

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Alistar Green Legal Services Limited

Of: Suite 1, Goodlass Road, Goodlass House, Liverpool, L24 9HJ

1. The Information Commissioner ("Commissioner") has decided to issue Alistar Green Legal Services Limited ("Alistar Green") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is being issued because of 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. Alistar Green Legal Services Limited, whose registered office is given above (companies house registration number:10423973), is the person 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 given their consent to that company to receive such calls.

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 set up by the Commissioner to carry out this role. 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 11(3) of the DPA defines direct marketing as “the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals”. This definition also applies for the purposes of PECR (see regulation 2(2)).
9. Under section 55A (1) of the DPA (as amended by PECR 2011 and the Privacy and Electronic Communications (Amendment) Regulations 2015) the Commissioner may serve a person with a monetary penalty notice 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, and

(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."

10. 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.

11. PECR implemented European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. PECR were amended for the purpose of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches the PECR regulations so as to give effect to the Directives.

12. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of that Act).

Background to the case

13. Alistar Green Legal Services Limited's business involves making unsolicited marketing calls to subscribers in order to generate road traffic accident claim leads.
14. Between 13 March 2017 and 18 July 2017, the ICO received 213 complaints about unsolicited direct marketing calls made by the Company. Of those, 127 complaints were made to the TPS, with a further 86 made direct to the Commissioner. All of these complaints were made by individual subscribers who were registered with the TPS.
15. The following are examples of the complaints received by the ICO:
 - "They call every day asking me to claim for personal injury in relation to a car accident I never had. Wont [sic] go away and are very rude and threatening. Wont [sic] give me a company address or real name."
 - "Wanted to know why I had not claimed for accident. Claimed it was the first time they have called, it is [sic] least the second time and both times I said no thank you and my phone is registered on TPS so please go away."
 - "Apologised for calling me, 'under the circumstances', 'about my accident a couple of years ago', they 'could see that the other party had admitted total liability and had paid for the

repair of my vehicle' (which is true), but they had not paid out anything further (which is not right), and they wanted for me to go with them to sue the other party a couple of years later."

- "A customer services agent who wanted to discuss the road traffic accident I'd had on a specific date, but did not have the details of the accident beyond it being a 3rd party impacting me, and the date. The date he supplied me was a date I'd deliberately falsely entered into a number of insurance comparison websites."
 - "I was told I had had a car accident and they wanted to help me with my claim. When questioned I was told it could have been some time ago! I asked the callers name, x, and a telephone number. The number was not available so I asked for an address. I was passed to x the floor manager who refused to give me his surname and asked me very forcefully to terminate the call. He then proceeded to shout over what I was saying and when I ceased talking I discovered that he had hung up on me."
16. On 28 July 2017, the Commissioner wrote to Alistar Green to explain that she could issue civil monetary penalties up to £500,000 for PECR breaches. The letter informed Alistar Green that the Commissioner and the TPS had received complaints from individual subscribers in relation to unsolicited calls. Alistar Green was asked a number of questions about its compliance with PECR.
17. The Commissioner received a response from Alistar Green explaining that the complaints were due to a new dialler manager who had been

employed. The employee was on a six month probation period and had only received one months' supervised training. The company believe that the employee didn't notify them of the complaints when they were received because of their belief that their job would be "under threat".

18. Alistar Green further explained that it had begun to investigate the complaints on receipt of the Commissioner's correspondence and discovered that, although they usually have an internal TPS checker, it appears that the data was not cleansed before being loaded onto the dialler during the months of March and April.
19. Alistar Green explained that it purchased the data from a third party company. A due diligence checklist provided by the company indicated that the data had been screened against the TPS. However, there were no direct contracts or agreements in place with the supplier.
20. With their response Alistar Green provided a spreadsheet which appeared to show evidence of consent in a sample number of cases. However, on examination by the Commissioner the data did not match any of the complaints received.
21. The Commissioner has made the above findings of fact on the balance of probabilities.
22. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Alistar Green and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

23. The Commissioner finds that Alistar Green contravened regulation 21 of PECR.
24. The Commissioner finds that the contravention was as follows:
25. Between 13 March 2017 and 18 July 2017 Alistar Green used a public telecommunications service for the purpose of making 213 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the line called 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; and
26. The Commissioner is also satisfied for the purposes of regulation 21 that these calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls and had not given their prior consent to Alistar Green to receive calls.
27. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

28. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Alistar Green's activities over a four month period, and this led to a significant number of complaints about unsolicited direct marketing calls to the TPS and the Commissioner.

29. In addition, it is reasonable to suppose that the contravention could have been far higher because those who went to the trouble to complain represent only a proportion of those who actually received calls.
30. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

31. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Alistar Green's actions which constituted that contravention were deliberate actions (even if Alistar Green did not actually intend thereby to contravene PECR).
32. The Commissioner considers that in this case Alistar Green did not deliberately contravene regulation 21 of PECR in that sense.
33. The Commissioner has gone on to consider whether the contravention identified above was negligent.
34. First, she has considered whether Alistar Green knew or ought reasonably to have known that there was a risk that this contravention would occur. She is satisfied that this condition is met, given that Alistar Green relied heavily on direct marketing due to the nature of its business, and the fact that the issue of unsolicited calls has been widely publicised by the media as being a problem.
35. Each time a complaint is made to the TPS, the TPS inform the company complained about. Alistar Green would therefore have been aware that

complaints were being made by TPS subscribers which should have prompted them to take steps to investigate the reasons for this and to address any deficiencies in their practices. Despite Alistar Green's assertion that their failure to take steps was due to an errant employee, the company persisted to receive complaints in May, June and July 2017. In any event, it is the company's responsibility to ensure that it is compliant with legislation.

36. 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 subscribers who have told an organisation that they do not want to receive calls; or to any number registered with the TPS, unless the subscriber has specifically consented to receive calls.
37. Finally, the Commissioner has gone on to consider whether Alistar Green failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
38. Reasonable steps in these circumstances would have included ensuring that Alistar Green could evidence consents relied upon to make marketing calls; having in place a contractual arrangement with its third party data supplier to ensure that the data being purchased met the required threshold for valid consent; screening the data against the TPS register and ensuring that it had in place an effective and robust suppression list.
39. Despite assurances provided by Alistar Green that it had a valid licence from TPS to screen data, the TPS informed the Commissioner on 21

August 2017 that it has no record of Alistar Green subscribing to the TPS. The details of the license they provided in response to the Commissioners enquiries belonged to another company who did not appear to be downloading the data regularly.

- 40. The Commissioner is therefore satisfied that Alistar Green failed to take reasonable steps to prevent the contravention.
- 41. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

- 42. For the reasons explained above, the Commissioner's view is that the conditions for issuing a monetary penalty under section 55A have been met in this case.
- 43. She is also satisfied that the procedural rights under section 55B have been complied with. This has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary views.
- 44. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
- 45. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty. 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 want to receive these calls.

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

The amount of the monetary penalty

47. The Commissioner has taken into account the following aggravating features of this case:
- The Commissioner's investigation revealed evidence that Ailstar Green's director was also director of an associated company that had also contravened PECR prior to its dissolution.
48. 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 want to receive these calls.
49. 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

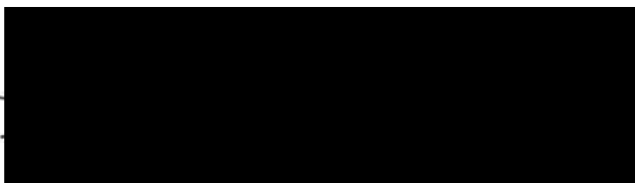
50. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque **2 March 2019** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
51. If the Commissioner receives full payment of the monetary penalty by **27 February 2019** 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.
52. 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.
53. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
54. Information about appeals is set out in Annex 1.
55. 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.

56. 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 30th day of January 2019

Signed

A large black rectangular box redacting the signature of Stephen Eckersley.

Stephen Eckersley
Director 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) General Regulatory Chamber (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:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

 - 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 (General Regulatory Chamber) are contained in sections 48 and 49 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)).