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Information Commissioner's Office

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: It's OK Limited

Of: Suite 12 4th Floor New England Road, Brighton, East Sussex, England, BN1 4GW

1. The Information Commissioner ("the Commissioner") has decided to issue It's OK Limited ("It's OK") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").

2. This notice explains the Commissioner's decision.

Legal framework

3. It's OK, whose registered office is given above (Companies House Registration Number: 10196140) is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.

4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls promoting a product or service to an individual who has a telephone

number which is registered with the Telephone Preference Service Ltd ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it.

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

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

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

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

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

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

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

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

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

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

(a) the subscriber shall be free to withdraw that notification at any time, and
(b) where such notification is withdrawn, the caller shall not make such calls on that line."

7. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited ("TPS") is a limited company which operates the register on the Commissioner's behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.

8. Section 122(5) of the DPA18 defines direct marketing as "*the communication (by whatever means) of advertising 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) DPA18).

9. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".

10. A "subscriber" is defined in regulation 2(1) of PECR as "*a person who is a party to a contract with a provider of public electronic communications services for the supply of such services*".

11. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –

(a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,

(b) subsection (2) or (3) applies.

(2) This subsection applies if the contravention was deliberate.

(3) This subsection applies if the person –

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

(b) failed to take reasonable steps to prevent the contravention.

12. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.

13. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will

interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.

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

Background

15. It's OK Limited ("It's OK") is a nationwide appliance service and repair company, for domestic white good products. It's OK were incorporated on 24 May 2016 and are registered with the Information Commissioner's Office.

16. It's OK came to the ICO's attention during 2020 as a result of the Commissioner monitoring complaints received via the TPS. Research by the Commissioner identified that from 1 January 2019 to 2020, at least 16 complaints had been made to the ICO regarding calls from It's OK, and 59 complaints had been received by the TPS.

17. Many of the complainants were concerned that It's OK were calling to encourage individuals to take out white goods insurance, often specifically in relation to washing machines. Complaints indicated that It's OK were telling individuals that their washing machine warranty had expired when this may not have always been the case. Complaints also indicated that It's OK may have been using high-pressure sales tactics and the complainants included elderly and/or vulnerable individuals.

18. The following are examples of the comments made about It's OK by TPS complainants:

"They called my Mum (who is 82) & bambozzeled [sic] her into talking [sic] out an extended warranty on her 10 year old washing machine - they talked into paying them £194 including VAT - I then sent them an e mail to cancel and they kept calling trying to get her to keep it - this is not ok".

"They try to con you into thinking they are your washing machine insurers and it needs to be renewed and they need to check your bank details. I am insured with Domestic and General. When asked their name they hung up".

"I have been mis-sold a Service Plan total cost of £194.40 for my washing machine. I was informed that my current service plan was due to expire and it needed to be renewed. I renewed it and I have been told that I am not eligible to receive an engineer visit for a service. It's OK Ltd has received £194.40 from me a pensioner and will not provide a service. I think many people are scammed".

"Tried to rush me into renewing warranty on washing implying warranty had expired recently. Actually warranty expired years ago."

19. It's OK had responded to the TPS complaints stating: "*Our organisation had prior consent to make this call and we can provide evidence of this."*

20. Given the volume of complaints and the comments suggesting that there was often no prior relationship between It's OK and the complainants, it was decided to open an investigation.

21. An investigation letter was sent to It's OK on 28 May 2020. The letter outlined the Commissioner's concerns and the regulations and powers

available to the ICO. It also asked a range of questions, including the volume of calls that had been made, and connected, over the period 28 May 2019 to 28 May 2020, and how It's OK sourced its call data. A list of complaints was also provided and the Commissioner requested evidence of consent to contact all of the subscribers in the spreadsheet.

22. It's OK responded to the Commissioner on 10 June 2020. They stated that from 28 May 2019 to 28 May 2020:

    i. 1,789,974 calls had been made
    ii. 1,141,919 calls had connected.

23. It's OK explained that they obtain data by purchasing leads from a third party organisation called [redacted] ([redacted]), which is based in India. It's OK further stated:

    "When GDPR was released in May 2018, our company contacted the ICO helpdesk to ask for guidance when purchasing data from lead generation companies. We were told that any company contacting a lead must have relevance and if the lead generation company had proof i.e. an opt-in then that would be deemed as compliant.

    It is our understanding along with the lead generation companies that if a lead has opted-in to the lifestyle survey, then this supersedes the TPS option as the lead has given permission to be contacted regarding the product and services."

24. It's OK supplied the name of the lead company that had provided the subscriber's details, where the subscriber could be identified by It's OK, which in all cases was [redacted]

25. On 12 June 2020 the Commissioner wrote to It's OK to ask whether [redacted] screens against the TPS before making the survey calls. The Commissioner also requested a copy of the script used by [redacted] when making the survey call and gaining the relevant opt-in leads.

26. On 25 June 2020 the Commissioner received a response from It's OK stating that:

"If the consumer is contacted within 6 months from the last point of contact (survey completion / opt in) they [redacted] do not screen the data against the TPS register, due to the existing opt-in and frequency of communication with that particular consumer. Their document also states that should they contact the / a consumer outside of 6 months, they screen the number against the TPS register prior to contact."

27. A copy of the call script used by [redacted] was also provided.

28. On 26 June 2020 the Commissioner wrote to It's OK requesting additional information, including justification for contacting the complainants listed in the spreadsheet provided by the Commissioner. The Commissioner also requested sample call recordings. It's OK responded on 16 July 2020 stating that:

[redacted] has not acquisitioned data from 3rd parties for a very long period, due to the lack of clarity from countries officiators regarding compliance. As a result, they only use data which they themselves have cultivated over many years i.e. contacting non TPS numbers and then opting them in to 3rd party contact prior to taking part in lifestyle surveys. Leads are then supplied to companies such as ours, based upon the relevance to response given by the consumer during the survey."

29. It's OK did not provide [redacted] justification for contacting the complainants and also did not provide the sample call recordings. It's OK stated that the recordings were only available from the compliance department, which was closed until further notice due to the Covid 19 pandemic.

30. On 23 July 2020 the Commissioner wrote to It's OK requesting evidence of consent for It's OK to contact the complainants listed in the spreadsheet provided by the Commissioner; and five call recordings/transcripts of the initial survey call made by [redacted] within the last calendar year. Given the difficulty It's OK were having in obtaining information from [redacted] as a result of the pandemic they were asked to provide monthly updates in relation to obtaining the relevant information. It's OK were also asked to confirm whether they obtained leads from any other source.

31. On 28 July 2020 It's OK responded to the Commissioner confirming that they did not obtain leads from any other source. It's OK also stated that the information purchased from [redacted] related to people who had answered questions relevant to their products and or services of It's OK and who had also agreed to receive contact from third parties such as It's OK.

32. On 30 July 2020 the Commissioner wrote to It's OK and again requested evidence of consent for It's OK to contact the complainants listed in the spreadsheet.

33. It's OK responded on 4 August 2020 and stated that they were seeking the necessary information from [redacted]. In addition, It's OK stated that they felt their practices were consistent with information that they said they had previously received from the Commissioner in response to a telephone enquiry. The Commissioner responded on 6 August 2020

providing clarification that the live marketing calls made by It's OK would need to be screened against the TPS unless valid consent to marketing contact from It's OK had been obtained from those individuals.

34. On 6 October 2020 the Commissioner wrote to Trading Standards to ask for any relevant information in connection with the investigation into It's OK. On 22 October 2020 Trading Standards provided the Commissioner with information including several Citizen Advice log complaints about It's OK.

35. On 17 November 2020 It's OK wrote to the Commissioner stating that they were still unable to provide the required information as the situation in India regarding the pandemic was ongoing and [redacted] were not fully operational.

36. On 18 January 2021 the Commissioner wrote to It's OK requesting a list of all outbound connected calls covering 28 May 2019 to 28 May 2020. This was requested from It's OK directly because of issues obtaining the call records from the telecommunications provider used by It's OK, [redacted].

37. On 28 January 2021 It's OK wrote to the Commissioner and provided a spreadsheet containing details of 19 complainants and It's OK's evidence of consent. The spreadsheet showed that individuals consented by completing [redacted] telephone survey and that the evidence of consent held by It's OK consisted of a record of the date the subscriber had last completed [redacted] survey.

38. On 27 January 2021 [redacted] provided the Commissioner with a copy of the call records for the It's OK account. The call records showed that 2,578,543 outbound connected calls had been made over a period of

11 months. [redacted] also provided a list of all the telephone numbers allocated to It's OK. Some of these numbers had not been provided by It's OK when the Commissioner asked It's OK to list all the telephone numbers used to make outbound marketing calls.

39. On 16 February 2021 the Commissioner wrote to It's OK and reiterated that TPS registered individuals would need to have specifically opted in to receive marketing calls from It's OK. The script that was provided as evidence that [redacted] obtained consent for It's OK to call TPS registered numbers did not specifically name It's OK or ask the individual to state that they did not object to receiving marketing telephone calls from It's OK.

40. The Commissioner asked It's OK to confirm whether they were named as an organisation that individuals agreed to be contacted by for marketing purposes in the [redacted] lifestyle survey, and to provide evidence of this. The previous request for a copy of outbound call records was repeated. This was because of the apparent discrepancy in the call volumes and list of numbers provided by [redacted] and It's OK.

41. It's OK responded to the Commissioner on 5 March 2021 stating that they were named on [redacted] survey and that they had obtained five call recordings for the ICO to review. In this response, It's OK also provided a link to [redacted] privacy policy, stating that they are named in the policy.

42. The Commissioner reviewed the link provided and noted that It's OK appeared to have been added to the [redacted] privacy policy subsequent to the ICO's recent email. The [redacted] privacy policy had been reviewed

by the Commissioner on 29 July 2020 which contained no mention of It's OK.

43. In its response of 5 March 2021 It's OK also stated that they were unable to provide the requested call records as they had made enquiries with [redacted] who no longer retained this information. It's OK also provided a copy of an email trail between themselves and [redacted] regarding the discrepancy in the list of telephone numbers allocated to It's OK. In the same response It's OK also requested a copy of telephone recordings for its calls to the ICO helpline in May 2018 as they felt they had followed the guidance provided by the ICO.

44. On 15 March 2021 the Commissioner explained that the ICO does not hold recordings of calls made to the ICO helpline, and also asked whether It's OK had been able to confirm which numbers it had used to make marketing calls over the contravention period.

45. On 29 March 2021 It's OK explained that discussions with [redacted] regarding the numbers used were still ongoing. It's OK provided a copy of five call recordings for calls made by [redacted]

46. On 15 April 2021 the Commissioner wrote to It's OK to request a copy of the contract in place between It's OK and [redacted] The Commissioner also asked for confirmation of when the call recordings provided by It's OK were from, as no date or time had been included in the files.

47. On 4 May 2021 It's OK wrote to the Commissioner and stated that [redacted] initially provided them with a list of 42 allocated numbers, which did not match the spreadsheet of 122 numbers provided to the Commissioner by [redacted]. [redacted] then stated to It's OK that there were in fact 82 telephone numbers allocated to It's OK. It's OK stated they would put their name to the 122 numbers but were not

confident in this matter given the discrepancy in the answers provided by [redacted]

48. In the same response It's OK provided the Commissioner with a copy of a purchase order confirmation, which they said was the agreement in place between both companies. It's OK also stated that they were still unable to provide any evidence of consent to contact the outstanding complainants due to [redacted] being heavily impacted by Covid 19.

49. On 6 May 2021 the Commissioner asked It's OK to confirm the date of the purchase order confirmation, as it appeared to be undated. The Commissioner also asked again for the dates of the call recordings that had been supplied, as it was unclear whether the calls had been made within the contravention period.

50. On 3 June 2021 It's OK wrote to the Commissioner and confirmed that the purchase order provided was from June 2019. It's OK also stated that the call recordings provided were in fact outside the dates of the requested period. They instead provided five new call recordings, which they said were from June 2019. A transcript of the alleged June 2019 calls is as follows:

*I just need your help with a few simple household questions and I will be very quick, is that OK? These questions are on behalf of UK leading companies for marketing purposes and there is a recorded message at the end of my call. So just to confirm ***confirm contact details*** Some of the companies may contact you via telephone or post with information relevant to your answer is that ok? Are you in the age 40s, 50s, or 60s? Are you renting or a homeowner? On behalf of It's OK – what make is your washing machine? And how old is your washing machine? I will now play the recorded message that lists the sponsors*

and other similar organisations and gives you the opportunity to opt out of future marketing. You may also visit [redacted] *or call* [redacted] *to view our privacy policy. Please take a moment to listen to our recorded message for today's sponsor. Recorded message: Thank you for taking the time to answer our questions. For security, the information provided will be held under the guidelines of the data protection act. Our partners provide products and services from the following sectors: retail, telecommunications, automotive, insurance, lifestyle, wills, publishing and media, charities, entertainment, gaming, leisure, utilities, public sector, financial services, home improvements, travel, claims management services. If you wish to opt out of any of these please dial* [redacted]

51. On 5 August 2021 the Commissioner wrote to It's OK to confirm that its enquiries had been completed and the Commissioner would now consider whether formal enforcement action was appropriate. It's OK were asked to provide any other relevant evidence, or information by 12 August 2021.

52. Given the apparent discrepancy in the call volumes and list of numbers used by It's OK, efforts were made to establish that the call records provided by [redacted] were all for calls made by It's OK. A spreadsheet was compiled of all telephone numbers used in the call records supplied by [redacted]. These telephone numbers were then compared with ICO and TPS complaints received regarding It's OK.

53. The comparison established that [redacted] had allocated It's OK blocks of numbers and that, for the majority of these number blocks, complaints had been received regarding calls from It's OK. The call records also included a column titled "src_user", which is understood to

mean "source user". The source user listed for all of the call records was the name of one of the directors of It's OK.

54. For these reasons the call records provided by [redacted] have been relied upon in the investigation. The records evidence that 2,578,543 connected calls were made by It's OK over an 11 month period. The call records were screened against the TPS and the screening evidenced that 1,752,149 of the calls made by It's OK had been made to subscribers who had been registered with the TPS for not less than 28 days at the time they received the call, over the period 1 July 2019 to 1 June 2020.

55. The Commissioner has made the above findings of fact on the balance of probabilities.

56. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by It's OK and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

57. The Commissioner finds that It's OK contravened regulation 21 of PECR.

58. The Commissioner finds that the contravention was as follows:

59. Between 1 July 2019 and 1 June 2020, It's OK used a public telecommunications service for the purposes of making 1,752,149 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 a total of 71 complaints being made to the TPS and the Commissioner.

60. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,752,149 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 It's OK that they did not object to receiving such calls.

61. 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.

62. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.

63. 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.

64. Against the backdrop of the factual matrix summarised in the background section, the Commissioner is satisfied that a serious contravention of regulation 21 of PECR has been committed by It's OK. Namely, in contravention of regulation 21 (1) (b), It's OK made 1,752,149 connected calls over an 11 month period to numbers that were registered with TPS for over 28 days.

65. The Commissioner has gone on to consider whether the onditions under section 55A DPA are met.

Seriousness of the contravention

66. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by It's OK arising from the organisation's activities between 1 July 2019 and 1 June 2020, and this led to 1,752,149 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified It's OK that they were willing to receive such calls, and 71 complaints being made as a result.

67. Additionally, the Commissioner considers the contravention serious because:

i. Over one and a half million calls were made over an 11 month period, demonstrating a sustained campaign of nuisance calls.

ii. Some of the calls appeared to involve misleading individuals that their warranties had expired and encouraging them to pay for services they did not necessarily need.

iii. Vulnerable individuals may have been negatively impacted by these calls and there is some indication that elderly individuals may have been specifically targeted.

68. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

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

70. The Commissioner considers that in this case It's OK did deliberately contravene regulation 21 of PECR. This is because although It's OK's actions may have been negligent prior to the commencement of the Commissioner's investigation, It's OK continued to contravene regulation 21 despite the Commissioner expressing his concerns and explaining the seriousness of the contravention to It's OK.

71. In reaching this conclusion, the Commissioner notes that It's OK were aware of the risks, but neither ceased its behaviour nor implemented any changes to mitigate against or prevent serious contraventions of the PECR. In addition, it was noted that at least 10 TPS complaints were submitted against It's OK after the investigation was concluded.

72. For the above reasons, the Commissioner is satisfied that this breach was deliberate.

73. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

74. Firstly, he has considered whether It's OK 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, for the following reasons:

    i. As a company that is engaged in continuously contacting its present and potential customers, It's OK should have been aware of the rules that apply to such communications.

    ii. During the course of this investigation, It's OK was advised to consult the ICO guidance on the requirements of PECR with regards to live marketing calls.

75. 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. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.

76. Where it is able to identify the organisation making the calls, it is standard practice for the TPS is to contact that organisation on each occasion a complaint is made. It is reasonable to believe that It's OK would have been sent a notification from the TPS for the complaints

being made in this case. From January 2018 to April 2022 67 TPS complaints received by the TPS were responded to by It's OK, including 28 over the contravention period. That these complaints were made and referred to It's OK by the TPS should have made It's OK aware of the risk that such contraventions may occur and were indeed occurring.

77. It is therefore reasonable to suppose that It's OK should have been aware of its responsibilities in this area.

78. Secondly, the Commissioner has gone on to consider whether It's OK failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.

79. The Commissioner's direct marketing guidance makes clear that organisations acquiring marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, 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.

80. Reasonable steps in these circumstances may also have included:

    i. Reviewing a copy of the script used by [redacted] when obtaining leads; a review of this script by It's OK should have found that the script was not sufficient to rely on to obtain valid justification for TPS registered numbers to be contacted by It's OK.

ii. Implementing procedures to investigate complaints and to ensure that objections that they received were appropriately acted upon, such as through the use of suppression lists, appropriate employee training and adjustments to procedures (including the development of an appropriate PECR policy).

81. Given the volume of calls and complaints, it is clear that It's OK failed to take those reasonable steps.

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

The Commissioner's decision to issue a monetary penalty

83. The Commissioner has taken into account the following aggravating features of this case:

i. It's OK were potentially targeting vulnerable individuals as a result of buying data specifically gathered from an older age bracket. Some complaints indicate vulnerable people were impacted.

ii. The purpose of the marketing was to increase turnover and ultimately generate profit for the organisation.

iii. Although It's OK Ltd maintained they verbally contacted the ICO Helpline for advice there is no record of this, and their interpretation of this possible advice given does not fit with published ICO Guidance or the legislation. The Commissioner would also have expected the company to have reviewed their practices given the number of complaints they would have been aware of.

iv. Whilst there has been co-operation, this has not always been timely. Documentation has been produced post request and amendments made to documentation already provided.

84. The Commissioner does not consider that there are any mitigating features of this case.

85. 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.

86. 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 It's OK on this matter.

87. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

88. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.

89. The Commissioner has considered the likely impact of a monetary penalty on It's OK. 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.

90. 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.

91. 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.

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

The amount of the penalty

93. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of £200,000 is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

94. The Commissioner The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **16 March 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.

95. If the Commissioner receives full payment of the monetary penalty by **15 March 2023** the Commissioner will reduce the monetary penalty by 20% to £160,000. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

96. 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.

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

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

99. 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.

100. 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 13 February 2023

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