

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Posh Windows UK Limited

Of: 8a Kingsway House, King Street, Bedworth, Warwickshire, CV12 8HY

1. The Information Commissioner ("the Commissioner") has decided to issue Posh Windows UK Limited ("PWUK") 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. PWUK, whose registered office is given above (Companies House Registration Number: 09223929), 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 provides 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 Limited ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it. It also provides that a direct marketing call must not withhold the calling line identification number ("CLI") from the person receiving the call or it must present the identity of a line on which it can be contacted.

5. Regulation 21 of PECR provides that:

"21.— (A1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making calls (whether solicited or unsolicited) for direct marketing purposes except where that person—

(a) does not prevent presentation of the identity of the calling line on the called line; or

(b) presents the identity of a line on which he can be contacted.

(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where-

(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or

(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26."

6. Regulation 21 paragraphs (2), (3), (4) and (5) provide that:

- "(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).*
- (3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.*
- (4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.*
- (5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—*
- (a) the subscriber shall be free to withdraw that notification at any time, and*
- (b) where such notification is withdrawn, the caller shall not make such calls on that line."*

7. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The TPS is a limited company which operates the register on the Commissioner's behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to

the TPS for a fee and receive from them monthly a list of numbers on that register.

8. Section 122(5) of the Data Protection Act 2018 ("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 Information Commissioner's Office ("ICO") 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 PECR's 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. PWUK is a home improvement company specialising in a range of products including windows, doors and conservatories. Its website states that it has many years of experience in all aspects of designing, manufacturing and installations.
16. Companies House indicates that PWUK was incorporated on 18 September 2014. Directors Mohammed Shiraz Liaqat and Rubani Ghulam were appointed on 22 March 2018 and 16 October 2018 respectively.

17. PWUK came to the attention of the Commissioner after an ICO employee ("ICO employee") reported receipt of a live unsolicited direct marketing call at 19:14 on 27 January 2021 from a withheld number. The caller referred to government grants for home improvements, was seeking to book an appointment for the following day and hung up when it was stated that the telephone number was registered with the TPS.
18. On 28 January 2021, a request to trace the call was issued to the relevant service provider, Sky¹. On the same date Sky confirmed that 01782433280 was the number used to make the unsolicited direct marketing call to the ICO employee's telephone number.
19. On 1 February 2021, the Commissioner sent a Third-Party Information Notice ("3PIN") to the Communications Service Provider, Voiceflex Limited ("Voiceflex"), requesting the identity of the subscriber to 01782433280.
20. The response, which was received on 11 March 2021, identified the subscriber as PWUK and confirmed that this was the only CLI assigned to PWUK. The CLI was activated on 10 November 2015. Voiceflex confirmed that most calls were outbound and withheld the CLI.
21. The Commissioner conducted a search for complaints to the TPS and the ICO. Such searches are usually undertaken by searching assigned numbers allocated to organisations but, since PWUK had withheld the CLI when making the vast majority of calls (see below), a search could only be undertaken by reference to the company name. Whilst several

¹ Pursuant to NICC Standard ND 1437 (Guidelines for the Tracing Calls Across Networks) NICC Nuisance Call and Calling Line Identity Task Group

complaints were identified, complaints may have been missed, for example, in circumstances where the company name was mistyped or not captured.

22. A total of 14 complaints to the TPS were identified during the period 1 August 2020 to 30 April 2021, which relates to the period covered by the call detail records ("CDRs") obtained from Voiceflex. Seven complaints to the ICO were identified during the same period.
23. A further five complaints to the TPS and seven to the Commissioner were identified outside the period 1 August 2020 to 30 April 2021. As such, at least 33 complaints were identified in relation to unsolicited direct marketing calls from PWUK. As is detailed below, further complaints have been received since the initial searches were undertaken.
24. Complaints made via the TPS and ICO reporting tools included the following statements:
 - *"Claimed it initially wasn't a sales call, then tried to sell double glazing. Told them not interested, then the pressure selling started. I told them I was on TPS, and they shouldn't be ringing, no apology just hung up."*
 - *"I am getting constant calls off a double glazing company. I have asked them to remove my number from their data base on numerous occasions and they continue to call."*
 - *"Offering a visit for windows. Knew my name, kept asking if I was the owner, their number withheld, after business hours - all adds to concern."*

25. CDRs indicated that PWUK made a total of 630,971 calls during the period 1 August 2020 to 30 April 2021. Of these, 461,062 were made to subscribers whose telephone numbers had been registered with the TPS for more than 28 days. The ratio of calls connected to TPS-registered numbers was therefore 73%. Of the 461,062 calls to TPS-registered numbers, 84 calls displayed the CLI (01782433280) whilst 460,978 calls withheld it.
26. Telephone numbers from complaints received were cross-referenced against CDRs and confirmed that PWUK continued to make calls to individuals even after they requested suppression, with some callers being called more than ten times.
27. The Commissioner sent an initial investigation letter to PWUK on 24 March 2021, along with an encrypted spreadsheet of complaints. The letter confirmed that an investigation had been commenced into PWUK's compliance with PECR after it had come to the Commissioner's attention that PWUK had made high volumes of unsolicited direct marketing calls from a withheld number in breach of regulation 21. The letter confirmed:

"Failure to comply with this regulation can lead to enforcement action being taken by the ICO which could lead to the imposition of a monetary penalty, up to a maximum of £500,000 for a serious breach of these regulations."

28. The letter went on to set out further details of the Commissioner's powers of enforcement and requested the provision of information to enable an assessment of PWUK's compliance with PECR.

29. PWUK's response was received on 4 May 2021. The information provided included a call script, data protection policy, nine "opt-in" consent leaflets ("consent leaflets") and a spreadsheet of data consisting of a list of names, addresses and numbers obtained from a data marketing agency, TDP Agency Limited ("TDP Agency"), which PWUK indicated was used to make calls. In addition to calling customers using the list obtained from TDP Agency, PWUK stated that they also contacted customers door-to-door "promoting with leaflets".
30. The nine consent leaflets related to some of the individual complainants who had appeared on the encrypted spreadsheet sent to PWUK on 24 March 2021 ("complainants"). They were stated to have been located during a search of old files and boxes after they were found not to be listed in PWUK's existing customer database.
31. PWUK stated that an internal spreadsheet contained a suppression list of numbers which the data used to make calls had to be screened against.
32. PWUK indicated that the data purchased from TDP Agency was screened against the TPS and provided a "Data Processing Agreement" dated 26 April 2020 as evidence of due diligence. The document consists of only one page and appears to be an invoice. It refers to:
- 4,546 "consumers over 40, homeowners in mid-high affluence areas... Landline and tel" at a cost of £500.
 - A separate cost for "TPS as standard".
33. PWUK further stated that the data is screened a second time before being used to make calls using a company called TPS Services. PWUK went on to state:

"The TPS services company also have a service called DNC list, so this means our DNC list can be screened through this service to ensure we are not calling people who specifically ask us not to call them. We also have a DNC list on the data company (TDP) online portal. So when we will purchase data from them we can put our excel DNC list into theirs to ensure they are not selling us any numbers that have specifically asked us not to call them."

34. PWUK indicated that Gateway Training Solutions had provided training for staff on data protection, data security, complaints handling and customer services. No evidence was provided in support.
35. On the question of why PWUK was calling from a withheld telephone number, PWUK stated that they had only one number for incoming calls which would make it difficult to cope if customers rang the number back.
36. The consent leaflets purported to confirm various complainants' consent to be contacted by PWUK. Further leaflets were provided later, apparently following further searches by PWUK. It was indicated by PWUK that the consent leaflets were completed by door-to-door canvassers and that *"customers details are requested if they have showed any interest, and then they must be happy to tick the box in order for them accepting to receive marketing calls etc."*
37. One of the consent leaflets related to the ICO employee who had initiated the investigation. The ICO employee indicated that they have never provided their details to a door-to-door canvasser acting on behalf of PWUK, their windows were replaced during the last 10 years and they do not want any further home improvements.

38. Several of the complainants were asked if they had provided their details to a canvasser on behalf of PWUK. Out of the 14 contacted, one did not reply. The 13 who did reply denied that they had provided their consent to be contacted by PWUK. A sample of the responses is as follows:

- *"I never had a visit from any representative of that company, nor did I give them my details. They are obviously doing this to cover their tracks."*
- *"No, I did not complete a form for a door-to-door canvasser. They or their canvassers are lying. I do not deal with cold callers and would certainly not deal with a company I do not know. I have complained twice about this organisation, but only after I asked them on more than one occasion to stop calling me. If I were to want to discuss replacement windows, I will approach a local company in Shrewsbury not one in Stoke-On-Trent."*
- *"I can confirm that no cold caller from Posh Windows has been given our details, or permission to telephone us. The number [redacted] is incorrect, as is the post code. All our windows, doors etc have been replaced, so we would have no need for the products they offer. In addition, we have a reliable, local builder who has completed projects on our house for many years and we would go to him for any work on the house."*
- *"This is totally fictional as I always send door to door salesmen packing, especially double glazing salesmen. I am not sure where they have had my land line number from. I asked them several times to remove my details from their data base. They continued to*

phone me on several occasions and every time I asked them where they had got my details from...”.

39. The Commissioner raised concerns with PWUK and made further requests for information on 24 June 2021, 12 July 2021 and 12 August 2021. The email of 12 August confirmed:

“...enquiries show that [PWUK] made 402,517 calls to TPS registered numbers between 1 August 2020 to 16 March 2021. Seemingly, the volumes of data obtained or purchased does not correlate with the volume of calls made. Furthermore, it raises serious concerns about the screening process and data purchased. Therefore, please could you offer an explanation for the number of calls made to TPS registered numbers.”.

40. This email also confirmed that several of the complainants had denied providing consent within the consent leaflets and detailed further complaints received which indicated that PWUK was continuing to make unsolicited direct marketing calls without consent.

41. PWUK provided further information on 8 July 2021, 2 August 2021 and 20 August 2021, which is summarised as follows:

- PWUK first purchased data from TDP Agency on 26 April 2020. 4,000 records were purchased from TDP Agency earlier in 2021.
- 2,905 records of existing customers were held by PWUK.
- In relation to data screening, PWUK stated that data is screened by TDP Agency and PWUK also screened it through TPS services

online. However, Mr Liaqat also stated *"...I never knew that as a director it is my responsibility to screen through TPS even if the company you have purchased it from has already done so. So moving forward everything will be more organised"*.

- PWUK has five self-employed door-to-door canvassers covering parts of Staffordshire, Cheshire, Derbyshire, and Shropshire. The consent leaflets are completed by the canvassers and potential customers are asked to tick the opt-in box. Mr Liaqat could not confirm whether or not this process was followed prior to his directorship.
- PWUK cannot confirm the dates that the complainants' data within the consent leaflets was obtained and stated *"customers have given consent at their door while speaking to our canvassers and maybe forget that they did, or are not happy with the calls therefore saying they did not give consent"*.
- PWUK's staff are trained on GDPR and to pass details of any customers who do not want to be contacted to Mr Liaqat to place on a suppression list. No documentary evidence was provided in support.
- PWUK stated that they were in the process of upgrading the telecom systems which could be a reason why further calls were received by the complainants.
- PWUK did not have a data retention policy.

- PWUK provided two documents which they had obtained from TDP Agency entitled 'Client SAR & Opt-in' and 'GDPR Statement'.

42. The GDPR Statement states:

"...The Data sourced has consent for TDP to process for a wide range of sectors such as, but not limited to, financial, retail, lifestyle/household and technology and the partners we chose to share this information with are detailed within our PP.

The Data is collated, validated, verified, screened and enhanced.

...

To simplify our process:

...

6. TDP licence Data to Client based on the opt in received from the Data Subject – dependant of the nature of the Client campaign

7. Client processes the Data for a maximum of 90 days, ensuring TPS screening every 28 days

8. TDP provide monthly updates to Client regarding Suppressions

9. 90 days from upload of Data, Clients are asked to delete that Data and sign a legally binding Data Destruction Notice. "

43. On 20 August 2021 PWUK stated that steps had been taken to ensure that its telephone number was displayed on outgoing calls.

44. On 26 August 2021 an email was received from one of the complainants stating that they had received a further unsolicited direct marketing call at 14:54 that day from PWUK from a withheld number. On 31 August 2021, the same complainant sent a further email stating that PWUK had called his house three times in quick succession. On the same date, the Commissioner sent an email to PWUK to request immediate suppression

of the complainant's details and set out further instances where PWUK had failed to suppress numbers after requests had been made.

45. On 7 September 2021, an email was sent on behalf of the Commissioner requesting PWUK's confirmation that the suppression request had been actioned along with further enquiries including in relation to data obtained prior to Mr Liaqat's directorship and whether PWUK could evidence consent for calls made to TPS registered numbers.

46. On 17 September 2021, PWUK responded stating (inter alia):

- 44,001 records were obtained from the previous director who had purchased leads from an unknown data broker. No due diligence checks were conducted in relation to this data.
- In response to the question whether PWUK could evidence consent for calls made to TPS registered numbers, Mr Liaqat stated: "*I cannot provide as I didn't do any checks regards to TPS until a later stage. I assumed that the numbers I acquired from the previous director were all ok to call, but again as time as gone on I have realised it is my duty to make my own checks etc and certain numbers cannot be called after a certain period of time etc.*".
- Mr Liaqat had acquired approximately 60,000 to 70,000 consent leaflets, but this figure may not be accurate.
- PWUK stated that the complainants' numbers were now on a suppression list and attributed the calls they had received to issues relating to a system upgrade.

47. PWUK has to date been unable to evidence that the subscribers receiving these calls had not objected to receiving its direct marketing calls.

48. On 1 December 2021, the Commissioner sent an 'end of investigation' letter to PWUK explaining that he would consider whether regulatory action was appropriate and requesting evidence of policies and procedures. PWUK subsequently provided two training certificates relating to retail skills and a code of conduct for staff.
49. Nine complaints have been received by the Commissioner between 28 October 2021 and 14 April 2022 in respect of an organisation using the number 03300564118 to make unsolicited direct marketing calls regarding replacement windows and government grants. A 3PIN issued on 20 January 2022 resulted in confirmation that the subscriber of this number was PWUK. The complaints received during this period included references to PWUK callers being aggressive and to repeated unwanted calls.
50. Complaints have been received in relation to PWUK's activities as recently as April 2022 notwithstanding the Commissioner's investigation.
51. The Commissioner is satisfied that 461,062 calls were made to TPS registered subscribers between 1 August 2020 and 30 April 2021 from a CLI attributed to PWUK for the purposes of direct marketing as defined by section 122(5) DPA18 and that 460,978 of these calls withheld the CLI.
52. The Commissioner has made the above findings of fact on the balance of probabilities.
53. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by PWUK and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

54. The Commissioner finds that PWUK contravened regulation 21 of PECR.
55. The Commissioner finds that the contravention was as follows:
56. Between 1 August 2020 and 30 April 2021, PWUK used a public telecommunications service for the purposes of making 461,062 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 21 complaints being made to the TPS and the Commissioner between 1 August 2020 and 30 April 2021 and further complaints outside this period.
57. The Commissioner is also satisfied for the purposes of regulation 21 that these 461,062 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 PWUK that they did not object to receiving such calls.
58. For such notification to be valid under regulation 21(4), the individual must have taken 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.

59. 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.
60. 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. The data purchased from TDP Agency did not, therefore, come with valid consent for individuals to be contacted by PWUK.
61. The evidence confirms that PWUK made a significant volume of calls to TPS-registered numbers, including persistent calls to individuals who had requested suppression. No explanation has been provided for why a CLI, which PWUK accepts was in use exclusively by itself at the material time, was used to make 461,062 unsolicited calls to individuals who had been registered with the TPS for not less than 28 days.
62. PWUK has been unable to provide any evidence that the subscribers who received these calls had notified PWUK that they did not, for the time being, object to such calls. Valid consent for individuals to be contacted by PWUK did not attach to data purchased from TDP Agency and, in any event, it is apparent from statements made by PWUK that the data purchased from TDP Agency was not screened, deleted or destroyed by PWUK as required by TDP Agency. The source and dates of the consent

leaflets cannot be confirmed and (as is set out above) their authenticity has been called into question.

63. Further, since the vast majority of calls were made using a withheld number, PWUK was also in breach of regulation 21 (A1) of PECR which requires that direct marketing calls must not withhold the CLI from the person receiving the call or must present the identity of a line on which it can be contacted.
64. The Commissioner is therefore satisfied that there is evidence of 461,062 unsolicited direct marketing calls being made by PWUK to subscribers who had been registered with the TPS for not less than 28 days and who had not previously notified PWUK that they did not object to receiving such calls.
65. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

66. The Commissioner is satisfied that the contraventions identified above were serious. There have been multiple breaches of regulation 21 by PWUK arising from PWUK's activities between 1 August 2020 and 30 April 2021, and this led to 461,062 unsolicited direct marketing calls from being made to subscribers who were registered with the TPS and who had not notified PWUK that they were willing to receive such calls. 460,978 of these calls withheld the CLI. During this period, 21 complaints have been identified in relation to PWUK's activities.
67. Throughout this investigation PWUK's responses have been vague, evasive or contradictory. PWUK indicated that data was sourced from at least three sources, but the estimated figures from those sources does

not correspond with the volume of calls made to TPS-registered numbers.

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

Deliberate or negligent contravention

69. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that PWUK's actions which constituted that contravention were deliberate actions (even if PWUK did not actually intend thereby to contravene PECR).
70. The Commissioner considers that in this case PWUK did deliberately contravene regulation 21 of PECR. There is sufficient evidence to suggest that PWUK conducted a large number of unsolicited direct marketing calls from a withheld number to TPS-registered individuals and made no apparent effort to establish that those individuals did not object to receiving such calls. The ratio of calls connected to TPS subscribers was relatively high at 73%.
71. PWUK continued to make unsolicited direct marketing calls from a withheld number to TPS-registered individuals, who had not previously notified PWUK that they did not object to receiving such calls, even after PWUK had been notified that such calls were in breach of PECR.
72. For the above reasons, the Commissioner is satisfied that this breach was deliberate.

73. Further or alternatively, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
74. Firstly, he has considered whether PWUK 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.
75. 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.
76. Before the Commissioner's investigation PWUK received letters from the TPS notifying them of complaints. PWUK responded to five of the complaints stating the calls were not made by them, but CDRs confirmed that PWUK did in fact make the calls. PWUK should have been aware of the likelihood of contraventions following the complaints to the TPS.
77. It is therefore reasonable to expect that PWUK should have been aware of its responsibilities in this area.

78. Secondly, the Commissioner has gone on to consider whether PWUK failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
79. The Commissioner's direct marketing guidance makes clear that organisations utilising 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. There is no evidence to suggest that PWUK took any steps to ensure that the individuals listed in the data from TDP Agency had agreed to be contacted by PWUK. Indeed, it is evident from TDP Agency's GDPR statement that individuals listed in the data from TDP Agency had not been asked to provide consent for their details to be passed on to other specifically named organisations.
80. It was clear from the responses that PWUK had poor record keeping and did not implement suitable procedures or training to ensure compliance with PECR. Reasonable steps may also have included presenting a valid telephone number when making unsolicited direct marketing calls, conducting thorough TPS checks on all data it was to use for direct marketing campaigns and performing regular reviews of marketing databases.
81. Given the volume of calls and complaints, it is clear that PWUK failed to take those reasonable steps.

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

The Commissioner's decision to issue a monetary penalty

83. The Commissioner has taken into account the following **aggravating features** of this case:

- Calls persisted even after suppression requests had been received.
- The potential adverse effects of the calls on recipients; some complaints refer to individuals being subjected to persistent, aggressive calls.
- PWUK has provided highly questionable evidence of consent in some cases with complainants strongly disputing having provided the same.
- PWUK's record keeping is poor, including the age of data and the lack of evidence of consent.
- There is no evidence of adequate training for PWUK's staff.
- Complaints have continued to be received outside the material period, as recently as April 2022.

84. The Commissioner has taken into account the following mitigating features of this case:

- There are indications that PWUK would be unable to withstand a penalty and formal recovery action could be required. Mr Liaqat indicated that PWUK is struggling to recover from the Covid-

19 pandemic and was corresponding with accountants and solicitors regarding liquidation. PWUK entered into a Creditors' Voluntary Liquidation on 10 August 2022.

- The most recent accounts information available was submitted by PWUK to Companies House on 14 September 2021. This indicates total net assets of £280 and an increase of employees from five in 2020 to 24 in 2021.
- The Commissioner is aware of an associated company, R.S.C Home Improvements Ltd trading as Posh Windows UK. This Company provides a potential vehicle by which the directors could continue to conduct non-compliant direct marketing in the event that PWUK ceases to trade.

85. 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.

86. 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 PWUK in this matter.

87. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

88. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.

89. The Commissioner has considered the likely impact of a monetary penalty on PWUK. He has decided on the information that is available to him that a penalty remains the appropriate course of action in the circumstances of this case.
90. 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.
91. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

92. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£150,000 (one hundred and fifty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

93. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 31 October 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.

94. If the Commissioner receives full payment of the monetary penalty by 28 October 2022 the Commissioner will reduce the monetary penalty by 20% to **£120,000 (one hundred and twenty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
95. 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.
96. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
97. Information about appeals is set out in Annex 1.
98. 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.

99. 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 29th day of September 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: 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)).