

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Boiler Cover Breakdown Limited

Of: 41 Oldfields Road, Sutton, Surrey, SM1 2NB

1. The Information Commissioner ("the Commissioner") has decided to issue Boiler Cover Breakdown Limited ("BCBL") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. BCBL, whose registered office is given above (Companies House Registration Number: 08392566) 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. Regulation 24 of PECR provides:

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

...

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

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

(a) the name of the person;

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

8. 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.
9. Section 122(5) of the Data Protection Act 2018 ("DPA18") defines direct marketing as *"the communication (by whatever means) of advertising or marketing material which is directed to particular individuals"*. This definition also applies for the purposes of PECR (see regulation 2(2) PECR and paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
10. From 1 January 2021, consent in PECR has been defined by reference to the concept of consent in the UK GDPR as defined in section 3(10) of the DPA 2018^[1]: see regulation 2(1) of PECR, as amended by Part 3 of Schedule 3, paragraph 44 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419. Article 4(11) of the UK GDPR sets out the following definition: *"'consent' of the data subject means 'any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative*

^[1] The UK GDPR is therein defined as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

action, signifies agreement to the processing of personal data relating to him or her".

11. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
12. 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"*.
13. 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.

14. 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.

15. 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.
16. 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

17. BCBL, trading as Boiler Cover UK, offers one-off boiler repairs, servicing, boiler installations and annual service plans. A similar, but separate company, Boiler Breakdown Limited ("BBL"), shares the same directorship and has the same registered office as BCBL.
18. BCBL first came to the attention of the Commissioner following the identification of a particular Calling Line Identifier ("CLI") which was linked to a number of complaints made to the TPS and the Commissioner's own Online Reporting Tool ("OLRT") between January and July 2020.
19. The Commissioner sent a Third-Party Information Notice ("3PIN") to the Communications Service Provider ("CSP"), [REDACTED] ("[REDACTED]"), for the CLI in question: [REDACTED] on 8 September

2020 requesting the identity of the CLI's subscriber. The response, which was received on 23 September 2020, identified the subscriber as BCBL, and provided a list of three other CLIs allocated to BCBL:

██████████, ██████████(C) & ██████████. The response also provided Call Detail Records ("CDR"s) for the CLIs attributed to BCBL between 1 January 2020 and 7 September 2020.

20. The Commissioner conducted a search for complaints to the TPS/OLRT in relation to the CLIs disclosed, and found that there had been two complaints to the TPS and 12 complaints to the OLRT, however none of those complaints named BCBL as the caller, rather they identified the caller as "Boiler Breakdown", or some similar generic variation, with the calls seemingly involving the advertising of boiler cover and servicing, as well as white goods warranties, and questions about double glazing and free newspapers.
21. The Commissioner identified the numbers of the two TPS complainants from the list of CDRs provided by ██████████ relating to CLI ██████████, and TPS screening demonstrated that both had been registered with the TPS for several years prior to the calls complained about.
22. The OLRT complaints received related to calls from CLI ██████████ included the following:
 - *Tried to claim that I had to set up boiler insurance with them for the yearly maintenance. Recently had a boiler fitted, so thought it was something to do with that. They wanted to set up a Direct Debit - thought this was strange as you usually pay on completion of work. Looked up the number on Google and it said that it was dangerous and a scam so ended the call. Caller got frustrated that he had been kept on the phone "for 10 minutes now". Immediately got a call back from another number (0208XXXXXXX). Ignored it... Worried*

that I almost gave my banking details to scammers. When challenged as to whether they were already my service provider the girl admitted this was a courtesy call. I then asked if she was aware of and [sic] registered with TPS, she stated probably so I explained to her the company would be reported for unsolicited call to a number registered with TPS.

- *Person identified himself as [REDACTED] tried to persuade my Mum (who took the call) to provide her bank details to give her a refund on her boiler warranty direct debit. She doesn't have a direct debit and it's a relatively new boiler so she was immediately suspicious, and the scammer hung up when she refused to provide her bank details... My Mum is 85 years old and in lockdown, she was anxious about this call and wanted me to check if it was legitimate. A quick perusal online suggested this number is a serial offender regarding boiler warranty scams.*
- *I am not sure whether the name of the company given to me when I called back is correct, we have lived at this address for 5 years, this phone call always asks for Mr XXXX of XXXX they want to engage in conversation about whether I have my free newspaper delivered, double glazing etc. etc. I have asked them on endless occasions to remove me from their list and stop making these calls but they do not stop.*
- *A web search of this number suggests they are phishing hoping to reach elderly women. The call purports to be about boiler serviceing [sic] and one report stated that when he answered the phone the caller hung up. This accords with my experience. I answered with "Hello". The voice asked "Mr XXXX?" and I replied "Who is calling?" at which point the caller hung up, presumably inferring that a) I was*

male and b) I was a bit cautious... Yet another interruption andteh[sic] need to report it because if these are not reported the size of the problem goes unrecognised.

- *Boiler breakdown... Called to offer me a renewal on my boiler cover. Seemed polite and helpful; although I've never to my knowledge had boiler cover with this company. Offered what seemed good terms, so I've given my Bank sort code and account number over the phone. Having just looked up the ring-back phone number on Google, I see that they may be scammers of the elderly / vulnerable. I'm still not sure whether I've purchased a legitimate service or been scammed out of my savings (I'll have to check my bank account tonight).*

23. The Commissioner calculated the number of calls which had originated from CLIs attributed to BCBL between 1 January 2020 and 31 August 2021 and established that there had been 543,219 calls made in total, of which 348,724 were connected. The number making the calls was [REDACTED].
24. The Commissioner conducted Open-Source Research into BCBL but was unable to identify a website which could be linked to either BCBL or its trading name, Boiler Cover UK.
25. The Commissioner sent an initial investigation letter to BCBL at its registered office address on 1 October 2020.
26. A response was received on 19 October 2020 in which BCBL confirmed its trading name was Boiler Cover UK and that the CLIs it used were: [REDACTED], [REDACTED] & [REDACTED]. In response to enquiries about the relationship between the various companies, BCBL explained that "*Boiler Cover Breakdown trades as Boiler Cover UK. Boiler Breakdown Limited is our company and has the same business model*

outlined above. UK Boiler Cover is our company, but we do not trade from this". It was disputed that the complaints made related to BCBL. In addition BCBL explained "We re-validate a set number of customers each day. This means a senior member of staff in our admin team will call a random selection of customers to ensure the cover still meets their needs, the correct information has been left with the customer and that the details we hold are accurate."

27. Further enquiries were sent to BCBL on 25 November 2020, including a request for confirmation as to which CLIs were allocated to which company.
28. In a response dated 2 December 2020 BCBL repeated the information provided on 19 October 2020 with regard to CLIs allocated to BCBL, and advised that the Communication Service Provider (CSP) for those numbers was [REDACTED] ("[REDACTED]"). It confirmed that CLI [REDACTED], which featured in the complaints, was allocated to BBL alongside two other CLIs: [REDACTED] & [REDACTED]. BCBL was unable to provide details of call volumes between 1 January 2020 and 31 August 2020.
29. In view of conflicting responses from BCBL and [REDACTED] regarding allocation of CLI [REDACTED], the Commissioner asked [REDACTED] on 19 November 2020 for evidence of allocation. In response, [REDACTED] provided an invoice dated 4 September 2020 demonstrating the number was allocated to Boiler Cover UK – the trading name of BCBL.
30. A 3PIN was sent to [REDACTED] on 7 December 2020 regarding the identity of the subscriber to the following CLIs: [REDACTED], [REDACTED] & [REDACTED] and requesting CDRs. A response was received on 8 January 2021 including CDRs which showed the CLI

██████████ was allocated to BBL. The other two numbers were not provided by ██████████. In addition, ██████████ confirmed CLIs within the range ██████████ to ██████████ and a single CLI ██████████ were also allocated to BBL.

31. A further 3PIN was sent to ██████████ on 16 February 2021 requesting additional CDRs for CLI ██████████, along with confirmation that the CDRs included all calls made by numbers allocated to BBL as detailed in its previous response of 8 January 2021. ██████████ responded on 12 April 2021 providing the requested information.
32. The CDRs provided by ██████████ were screened against the TPS register and showed that between January to August 2020 BCBL made (using the CLI ██████████ allocated by ██████████ to BBL) 13,632 calls of which 9,075 (67%) were to TPS registered individuals.
33. Further queries were sent to BCBL on 6 April 2021, to which a response was received on 13 April 2021. In reply to queries about how calls are answered, BCBL replied: *"This called line references Boiler Breakdown. Hence when the number is called the automated system states "Thank you for calling Boiler Breakdown". BCBL advised that it has a website: <https://www.boilercover.uk.com/> and that the source of data they used to promote their business was "Obtained from customers they have an existing service cover with us...A yearly renewal letter is sent. To ensure best practice we provide customers with a courtesy call before the renewal date to ensure they are happy to with the cover for a further year". BCBL went onto state that it did not purchase data from third parties and in answer to whether it screened calls against the TPS it answered "N/A". With regard to a question regarding policies and procedures regarding contact with customers and their responsibilities*

under PECR, BCBL state *"These customers have had cover with us. We are calling them to ensure their boiler/system remains protected and we are simply giving them a courtesy call to ensure they are satisfied. If they express an objection to being contacted going forward, the renewal is cancelled, and the customer is not contacted again."*

34. Whilst the http web address provided by BCBL does show a website, an internet search using Google on the website address for www.boilercover.uk.com does not bring up this website on the first 4 pages of Google. The only reference to Boiler Cover UK links to a separate unrelated company.
35. A final end of investigation letter was sent to BCBL on 20 April 2021 explaining that the Commissioner had gathered the necessary evidence and would determine whether any regulatory action would be taken against BCBL.
36. On the same date, 20 April 2021, the Commissioner received a report from the Financial Conduct Authority ("FCA") regarding a complaint it had received about a call made on 27 March 2021 to an individual from CLI [REDACTED] (allocated to BBL but used by BCBL). The name of the company reported was BBL. The complainant reported that direct debits had been taken over a period of three years for boiler cover, when the complainant stated she had no cover with this company (having already had a policy with a different company), had never had contact with the company nor received any paperwork.
37. In respect of the 9,075 unsolicited direct marketing calls made by BCBL to TPS numbers, BCBL has to date been unable to evidence that the subscribers receiving them had not for the time being objected to receiving its direct marketing calls.

38. The Commissioner is satisfied that the 9,075 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
39. The Commissioner has made the above findings of fact on the balance of probabilities.
40. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by BCBL and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

41. The Commissioner finds that BCBL contravened regulations 21 and 24 of PECR.
42. The Commissioner finds that the contravention was as follows:
43. Between 1 January 2020 and 31 August 2020, using CLIs allocated to BBL (specifically [REDACTED]), BCBL used a public telecommunications service for the purposes of making 9,075 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.
44. The Commissioner is satisfied for the purposes of regulation 21 that these 9,075 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

BCBL that they did not, for the time being, object to receiving such calls.

45. 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.
46. 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.
47. 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 from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
48. There is no evidence to suggest that BCBL were carrying out TPS checks on data. Indeed, when asked whether it screened data against the TPS register, BCBL's response was "N/A". Enquiries by the Commissioner with the TPS have confirmed that no TPS licence has been provided to BCBL or any of the other associated companies. Nor is there any explanation provided for why CLIs which were in use by BCBL at the material time were used to make 9,075 unsolicited calls to

individuals who had been registered with the TPS for not less than 28 days.

49. BCBL has been unable to provide any evidence that the subscribers who received these calls had notified BCBL that they did not, for the time being, object to such calls. BCBL stated that it did not purchase data from third parties, and explained in relation to its 452 active clients: *"These customers have had cover with us. We are calling them to ensure their boiler/system remains protected and we are simply giving them a courtesy call to ensure they are satisfied. If they express an objection to being contacted going forward, the renewal is cancelled, and the customer is not contacted again."* Given that BCBL have 452 active clients it is not clear why, between January and August 2020, BCBL made 13,632 calls of which 9,075 were to TPS registered individuals.
50. The Commissioner is therefore satisfied that there is evidence of 9,075 unsolicited direct marketing calls being made by BCBL to subscribers who had been registered with the TPS for not less than 28 days, and who had not previously notified BCBL that they did not object to receiving such calls.
51. In addition, BCBL permitted its lines (specifically CLI [REDACTED]) to be used by BBL, contrary to regulation 21(2) of PECR, resulting in 348,724 connected calls between January and August 2020.
52. Further and in relation to live calls made by BCBL, as the complaints indicate, BCBL failed, as required by regulation 24 of PECR, to provide the recipient of the calls from CLI [REDACTED] the particulars specified at regulation 24(2) of PECR in that there is evidence that the calls and automated message from that CLI identified the caller as

"Boiler Breakdown". This is different to the trading style Boiler Cover UK which BCBL use. Contrary to information provided to the Commissioner by BCBL with regard to which CLIs were allocated to which companies, BBL is actually the subscriber of this CLI which creates a confusing picture of which organisation is using which lines to call individuals and makes it difficult for individuals to be clear about who is calling them. The name used is sufficiently generic that it could apply to both companies, and searches for a website demonstrate that it is difficult for individuals to locate the correct organisation without knowing the exact http address.

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

Seriousness of the contravention

54. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulations 21 and 24 by BCBL arising from the organisation's activities between 1 January 2020 and 31 August 2020, and this led to 9,075 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified BCBL that they were willing to receive such calls. This equates to 67% of calls made by BCBL. Furthermore, BCBL allowed its lines to be used by BBL to make significant numbers of unsolicited live calls to individuals who were registered with the TPS and who had not provided notification that they did not object to receiving such calls.
55. A total of 14 complaints were received about the organisation's activities over the relevant period, with the complaints suggesting that BCBL provided inaccurate information as to its identity. BCBL alleged

other similar companies and competitors are "*proactively trading with deliberate attempt to confuse matters*" and that these account for some of the complaints. However the Commissioner has seen no evidence to support this theory, and in fact the evidence supports that all of the complaints can be traced back to CLIs used by BCBL. BCBL also points to the low call/complaint ratio as evidence of a lack of seriousness, but the Commissioner places little or no weight on this argument as the lack of clarity as to the identity of the calling organisation would have made it difficult for individuals to complain.

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

Deliberate or negligent contraventions

57. The Commissioner has considered whether the contravention identified above was deliberate.
58. The Commissioner considers that in this case BCBL did deliberately contravene regulations 21 and 24 of PECR. It is noted that there is sufficient evidence to suggest that BCBL conducted a large number of unsolicited direct marketing calls to TPS-registered individuals, and made no apparent effort to establish that those individuals did not object to receiving such calls. The Commissioner is particularly concerned that the set-up of the organisations, alongside apparent use of a different company name during its calls and automated message, suggests that BCBL was deliberately attempting to deceive individuals as to its identity. As BCBL and BBL have a common directorship, the directors would have known which of their organisations was allocated which CLIs, and which organisation was using which numbers. That there is a clear division of calling numbers, having essentially been

'swapped' in their entirety by the two companies, is in the Commissioner's view, indicative of a business model deliberately conceived.

59. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
60. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
61. Firstly, he has considered whether BCBL knew or ought reasonably to have known that there was a risk that this contravention would occur. This is not a high bar, and he is satisfied that this condition is met.
62. 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
63. Standard practice of the TPS is to contact the organisation making the calls on each occasion a complaint is made. It is therefore reasonable to believe that BCBL, as subscriber to the CLI detailed in the complaints, would have received a notification from the TPS for each of the complaints being made in this case. That there were two

complaints made to the TPS alone over the period of the contravention should have made BCBL aware of the risk that such contraventions may occur and were indeed occurring.

64. It is therefore reasonable to suppose that BCBL should have been aware of its responsibilities in this area.
65. Secondly, the Commissioner has gone on to consider whether BCBL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
66. Reasonable steps in these circumstances may have included conducting thorough TPS checks on all of the data it was to use for its direct marketing campaigns; 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. In respect of those calls BCBL could have made it clear both in its live calls and automated message the correct identity of the calling organisation. Furthermore, the directors of BCBL and BBL could have ensured that each organisation was using CLIs allocated to it for the purposes of making direct marketing calls. Where data is purchased from third parties, thorough due diligence could have been undertaken alongside contractual arrangements to ensure the veracity of the purchased data.
67. Given the volume of calls in contravention of Regulation 21(1) PECR, and the volume of connected calls as a result of allowing its lines to be used by BBL in contravention of regulation 21(2) PECR, it is clear that BCBL failed to take those reasonable steps. BCBL concedes it did not itself undertake checks of the TPS register. Had sufficient checks been undertaken, these would have revealed that the data was not compliant. Indeed, in BCBL's representations it accepted that it was

"unsure over who had been contacted for what purpose under what lawful basis and whether we had any license to contact those who had complained to understand better what we could do to support them". A CLI was presented which, whilst being a legitimate CLI, was not one which would allow the subscriber to identify the caller either by ringing the number back and speaking to an operative, listening to a recorded message or by a search on the internet. Furthermore, a complaint was received by the FCA relating to an unsolicited call to an individual on 27 March 2021 from CLI [REDACTED] – the number allocated to BBL but used by BCBL. This would suggest that the organisations did not alter their business model, and continued to make calls in contravention of PECR, despite awareness of the Commissioner's ongoing investigation into concerns about the organisation's compliance with PECR.

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

The Commissioner's decision to issue a monetary penalty impose

69. The Commissioner has taken into account the following **aggravating features** of this case:
- The Commissioner is concerned by evidence that BCBL targeted vulnerable individuals. It is accepted by BCBL in its representations that 80% of call recipients are elderly and many are 'vulnerable'. It is also apparent that due to the volume of calls they were persistent in nature.
 - BCBL acted deliberately in contravention of PECR with a view to generating an increase in profit and turnover.

- BCBL failed to follow ICO Guidance or seek support where necessary.
 - BCBL's business model was purposefully opaque such that individuals were unable to identify which organisation was calling them, making it difficult to object to calls or complain.
 - The Commissioner notes that reviews of the organisation identify BCBL as operating scam calls.
70. The Commissioner notes that BCBL has indicated a willingness to be compliant, but he does not consider that this constitutes mitigation for the contravention which took place. Indeed evidence suggests that BCBL continued to make calls leading to complaints up to March 2021. Further, whilst BCBL has informed the Commissioner in representations that it has temporarily ceased making marketing calls pending the outcome of this matter, and has produced draft policies and processes designed to improve the business practices, the Commissioner notes that BCBL has been reactive in its approach to compliance, and only seems to make changes in its practices in order to comply with the law when failings are discovered, and changes are required, by a regulator. Had such measures been implemented at the outset, then this contravention may have been averted.
71. 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.
72. The latter has included issuing a Notice of Intent on 6 May 2022, in which the Commissioner set out his preliminary thinking and invited BCBL to make representations in respect of this matter. In reaching his final view, the Commissioner has taken into account the

representations and additional documents and financial information provided by BCBL.

73. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
74. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
75. The Commissioner has considered the likely impact of a monetary penalty on BCBL. He has decided on the information that is available to him that a penalty remains the appropriate course of action in the circumstances of the case.
76. 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.

The amount of the penalty

77. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£120,000.00 (One hundred and twenty thousand pounds)** is reasonable and proportionate given the

particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

78. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **23 September 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.
79. If the Commissioner receives full payment of the monetary penalty by **22 September 2022** the Commissioner will reduce the monetary penalty by 20% to **£96,000.00 (Ninety 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.
80. 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.
81. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
82. Information about appeals is set out in Annex 1.

83. 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.

84. 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 **24th** day of **August** 2022

Andy Curry
Head of Investigations
Information Commissioner's Office
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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 she 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)).