

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Easyleads Limited

Of: 83 Birchfield Road, Coventry, England CV6 2BB

1. The Information Commissioner ("Commissioner") has decided to issue Easyleads Limited with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulation 19 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. Easyleads Limited, whose registered office is given above (companies house registration number: 09811848), is the organisation (person) stated in this notice to have used an automated calling system for the purpose of making recorded direct marketing calls contrary to regulations 19 and 24 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. Regulation 24 of PECR provides:

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

(a) in relation to a communication to which regulations 19 (automated calling systems) and 20 (facsimile machines) apply, the particulars mentioned in paragraph (2)(a) and (b);

(2) The particulars referred to in paragraph (1) are –

(a) the name of the person;

(b) either the address of the person or a telephone number on which he can be reached free of charge.”

6. Section 55A of the DPA (as amended by the Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2011 and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015) states:

“(1) The Commissioner may serve a person with a monetary penalty 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.”

7. 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.

8. 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. PECR was amended for the purpose of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches PECR so as to give effect to the Directives.

Background to the case

9. On 31 October 2016 the Commissioner served a third party information notice on DXI in relation to automated calls made via the DXI voice broadcasting platform.
10. DXI responded to the notice on 5 December 2016. They provided a spreadsheet containing a list of automated calling campaigns carried out by their customers, which showed that, between 22 October 2015 and 27 July 2016, Easyleads Limited made a total of 16,151,223 calls.
11. On 13 January 2017 the Commissioner wrote to Easyleads Limited to request specific information in relation to the calls that had been made. A chaser letter was sent on 6 February 2017.
12. Easyleads Limited's subsequent responses did not address the substantive request for specific information.
13. On 16 February 2017 the Commissioner served a third party information notice on Autom8 Limited.
14. Autom8 Limited confirmed that between 23 January 2017 and 13 March 2017 a total of 83,252 connected calls had been made by Easyleads Limited.

15. A further third party information notice was served on Autom8 Limited on 3 May 2017 requesting additional information in respect of Easyleads Limited.

16. Autom8 Limited confirmed that between the period of 13 March 2017 and 9 June 2017, Easyleads Limited had made a further 495,865 connected calls.

17. The automated calls contained recorded messages from Easyleads Limited which contained the following wording, or minor variations of the same:

"Hi. If your boiler is oil or LPG you may be entitled to a grant to replace it totally free of charge. Does anyone in your property receive benefits or tax credits? If they do, press 5 for more information or 9 to opt out."

18. A search of the complaints submitted via the ICO online reporting tool showed that, between 22 October 2015 and 30 June 2017, the Commissioner received a total of 551 complaints about automated calls from Easyleads Limited.

19. Many of the complainants reported that they had received multiple calls and that they appeared to be unable to opt-out of the calls. Others expressed further distress as they had been awaiting urgent calls, only to receive an automated message about replacement boilers.

20. Some of the complaints were as follows:

"This is a repeated caller, the press 9 to opt out as stated in the message seems to increase the number of calls not stop them. The repeated calls wastes time and is like harassment!!!!"

"I am a pensioner and ex-directory so it was disturbing to get this unsolicited call. They have also phoned before. I have no way of stopping these calls."

"I have lots of these automated messages from this company about installing a boiler. I have told them twice to remove me from the list but still they ring me. I told them last time they were harassing me. This time they were very elusive about giving me their company details and hung up on me."

"I am waiting for a call about my mother's imminent surgery. Rushing to answer the phone to these jokers made me even more anxious. They need to be stopped"

"These calls heighten my already high levels of anxiety for which I am under medical supervision."

"I suffer from high blood pressure and do not need this stress. Why are they allowed to ignore the TPS?"

"I have only lived here three months - where did they get my number from?? Also I have depression, and PTSD, I don't like phone calls I am not expecting"

21. There were further complaints regarding calls being made late at night, and in the early hours of the morning, with particular frequency over the May 2017 bank holiday weekend.
22. Easyleads Limited has been unable to provide evidence that it had the consent of the individuals to whom it had instigated the transmission of the automated direct marketing calls.
23. The Commissioner has made the above findings of fact on the balance of probabilities.
24. The Commissioner has considered whether those facts constitute a contravention of regulation 19 of PECR by Easyleads Limited and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

25. The Commissioner finds that Easyleads Limited contravened regulation 19(1) and (2) of PECR.
26. The Commissioner finds that the contravention was as follows:
27. Between 22 October 2015 and 30 June 2017 Easyleads Limited instigated the transmission of 16,730,340 automated marketing calls to subscribers without their prior consent, resulting in 551 complaints.
28. Automated marketing calls can only be made to people who have previously notified the caller that they consent to such communications being sent by, or at the instigation of, the caller. Consent must be freely given, specific and informed, and involve a positive indication signifying the individual's agreement.
29. In this case the Commissioner is satisfied that Easyleads Limited did not have the consent of the individuals to whom it had instigated the transmission of 16,730,340 automated direct marketing calls.
30. The Commissioner is satisfied that Easyleads Limited was responsible for this contravention.
31. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

Seriousness of the contravention

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

33. This is because Easyleads Limited instigated the making of over 16 million automated marketing calls to subscribers without their prior consent. This resulted in 551 complaints being made to the Commissioner.
34. The wording of some of the automated calls was misleading in that it referred to a "government scheme" and the offer of a "free boiler".
35. Furthermore, whilst the automated calls offered an "opt out" option by pressing 9, there is evidence to suggest that repeat calls were made to the subscriber regardless of this.
36. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or foreseeable contravention

37. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Easyleads Limited's actions which constituted that contravention were deliberate actions (even if Easyleads Limited did not actually intend thereby to contravene PECR).
38. The Commissioner considers that in this case Easyleads Limited did deliberately contravene regulation 19 of PECR in that sense.
39. The director of Easyleads Limited had previously been a director of two lead generation companies: Lead Supplier UK Limited, and Leads 4 U Limited. It would be reasonable for him to be aware of the rules relating to automated calls, the ICO's guidance on direct marketing and the enforcement action taken by the Commissioner against

organisations who have made automated calls in contravention of PECR.

40. 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.
41. Lead Supplier UK Limited had previously been investigated by the Commissioner (between August 2014 and March 2015), at which time the director was provided with guidance - detailed above - in relation to company obligations in respect of PECR, and given a warning in respect of potential monetary penalties for companies in violation of the requirements.
42. Despite this, seven months later Easyleads Limited was incorporated and the director embarked on a similar marketing campaign.
43. Whilst Easyleads Limited may not have deliberately set out to cause distress, it did deliberately send or instigate automated marketing calls on a massive scale to subscribers.
44. Easyleads Limited failed to ensure that they had the necessary consent to make the calls.
45. Furthermore, they failed to include the company name, address and telephone number in their automated messages pursuant to the requirements of Regulation 24.

46. Easyleads Limited also failed to ensure an effective suppression system was in place to prevent repeat calls to those who had opted out.
47. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

48. 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.
49. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary thinking. The Commissioner notes that no representations have been made by Easyleads Limited in response to the Notice of Intent.
50. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
51. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty.
52. 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.

53. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

54. The Commissioner has also taken into account the following **aggravating features** of this case:

- The ICO's direct marketing monthly threat assessments showed that one of the CLI's used by Easyleads Limited was the most complained about number for automated calls for four consecutive months, from March 2017 to June 2017.
- Easyleads Limited have effectively failed to engage with the Commissioner in assisting with her investigations, and have failed to respond to enquiries.
- Within nine days of receiving a letter from the Commissioner in January 2017 to confirm that the company was under investigation, Easyleads Limited embarked on a further marketing campaign and continued to make automated marketing calls until at least 30 June 2017.

55. The Commissioner has also taken into account the fact that Easyleads Limited has contravened regulation 24 of PECR in that it did not identify the person/organisation 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.

56. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£260,000 (two hundred and sixty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

57. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **17 October 2017** 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.
58. If the Commissioner receives full payment of the monetary penalty by **14 October 2017** the Commissioner will reduce the monetary penalty by 20% to **£208,000 (two hundred and eight thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
59. 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.

60. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
61. Information about appeals is set out in Annex 1.
62. 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.
63. 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 14th day of September 2017

Signed ...



Stephen Eckersley
Head of Enforcement
Information Commissioner's Office
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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)).