

## **DATA PROTECTION ACT 1998**

### **SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

#### **MONETARY PENALTY NOTICE**

To: DPG Professional Services Ltd

Of: 9 Portland Street, Manchester, England, M1 3BE

1. The Information Commissioner ("the Commissioner") has decided to issue DPG Professional Services Ltd ("DPG") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA 1998"). 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. DPG, whose registered office is given above (Companies House Registration Number: 13435544) is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to Regulation 21 of PECR.
4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls

promoting a product or service to an individual who has a telephone number which is registered with the Telephone Preference Service Ltd ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it.

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

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

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or*
- (b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under Regulation 26."*

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

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

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

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

*being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.*

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

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

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

7. Under Regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The TPS is a limited company which operates the register on the Commissioner’s behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.
8. Section 122(5) of the DPA 2018 defines direct marketing as “*the communication (by whatever means) of advertising material 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) DPA 2018).
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 1998 (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. 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.*

*(4) This subsection applies if the contravention was deliberate.*

*(5) This subsection applies if the person –*

*(c) knew or ought to have known that there was a risk that the contravention would occur, but*

*(d) 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 1998 remain in force for the purposes of PECR notwithstanding the introduction of the DPA 2018: see paragraph 58(1) of Schedule 20 to the DPA 2018.

### **Background to the case**

16. At all material times, DPG operated life insurance and other later life planning services. DPG was incorporated on 3 June 2021, and between 3 August 2021 and 3 August 2022 ("the contravention period"), their sole director was Daniel Gavin. Mr Gavin is also the director of DPG Outsourcing Limited ("DPGO") (Companies House Registration Number: 12211828) and DPG Associates Ltd ("DPGA") (Companies House Registration Number: 11933304).
17. DPG is registered as a data controller with the Commissioner, under registration number ZB138952. Their sector is listed as "*direct marketing provider*". The contact point is Daniel Gavin, and the email domain for contacting him is given as "dpgmedia.co.uk".
18. DPG first came to the attention of the Commissioner as part of an operation set up to investigate direct marketing activity regarding life insurance and later life planning.
19. The Commissioner identified that the calling line identifier ("CLI") [REDACTED] had featured in a complaint made via the Commissioner's Online Reporting Tool ("OLRT"). The call related to will writing and the caller gave their name as "*Taylor Sterling Legal*".
20. The Commissioner received three additional OLRT complaints during the contravention period regarding similar calls from organisations using the name, or a variation of the name, "*Taylor Sterling*".
21. The Commissioner identified that the TPS had received three complaints about variations of "*Taylor Sterling*" between November 2021 and July 2022.

22. Taylor Sterling Legal Limited ("TSL") is a registered entity at Companies House (Companies House Registration Number: 07362779), which was dissolved in February 2019. The Commissioner was unable to identify an active company website for TSL.
23. A third party information notice was submitted to [REDACTED] [REDACTED] the communications service provider responsible for allocating CLI [REDACTED].
24. [REDACTED] responded and confirmed that the subscriber to CLI [REDACTED] was an individual named Daniel Gavin and provided a list of CLIs allocated to Mr Gavin (the "other CLIs"). [REDACTED] confirmed that Mr Gavin has been operating the account as DPG Professional Services Ltd, however, billing had been going through DPGA.
25. [REDACTED] also stated that they understood from Mr Gavin that he purchased data that had been pre-screened against the TPS, but he was not re-checking the data for TPS registrations after 28 days.
26. The Commissioner searched the OLRT complaints for the other CLIs and identified a further six complaints from TPS registered numbers and three complaints from non-TPS registered numbers between 11 October 2021 and 18 July 2022.
27. Between the same period, the Commissioner identified seven TPS complaints against the other CLIs.
28. The content of the complaints stated that the organisation calling gave their name as "Taylor Sterling", "DPG" and "DPG Estate Planning". Five of the complaints stated that the government had been mentioned in

the calls. One complaint said the government was referenced in the context of the government conducting an "awareness survey" as to people not having a will, whilst another complainant stated they had been told that new government regulations would lead to people being fined for having incorrect documents. One complainant also said that the caller told them they had obtained their details from a database.

29. The Commissioner's online research identified the website "www.dpgestateplanning.co.uk" ("the Website") which stated that DPG Estate Planning offered:
  - Last will and testament
  - Lasting Power of Attorney (LPA)
  - Funeral plans
  - Probate assistance
  - Long term care planning
30. The Website also offered "*The DPG Estate Plan*", which stated that a will and two LPAs would be provided free of charge if an individual paid a minimum deposit of £250 on a funeral plan.
31. The Website's privacy policy stated that DPG Estate Planning is a trading style of DPG Professional Services Ltd. The privacy policy stated that the company may send individuals marketing emails with their consent but did not mention marketing calls. There was also no reference to "*Taylor Sterling Legal*" on the website.
32. On 16 August 2022, the Commissioner sent an investigation letter to DPG, which enclosed a list of the complaints that had been identified as being generated by calls made by DPG. The investigation letter set out the requirements of Regulation 21 of PECR, the Commissioner's



powers, and asked a series of questions regarding DPG's compliance with PECR.

33. In response, Mr Gavin provided a list of numbers used by DPG, a series of documents relating to data protection, and a funeral plan call script. The response confirmed:

- Of the separate DPG entities Mr Gavin is director of, the only entity actively trading is DPG Professional Services Ltd.
- The activity that had generated complaints was conducted by DPG Professional Services Ltd.
- "www.dpgestateplanning.co.uk" was the website used to operate DPG's funeral plan campaign, which is no longer live due to the Financial Conduct Authority's regulation of the sale of funeral plans from 31 July 2022.
- The campaign that generated the complaints is no longer live.
- Taylor Sterling Legal was the trading name used for all outbound activity and DPG has operated under this name for the last four years.
- The number of calls made between 3 August 2021 and 3 August 2022 is 6,117,509, of which 3,156,579 connected.
- All data is purchased from third party marketing agencies and arrives with an opt-in date and time stamp.
- DPG had thought that their communications service provider was TPS screening their numbers daily, but this was not the case. DPG has now asked the communications service provider to do this.

34. The Commissioner identified that, of the 3,156,579 connected calls, 74,119 were made to numbers that had been registered with the TPS for 28 days or more at the time of the call.

35. The data protection documents provided by DPG consisted of a data protection policy, an employee privacy notice, a general privacy policy, and a document stating that DPG exports personal data to a third party offering funeral plans. None of the documents referenced PECR or direct marketing by telephone.

36. The call script identified the caller as being from "*Taylor Sterling Legal*". The script began with:

*"The government are raising awareness for people to ensure that they have the correct and up to date legal documents in place."*

37. The first question consisted of asking the individual whether they had a will and, if so, whether it was more than two years old. The script involved telling individuals that the Law Society advises wills should be updated every two years, then asking if the individual knew what would happen if they died without a will:

*"Your estate would go intestate, what that basically means is that your loved ones may not receive what you want them to, there can be family disputes and your loved ones may not receive what you want them to".*

38. If the individual indicated that they did not have a will in place, the script directed the caller to emphasise the rising cost of funerals, mentioning a report by Sun Life which indicated that the cost of funerals is doubling every 10 years and that in 10 years' time the average cost of a funeral will be £9,000. The script states:

*"Let me ask you how easy would be for your family to find £9,000 at the drop of a hat? I'm sure the last thing you would want is to leave the family with a big bill when you pass away?"*

39. The script then instructs the caller to offer *"a free will, completely legally binding, done by our in house paralegal team and a prepaid funeral plan which will freeze the cost of your funeral at less than today's prices in order to ensure your family aren't left with a big bill when the time comes"*.
40. This script appears to have been misleading because complainants indicated they felt that callers were implying that they were calling on behalf of the government, which was not the case. Online research indicates that the Law Society does not advise that wills should be updated every two years, and the claim regarding Sun Life could not be corroborated either; Sun Life stated in a 2020 report that predictions beyond five years would likely be inaccurate.
41. On 26 August 2022, the Commissioner made further enquiries to understand which third party data providers DPG used, how the leads were opted-in to receive calls from DPG, and why the trading name *"Taylor Sterling Legal"* had been used.
42. On 20 September 2022, the Commissioner sent a chaser letter to DPG.
43. On the same day, DPG responded confirming that:
  - Data was purchased from [REDACTED] (the "Data Providers").
  - DPG had requested opt-in information from the Data Providers.

- There is no connection between TSLL and DPG; the trading name was selected because Mr Gavin liked the name.
44. On 4 October 2022, the Commissioner sent further enquiries to DPG. The Commissioner also sent a chaser on 21 October 2022.
45. On 25 October 2022, DPG responded with confirmation that:
- Individuals were initially contacted as "*Taylor Sterling Legal*", if the customer then wanted more information and were transferred through to an advisor, that advisor would introduce themselves as DPG.
  - The Data Providers advised DPG that they can provide opt-in evidence in the form of a call recording for all purchased data.
  - DPG did not have a contract in place with the Data Providers, but instead received a new invoice for each batch of data purchased.
  - DPG has been purchasing data for approximately the last four years. The volumes of data purchased are:
    - [REDACTED] – 1,515,683
    - [REDACTED] – 340,335
    - [REDACTED] – 545,794
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- All data was purchased as TPS screened data.
46. A separate email on 25 October 2022 enclosed example invoices for [REDACTED]. The [REDACTED] invoice, dated 4 November 2021, showed that 60,000 records had been purchased from two sources, but the data criteria was not stipulated on the invoice. The [REDACTED] invoice, payment for which was due on 3 February 2022,

showed that 10,000 "*funeral data*" leads had been purchased, and identified [REDACTED].

47. On 4 November 2022, the Commissioner sent DPG further enquiries. A chaser was sent on 21 November 2022. This did not elicit a response so a further chaser was sent on 29 November 2022, informing DPG that a failure to respond may result in an information notice being issued.
48. On 29 November 2022, DPG responded to state that:
  - The lead criteria requested from the Data Providers was age range 50-75 with no funeral plan.
  - There are no formal contracts between DPG and the Data Providers.
  - When DPG receive a lead they usually attempt to contact the individual within one week, DPG will then attempt to contact the individual a further three times over the next 30 days.
  - The Data Providers can provide evidence of an opt-in but some leads would be via telephone call and some would be obtained online.
  - DPG did not review any opt-in information prior to purchasing data from any of the data suppliers.
49. On 29 November 2022, the Commissioner sent correspondence asking for copies of the script used to obtain opt-ins for leads generated by telephone, the customer journey for leads generated online, evidence that leads were purchased as TPS checked, and evidence that each of the complainants had opted in to receive a call from DPG.
50. No response was received so the Commissioner sent further chasers to DPG on 9 December 2022 and 19 December 2022.

51. Despite this, the Commissioner did not receive a response from DPG. Therefore, on 4 January 2023, the Commissioner sent an end of investigation letter to DPG, advising that the Commissioner would now consider whether formal enforcement action would be appropriate in this case, based on the information available. DPG were advised that if they wanted to submit any relevant evidence or information for consideration, they should do so by no later than 11 January 2023.
52. On 6 February 2023 a monthly update was sent to DPG, stating that the investigation into DPG was being reviewed, and that all enforcement options were being considered as part of the review. To date, no response has been received by the Commissioner.
53. The Commissioner is satisfied that the 74,119 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA 2018.
54. The Commissioner has made the above findings of fact on the balance of probabilities.
55. The Commissioner has considered whether those facts constitute a contravention of Regulation 21 of PECR by DPG and, if so, whether the conditions of section 55A DPA 1998 are satisfied.

### **The contravention**

56. The Commissioner finds that DPG contravened Regulation 21 of PECR.
57. The Commissioner finds that the contravention was as follows:

58. Between 3 August 2021 and 3 August 2022, DPG used a public telecommunications service for the purposes of making 74,119 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 13 complaints being made to the TPS and the Commissioner.
59. The Commissioner is also satisfied for the purposes of Regulation 21 that these 74,119 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 DPG that they did not object to receiving such calls.
60. 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.
61. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting into marketing communications generally, unless it is clear that this will include telephone calls.

62. 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.
63. DPG has not provided any evidence to indicate that they received valid notifications.
64. The Commissioner has gone on to consider whether the conditions under section 55A DPA 1998 are met.

#### **Seriousness of the contravention**

65. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of Regulation 21 by DPG arising from the organisation's activities between 3 August 2021 and 3 August 2022, and this led to 74,119 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified DPG that they were willing to receive such calls, and 13 complaints being made as a result.
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66. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA 1998 is met.

#### **Deliberate or negligent contraventions**

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



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

68. The Commissioner does not consider that DPG deliberately set out to contravene PECR in this instance.
69. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
  70. Firstly, he has considered whether DPG 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, given that, as an organisation operating in the "*direct marketing provider*" sector, DPG should reasonably have sought to familiarise itself with the relevant legislation and available guidance.
  71. 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.

72. It is therefore reasonable to suppose that DPG should have been aware of its responsibilities in this area.
73. Secondly, the Commissioner has gone on to consider whether DPG failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
74. The Commissioner's direct marketing guidance makes clear that organisations acquiring or 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. DPG have not provided any evidence of due diligence conducted on the data purchased from the Data Providers, nor have they provided evidence to satisfactorily demonstrate how the Data Providers sourced all the data they purchased. DPG also did not screen the data against the TPS register itself.
75. Reasonable steps in these circumstances may also have included: asking their third-party data providers for evidence that the subscribers had specifically notified that they did not object to receiving calls from DPG; screening the data against the TPS register itself, regardless of any assurances that might have been given by the providers of the data; and ensuring that they had a contract in place with their data providers.
76. Given the volume of calls and complaints, it is clear that DPG failed to take those reasonable steps.

77. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA 1998 is met.

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

78. The Commissioner has taken into account the following aggravating features of this case:
- DPG's director, Daniel Gavin, did not fully cooperate with the Commissioner's investigation.
  - DPG did not conduct appropriate due diligence around the source of it's data.
  - The complaints received evidence the misleading and predatory nature of the calls.
79. The Commissioner does not consider there to be any mitigating features of this case.
80. 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.
81. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by DPG on this matter.
82. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

83. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
84. The Commissioner has considered the likely impact of a monetary penalty on DPG. In doing so, the Commissioner has given careful consideration to the representations made by DPG 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.
85. 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.
86. 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.

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

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


88. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£90,000 (ninety thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

### **Conclusion**

89. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **13 December 2023** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
90. If the Commissioner receives full payment of the monetary penalty by **12 December 2023** the Commissioner will reduce the monetary penalty by 20% to **£72,000 (seventy-two thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
91. 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.

92. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
93. Information about appeals is set out in Annex 1.
94. 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.
95. 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 9<sup>th</sup> day of November 2023.

Signed .....  .....

Andy Curry  
Head of Investigations  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **ANNEX 1**

### **SECTION 55 A-E OF THE DATA PROTECTION ACT 1998**

#### **RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER**

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.

2. If you decide to appeal and if the Tribunal considers:-

a) that the notice against which the appeal is brought is not in accordance with the law; or

b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber  
HM Courts & Tribunals Service  
PO Box 9300  
Leicester  
LE1 8DJ

Telephone: 0203 936 8963

Email: grc@justice.gov.uk

a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.

b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.

4. The notice of appeal should state:-

a) your name and address/name and address of your representative (if any);

b) an address where documents may be sent or delivered to you;

c) the name and address of the Information Commissioner;

d) details of the decision to which the proceedings relate;

e) the result that you are seeking;

f) the grounds on which you rely;

g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;

h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time



and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in section 55B(5) of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).