

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Crown Glazing Ltd

Of: Unit 7 Navigation Business Village, Navigation Way, Preston,
Lancashire, PR2 2YP

1. The Information Commissioner ("the Commissioner") has decided to issue Crown Glazing Ltd ("CGL") 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. CGL, whose registered office is given above (Companies House Registration Number: 11768116) 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 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 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. CGL first came to the attention of the Commissioner in 2021 after 37 complaints were received in relation to the energy and home improvements sector.
16. According to some of the complaints received about CGL, their calls were advertising double-glazing or a free energy test. One of the complainants stated the caller was working on behalf of the government to improve energy savings. When the complainant questioned the call by explaining their number was registered with the TPS, the caller said the individual had opted in.
17. On 24 August 2021, the Commissioner issued a third party information notice to [REDACTED] ([REDACTED]) to obtain subscriber information. [REDACTED] stated the numbers were allocated to a reseller called [REDACTED] which had assigned the numbers to another reseller called [REDACTED] ([REDACTED]).
18. On 28 September and 12 November 2021, the Commissioner issued third party information notices to [REDACTED] who stated the numbers were allocated to CGL. The response also included call detail records (CDRs) for the CLIs allocated to CGL.

19. The CDRs were screened against the TPS register and it was established that between 4 January 2021 and 11 November 2021, 503,445 connected calls were made to individuals registered with the TPS.
20. On 13 January 2022, the Commissioner sent an initial investigation letter and a spreadsheet of complaints to CGL. The letter outlined the Commissioner's powers and requested information to help ascertain CGL's compliance with PECR.
21. On 27 January 2022, the Commissioner received a response from CGL (via its legal representative) that explained the requested information was being collated. CGL requested evidence that the numbers listed in the complaint spreadsheet were registered with the TPS. The Commissioner responded to CGL on the same day providing a spreadsheet of TPS registration dates for each complainant.
22. On 24 February 2022, CGL responded to the Commissioner and provided various documents and supporting evidence, including a response to the Commissioner's questions about CGL's compliance with PECR. In the response, CGL explained that data was purchased from a list broker called [REDACTED]. CGL did not provide any supporting evidence to show how data was collected or what fair processing information was provided to individuals. However, a due diligence document supplied in the response suggested that the data was obtained from lifestyle surveys, comparison websites and product registration.
23. CGL stated that none of the complainants' information was purchased from their list broker. Instead, the data had been obtained by door to

door canvassing where individuals had given permission to be contacted. The evidence CGL provided to demonstrate this was a spreadsheet of names, numbers and postcodes of customers who had agreed to services. This information was cross-referenced with the complainant's names, numbers and postcodes, but the records did not match.

24. One of the documents provided by CGL was their door canvassing process, which provided an insight into how the business operated. This included details of automatic screening against TPS before data was added to their dialler system for an agent to call. Any telephone numbers registered with the TPS were automatically removed by the dialler.
25. CGL advised that data purchased from the list broker was screened prior to purchase. This was evidenced in a due diligence document that CGL provided which stated, "data supplied for outbound calling is screened against the TPS on output." In addition, CGL provided a copy of an email dated 16 January 2022 with their service provider showing a request to upgrade their dialler system to include TPS screening. This exchange showed the service provider responding to the request stating that CGL's account had been enabled with outbound TPS screening as of 12:05 on 17 January 2022. This appears to have been implemented because of the Commissioner's investigation and had not been in place at the time of the contravention.
26. In relation to suppression, CGL stated that they had a built-in system on the dialler where a call agent could block a number if requested. Suppression requests were also received by the list broker who informed CGL by email if a suppression request had been made. Once

added, the numbers were blocked even if the customer 'opts in' on a separate occasion.

27. CGL concluded by explaining the procedures they have implemented since the Commissioner commenced its investigation, which had included obtaining written confirmation from customers who had provided their information to a door to door canvasser; ringing customers who had provided their information within one or two weeks; explaining to customers that they had 'opted in' to telephone calls after supplying their information, and analysing complaint trends. CGL further explained that if they were unable to contact a customer after four weeks, then they would input the data into their dialler which would screen the data against the TPS and remove registered numbers.
28. On 14 March 2022, the Commissioner contacted CGL to enquire about the supporting evidence and to ascertain whether the records had been sent in error, as they did not match with the complainants.
29. CGL telephoned the Commissioner on 21 March 2022 and stated that the records provided were of customers who had agreed to services in the same areas as the complainants. Following this discussion, the Commissioner sent further questions about CGL's processes and whether they could provide any supporting evidence to show that individuals agreed to be called by the organisation.
30. On 13 April 2022, CGL provided a response to the Commissioner's questions along with a copy of appointment visits made by their canvassing team and examples of four leaflets. CGL explained that the canvassing team did not previously obtain any supporting evidence to

show that individuals agreed to be contacted but this has now been rectified.

31. CGL confirmed the complainants were contacted by the appointment team rather than being inputted onto the dialler for a call agent to call. CGL did not provide details of which service provider is used for the appointment team stating: "there is only one dialler and that is [REDACTED], however the appointment contacts the consumers manually." Several of the policies were created within the last three months, which suggested the documents were drafted at the start of the ICO's investigation. CGL stated that staff are trained when they first start and are monitored for at least a month with full training every six months.
32. On 14 April 2022, the Commissioner contacted CGL to ask for details of the service provider they were using for the appointment calls and to request copies of call detail records. On 21 April 2022, CGL sent an email to explain that telephony services were supplied by [REDACTED] [REDACTED] which were in the process of liquidating. As such, the CSP was unable to provide the information requested.
33. On 18 May 2022, the Commissioner sent an end of investigation letter to CGL which stated the Commissioner would now consider whether regulatory action was appropriate. The correspondence asked CGL to provide evidence of any processes or procedures they may not have supplied as part of the investigation.
34. On 25 May 2022, the Commissioner received a telephone call from CGL asking for guidance; specifically what type of information should be provided in response to the end of investigation letter. The

Commissioner explained that it was an opportunity for the organisation to provide any updated procedures or policies that may have been implemented following the investigation. CGL noted that the deadline to provide the information had been missed but indicated they would try to provide something in writing by 27 May 2022. However, no response was received.

35. The Commissioner is satisfied that the 503,445 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 CGL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

38. The Commissioner finds that CGL contravened regulation 21 of PECR.
39. The Commissioner finds that the contravention was as follows:
40. Between 4 January 2021 and 11 November 2021, CGL used a public telecommunications service for the purposes of making 503,445 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 37 complaints being made to the TPS and the Commissioner.

41. The Commissioner is also satisfied for the purposes of regulation 21 that these 503,445 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 CGL 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. The Commissioner has considered the lack of evidence of any notifications obtained by CGL and is concerned that 503,445 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 CGL that they did not object to receiving such calls.

46. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

47. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by CGL arising from the organisation's activities between 4 January 2021 and 11 November 2021, and this led to 503,445 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified CGL that they were willing to receive such calls, and 37 complaints being made as a result.
48. CGL has failed to provide any evidence that the calls were made to subscribers who did not otherwise object to receiving those calls from CGL.
49. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

50. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that CGL's actions which constituted that contravention were deliberate

actions (even if CGL did not actually intend thereby to contravene PECR).

51. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
52. The Commissioner does not consider that CGL deliberately set out to contravene PECR in this instance.
53. Firstly, he has considered whether CGL knew or ought reasonably to have known that there was a risk that this contravention would occur. He is satisfied that this condition is met, for the following reasons:
54. Prior to the Commissioner's investigation the TPS contacted CGL at their registered office to notify them of the complaints received and alerting them to compliance issues. CGL failed to engage with the TPS.
55. The Commissioner has also 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.

56. Where it is able to identify the organisation making the calls, it is standard practice of the TPS to contact that organisation on each occasion a complaint is made. It is reasonable to believe that CGL would have been sent a notification from the TPS for complaints being made in this case. That there were 27 complaints made to the TPS alone over the period of the contravention should have made CGL aware of the risk that such contraventions may occur and were indeed occurring.
57. It is therefore reasonable to suppose that CGL should have been aware of its responsibilities in this area.
58. Secondly, the Commissioner has gone on to consider whether CGL 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.
60. Reasonable steps in these circumstances may also have included:
 - a) Ensuring that call data was screened against TPS and rescreened every 28 days.

- b) Conducting regular checks of marketing lists to ensure that any TPS screening outsourced to a third party is working correctly.
 - c) Maintaining clear records of any notifications from individuals registered on TPS who do not object to marketing calls from the organisation.
 - d) Providing adequate staff training to ensure suppression requests are identified and acted upon.
 - e) Monitoring and sampling calls for quality control purposes and to ensure policies and processes are being adhered to; and
 - f) Performing regular reviews of marketing databases to ensure the data is fit for purpose and PECR compliant.
61. Given the volume of calls and complaints, it is clear that CGL failed to take those 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. The Commissioner has taken into account the following aggravating feature of this case:
- a) Some of the complainants indicated that CGL provided misleading information in relation to their identity by incorrectly suggesting that they were representing the government.
64. The Commissioner has not identified any mitigating features in this case.

65. 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.
66. 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 CGL on this matter.
67. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
68. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
69. The Commissioner has considered the likely impact of a monetary penalty on CGL. In doing so, the Commissioner has given careful consideration to the representations made by CGL in response to the Notice of Intent. However, the Commissioner has decided that a penalty nevertheless remains the appropriate course of action in the circumstances of this case.
70. 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.

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

The amount of the penalty

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

Conclusion

74. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **20 June 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.

75. If the Commissioner receives full payment of the monetary penalty by **19 June 2023** the Commissioner will reduce the monetary penalty by 20% to **£104,000 (one hundred and four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
76. 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.
77. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
78. Information about appeals is set out in Annex 1.
79. 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.

80. 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 18th day of May 2023.

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)).