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Information Commissioner's Office

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SOLUTIONS LTD £180,000**

Monetary Penalty Notice

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DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Advanced VOIP Solutions Ltd

Of: Peel House 30, The Downs Suite 324, Altrincham, Cheshire WA14 2PX

1. The Information Commissioner ("Commissioner") has decided to issue Advanced VOIP Solutions 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 by Advanced VOIP Solutions Ltd ("AVSL").
2. This notice explains the Commissioner's decision.

Legal framework

3. AVSL, whose registered office is given above (companies house registration number: 08440874), 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 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.
- 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. AVSL provides telephony services including 'voice broadcasting' to help companies such as Money Help Marketing Ltd ("MHML") to maximise their potential sales. MHML is a lead generating company. AVSL and MHML are connected to two other lead generating companies.
9. Between January and October 2015, the Commissioner's office received 6,381 complaints via the online reporting tool (3,375 after 6 April). The gist of the complaints was that repeated automated marketing calls had been received by subscribers in relation to personal protection insurance, packaged bank accounts and flight delays without their prior consent.
10. The CLI's were prefixed with the number 0843 724. The automated marketing calls allowed an option to press 9 to be removed from the list, although this was not always effective. If the subscriber re-dialled the 0843 724 number, they were connected to yet another recorded message identifying MHML as the person that had sent the automated marketing call.
11. On further investigation, it was discovered that a telecom provider had allocated the CLI's to AVSL who acted as a reseller to MHML, the subscriber of the CLI's. A voice broadcasting company provided the platform from which the automated marketing calls were sent on behalf of AVSL and MHML.
12. The CLI ranges being used for the automated calls were 'added value' numbers. They are non-geographical and charged at the standard network rate plus 4.1667p per minute. The subscribers were charged

at this rate if they re-dialled the 0843 724 number to speak to a person or identify who had sent the automated marketing call.

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

The contravention

15. The Commissioner finds that AVSL contravened the following provisions of PECR:

AVSL has contravened regulation 19(1) and (2) of PECR.

16. The Commissioner finds that the contravention was as follows:

Between January and October 2015, AVSL jointly instigated the sending of at least 6,381 (3,375 after 6 April) automated marketing calls to subscribers without their prior consent.

17. The Commissioner is satisfied that AVSL was responsible for this contravention.
18. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

Seriousness of the contravention

19. The Commissioner is satisfied that the contravention identified above was serious.

This is because AVSL jointly instigated the sending of at least 6,381 (3,375 after 6 April) automated marketing calls to subscribers between January and October 2015 without their prior consent.

During that period, the Commissioner considers it likely that AVSL jointly instigated the sending of hundreds of thousands to millions of automated marketing calls to subscribers without their prior consent.

AVSL also jointly instigated the sending of repeat calls to subscribers (sometimes in excess of 50 calls per day) even though they had pressed option 9. The subscribers were charged at the standard network rate plus 4.1667p per minute if they re-dialled the 0843 724 number to speak to a person or identify who had sent the automated marketing call. In such event, the subscriber was connected to yet another recorded message.

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

Deliberate or negligent contravention

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

PECR).

22. The Commissioner considers that in this case AVSL did deliberately contravene regulation 19 of PECR in that sense.
23. 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.
24. Whilst AVSL may not have deliberately set out to cause distress, it did deliberately jointly instigate automated marketing calls on a massive scale to subscribers.
25. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

26. 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.
27. The latter has included the issuing of a Notice of Intent dated 10 March 2016, 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 and in other correspondence on this matter.

28. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
29. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
30. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending or instigating of automated 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 sending automated marketing calls in compliance with PECR.
31. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

32. The Commissioner has taken into account the following **mitigating features** of this case:
 - There is a potential for damage to AVSL's reputation which may affect future business.

33. The Commissioner has also taken into account the following **aggravating features** of this case:
- The use of 'added value' numbers caused some of the subscribers to suffer financial loss.
 - The Commissioner's office has continued to receive similar complaints.
 - The Company may obtain a commercial advantage over its competitors by generating leads from unlawful marketing practices.
34. The Commissioner has also taken into account the fact that the Company has 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 he can be reached free of charge.
35. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£180,000 (One hundred and eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

36. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **8 July 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.
37. If the Commissioner receives full payment of the monetary penalty by **7 July 2016** the Commissioner will reduce the monetary penalty by 20%

to **£144,000 (One hundred and forty 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.

38. 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.

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

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

41. 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.

42. 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 7th day of June 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;
 - 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)).