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Information Commissioner's Office

ICO FINE AMBER UPVC £50,000

Monetary Penalty Notice

(with key areas highlighted for easy reading)

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**THE PRIVACY AND ELECTRONIC COMMUNICATIONS (EC DIRECTIVE)
REGULATIONS 2003 AS AMENDED**

MONETARY PENALTY NOTICE

DATED: 1 APRIL 2014

Name: Amber UPVC Fabrications Ltd

Registered Office: 181-183 Summer Road, Erdington, Birmingham, B23 6DX

Statutory framework

1. Amber UPVC Fabrications Ltd, whose registered office is given above (Companies House Registration Number: 03013390) 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 the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 and by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 ("PECR 2011").
2. PECR came into force on 11 December 2003 and revoked the Telecommunications (Data Protection and Privacy) Regulations 1999. PECR adopted Part V entitled, 'Enforcement', and Schedules 6 and 9 of the Data Protection Act 1998 (the "Act"). By virtue of regulation 31(2) PECR the Information Commissioner (the "Commissioner") was made responsible for the enforcement functions under PECR.

3. On 26 May 2011, PECR 2011 amended regulation 31 PECR to adopt sections 55A to E of the Act and introduced appropriate adaptations to those sections.
4. Under sections 55A and 55B of the Act the Commissioner may, in certain circumstances, where there has been a serious contravention of the requirements of PECR, serve a monetary penalty notice on a person requiring the person to pay a monetary penalty of an amount determined by the Commissioner and specified in the notice but not exceeding £500,000.
5. The Commissioner has issued statutory guidance under section 55C (1) of the Act about the issuing of monetary penalties ("Guidance"). The Guidance was approved by the Secretary of State and laid before Parliament. The Guidance was amended to take the changes to PECR into account and was published on 30 January 2012 on the Commissioner's website. It should be read in conjunction with the Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 and the Data Protection (Monetary Penalties) Order 2010.

Power of Commissioner to impose a monetary penalty

6. Section 55A

Section 55A of the Act as adopted by PECR 2011 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,

(b) the contravention was of a kind likely to cause substantial damage or substantial distress, and

(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 –

(i) that there was a risk that the contravention would occur, and

(ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but

(b) failed to take reasonable steps to prevent the contravention.”

Background

7. Amber UPVC Fabrications Ltd, trading as and hereafter referred to as Amber Windows, manufactures, fits, and sells replacement windows, doors, porches, and conservatories throughout the Midlands.
8. OFCOM is the Office of Communications established by section 1 of the Office of Communications Act 2002 to facilitate the regulation of communications. Under regulation 26 PECR, OFCOM 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 OFCOM to carry out this role. Businesses who wish to carry out direct marketing by telephone can subscribe to TPS for a fee and receive from them monthly a list of numbers on that register.
9. Amber Windows' business involves direct marketing to consumers by telephone. It is a fundamental requirement of PECR, and well-known in the direct marketing industry, that a consumer's consent must have been notified to the company before it makes direct marketing telephone calls to that consumer if the consumer is registered with TPS. **Therefore, it is a necessary step for businesses involved in telesales to make arrangements to ensure that they do not make direct marketing calls to those consumers who have subscribed to TPS,** unless the business holds records showing that those consumers have given their informed consent to that business to receive such calls.

10. To that end, it is also a necessary step for a business involved in direct marketing to register with the TPS, to ensure that the business has access to a monthly update of the TPS list which is updated as consumers apply to be registered. Furthermore, the business should hold a 'suppression list' of those consumers who have informed it directly that they do not wish to receive direct marketing calls.

11. The Commissioner first started to receive complaints about unsolicited marketing calls made by Amber Windows in June 2006. On a number of occasions during 2010, and again in March 2011, the Commissioner wrote to Amber Windows requesting that it stop making unsolicited calls to the individuals who had complained to his office. He also requested confirmation that measures had been put in place to prevent future breaches of PECR. In April 2011 Amber Windows confirmed that it had taken action to prevent further calls being made to the individuals who had complained to the Commissioner and had taken steps to ensure that all of the telephone lines it used were now covered by TPS.

12. Despite these assurances the Commissioner and TPS continued to receive complaints about Amber Windows.

13. On 28 July 2012 the Commissioner again wrote to Amber Windows explaining that the amendments to the Regulations contained in PECR 2011 enabled him to issue civil monetary penalties up to £500,000. The letter also stated that Amber Windows was the subject of a number of complaints to TPS and asked the following questions:
 - What is the source of their marketing information?
 - If information is obtained directly from customers, how do you ensure that they have consented to receiving marketing calls?

- If information is obtained from third parties what checks are carried out to confirm 'third parts opt ins'?
- Is the information screened against the TPS register?
- Do they operate an internal suppression list?
- What is the process that they have in place to run any marketing lists against the TPS register and any in-house suppression list?
- Could they offer any explanation of the number of complaints made to the TPS?

The letter gave Amber Windows the opportunity to provide information to assist the Commissioner in his decision as to what action to take and required a response within 21 days.

14. No response was received to this letter, nor to further letters sent on 6 December 2012 to both Amber Windows' registered office address and trading address.
15. On 27 March 2013 the Commissioner again wrote to Amber Windows at both its registered office address and trading address. In this letter the Commissioner advised Amber Windows that he was now contemplating whether to take formal enforcement action against Amber Windows in relation to its breaches of regulation 21 PECR. The Commissioner asked Amber Windows to provide a response to the questions asked in his previous correspondence.
16. On 11 April 2013 Amber Windows responded to the Commissioner. It explained as follows:

- It had taken a decision to install Opal TPS on all of its telephone lines.
 - The majority of emails from TPS had been going to spam mail. Changes had been made to prevent this.
 - Sales branches were advised that if a complaint was received the number should be removed from their marketing lists.
17. Amber Windows provided no further explanation for the breaches nor responded to the specific questions that the Commissioner had asked.
18. Again, despite the assurances given, the Commissioner and TPS continued to receive complaints about Amber Windows.
19. Between 26 May 2011 and 30 April 2013, ("period of complaint") the TPS received 513 (five hundred and thirteen) complaints from individuals registered with them who had received unsolicited direct marketing calls from Amber Windows. The TPS referred all those complaints to Amber Windows and also notified the Commissioner.
20. Attached at Annex 1 is a spread sheet detailing the 513 complaints made by individual subscribers to the TPS. This list includes the subscribers' name and telephone number together with the date and time of the call (under the headings, 'complaint date' and 'complaint time') and the date that the complaint was processed by the TPS. In all cases, by virtue of the fact that the subscribers have placed their number on the TPS "do not call list", the company has breached Regulation 21(1)(b) PECR by calling those numbers.
21. The explanations provided by Amber Windows to the TPS for making these 513 calls is as follows:

- On 377 occasions Amber Windows failed to respond to the TPS.
- On 67 occasions Amber Windows said it was a “programming error”.
- On 37 occasions Amber Windows said “we use Telephone Europe Ltd for outbound calling”.
- On 24 occasions Amber Windows said it was “human error”.
- On 3 occasions no reason was given.
- On 3 occasions Amber Windows claimed that “there is no record of the call being made by us”.
- On 1 occasion Amber Windows claimed “we had prior consent to call this number”.
- On 1 occasion Amber Windows stated that “they need more information”.

22. Also during the period of complaint, the Commissioner received 21 complaints from individuals who had received unsolicited direct marketing calls from Amber Windows. A schedule of those complaints is at Annex 2. All of these complaints were made by individual subscribers who were registered with the TPS. Of the 21 complaints received by the Commissioner, 10 were also duplicated in the list of 513 complaints referred to the TPS.

23. The following are examples of complaints received by the Commissioner among the 21 referred to in paragraph 22 above:

- 11 of the complainants describe the calls as “repeat”, stating that they have previously asked Amber Windows not to call them again.

- One complainant states that Amber Windows told him it was a waste of time being TPS registered and it was his own fault for being in the telephone book.
- One complainant claims to have received at least 2 calls a year for the past 3 years from Amber Windows and each time had asked not to be called again.
- One complainant states that when he put the receiver down he overheard staff at Amber Windows discussing him in a derogatory manner; when the caller realised the call had not been disconnected, he swore at the complainant before ending the call.
- One complainant states that the caller laughed when asked to stop calling.
- One complainant states that the caller laughed when told that the matter had been reported to the police.
- One complainant states that they felt tricked into discussing buying windows.
- One complainant states that Amber Windows informed him that they had spoken previously which the complainant denies.

24. The total number of complaints about Amber Windows made by individual subscribers to both TPS and the Commissioner during the period of complaint is 513 plus 11 (21 minus the 10 duplicate complaints referred to in paragraph 22 above) which makes a total of 524.

25. Despite the assurances given by Amber Windows in its letter dated 11 April 2013 the Commissioner and TPS continued to receive complaints about Amber Windows.

26. Between April 2013 and August 2013 there have been a further 123 complaints made to the TPS about Amber Windows. In addition the Commissioner has received a further 20 complaints.

Grounds on which the Commissioner proposes to serve a monetary penalty notice

Breaches of Regulation 21

27. The relevant provision of PECR is Regulation 21 paragraph (1) (a) and (b) which provides that,

"..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."

Regulation 21 paragraphs (2), (3), (4) and (5) provide :-

- "(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.”

Definitions

28. The term “person” applies to limited companies as well as individuals. It is defined in Schedule 1 of the Interpretation Act 1978 as follows:
“ ‘Person’ includes a body of persons corporate or unincorporate”.
29. The following are defined in Regulation 2 (1) of PECR :
- a. The term “public electronic communications service” is defined as having the meaning given in section 151 of the Communications Act 2003 which states that it means any electronic communications

service that is provided so as to be available for use by members of the public.

- b. The term, "individual" is defined as, "a living individual and includes an unincorporated body of such individuals;"
 - c. The term, "subscriber" is defined as, "a person who is a party to a contract with a provider of public electronic communications services for the supply of such services;"
 - d. The term "call" is defined as "a connection established by means of a telephone service available to the public allowing a two-way communication in real time;"
 - e. The term, "direct marketing" is defined in the Act at section 11 as "the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals."
30. 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 TPS, then that individual must have given their consent to that company to receive such calls.

The contraventions

31. The Commissioner is satisfied that on various dates during the period of complaint, Amber Windows used, or instigated the use of a public telecommunications service for the purposes of making 524 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 OFCOM in accordance with regulation 26, contrary to regulation 21(1)(b) PECR.

32. The Commissioner is also satisfied for the purposes of regulation 21 that the 524 complaints were made by subscribers who had registered with TPS at least 28 days prior to receiving the calls and they had not given their prior consent to Amber Windows to receive calls.
33. Therefore the Commissioner is satisfied that Amber Windows has acted in breach of regulation 21.

Serious (S55A (1) (a))

34. The Commissioner is satisfied that these contraventions of PECR have been serious as required by Section 55A(1)(a) because there have been multiple breaches of Regulation 21 by Amber Windows arising from its activities over a long period of time and these led to a large number of complaints about unsolicited direct marketing calls to TPS. In addition, it is reasonable to suspect that considerably more calls were made by Amber Windows because those who went to the trouble to complain are likely to represent only a proportion of those who actually received calls.
35. These complaints were from individuals who were registered on the TPS 'do not call' list, but had not given their consent to Amber Windows to receive calls. Each of the 513 complaints was sent by TPS to Amber Windows inviting a response, but Amber Windows' responses were

inadequate. The Commissioner also received 21 complaints from individual subscribers registered with the TPS.

36. Amber Windows were in the monthly top 20 list of companies about which the TPS received the most complaints on 5 occasions in 2012, and on 3 occasions in the first four months of 2013.
37. In determining whether the contravention was serious consideration has to be given to the Commissioner's Guidance. The guidance gives an example of a serious contravention on page 13 as follows:

"Making a large number of automated marketing calls based on recorded messages or sending large numbers of marketing text messages to individuals who have not consented to receive them, particularly if distress and anxiety is caused to the recipients."

This is a case which is comparable to that example.

38. Therefore the Commissioner is satisfied that the case meets the 'seriousness threshold' because of the nature, duration and extent of the breach.

Likely to cause substantial damage or substantial distress (S55A (1) (b))

39. The Commissioner is satisfied that the contravention is of a kind likely to cause substantial damage or substantial distress as required by section 55

(1)(b) because of the large numbers of individuals who complained about these unsolicited calls and the nature of some of the complaints they gave rise to.

40. Although the distress in every individual complainant's case may not always have been substantial, the cumulative amount of distress suffered by the large numbers of individuals affected, coupled with the distress suffered by some individuals, some receiving multiple calls means that overall the level was substantial.
41. When looking at the meaning of "substantial" in terms of the levels of distress, the Commissioner has had regard to section 2, page 14 of his Guidance. This says that the Commissioner considers that "if damage or distress that is less than considerable in each individual case is suffered by a large number of individuals the totality of the damage or distress can nevertheless be substantial".
42. The Commissioner is satisfied that the above evidence shows not only that the unsolicited marketing calls are of a kind "likely to cause substantial distress" as required by section 55, but that in fact they have, in the case of some particular individual complainants, actually done so.

Deliberate

43. Amber Windows acted deliberately in using or instigating the use of a public telecommunications system for the purposes of making unsolicited calls for direct marketing purposes. There is evidence from the correspondence received by the Commissioner from Amber Windows that it knew what action to take to prevent the breaches from occurring but failed to take such action during the period of complaint. Amber Windows

claimed to be putting in place procedures to ensure compliance with PECR but failed to do so.

Knew or ought to have known that there was a risk that the contravention would occur and that it would be of a kind likely to cause substantial damage or distress (S55A (3)(a)(i) and (ii)).

44. The following facts are indicative of the fact that Amber Windows knew or ought to have known there was a risk of contravention and that it would be of a kind likely to cause substantial damage or distress.
- Due to the nature of the business of Amber Windows and the fact that it relied heavily on direct marketing, and the fact that the issue of unsolicited calls was widely publicised by the press as being a problem, it is reasonable to suppose that they should have been aware of their responsibilities in this area and aware that there was a high risk of contravention.
 - Amber Windows has been aware of its obligations under PECR since at least 21 March 2011 when the Commissioner first raised his concerns with it.
 - The volume of complaints received from TPS should have made Amber Windows aware of the risk of a contravention and that such a contravention would be of a kind likely to cause substantial distress. The TPS contacted Amber Windows 513 times regarding complaints.
 - Complaints continued to be received by TPS and the Commissioner even after the Commissioner's letters and Amber Windows' assurances.
 - Complainants asked Amber Windows to stop calling them but despite this Amber Windows continued to do so.

- Amber Windows admitted internal problems and failed to screen calls effectively against a current TPS list.

45. The volume and nature of the complaints received from TPS regarding the marketing calls should have indicated to Amber Windows that they were continually breaching the regulations.
46. The fact that Amber Windows knew that people were complaining about calls they were receiving and that the recipients of those calls had not therefore agreed to receive them shows that Amber Windows knew of the risk of contraventions. Amber Windows therefore ought to have known that it was only a matter of time before substantial distress to recipients of the calls was likely to be caused.
47. The Commissioner is therefore satisfied that section 55A(3) of the Act applies in that during the period of complaint Amber Windows knew or ought to have known that there was a risk that the contravention would occur, and that such a contravention would be of a kind likely to cause substantial damage or substantial distress.

Failed to take reasonable steps to prevent the contravention (S55A (3) (b))

48. Amber Windows' business is reliant upon direct marketing to consumers. It is a fundamental requirement of PECR that TPS registered numbers have to be suppressed and that consent is required from consumers who are TPS registered before marketing calls can be made to them.
49. Amber Windows has provided no evidence of any formal policies and

procedures in place for the staff to follow to ensure they know how to comply with PECR. Amber Windows should have been able to demonstrate that they had effective systems in place to prevent the breaches of PECR.

Aggravating features the Commissioner has taken into account in determining the amount of a monetary penalty

50. Nature of the contravention:

- Some of the complainants said that despite informing the caller that they did not want to receive calls they nevertheless did continue to receive them.
- There has been an on-going contravention of regulation 21 PECR since 2006.
- There is no sign that any of the controls said to have been implemented in 2011 have worked.

51. Effect of the contravention:

- There were large numbers of people affected by the calls.

52. Behavioural issues by Amber Windows:

- Amber Windows only engaged with the Commissioner in a limited way in its responses to the Commissioner's letters.
- Of the 513 occasions it was contacted by the TPS, Amber Windows failed to even respond on 377 occasions.

- Amber Windows exhibited a complete disregard for PECR by failing to change its business practices and to use the TPS list effectively despite a large number of complaints made to it via TPS.
- No reasonable steps were taken during the period of complaint to ensure the business was complying with PECR and there was no evidence given to the Commissioner of any policies or procedures for Amber Window's staff to follow or evidence of checks made on any bought-in lists of data.

53. Impact on Amber Windows:

- Amber Windows is a private organisation within a competitive direct marketing industry where continuous breaches of PECR could create an unfair advantage.

Mitigating features the Commissioner has taken into account in determining the amount of the monetary penalty

54. Nature of the contravention:

- Amber Windows may have believed that the telephone numbers the company was purchasing had been screened by the seller of the data and therefore that the telephone numbers belonged to people who had consented to receive the calls.

55. Behavioural issues:

- There is no evidence that the calls made are of an aggressive nature.

56. Impact on Amber Windows:

- Amber Windows has sufficient financial resources to pay the penalty proposed without undue financial hardship.
- There is a potential for damage to reputation of Amber Windows which may affect future business.

Other considerations

57. The Commissioner's underlying objective in imposing a monetary penalty is to promote compliance with the 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 the calls.

Notice of Intent

58. A notice of intent was served on Amber Windows on 14 October 2013. The Commissioner received written representations from Amber Windows in a letter dated 4 November 2013 in response to the notice of intent.

59. The Commissioner has considered the written representations made by Amber Windows when deciding whether to serve this monetary penalty notice. In particular, the Commissioner has taken the following steps:
- reconsidered the amount of the monetary penalty generally, and whether it is a reasonable and proportionate means of achieving the objective which the Commissioner seeks to achieve by this imposition;
 - ensured that the monetary penalty is within the prescribed limit of £500,000; and
 - ensured that the Commissioner is not, by imposing a monetary penalty, acting inconsistently with any of his statutory or public law duties and that a monetary penalty notice will not impose undue financial hardship on an otherwise responsible data controller.

Amount of the monetary penalty

60. The Commissioner considers that the contravention of the PECR is serious and that the imposition of a monetary penalty is appropriate. Further that a monetary penalty in the sum of £50,000 (fifty thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Payment

61. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 2 May 2014 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.

Early payment discount

62. If the Commissioner receives full payment of the monetary penalty by 1 May 2014 the Commissioner will reduce the monetary penalty by 20% to £40,000 (forty thousand pounds).

Right of Appeal

63. 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.

Any Notice of Appeal should be served on the Tribunal by 5pm on 1 May 2014 at the latest. If the notice of appeal is served late the Tribunal will not accept it unless the Tribunal has extended the time for complying with this rule.

Information about appeals is set out in the attached Annex 3.

Enforcement

64. The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified in 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 the data controller to appeal against the monetary penalty and any variation of it has expired.

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 or any sheriffdom in Scotland.

Dated 1 April 2014

Signed:

David Smith

Deputy Information Commissioner

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

ANNEX 1 – SCHEDULE OF COMPLAINTS MADE TO THE TPS

ANNEX 2 – SCHEDULE OF COMPLAINTS MADE TO THE ICO

ANNEX 3 - RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 55B (5) of the Data Protection Act 1998 which was adopted by Regulation 31 PECR 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 issue of the notice and the amount of the penalty specified in 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
First Tier Tribunal (Information Rights)
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

 - a) The notice of appeal should be served on the Tribunal by 5pm on 2 May 2014 at the latest.
 - 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;
 - 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 (Information Rights) 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)). Also Article 7 of the Data Protection (Monetary Penalties) Order 2010 (SI 2010/910), s.49 of, and Schedule 6 to, the Data Protection Act 1998 have effect in relation to appeals for PECR as they have effect in relation to appeals under the DPA, s.48(1).