

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: National Debt Advice Limited

Of: 14 Exchange Quay, Salford Quays, Manchester, England, M5 3EQ

1. The Information Commissioner ("the Commissioner") has decided to issue National Debt Advice Limited ("NDA") 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 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. NDA, whose registered office address is given above (Companies House Registration Number: 09470932) 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. 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).
6. 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 DPA18^[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 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"*.
7. 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"*.

^[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.

8. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
9. 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"*.
10. "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"*.
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 5SC (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. Mobile users can report the receipt of unsolicited marketing text messages to 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.
16. NDA was incorporated on 4 March 2015, under the name Prestige Money Solutions Limited. The registered office address is 14 Exchange Quay, Salford Quays, Manchester, England, M5 3EQ. NDA has undergone three name changes since its date of incorporation. Initially

incorporated as Prestige Money Solutions Limited, on 10 March 2015 the company's name changed to Prestige UK Solutions Limited. On 25 February 2021, the company changed its name to Prestige UK Solutions TA National Debt Advice Limited. On 20 December 2022, the company changed its name to National Debt Advice Limited.

17. NDA is registered with Companies House (Companies House number: 09470932) with its nature of business being listed as 'Financial intermediation not elsewhere classified'.
18. NDA has been registered with the Commissioner as a data controller since 9 May 2016 (registration number: ZA182833) with the nature of work listed as 'Marketing Agency'.
19. Since its incorporation, NDA has appointed three directors, two of which were directors during the period 4 April 2023 to 4 August 2023 (the "Investigation Period"): Danielle Louise Carden ("Ms Carden") (4 March 2015 to date) and Stevie Jane Carden (8 June 2016 to date).
20. The company is authorised and regulated by the Financial Conduct Authority ("FCA") for the purpose of debt counselling (FCA registration number: 789258).
21. NDA first came to the attention of the Commissioner in May 2023, when SMS complaints received via the 7726 spam reporting service were reviewed by a member of the Privacy and Digital Marketing Investigation Team. An example message sent by NDA is provided below:

"Good Afternoon [REDACTED]"

*Did you know you may qualify for a Government Backed Debt
Write Off Scheme?*

Find out now!

smsu.io/Rfkp8

StopMsg.me/9i92G"

22. Based on the wording of the example message provided above, the Commissioner conducted a wider search of the 7726 database and identified a total of 4,033 complaints regarding messages which appeared to have been sent by NDA during the Investigation Period.
23. On 7 August 2023, the Commissioner sent an initial investigation letter to NDA regarding the complaints the Commissioner had identified from the 7726 database. The Commissioner provided NDA with copies of the reports made to the 7726 spam reporting service, and outlined the requirements placed on NDA under PECR and the powers of the Commissioner. The Commissioner required responses to a number of questions by 28 August 2023. The Commissioner's questions, and the responses from NDA, are set out at paragraph 30.
24. On 8 August 2023, NDA responded to the Commissioner via [REDACTED] [REDACTED], a manager for NDA. NDA requested an extension to respond to the Commissioner's questions due to the unavailability of the directors. The Commissioner agreed to extend the response deadline to 4 September 2023.
25. On 8 September 2023, after NDA had failed to respond to the Commissioner, the Commissioner contacted NDA again and requested

all their questions be answered by 15 September 2023. The Commissioner informed NDA that failure to respond may result in the Commissioner serving an Information Notice on NDA.

26. On 13 September 2023, Ms Carden replied to the Commissioner on behalf of NDA to inform the Commissioner that the request was being passed to NDA's legal representative to deal with the matter.
27. On 26 September 2023, the Commissioner contacted Ms Carden due to no correspondence being received from NDA's legal representative. The Commissioner requested a response to their initial investigation questions be provided by 28 September 2023.
28. On 28 September 2023, Ms Carden responded to the Commissioner, advising their preferred legal representative was unable to deal with this matter and requested more time to identify an appropriate legal representative.
29. On 29 September 2023, the Commissioner issued an Information Notice to NDA, requesting answers to the questions originally raised in the initial investigation letter.
30. On 2 November 2023, NDA provided a response to the Commissioner, answering the questions in the Information Notice (NDA's responses are provided in *italics*):
 - The total number of direct marketing text messages sent by NDA between 4 April 2023 and 4 August 2023 - *138,390 Text sent*
 - The total number of text messages that were successfully delivered - *129,902 Text delivered*

- The total number of leads generated by these text messages - *1728 leads generated*
- The source(s) of data used by NDA to send direct marketing text messages - *Loan Decline Data*
- For each data source, how do you ensure that the subscribers have consented to receiving direct marketing text messages from NDA - *Clients OPT in to receive Calls, Text and Emails from NDA*
- If information is obtained from third parties, please provide copies of signed contracts, invoices and details of any due diligence undertaken - *Attached*
- Evidence that the subscribers to the mobile numbers listed in the spreadsheet attached to the Commissioner's email of 7 August 2023 had consented to receiving direct marketing text messages from NDA - *Requested from lead provider, been ignored and the company has recently gone into liquidation (Vanquish Communications Ltd) – this has been our main hold up on providing the information*
- Details of any procedures that are in place for dealing with opt-out requests - *██████████ we send an OPT out link, ██████████ then remove the client from future contact*
- Copies of any policies, procedures or training materials used to inform staff about compliance with PECR - *Will Attach-We use the module from the ICO*

- A copy of the contract between NDA and [REDACTED]
- *No longer use*
 - Copies of any invoices issued to [REDACTED] since 4 April 2023 - *NIL*
 - The names and contact details of any other third parties to whom NDA refers leads and/or provides personal data. - [REDACTED]
[REDACTED]
(Debt Management Plans) Agreements attached.
31. NDA also provided the Commissioner with copies of a due diligence form for Vanquish Communications Ltd. The due diligence form states Vanquish Communications Ltd comply with PECR and the GDPR, and rely on consent as their lawful basis for processing personal data for direct marketing purposes. No information is provided regarding the source of the data or the wording of the opt-in statement or privacy policy. In response to the request to provide a high level overview of the processes they have in place to ensure that their websites, advertising and commercial practices comply with applicable legal requirements, Vanquish Communications Ltd have replied "yes".
32. Companies House records show that Vanquish Communications Ltd went into liquidation on 3 October 2023.
33. On 3 November 2023, the Commissioner requested further information from NDA regarding the data purchased from Vanquish Communications Ltd and their relationships with other companies including [REDACTED], [REDACTED] and [REDACTED]
[REDACTED]

34. On 6 November 2023, NDA provided responses to the Commissioner's further questions:

- You have confirmed that you purchased loan decline data from a company called Vanquish Communications Ltd and that clients had opted in to receiving calls, texts and emails from NDA (NDA's responses are provided in *italics*):
 - i. Where did Vanquish Communications obtain this loan decline data? - *As he was a 'broker' this information was never shared with us, I can only imagine it's so we didn't go direct to the supplier and 'cut him out'.*
 - ii. Please provide copies of the opt-in statements and privacy policies agreed to by the clients. - *Vanquish are unable to provide these to us, we have tried for weeks now to obtain this information and I believe he has now blocked us from contacting him, he has since liquidated his company also.*
 - iii. Please provide a copy of the contract or agreement between NDA and Vanquish Communications. - *Due diligence only.*
 - iv. Please provide copies of any correspondence between NDA and Vanquish Communications confirming that the clients had opted in to receiving marketing texts from NDA - *He had confirmed on our due diligence form and in the meeting we had with him, he came highly recommended to us so we have no reason to dis-believe him.*

v. Please provide copies of any invoices received from Vanquish Communications between October 2022 and October 2023 – *Attached.*

- Have you purchased leads or data from any other companies during the past 12 months? If so, please provide the names and contact details of these companies, and copies of any contracts, invoices, due diligence documents and opt-in statements - *Yes, please see invoices attached, [REDACTED] and [REDACTED].*
 - You have confirmed that you no longer work with [REDACTED]. Please explain when and why you added their company name to your website privacy policy. - *these were added about 3 months ago, we were about to start working with them full time but we decided against, my error for not removing them from our privacy policy, we still have the option to work with them if we require.*
 - Please provide details of your relationship with [REDACTED] and [REDACTED] - [REDACTED] *I am aware they are a debt packager, from my memory I don't think we have ever worked with them, [REDACTED] are a debt packager who previously introduced fully packed IVAs into us.*
35. On 6 November 2023, the Commissioner asked NDA to provide copies of any due diligence documents completed, opt-in statements, call scripts, contracts or agreements with regards to [REDACTED], [REDACTED] and [REDACTED]. NDA replied on the same day to confirm they did not require a call script from any of the lead

providers, and the internal one used by NDA was approved by the FCA and NDA's Insolvency Practitioners. A copy of NDA's internal call script was provided to the Commissioner.

36. NDA also advised the Commissioner that they worked with a company called [REDACTED], which was based in India. NDA provided the Commissioner with a copy of the completed due diligence documents for [REDACTED].
37. On 9 November 2023, NDA provided the Commissioner with the due diligence forms for [REDACTED] and [REDACTED]. NDA also provided a copy of the contract with [REDACTED] and the opt-in details for [REDACTED]. NDA confirmed they do not have a recent due diligence form to provide regarding [REDACTED]. In a following email on the same day, NDA provided the Commissioner with the marketing agreement between NDA and [REDACTED].
38. On 10 November 2023, the Commissioner asked NDA to check for communications with other entities within the [REDACTED] network of companies. The Commissioner also requested that NDA clarifies its relationship with [REDACTED].
39. NDA confirmed that no due diligence was carried out on [REDACTED] in relation to the June 2023 data purchase since a due diligence exercise was completed on [REDACTED] in 2017.
40. On 13 November 2023, NDA provided the Commissioner with a copy of the signed introducer agreement between NDA and [REDACTED].
41. On 17 November 2023, the Commissioner sent an end of investigation letter to NDA. The end of investigation letter explained that the

Commissioner had completed his enquiries, and would now consider whether formal enforcement action was appropriate. The email concluded by saying that if NDA had any further relevant evidence or information, they should provide it by 24 November 2023. No response was received by the Commissioner.

- 42. The Commissioner has made the above findings of fact on the balance of probabilities.
- 43. The Commissioner has considered whether those facts constitute a contravention of regulation 22 of PECR by NDA and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

- 44. The Commissioner finds that NDA contravened regulation 22 of PECR.
- 45. The Commissioner finds that the contravention was as follows:
- 46. The Commissioner finds that between 4 April 2023 and 4 August 2023 there were 129,902 direct marketing SMS messages received by subscribers. The Commissioner finds that NDA transmitted those direct marketing messages, contrary to regulation 22 of PECR.
- 47. NDA, as the sender of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those messages had been acquired.

48. In this instance, NDA purchased data from a third party supplier but failed to conduct appropriate checks that valid consent had been obtained, to enable NDA to send direct marketing SMS messages.
49. The Commissioner's PECR guidance says *"You should be very careful when relying on consent obtained indirectly (consent originally given to a third party). You must make checks to ensure that the consent is valid and specifically identifies you. Generic consent covering any third party is not enough."*
50. 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.
51. Consent is also required to be "specific" as to the type of marketing communication to be received, and the organisation that will be sending it.
52. 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.
53. The Commissioner is therefore satisfied from the evidence he has seen that NDA did not have the necessary valid consent for the 129,902 direct marketing messages received by subscribers.

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 between 4 April 2023 and 4 August 2023, a confirmed total of 129,902 direct marketing messages were sent by NDA. These messages contained direct marketing material for which subscribers had not provided valid consent.
56. The Commissioner noted the large number of messages sent during the Investigation Period of four months. In addition, the Commissioner has considered the unusually high percentage of complaints that were generated as a result of the 129,902 messages received during the contravention period. Since there is no facility for free text within the 7726 spam reporting tool, the Commissioner is unable to gauge the impact of NDA's unlawful actions on individuals who complained.
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, this means that NDA's actions which constituted that contravention were deliberate actions (even if NDA did not actually intend thereby to contravene PECR).

59. The Commissioner does not consider that NDA deliberately set out to contravene PECR in this instance.
60. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
61. Firstly, he has considered whether NDA 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, since NDA has been in business for eight years and has been registered with the Commissioner for seven years. The company should have been aware of the requirements of PECR, the Commissioner's guidance on direct marketing and the enforcement action taken against companies that have sent unsolicited SMS messages in contravention of PECR. NDA should have known there were inherent risks in relying on data purchased from third parties and put measures in place to mitigate those risks.
62. 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.

63. It is therefore reasonable to suppose that NDA should have been aware of its responsibilities in this area.
64. Secondly, the Commissioner has gone on to consider whether NDA failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
65. 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 simple assurances given by third party suppliers without undertaking proper due diligence. NDA failed to carry out any substantive checks, and did not have in place a fit-for-purpose due diligence process. NDA should have had a written contract in place with Vanquish Communications Ltd, supported by a robust due diligence process, instead of relying on a three page self-assessment questionnaire, a third party recommendation, and the director's assurances. NDA should have requested copies of opt-in statements and privacy policies prior to sending the messages rather than waiting until they were under investigation by the ICO and the data broker was in liquidation.
66. In the circumstances, the Commissioner is satisfied that NDA failed to take reasonable steps to prevent the contraventions.
67. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

68. The Commissioner has identified there were no aggravating factors taken into account, however the Commissioner noted:
- SMS messages were targeting people on low incomes with debt problems;
 - the impact of these messages is difficult to assess due to the complaint notification method being 7726 complaints;
 - the level of co-operation from NDA was not as expected resulting in extensions and non-responses; and
 - NDA did not carry out appropriate due diligence with Vanquish Communications Ltd.
69. The Commissioner did not identify any mitigating factors.
70. 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.
71. 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 NDA on this matter.
72. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

73. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
74. The Commissioner has considered the likely impact of a monetary penalty on NDA. 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.
75. 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.
76. 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.

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

The amount of the penalty

78. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of £30,000 (thirty thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

79. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 22 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.
80. If the Commissioner receives full payment of the monetary penalty by 21 October 2024 the Commissioner will reduce the monetary penalty by 20% to £24,000 (twenty 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.
81. 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.
82. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

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

84. 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.

85. 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 19th day of September 2024

Signed



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