

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Euroseal Windows Limited

Of: 98 Lancaster Road, Newcastle Under Lyme, Staffordshire, ST5 1DS

1. The Information Commissioner ("the Commissioner") has decided to issue Euroseal Windows Limited ("Euroseal") 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. Euroseal, whose registered office is given above (Companies House Registration Number: 04176895) 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. Euroseal is a company that specialises in the installation of windows and doors.
16. Euroseal came to the attention of the ICO when five complaints had been made about calls made from Calling Line Identity ("CLI") 01782211100 to TPS registered numbers. Each complainant named Euroseal as the company making the marketing calls.
17. A third-party information notice was sent to the Communications Service Provider ("CSP") on 1 December 2020. The CSP responded on 2 December 2020, identifying Euroseal as the person to whom the CLI was allocated. Analysis of the call detail records (CDRs) provided by the CSP confirmed that a total of 169,830 calls were made to TPS registered numbers.
18. On 4 February 2021, the ICO sent Euroseal an initial investigation letter, outlining the requirements of regulation 21 and the Commissioner's powers, along with a spreadsheet of complaints, and a number of questions regarding Euroseal's business.
19. On 24 February 2021 Euroseal replied stating that:

- a) Euroseal had made 1,894,619 calls, of which 1,805,352 had connected, in the period from 1 January 2020 and 2 December 2020;
- b) the telephone data was sourced through door-to-door canvassing and purchased from data brokers;
- c) the purchased data is positive opted in data which is screened against the TPS;
- d) Euroseal had not made marketing calls to Complainant A, and calls to Complainant B and C were made following completion of a "lead card" through door-to-door canvassing;
- e) Provided information on measures Euroseal had in place to ensure compliance with data protection legislation, and provided copies of Euroseal's internal training documents.

20. On 8 March 2021, the Commissioner wrote to Euroseal to request further information, namely:

- a) A list of third parties used by Euroseal to supply marketing leads;
- b) A copy of the contract between Euroseal and any third party lead supplier;
- c) Details of the volume of calls made as a result of door-to-door canvassing and Euroseal's retention policy for the consent collected via lead cards;
- d) Clarification on Euroseal's assertion that it had not made marketing calls to Complainant A, taking into consideration that the call detail records indicate there was three attempted calls and two answered calls to Complainant A's telephone number. A spreadsheet was provided to Euroseal containing the time and date of the calls.

21. On 17 March 2021 Euroseal responded and provided the name of four data brokers used to purchase marketing leads, namely (i) Fusion BPO Services Ltd, (ii) Tele Prospects Limited t/a Lloyd James Media Group, (iii) RSS Digital Limited and (iv) Interrog8 Ltd. Contracts were also provided for each broker. Euroseal were unable to provide the exact number of leads gained through canvassing, but determined that it was like to be approximately 50,000. Euroseal provided a copy of its 'Door Canvass – Gathering and Retaining Customers Details' policy which set out the retention period for lead cards. Euroseal confirmed that calls made to Complainant A were a result of an incorrect number being recorded on their database.
22. On 23 March 2021 the Commissioner wrote to Euroseal to request further information. Namely, an accessible copy of the call recording attached to Euroseal's prior email, a copy of consent statements used by the data brokers and details held in respect of Complainants B and C.
23. On 3 April 2021 Euroseal responded and provided a copy of the requested call recordings. Euroseal stated that the retention policy provided on 17 March 2021 was outdated and had now been updated, and provided a copy of the updated policy which reflected how they manage the data collected via door-to-door canvassing. The updated policy stated that all data collected via door-to-door canvassing was deleted if the customer had not expressed specific interest in Euroseal contacting them in the future. Consequently, Euroseal no longer held any records on Complainant B and C. Euroseal provided a spreadsheet containing links to the third party websites used to gain leads by Interrog8 Ltd and provided consent statements from Fusion BPO Services Ltd and Interrog8 Ltd. Euroseal confirmed that it was waiting to hear back from the remaining two data brokers in relation to their

consent statements.

24. On 17 May 2021 the Commissioner wrote to Euroseal to request Fusion BPO Services Ltd's consent statement in an alternative format due to the previous version appearing to be blank. The Commissioner also requested an update on the outstanding consent statements.
25. On 20 May 2021 Euroseal provided the consent statement for Fusion BPO Services Ltd. Euroseal explained that RSS Digital Limited had gone into liquidation and therefore was unable to obtain their consent statement, and confirmed that Tele Prospects Limited t/a Lloyd James Media Group had failed to respond to their request for the consent statement.
26. On 14 July 2021, the Commissioner wrote to Euroseal to say that it had concluded its investigation and would consider whether enforcement action would be appropriate.
27. The Commissioner is satisfied that the 169,830 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
28. The Commissioner has made the above findings of fact on the balance of probabilities.
29. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Euroseal and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

30. The Commissioner finds that Euroseal contravened regulation 21 of PECR.
31. The Commissioner finds that the contravention was as follows:
32. Between 1 January 2020 and 2 December 2020, Euroseal used a public telecommunications service for the purposes of making, on the balance of probabilities, at least 169,830 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the called line was a number listed on the register of numbers kept by the Commissioner in accordance with regulation 26, contrary to regulation 21(1)(b) of PECR. This resulted in a total of five complaints being made to the TPS and the Commissioner.
33. The Commissioner is also satisfied for the purposes of regulation 21 that these 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 Euroseal that they did not object to receiving such calls.
34. 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.

35. 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.
36. 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.
37. Euroseal has advised that it obtains some data through door-to-door canvassing and the completion of 'lead cards'. Euroseal were unable to provide the exact number of leads obtained through door canvassing, however determined that it was likely to be approximately 50,000 leads. Due to Euroseal's updated retention policy in respect of door canvassing data, it has been unable to provide any detail of the calls made via 'lead cards'. Whilst it is possible that some of those called may have opted into marketing calls on completion of a 'lead card', in the absence of any evidence in this respect, the Commissioner concludes from the available evidence that, on the balance of probabilities, most or all of the numbers on the TPS register were not allocated to people who had notified Euroseal, via completion of a 'lead card', that they did not object to being contacted.
38. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

39. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Euroseal arising from the organisation's activities between 1 January 2020 and 2 December 2020, and this led to 169,830 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified Euroseal that they were willing to receive such calls, and to five complaints being made as a result.
40. Euroseal stated that the data they purchase from third parties is positively opted in data. During the investigation Euroseal has been unable to provide evidence of consent in respect of both data purchased from data brokers and data obtained through door-to-door canvassing. Euroseal had provided two consent statements, from Fusion BPO Services Ltd and Interrog8 Ltd, however the consent statements did not demonstrate valid consent under GDPR. Euroseal has failed to conduct due diligence into the data providers to ensure that the data purchased was compliant.
41. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

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

43. The Commissioner does not consider that Euroseal deliberately set out to contravene PECR in this instance.
44. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
45. Firstly, he has considered whether Euroseal 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.
46. The Commissioner notes that any company conducting direct telephone marketing should take appropriate and necessary organisational steps to comply with Regulation 21 of PECR. From the information provided by Euroseal, the Commissioner considers that Euroseal failed to implement necessary policies or procedures to ensure compliance, instead relying on assurances from the data providers that the data was obtained compliantly. In respect of data obtained via door-to-door canvassing, Euroseal had failed to retain appropriate evidence of consent where it is claimed to have obtained permission from the subscriber.
47. The Commissioner has also published detailed guidance for companies carrying out marketing explaining their legal requirements under PECR. This guidance explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax. Specifically, it states that live calls must not be made to any subscriber registered with the TPS, unless the subscriber has specifically notified the company that they do not object to receiving such calls. 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.

48. It is therefore reasonable to suppose that Euroseal should have been aware of its responsibilities in this area.
49. Secondly, the Commissioner has gone on to consider whether Euroseal failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
50. 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. No such checks were undertaken here. Euroseal were able to provide the Commissioner with consent statements for only two of the four data providers, which further suggests a lack of a due diligence.
51. Reasonable steps that Euroseal could have been expected to take in these circumstances may also have included ensuring that it had in place an effective and robust suppression list. Euroseal state that they currently have measures in place to ensure compliance, including a phone system which prevents outgoing calls to TPS registered numbers. However, these measures have failed to ensure compliance. Euroseal should reasonably have had in place appropriate policies and procedures in respect of door-to-door canvassing leads, to ensure that it is able to evidence that the subscriber did not object to such calls being made.

52. Given the volume of calls and complaints, it is clear that Euroseal failed to take those reasonable steps.
53. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

54. The Commissioner has taken into account the following **aggravating features** of this case:
- There had been a deliberate action with respect to the purpose of the calls being to increase the Company's customer base and generate income;
 - Euroseal failed to act upon the ICO's guidance on direct marketing. It did not observe that evidence of consent is required before embarking upon a direct marketing campaign. Euroseal failed to maintain records of individuals who did not object to such calls pertaining to data obtained from multiple sources.
55. The Commissioner finds that there are no mitigating features of this case.
56. 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.
57. 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 Euroseal on this matter.

58. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
59. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
60. The Commissioner has considered the likely impact of a monetary penalty on Euroseal. He has decided on the information that is available to him, that Euroseal has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship and that a penalty remains the appropriate course of action in the circumstances of this case.
61. 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.
62. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

63. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£80,000 (eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

64. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 18 August 2022 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.
65. If the Commissioner receives full payment of the monetary penalty by 17 August 2022 the Commissioner will reduce the monetary penalty by 20% to **£64,000 (sixty four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
66. 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.
67. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

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

69. 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.

70. 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 18th day of July 2022.

Andy Curry
Head of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
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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: 0203 936 8963

Email: grc@justice.gov.uk

a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.

b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.

4. The notice of appeal should state:-

a) your name and address/name and address of your representative (if any);

b) an address where documents may be sent or delivered to you;

c) the name and address of the Information Commissioner;

d) details of the decision to which the proceedings relate;

e) the result that you are seeking;

f) the grounds on which you rely;

g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;

h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time

and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in section 55B(5) of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).