

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Outsource Strategies Ltd

Of: 7-8 Brigantine Place, Cardiff, Wales, CF10 4LN

1. The Information Commissioner ("the Commissioner") has decided to issue Outsource Strategies Ltd ("OSL") 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. OSL, whose registered office is given above (Companies House Registration Number: 12553312) 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 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. OSL is a telemarketing company based in Cardiff that provides telesales campaigns for its partners. OSL were incorporated on 09 April 2020 and are registered with the Information Commissioner's Office.
16. OSL first came to the attention of the Commissioner following an episode of [REDACTED], a consumer rights programme, which aired on BBC Wales. The episode alleged OSL was a [REDACTED] ([REDACTED], a telemarketing company that had previously been fined by the Commissioner in [REDACTED] and that unsolicited marketing calls were being made to customers of a UK catalogue retailer, [REDACTED] ("[REDACTED]").
17. During the course of the Commissioner's investigation into [REDACTED], they informed the Commissioner they no longer used [REDACTED] as a telemarketer and had swapped to a new company, "[REDACTED]" ([REDACTED]), in October 2020. [REDACTED] also stated they had transferred their business relating to the membership "clubs" to an organisation called "[REDACTED]" ([REDACTED]) due to a trademark issue.

18. The Commissioner continued to receive complaints that named [REDACTED] as the caller. The calling line identifiers ("CLIs") that made those calls were allocated via [REDACTED].
19. On 22 March 2022, the Commissioner issued a third party information notice to [REDACTED] for the call detail records ("CDRs") and information relating to the account holder. The response established that the account holder was currently OSL, and that the same account had previously been used by [REDACTED] to make calls, but was novated to OSL on 11 February 2021.
20. The CDRs revealed that during the contravention period of 11 February 2021 to 22 March 2022, OSL had made 3,533,873 connected and answered marketing calls, 1,346,500 of which were to individuals whose number was registered with the TPS.
21. Out of the complaints received, 43 were made to the TPS and 41 to the Commissioner via the online reporting tool ("OLRT") regarding CLIs operated by OSL. 31 of the OLRT complainants were either registered on the TPS or stated they had explicitly objected to receiving calls from [REDACTED].
22. On 10 May 2022, the Commissioner sent an initial investigation letter to OSL. The letter requested information to help ascertain OSL's compliance with PECR, outlined the Commissioner's powers and required a response by 31 May 2022.
23. OSL responded on 27 May 2022 and further correspondence was exchanged between the Commissioner and OSL over the period of June to August 2022. During this period, OSL provided a copy of a contract it had with [REDACTED] dated 18 November 2021. The contract required [REDACTED] to create, produce and supply OSL with marketing support materials,

and OSL to comply with PECR. Although the contract was signed on 18 November 2021, it commenced on 24 August 2020.

24. [REDACTED] had contracted [REDACTED] to make marketing calls on their behalf, and [REDACTED] had outsourced the marketing call campaigns to OSL.
25. OSL told the Commissioner that data for the calls was sourced from [REDACTED], [REDACTED] ('[REDACTED']'), [REDACTED] and opt-in consents it had obtained internally.
26. OSL told the Commissioner that [REDACTED] screen its customer data against the TPS. Despite this, 1,209,483 of the answered calls were made by OSL on behalf of [REDACTED] to TPS registered [REDACTED] customers.
27. There was no evidence of any screening undertaken by [REDACTED] or [REDACTED]. 49,387 of the answered calls were made by OSL to TPS registered [REDACTED] customers. 81,985 of the answered calls were made to TPS registered [REDACTED] customers.
28. A further 5,645 of answered calls were made to a mixture of TPS registered [REDACTED] customers.
29. In total, OSL has made 1,346,500 connected and answered calls to TPS registered individuals.
30. OSL told the Commissioner that each of the campaigns were delineated by its data source. They stated [REDACTED] calls were sourced from internally generated data generated from opt-ins obtained by OSL on calls and mail inserts. Therefore, the Commissioner returned the list of 179,380 answered [REDACTED] calls to OSL to identify their source.
31. The results showed that 176,541 of the calls, which equates to 98.4%, were sourced from external opt-ins obtained by [REDACTED] and [REDACTED]. 160

calls were made from data supplied by [REDACTED] mail inserts. 1,402 calls were made from OSL obtained opt-ins. 1,277 calls were made from data OSL purchased from [REDACTED] on 19 November 2021.

32. OSL stated that TPS screening was the responsibility of [REDACTED] as the data supplier, who screen the data on behalf of [REDACTED] as the data purchaser. OSL explained that daily data feeds of new customers were supplied via a secure file transfer protocol server, and then screened against the TPS and re-supplied to OSL without the TPS registered numbers. OSL feeds back the data to [REDACTED] every 28 days who re-screen it against the TPS register. However, a significant number of answered calls were still made by OSL on behalf of [REDACTED] to TPS registered [REDACTED] customers.
33. OSL explained screening was also in place for internally generated data, where their full database is supplied to a third party every 28 days who screen it against the TPS register.
34. OSL stated that when an individual indicates they do not want to receive calls their number is marked on the system as such and categorised as "DNC". Individuals are then added to OSL's own internal suppression list within one working day. OSL screen data against this suppression list so as to avoid calling individuals who have stated they do not want to receive their calls.
35. Despite this, OSL provided a breakdown of complaints made via the Commissioner's OLRT that showed 11 complainants were marked as "DNC TPS". This indicates OSL were aware they were conducting calls to TPS registered individuals, and aware they should not have been doing so.

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

The Contravention

39. The Commissioner finds that OSL contravened regulation 21 of PECR.
40. The Commissioner finds that the contravention was as follows:
41. Between 11 February 2021 to 22 March 2022, OSL used a public telecommunications service for the purposes of making 1,346,500 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 74 complaints being made to the TPS and the Commissioner.
42. The Commissioner is also satisfied for the purposes of regulation 21 that these 1,346,500 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 OSL that they did not object to receiving such calls
43. For such notification to be valid under regulation 21(4), the individual must have taken a clear and positive action to override their TPS

registration and indicate their willingness to receive marketing calls from the company. The notification should reflect the individual's choice about whether or not they are willing to receive marketing calls. Therefore, where signing up to use a product or service is conditional upon receiving marketing calls, companies will need to demonstrate how this constitutes a clear and positive notification of the individual's willingness to receive such calls.

44. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.
45. Further, the notification must demonstrate the individual's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of regulation 21(4) if individuals are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
46. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

47. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by OSL arising from the organisation's activities between 11 February 2021 to 22 March 2022, and this led to 1,346,500 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified OSL that they were willing to receive such calls, and 74 complaints being made as a result.

48. Whilst 1,346,500 connected and answered calls were made, the CDRs for OSL's [REDACTED] account shows that OSL conducted 8,503,026 calls, a large proportion of which reached the voicemail or answer machine of TPS registered individuals. This evidences OSL's attempt to engage in a larger campaign, meaning the contravention could have been higher.
49. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

50. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that OSL's actions which constituted that contravention were deliberate actions (even if OSL did not actually intend thereby to contravene PECR).
51. The Commissioner considers that in this case OSL did deliberately contravene regulation 21 of PECR. There is some evidence that OSL may be a [REDACTED] of [REDACTED], who were fined by the Commissioner in [REDACTED] [REDACTED] for making similar calls as OSL. Such evidence includes both companies having appointed the same director, who remains active at [REDACTED] but resigned from OSL on 21 July 2020. [REDACTED] account was novated to OSL and includes many of the same CLIs used by [REDACTED]. This shows no meaningful changes have been made.
52. Training materials and policies provided by OSL reflect awareness of PECR but despite this, OSL still made the calls to TPS registered individuals.

53. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
54. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 55. Firstly, he has considered whether OSL 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 due to the lack of regard to the available training materials and policies which demonstrated awareness of PECR. Further, OSL appear to be a [REDACTED] of an organisation that has previously been fined by the Commissioner for making the similar calls.
 56. 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.
57. Further, individuals involved in OSL were also involved in [REDACTED], a company fined by the ICO for not complying with PECR. It is not feasible to suggest that OSL were unaware of the inherent risks in such activity.

58. It is therefore reasonable to suppose that OSL should have been aware of its responsibilities in this area.
59. Secondly, the Commissioner has gone on to consider whether OSL failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
60. The Commissioner's direct marketing guidance makes clear that organisations acquiring or 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. As aforementioned, OSL explained a third party screens their data on their behalf every 28 days and that they also screen it against their own internal suppression list. Despite this, 141,914 calls were still made to individuals marked as "DNC TPS".
61. Reasonable steps in these circumstances may also have included requesting evidence from the third party data providers for evidence that subscribers had either specifically not objected to receiving direct marketing calls from OSL or were not registered with the TPS. OSL should also have taken steps to ensure the TPS checks were being rigorously carried out. The Commissioner also notes that OSL should have ensured there was an effective and robust suppression list and procedure in place to avoid calling individuals marked as "DNC TPS".
62. Given the volume of calls and complaints, it is clear that OSL failed to take those reasonable steps.

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

The Commissioner's decision to issue a monetary penalty

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

- Repeated calls were made to some individuals despite multiple requests to stop contact;
- Complainants described some callers as being aggressive;
- It appears that OSL used the same database as [REDACTED], which contained a high proportion of elderly and vulnerable individuals;
- The individuals in control of OSL are the same individuals who controlled [REDACTED], an organisation that was previously fined by the Commissioner for the same breach of PECR; and
- Devious behaviour in respect of the transfer of [REDACTED] account to OSL.

65. The Commissioner has not identified any mitigating features in this case.

66. 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.

67. 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 OSL on this matter.

68. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
69. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
70. The Commissioner has considered the likely impact of a monetary penalty on OSL. 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.
71. 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.
72. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the proposed intervention on the wider business community, both in terms

of deterring non-compliance and economic benefits to legitimate businesses.

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

The amount of the penalty

74. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£240,000 (two hundred and forty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

75. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **28 November 2023** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
76. If the Commissioner receives full payment of the monetary penalty by **27 November 2023** the Commissioner will reduce the monetary penalty by 20% to **£192,000 (one hundred and ninety two thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
77. 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.

78. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

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

80. 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.

81. 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 26th day of October 2023.

Signed

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)).