

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Repair Plans UK Limited

Of: 3rd Floor, Queensberry House, 106 Queens Road, Brighton
England BN1 3XF

1. The Information Commissioner ("the Commissioner") has decided to issue Repair Plans UK Limited ("RPUK") 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. RPUK, whose registered office is given above (Companies House Registration Number: 12925962) 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 to the case

15. On 08 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. One of the companies identified by the report was RPUK.
16. On 1 June 2021, an initial letter addressing the Commissioner's concerns regarding RPUK'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 RPUK, any Due Diligence checks it carries out on such data, full details of the Calling Line Identifiers ("CLIs") used by RPUK, together with details of the number of calls made by RPUK over a prescribed period. It also required for RPUK to provide evidence that Complainant 1 in particular had not objected (i.e. had consented) to receiving unsolicited direct marketing calls from RPUK.

17. The sole Company Director, having received a copy of this initial letter by email, responded to say: *"I have looked through our records and have no luck finding anyone under the name of [Complainant 1], can you please find more information as to when this alleged call was made and we can try look into it further"*. This was followed by a further email from the Company Director on 14 June 2021 stating: *"As a company we do not store all records of leads that have been dialled but we do buy our data from [REDACTED] and other providers, which has all be checked for TPS."*
18. On 15 June 2021, the Commissioner emailed the Company Director and included a screenshot to show that a withdrawal had been made from Complainant 1's bank account on 22 January 2021 in the sum of £180.00, by "REPAIR PLANS UK CD 1415". The Commissioner also asked for a comprehensive response to his initial letter of 1 June 2021.
19. On 25 June 2021, RPUK provided a response to the initial letter, with the following notable comments:
 - a. RPUK *"have no record of [Complainant A] as someone that [they] have contacted"*.
 - b. RPUK *"purchase all of [its] data directly from data companies, who state all their records are searched to make sure the person [they] call does not use the TPS service"*.
 - c. RPUK does not source any data from customers directly.
 - d. RPUK could not confirm accurate call volumes as it *"do[es] not store data that has been used, as once it has been called [they] remove it as there is no obligation or need to store the information"*

20. In addition to the above, RPUK provided details of two CLIs used for outbound calls, and customer service enquiries respectively¹.
21. RPUK also provided a copy of a call script used for "all outbound calls", which stated to subscribers that the call was: *"... a courtesy call today to get a new plan in place on your washing machine, just to make sure it's fully covered for at least the next year [...] we offer unlimited call outs, parts, repairs and labour costs and if the machine does break down and cannot be fixed we'll deliver you a brand new one [...] it's a one off payment of £99 [...]"*.
22. On 7 July 2021, the Commissioner requested further information from RPUK, specifically: its banking details used for business purposes, and full details of the companies which RPUK would purchase data from, together with any purchase orders/contracts, and documentation of Due Diligence.
23. On 15 July 2021 RPUK provided copies of three purchase orders for data purchased by it between 19 January 2021 and 16 February 2021 from its sole third-party data provider: My [REDACTED], trading as [REDACTED].
24. All three purchase orders contained 'criteria', specifying that the required data was for individuals who were homeowners aged 60+. Two of the three purchase orders contained text stating 'TPS Screened Live Number Checked', and 'Landline Only'.

¹ It was later ascertained that the CLI provided at this time for RPUK's outbound calls was incorrect, and in fact had not been allocated to a user. This was clarified by RPUK on 15 July 2021 who confirmed the correct CLI for outgoing calls was 01273 054738 (See Paragraph 26 of this Notice).

25. Despite the Commissioner's request, RPUK did not provide information regarding the banking details used by it for business purposes.
26. In separate correspondence, RPUK also confirmed that the information it had provided on 7 July 2021 with respect to its CLI used for outbound calls was erroneous, and that the CLI used for such calls was in fact 01273 054738. The Commissioner subsequently discovered however that 01273 054738 was only allocated to RPUK by the Communications Service Provider on 14 July 2021 – i.e. one day before RPUK notified the Commissioner of its use. The CLI used for outgoing calls prior to 14 July 2021 was not disclosed by RPUK.
27. On 7 September 2021, the Commissioner sent a Third-Party Information Notice to [REDACTED] ("[REDACTED]"), the Communications Service Provider which had allocated 01273 054738 to RPUK on 14 July 2021. The Commissioner asked for details of any other CLIs allocated to RPUK between 1 October 2020 and 7 September 2021, together with information regarding the Call Dialler Records ("CDRs") for outbound calls from those CLIs.
28. In its response, [REDACTED] provided details of four CLIs which had been allocated to RPUK, and their respective allocation start-dates:
- 01273714093 – allocated to RPUK since 18 January 2021;
 - 01273101803 – allocated to RPUK since 16 March 2021;
 - 01273054252 - allocated to RPUK since 9 April 2021;
 - 01273054738 - allocated to RPUK since 14 July 2021.
29. The CDRs disclosed by [REDACTED] revealed that there had been 78,160 outbound calls made from these four CLIs between 18 January 2021 and 7 September 2021. Of those 78,160, 39,313 calls connected with a

subscriber. Of those 39,313 calls, 21,347 connected to a subscriber who had been registered with the TPS for not less than 28 days at the time they received the call.

30. During the investigation, the Commissioner notes that RPUK has failed to provide any details related to any aspect of data management by the company. It has also failed to provide any details related to their marketing processes including details on TPS screening and compliance with PECR Regulations.
31. It is noted that, between the dates of 18 January 2021 and 7 September 2021, there was a single complaint made to the TPS about calls from RPUK from one of the four allocated CLIs. This complaint stated:

"My dad hung up after saying he was not interested and they phoned back 2 minutes later but denied they had already called."

32. There was also a complaint made directly to the Commissioner via his online reporting tool ("OLRT"). This complaint stated:

"Male requesting renewal of insurance for washing machine. Don't have insurance."

33. A significant number of complaint reports are also noted to have been logged online by individuals via the site 'who-called.co.uk'.

- a. For calls from 01273 714093, between 18 January 2021 and 7 September 2021, 17 reports were logged;
- b. For calls from 01273101803, between 16 March 2021 and 7 September 2021, 11 reports were logged;

c. For calls from 01273 054252, between 9 April 2021 and 7 September 2021, 1 report was logged; and,

d. For calls from 01273 054738, between 14 July 2021 and 7 September 2021, 3 reports were logged.

34. Noting that RPUK purchases its data from [REDACTED], with RPUK suggesting that it relies on [REDACTED] to screen data against the TPS register, the Commissioner has considered [REDACTED] website. Its 'Data Supply Terms & Conditions' at the time of checking state at Paragraph 8.5:

"Whilst the Company has used all reasonable endeavours to ensure the accuracy of the information contained in the Data the Client acknowledges that in the compilation and supply of the Data to the Client the Company often has to rely on information supplied by a third party and that such information may have been incorrectly provided and that by the very nature and volume of such Data accuracy cannot be verified. Therefore the Company does not guarantee or warrant that the Data is without errors or omissions and the accuracy of the Data is not a condition of the Licence and the Client will not be entitled to refuse to pay any amount due or part thereof by reason of errors or omissions in the Data supplied under the Licence".

35. It is also noted that RPUK has failed to provide any evidence of a contractual arrangement with [REDACTED] to conduct TPS screening.
36. The Commissioner is satisfied that the 21,347 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.

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

The contravention

39. The Commissioner finds that RPUK contravened regulation 21 of PECR.
40. The Commissioner finds that the contravention was as follows:
41. Between 18 January 2021 and 7 September 2021, RPUK used a public telecommunications service for the purposes of making 21,347 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.
42. The Commissioner is also satisfied for the purposes of regulation 21 that these 21,347 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 RPUK that they did not object to receiving such calls.
43. 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.

44. 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.
45. 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.
46. Rather than providing evidence that the subscribers which it called had given valid notification that they agreed to receive such direct marketing calls from RPUK, RPUK has instead confirmed in the course of the Commissioner's investigation that it destroys all of the data that it relies on to make the calls immediately after the calls are made. As such, it is unable to provide any evidence of such notification.
47. The Commissioner's Direct Marketing Guidance is very clear that bought-in call lists, such as those used by RPUK, should be screened against the TPS. RPUK failed to adhere to this guidance, and has provided no evidence that it screened its data against the TPS register prior to making its unsolicited direct marketing calls. This failure led to a significant breach of regulation 21 PECR.

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

Seriousness of the contravention

49. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by RPUK arising from the organisation's activities between 18 January 2021 and 7 September 2021, and this led to 21,347 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified RPUK that they were willing to receive such calls. This resulted in a single complaint to the TPS, a complaint to the Commissioner directly via his OLRT, and a complaint to the WSTS.
50. The Commissioner is concerned by a number of factors which arose during the investigation. In particular, RPUK's failure to provide any form of internal policy or procedure regarding PECR and the DPA, its apparent lack of any contractual arrangements with its third-party data provider, the lack of evidence of any TPS checks being conducted by RPUK to ensure the protection of individuals' privacy rights, and the number of calls made to TPS registered individuals. It is also concerning that RPUK appears to adopt a policy of deleting any data once it has been "used". The Commissioner's Direct Marketing Guidance states that, in terms of being able to evidence consent in a direct marketing context, *"Organisations should [...] make sure that they keep clear records of exactly what someone has consented to. In particular, they should record the date of consent, the method of consent, who obtained consent, and exactly what information was provided to the person consenting. They should not rely on a bought-in list unless the seller or*

list broker can provide these details. Organisations may be asked to produce their records as evidence to demonstrate compliance in the event of a complaint". It is therefore concerning that, despite this clear guidance, RPUK simply deleted any, and indeed all, data which would be necessary to evidence a lawful basis to engage in unsolicited direct marketing. The Commissioner takes the view that these issues all point to an ignorance or disregard of the particular regulations and the Regulator by RPUK.

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

Deliberate or negligent contraventions

52. The Commissioner has considered whether the contravention identified above was deliberate. The Commissioner does not consider that RPUK deliberately set out to contravene PECR in this instance.
53. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
54. Firstly, he has considered whether RPUK 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.
55. 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.

56. Despite receiving correspondence on 1 June 2021 advising that the Commissioner had concerns regarding its direct marketing practices, RPUK continued unabated to carry out its direct marketing campaign.
57. It is noted that RPUK's privacy policy appears to comprehensively cover some data protection topics including regarding the collection, storage, use, security, transfer, and deletion of personal data, which implies at least an awareness of the DPA/PECR. Given this apparent knowledge of its legislative duties, it is reasonable to expect the company to at least have been aware that there was a risk associated with conducting an unsolicited live call direct marketing campaign using personal data obtained from third parties.
58. It is therefore reasonable to suppose that RPUK should have been aware of its responsibilities in this area.
59. Secondly, the Commissioner has gone on to consider whether RPUK failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
60. 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. As evidence of Due Diligence, RPUK had selected and provided three specific purchase orders between it and its third-party data provider. Two of these three purchase orders contained 'TPS checking' within the required criteria; no explanation has been given for why the third did not. In any event, no formal contract between the parties has been provided to the Commissioner to ascertain whether 'TPS checking' was in fact a requirement expected by RPUK. Furthermore, despite any assurances which may have been provided, it is reasonable to expect an organisation seeking to carry out unsolicited live-call direct marketing to check any data against the TPS register itself, and/or to retain records of any consent/notification provided by the third-party data provider. RPUK did neither of these things. Nor has it evidenced any relevant data protection policies or practices which could have demonstrated at least an intention to comply with the law. Furthermore, it is noted that upon being informed in June 2021 by the Commissioner that it was under investigation in relation to potential regulation 21 contraventions, RPUK continued to engage in the practice of unsolicited direct marketing calls. It would have been reasonable for RPUK to cease its direct marketing activity at that time pending the Commissioner's investigation.

61. Given the volume of calls made to TPS-registered numbers and the nature of the complaints, it is clear that RPUK failed to take those reasonable steps.
62. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

63. Taking into account the volume of unsolicited direct marketing calls made in contravention of the legislation, the duration of the contravention, and the negligent 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 £40,000.
64. The Commissioner has taken into account the following **aggravating features** of this case:
- In addition to the evidence that at least one vulnerable individual was affected and had money taken as a result of RPUK's unsolicited direct marketing activity, there is evidence that RPUL were widely targeting individuals aged 60+, whose telephone facility was 'landline only', so there was potential for more vulnerable individuals to be affected.
 - Engagement with the Commissioner proved unsatisfactory, limited, and not meaningful. The Commissioner was not provided with evidence of any relevant policies such as staff training. RPUL did not screen calls, and could not evidence that individuals did not object to their calls.
 - RPUK used false and misleading statements in their telephone calls, i.e. that its calls were "courtesy calls" when they were in fact unsolicited direct marketing calls, and that its service involved a one-off payment of £99.00, when the Commissioner has evidence that at least one individual was charged £180.00. The Commissioner is further concerned with how it was possible for RPUL to maintain and

provide service cover when it apparently does not hold phone/customer records.

- In addition to the two complaints made to the TPS and Commissioner directly, and the WSTS referral, the Commissioner has given consideration to the additional 32 reports made by individuals via 'who-called.co.uk'.

65. In light of these aggravating features, the Commissioner proposes to increase the penalty to £70,000.
66. The Commissioner does not consider there to be any **mitigating features** in this case.
67. 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.
68. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. The Notice of Intent, together with a Preliminary Enforcement Notice, were sent by post to the company's registered office address on 19 July 2022 and also to the email address used by the company to correspond with the Commissioner during the investigation - repairplansuk@gmail.com. Representations had been due by 18 August 2022, however on 3 August 2022 The Commissioner received the Envelope/Notices back as 'Returned to Sender'. The email containing the Notices was not acknowledged, however the Commissioner did receive an electronic 'delivery receipt'. The Representations deadline date of 18 August 2022 passed, and on 15 September 2022 The Commissioner sent a further

copy of the Notices to the company director at his home address, allowing a further 21 days for representations (i.e. until 5 October 2022). A search against the tracking number for this post shows that delivery is pending following a failed attempt on 16 September 2022. The Commissioner has taken all reasonable steps to ensure service of the preliminary Notices in this case.

69. The Commissioner has received no representations from RPUK.
70. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
71. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
72. The Commissioner has attempted to consider the likely impact of a monetary penalty on RPUK but has been unable to do so given the lack of recent publicly available information. The Notice of Intent had invited RPUK to serve financial representations in response, however the company has since failed to engage with the Commissioner, and no such information has been received. The Commissioner is concerned that RPUK may be seeking to evade regulatory action, and considers in the circumstances that a penalty remains the appropriate course.
73. 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.

74. 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.
75. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

76. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£70,000 (seventy thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

77. 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.

78. If the Commissioner receives full payment of the monetary penalty by **4 January 2023** the Commissioner will reduce the monetary penalty by 20% to **£56,000 (fifty-six thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
79. 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.
80. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
81. Information about appeals is set out in Annex 1.
82. 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.

83. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

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

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

- a) that the notice against which the appeal is brought is not in accordance with the law; or
- b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

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

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

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

Telephone: 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)).