

**The Privacy and Electronic Communications (EC Directive) Regulations
2003 as amended**

Monetary Penalty Notice

Dated: 2 December 2014

Name: Parklife Manchester Ltd

Registered Office: c/o Ground Control Productions Ltd, 3rd Floor,
North Square, 11-13 Spear Street, Manchester, M1
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Statutory framework

1. This monetary penalty notice is issued by virtue of Regulation 23 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. Parklife Manchester Ltd whose registered office is given above (Companies House Registration Number: 8599387) is the person stated in this Notice of Intent to have transmitted or instigated the transmission of unsolicited communications for the purposes of direct marketing by means of electronic mail contrary to Regulation 23(a) of PECR.

3. 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) of PECR the Information Commissioner (the "Commissioner") was made responsible for the enforcement functions under PECR.
4. On 26 May 2011, PECR 2011 amended Regulation 31 of PECR to adopt sections 55A to E of the Act and introduced appropriate adaptations to those sections.
5. 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.
6. 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

7. 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

8. The Parklife Weekender is an annual music festival held in Manchester. It is run by Parklife Manchester Ltd (“Parklife”). The 2014 festival was held on 7 and 8 June.
9. On 13 May 2014 Parklife arranged for a marketing text message to be sent to approximately 70,000 individuals who had booked tickets for the 2014 event. The message read as follows:

“Some of the Parklife after parties have already sold out. If your going, make sure your home for breakfast! xxx www.afterlifemcr.com”.

10. The text message appeared on the recipients' mobile phones as having been sent by "Mum".
11. Mobile phone users can report the receipt of unsolicited marketing communications to the Commissioner through an online reporting tool on his website. The Commissioner received eight complaints from individuals who had received the text message from Parklife. The following are examples of the comments made by some of the complainants:

"My Mum suffered a major stroke 3 years ago that she did not recover from. She is now in a care home and unable to move any parts of her body. Seeing a message from what was titled Mum shocked me and messed with my head as I have not received anything like this for over 3 years."

"My husband also received the text and it caused confusion as to why his mother would text this to him. I then had the same text which brought me distress as I couldn't understand why it would say my mum had texted me when she died 5 years ago. I also spoke to my friend this morning and she is angry as she received the same text which was very distressing for her also as her mum is no longer with us. This shouldn't be allowed."

"Very upset and annoyed that they could send such an text pretending to be my mum who passed away over 5 years ago. And how the organisation owner has responded on twitter saying #loveitorhateit very disrepectful."

"I lost my mother 3 years ago and to suddenly get a message from "Mum" brought me much distress. I was confused, shocked and devastated all at once only to realise it was a stupid marketing technique employed by Parklife. I had an emotional night after the text revoked the pain of my mum's death and making me believe for a split second she was still here. Absolutely disgusting marketing and something needs to be done about it."

"I recently lost my mum and seeing a message come up on my screen to say from my mum was very upsetting and confusing. I can see a number of people are not happy either with the text on social media. This situation should have been thought of by their marketing before sending out the text. I never asked them to send me a text regarding this and has caused some unwanted distress."

"I have been very traumatised by the text as the death of my mum was one of the lowest points of my life. To receive a text from her close to the anniversary of her passing was upsetting beyond words. I have sought to be removed from their mailing list and complain directly to them and have received no response. Public response from the organisers of Parklife and Sacha Lord was flippant and unsubstantial. This event continues to make a very difficult time for me even more distressing."

12. Mobile phone users can also report the receipt of unsolicited marketing text messages to the GSMA's Spam Reporting Service by forwarding the message to 7726 (spelling out "SPAM"). 10 complaints were made to the GSMA's Spam Reporting Service about the receipt of the text message from Parklife.

13. In addition, Parklife itself (and its associated companies) received 62 complaints about the text message. The following are examples of some of those complaints:

"I would just like to inform you of how upset I am regarding the recent text message I have received about parklife. The text message came through as it was from my MUM. I find this totally disgusting. I have recently lost my mum and to receive this was heartbreaking. This has been sent out I'm guessing to everyone on the mailing list and I think this is a heartless act. I'm in total shock from getting this message too. I cannot express the anger I have right now towards this."

"My mother recently passed due to terminal cancer, and I still had her number saved in my contacts so to receive a text with no preview was extremely distressing for me and my family, I was at the time on a student placement and broke down in tears. I find it unprofessional and disgusting that your marketing team wouldn't consider this knowing that people like myself have certain circumstances."

"I have just received a text from yourselves titled 'Mum', my mum passed away last year and this has been extremely traumatising and has caused me a massive deal of emotional stress. I gave out my mobile number to receive information about parklife not to be sent texts like this. Not only is it completely unacceptable and unprofessional from such a big organisation, it has upset me greatly as I'm sure you can appreciate when I looked at my phone with the name 'mum'."

"My friend ██████ lost her mum last year, it is coming up to a year anniversary since her mothers death and I think this text is completely

unacceptable, unthoughtful and disrespectful. I understand the general gist of the idea and agree it is very clever but can you imagine the amount of emotions my friend experienced to receive a text message to her phone from a contact "Mum." As you can imagine; as anyone would be; she was distraught. My friend is a very placid person and refused to put in a complaint as she said she was "too upset" and did not want "any trouble".

"I lost my mum very recently to cancer so you can imagine the shock I had when I had 'Mum' flash up as a notification on my mobile screen. Please have a long, hard think before you do this again as this really upset me as I'm sure it did with many other people in similar circumstances as mine. I feel so strongly about this that I am selling my tickets and refuse to attend the festival."

"I was one of the unfortunate people who got sent this message where my mum is no longer alive and it is something that I still struggle to comprehend to this day. Upon receiving this text I checked my phone again and again to see if I had a contact for my mum, thinking that I may still have her contact and that someone else was using the number now. The way in which I lost my mum meant I never got to have closure and without wanting to go into detail this text did leave me feeling very hurt, saddened and actually depressed for a few days."

"I find this EXTREMELY distressing as my mum passed away in December 2013. Less than 5 months ago. I understand this text could be amusing for some people. But it was extremely upsetting for me, my heart has never sunk more. To think my mum was asking me to be home for breakfast was sickening."

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

Regulation 23 of PECR

14. Regulation 23 of the Regulations states –

“A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail –

(a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed; ...”

Definitions

15. 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”.

16. The following are defined in Regulation 2(1) of PECR :

(a) The term “communication” means any information exchanged or conveyed between a finite number of parties by means of a public electronic communications service, but does not include information conveyed as part of a programme service, except to the extent that such information can be related to the identifiable subscriber or user receiving the information;

- (b) The term "electronic mail" means any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service;
- (c) The term, "direct marketing" is defined in the Data Protection Act at section 11 as "the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals."

The contravention

- 17. The Commissioner is satisfied that on 13 May 2014 Parklife sent or instigated the sending of approximately 70,000 unsolicited marketing texts having disguised or concealed the identity of the person on whose behalf the messages were sent.
- 18. The Commissioner is therefore satisfied that Parklife has contravened Regulation 23(a) of PECR.

Serious (S55A (1)(a))

- 19. The Commissioner is satisfied that these contraventions of Regulation 23(a) of PECR are serious as required by Section 55A(1)(a) because of the number of text messages sent and the substantial distress caused to many of the recipients, as evidenced at paragraphs 11 and 13 above.
- 20. Therefore the Commissioner is satisfied that the case meets the seriousness threshold.

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

21. The Commissioner is satisfied that the contravention is of a kind likely to cause substantial distress as required by section 55A(1)(b) because the sender of the message had been disguised to make it appear that the message had been sent by the recipient's mother.
22. It is reasonably foreseeable that a significant number of the recipients of the text message may have recently lost their mothers or have mothers who are seriously ill. Furthermore, receiving a text message that purported to come from "Mum", particularly when it was preceded by kisses, would be likely to cause those individuals substantial distress.
23. The Commissioner is therefore satisfied that the text messages were of a kind likely to cause substantial distress. In addition the Commissioner is satisfied from the evidence referred to at paragraphs 11 and 13 of this Notice that the text messages did in fact cause substantial distress.

Deliberate

24. 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 organisations must not disguise or conceal their identity in any marketing texts or emails.

25. Whilst Parklife may not have deliberately set out to cause distress, it did deliberately disguise or conceal the identity of the person on whose behalf the messages were sent.
26. Therefore the Commissioner is satisfied that the contravention of regulation 23(a) of PECR was deliberate.

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

27. Nature of the contravention:

- Approximately 70,000 text messages were sent as part of the campaign.
- The text messages were sent without the prior consent of the recipients which is in itself a contravention of regulation 22(2) of PECR.
- Parklife contravened regulation 22(3)(b) of PECR by failing to provide recipients with a valid address within the text message to opt-out of further marketing.
- The recipients were primarily young people and potentially more vulnerable.

28. Effect of the contravention:

- 76 people complained about having received the text message.
- Many of the complainants suffered substantial distress as a result of the contravention.

29. Behavioural issues:

- Parklife did not initially take the complaints made seriously, sending the following tweet: "So this is what it feels like to be a jar of Marmite #LoveItOrHateIt".

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

30. Nature of the contravention:

- The contravention was a one off rather than part of a series of similar contraventions.

31. Behavioural issues:

- Parklife subsequently issued a public statement apologising for any distress caused.
- Parklife cooperated fully with the Commissioner's investigation.

32. Impact on Parklife:

- There is a potential for damage to reputation of Parklife which may affect future business.

Other considerations

33. The Commissioner's underlying objective in imposing a monetary penalty is to promote compliance with the PECR. The sending or instigating the sending of unsolicited direct marketing texts 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 marketing text messages in compliance with the PECR.

Notice of Intent

34. A notice of intent was served on Parklife dated 10 October 2014. The Commissioner received written representations from Parklife in response to the notice of intent on 10 November 2014. The Commissioner has considered the written representations made by Parklife when deciding whether to serve a 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 person.

Amount of the monetary penalty

35. 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 **£70,000 (seventy thousand**

pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Payment

36. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 6 January 2015 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

37. If the Commissioner receives full payment of the monetary penalty by 5 January 2015 the Commissioner will reduce the monetary penalty by 20% to **£56,000 (fifty six thousand pounds)**. However, you should be aware that you will not be entitled to the early payment discount if you decide to exercise your right of appeal.

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 served on the Tribunal within 28 days of the date on which this monetary penalty notice was sent. 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.
40. Information about appeals is set out in Annex 1.

Enforcement

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 2nd December 2014

Signed:

David Smith
Deputy Information Commissioner
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 55B (5) provides that a person on whom a monetary penalty notice (MPN) is served may appeal to the Tribunal against a) the issue of the MPN and b) the amount of the penalty specified in the MPN.
2. 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) General Regulatory Chamber (the "Tribunal") against the notice.
3. 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.
4. 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 served on the Tribunal within 28 days of the date on which this monetary penalty notice was sent.

- 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.
5. 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.
6. 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.
7. 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)). 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).