 14 February 2021 and 16 February 2021 and a response was received on 10 August 2021. This response indicated that the CLI 0333 4438517 had called the complainant on 15 February 2021 at 13:53 for 6 minutes. This CLI had already been identified from the Commissioner's enquiries with [REDACTED] as being allocated to AUKL at the time of the call.

24. AUKL provided a response to the Commissioner's initial investigation letter on 16 July 2021, advising that it uses three CLIs: 0203 6349887, 0144 4642998 and 0333 4438517. It also stated that it obtains data lists from a third-party data provider: [REDACTED] ("[REDACTED]") and that [REDACTED] created *"bespoke lists for [AUKL], based on [AUKL's] requests for landlines/mobile numbers of homeowners that have purchased certain brands of white goods. [...] As part of [AUKL's] initial due diligence on the company and their methods, [REDACTED] provided [AUKL] with assurances at the outset that the databases would be screened against the TPS register to ensure that no registered TPS members would be included within the database. [AUKL] are disappointed to hear that this may not have been the case, and [...] have separately made a complaint to [REDACTED] in respect of this. [...] Upon receiving [the Commissioner's] letter and becoming aware that [AUKL's] database may have included registered TPS members, [AUKL] are now in the process of signing up to the TPS list and will be screening all telephone numbers against the list to ensure that this does not happen again in the future"*.

The implication from this statement is that AUKL had not previously conducted its own TPS screening on the numbers which it used for its direct marketing campaign.

25. In response to the Commissioner's request for valid notification (i.e. consent) for AUKL to contact subscribers, AUKL states that *"For GDPR purposes, we rely on the legitimate interest ground (rather than consent) to carry out such marketing i.e. on the basis that we have reasonable grounds to believe that the individuals will be interested in our products by virtue of the relevant survey they participated in and consent provided to [REDACTED] to receive marketing of a similar nature. [...] For PECR purposes (and, in particular in line with PECR and the ICO's guidance on direct marketing), we understand that specific consent is not required on the basis that the numbers are not listed within the TPS"*.
26. The Commissioner had asked for AUKL to provide information about any contractual arrangements with its third-party data provider(s), and details of any due diligence carried out to ensure the veracity of the data being purchased. AUKL replied stating that *"[w]hilst there is no formal contract in place, in terms of due diligence, [REDACTED] provided [AUKL] with very strong verbal assurances at the outset of [its] relationship, which [AUKL] relied on, that the lists would be screened against the TPS list and would be compliant with all applicable laws."*
27. The Commissioner had also requested copies of any internal customer-contact training policies, or indeed any policies/procedures regarding AUKL's responsibilities under PECR. AUKL confirmed in response that it held no existing written policies regarding these areas.
28. To explain the complaints received by the TPS, AUKL stated that the complaints were *"due to individuals being contacted that were on the*

TPS list – [AUKL] entrusted a third party provider to provide a database that had been screened of such individuals. [...] The issue that arose here is that [AUKL] entrusted a third party provider who unfortunately did not meet the assurances provided to [AUKL] re screening their databases against the TPS list. [AUKL] acknowledge and apologise for any calls made to the TPS registered individuals as a result and are very disappointed that this has happened”.

29. AUKL also stated that it “*sought at the outset (and continue to seek) legal advice to ensure that [its] business and practices are compliant*”, however no further evidence or details have been provided regarding what type of legal advice was sought.
30. AUKL concluded by stating that it would be terminating its relationship with [REDACTED] and that for future data providers it will “*ensure that comprehensive due diligence is carried out [...] and that a formal contract is implemented. [...] [It] will also ensure that all telephone numbers provided are screened against the TPS list*”.
31. The Commissioner sent further queries to AUKL on 20 July 2021 requesting *inter alia* details of the criteria for the data purchased by AUKL, and received a response on 2 August 2021. In its response, AUKL confirmed that its criteria for data was homeowners with landline/mobile numbers, whose appliances matched particular brands.
32. On 19 August 2021, the Commissioner sent an ‘end of investigation’ letter to AUKL.
33. The Commissioner sent a final email to AUKL on 21 December 2021 stating that he had evidence of a significant number of calls being made to TPS-registered subscribers during the relevant period. AUKL

responded on 5 January 2022 reiterating its earlier position, but offering no significant further information.

34. The Commissioner's investigation has found that between 1 January 2021 and 28 June 2021, AUKL made 211,487 connected unsolicited direct marketing calls, of which 99,313 were to individuals who had been registered with the TPS for not less than 28 days. AUKL had relied on verbal assurances from its third-party data provider that the data it had purchased had been screened against the TPS register. It did not conduct its own screening, or seek to obtain evidence of valid notification from the subscribers it intended to call that they did not object to receiving its direct marketing calls.
35. The Commissioner is satisfied that the 99,313 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
36. The Commissioner has made the above findings of fact on the balance of probabilities.
37. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by AUKL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

38. The Commissioner finds that AUKL contravened regulation 21 of PECR.
39. The Commissioner finds that the contravention was as follows:
40. Between 1 January 2021 and 28 June 2021, AUKL used a public telecommunications service for the purposes of making 99,313

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.

41. The Commissioner is also satisfied for the purposes of regulation 21 that these 99,313 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 AUKL that they did not object to receiving such calls.
42. 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.
43. 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.
44. 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.

45. In this instance, AUKL relied wholly on verbal assurances from its third-party data provider that the data being acquired had been screened against the TPS register. It did not have in place a written contract, and did not undertake any checks against the TPS register itself.
46. The Commissioner's Direct Marketing Guidance is clear [at Paragraph 180] that when relying on a marketing list, as AUKL has done, "*[i]t 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.* It goes on to say [at Paragraph 185] that "*[b]ought-in call lists must always be screened against the TPS. And they should also be screened against the organisation's own in-house suppression (do not call) list, to ensure it doesn't contact anyone who has already said they want to opt out of its marketing*".
47. In the circumstances, the Commissioner is satisfied that there has been a contravention of regulation 21 of PECR. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

48. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by AUKL arising from the organisation's activities between 1 January 2021 and 28 June 2021, and this led to 99,313 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified AUKL that they were willing to receive such calls.

49. The Commissioner is concerned by the apparent pressure-tactics which appear from the complaints received to have been applied to older individuals during AUKL's calls³. For instance, one of the complaints received suggested that AUKL had "*insisted*" that the recipient provided their card details to it, and the second complaint stated that the recipient of the call "*just wanted [AUKL] to go away*" and so handed over their credit card details. Of the complainants, the Commissioner understands that one had recently suffered a stroke and had reduced capacity as a result, with a second suffering from dementia.
50. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

51. The Commissioner has considered whether the contravention identified above was deliberate. The Commissioner does not consider that AUKL deliberately set out to contravene PECR in this instance.
52. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
53. Firstly, he has considered whether AUKL 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. AUKL stated during the investigation that "*[it is] fully aware of the GDPR and PECR issues that heavily govern this area. [AUKL] understand that the telemarketing*

³ It is noted that AUKL has objected in its representations to the Commissioner's finding that pressure-tactics were applied, citing its previously-provided script as evidence, however the Commissioner is content to maintain this finding in light of the content of the complaints received.

industry has gained a bad reputation in recent years for disregarding the regulations and taking advantage of individuals, however, [AUKL's] compliance with the privacy regulations and the reputation of [AUKL's] business is extremely important to [AUKL]".

54. AUKL also made reference during the investigation to the Commissioner's guidance in relation to the requirements under PECR, demonstrating at least an awareness of both the relevant legislation and the Commissioner's role in overseeing that legislation.
55. The Commissioner's Direct Marketing Guidance, as referenced by AUKL, includes detailed advice for companies carrying out marketing, explaining their legal requirements under PECR. It 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.
56. Furthermore, the Commissioner has evidence that the TPS wrote to AUKL at its registered office address for one of the two complaints referred to in this Notice (i.e. regarding the unsolicited call made on 15 February 2021). That the TPS had written to AUKL regarding a complaint over the period of the contravention should have made AUKL aware of the risk that such contraventions may occur and had indeed occurred.
57. It is therefore reasonable to suppose that AUKL were, or at least should have been aware of its responsibilities in this area.

58. Secondly, the Commissioner has gone on to consider whether AUKL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
59. The Commissioner's direct marketing guidance makes clear that organisations acquiring 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. In this instance AUKL relied wholly on verbal assurances, and failed to undertake any checks of its own against the TPS register. This cannot constitute reasonable due diligence.
60. Reasonable steps in these circumstances may have included the implementation of an appropriate contract with its third-party data provider, with a view to protecting both itself and the privacy rights of the individuals whose data was being purchased; and conducting its own TPS checks regardless of any assurances given by the third-party data provider.
61. Given the volume of calls made in contravention of regulation 21 PECR, it is clear that AUKL failed to take those, or any, reasonable steps.
62. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

63. Taking into account the volume of unsolicited direct marketing calls made in contravention of the legislation, the duration of the contravention, and the negligent nature of the contravention, when examined against comparator cases the Commissioner has determined that an appropriate starting point for the penalty in this case should be £85,000.
64. The Commissioner has taken into account the following **aggravating features** of this case:
- AUKL conducted its business, in contravention of PECR, with a view to maximising its turnover and potential profits.
65. Despite the above aggravating feature, the Commissioner considers that the penalty amount should remain at £85,000.
66. The Commissioner has taken into account the following **mitigating feature** of this case:
- In light of the Commissioner's investigation, AUKL has acknowledged the importance of undertaking its own TPS screening in future. It has stated that it will undertake necessary measures to address the Commissioner's concerns and put in place adequate policies in order to prevent further contraventions. However, it is noted that the Commissioner has not yet been provided with any evidence that such steps have been taken.
67. Having considered the above aggravating and mitigating features, the Commissioner is minded to maintain a penalty of £85,000.

68. 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.
69. 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 AUKL on this matter.
70. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
71. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty
72. The Commissioner has considered the likely impact of a monetary penalty on AUKL. 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.
73. 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.

74. In making his decision, the Commissioner has 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.
75. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

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

Conclusion

77. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **5 January 2023** 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.
78. If the Commissioner receives full payment of the monetary penalty by **4 January 2023** the Commissioner will reduce the monetary penalty by

20% to **£68,000 (sixty-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.

79. 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.

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

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

82. 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.

83. 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 28th 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: 0300 123 4504

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)).