

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Utility Guard Ltd

Of: Demar House, 14 Church Road, East Wittering, Chichester,
West Sussex, England PO20 8PS

1. The Information Commissioner ("the Commissioner") has decided to issue Utility Guard Ltd ("UGL") 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. UGL, whose registered office is given above (Companies House Registration Number: 12701172) 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 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 to the case

15. On 8 March 2021, the Commissioner received information from West Sussex Trading Standards ("WSTS") relating to an older individual ("complainant 1") who had reportedly been targeted over several weeks by various telesales companies to purchase "*unnecessary & unrequested services*". Complainant 1 had received these unsolicited calls, despite being listed on the TPS register since August 1999. The complaint to WSTS was made by Complainant 1's son-in-law.
16. One of the companies identified by the report was UGL, which had itself withdrawn a sum of money from Complainant 1's bank account on 2 March 2021.
17. On 1 June 2021, an initial letter addressing the Commissioner's concerns regarding UGL's compliance with Regulation 21 of PECR was sent to the organisation. The letter requested such information as details of the source for the data used by UGL, any due diligence checks it carries out on such data, full details of the Calling Line Identifiers ("CLIs") used by UGL, together with details of the number of calls made by UGL over a prescribed period. It also required UGL to provide evidence that

Complainant 1 in particular had not objected (i.e. had consented) to receiving unsolicited direct marketing calls from UGL.

18. This initial letter was subsequently returned to the Commissioner unopened and on 13 July 2021, following consultation with Companies House, a further copy of the letter was sent to the home address of the sole Company Director, Mr Richard Singh. This letter was signed for on 15 July 2021.
19. No response was provided, and so the Commissioner sent a final letter to the Company Director at his home address on 7 September 2021 seeking a response to the Commissioner's initial enquiries by 14 September 2021. This letter was signed for on 8 September 2021.
20. On 14th September 2021, the Commissioner was contacted by [REDACTED], stating that they had received instructions to advise UGL in connection with the Commissioner's investigation. [REDACTED] requested an extension to respond to the Commissioner's queries, which the Commissioner granted, requesting that a response is provided by 12 October 2021.
21. [REDACTED] responded to confirm that it would "*reply fully by 22 October 2021*". This deadline passed, and on 25 October 2021 [REDACTED] wrote again to say that it would reply by 28 October 2021. This deadline also lapsed with no substantive responses being provided, and on 10 November 2021 [REDACTED] contacted the Commissioner by voicemail to say that the response "*will definitely be with you by close on play on Friday this week [12 November 2021] at the very latest*". This deadline passed without any further contact being received from [REDACTED].

22. During the investigation, whilst attempting to liaise with UGL/[REDACTED]
[REDACTED], the Commissioner had sought to investigate whether any complaints had been lodged with the TPS which could be linked to UGL. One such complaint was identified, naming "Utility Guard Insurance" as the caller on 13 November 2020, using the CLI: 01243 217 441 ("Complainant 2").
23. On 11 August 2021, a Third-Party Information Notice ("3PIN") was sent to [REDACTED] ("[REDACTED]") as the Communications Service Provider ("CSP") for this CLI. The Commissioner sought the identity of the subscriber for the CLI between 29 June 2020 and 11 August 2021, together with details of any other CLIs allocated to that subscriber, and copies of the Call Detail Records ("CDRs") detailing outbound calls from those CLIs.
24. In response, on 17 August 2021, [REDACTED] confirmed that the cited CLI was allocated to a "reseller": [REDACTED]. The reseller had provided [REDACTED] with details of the "end user" of that CLI, but advised the Commissioner that it did not have access to any other number ranges (i.e. CLIs) which that reseller might also have sold to the end user. The end user of 01243 217 441 was identified as Mr Richard Singh.
25. On 17 August 2021, the Commissioner sent a 3PIN to [REDACTED]
[REDACTED] requesting the identity of the subscriber for the cited CLI between 29 June 2020 and 17 August 2021, together with details of any other CLIs allocated to that subscriber, and copies of the CDRs detailing outbound calls from those CLIs. [REDACTED] responded later that day to provide the CDRs for the cited CLI via a series of spreadsheets.
26. On 18 August 2021 [REDACTED] provided further information to say that the "retail provider" for the cited CLI was [REDACTED].

██████████ confirmed that: *"we hold no documentation on our side, any held or signed documentation would be in the possession on ██████████"*. However, the screenshot which accompanied the response providing details of the end user did name UGL, and included UGL's registered office address, email address, phone number and details of Mr Richard Singh. The response also provided details of a second CLI associated with UGL: 01243 217 440.

27. On 19 August 2021, the Commissioner sent a 3PIN to ██████████ requesting the identity of the subscriber for the two cited CLIs (01243 217 441 and 01243 217 440) between 29 June 2020 and 19 August 2021, together with details of any other CLIs allocated to that subscriber, and copies of the CDRs detailing outbound calls from those CLIs.
28. In response, on 23 August 2021, ██████████ confirmed that the end user and current subscriber for the two cited CLIs was: *"Mr Richard Singh, Utility Guard Limited, ██████████ ██████████"*. A copy of the Service Agreement signed by Mr Richard Singh and dated 29 July 2020 was also provided. The response and Service Agreement confirmed that there were ten CLIs allocated to UGL which ranged from 01243 217 440 to 01243 217 449 (inclusive), and that these had been allocated to UGL since 30 July 2020 until the present day. In subsequent correspondence on 7 September 2021, ██████████ confirmed that only one of the ten CLIs (01243 217 441) appeared to have been used, and to be in active use.
29. From analysing the CDRs for 01243 217 441 which had been provided by ██████████ on 17 August 2021, the Commissioner has been able to determine that between 04 August 2020 to 28 July 2021 there were:

- a. 2,490 outbound calls which connected to a subscriber for one second or more;
 - b. 1,932 of those 2,490 outbound calls were made to subscribers who had been registered with the TPS for a period of not less than 28 days.
 - c. The 1,932 calls were made to a total of 1,248 unique 'Called Line Identifiers', which indicates that some subscribers received more than one phone call.
30. The Commissioner conducted open-source research on UGL's website, noting that its Terms & Conditions contain a section headed "Contract of Services". Under this heading it materially states:

"This plan is not categorised as an insurance product and therefore insurance regulation does not apply. This plan is a contract of services..."

31. Under the heading "Using Your Information" it materially states:

"Utility Guard is the "data controller" of your information. We process two sets of information about you, "Personal Information" (your name, address, contact and payment details) and the "Goods Information" ... We'll use your information: [...] for our legitimate interests in: undertaking marketing (about our products and services and those of our third party partners) by post, telephone, email and/or other electronic messaging services; ...recording your conversations for training, quality and compliance

purposes; and for analytics and profiling for marketing purposes; [...]"

32. Under "Keeping Your Information" it states:

"We keep your Personal Information for six years after you terminate your policy so that we can deal with any claims. Your goods information we keep for a bit longer, normally 10 years (the average life of an appliance) for health and safety. We also keep your information to send you marketing that you might be interested in unless we receive a request from you to opt-out of marketing."

33. Under "Marketing" it materially states:

"We, along with other members of our Group may use your information to tell you about any offers, products or services which may be of interest to you. We may contact you by post, telephone, email and/or other electronic messaging services. To change your marketing preference, let us know by emailing admin@utilityguard.co.uk or by writing to us using the contact details provided in the 'customer service details' section above".

34. On 11 January 2022, having been yet to receive a substantive response to his initial investigation correspondence first sent on 1 June 2021, the Commissioner sent a further email to [REDACTED] as UGL's representatives. In this email the Commissioner specifically requested evidence that the TPS-registered subscribers which UGL had called had provided notification to UGL that they did not object to receiving direct marketing calls from them.

35. On 7 February 2022 [REDACTED] responded to the Commissioner's correspondence, with the notable comments from that correspondence being:

- a. UGL is a small business that offers and fulfils "*service contracts for household appliances, particularly televisions*".
- b. "*On or about 25 January 2021 UGL telephoned [Complainant 1] to enquire whether he had any televisions which he would wish to protect by a service contract. [...] At that time UGL were not aware that his number was on the TPS list and must accept that, therefore, on that occasion their due diligence was not sufficient*".
- c. UGL claims that it was not aware of Complainant 1's dementia diagnosis until informed by the Commissioner on 02 February 2022.
- d. On or about 11 March 2021, the payment of £150 was returned to Complainant 1.
- e. UGL "*regrets*" calling the subscriber who complained to the TPS on 13 November 2020 (i.e. Complainant 2).
- f. UGL did not use and had "*no affiliation with any other telesales companies*."
- g. UGL purchased data only from "*bona fide sources such as* [REDACTED] [REDACTED]".

h. UGL states that it screens calls against the TPS and has a DNC (Do Not Call) list.

i. UGL *"accepts that on two isolated occasions [i.e. the two complaints which the ICO had drawn to its attention] it would appear that consumers whose details were registered with the TPS have been contacted by telephone"*. However, the breaches were *"completely out of character"*.

36. From this response, the Commissioner notes that no copies of any purchase orders or contracts with UGL's data providers were provided, despite being requested.

37. Despite the claim that it screens data against the TPS register, enquiries made by the Commissioner with the TPS during the investigation on 8 February 2022 show that UGL do not hold a TPS licence and have not downloaded the TPS register at any time. There is also no evidence that UGL engaged a third-party to specifically carry out this exercise on its behalf.

38. Regarding the refund of £150.00 to Complainant 1, UGL provided with its response a copy of a 'Merchant Dispute Advice' letter dated 11 March 2021 which indicated that Complainant 1 (or his son-in-law) had raised a dispute with [REDACTED] Dispute Resolution Department following UGL's unsolicited direct marketing call, and that accordingly the amount of £150.00 would be debited from UGL's account and returned to Complainant 1. The letter shows that UGL checked a box on this letter which said, *"Please check here if you disagree with the cardholders claim and are providing a rebuttal"*.

39. UGL appears in its letter to concede that, for the two complaints brought to its attention, the individuals were called whilst on the TPS register, but claims that these were “*isolated incidents*”. However, at no point during the investigation has UGL supplied evidence that it had been provided with valid notification from any of the TPS-registered subscribers, for the 1,932 calls which it made between 04 August 2020 to 28 July 2021, that they did not object to receiving its direct marketing calls.
40. On 11 January 2022 and 20 January 2022 the Commissioner also liaised with “trueCall”, an organisation which provides a call-blocking system allowing call recipients to block unwelcome callers and which asks unrecognised callers to identify themselves before it puts them through to the recipient. These enquiries discovered that 19 calls were made by UGL via its CLI 01234317441 to 13 trueCall customers between 29 September 2020 and 3 May 2021. All 13 of these customers were designated ‘vulnerable’ by trueCall, and were TPS-registered.
41. For 10 of the 19 calls, UGL received the trueCall “Shield” announcement. The Shield announcement states:
- "If you are a friend, family or invited caller please press <2>, if you are a cold caller please hang up and don't call us again".*
42. On 8 of the 10 occasions, having heard the Shield announcement, UGL chose to ignore the request and be put through to trueCall user.
43. Taking account of the service provided by UGL, the Commissioner is satisfied that the 1,932 connected calls made by UGL to TPS-registered subscribers, as described at Paragraph 29(b) of this Notice, were all

made for the purposes of direct marketing as defined by section 122(5) DPA18.

- 44. The Commissioner has made the above findings of fact on the balance of probabilities.
- 45. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by UGL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

- 46. The Commissioner finds that UGL contravened regulation 21 of PECR.
- 47. The Commissioner finds that the contravention was as follows:
- 48. Between 4 August 2020 and 28 July 2021, UGL used a public telecommunications service for the purposes of making 1,932 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 complaint to the WSTS which was subsequently referred to the Commissioner, and a complaint to the TPS.
- 49. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,932 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 UGL that they did not object to receiving such calls.

50. 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.
51. 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.
52. 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.
53. The Commissioner would note that the sole response provided by UGL to his enquiries is general in its content, and fails to provide specific answers to the 28 questions asked. The Commissioner has therefore been required to conduct enquiries with UGL's CSP to determine the extent of its direct marketing activity.
54. UGL has advised the Commissioner that it purchases the data for its calls from third-party data providers. It gave a single example, UK Datahouse, but has not provided any copies of contracts or purchase orders regarding the data it acquires. It is not clear whether UGL contracts with

other third-party data providers as no such details have been provided, despite the Commissioner's request.

55. UGL has failed to provide any evidence that the data it purchased from its third-party data provider(s) had provided valid notification in accordance with regulation 21(4) to be contacted by UGL, or that it even sought assurances of such notification.
56. UGL has claimed that it "*checks data against the TPS list*", however no further details have been provided as to the frequency and extent of those purported checks. Furthermore, the Commissioner has evidence obtained from the TPS directly that UGL in fact does not hold a TPS licence, and has not previously conducted any checks against the TPS register.
57. There is no evidence that UGL contracts a third-party to conduct TPS checks on its behalf, nor is there any evidence to suggest that UGL contractually requires its third-party data providers to provide evidence of such checks being conducted prior to it purchasing data.
58. Despite being asked to do so, UGL has failed to provide copies of any policies/procedures regarding its responsibilities under PECR.
59. For the reasons above, the Commissioner is satisfied that UGL did not hold valid notification to engage in the 1,932 direct marketing calls to TPS-registered subscribers.
60. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

61. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by UGL arising from the organisation's activities between 4 August 2020 and 28 July 2021, and this led to 1,932 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified UGL that they were willing to receive such calls.
62. The Commissioner is concerned by the lack of engagement from UGL at the outset of the investigation and throughout, the lack of evidence relating to any form of internal policy or procedure regarding PECR and the DPA, the apparent lack of any contractual arrangements with its third-party data provider(s), the lack of evidence of any checks being conducted by UGL to ensure the protection of individuals' privacy rights, and the number of calls made to TPS registered individuals. The Commissioner takes the view that these failings all point to an ignorance or systemic disregard of the regulations and the Regulator by UGL.
63. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

64. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that UGL's actions which constituted that contravention were deliberate actions (even if UGL did not actually intend thereby to contravene PECR).
65. The Commissioner considers that in this case UGL did deliberately contravene regulation 21 of PECR. The failure of UGL to provide evidence

of any contractual arrangements with its third-party data providers which sought to ensure the protection of individuals' privacy rights, and the failure to provide evidence of UGL conducting its own TPS checks suggests that no such checks were in fact conducted and this indicates a wilful disregard of the law, and represents a deliberate act seeking to circumvent the legislation.

66. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
67. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 68. Firstly, he has considered whether UGL 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:
 69. The Commissioner has 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.

70. It is therefore reasonable to suppose that UGL should have been aware of its responsibilities in this area.
71. Secondly, the Commissioner has gone on to consider whether UGL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
72. 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. UGL has provided no evidence that any due diligence at all was carried out on the data which it obtained, or on the organisation[s] that it was obtaining the data from. It has provided no evidence of any contracts or purchase orders which might have provided assurances that the data it was purchasing could be lawfully contacted. There is also no evidence that UGL sought to carry out even basic TPS checks to ensure that individuals who did not wish to receive unsolicited direct marketing calls would not be contacted. Rather, UGL appears to have contacted subscribers indiscriminately, and in some instances on multiple occasions, without any regard for their privacy rights.
73. Reasonable steps in these circumstances may also have included conducting thorough TPS checks on all of the data it was to use for its direct marketing campaign, or at least obtaining and recording evidence of notification from those TPS-registered individuals whom it intended to contact prior to engaging in its direct marketing calls.

74. Whilst UGL claimed in its sole response during the investigation of 4 February 2022 to “[follow] the Commissioner’s guidance on PECR”, given the absence of evidence of any precautionary checks on UGL’s behalf, this is clearly not the case.
75. Given the volume of unsolicited direct marketing calls received by subscribers, it is clear that UGL failed to take those, or indeed any, reasonable steps.
76. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner’s decision to issue a monetary penalty

77. Taking into account the volume of unsolicited direct marketing calls made in contravention of the legislation, the duration of the contravention, and the deliberate nature of the contravention, when examined against comparator cases the Commissioner has determined that an appropriate starting point for the penalty in this case should be £10,000.
78. The Commissioner has gone on to take into account the following **aggravating features** of this case:
- The Commissioner’s investigation has evidenced at least one vulnerable elderly individual with dementia who was financially impacted and in receipt of several unwanted and non-compliant nuisance calls. The trueCall data supports the Commissioner’s view that vulnerable people, who were particularly at risk of such unsolicited direct marketing calls, were affected despite their

numbers being TPS registered. The Commissioner noted calls made to one user (who was classified as being vulnerable) had a trueCall unit installed at the request of Trading Standards Scotland.

- UGL failed to engage, and cooperate, with the Commissioner's investigation in a meaningful and efficient way, with several requests for extensions and failures to honour such extensions. Indeed, the Commissioner's initial correspondence of 1 June 2021 did not receive a formal response until 7 February 2022, resulting in the Commissioner having to seek evidence from third party sources. The Commissioner also notes UGL's failure to provide any documentation related to policies, procedures, or training, despite numerous requests.

79. In light of these aggravating features, the Commissioner proposes to increase the penalty to £20,000.
80. The Commissioner does not consider there to be any **mitigating features** in this case.
81. 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.
82. 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 UGL on this matter on 20 July 2022.

83. The Commissioner is accordingly entitled to issue a monetary penalty in this case
84. The Commissioner has attempted to consider the likely impact of a monetary penalty on UGL but has been unable to do so given the lack of recent publicly available information. UGL was invited in the course of providing its representations to supply updated financial information for the company and evidence of any financial hardship which would be suffered in the event of a penalty, however it has failed to do so. The Commissioner also notes that following receipt of the Commissioner's Notice of Intent, on 20 July 2022, UGL has made an application to Companies House to be struck off the register. The Commissioner considers in the circumstances that a penalty remains the appropriate course of action.
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 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 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 **£20,000 (twenty 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 **5 January 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 **4 January 2023** the Commissioner will reduce the monetary penalty by 20% to **£16,000 (sixteen 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 28th day of November 2022.

Andy Curry
Head of Investigations
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Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

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

Telephone: 0300 123 4504
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)).