

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: Arthur John James Ryan and Matthew Peter Hill, trading as Ryan Hill Partners and Hill Ryan Partnership.

Of: Lytchett House, Unit 13, Freeland Park, Wareham Road, Lytchett Matravers, Poole, BH16 6FA

1. The Information Commissioner ("the Commissioner") has decided to issue Arthur John James Ryan ("Mr Ryan") and Matthew Peter Hill ("Mr Hill"), trading as Ryan Hill Partners and Hill Ryan Partnership, 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 22 and 23 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

**Legal framework**

3. Mr Ryan and Mr Hill, trading as Ryan Hill Partners and Hill Ryan Partnership, whose business is given above, are the persons stated in this notice to have transmitted unsolicited communications by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.

4. Regulation 22 of PECR states:

- "(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.*
- (2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.*
- (3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—*
- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;*
  - (b) the direct marketing is in respect of that person's similar products and services only; and*
  - (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.*

- (4) *A subscriber shall not permit his line to be used in contravention of paragraph (2)."*
5. Regulation 23 of PECR states that "A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail –
- (a) *where the identity of the person on whose behalf the communication has been sent has been disguised or concealed;*
  - (b) *where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided*
  - (c) *where that electronic mail would contravene regulation 7 of the Electronic Commerce (EC Directive) Regulations 2002;*  
*or*
  - (d) *where that electronic mail encourages recipients to visit websites which contravene that regulation."*
6. Section 122(5) of the Data Protection Act 2018 "DPA18" defines direct marketing as "*the communication (by whatever means) of advertising or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR and paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
7. Consent in PECR, between 29 March 2019 and 31 December 2020, was defined by reference to the concept of consent in Regulation 2016/679 ("the GDPR"): regulation 8(2) of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. Article 4(11) of the GDPR sets out the following definition:

*“consent’ of the data subject means any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”.*

8. Recital 32 of the GDPR materially states that *“When the processing has multiple purposes, consent should be given for all of them”*. Recital 42 materially provides that *“For consent to be informed, the data subject should be aware at least of the identity of the controller”*. Recital 43 materially states that *“Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case”*.
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. *“Electronic mail”* is defined in regulation 2(1) of PECR as *“any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient’s terminal equipment until it is collected by the recipient and includes messages sent using a short message service”*.
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 Information Commissioner's Office ("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.
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. Mr Ryan and Mr Hill trade under the names Ryan Hill Partners and Hill Ryan Partnership. It appears that Ryan Hill Partners and Hill Ryan Partnership are trading names of the same partnership. The partnership acts as a lead generator for the debt management sector.
17. Mr Ryan and Mr Hill are former directors of several Manchester-based lead generation and call centre companies, including Signed and Sealed Marketing Limited (formerly Maximedia Limited), Cutmycosts Limited and Clearshot Limited. The first of these companies was dissolved in February 2016 after it entered into creditors' voluntary liquidation, owing £166,597.33 to creditors. The latter two companies were dissolved via compulsory strike-off in April 2016 and May 2018 respectively.
18. Mr Ryan and Mr Hill were disqualified as directors from 7 April 2017, for 12 years and 8 years respectively, following an investigation by the Insolvency Service.
19. Hill Ryan Partnership was registered with the ICO from 29 June 2017 to 28 June 2021, under registration number ZA263064. The organisation was described as a "partnership" and the nature of work was listed as "lead generator" and the contact point was "John Ryan".
20. Ryan Hill Partners first came to the attention of the ICO in August 2020, during an investigation into unsolicited SMS messages sent by H&L Business Consulting Ltd, in respect of which the Commissioner issued a Monetary Penalty and Enforcement Notice dated 29 March 2022. Following a third party information notice sent to the

telecommunications service provider (as outlined in further detail below), Mr Ryan and Mr Hill, trading as Ryan Hill Partners, were subsequently identified as the customer to whom mobile telephone numbers generating unsolicited SMS messages were allocated.

21. Mobile users can report the receipt of unsolicited marketing SMS messages to the Mobile UK's Spam Reporting Service by forwarding the message to 7726 (spelling out "SPAM"). Mobile UK is an organisation that represents the interests of mobile operators in the UK. The Commissioner is provided with access to the data on complaints made to the 7726 service and this data is incorporated into a Monthly Threat Assessment (MTA) used to ascertain organisations in breach of PECR.
22. Searches of the 7726 database initially identified over 250 complaints about unsolicited SMS messages promoting the website [www.debt247.co.uk](http://www.debt247.co.uk). The messages offered individuals the opportunity to write off 95% of their debts, by visiting a website ([www.debt247.co.uk](http://www.debt247.co.uk)) and providing their contact details and details of their debts. Some of the messages referred to "government help" or the solution being "government backed". Others attempted to capitalise on the pandemic by referring to "lockdown" or "furlough".
23. The following are examples of the SMS messages:

*"You qualify for Government Help to WRITE OFF 95% of ALL DEBTS with ALL charges and fees FROZEN. Act NOW - Click [www.debt247.co.uk](http://www.debt247.co.uk) or stop 2 opt out*

*WRITE OFF 95% of ALL DEBTS with ALL charges & fees FROZEN if you're genuinely struggling with debts. For FREE help & info go to [www.debt247.co.uk](http://www.debt247.co.uk) Stop 2 opt out*

*Worried about debts & bills? Have up to 95% of your debts officially written off & get a new start. For FREE help & info go to [www.debt247.co.uk](http://www.debt247.co.uk) Stop 2 opt out*

*If you're employed or furloughed, special FREE help with debts is now available. Up to 90% of your debt is WRITTEN OFF. Go to [www.debt247.co.uk](http://www.debt247.co.uk) Stop 2 opt out*

*Get Debt FREE during the Lockdown! Write off 95% of ALL DEBTS with ALL charges and fees FROZEN. UK residents only. Click [www.debt247.co.uk](http://www.debt247.co.uk) Stop 2 opt out".*

24. Several of the SMS messages were virtually identical to SMS messages sent by H&L Business Consulting Ltd. The only difference being that the website address referred to was [www.debt247.co.uk](http://www.debt247.co.uk) rather than [out-of-debts.co.uk](http://out-of-debts.co.uk).
25. The website [www.debt247.co.uk](http://www.debt247.co.uk) did not contain any company information and the only contact information available was an email address ([help@debt247.co.uk](mailto:help@debt247.co.uk)). The website asked users to enter the following information into an online enquiry form: name, phone number, email address, employment status, living arrangements, number of debts and total debt amount. The website explained that the form "will then be passed to a qualified advisor, who will be in touch by phone and text". The website did not provide details of the "qualified advisor" to whom the leads would be passed. The website was not registered with the Financial Conduct Authority ("FCA").
26. The privacy policy for [www.debt247.co.uk](http://www.debt247.co.uk) was extremely short and stated as follows:

*"The information that we collect and store relating to you is primarily used to enable us to provide our services to you. In addition, we may use the information for the following purposes:*

- To provide you with information requested from us relating to our services and to provide information on other products which we feel may be of interest to you if you consent to receive such information.*
- To notify you about any changes to our services*
- If you are an existing customer, we may contact you to gain feedback on your experiences.*
- We may use your data, or permit selected third parties to use your data, so that you can be provided with information about unrelated goods and services which we consider may be of interest to you.*
- If you are a new customer, we will only contact you or allow third parties to contact you only when you have provided consent and only by those means you provided consent for.*
- If you do not want us to use your data for ourselves or third parties you will have the opportunity to withhold your consent to this when you provide your details to us on the form on which we collect your data."*

27. On 1 September 2020, a third party information notice was issued to the telecommunications service provider, [REDACTED], requesting subscriber details for three mobile telephone numbers used to send the

SMS messages promoting [www.debt247.co.uk](http://www.debt247.co.uk), [out-of-debts.co.uk](http://out-of-debts.co.uk) and [outofdebtuk.co.uk](http://outofdebtuk.co.uk). [REDACTED] responded on 13 October, informing the ICO that the numbers were allocated to [REDACTED]. According to their website ([REDACTED]), [REDACTED] is an SMS platform provider offering bulk SMS marketing solutions to organisations. It has been registered with the ICO as a “telecommunications company” since March 2017.

28. On 26 October 2020, the ICO sent an initial investigation letter to [REDACTED], which informed them of the complaints received and requested answers to several questions. On 2 November, [REDACTED] responded, informing the ICO that [REDACTED] is a communications service provider, in which users access their service via a self-service web portal or application programming interface. [REDACTED] stated that all users agree to be bound by its terms of service, which state that users must comply with the laws surrounding consent.
29. [REDACTED] identified Mr Ryan and Mr Hill, trading as Ryan Hill Partners, as the users who rented two of the virtual mobile numbers (07520649873 and 07520660864) used to send the SMS messages promoting [www.debt247.co.uk](http://www.debt247.co.uk). Invoices were provided which showed that Ryan Hill Partners had purchased a total of 367,500 SMS credits from [REDACTED]. On 18 November, a third party information notice was issued to [REDACTED], requesting further information about Ryan Hill Partners, including the full list of numbers allocated, the connection dates and usage periods, payment details and copies of message logs.
30. On 24 November 2020, further searches of the 7726 database were conducted which revealed that complaints for SMS messages referencing [www.debt247.co.uk](http://www.debt247.co.uk) ceased on 5 November 2020, three days after [REDACTED] responded to the initial investigation letter from the ICO. Also on 5 November, complaints began to be received about

similar SMS messages promoting the website [www.debtassist.uk](http://www.debtassist.uk).

There were 75 such complaints between 5 and 24 November. The website did not contain any company information and the only contact information was an email address ([help@debtassist.uk](mailto:help@debtassist.uk)). A whois search revealed that [www.debtassist.uk](http://www.debtassist.uk) was registered on 1 November 2020 via [REDACTED]. A comparison between the websites [www.debt247.co.uk](http://www.debt247.co.uk) and [www.debtassist.uk](http://www.debtassist.uk) revealed that the two websites were virtually identical.

31. Most of the SMS messages promoting the website [www.debtassist.uk](http://www.debtassist.uk) were sent from the mobile number, 07451289475. This same number was used between 6 October and 5 November 2020 to send messages promoting the website [www.debt247.co.uk](http://www.debt247.co.uk). The change of mobile number used to promote [www.debt247.co.uk](http://www.debt247.co.uk) appears to have occurred after the ICO issued the third party information notice to [REDACTED] in September requesting subscriber details for the mobile numbers 07520649873 and 07520660864 (the numbers previously used to promote [www.debt247.co.uk](http://www.debt247.co.uk)).
32. In response to the third party information notice, [REDACTED] confirmed that Ryan Hill Partners were allocated the three mobile numbers used to send the messages promoting [www.debt247.co.uk](http://www.debt247.co.uk) and, from 5 November 2020, [www.debtassist.uk](http://www.debtassist.uk) (i.e. 07520649873, 07520660864, and 07451289475). [REDACTED] also provided message logs confirming that Ryan Hill Partners stopped sending messages promoting [www.debt247.co.uk](http://www.debt247.co.uk) on 29 October, three days after the ICO sent the initial investigation letter to [REDACTED]. The message logs showed that SMS messages promoting [www.debtassist.uk](http://www.debtassist.uk) started on 5 November, three days after [REDACTED] identified Ryan Hill Partners as the sender of the [www.debt247.co.uk](http://www.debt247.co.uk) messages.

33. On 27 November 2020, an initial investigation letter was sent to Ryan Hill Partners via email informing them of the complaints received by the ICO and via the 7726 service. The letter outlined the requirements of PECR and the enforcement powers available to the Commissioner. Ryan Hill Partners was asked to provide answers to several questions by 18 December 2020. The letter was accompanied by a spreadsheet listing 456 complaints received by the ICO and the via the 7726 service between 5 September 2019 and 5 November 2020 about unsolicited SMS messages promoting the website [www.debt247.co.uk](http://www.debt247.co.uk).
34. On 1 December, Mr Ryan called the ICO's investigating officer to request the password for the spreadsheet, which was provided to him during the call. Mr Ryan stated that he intended to instruct someone to respond on his behalf.
35. On 18 December, Mr Ryan called the ICO's investigating officer. He explained that he had managed to obtain some of the requested information, but that he was awaiting further details from his suppliers. The investigating officer advised Mr Ryan to send any information he had at this stage and asked him to confirm what information was outstanding, and when this could be provided. No response was received from Mr Ryan, so a chaser email was sent by the ICO on 4 January 2021, requesting the information by 8 January 2021.
36. On 8 January 2021, John Ryan provided the following update:

*"I have gone through the logs, and I calculate that the total number of direct marketing texts sent out was 426,300 since 1st September 2019.*

*I'm now going through the data, opt outs, leads generated etc and I will pull together the other information that you require.*

*I will be able to update you with further information next week and I apologise for the delay in submission of these responses."*

37. Over the following ten weeks, Mr Ryan contacted the investigating officer several times, by phone and email, detailing the various difficulties he was encountering in attempting to provide the information requested by the ICO.

38. On 23 March 2021, Mr Ryan provided the following update:

*"I've now done a detailed manual count of the total SMS sent since 1st Sept 2019 and it is 463,360 (which is more than my earlier submission of approximately 426,300).*

*Of these, 409,468 were delivered and 53,892 'failed'.*

*I will have the opt out figures today for you and the opt-out process as well as other information you require."*

39. On 1 June 2021, the ICO sent an end of investigation email to Mr Ryan. Mr Ryan was reminded that it had been over six months since the initial investigation letter and most of the information requested in that letter was still outstanding.

40. The end of investigation email also explained that, under PECR, the onus was on Ryan Hill Partners, as the sender of the messages, to prove that it had valid consent. The email referred Mr Ryan to the initial investigation letter, which outlined the enforcement powers available to the Commissioner, and explained that consideration would now be given as to whether formal enforcement action was

appropriate. The email added that if Mr Ryan had any relevant evidence, he should provide it by 8 June 2021.

41. On 14 June 2021, Mr Ryan acknowledged receipt of the end of investigation email. He said that he fully understood that there were unresolved issues in this matter. He confirmed that he would compile the information requested.
42. On 30 June and 1 July 2021, Mr Ryan spoke to the investigating officer. He expressed his desire to resolve the matter, but said that he did not have most of the information. The investigating officer asked Mr Ryan to send any information he had, including details of any companies who had supplied the data or who had instructed him to send the SMS messages.
43. No further response was received so, on 14 July 2021, a follow-up email was sent to Mr Ryan. Mr Ryan emailed the investigating officer on 20 July 2021, stating that he would resume work on the matter and compile the requested information. No further response was received from Mr Ryan.
44. A search of the ICO registration database, conducted on 22 July 2021, revealed that the registration for Hill Ryan Partnership expired on 28 June 2021.
45. The Commissioner has made the above findings of fact on the balance of probabilities.
46. The Commissioner has considered whether those facts constitute a contravention of regulations 22 and 23 of PECR by Mr Ryan and Mr Hill, trading as Ryan Hill Partners and Hill Ryan Partnership and, if so, whether the conditions of section 55A DPA are satisfied.

**The contravention**

47. The Commissioner finds that Mr Ryan and Mr Hill, trading as Ryan Hill Partners and Hill Ryan Partnership (together "Ryan Hill Partners") contravened regulations 22 and 23 of PECR.
48. The Commissioner finds that the contravention was as follows:
49. The Commissioner finds that between 1 September 2019 and 30 November 2020, Ryan Hill Partners sent 463,360 SMS messages, of which 409,468 were delivered, which were unsolicited direct marketing messages sent to subscribers who had not consented to receiving them. The Commissioner finds that Ryan Hill Partners transmitted those direct marketing SMS messages, contrary to regulation 22 of PECR.
50. Ryan Hill Partners, as the sender of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those SMS messages has been acquired.
51. Ryan Hill Partners sought to profit from the Covid-19 pandemic by sending SMS messages to individuals offering them the opportunity to "Get Debt FREE during the Lockdown!". Message logs provided by [REDACTED] [REDACTED] show that 9,906 messages sent by Ryan Hill Partners on 18 and 19 May 2020 included this wording. Certain SMS messages also misleadingly referred to "government help" or the solution being "government backed", despite the fact Ryan Hill Partners were not authorised by the FCA to provide regulated financial products or services. Message logs provided by [REDACTED] [REDACTED] show that 235,940 of the messages sent by Ryan Hill Partners between 18 May and 26 November 2020 included this wording.

52. The websites referenced in the SMS messages, [www.debt247.co.uk](http://www.debt247.co.uk) and [www.debtassist.uk](http://www.debtassist.uk), collected personal data, including financial information. Individuals who visited the websites and completed the online enquiry form were required to agree to a vaguely worded privacy policy which stated that their data may be used to provide them with "*information about unrelated goods and services*" from "*selected third parties*". No information was provided about the identity of the controller or third parties, the lawful basis for the processing or the existence of individual rights.
53. The Commissioner considers that Ryan Hill Partners attempted to frustrate his investigation by changing the mobile number used to send the SMS messages and by changing the name of the promoted website from [www.debt247.co.uk](http://www.debt247.co.uk) to [www.debtassist.uk](http://www.debtassist.uk). Ryan Hill Partners implemented these changes after third party information notices were issued to [REDACTED] and [REDACTED] requesting details of the subscribers who were allocated the mobile numbers used to send the SMS messages.
54. Further, Mr Ryan failed to provide the majority of the information requested by the ICO in the initial investigation letter, despite repeated assurances over the course of six months that he was in the process of collating the information.
55. Ryan Hill Partners did not provide any explanation or evidence to the Commissioner on whether it had obtained the consent of subscribers. No evidence was provided by Ryan Hill Partners as to the nature and extent of any consent from subscribers, or when or how any such consent had been obtained.
56. For consent to be valid it is required to be "freely given", by which it follows that if consent to marketing is a condition of subscribing to a

service, the organisation will have to demonstrate how the consent can be said to have been given freely.

57. Consent is also required to be "specific" as to the type of marketing communication to be received, and the organisation, or specific type of organisation, that will be sending it.
58. Consent will not be "informed" if individuals do not understand what they are consenting to. Organisations should therefore always ensure that the language used is clear, easy to understand, and not hidden away in a privacy policy or small print. Consent will not be valid if individuals are asked to agree to receive marketing from "similar organisations", "partners", "selected third parties" or other similar generic description.
59. The Commissioner is therefore satisfied from the evidence he has seen that Ryan Hill Partners did not have the necessary valid consent for the 463,360 direct marketing SMS messages which it sent to subscribers between 1 September 2019 and 30 November 2020, of which 409,468 were delivered.
60. The Commissioner is further satisfied that Ryan Hill Partners concealed its identity in contravention of regulation 23 PECR.
61. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

### **Seriousness of the contravention**

62. The Commissioner is satisfied that the contravention identified above was serious. This is because between 1 September 2019 and 30 November 2020 a total of 463,360 direct marketing SMS messages (of

which 409,468 were delivered) were sent by Ryan Hill Partners. These messages contained direct marketing material for which subscribers had not provided valid consent. The SMS messages sent by Ryan Hill Partners between 1 September 2019 and 30 November 2020 (a period of 15 months) resulted in 522 complaints from subscribers through the 7726 spam reporting service and nine complaints through the ICO's Online Reporting Tool.

63. Although 53,892 SMS messages were not delivered to subscribers, their existence evidences an attempt by Ryan Hill Partners to send even larger volumes of marketing messages to individuals without consent to do so.
64. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

**Deliberate or negligent contraventions**

65. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Ryan Hill Partners' actions which constituted that contravention were deliberate actions (even if Ryan Hill Partners did not actually intend thereby to contravene PECR).
66. The Commissioner considers that in this case Ryan Hill partners did deliberately contravene regulations 22 and 23 of PECR.
67. Both Mr Ryan and Mr Hill were disqualified as company directors from 7 April 2017, for 12 years and 8 years respectively. They set up Ryan Hill Partners less than three months after they were disqualified from acting as company directors and continued to generate debt management leads.

68. Mr Ryan and Mr Hill were not registered with the FCA. The websites promoted by the SMS messages, [www.debt247.co.uk](http://www.debt247.co.uk) and [www.debtassist.uk](http://www.debtassist.uk), also did not contain any information about the identity of the organisation or the debt management companies or insolvency practitioners to whom the leads would be passed.
69. Ryan Hill Partners failed to provide the Commissioner with evidence of having taken any steps to comply with PECR. In correspondence, Mr Ryan failed to provide any evidence, or explanation, of having obtained consent from subscribers. There was also a failure to provide any details of Ryan Hill Partners' relationships with third parties.
70. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
71. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
72. Firstly, the Commissioner has considered whether Ryan Hill Partners knew or ought reasonably to have known that there was a risk that these contraventions would occur. He is satisfied that this condition is met, for the following reasons:
  - Mr Ryan and Mr Hill are former directors of several lead-generation companies and have been generating leads for the debt management sector since 2012 so they should have been aware of the requirements of PECR, the ICO's guidance on direct marketing and the enforcement action taken against companies that have sent unsolicited SMS messages in contravention of PECR.

- The Insolvency Service's investigation into Mr Ryan and Mr Hill's previous company, Maximedia (later Signed and Sealed Marketing Limited), raised concerns about their compliance with data protection legislation.
- Hill Ryan Partnership was registered with the ICO from 29 June 2017 until 28 June 2021.
- The agreement Ryan Hill Partners had with [REDACTED] stated that *"You shall only send messages to recipients who have opted in to receive messages"* and that *"You warrant that all content You submit through [REDACTED] (including but not limited to SMS sent via [REDACTED] bulk SMS solution): (i) is sent only to recipients who have provided consent to receive the content in line with the Data Protection Legislation, where such consent is required"*.
- Ryan Hill Partners should have been particularly aware of the risk of a contravention because they were relying on data purchased from third parties.

73. The Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations under PECR. This guidance gives clear advice regarding the requirements of consent for direct marketing and explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post, or by fax. In particular it states that organisations can generally only send, or instigate, marketing messages to individuals if that person has specifically consented to receiving them; and highlights the difficulties of relying on indirect consent for electronic mail. The Commissioner has also published detailed guidance on consent under the GDPR. 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.

74. It is therefore reasonable to suppose that Ryan Hill Partners should have been aware of its responsibilities in this area.
75. Secondly, the Commissioner has gone on to consider whether Ryan Hill Partners failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
76. In this case, reasonable steps would have included obtaining evidence of consent from the third party data suppliers before using the data to send unsolicited SMS marketing messages. Ryan Hill Partners should have paid particular attention to the requirement to demonstrate consent, particularly given the fact that they had been disqualified as directors for failing to maintain adequate company records.
77. Mr Ryan and Mr Hill should also have ensured that Ryan Hill Partners was clearly identified on the websites [www.debt247.co.uk](http://www.debt247.co.uk) and [www.debtassist.uk](http://www.debtassist.uk) and that contact details were available for individuals who wished to exercise their right to opt out of direct marketing.
78. In the circumstances, the Commissioner is satisfied that Ryan Hill Partners failed to take reasonable steps to prevent the contraventions.
79. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

### **The Commissioner's decision to issue a monetary penalty**

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

- Ryan Hill Partners could not be identified in the SMS communications sent to subscribers, in contravention of regulation 23 of PECR. Its identity as the sender of the messages would have gone undetected if not for the due diligence of the ICO's investigating officer who had the benefit of prior knowledge of the individuals involved.
  - Ryan Hill Partners attempted to frustrate the Commissioner's investigation changing the mobile number used to send the SMS messages and by changing the name of the promoted website.
  - There was a highly unsatisfactory level of engagement by Ryan Hill Partners during the ICO's investigation. Mr Ryan failed to provide the majority of the information requested in the initial investigation letter, despite repeated assurances over the course of six months that he was collating the information.
  - Mr Ryan and Mr Hill are disqualified directors. Disqualification came into force from 17 April 2017 for 12 years and 8 years respectively following an investigation by the Insolvency Service.
  - The ICO registration for Hill Ryan Partnership has since expired, as of 28 June 2021.
  - The contravention was motivated by the potential of financial gain.
  - Ryan Hill Partners sought to profit from the Covid-19 pandemic.
81. The Commissioner does not consider that there are any mitigating features of this case.
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. Ryan Hill Partners were invited to make representations in response to that Notice of Intent but did not do so.
84. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
85. The Commissioner has attempted to consider the likely impact of a monetary penalty on Ryan Hill Partners. This has been difficult to assess as the trading entity is a partnership, meaning there is very limited financial information publicly available. Ryan Hill Partners was invited to make financial representations in response to the Notice of Intent but did not do so.
86. As Ryan Hill Partners is a partnership this also means that Mr Ryan and Mr Hill would be jointly and severally liable for any monetary penalty and subsequent debt.
87. The Commissioner has decided on the information that is available to him, that a penalty remains the appropriate course of action in the circumstances of this case. The Commissioner has decided that the factors referenced above do not provide justification to decrease the proposed penalty. In reaching this view, the Commissioner has taken into account the serious aggravating factors present in this case and the egregious manner by which Mr Ryan and Mr Hill, trading as Ryan Hill Partners, pursued financial gain throughout a prolonged contravention period of 15 months.
88. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending of unsolicited direct marketing messages 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. The issuing of a monetary penalty will reinforce the need for businesses to ensure that they are only messaging those who specifically consent to receive direct marketing

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 **£70,000 (seventy 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 **13 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.
92. If the Commissioner receives full payment of the monetary penalty by **12 January 2023** the Commissioner will reduce the monetary penalty by 20% to **£56,000 (fifty six 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 12<sup>th</sup> December 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](mailto: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)).