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IAG Nationwide Ltd

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Monetary Penalty Notice

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DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: IAG Nationwide Limited

Of: 24-26 Greek Street, Stockport SK3 8AB

1. The Information Commissioner ("Commissioner") has decided to issue IAG Nationwide Limited ("IAG") 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 regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. IAG, whose registered office is given above (companies house registration number: 10148749), 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. Regulation 24 of PECR provides:

“(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication –

(b) in relation to a communication to which regulation 21 (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph 2(b).

- (2) The particulars referred to in paragraph (1) are –
- (a) the name of the person;
 - (b) either the address of the person or a telephone number on which he can be reached free of charge.”
9. 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)).
10. Under section 55A (1) of the DPA (as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 and the Privacy and Electronic Communications (EC Directive) (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.”

11. 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.
12. 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.

Background to the case

13. IAG is a company that describes itself as a marketing/advertising agency.
14. IAG first came to the attention of the Commissioner when a number of complaints were identified about them within a monthly ICO report.
15. An analysis of those complaints made to the ICO online reporting tool regarding unsolicited calls from IAG identified that a total of 41 complaints were received between 3 May 2016 and 16 November 2017.

16. In addition, information provided to the ICO by the Telephone Preference Service (TPS) showed that a further 21 complaints had been received by the TPS from individuals who were registered with the TPS but had received unsolicited direct marketing calls from IAG.
17. The following are examples of complaints received by the ICO and TPS:
- *"Called to chat with me about 'calls I had been receiving from this number' (callers words). I have previously had missed calls from this number but no message left. When I asked caller who she represented, she replied Insurance Advisory Service. When asked to delete my number & told firm would be reported she became angry & said go on then."*
 - *"Pretended to be trying to help me with my problem with nuisance calls following an accident (I have made a complaint to my insurers and police in past week or so about this). Claimed to need to check my data and pretended not to be an accident claim company and to be able to help remove my details. I said leave me alone as I don't believe anyone calling me at all. They called back the next day."*
 - *"This is at least the third time I have received a call from these people , each time I decline to discuss compensation as i was not injured but they refuse to "close the file" until I tell them details of an accident that happened last year. I have asked every time not to be called again but they just keep on calling."*
 - *"They phoned me on the land line but then I blocked the calls. They started to call me on my mb and sometimes both phones were ringing - I felt as if I was being hounded and it is quite frightening! I have called the insurance company that are dealing with the case and they said I should say I would call the police for harassment if they continued. I have told them that I consider it harassment but they just won't take 'no' for an answer. They now keep saying they need to speak to my husband to close the case! We have asked them to close it but they won't listen. Also a [] spoke to my husband and he has left two messages on the answerphone to say that he must speak to him to close the case. The last message said, Don't worry, we will continue to call you until we have spoken to you. Was that a threat!!! I just daren't phone them now as I feel too frightened."*
 - *"Threatened with court or jail if I don't heed their advice or employ their services. Very threatening calls over a six month period"*

- *"To handle a claim for me which never happened, I explained to the operator I was not happy to receive these calls and my number is registered on tps, I was told I will receive many more calls even after making a complaint and that I can't stop them calling me."*
 - *"He knew my name and said he had information I'd been in an accident and that I had been receiving unwanted calls. I said I had not been in an accident and he then apologised and said he must have been sent a wrong file. I also made clear I was on TPS and he claimed that didn't apply to this call as it wasn't a sales call."*
 - *"Pretended to be tasked by someone to make sure we stopped receiving accident PI calls. Actually tried to get information out of me regarding my personal details. When i challenged them they got very aggressive and shouting at me on the phone. A very upsetting call - i told them not to call me. They then called 25 mins later as a different person."*
 - *"I asked them to stop calling me and was told "Don't speak to me like a 3 year old". I've been called more than 50 times now from various numbers (all claiming to be the same company), each time, I have asked them to stop calling - each time, they have continued to call me. I've even registered with the TPS to no avail. As a self employed designer, I must answer calls as they could be from clients, each time, the person refuses to listen and continues their script - eventually hanging up on me when I'm adamant I don't want to be contacted. The calls are very frequent (at least 3-4 times per week) which interrupts my work, and wastes my time."*
18. As a result of these complaints the Commissioner called the CLI identified within those complaints. The call was answered by an operative who initially gave the company name as "Insurance Advice Group" but later confirmed that the company was in fact IAG Nationwide Ltd. The operative and their supervisor declined to confirm the company's contact address, instead providing an email address which subsequently transpired to be unregistered and available for sale.

19. Accordingly on 13 April 2017, the Commissioner sent a third party Information Notice to the telecoms provider who confirmed that the CLI presented was allocated to a third party reseller.
20. A response to a further third party Information Notice sent to the reseller confirmed that the subscriber was IAG, and the reseller provided IAG with both an automated dialler service and a private branch exchange. It also confirmed that between 3 May 2016 and 25 August 2017 a total of 506,188 calls had been made by IAG.
21. Further enquiries of the TPS revealed that of the 506,188 calls made, involving 190,078 individual subscribers, 69,317 of those calls were to subscribers whose telephone numbers had been registered with the TPS for more than 28 days.
22. On 4 May 2017 a letter was sent to IAG setting out the ICO's concerns about IAG's compliance with PECR, and requesting an explanation for the complaints received by the TPS and the ICO's online reporting tool.
23. IAG, via its appointed consultant, provided a substantive response on 5 June 2017.
24. The response explained that IAG works under an agency agreement with a number of claims management companies and provided copies of the agreements between IAG and those companies. It also explained that some data had previously been purchased from a third party provider which was in liquidation and IAG was therefore unable to obtain opt-in records, however IAG did provide some documentation including blank copies of due diligence forms and a blank leads data purchase agreement, stating that even if the opt-ins were available they would only cover "third party marketing". IAG also provided a copy of its call script in which the company is identified as "Insurance

Advice Group". It advised that it monitored a selection of incoming and outgoing calls.

25. Additionally, IAG provided a list of all calls made to those individuals who had made complaints to the TPS. This revealed that IAG continued to call some of those numbers on multiple occasions even after complaints were raised with the TPS.
26. In relation to purchased data it is apparent that IAG has sought to place the emphasis for TPS screening, data quality and compliance with regulations firmly with its data supplier rather than itself, and has offered no form of due diligence checks on the data supplier.
27. An analysis of the agreements with claims management companies revealed that responsibility for compliance with PECR rests firmly with IAG.
28. IAG accepted that that prior to the Commissioner's investigation, IAG had "without malice, interpreted the regulations surrounding TPS screening incorrectly" and that the company was now aware that third party consent did not override TPS registration.
29. The Commissioner has made the above findings of fact on the balance of probabilities.
30. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by IAG and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

31. The Commissioner finds that IAG contravened regulations 21 and 24 of PECR.
32. The Commissioner finds that the contravention was as follows:
33. Between 3 May 2016 and 25 August 2017 IAG used a public telecommunications service for the purpose of making 69,317 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 25, contrary to regulation 21(1)(b) of PECR.
34. 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 IAG to receive calls.
35. In respect of those calls, the Commissioner is satisfied for the purposes of regulation 24 that whilst a valid CLI was presented, it did not allow subscribers to identify the caller as the company name was withheld, and a false email address provided.
36. The Commissioner is satisfied that IAG was responsible for the contravention.
37. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

38. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by IAG's activities over a 15 month period. Between 3 May 2016 and 25 August 2017 IAG made a total of 506,188 calls to 190,078 subscribers. 69,317 of these calls were to subscribers whose numbers had been registered with the TPS for more than 28 days. This led to a significant number of complaints about unsolicited direct marketing calls to the TPS and the ICO.
39. IAG did not correctly identify itself in the calls and the telephone number provided did not give the recipients the opportunity to opt-out of receiving calls.
40. IAG continued to make repeated calls to subscribers even after they had registered with the TPS and informed IAG that they did not wish to receive calls.
41. IAG provided subscribers with misleading information regarding the nature of the call and some of the subscribers described the calls as "frightening", "threatening" or "aggressive".
42. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

43. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that the IAG's actions which constituted that contravention were deliberate actions (even if IAG did not actually intend thereby to contravene

PECR).

44. The Commissioner considers that in this case IAG did not deliberately contravene regulations 21 and 24 of PECR in that sense.
45. The Commissioner has gone on to consider whether the contravention identified above was negligent.
46. First, she has considered whether IAG 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 IAG 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.
47. The directors of IAG were previously directors of a similar company which was registered with the ICO as a "Marketing/Advertising Agency" and therefore it is reasonable to assume that IAG were aware of the requirements of PECR and the risk that such a contravention could occur.
48. Agency agreements with the claims managements companies for whom IAG worked refer to PECR and the requirement to use authorised methods of marketing, and so it is reasonable to expect that IAG would have familiarised themselves with the regulations in order to prevent a breach of those agreements as well as the regulations themselves.
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 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.

50. Finally, the Commissioner has gone on to consider whether IAG failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
51. Reasonable steps in these circumstances would have included ensuring that IAG could evidence consents relied upon to make marketing calls where these were based upon purchased data; having in place a contractual arrangement with any third party data supplier to ensure at the data being purchased met the required threshold for valid consent; screening data against the TPS register; ensuring that it had in place an effective and robust suppression list; correctly identifying itself as the caller and providing subscribers with an opportunity to opt-out.
52. IAG has now put in place a TPS screening system via its dialler provider, however the Commissioner has continued to receive complaints from subscribers whose numbers are not TPS registered but who have previously notified the company that they did not wish to receive such calls.
53. The Commissioner is therefore satisfied that IAG failed to take reasonable steps to prevent the contravention.
54. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to impose a monetary penalty

55. For the reasons explained above the Commissioner is satisfied that the conditions from section 55A(1)DPA have been met in this case. She is also satisfied that section 55A(3)DPA and the procedural rights under section 55B have been complied with.
56. The latter has included the issuing of a Notice of Intent dated 16 March 2018 in which the Commissioner set out her preliminary thinking.
57. The Commissioner has considered whether, in the circumstances she should exercise her discretion so as to issue a monetary penalty. In reaching her final view, the Commissioner has taken into account representations made by IAG on this matter.
58. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

The amount of the penalty

59. The Commissioner has also taken into account the following **aggravating features** of this case:
 - A general lack of engagement by IAG during the Commissioner's investigation, and provision of a false email address and contradictory information in response to the Commissioner's enquiries;
 - The repeated and harassing nature of the calls made to subscribers;

- Despite putting in place a TPS screening system the Commissioner has continued to receive complaints from subscribers whose numbers are not TPS registered but who have previously notified the company that they did not wish to receive further calls.
60. The Commissioner has also taken into account the fact that IAG has contravened regulation 24 of PECR in that it did not identify the person/organisation making the calls, and the number presented did not allow recipients to opt out of receiving marketing calls.
61. 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.
62. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£100,000 (One hundred thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

63. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **28 May 2018** 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.

64. If the Commissioner receives full payment of the monetary penalty by **25 May 2018** the Commissioner will reduce the monetary penalty by 20% to **£80,000 (eighty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
65. 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.
66. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
67. Information about appeals is set out in Annex 1.
68. 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.

69. 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 25th day of April 2018

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 (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 she ought to have exercised her 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)).