

**DATA PROTECTION ACT 1998****SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER****MONETARY PENALTY NOTICE**

To: Ice Telecommunications Ltd

Of: 4 Crewe House, Oak Street, Crewe, Cheshire, CW2 7DB

1. The Information Commissioner ("the Commissioner") has decided to issue Ice Telecommunications Ltd ("Ice Comms") 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. Ice Comms, whose registered office is given above (Companies House Registration Number: 09180490) 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 a subscriber who has a telephone number which is registered with the Telephone Preference Service ("TPS") or Corporate Telephone Preference Service ("CTPS"), then that subscriber must have notified the company that they do not object to receiving such calls from it.

5. Regulation 21 paragraph (1) of PECR provides that:

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

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

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

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

*"(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).*

*(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the*

*register for less than 28 days preceding that on which the call is made.*

- (4) *Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.*
  - (5) *Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—*
    - (a) *the subscriber shall be free to withdraw that notification at any time, and*
    - (b) *where such notification is withdrawn, the caller shall not make such calls on that line.”*
7. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited ("TPS") is a limited company which operates the register on the Commissioner's behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.

8. Section 122(5) of the DPA18 defines direct marketing as "*the communication (by whatever means) of advertising material or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR & Schedule 19 paragraphs 430 & 432(6) DPA18).
9. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".
10. A "subscriber" is defined in regulation 2(1) of PECR as "*a person who is a party to a contract with a provider of public electronic communications services for the supply of such services*".
11. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

*"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –*

  - (a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,*
  - (b) subsection (2) or (3) applies.*

*(2) This subsection applies if the contravention was deliberate.*

*(3) This subsection applies if the person –*

  - (a) knew or ought to have known that there was a risk that the contravention would occur, but*
  - (b) failed to take reasonable steps to prevent the contravention.*

12. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.
13. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PEPCR were subsequently amended and strengthened. The Commissioner will interpret PEPCR 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 PEPCR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

### **Background to the case**

15. Ice Telecommunications Ltd ("Ice Comms") is a business-to-business telecommunications solutions provider, which trades under the name Ice Comms. Ice Comms was incorporated on 18 August 2014, under the name Talkfair Converged Solutions Ltd. Ice Comms currently has three active directors: James Taylor, Stuart William Bonell and Jamie Steven Ward. James Taylor is the Managing Director of Ice Comms.

James Taylor, Stuart William Bonell and Jamie Steven Ward are also directors of the parent company, Ice Comms Holdings Limited.

16. Ice Comms first came to the attention of the Commissioner in November 2021, because of complaints made to the TPS about unsolicited direct marketing calls from a company calling themselves Ice Comms or Ice Communications. The Commissioner conducted a search of the complaints received by the ICO and TPS about Ice Comms and identified 23 complaints to TPS and seven complaints to the ICO, between 1 November 2020 and 31 October 2021.
17. Complaints made via the TPS and ICO reporting tools included the following statements:
  - I. *"Offering their telecommunications services, we have written to this company before in 2019 requesting that they remove all of our details from their database and not call us again."*
  - II. *"Calling about renewing our [REDACTED] contract (despite us dealing with [REDACTED] direct). We have mentioned numerous times in the past that we have registered with TPS (back in May 2020), but they still keep calling, even when asked to remove our company from their call lists ... They clearly haven't listened to our request to delete our company from their contact list, despite me telling them that we are registered with TPS and are NOT accepting any sales calls. I was contacted back on 14 September 2020 by [REDACTED] [REDACTED] from ICE communications who, despite being told were registered with TPS and were not accepting any sales calls"*

*continued to call our company another couple of times and then further emailed us."*

- III. "They keep calling, have previously reported to you, however never received an outcome. They have called 4 times today trying to sell their phone service. We have asked every time to be removed the callers say they just receive a list of numbers to call and can't do anything about it."*
- IV. "Was the 5th or 6th call in two weeks from the company, refused to take us off their mailing list or disclose where they got our details from."*
- V. "This has happened for 5 months, I have asked on every single occasion to be removed and this has not happened. I receive this 1-2 times a week."*
- VI. "No matter how many times we have told this company over the last 3-4 years that we are on the TPS, they not only never check the list but flagrantly flout the TPS and CPS rules, calling us every 3-6 months. The caller said quite clearly that they do not need to remove us from their database as they are not making 'sales' calls, merely asking us if we are happy with our current mobile telephone provider, asking us when our mobile phone contract is up for renewal, and hiding behind offering a sham service to analyse our current bills to see if we are getting best value so they can then offer alternative contracts. If this isn't selling then what is? They are an absolute nuisance and just do*

*not take no for an answer and the caller refused to remove us from their list of prospects saying that it's not his jurisdiction and not possible anyway. We are a busy health and social care provider and the regular nuisance of these calls is a hindrance to focussing on business."*

18. Information provided to the Commissioner by TPS revealed that TPS had written to Ice Comms on at least 19 occasions between 1 November 2020 and 31 October 2021 but no response had been received.
19. The Commissioner sent an initial investigation letter to Ice Comms on 19 November 2021. The letter was sent by email to [REDACTED] [REDACTED], using the contact details in the Ice Comms privacy policy. The letter asked several questions in relation to potential contraventions of regulation 21 PECR and attached a spreadsheet of the complaints received by the ICO and TPS between 1 November 2020 and 31 October 2021. A response was requested by 10 December 2021.
20. Also on 19 November 2021 the Commissioner issued a third party information notice to [REDACTED] the telecommunications service provider to Ice Comms (up until September 2021) requiring them to provide subscriber details for the telephone numbers used by Ice Comms, along with call detail records ("CDRs") for the period 1 November 2020 to 31 October 2021. [REDACTED] responded on 7 December and stated that the telephone numbers were

allocated to Ice Telecommunications Ltd and [REDACTED]  
[REDACTED] ("[REDACTED]"). They also provided end user details.

21. On 10 December, a response was received from Ice Comms providing two spreadsheets listing the telephone numbers used by Ice Comms between November 2020 and October 2021. Ice Comms explained that they changed their telecoms provider from [REDACTED] to [REDACTED] in September 2021 and therefore were only able to provide call statistics for the period 6 September 2021 to 31 October 2021. The statistics provided indicated that during this period a total of 222,000 calls were made, of which 181,000 calls were answered. Ice Comms also stated that they obtained their marketing lists of potential prospects from [REDACTED] ("[REDACTED]") and that the marketing lists were screened against the TPS and CTPS by [REDACTED] such that all outbound call data obtained and used by Ice Comms related to businesses not registered with the CTPS.
22. Ice Comms also stated that they operated an internal suppression list and Ice Comms staff were trained in its use. Ice Comms acknowledged that they had no written policy regarding PECR, but stated that staff were fully trained with the knowledge that calling individuals and businesses registered with the TPS and CTPS was prohibited.
23. Ice Comms confirmed that since receiving correspondence from the Commissioner, they had conducted a thorough investigation and regretted to advise that a minority of staff had breached their policy to only use marketing data obtained from [REDACTED]. Certain staff members had obtained prospect details from web sites such as

Yell.com. Ice Comms added that they take their responsibilities under PECR and data protection legislation seriously and measures had been taken to prevent a reoccurrence.

24. On 13 December 2021 the Commissioner sent an email to Ice Comms requesting further information including a copy of the contract or agreement between Ice Comms and [REDACTED]; copies of invoices received from [REDACTED] between 1 November 2020 and 31 October 2021, showing that the data was purchased as TPS and CTPS screened; confirmation as to whether any of the complainants' telephone numbers appeared on the marketing lists purchased from [REDACTED]; a copy of the Ice Comms data protection policy; copies of any instructions provided to staff on how to deal with opt-out requests; a copy of the email reminding staff that anyone found to be calling prospects not on the lists obtained from [REDACTED] would be dismissed; and the number of staff who have been disciplined for obtaining their own data since 1 November 2020.
25. On 14 December 2021, the Commissioner issued a third party information notice to [REDACTED] requiring them to provide CDRs for the period 6 September 2021 to 31 October 2021. The CDRs were provided by [REDACTED] on 16 December and listed 221,987 calls made by Ice Comms between 13 September 2021 and 31 October 2021. 181,500 of these calls were shown as answered. The Commissioner's analysis of the 181,500 answered calls revealed that, between 13 September 2021 and 31 October 2021, Ice Comms made 31,393 calls to numbers registered with the TPS or CTPS for more than 28 days.

26. On 20 December, the Commissioner received an email from Ice Comms enclosing an email exchange between Ice Comms and [REDACTED] dated 13-20 December and a statement of account listing three sales orders dated 7 June 2021, 26 August 2021, and 29 November 2021. Ice Comms' [REDACTED] account manager was copied into the email exchange and asked to confirm that the marketing lists were screened against CTPS. Ice Comms also provided an update of the measures being taken to prevent repeated complaints. The Commissioner replied to Ice Comms by email on 21 December requesting the remaining information by 4 January 2022.
27. The Commissioner received an email from Ice Comms on 4 January 2022 enclosing a copy of their data protection policy. Ice Comms stated that they were unable to provide copies of any instructions to staff on how to deal with opt-out requests as that training was conducted face to face. They advised that they were still awaiting further information from [REDACTED] as well as confirmation of the number of staff disciplined. Ice Comms also provided an all staff email dated 23 November 2021 reminding staff that anyone found to be calling unscreened data from Thomson Local, Yell, 192 or Google would receive a written warning. The Commissioner sent a response to Ice Comms by email on the same day requesting the remaining information by 11 January. No response was received so the Commissioner sent a chaser email to Ice Comms on 8 February.
28. On 14 February, the Commissioner issued a further third party information notice to [REDACTED] requiring them to provide CDRs for the period 1 November 2021 to 31 January 2022 and details of the TPS

screening service provided to Ice Comms. A response was received from [REDACTED] on 21 February stating that they provide a real-time TPS service that, when in use, stops calls to numbers on the TPS list. [REDACTED] stated that Ice Comms started to use the service on 7 January 2022.

29. [REDACTED] provided the requested CDRs on 22 February and these listed 143,749 calls made by Ice Comms between 1 and 30 November 2021, 81,974 calls made between 1 and 31 December 2021 and 99,196 calls made between 3 and 31 January 2022. The Commissioner's analysis of the CDRs revealed that a total of 41,289 of the calls made by Ice Comms between 1 November 2021 and 31 January 2022 were made to numbers that had been registered with the TPS or CTPS for more than 28 days. This figure included 23,133 calls in November, 11,432 calls in December and 6,724 calls in January.
30. On 23 February 2022 the Commissioner sent an end of investigation email to Ice Comms informing them of the evidence received from [REDACTED] and explaining that the ICO would now consider whether formal enforcement action was appropriate. Ice Comms was asked to provide any additional information by 2 March. Ice Comms responded on the same day and confirmed that they had still not received the requested information from [REDACTED]. Ice Comms stated that, since receiving the initial correspondence from the ICO, they had done everything possible to prevent their employees ignoring their policies by preventing outgoing calls to TPS and CTPS registered numbers.
31. The Commissioner responded to Ice Comms by email on the same day explaining that Ice Comms is responsible for compliance with PECR and

any assurances provided by data brokers should be supported by a written contract or agreement and appropriate due diligence checks. The Commissioner also pointed out that any calls to existing Ice Comms customers should be screened against the TPS and CTPS unless the customer had notified Ice Comms that they do not object to receiving such calls. Within the same email, the Commissioner asked Ice Comms to provide by 2 March any documents that confirmed the data purchased from [REDACTED] was TPS screened. No response was received.

32. Following the end of the investigation, the Commissioner has conducted further searches of the ICO and TPS complaints databases. These confirmed that, since the start of the investigation in November 2021, there has been a significant reduction in the number of complaints received about Ice Comms. However, the searches also revealed two further complaints to the ICO dated 21 February 2022 and 9 March 2022. The complainants' comments are consistent with previous complaints about Ice Comms:

*I. "Sales call. We had previously complained to the company because their agent had cold-called us in August 2021 pretending to be from [REDACTED]. By coincidence, at the time, we were expecting a genuine call from [REDACTED]. And had then persisted with the call despite being told we were not at all interested. A member of the company's support staff then said we had been blocked on their system. This morning, we have again received a call from this company."*

*II. "ICE comms have been contacting our company on a weekly basis for the last 12 months. We have requested on at least 6 occasions to take our telephone number off their calling list and refrain from contacting us. They last telephoned a week ago, previous to the call today and I informed the sales person that if they called again, I would report them to the office of the ICO."*

33. The Commissioner is satisfied that 72,682 calls were made to TPS or CTPS registered subscribers between 13 September 2021 to 31 January 2022 by Ice Comms for the purposes of direct marketing as defined by section 122(5) DPA18.
34. The Commissioner has made the above findings of fact on the balance of probabilities.
35. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Ice Comms and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

36. The Commissioner finds that Ice Comms contravened regulation 21 of PECR.
37. The Commissioner finds that the contravention was as follows:
  - I. Between 13 September 2021 and 31 January 2022, Ice Comms used a public telecommunications service for the purposes of

making 72,682 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 PEGR. This resulted in 23 complaints being made to the TPS and seven to the Commissioner.

- II. The Commissioner is also satisfied for the purposes of regulation 21 that these 72,682 unsolicited direct marketing calls were made to subscribers who had registered with the TPS/CTPS at least 28 days prior to receiving the calls, and who for the purposes of regulation 21(4) had not notified Ice Comms that they did not object to receiving such calls.

For such notification to be valid under regulation 21(4), the individual must have taken a clear and positive action to override their TPS/CTPS 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.

38. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. For example, companies cannot

rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.

39. 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.
40. In light of the information and evidence received by the Commissioner during his investigation as summarised in the background section above (in particular, but not limited to the contents of the complaints information received), the Commissioner is satisfied that for the purposes of regulation 21(1)(b) that Ice Comms made 72,682 unsolicited direct marketing calls to subscribers who have been registered with the TPS/CTPS for not less than 28 days and who had not previously notified Ice Comms that they did not object to receiving such calls.
41. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

### **Seriousness of the contravention**

42. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Ice Comms arising from the organisation's activities

between 13 September 2021 and 31 January 2022, and this led to 72,682 unsolicited direct marketing calls being made to subscribers who were registered with the TPS/CTPS and who had not notified Ice Comms that they were willing to receive such calls. During this period, 30 complaints have been identified in relation to Ice Comms' activities.

43. Ice Comms also made an unspecified number of unsolicited direct marketing calls to subscribers who had notified Ice Comms that they did not wish to receive such calls.
44. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

#### **Deliberate or negligent contraventions**

45. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Ice Comms actions which constituted that contravention were deliberate actions (even if Ice Comms did not actually intend thereby to contravene PECR).
46. The Commissioner does not consider that Ice Comms deliberately set out to contravene PECR in this instance.
47. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

48. Firstly, he has considered whether Ice Comms 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, for the following reasons:
- I. Ice Comms have been registered with the ICO since February 2015 and should have been aware of the requirements of PECR;
  - II. As a telecommunications business with a reliance on direct marketing calls, Ice Comms should have been aware of the rules that apply to such communications;
  - III. Ice Comms were sent 19 letters by TPS referring details of complaints submitted, which were not acted upon;
  - IV. User complaints were made direct to Ice Comms, which were not acted upon.
49. 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/CTPS, 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.

50. Where it is able to identify the organisation making the calls, it is standard practice of the TPS to contact that organisation on each occasion a complaint is made. The Commissioner has evidence that Ice Comms was sent notifications from the TPS in respect of complaints being made in this case. That there were 23 complaints made to the TPS alone over the period of the contravention should have made Ice Comms aware of the risk that such contraventions may occur and were indeed occurring.
51. It is therefore reasonable to suppose that Ice Comms should have been aware of its responsibilities in this area.
52. Secondly, the Commissioner has gone on to consider whether Ice Comms failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
53. The Commissioner's direct marketing guidance makes clear that organisations acquiring/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. In this case, Ice Comms could not present any evidence of

the performance of the required rigorous check. Furthermore, Ice Comms could not produce a contract with [REDACTED].

54. Reasonable steps in these circumstances may also have included:

- I. Requiring [REDACTED] to provide evidence of the performance of screening against TPS/CTPS.
- II. The performance of screening by Ice Comms itself, for the data received from [REDACTED].
- III. Staff training concerning PECR compliance, in particular the screening of telephone numbers.

55. In addition to the steps that Ice Comms could have taken to ensure that data provided by [REDACTED] was properly screened, other reasonable steps that Ice Comms could have taken to prevent the contravention would have included:

- I. Implementing procedures to ensure that its employees did not use publicly available data and/or did not use such data without screening.
- II. Implementing procedures to investigate complaints from subscribers and to ensure that objections that they received were appropriately acted upon, such as through the use of suppression lists, appropriate employee training and adjustments to

procedures (including the development of an appropriate PECR policy).

- III. Implement procedures to investigate complaints received from TPS and to ensure that such complaints were appropriately acted upon, as summarised immediately above.
- IV. Implement procedures to prevent employees from obtaining telephone numbers from publicly available sources, which had not been screened against TPS/CTPS or its internal suppression list.
- V. Procuring a suppression screening service from [REDACTED] at an earlier date than January 2022.

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

**The Commissioner's decision to issue a monetary penalty**

- 58. The Commissioner has taken into account the following aggravating features of this case:
  - I. Ice Comms continued to make contravening calls for two months after the receipt of ICO's initial investigation letter.

- II. Further complaints were identified after the contravention period covered by the ICO's investigation, which is evidence that Ice Comms continued to make contravening calls.
  - III. Calls were repeated and persistent in that the complaints evidence shows that even after the receipt of objections by subscribers, they continued to receive calls.
59. The Commissioner has taken into account the following mitigating features of this case:
- I. As a result of the Commissioner's investigation, Ice Comms has put certain policies and procedures in place to ensure compliance. However, as complaints have been received after the contravention period, this does not appear to have been entirely effective in preventing calls to TPS/CTPS subscribers.
60. 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.
61. 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 Ice Comms on this matter.

62. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
63. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
64. The Commissioner has considered the likely impact of a monetary penalty on Ice Comms. He has decided on the information that is available to him, that Ice Comms has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship.
65. 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 subscribers who are not registered with the TPS/CTPS and/or specifically indicate that they do not object to receiving these calls.
66. 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.

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

#### **The amount of the penalty**

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

#### **Conclusion**

69. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **9 June 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.
70. If the Commissioner receives full payment of the monetary penalty by **8 June 2023** the Commissioner will reduce the monetary penalty by 20% to **£64,000 (sixty four thousand pounds)**. However, you

should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

71. 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.

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

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

74. 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.

75. 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 9th day of May 2023.

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)).