

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: **WerepairUK Ltd**

Of: **18 Sychem Place, Five Oak Green, Tonbridge TN12 6TR**

1. The Information Commissioner ("the Commissioner") has decided to issue WerepairUK Ltd ("**WRUK**") 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. **WRUK**, whose registered office is given above (Companies House Registration Number: 12080599) is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.
4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls promoting a product or service to an individual who has a telephone number which is registered with the Telephone Preference Service Ltd

("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it.

5. Regulation 21 paragraph (1) of PECR provides that:

*"(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where-*

*(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or*

*(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26. "*

6. Regulation 21 paragraphs (2), (3), (4) and (5) provide that:

*"(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).*

*(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.*

*(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by*

*that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.*

*(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—*

*(a) the subscriber shall be free to withdraw that notification at any time, and*

*(b) where such notification is withdrawn, the caller shall not make such calls on that line.”*

7. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited (“TPS”) is a limited company which operates the register on the Commissioner’s behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.
8. Section 122(5) of the DPA18 defines direct marketing as “*the communication (by whatever means) of advertising 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. This Notice of Intent does not purport to identify exhaustively each and every circumstance and document relevant to the Commissioner's investigation. The circumstances and documents identified below are a proportionate summary.
16. WRUK is a company that offers a repair service for household white goods and service and maintenance plans for home appliances. WRUK was incorporated on 2 July 2019 and is registered at Companies House under registered number 12080599. Connor Budden is the director of WRUK and is also a listed director of the following companies:
  - Home Care Protect Ltd (Companies House number: 15055024) incorporated on 7 August 2023; and
  - Southern Plumbing Drainage & Water UK Limited (Companies House number: 12797596) incorporated on 6 August 2020; and
  - Southern Drainage Assist Limited (Companies House number 15485610) incorporated on 13 February 2024.
17. WRUK came to the attention of the Commissioner as a part of a wider operation that was set up to investigate complaints in relation to

organisations making unsolicited telephone calls to vulnerable individuals about white goods maintenance and warranty products.

18. The Commissioner identified one complaint made to the TPS and one complaint made to the Commissioner's online reporting tool ("**OLRT**"). The complaints featured a calling line identifier ("**CLI**") of 02034758929.
19. The complaint made to the TPS stated as follows:

*"Drain insurance. They started with asking the occupants name, and according to their records... This company may have previously 'scammed' my in laws out of hundreds of pounds for fictional insurance."*
20. The TPS register showed the complainant's telephone number as being registered with TPS since February 2007.
21. The complaint made via OLRT stated as follows:

*"tried to renew my boiler cover. I don't have boiler cover."*
22. The TPS register showed the complainant's number as being registered with the TPS since May 1999.
23. On 13 February 2023, the Commissioner sent a third party information notice (3PIN) to the communication service provider [REDACTED] ([REDACTED]) who responded on the same day identifying the end user of CLI 02034758929 as WRUK and confirming that the number range for this subscriber was 02034758929 and 02034758920 to 02034758925.

24. [REDACTED] also provided call detail records ("**CDRs**") for the identified CLIs for the period of 01 September 2022 to 31 January 2023.
25. The Commissioner screened the CDRs from [REDACTED] against the TPS register and between 01 September 2022 to 31 January 2023 WRUK made 22,339 calls of which 19,275 were to individuals registered with the TPS.
26. On 16 February 2023, an initial investigation letter was sent by special delivery to WRUK's registered office address seeking information about WRUK's compliance with PECR. A response was requested by 9 March 2023.
27. On 13 March 2023, the Commissioner sent a further letter by email to WRUK, including details of the complaints received. WRUK responded on the same day stating that the Commissioner's letter would be reviewed.
28. On the same day the Commissioner sent a 3PIN to the telecoms provider, [REDACTED] requesting information about the IP address captured by [REDACTED] when WRUK accessed their system.
29. On the 14 and 15 March 2023, WRUK responded to the Commissioner stating that they did not recognise the telephone numbers listed in the Commissioner's letter and requesting proof of any wrongdoing.
30. On the 15 March 2023, the Commissioner responded to WRUK confirming the reasons for the investigation and the deadline of 31 March 2023 for providing the requested further information. On 4 April 2023, a chaser email was sent to WRUK requesting a response to the initial investigation letter.

31. On 6 April 2023, Mr Budden of WRUK responded to the Commissioner requesting an extension [REDACTED]. The same day the Commissioner responded to Mr Budden asking whether anyone else at WRUK could respond to the questions in his absence. Mr Budden advised that there was no one else at the company who was able to respond [REDACTED].
32. On 24 May 2023, Mr Budden of WRUK responded to the Commissioner requesting a further extension [REDACTED].
33. On 7 June 2023, a further 3PIN was sent to [REDACTED] requesting CDRs from 31 March 2023 to 30 May 2023. [REDACTED] responded on the same day providing the CDRs.
34. On 21 June 2023, WRUK responded to the Commissioner advising that both of the original complainants had opted in to direct marketing during a WRUK door-to-door marketing campaign. On the same day, the Commissioner responded to WRUK requesting evidence of the campaign, evidence of consent from both complainants and for full responses to the Commissioner's question.
35. On the 22 June 2023, the Commissioner received correspondence from one of the complainants. The correspondence stated as follows:
- "I am frequently called by people trying to sell me goods and services, despite the fact that I am registered with the Telephone Preference Service. It's a major annoyance that disturbs my life... The company in question claims that it got my details form a door to door salesman who called on me. I can't remember any unsolicited tradesman calling on me at all in the 30 years that I've lived at this address... Even if someone did call on me, I would make it clear that I wasn't interested*



*as I live in rented accommodation and the boiler is looked after by my landlord. Not only that, but if a sales caller did call on me, I would either sign up or say that I wasn't interested. In either case, why phone and repeat the process? There would be no point. I believe that this company is lying".*

36. On 11 July 2023, the Commissioner sent a further 3PIN to [REDACTED] requesting total CDRs from 1 September 2022 to 30 June 2023.
37. On the same day, a 3PIN was also sent to communications service provider [REDACTED] in relation to the CLI 02039606464 which was listed on WRUKs website and CLI 02045113755 which was linked to another complaint made to TPS in July 2023.
38. On 11 July 2023, the Commissioner wrote to WRUK stating that no further response had been received and as a result if no response was received within seven days then the investigation would proceed on the evidence available.
39. On 13 July 2023, [REDACTED] provided a partial response to the 3PIN and confirmed that the contract between WRUK and [REDACTED] had been a verbal one.
40. On 19 July 2023, [REDACTED] provided the CDRS for 1 February 2023 to 30 March 2023.
41. On 29 August 2023, [REDACTED] provided a further response to the Commissioner that included copies of 10 invoices from 1 September 2022 to 30 June 2023 and correspondence between WRUK and [REDACTED].
42. On 28 September 2023, having received no response from WRUK, an end of investigation email was sent to WRUK. The email stated that the

Commissioner had not received adequate responses to either the initial investigation letter of 16 February 2023 or the subsequent email of 11 July 2023. The email stated the investigation had been completed using the evidence available.

43. The 3PIN responses from the various telecommunication providers (which have been screened against the TPS register) showed that between 1 September 2022 and 31 May 2023, WRUK made 49,833 calls of which 42,688 (85.6%) were to individuals registered with the TPS for more than 28 days.
44. The Commissioner is satisfied that the 42,688 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
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 regulation 21 of PECR by WRUK and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

47. The Commissioner finds that WRUK contravened regulations 21 of PECR.
48. The Commissioner finds that between 1 September 2022 and 31 May 2023, WRUK used a public telecommunications service for the purposes of making 42,688 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 two complaints being made to the TPS and the Commissioner.

49. The Commissioner is also satisfied for the purposes of regulation 21 that these 42,688 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 WRUK that they did not object to receiving such calls.
50. 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.
51. 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.
52. 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.

53. WRUK has not provided any evidence to show that they have obtained notifications from the individuals they have contacted.
54. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

**Seriousness of the contravention**

55. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by WRUK arising from the organisation's activities between 1 September 2022 and 31 May 2023 and this led to 42,688 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified WRUK that they were willing to receive such calls, and two complaints were made as a result.
56. The Commissioner considers that the contraventions of PECR are serious because of the large volume of calls in the period between 1 September 2022 and 31 May 2023 and the percentage of those calls being made to TPS registered individuals being especially high (85.6% of all calls made). The Commissioner also found evidence that WRUK were making unsolicited marketing calls to vulnerable or at risk individuals.
57. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

**Deliberate or negligent contraventions**

58. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, WRUK's actions

which constituted that contravention were deliberate actions (even if WRUK Ltd did not actually intend thereby to contravene PECR).

59. The Commissioner considers that in this case WRUK did deliberately contravene regulations 21 of PECR, due to WRUK's lack of cooperation and engagement. The Commissioner notes that WRUK has claimed to have obtained contact details and consent of the complainants from door-to-door canvassing but failed to provide any evidence of the required consent. Overall, WRUK did not cooperate in any substantive way with the Commissioner. The Commissioner acknowledged in some cases a level of naivety may lead to mistakes occurring, but in this instance, the Commissioner found that WRUK have deliberately provided false and misleading information in their responses to the Commissioner.
60. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
61. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
62. Firstly, he has considered whether WRUK 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, due to WRUK's failure to cease the contravention after the organisation has registered with the ICO. The Commissioner would expect that by the time WRUK have registered with ICO, the directors should have reviewed their business practices to ensure compliance with the regulations.

63. 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.
64. It is therefore reasonable to suppose that WRUK should have been aware of its responsibilities in this area.
65. Secondly, the Commissioner has gone on to consider whether WRUK failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
66. The Commissioner's direct marketing guidance makes clear that organisations acquiring/utilising 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.
67. Reasonable steps in these circumstances may also have included:

- Requiring third party data providers providing leads to cleanse their data against the TPS/DNC/Current client lists.
  - Sample checking third party data against the TPS/DNC/Current client lists.
  - Maintaining adequate processes and systems, including supervision, to ensure that any company policies and/or procedures relating to compliance with data protection legislation, including PECR, were being followed.
68. Given the volume of calls and complaints, it is clear that WRUK failed to take those reasonable steps.
69. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

70. The Commissioner has taken into account the following aggravating features of this case:
- A significant proportion (85.6%) of the total connected calls were made to numbers registered with the TPS for 28 days or longer.
  - WRUK were making calls to a demographic which included a number of vulnerable or at risk individuals as evidenced by the types of complaints received by the Commissioner.
  - Although WRUK claimed that the complainants had supplied their contact details to door-to-door canvassers working on behalf of WRUK it was unable to provide any evidence to support this.
71. The Commissioner has not identified any mitigating factors.

72. 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.
73. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking.
74. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
75. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
76. The Commissioner has considered the likely impact of a monetary penalty on WRUK. 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.
77. 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.
78. 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.

### **The amount of the penalty**

79. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£80,000 (eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

### **Conclusion**

80. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 19 October 2024 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.
81. If the Commissioner receives full payment of the monetary penalty by 18 October 2024 the Commissioner will reduce the monetary penalty by 20% to £64,000 (sixty-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.
82. 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.

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

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

85. 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.

86. 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 18 day of September 2024.

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](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)).