

## **DATA PROTECTION ACT 1998**

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

#### **ENFORCEMENT NOTICE**

To: Repair & Assure Ltd

Of: Suite C, Second Floor, Redhill Chambers, 2d, High Street, Redhill  
RH1 1RJ

1. The Information Commissioner ("Commissioner") has decided to issue Repair & Assure Ltd ("RAL") with an enforcement notice under section 40 of the Data Protection Act 1998 ("DPA"). The notice is in relation to a contravention of regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003.
2. This notice explains the Commissioner's decision.

#### **Legal framework**

3. RAL, whose registered office address is given above (Companies House Registration Number: 10539230), 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 given their consent to that company to receive such calls.

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 set up by the Commissioner to carry out this role. 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 which is directed to particular individuals*”. This definition also applies for the purposes of PECR.
9. Consent is defined in Article 4(11) the General Data Protection Regulation 2016/679 as “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.

10. The DPA contains enforcement provisions at Part V which are exercisable by the Commissioner. Those provisions are modified and extended for the purposes of PECR by Schedule 1 PECR.
11. 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 to take within such time as may be specified in the Notice, or to refrain from taking after such time as may be so specified, such steps as are so specified.
12. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of that Act).

### **The contravention**

13. The Commissioner finds that RAL has contravened regulation 21 of PECR.
14. The Commissioner finds that the contravention was as follows:
15. Between 2 January 2019 and 11 June 2019, RAL used a public telecommunications service for the purposes of making 1,103,292 unsolicited calls to subscribers 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.

16. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,103,292 unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and they had not given their prior consent to RAL to receive calls.
17. The Commissioner is further satisfied that there were a total of 88 complaints to the TPS and ICO arising from these calls.
18. The content of the complaints included the following:
  - *"My elderly mother was cold-called [...] from Repair & Assure regarding insurance for her washing machine. As her machine is very old, this made no sense to her. And as she had no recollection of ever dealing with this company before, she was very concerned that they already knew her name, address and telephone number. During the call, [name redacted] also asked my mother if she had a mobile, email or direct debit – all details of which my mother did not give. She terminated the call shortly after."*
  - *"The caller, male, told me my washing machine manufacturer warranty was about to expire and they wanted to continue it with a 35% discount. I asked who the company were and he told me. I then said I didn't have any cover with them to continue with and he apologised for phrasing it like that. I then said I was registered with the TPS so he shouldn't be calling me and he said all I had to say was do I want the cover or not! I said no and that I would be reporting the call."*
  - *"Caller enquired about Hotpoint washing machine that I do not own. I own a Zanussi. Prior to any sales pitch, I had informed the caller that he was breaking the rules/laws regarding restricted numbers*

*and sales calls. He said he was not. I informed him that my number is on the TPS service and that by calling he was indeed breaching the law regarding this. He again attempted to continue the call at which point I put the phone down on him."*

- *"Caller wanted to talk about my washing machine! I told him that I did not have such a device and used the local launderette. He called me a liar. I told him I was TPS registered and I put the phone down. I had received a "silent call" from the same number earlier at 10:29, which I have reported to Ofcom."*

19. The data used by RAL for the purposes of its direct marketing calls was obtained from its twelve data suppliers. To obtain its data, the data suppliers sought to carry out telephone surveys with individuals. RAL has attempted to provide evidence, albeit unclear evidence, to the Commissioner of how four of its twelve data suppliers obtained the data which they used for their initial survey calls, but has provided nothing for the remaining eight data suppliers used.
20. The Commissioner is satisfied that the calls carried out by the data suppliers are clearly for the intention of collecting data for use in future marketing campaigns (by organisations such as RAL). During these calls individuals would be asked to answer some 'household questions' or to give a 'valid opinion' on "leading UK brands". Once the individual agrees to participate in the survey they are asked to confirm their personal details, and then provide information regarding their washing machine. The Commissioner has been provided with some data supplier call samples and whilst RAL are mentioned briefly in the samples provided, the Commissioner is concerned that the way in which these consents were obtained renders it not sufficiently specific, informed or freely given.

21. The Commissioner's direct marketing guidance is very clear that informed consent cannot be established when an individual has been asked to agree to third party marketing prior to being informed who the third-party organisations actually are. In terms of the data supplier surveys, not only are the third parties provided after the apparent consent is obtained, but the data suppliers have conflated the agreement to marketing with a more veiled request to individuals to provide an 'opinion' or to answer 'household questions' about "UK leading brands". This strategy of being deliberately opaque about the purpose of the call is misleading, and makes it difficult for anybody seeking to rely on that consent to demonstrate that the individuals could have known precisely what they were agreeing to when they agreed to answer some 'household questions'.
22. The Commissioner is further concerned that the 'third party data agreements' between RAL and the suppliers are not dated before 22 March 2019, suggesting that there were no such agreements in place prior to that date. The Commissioner has clear evidence that calls were being made at least as early as 2 January 2019 for the purposes of this contravention (with evidence of complaints being made significantly earlier) and since no evidence of valid consent has been provided, and RAL have confirmed that no TPS checks were undertaken prior to making its calls, the Commissioner has concluded that the 1,103,292 direct marketing calls were not made lawfully
23. The Commissioner has considered, as she is required to do under section 40(2) of the DPA (as extended and modified by PECR) 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, but notes the distress prevalent in some of the complaints received about RAL's activities.

24. **In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires RAL to take the steps specified in Annex 1 of this Notice.**

**Right of Appeal**

25. 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 the attached Annex 2.

Dated the 25<sup>th</sup> day of January 2021.

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



## **ANNEX 1**

### **TERMS OF THE ENFORCEMENT NOTICE**

RAL shall within 30 days of the date of this notice:

Neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where the called line is that of:

(a) a subscriber who has previously notified RAL that such calls should not be made on that line; and/or

(b) a subscriber who has registered their number with the TPS at least 28 days previously and who has not notified RAL that they do not object to such calls being made.

## **ANNEX 2**

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

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement 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 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:

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

LE1 8DJ

Telephone: 0300 123 4504

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

- The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent
4. 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, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).