



# Services

*Practical TPS solutions for businesses*

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Information Commissioner's Office

## Alex Goldthorpe

t/a

### Approved Green Energy Solutions

# FINED £150,000

## 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

Telephone: 0844 774 8410\*

Fax: 0844 774 8411

[www.tpschecker.co.uk](http://www.tpschecker.co.uk)

#### I Want That Ltd

Unit A, 5 Colville Road  
Acton, London, W3 8BL

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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: Mr Alex Goldthorpe (Trading as 'Approved Green Energy Solutions')

Of: Unit 302 Victoria Works, Calder Street, Brighouse, West Yorkshire  
HD6 1NB

1. The Information Commissioner ("Commissioner") has decided to issue Mr Alex Goldthorpe ("Mr Goldthorpe") 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.
2. This notice explains the Commissioner's decision.

**Legal framework**

3. Mr Goldthorpe is a sole trader, trading as Approved Green Energy Solutions ("AGES"), whose registered office is given above, and 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 17 of the DPA:

- (a) "Subject to the following provisions of this section, personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Commissioner under section 19"
10. 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."
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. Mr Goldthorpe is the sole trader for AGES, a company whose website advertises that they *"supply/fit a range of high/low LED solutions which can save you up to 80% on your lighting bills, replace glass units with energy efficient units saving on your heat requirements, meaning you can save the equivalent of thousands of pounds per year"*.
14. AGES first came to the attention of the Commissioner when a number of complaints were identified about them within a monthly TPS report.
15. Analysis of those complaints made to the TPS regarding unsolicited calls from AGES identified that a total of 89 complaints were received between 1 April 2017 and 24 July 2017.
16. In addition, an interrogation of the ICO's on-line reporting tool showed that a further 18 complaints had been received between 1 April 2017 and 30 July 2017 from individuals who were registered with the TPS but had received unsolicited direct marketing calls from AGES.
17. The following are examples of complaints received via the ICO's online reporting tool:

- *This morning's call was the fourth in two days. Yesterday I asked for no more calls having received two previously that day.*
- *Annoyed to get call from such rude person/organisation.*
- *This is at least the third call in as many days. Have challenged other cold callers with the fact I belong to TPS and the response has been you are on our list. ???*
- *Asked to speak to Mr Marsh, who used to live at this address but died at least 20 years ago. I told them that and asked them to remove the reference on their database but they hung up before I could finish. I have been plagued by these calls, and they ignore my requests to correct their database. My number is registered with the TPS.*
- *Asked to speak to householder - gave name of a deceased person. I informed him that the number was registered with the TPS. He said they had just moved into the area...and rang off. The call was from Huddersfield in Yorkshire while we live on the Isle of Wight! My late mother had dementia and died last year. We have taken all means to ensure the details are known regarding her death to prevent post etc. And the phone line is registered with the TPS for over six years.*

18. On 30 June 2017 a letter setting out the ICO's concerns about AGES' compliance with PECR, and requesting an explanation for the complaints, was sent to the company together with the two spreadsheets containing the details of the 89 complaints received by the TPS and of the 18 complaints received via the ICO's online reporting tool.

19. As no response was received a chaser letter was sent on 24 July 2017, to which a response (dated 26 July 2017) was received on 31 July 2017.
20. The response identified Mr Goldthorpe as the sole trader of AGES, and explained that AGES uses a range of 20 different telephone numbers to make calls from 01484216968 to 01484216997.
21. The letter further explained that in order to make their calls, AGES buys data from a third party provider, however this is done on a pro-forma basis, and without any existing contract in place between the parties.
22. In addition AGES explained that they "...do not know how to get this [TPS] register" and have no other form of screening prior to making calls, save for cross referencing old data with newly purchased data and manually removing the numbers for those who have previously indicated that they do not wish to be called.
23. AGES also confirmed that there are no formal training processes in place for their staff, nor had AGES been aware of its legal requirement under s17 DPA to register with the ICO.
24. In the correspondence which followed it was established that in the period of 1 April 2017 to 31 July 2017 a total of 414,482 connected unsolicited direct marketing calls were made by AGES.
25. Of the 414,482 unsolicited calls made, it has been confirmed, following the Commissioner's enquiries with the TPS, that 334,879 (or 80.79%) were made to subscribers who had previously registered with the TPS so as to not receive such calls. This resulted in a total of 107 complaints being made to the TPS / Commissioner.



26. The Commissioner has made the above findings of fact on the balance of probabilities.
27. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Mr Goldthorpe and, if so, whether the conditions of section 55A DPA are satisfied.

**The contravention**

28. The Commissioner finds that Mr Goldthorpe contravened the following provisions of PECR:
29. Mr Goldthorpe has contravened regulation 21 of PECR.
30. The Commissioner finds that the contravention was as follows:
31. Between 1 April 2017 and 31 July 2017, Mr Goldthorpe's company, AGES, used a public telecommunications service for the purposes of making 334,879 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 PECR. This resulted in 107 complaints being made to the TPS / Commissioner.
32. The Commissioner is also satisfied for the purposes of regulation 21 that these 334,879 unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and they had not given their prior consent to Mr

Goldthorpe to receive calls.

33. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

**Seriousness of the contravention**

34. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulation 21 by Mr Goldthorpe arising from his company's activities over a 4 month period, and this led to a significant number of unsolicited direct marketing calls being made to subscribers who were registered with the TPS, and a substantial number of complaints being made as a result.
35. AGES confirmed that it had made 414,482 marketing calls between 1 April 2017 and 31 July 2017, and that these calls were not screened against the TPS register, nor were there sufficient contractual terms in place to ensure the data's veracity upon purchase. Subsequent enquiries with TPS revealed that of the 414,482 connected calls made, 334,879 were made to subscribers who had previously registered with TPS so as to not receive such calls.
36. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

**Deliberate or negligent contraventions**

37. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Mr Goldthorpe's actions which constituted that contravention were

deliberate actions (even if Mr Goldthorpe did not actually intend thereby to contravene PECR).

38. The Commissioner considers that in this case Mr Goldthorpe did not deliberately contravene regulation 21 of PECR in that sense.
39. The Commissioner has gone on to consider whether the contravention identified above was negligent.
40. First, she has considered whether Mr Goldthorpe 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 Mr Goldthorpe's company 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.
41. 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.
42. The TPS contacted Mr Goldthorpe on each occasion a complaint was made to it which should have made Mr Goldthorpe aware of the risk that these contraventions would occur. It is therefore reasonable to suppose that Mr Goldthorpe should have been aware of his responsibilities in this area.

43. Finally, the Commissioner has gone on to consider whether Mr Goldthorpe failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
44. Reasonable steps in these circumstances would have included ensuring that Mr Goldthorpe could evidence consents relied upon to make marketing calls; having in place a contractual arrangement with his 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 he had in place an effective and robust suppression list rather than merely conducting manual checks on the data.
45. The Commissioner is therefore satisfied that Mr Goldthorpe failed to take reasonable steps to prevent the contravention.
46. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

47. 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 (3A) and the procedural rights under section 55B have been complied with.
48. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking. In reaching her final view, the Commissioner has taken into account the representations made by the Company on this matter.

49. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
50. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
51. 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.
52. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

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

53. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£150,000 (one hundred and fifty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

### **Conclusion**

54. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **16 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.

55. If the Commissioner receives full payment of the monetary penalty by **15 May 2018** the Commissioner will reduce the monetary penalty by 20% to **£120,000 (one hundred and twenty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
56. 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.
57. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
58. Information about appeals is set out in Annex 1.
59. 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.

60. 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 16<sup>th</sup> 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)).