

**ico.**

Information Commissioner's Office

**DIRECT SECURITY MARKETING LTD  
FINED £70,000**

**Monetary Penalty Notice**

**TEL: 0843 005 9576\***

**TPS Services**

Telephone: 0843 005 9576\*  
Fax: 0844 774 8411  
[www.tpsservices.co.uk](http://www.tpsservices.co.uk)

**TPS Checker**

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\*Calls cost 5p per minute plus your phone company's access charge.

## **DATA PROTECTION ACT 1998**

### **SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

#### **MONETARY PENALTY NOTICE**

To: Direct Security Marketing Ltd

Of: Kings Chambers, Queens Cross, High Street, Dudley, West Midlands,  
DY1 1QT

1. The Information Commissioner ("Commissioner") has decided to issue Direct Security Marketing Ltd 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 19 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") by Direct Security Marketing Ltd.
2. This notice explains the Commissioner's decision.

#### **Legal framework**

3. Direct Security Marketing Ltd, whose registered office is given above (Companies House registration number: 09335535), is the person stated in this notice to have used an automated calling system for the purpose of making recorded direct marketing calls contrary to regulation 19 of PECR.
4. Regulation 19 of PECR provides that:

“(1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except in the circumstances referred to in paragraph (2).

(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line.

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

(4) For the purposes of this regulation, an automated calling system is a system which is capable of—

- (a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- (b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.”

5. Section 55A of the DPA (as amended by the Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2011 and the Privacy and Electronic Communications (Amendment) Regulations 2015) 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,

..

- (c) 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.”
6. 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.
7. PECR implements European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. The Commissioner approaches the PECR regulations so as to give effect to the Directive.

### **Background to the case**

8. Direct Security Marketing Ltd (“Company”) provides a range of marketing services to its clients.
9. The Commissioner's office received 49 complaints via the online reporting tool. The gist of the complaints was that automated marketing calls were received by subscribers early on 24 August 2015, inviting them to purchase a security system. The calls were made from a withheld number and did not identify the sender.

The following are examples of the complaints received by the Commissioner's office:

- "Receiving a call from a withheld number at 4.40 in the morning is an extremely unpleasant experience. I have elderly parents therefore the first thing I thought of was that something had happened to one of them. No-one wants to receive a phone call in the middle of the night as it's usually bad news. Very upsetting and worrying".
- "I am 72 years old and have a heart condition. It left me wondering why I had received it and took some time to get back to sleep".
- "It was 2am on Monday morning, I was asleep in bed. When the phone rang, the caller display showed a private number. I thought it was my mum phoning as her number comes up private and my dad has recently had an operation and a heart attack, so my first thought was that my dad had become ill again. It was a recorded message about home security, so I hung up. But it left me shaken and unable to get back to sleep".
- "I am complaining on behalf of my 84 year old mother. She lives alone. When the phone rang in the middle of the night she thought it was a family emergency/death. She tripped in her anxiety to reach the phone and fell and badly twisted her leg. She is awaiting knee surgery and this exacerbated the pain and discomfort in her knee. She has been burgled twice in the past 18 months and as a result is a nervous and light sleeper. Receiving a call regarding security in the night was extremely sinister and she got no further sleep that night".
- "This is a friend of a 90 and 70 year old both thinking there was a family problem. I am their warden. The 90 year old was very tearful

and the other resident had an ill daughter. It frightened her thinking it was her”.

- “I was awoken in the middle of the night. As my mother is in hospital with a life threatening illness, we thought the worst. I was not able to get back to sleep after getting out of bed to answer the phone”.
10. On further investigation, the Commissioner’s office discovered that the automated marketing calls had been instigated by the Company.
  11. On 27 August 2015, the Commissioner’s office wrote to the Company to remind the organisation of its obligations under regulation 19 of PECR and to provide the Company with an opportunity to provide an explanation for the calls.
  12. In particular, the Company was asked to provide the Commissioner’s office with proof of the consent that it relied on to make the calls.
  13. On 10 September 2015, the Commissioner’s office received a response confirming that the Company was the instigator of the automated marketing calls. The Company also admitted that it was not aware that regulation 19 of PECR applied to automated marketing calls and it did not have the subscribers’ prior consent to make the calls.
  14. Subsequently, the Commissioner’s office established that the Company instigated 39,214 automated calls on 24 August 2015, although the calls were only connected to approximately 12,000 subscribers. The Company instigated 9,775 of those calls between the hours of 01:00 and 06:00 in the morning.

15. The Commissioner has made the above findings of fact on the balance of probabilities.
16. The Commissioner has considered whether those facts constitute a contravention of regulation 19 of PECR by the Company and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

17. The Commissioner finds that the Company contravened regulation 19(1) and (2) of PECR.
18. The Commissioner finds that the contravention was as follows:
19. On 24 August 2015, the Company instigated 39,214 automated marketing calls to subscribers without their prior consent.
20. The Commissioner is satisfied that the Company was responsible for this contravention.
21. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

### **Seriousness of the contravention**

22. The Commissioner is satisfied that the contravention identified above was serious. This is because the Company instigated 39,214 automated marketing calls in a period of 24 hours to subscribers without their prior consent. 9,775 of those calls were instigated between the hours of 01:00 and 06:00 in the morning. The calls, which invited the subscribers to purchase a security system, were particularly

disconcerting at that time of day.

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

### **Deliberate or negligent contraventions**

24. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that the Company's actions which constituted that contravention were deliberate actions (even if the Company did not actually intend thereby to contravene PECR).
25. The Commissioner considers that in this case the Company did deliberately contravene regulation 19 of PECR in that sense.
26. The Commissioner has published detailed guidance for companies carrying out marketing explaining their legal requirements under PECR. This guidance explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax. Specifically, it states that marketing material can only be transmitted via an automated system with the prior consent of the subscriber.
27. The Company deliberately instigated automated marketing calls on a large scale to subscribers.
28. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.



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

29. 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 section 55A(3A) and the procedural rights under section 55B have been complied with.
30. The latter has included the issuing of a Notice of Intent dated 3 November 2015, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made in response to that Notice of Intent, as well as those made in other correspondence from the Company.
31. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
32. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty. He has taken into account the Company's representations made in response to the Notice of Intent and in other correspondence on this matter.
33. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending or instigating of automated 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 sending automated

marketing calls in compliance with PECR.

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

**The amount of the penalty**

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

- The Company has fully co-operated with the ICO.
- There is a potential for damage to the Company's reputation which may affect future business.

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

- The contravention was likely to cause substantial distress to the subscribers.
- The Company may obtain a commercial advantage over its competitors by generating leads from unlawful marketing practices.

37. The Commissioner has also taken into account the fact that the Company has also contravened regulation 24 of PECR in that it did not identify the person who was sending or instigating the automated marketing calls and provide the address of the person or a telephone number on which this person could be reached free of charge.

38. Taking into account all of the above, the Commissioner has decided that the appropriate amount of the penalty is **£70,000 (Seventy thousand pounds)**.

**Conclusion**

39. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 17 March 2016 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.
40. If the Commissioner receives full payment of the monetary penalty by 16 March 2016 the Commissioner will reduce the monetary penalty by 20% to **£56,000 (Fifty six thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
41. 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.
42. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
43. Information about appeals is set out in Annex 1.

44. 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.

45. 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 15<sup>th</sup> day of February 2016

Signed .....

Stephen Eckersley  
Head of Enforcement  
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 48 of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice or variation 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;
- d) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
- e) 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)).