

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Argentum Data Solutions Limited

Of: 27 Sheet Street, Windsor, Berkshire, England, SL4 1BN

1. The Information Commissioner ("the Commissioner") has decided to issue Argentum Data Solutions Limited ("ADS") 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. ADS, whose registered office address is given above (Companies House Registration Number: 08936427) is the organisation 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. From 1 January 2021, consent in PECR has been defined by reference to the concept of consent in the UK GDPR as defined in section 3(10) of the DPA 2018^[1]: see regulation 2(1) of PECR, as amended by Part 3 of Schedule 3, paragraph 44 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations

^[1] The UK GDPR is therein defined as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

2019/419. Article 4(11) of the UK 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 UK 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 ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.

14. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.

15. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

Background to the case

16. ADS is a data processing and hosting provider that claims to be a platform for other organisations to use to send out marketing SMS messages. ADS was incorporated on 12 March 2014 and is registered at Companies House under company number 08936427.
17. Mobile users can report the receipt of unsolicited marketing text 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 used to identify organisations potentially in breach of PECR.
18. ADS first came to the attention of the Commissioner as a result of 10,242 complaints received through the Mobile UK's Spam Reporting Service, linked to [REDACTED] pages collecting individuals' data, between 1 January 2021 and 31 January 2022.
19. Examples of the messages complained of are:

"Taken out car finance in the last 10 years? If Yes you could be entitled to compensation see how much now.

[REDACTED]

We are now offering brand new boiler replacements in your area under the Governments ECO 3 scheme. Get yours now.

██

Report housing issues such as damp, roofs, mould or infestation now. Issues will be resolved and a refund in rent given

██"

20. Following receipt of the complaints, on 11 November 2021 the Commissioner issued a third-party information notice to ██████████ to identify the organisation responsible for sending such SMS messages.
21. On 26 November 2021, ██████████ responded identifying The Data Source (UK) Limited ("TDS") as the organisation responsible for the account from which the SMS messages were sent and provided a contact email address.
22. According to Companies House records, TDS changed its name to ADS on 25 July 2022. For the purposes of this notice, references to TDS shall be construed as references to the entity that is now called ADS.
23. ██████████ provided a further response to the third-party information notice which identified a total of 2,330,423 SMS messages had been sent between 1 January 2021 and 31 January 2022.
24. Consequently, on 1 February 2022, the Commissioner sent an initial investigation letter to ADS. The letter requested information to help ascertain ADS' compliance with PECR and outlined the Commissioner's powers. ADS replied requesting an extension of time to respond, which the Commissioner granted until 13 March 2022.

25. As ADS did not provide a response, on 28 March 2022 the Commissioner issued ADS with an information notice to request information as part of their investigation.
26. On 2 May 2022, ADS responded to the information notice confirming it used [REDACTED] to send SMS messages. Examples of SMS messages sent by ADS' [REDACTED] account are:

*"You may be able to write off up to 85% of unpaid debt. See if you qualify now. [REDACTED]
[REDACTED]"*

*"Are you struggling with debt? write off 85% today! See if you qualify today [REDACTED]
[REDACTED]"*

27. ADS informed the Commissioner it had sent 25,000 SMS messages between 1 January 2021 and 1 January 2022, 24,309 of which were delivered successfully. ADS also explained it obtained data from [REDACTED] and provided a screenshot of the information the website provided to individuals, which reads:

"Can I refuse my data being sold?"

Yes you can. If you do not wish for your data to be sold, do not submit your application on our website. The nature of our business is to sell your data which is how we generate revenue."

This does not demonstrate ADS obtained valid consent to send electronic direct marketing in accordance with Regulation 22 of PECR.

28. ██████ is the trading name of ████████████████████, which was fined by the Commissioner in 2016 for sending marketing SMS messages in breach of PECR.
29. ADS also explained it carried out due diligence checks on the third parties that use its platform however, it did not elaborate on what this involved.
30. When asked to provide the consent relied upon to send the SMS messages, ADS explained its contractual obligations were based on legitimate interest as the lawful basis.
31. In relation to the complaints made via the Mobile UK's Spam Reporting Service, ADS stated it sent a small number of SMS messages as part of a marketing campaign and customers were given the option to opt out.
32. Further, ADS provided a copy of its PECR training manual which detailed the definition of consent and how marketing can be conducted in compliance with the law.
33. On 9 May 2022, the Commissioner informed ADS there was evidence that significantly more than 25,000 SMS messages had been sent and there were complaints which detailed more SMS bodies than ADS had confirmed in its response. The Commissioner reminded ADS it was a criminal offence to knowingly or recklessly make a false statement in response to an information notice and invited ADS to provide a more comprehensive response.
34. On 12 May 2022, ADS responded explaining it assists clients with setting up SMS platforms and website automations, so it was likely the complaints related to SMS messages sent by one of its clients. ADS

- asked the Commissioner which account was being referred to. On 13 May 2022, the Commissioner confirmed the account belonged to ADS and was the subject of over 10,000 complaints.
35. That same day, on 13 May 2022, the Commissioner issued a third-party information notice to [REDACTED] to identify the creators and users of the websites mentioned in the SMS messages.
 36. On 25 May 2022, [REDACTED] responded to the Commissioner identifying two accounts linked to the websites. The first account was created by [REDACTED] on 6 July 2021. The second account was created by another individual on 9 April 2021 and was deleted on 5 January 2022. Both accounts were used by multiple clients of TDS.
 37. Companies House records confirm [REDACTED] was disqualified as a director of [REDACTED] in 2017 for 10 years by the Insolvency Service for violating the Compensation (Claims Management Services) Regulations 2006.
 38. On 26 May 2022, ADS responded to the Commissioner confirming it had set up the account with [REDACTED] but explained other companies also used that account which is how the other SMS messages were sent. ADS further explained [REDACTED], of [REDACTED], was responsible for sending the SMS messages and provided his email address which was almost identical to the email address used by [REDACTED]. ADS told the Commissioner to obtain the remaining information from [REDACTED] or [REDACTED].
 39. On 8 June 2022, the Commissioner asked ADS to provide copies of all correspondence, evidence that shows [REDACTED] sent the SMS messages through ADS' [REDACTED] account, evidence of payments or

invoices from [REDACTED] for the SMS messages sent, details of the due diligence conducted on [REDACTED] prior to allowing them to send the SMS messages, details of how the relationship was established and evidence of websites that ADS created for [REDACTED]. The Commissioner also asked ADS whether they had taken any action since the investigation began. ADS had seven days to respond.

40. On 24 June 2022, ADS provided its response to the Commissioner's questions. ADS stated all correspondence with [REDACTED] was via phone or email and told the Commissioner to direct all correspondence to that email address to obtain the requested evidence. ADS also supplied an invoice relating to the setup of the [REDACTED].
41. In relation to payments, ADS explained companies purchased credits directly from the [REDACTED].
42. In relation to due diligence, ADS explained that as the setup of the [REDACTED] account was done on an administrative basis it did not think any due diligence was required. ADS further explained that due diligence for the sending of SMS messages will be conducted by the relevant companies.
43. In terms of the websites created, ADS stated it only setup an account for [REDACTED]. ADS also stated its relationship with [REDACTED] was established through a phone call it received.
44. In terms of action taken since the start of the Commissioner's investigation, ADS explained it had employed a new Data Protection Officer who would be joining the company in July 2022, and had

engaged with an organisation, on a monthly retainer starting from July 2022, to provide a full compliance quarterly audit.

45. Upon receipt of this response on 24 June 2022, the Commissioner found that the metadata on the invoice provided by ADS was created on the same day it was provided.
46. On 30 June 2022, the Commissioner contacted [REDACTED] and a meeting was arranged for 11 July 2022 to obtain further information about ADS.
47. In the meeting, [REDACTED] explained he was operating as a sole trader. He had explored the possibility of incorporating into a limited company and was using [REDACTED] as a trading name, but he was unable to proceed with this. Some people still refer to his business as [REDACTED].
48. In terms of the relationship with ADS, [REDACTED] stated he had clients who wanted marketing assistance and referred them to ADS. He wanted the process of sending marketing SMS messages to be automated so he paid ADS a fee to set up a [REDACTED] account and in return, he would receive an introducer fee from ADS when he introduced customers to them. [REDACTED] confirmed these arrangements with ADS were informal but was unable to confirm who paid for the SMS messages to be sent. He explained two companies were sending SMS messages and may be using data from individuals who had not opted in but refused to name the organisations.
49. On 12 July 2022, the Commissioner asked [REDACTED] to provide further information regarding how the SMS messages were sent, how the [REDACTED] account was accessed, who sent and instigated the SMS

messages, the volumes and bodies of SMS messages sent, who paid for the SMS messages and who operated the [REDACTED] accounts. [REDACTED] did not respond to this request.

50. On 20 September 2022, the Commissioner sent ADS an end of investigation letter which reminded them of the Commissioner's powers set out in the initial letter dated 24 January 2022. ADS were also asked to provide any relevant evidence or information regarding their policies, procedure and training programmes which had not yet been supplied within seven days, by 27 September 2022.
51. On 27 October 2022, the Commissioner issued a third-party information notice to [REDACTED] requesting a copy of the contract ADS had signed.
52. On 2 November 2022, [REDACTED] responded that ADS did not sign a contract but had signed up online, where it agreed to [REDACTED] terms of service on 14 January 2021 as [REDACTED]
[REDACTED].
53. As these details differed from the details [REDACTED] previously provided, the Commissioner issued a further third-party information notice to [REDACTED] to confirm when ADS' account details were changed. The Commissioner also requested copies of correspondence relating to the setup of the account, change in details and invoices since the creation of the account.
54. Upon review of the terms of service, the Commissioner determined ADS was a subscriber of services as defined by PECR and allowed its lines to be used by its clients to send marketing SMS messages contrary to Regulation 22(4) of PECR.

55. On 15 December 2022, [REDACTED] responded to the second third party information notice explaining it was unable to confirm when ADS' account details were updated. [REDACTED] provided the first invoice dated 25 January 2021, 13 days after the ADS account was first opened, which showed the account details had changed from those provided at sign up to [REDACTED]
[REDACTED]
56. The Commissioner has made the above findings of fact on the balance of probabilities.
57. The Commissioner has considered whether those facts constitute a contravention of regulations 22 and 23 of PECR by ADS and, if so, whether the conditions of section 55A DPA 1998 are satisfied.

The contravention

58. The Commissioner finds that ADS contravened regulations 22 and 23 of PECR.
59. The Commissioner finds that the contravention was as follows:
60. The Commissioner finds that between 1 January 2021 and 31 January 2022 there were 2,330,423 direct marketing SMS messages received by subscribers. The Commissioner finds that of those 2,330,423 messages ADS sent 24,309 (regulation 22(3)) and allowed its lines to be used, by others, to send 2,306,114 direct marketing messages, thereby 2,330,423 messages were sent contrary to regulation 22 of PECR.

61. ADS, as the sender of the SMS messages, is required to ensure that it is acting in compliance with the requirements of Regulation 22(3) of PECR, and to ensure that valid consent to send those messages had been acquired.
62. 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.
63. 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.
64. 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.
65. In this instance, ADS has not provided any evidence of consents it had obtained from individuals prior to sending direct marketing SMS messages or allowing other companies to send such from their [REDACTED] account. Instead, ADS refers to 'legitimate interest' as the lawful basis for its actions which is contrary to the express requirement for consent in Regulation 22 of PECR.
66. The Commissioner is therefore satisfied from the evidence he has seen that ADS did not have the necessary consent for the 24,309 direct marketing SMS messages it sent and were received by subscribers.

67. The Commissioner is further satisfied that the actions of ADS have contravened Regulation 23 PECR. This is because none of the SMS messages which ADS is responsible for sending identified the sender of such communication.
68. The Commissioner has gone on to consider whether the conditions under section 55A DPA 1998 are met.

Seriousness of the contravention

69. The Commissioner is satisfied that the contravention identified above was serious. This is because between 1 January 2021 and 31 January 2022, a confirmed total of 2,330,423 direct marketing messages were sent by the [REDACTED] account that ADS is responsible for. These messages contained direct marketing material for which subscribers had not provided valid consent.
70. Furthermore, none of the SMS messages sent gave individuals the opportunity to opt out of future marketing communications.
71. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA 1998 is met.

Deliberate or negligent contraventions

72. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that the actions taken by ADS which constituted that contravention were deliberate (even if ADS did not actually intend thereby to contravene PECR).

73. The Commissioner considers that in this case ADS did deliberately contravene Regulations 22 and 23 of PECR. This is because the Commissioner's investigation established ADS deliberately sent direct marketing SMS messages to individuals without evidencing it had obtained valid consent from the recipients. Further, ADS has deliberately allowed its clients to send such communications through its [REDACTED] account, and has also permitted [REDACTED], a disqualified director, access to the account.
74. Moreover, ADS admitted sending 24,309 direct marketing SMS messages but denied responsibility for sending the remaining 2,306,114 that were sent by its clients. This suggests to the Commissioner that ADS had deliberately attempted to downplay the volume SMS messages it is responsible for sending individuals.
75. During the Commissioner's investigation, ADS deliberately failed to respond to some requests for information and provided incorrect details, such as the incorrect email address for and name of [REDACTED]. Whilst ADS had provided a copy of its privacy policy, it appears to be superficial and lacking in detail to relate it specifically to ADS' use of personal data.
76. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
77. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

78. Firstly, he has considered whether ADS 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 because ADS allowed its [REDACTED] account to be used by its clients to send direct marketing SMS messages. Furthermore, ADS specifically chose not to identify itself in the 24,309 SMS messages it admitted it sent and failed to obtain any valid consent from the recipients. ADS also obtained information from an organisation who had previously been fined by the Commissioner.
79. 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. 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.
80. It is therefore reasonable to suppose that ADS should have been aware of its responsibilities in this area.
81. Secondly, the Commissioner has gone on to consider whether ADS failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met. This is because ADS has not provided evidence of any steps it took to mitigate the risk of a breach

occurring and has failed to demonstrate it had an adequate understanding of PECR. Whilst ADS provided the Commissioner with a PECR policy which makes it clear direct marketing SMS messages cannot be sent without consent, it has failed to provide any evidence of putting this into practice. The Commissioner therefore believes ADS had taken superficial steps to work towards compliance but had failed to put its own policies into practice.

82. Further, ADS permitted a disqualified director to control its [REDACTED] account, which suggests to the Commissioner that ADS actively took steps which may have resulted in a breach rather than prevented one.

83. 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, and that they have the necessary consent. It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. As aforementioned, ADS did not conduct any due diligence on the organisation which it purchased personal data from or any of its clients that used its [REDACTED] [REDACTED] account.

84. Reasonable steps the Commissioner might have expected the organisation to take include undertaking its own due diligence against those entities referred to at paragraph 83 above and reviewing their privacy policies. It is also reasonable to expect that an organisation wishing to engage in direct marketing by electronic mail could and should, particularly since the UK GDPR came into force on 25 May 2018, have familiarised themselves with their obligations regarding consent, and ensured their privacy policy was transparent about their processing activities. ADS could have also made use of the

Commissioner's guidelines and telephone helpline described at paragraph 79 above.

85. In the circumstances, the Commissioner is satisfied that ADS failed to take reasonable steps to prevent the contraventions.
86. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

87. The Commissioner has taken into account the following aggravating features of this case:
 - Poor co-operation during the investigation;
 - ADS allowed its [REDACTED] account to be used to facilitate unlawful direct marketing SMS messages which also failed to identify the sender of such communications; and
 - Nature and context of the SMS messages sent falsely claimed to act on behalf of the Government in connection with the Government's ECO3 scheme.
88. The Commissioner has not identified any mitigating features in this case.
89. 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.

90. 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 ADS on this matter.
91. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
92. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
93. The Commissioner has considered the likely impact of a monetary penalty on ADS. 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.
94. 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.
95. 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.

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

The amount of the penalty

97. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of £65,000 (sixty five thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

98. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **28 November 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.
99. If the Commissioner receives full payment of the monetary penalty by **27 November 2023** the Commissioner will reduce the monetary penalty by 20% to £52,000 (fifty two thousand pounds). However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
100. 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.

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

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

103. 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.

104. 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 26th day of October 2023

Signed



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)).