

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: ESL Consultancy Services Ltd

Of: 18 The Boulevard, Horsham, West Sussex, England, RH12 1EP

1. The Information Commissioner ("the Commissioner") has decided to issue ESL Consultancy Services Ltd ("ESL") 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. ESL, whose registered office address is given above (Companies House Registration Number: 11483654) is the organisation stated in this notice to have instigated the transmission of 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. 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 uses this data to identify breaches of PECR.
17. The investigation period considered for the purpose of this investigation is 15 September 2022 to 5 December 2023.
18. ESL Consultancy Services Ltd ("ESL") was incorporated on 25 July 2018. The registered office address is 18 The Boulevard, Horsham, West Sussex, England, RH12 1EP.
19. ESL is registered with Companies House (Companies House number: 11483654) with its nature of business being listed as 'information technology consultancy activities'. At the point of ESL's inception, the sole director was Steven David Richardson who resigned as ESL's director on 6 December 2023. ESL currently has a sole director named Leanne Richardson ("Ms Richardson") who was appointed to ESL on 3 January 2019.
20. Between July 2018 and January 2024, ESL operated five registered trading names: beeloan.uk, quick-cash.co.uk, trustedloans.co.uk, quickcashmoney.co.uk and smart-loans.uk. The website for ESL 'www.esl-consultancy.co.uk', was registered on 25 July 2018 but is currently showing as offline and was last updated on 18 December 2023. However, when it was operational, it stated ESL had years of

experience in digital and telephonic marketing, specialising in lead generation whether it be email, telephone, push notifications or social.

21. During 2020, ESL first came to the attention of the Commissioner after a number of complaints were submitted to the 7726 message reporting service regarding SMS messages promoting high-interest rate loans. During the 2020 investigation, ESL stated it did not send unsolicited marketing messages promoting their brand, but instead had agreements with third parties, known as 'appointed representatives', which used ESL's FCA authorisation to send messages after individuals opted in to receive marketing. The Commissioner's investigation was closed due to insufficient evidence.

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. ESL was brought to the attention of the Commissioner again in July 2023, when, following a wider investigation, ESL was identified as an organisation which had used 'ping trees'.

24. A 'ping tree' is a method of lead generation which is initiated when an individual inputs their data onto an affiliate website offering personal loans. Data input into these websites is then 'pinged' around various lenders who work in partnership with the affiliates. Leads are offered to finance companies in a hierarchical order, usually based on the amount of commission paid. If the company at the top of the hierarchy declines the individual, then their data is passed to the next company down the 'tree'.

25. ESL also came to the Commissioner's attention during the course of a separate investigation conducted by the Commissioner regarding an affiliate marketing and lead generator named Daniel George Bentley ("Mr Bentley").
26. During May 2022, Mr Bentley was investigated by the Commissioner regarding the practices of a website called CalculateMyDebt.co.uk.
27. On 14 June 2023, the Commissioner executed search warrants at two premises related to Mr Bentley. He was encountered at one of the premises along with [REDACTED] ("[REDACTED]"). Following the forensic analysis of computer equipment seized during the search, the Commissioner was able to identify several documents referring to ESL. These included:
- An ESL due diligence for appointed representatives' questionnaire completed by Mr Bentley on 13 February 2023. The form listed his company name as Taipan Trading Ltd, the main contact as Mr Bentley and the invoicing contact as [REDACTED].
 - An introducer appointed representative agreement dated 22 February 2023 between ESL and Taipan Trading Ltd. Records lodged at Companies House state that Mr Bentley has been the sole director of Taipan Trading Ltd since the company was incorporated on 19 October 2022.
 - An email from [REDACTED] to Ms Richardson, director of ESL, dated 2 December 2022, providing [REDACTED]'s personal bank details.
 - Bank statements for a personal bank account in the name of [REDACTED] covering the period 31 October 2022 to 30 April 2023. The statements include payments from ESL and Ms Richardson.

28. On the due diligence for appointed representatives' questionnaire, Mr Bentley described his business model as follows:

"I send SMS from 6am-11pm using pay as you go sim cards in conjunction with USB modems, modem hubs and rigs of mobile phones connected via PC software. At full capacity, I can send 546,000 SMS messages daily. I would say sending SMS messages is at the absolute core of what I do. My business model is to make profit from sending SMS and to do that as much as I can and often as I can. I cannot obtain enough offers, products or data of good enough quality and quantity legally to be able to satisfy and meet the absolute fixed needs of my business monthly. Therefore, this leads to me sending SMS indiscriminately in terms of data and how I obtain data and offers and products in terms of how I come into them, often indirect through a 3rd party which affects any revenue that I do make"

29. Between 15 September 2022 and 5 December 2023, 37,961 complaints were submitted to 7726 in relation to SMS which referred to the trading styles of ESL. The complaints referred to a number of entities related to ESL, including 13,332 complaints related to beeloan.co.uk, 2,621 complaints related to trustedloans.co.uk, 7,269 complaints related to quickcashmoney.co.uk, and 2,091 complaints related to smart-loans.uk.
30. The Commissioner was also aware of additional complaints submitted to the 7726 service, including 2,106 complaints about smart-loan.co.uk, 9,697 complaints submitted for getmyloantoday.co.uk and 845 complaints submitted for sherlockloans.co.uk. The Commissioner believes that these websites were set-up by Mr Bentley. When these

websites were visited, visitors were redirected to ESL's websites listed in paragraph 21.

31. Between 28 November 2022 and 24 August 2023, the Commissioner received 16 complaints via the Commissioner's online reporting tool regarding ESL's listed websites. One complainant submitted four separate complaints after receiving multiple messages promoting loans directed to 'Michelle', they stated, *"I have never had a loan from any such company, and I am not Michelle nor know anybody by that name."*
32. The following are further examples of additional complaints:
- *"Yet another illegal spam text message."*
 - *"Hearing my phone go during a struggling time knowing that someone is selling my information as well as trying to prey on people struggling during the current economy gave me extreme anxiety."*
 - *"I have checked and made a complaint also to FCA, they are not allowed to use my data, and I have not requested any website or persons regarding a loan. They redirect to another website on clicking on the link. Don't like getting messages that disturbs my sleep and feel that they are preying on vulnerable people at this time of the year, try to get people to take loans at high interest rates, just not on."*
 - *"Annoying to keep getting these random scam texts. I've been getting more lately, and I try to report all text, call and automated scam calls as they happen."*
33. The Commissioner was able to identify the below SMS wording in relation to the 7726 complaints made against ESL:

- *NAME OF INDIVIDUAL get Â£100-Â£2000 today. Flexible repayment terms. <https://www.beeloan.uk/apply-now/UNIQUEURL> Stop 07732031245.*
- *NAME OF INDIVIDUAL need a loan over 3-36 months? <https://www.trustedloans.co.uk/apply-nowUNIQUEURL> Stop 07802944322.*
- *NAME OF INDIVIDUAL get up to Â£5000 now. No Fee Application. [https://www.quickcashmoney.co.uk/apply-nowUNIQUE URL](https://www.quickcashmoney.co.uk/apply-nowUNIQUEURL) OPTOUT 07751847864*
- *NAME OF INDIVIDUAL get up to Â£5000 now. No Fee Application. <https://smart-loans.uk/quote/sendformUNIQUEURL> Stop 07710987461.*
- *NAME OF INDIVIDUAL Get Â£100-Â£2000 today. No fee application smart-loan.co.uk REPAPR 1,192% Text Stop to 07732031245 to opt out.*
- *Need a loan? You can get Â£100-Â£2000 today. Apply up to Â£5000 GetMyLoanToday.co.uk REPAPR 1,192% Text STOP to 07707450249 to opt out.*
- *Need a loan? Easy and quick to apply Up to £5000 SherlockLoans.co.uk REPAPR 1,192%Text STOP to 07707450249 to opt out.*

34. The Commissioner is aware that the SMS which generated these messages were sent from 459 different telephone numbers. Further analysis of these numbers confirmed that the ICO already had knowledge of 127 of these numbers as a result of the investigation

regarding Mr Bentley. This left 332 unique telephone numbers in respect of which the Commissioner made further enquiries.

35. The Commissioner identified that all 332 telephone numbers were allocated to [REDACTED] ("[REDACTED]"). The Commissioner issued a third party information notice ("3PIN") to [REDACTED] in respect of these telephone numbers to request details of the location from which the SMS were sent and when the telephone number was first and last used.
36. The Commissioner's 3PIN to [REDACTED] revealed that the SMS were sent from various locations including [REDACTED], [REDACTED] and [REDACTED]. Analysis of material found on devices seized during searches of premises linked to Mr Bentley indicated that he has links to all these areas with some evidence suggesting that there is correlation between locations from which messages were sent and the whereabouts of Mr Bentley at that time.
37. On 5 December 2023, the Commissioner executed a search warrant at the premises of [REDACTED]; the [REDACTED] of Steven and Leanne Richardson.
38. During the execution of the search warrant, the Commissioner took possession of a number of electrical items, including mobile phones, tablet computers, laptops, and external storage drives.
39. Ms Richardson agreed to speak with ICO officers during the search. Ms Richardson explained that Steven Richardson, her husband, was a director in name only and had previously provided consultancy services.

40. In relation to Mr Bentley, Ms Richardson admitted that Mr Bentley sent messages on ESL's behalf but claimed that he had not been sending messages on their behalf for some time.
41. On 16 January 2024, the Commissioner sent ESL an initial investigation letter along with a spreadsheet of complaints submitted about ESL.
42. On 6 February 2024, ESL replied to the Commissioner's initial investigation letter and stated that prior to ESL cancelling its FCA authorisation on 24 January 2024, ESL operated as a credit broker. ESL generated leads using various websites which matched customers with lenders using ping tree technology. Customers apply for a loan on one of ESL's websites where they complete a loan application and opt in to be contacted by ESL. Once the application has been submitted, ESL would match a successful applicant with a lender, they were then redirected to the lender's website to continue the application process.
43. ESL stated several websites included in the spreadsheet of complaints were not owned or operated by ESL, including [REDACTED] which they stated was a trading name of [REDACTED]. ESL stated that they would not benefit from promoting this website and had to place a notification on their website advising customers. However, the website [REDACTED] was not included in the spreadsheet of complaints; it had been incorrectly mistaken by ESL for the website smart-loan.co.uk which when clicked redirected recipients to 'smart-loans.uk'. ESL confirmed that 'smart-loans.uk' was a website owned and operated by ESL.
44. During the execution of the 5 December 2023 search warrant, the Commissioner recovered a mobile phone which belonged to Ms Richardson. Forensic analysis was conducted on this device. The following documents were identified as a result of the search warrant:

- An ESL due diligence for appointed representative's questionnaire completed by Mr Bentley on 13 February 2023; and
- An introducer appointed representative agreement dated 22 February 2023 between ESL and Taipan Trading Ltd.

Both documents were originally retrieved following a forensic review of devices obtained from the search warrants executed on addresses linked to Mr Bentley on 14 June 2023.

45. Forensic analysis of the computer equipment seized identified several documents relevant to the investigation. These included:

- An ESL Consultancy Services due diligence for appointed representative's questionnaire completed by Mr Bentley on 13 February 2023. The form lists his company name as Taipan Trading Ltd, the main contact as Mr Bentley and the invoicing contact as [REDACTED].
- Excel files containing personal data including names, addresses and mobile numbers.
- Excel file titled 'suppression' containing lists of mobile numbers.
- Screenshots of the following websites: trustedloans.co.uk, beeloan.uk, smart-loans.uk, quickcashmoney.co.uk and quick-cash.co.uk.
- Compliance document review for beeloan.uk completed by [REDACTED] of [REDACTED].
- Word documents for various policies and procedures including Data Protection, Compliance and Monitoring, Procedure, Training and Competence, Subject Access Requests and Consumer Duty.

46. Also recovered from Ms Richardson's mobile phone were several Skype conversations between Ms Richardson and a person with the username

'clicktree', beginning on 10 November 2022. This user was subsequently identified as Mr Bentley. Below is the opening of the message thread between Ms Richardson and Mr Bentley:

"Daniel [Mr Bentley]: *Hi. Are you looking for any loan traffic.*

Leanne [Ms Richardson]: *Who do you work for and what sort of traffic to do you have?*

Daniel: *I have high quality SMS traffic from fresh daily feeds, I can provide opt ins and I am willing to be compliant with regards to the SMS message that is sent out eg Apr %'s and opt outs. I can do like £25k-£30k per month commission, probably more this time of year if I can put my foot down.*

Leanne: *Ok sounds interesting. We always work on a rev share basis with weekly net 7 payment terms. 90% in your favour.*

Daniel: *So I'll just let you know I run traffic 7 days a week from 7am-cutoff. 365 days a year. Is that ok?*

Leanne: *Yes, that works for us as we are a Pingtree, so most buyers are on 24/7. Are you able to complete our due dil? Are you FCA regulated or will you be running the traffic directly to one of our websites.*

Leanne: *We would need to know the site you are generating the traffic on to check opt ins.*

Daniel: *I am not FCA regulated but I am willing to give up some % for a long term relationship with you.*

Leanne: *Ok that's fine, I would need to do a due dil and consider whether we need you to become an appointed representative of ours or not, but this depends on how you are generating the traffic and opt ins."*

47. Mr Bentley subsequently explained to Ms Richardson he obtained the majority of his data between 2020 and 2021 from [REDACTED]

[REDACTED]. He advised Ms Richardson that he was looking for a long-term sustainable relationship.

48. On 16 November 2022, Ms Richardson sent Mr Bentley a message on Skype which suggested he had sent SMS to generate traffic to ESL's websites. However, Ms Richardson had not yet received details of the opt in which he was relying on to send the messages. Ms Richardson advised Mr Bentley to make sure that none of the data used for the campaign is older than six months. Mr Bentley responded, explaining the opt in "*strictly speaking that doesn't exist yet*", and he needed to reactivate various trading styles and websites which will need to be added to ESL's privacy policy.
49. Subsequently, Mr Bentley advised Ms Richardson "*the opt in wording as I remember says 'FCA regulated advisor will contact you' on the debt ones, but I can change the wording to whatever you tell me*". In response, Ms Richardson stated "*the ICO are on everyone at the mo [sic] so as long as we have something to show that's fine.*"
50. On 26 January 2023, Mr Bentley contacted Ms Richardson and provided a list of websites ('getfastloan.co.uk, getmyloantoday.co.uk, akeiva.co.uk, smart-loan.co.uk and sherlockloans.co.uk.') that he was using in the SMS marketing to generate traffic. Mr Bentley stated, "*they are all the websites I'm using, I'm gonna start traffic*", to which Ms Richardson responded, "*Yeah, for sure, agreed.*"
51. On 31 January 2023, Mr Bentley sent the below message to Ms Richardson, which Ms Richardson subsequently agreed to:
- "Let's do whatever you are comfortable with and expand outwards when ready. I will keep a record of every activity that we do. In terms of data, for loan I really just need name and number. If you think it will*

work better with loan amount too, feel free to include that. I only have one more direct loan offer connection and that is with [REDACTED]. I've never worked with them but know people who do. I need to complete their due diligence form they have sent me in November 2022. I'm working with a few debt companies that I am generating SMS responses for. The message I sent out is:

Name credit records show you can write off 75% of your debts. Freeze interest/fees/legal action. REPLY yes for free info pack to DOOR NUMBER POSTCODE"

52. Also during their conversation on 31 January 2023, Ms Richardson advised Mr Bentley that he had still not completed his due diligence form. Ms Richardson stated: *"I need to send you a link for the due dil, but just complete what you can, and I'll do the rest, you can also use our FCA policies etc and just amend the company name."*
53. Forensic analysis of the devices obtained from the search warrant of December 2023 established that the due diligence form was completed by Mr Bentley on the 13 February 2023. In response, Leanne Richardson provided him with an Appointed Representative agreement along with several csv files containing personal data.
54. The due diligence form completed by Mr Bentley on 13 February 2023 contained an admission that Mr Bentley's business model is only achieved by obtaining data non-compliantly, stating:

"I cannot obtain enough offers, products or data of good enough quality and quantity legally to be able to satisfy and meet the absolute fixed needs of my business monthly. Therefore, this leads to me sending SMS indiscriminately in terms of data and how I obtain data and offers and products in terms of how I come into them, often

indirect through a 3rd party which affects any revenue that I do make."

55. On this form, Mr Bentley further stated that he sent unsolicited SMS from 6am to 11pm using pay as you go SIM cards and USB modems. He explained that at full capacity, he can send 546,000 SMS messages a day. He also provided a list of [REDACTED]. A copy of this version of the form was found on computer equipment seized from both Mr Bentley and Ms Richardson.
56. One of the questions on the due diligence form asked if Mr Bentley had received communication from any regulator, such as the ICO, FCA or FOS over the last 12 months. Mr Bentley responded to the question by inputting 'N/A'. The due diligence form also asked whether his firm had been fined or investigated by a regulatory authority, to which he responded, 'no'. However, at the time of completion, Mr Bentley would have been aware of several attempts made by the ICO to contact him about the Commissioner's concerns regarding his compliance with regulation 22 and 23 of PECR. The letter included a list of questions and a spreadsheet of complaints. Mr Bentley failed to provide the information requested, and as such, an Information Notice was issued on 28 June 2022.
57. On 9 May 2023, Ms Richardson wrote an iOS message to [REDACTED], a compliance consultant for ESL. The conversation was as follows:
- "Leanne** [Ms Richardson]: Hey [REDACTED], with the DD for Taipan, I'm worried about [REDACTED]! What are your thoughts? I'm wondering whether to just remove the entire question from DD [REDACTED]: probably best to remove, tbh.
- Leanne:** Yeah, that's what I thought too, as they aren't an AR and won't ever be anyway."

58. According to email correspondence between [REDACTED] and Ms Richardson on 5 May 2023, the due diligence form was sent to a solicitor, for review.
59. On 10 May 2023, ESL sent the due diligence form to the FCA. As part of the forensic analysis, this version of the form was cross referenced against the form completed by Mr Bentley. A comparison of the documents showed the form sent to the FCA was altered; and – it is contended – any information that may have been deemed unfavourable was removed.
60. For instance, [REDACTED] referred to in the above messages with [REDACTED] were removed in the submitted version. There were also several instances where responses completed by Mr Bentley were shortened.
61. On 14 March 2023, Ms Richardson and Mr Bentley discussed obtaining data from [REDACTED] ("[REDACTED]"), a director of [REDACTED] and a [REDACTED]-based company called [REDACTED]. [REDACTED] had raised concerns regarding ESL's websites and was therefore hesitant to provide ESL with his data.
62. On 14 March 2023, Ms Richardson approached [REDACTED], when [REDACTED] asked if Mr Bentley was referenced in the ESL privacy policy. Ms Richardson responded:

"Dan [Mr Bentley] isn't referenced because Dan is sending my data to my own sites, we hold the opt ins etc. It's remarketing to our own brands, with your data, it's the same thing, you would need to reference us in your sites as SMS being sent will be from ESL sites, the risk is solely with us, if we are messaging, we are in the firing line with the ICO, not where the data comes from. URLs are: smart-

loans.uk, quickcashmoney.co.uk, trustedloans.co.uk, Beeloan.uk. But you're right, as we are sharing our data with Dan, his company should be added, however, it was more to keep Dan out of the limelight for the moment as he's had a lot of shit, so I wanted to protect him"

63. Separately, it was identified that on 15 September 2022, Ms Richardson had exchanged communications with [REDACTED], a director of [REDACTED] at the time. [REDACTED] was previously known to the Commissioner following an investigation into [REDACTED]. An extract of the conversation between Ms Richardson and [REDACTED] is provided below:

"Leanne [Ms Richardson]: Hey [REDACTED], with the ICO stuff for debt, if they contact you can you please make sure you don't say you got the data from us, they can't touch you as you are in [REDACTED] but what they will do is try and find out where you got the data from so best bet is to ignore anything from them.

[REDACTED] [REDACTED]: oh god, no don't worry about that! 99% of it would have been from my mobile traffic. I don't know if I even got around to setting up SMS feed on the debt data I was taking from you"

64. On 27 March 2023, Ms Richardson enquired about the status of the Commissioner's investigation of [REDACTED], to which he stated he was waiting for the ICO's response. He also insinuated that he was nervous about using bulk modems to send marketing messages due to the ICO's investigation. Ms Richardson responded stating: *"also if you sort your data that's no risk for you, only me as it's my campaigns that go out."*
65. Further, on 27 March 2023, Ms Richardson sent an email to [REDACTED], stating:

"Leanne [Ms Richardson]: Hi [REDACTED], I hope you're well. With regards to us marketing to your opted in loan data (as you have added us to your opt in as agreed) the sites we will be sending are:

TrustedLoans.co.uk, QuickCashMoney.co.uk, Smart-Loans.uk, BeeLoan.uk.

[REDACTED] [REDACTED]: Thank you, Leanne, happy to proceed on the above basis. Please send an email to request any changes to this schedule so that we can confirm.

66. On 4 April 2023, Ms Richardson explained to [REDACTED] that ESL were not in possession of any SIM cards, so messages were currently being sent by Mr Bentley. However, ESL had just paid a deposit and were waiting for SIM cards to be sent from mobile providers. [REDACTED] enquired as to whether the operation would be profitable, reiterating that campaigns should only focus on loans, as specified by the above agreement. Ms Richardson confirmed the arrangement with Mr Bentley was lucrative.
67. On 24 April 2023, [REDACTED] ("[REDACTED]"), who at the time was a director of [REDACTED] alongside Ms Richardson, asked Ms Richardson whether they could get into trouble from the ICO for allowing the SMS to be sent. He speculated whether they could be identifiable if the ICO contacted the network providers. Ms Richardson reassured him they were using pay as you go sim cards as opposed to contracts, so they were effectively untraceable.
68. In October 2023, [REDACTED] and Ms Richardson discussed previous enforcement action taken by the Commissioner. The conversation appears to reference the Monetary Penalty Notice issued against Bizfella Limited on 22 April 2022.

69. On 13 November 2023, three weeks before the search warrant, Leanne Richardson messaged [REDACTED] as she was concerned about recent enforcement action taken by the ICO:

"Leanne [Ms Richardson]: *There have been some fines issued by the ICO to Digivo Media and Monetise for SMS and email marketing, both had opt ins. One was for £50k and one was for £100k, I'm not comfortable with continuing with Dan, he hasn't been on for a while anyway because of the sim issue I told you about. But I just think the risk is too great. Hoping you agree."*

70. During the discussion between Ms Richardson and [REDACTED], Ms Richardson shared a link of the monetary penalty notices for Digivo Media Limited and Monetise Media Limited, which were both fined by the ICO for sending unsolicited marketing messages, one for promoting debt management and the other for advertising loan products.
71. The Commissioner has identified a separate conversation which took place between Ms Richardson and Mr Bentley during the period 30 September 2023 to 2 October 2023. During this conversation, Ms Richardson informed Mr Bentley that she had received a text message promoting PPI from one of Mr Bentley's numbers. Mr Bentley responded by explaining that if she had, then it wouldn't be from any of ESL's data, but he would forward her the original data file that his client sent him. Ms Richardson asked, *"ok cool, can I ask who sent you the data file, please?"*, to which Mr Bentley responded, *"the first 160k, [REDACTED] and the million after that [REDACTED]. You should have the emails and data now."* In response, Ms Richardson stated, *"ok, no worries, just be careful as that data isn't opted in."*
72. Analysis of the evidence collected following the execution of the search warrant suggested a number of opt-out requests were not properly

followed or complied with. A number of requests have been taken from this evidence and provided below as an example of the opt-out process in action.

73. On 1 December 2022, Ms Richardson received a message from [REDACTED] ('[REDACTED]') stating that she had received unsolicited direct marketing messages which redirected to websites owned and operated by ESL. [REDACTED] asked for her number to be removed from any SMS marketing.
74. On 6 December 2022, after receiving a follow-up removal request from [REDACTED], Ms Richardson contacted Mr Bentley and asked for [REDACTED]'s mobile number to be removed from circulation. In response, Mr Bentley confirmed the messages received by [REDACTED] had been sent by him on ESL's behalf.
75. On 15 December 2022, [REDACTED] reached out to ESL to advise she was still receiving unsolicited SMS marketing messages despite following the opt-out procedure included in the SMS communications. Later on the same day, Ms Richardson contacted Mr Bentley and stated:
- "Hey Dan [Mr Bentley], this number I asked you to supress above is still getting messages: [REDACTED]. It's actually another tree you're messaging, and they said I've been texting stop to the numbers in SMS, and I am still receiving messages. This isn't good, can you please make sure you are suppressing numbers and that your opt out number/s are working? Because ultimately, it's us that get shit from the ICO."*
76. On 8 March 2023, Leanne Richardson forwarded an opt-out request via Skype to [REDACTED], a director of [REDACTED]:

"Hi Leanne, can you please suppress the following: [REDACTED], [REDACTED], [REDACTED]' The client has said she did not apply for a loan and some of the details on the application (DOB) were not correct. We had a similar case yesterday: [REDACTED]. Could it be that somebody is sending you old applications? If both applications came from the same source that may be the case and you might want to have a word with them."

The Commissioner has not been able to confirm the identity of the individual who sent this message to Ms Richardson.

77. Ms Richardson suggested to [REDACTED] that the source may be reselling old data as she's received another opt out from an individual who stated they had never applied for a loan, but they can see an application was completed in 2018.
78. On 30 March 2023, Ms Richardson received an email titled 'Complaint' from a data subject called [REDACTED] which was forwarded from admin@beeloans.co.uk. The complainant stated they had received several marketing SMS for an individual called Katie and that she had never applied for a loan from ESL. The complainant asked for her details to be removed and that she had made requests previously but is still receiving messages.
79. The Commissioner has made the above findings of fact on the balance of probabilities.
80. The Commissioner has considered whether those facts constitute a contraventions of regulations 22 and 23 of PECR by ESL and, if so, whether the conditions of section 55A DPA are satisfied.

81. The Commissioner has made the above findings of fact on the balance of probabilities.
82. The Commissioner has considered whether those facts constitute a contravention of regulations 22 and 23 of PECR by ESL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

83. The Commissioner finds that ESL contravened regulations 22 and 23 of PECR.
84. The Commissioner finds that the contravention was as follows:
85. The Commissioner finds that between 15 September 2022 and 5 December 2023, ESL used a public telecommunications service for the purposes of instigating the transmission of unsolicited communications by means of electronic mail to individual subscribers for the purpose of direct marketing contrary to regulation 22 of PECR. This resulted in the Commissioner identifying 37,961 complaints via the 7726 SPAM reporting service and receiving 16 complaints via the ICO's Online Reporting Tool.
86. ESL, as the instigator of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those messages had been acquired.
87. In this instance ESL were aware that a primary provider of its data, Mr Bentley, used data which was sourced from old data logs which Mr Bentley had created or obtained. ESL showed no effort to ensure that consent has been properly obtained and engaged with Mr Bentley

despite no evidence of any consideration for properly gained consent for direct marketing being obtained. This is evidenced by the changing of the FCA forms completed by Mr Bentley by ESL to remove Mr Bentley's statement that he was acting in a non-compliant manner by sending marketing messages without consent.

88. 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.
89. 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.
90. 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.
91. The Commissioner concludes that ESL knowingly and deliberately used data for which valid consent had not been provided, for the use of unsolicited direct marketing
92. The Commissioner is therefore satisfied from the evidence he has seen that ESL did not have the necessary valid consent for the direct marketing messages sent to subscribers which resulted in the receipt of 37,977 complaints.

93. The Commissioner is further satisfied that the actions of ESL have contravened regulation 23 PECR by having taken steps to conceal the true identity of the sender of the messages.
94. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

95. The Commissioner is satisfied that the contravention identified above was serious. This is because between 15 September 2022 and 3 December 2023, a total of 37,977 complaints were received regarding direct marketing messages which were sent at the instigation of ESL. These messages contained direct marketing material for which subscribers had not provided valid consent.
96. The direct marketing messages promoted websites owned and operated by ESL which offered payday loans. This resulted in 37,961 complaints to the 7726 SPAM reporting service and 16 complaints to the ICO.
97. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

Deliberate or negligent contraventions

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

99. The Commissioner considers that in this case ESL did deliberately contravene regulation 22 and 23 of PECR since there was no attempt by ESL to check that the data being used for direct marketing was compliant or that the direct marketing messages it instigated to be sent on its behalf were being sent compliantly.
100. Additionally, ESL's business model appears to have been designed to avoid ESL being identified as the instigator of the messages. ESL paid a third party to send the messages using unregistered pre-pay SIM cards making them untraceable.
101. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
102. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
103. Firstly, he has considered whether ESL 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, as it is clear from the material obtained during the investigation, including Skype messages sent between ESL and various associates, that ESL were well aware of the risks that their unlawful direct marketing practices entailed.
104. 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.

105. It is therefore reasonable to suppose that ESL should have been aware of its responsibilities in this area.
106. Secondly, the Commissioner has gone on to consider whether ESL failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
107. The Commissioner's direct marketing guidance makes clear that organisations acquiring and utilising 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.
108. ESL failed to conduct appropriate due diligence in relation to the data being used and the direct marketing messages that were sent at its instigation. Although ESL did conduct some due diligence relating to the lists purchased from Mr Bentley, those checks were inadequate and were only conducted months after Mr Bentley had begun to work with ESL. Additionally, misleading information appears to have been provided to the FCA relating to Mr Bentley.
109. The Commissioner produces clear guidance via its website on the rules of direct marketing. The Commissioner operates a helpline should

organisations require further clarification or assistance with specific enquiries. In the case of ESL, the messages were sent using unregistered pre-pay SIM cards which were untraceable, and recipients were often unable to opt out.

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

The Commissioner's decision to issue a monetary penalty

112. The Commissioner has taken into account the following aggravating features of this case:
- Evidence indicates that ESL has deliberately provided inaccurate and misleading information to regulators in order to evade detection. This extends to information provided during the search warrant executed on 5 December 2023.
 - The failure to take reasonable steps to achieve compliance, in any basic form, by the company, other than a surface level objective of appearing compliant whilst simultaneously attempting to avoid regulatory scrutiny.
113. The Commissioner was unable to identify any mitigating factors in this matter.
114. 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.

115. 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 ESL on this matter.
116. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
117. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
118. The Commissioner has considered the likely impact of a monetary penalty on ESL. In doing so, the Commissioner has given careful consideration to the representations made by ESL 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.
119. 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.
120. 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.

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

The amount of the penalty

122. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£200,000 (two hundred thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

123. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **7 January 2025** 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.
124. If the Commissioner receives full payment of the monetary penalty by **6 January 2025** the Commissioner will reduce the monetary penalty by 20% to **£160,000 (one hundred and sixty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

125. 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.

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

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

128. 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.

129. 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 5th day of December 2024

Signed



Andy Curry
Head of Investigations
Information Commissioner's Office
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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)).