

**DATA PROTECTION ACT 1998
PRIVACY AND ELECTRONIC COMMUNICATIONS (EC DIRECTIVE)
REGULATIONS 2003**

ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: CRDNN Limited, formerly known as Contact Reach Digital Limited

Of: 5 Blair Court, North Avenue, Clydebank Business Park, Clydebank,
G81 2LA

1. The Information Commissioner ("Commissioner") has decided to issue CRDNN Limited ("CRDNN") with an enforcement notice under section 40 of the Data Protection Act 1998 ("the DPA").¹ This notice is in relation to contraventions of regulation 19 and regulation 24 of the Privacy and Electronic Communication (EC Directive) Regulations 2003 ("PECR") by CRDNN.
2. This notice explains the Commissioner's decision.

Legal framework for this Notice

3. PECR came into force on 11 December 2003. PECR adopted Part V, entitled "Enforcement", and Schedules 6 and 9 of the DPA. By virtue of regulation 31(2) of PECR the Commissioner was made responsible for the enforcement functions under PECR.

¹ In accordance with paragraph 58 of Schedule 20 of the Data Protection Act 2018, the provisions of the Data Protection Act 1998 remain in force for the purposes of PECR.

4. CRDNN, whose registered office is given above (companies house registration number SC547986), is the person stated in this notice to have used an automated calling system for the purpose of making recorded direct marketing calls contrary to regulation 19 and regulation 24 of PECR.

5. Regulations 19 of PECR states:

“(1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling or communication system except in the circumstances referred to in paragraph (2).

(2) Those circumstances are where—

(a) the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line; and

(b) the person transmitting, or instigating the transmission of, such communications—

(i) does not prevent presentation of the identity of the calling line on the called line; or

(ii) presents the identity of a line on which he can be contacted.

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

(4) For the purposes of this regulation, an automated calling system is a system which is capable of–

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.”

6. Regulation 2(4) of PECR provides the meaning of a ‘line’, which is applicable to regulation 19:

“Any reference in these Regulations to a line shall, without prejudice to paragraph (3), be construed as including a reference to anything that performs the function of a line, and “connected”, in relation to a line, is to be construed accordingly.”

7. Section 11(3) of the DPA 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)).

8. Regulation 24 of PECR states:

“(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication–

(a) in relation to a communication to which regulations 19 (automated calling systems) and 20 (facsimile machines) apply, the particulars mentioned in paragraph (2)(a) and (b);

(b) in relation to a communication to which regulation 21 or 21A (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).

(2) The particulars referred to in paragraph (1) are–

(a) the name of the person;

(b) either the address of the person or a telephone number on which he can be reached free of charge.”

9. The DPA contains enforcement provisions at Part V which are exercisable by the Commissioner. These provisions are modified and extended for the purposes of PECR by Schedule 1 of PECR.
10. Section 40(1)(a) of the DPA (as extended and modified by PECR) provides that if the Commissioner is satisfied that a person has contravened or is contravening any of the requirements of the Regulations, she may serve him with an Enforcement Notice requiring him comply with the Regulations within such time as may be specified in the Notice, or to refrain from taking certain actions after such time as may be so specified.

The Contravention

11. The Commissioner finds that CRDNN contravened regulation 19 and regulation 24 of PECR.
12. The Commissioner finds that the contravention was as follows.
13. Between 1 June and 1 October 2018 ("the relevant time") CRDNN instigated 193,606,544 attempted automated calls, of which 63,615,075 connected.
14. These automated calls were for the purpose of direct marketing.
15. There is no evidence to suggest that there was consent for these calls. There is also evidence from the volume and nature of the complaints that many recipients of the calls had sought to opt-out from the calls but that had not been facilitated by the CRDNN.
16. These calls were thus in contravention of regulation 19 PECR.
17. The calls were also in contravention of regulation 24 PECR. The calls were conducted from spoofed CLIs and during the calls no company information or contact details were provided.
18. The Commissioner is satisfied that CRDNN was responsible for these contraventions.
19. The Commissioner has considered, as she is required to do under section 40(2) of the DPA (as extended and modified by the Regulations) when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage. The Commissioner has decided that it is unlikely that actual damage has been caused in this instance.
20. In view of the matters referred to above, the Commissioner hereby gives notice that, in the exercise of her powers under

section 40, she requires that CRDNN shall within 35 days of the date of this notice:

Except in the circumstances referred to in paragraph 2 of regulation 19 of PECR, and in compliance with the terms of regulation 24 of PECR, neither transmit nor instigate the transmission of communications comprising recorded matter for direct marketing purposes by means of an automated calling system.

The circumstances referred to in paragraph 2 of regulation 19 of PECR are:

- **First, that the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communication being sent by or at the instigation of the caller; and**
- **Second, that the person transmitting or instigating the transmission of such communications, either:**
 - **Does not prevent presentation of the identity of the calling line on the called line; or**
 - **Presents the identity of a line on which he can be contacted**

For any automated call that CRDNN does instigate in compliance with the above steps, ensure that the

name of the person instigating the call (CRDNN) as well as either the address or telephone number at which CRDNN can be contacted free of charge is provided with that call.

21. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in Annex 1.
22. Any notice of appeal should be sent so that it is received by the Tribunal within 28 days of the date on which this Notice is sent.

Dated the 26th day of February 2020

Signed

Stephen Eckersley
Director of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the DPA gives any person upon whom a monetary penalty notice or variation 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 law; or
 - b. To the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her 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:

GRC & GRP Tribunals
HM Courts and Tribunals Service
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- 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 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 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 (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).