

## **DATA PROTECTION ACT 1998**

### **SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

#### **MONETARY PENALTY NOTICE**

To: Dr Telemarketing Ltd

Of: Unit 3, Gateway Mews, Ringway, Bounds Green, London, United Kingdom, N11 2UT

1. The Information Commissioner ("the Commissioner") has decided to issue Dr Telemarketing Ltd ("DRT") 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 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

#### **Legal framework**

3. DRT, whose registered office is given above (Companies House Registration Number: 12750317) is the organisation stated in this notice to have instigated the use of 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 notified the company that they do not object to receiving such calls from it.

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 TPS is a limited company which operates the register on the Commissioner’s behalf. 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 122(5) of the DPA18 defines direct marketing as “*the communication (by whatever means) of advertising material or marketing material which is directed to particular individuals*”. This definition also applies for the purposes of PECR (see Regulation 2(2) PECR & Schedule 19 paragraphs 430 & 432(6) DPA18).
9. “Individual” is defined in Regulation 2(1) of PECR as “*a living individual and includes an unincorporated body of such individuals*”.

10. A “subscriber” is defined in Regulation 2(1) of PECR as “a *person who is a party to a contract with a provider of public electronic communications services for the supply of such services*”.

11. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) 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,*

*(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.*

12. 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.

13. PECR were enacted to protect the individual’s fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will

interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.

14. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

### **Background to the case**

15. DRT is a telemarketing company registered at Unit 3, Gateway Mews, Ringway, Bounds Green, London, United Kingdom, N11 2UT. DRT were incorporated on 17 July 2020 and were initially called 'The Telemarketing Company Limited' until 23 December 2020, when it changed its company name to DRT.
16. DRT has had three directors, one of which remains active – Mr Chrys Elias Chrysostomou (appointed on 17 July 2020 and is a person of significant control), Mr Noyan Nihat (appointed on 17 July 2020, resigned on 19 May 2022 and was a person of significant control until 12 December 2022), and Mr Laurence Douglas Adams (appointed on 17 July 2020 and resigned on 17 July 2020).
17. On 16 December 2022, DRT submitted its confirmation statement which listed the shareholders as Ms Tracy Nowell, Mr Wayne Phillips and [REDACTED]
18. Mr Chrysostomou is the director of [REDACTED], a [REDACTED] [REDACTED] a catalogue company registered in England.

19. Mr Nihat was a director of [REDACTED] from 9 April 2020 to 5 May 2023 when he resigned.

20. DRT first came to the Commissioner's attention through his investigation into [REDACTED], which was initiated following an episode of [REDACTED], a consumer rights programme that aired on BBC Wales in February 2021. The programme alleged [REDACTED] were making direct marketing calls on behalf of [REDACTED] ([REDACTED]) to TPS registered individuals. Once the episode had aired, a notice went up on [REDACTED] website which stated:

*"We recently learnt that a telemarketing company used by [REDACTED] had been making sales calls to the numbers of some of our customers, who had registered with the Telephone Preference Service to avoid receiving unsolicited sales calls. Although our enquiries in relation to precisely what happened are still continuing. We [sic] believe that phone numbers called were those customers who had provided their details to us prior to January 2021. As soon as we learnt this had happened we immediately took steps to ensure no further calls were made."*

21. Mr Phillips has had a series of past directorships, including [REDACTED] [REDACTED]. The episode of [REDACTED] indicated that [REDACTED] may be a direct phoenix of [REDACTED], who have also previously been investigated and fined by the Commissioner for contravention of Regulation 21 of PECR.

22. Further, Mr Phillips was disqualified from being a director for six years from 26 March 2019, however, the episode suggested that he was acting as a shadow director of [REDACTED]

23. The Commissioner asked [REDACTED] for more details regarding the incident that led to the notice being published. In their response, [REDACTED] identified the telemarketing company as DRT and that their point of contact was Mr Nihat. [REDACTED] also stated that the relationship between [REDACTED] and DRT began when DRT replaced [REDACTED] as their telemarketer in October 2020.
24. During the Commissioner's investigation into [REDACTED], [REDACTED] provided two contracts between DRT and [REDACTED] - a Marketing Services Agreement ("MSA") and a Data Processing Agreement ("DPA"), both of which were dated 9 November 2021. [REDACTED] is a wholly owned subsidiary of [REDACTED] who is the parent company of [REDACTED]. On 1 September 2021, [REDACTED] transferred part of their business that related to 'reward clubs' to [REDACTED] due to a separate trademark issue.
25. The DPA states that DRT is the processor and [REDACTED] is the controller for the processing of personal data under the agreement.
26. The DPA stated that notices in connection with the agreement should be sent to "... DRT: [REDACTED] are the initials of Mr Phillips and although [REDACTED] is not registered on Companies House, its website [REDACTED] has the same registered office address as [REDACTED] and the same correspondence address that Mr Phillips has previously used on Companies House.
27. However, during the investigation, DRT provided the Commissioner with a copy of the same MSA and DPA but marked as "20092021 Final". In this DPA, Mr Phillips' email address had been replaced with Mr Nihat's email address.

28. On 30 June 2022, the Commissioner sent an initial investigation letter to DRT seeking further information in relation to DRT's compliance with PECR.
29. On 20 July 2022, DRT responded to the Commissioner's letter stating that:
- DRT provides affinity products and direct marketing campaigns to create increased customer experience and ancillary revenue for the business owner.
  - DRT sub-contracts data and campaign management exclusively to [REDACTED].
  - DRT does not use a dialler or obtain calling line identifiers; they are sub-contracted to [REDACTED].
  - DRT provides the products to be used in the campaigns but does not prescribe the campaign order.
  - Scripts are created and managed by [REDACTED].
  - The products supplied are motoring management, gardening discounts, Supercard, top rewards, Perx magazine, puzzle books, colouring books, and cooking tutorials.
  - Campaign data is provided by [REDACTED].
  - Data supplied is opted-in at the point of catalogue order.
  - DRT has a single exclusive relationship with [REDACTED].
  - TPS screening is provided by [REDACTED] before delivery to [REDACTED] and
  - In 2021, there was a possible delay of updating data against TPS lists. This was addressed between December 2021 and January 2022.
30. During the investigation into [REDACTED], the Commissioner was provided with a "Partner Centre Contract" between [REDACTED] and DRT which was dated 18



November 2022. The Partner Centre Contract lists "The Irish Lotter" as one of the clubs which [REDACTED] was to contact as follows:

*"The Irish Lotter, on behalf of Lotto Express: this offers a 16 group share over 4 weeks into the Irish Lottery".*

31. DRT's response on 20 July 2022 did not mention "The Irish Lotter" [sic] club. Neither the MSA nor the DPA between DRT and [REDACTED] covered the Lotto Express calls and DRT had already confirmed to the Commissioner that there was no contract for any calls instigated by [REDACTED]
32. The episode of X-Ray also indicated that the Lotto Express calls were made by [REDACTED]. In addition, at least one of the complaints that were sent to DRT for comment also referenced receiving an unsolicited call about "the Irish Lottery syndicate". The Lotto Express website [REDACTED] reveals that it is a trading name of [REDACTED]
33. [REDACTED] informed the Commissioner that the data used in their call campaigns was usually purchased by DRT. [REDACTED] provided the wording of the opt-in as follows:

*"Just before you go, we work with a lottery client that enables UK based customers to play some of the world's most lucrative lottery games, which generally have better odds of winning at a cheaper price than the UK Lotto and EuroMillions. Would you be happy to receive a quick call to hear a bit more?"*

[REDACTED] explained that only the records that were marked with a positive response of "Yes" were used.

34. In relation to Lotto Express, █████ further stated *"the obligations that we rely on for this source of data are that the records supplied to us are already customers of this client and have not requested to be removed from their marketing list"*.
35. The Commissioner's investigation into █████ revealed that █████ had made calls on behalf of █████, however, they were contracted to do so by DRT pursuant to the Partner Centre Contract.
36. At the same time as providing the Commissioner with the Partner Centre Contract, █████ also provided a copy of a privacy policy for Lotto Express, a script of Lotto Express Calls and an Index Report.
37. The Partner Centre Contract required DRT to create, produce and supply █████ with marketing support materials and █████ to comply with PECR.
38. The Index Report referred to the Lotto Express campaign as follows:
- "Trading names: Lotto Express*  
*Description: Contacting customers of the Lotto Express on behalf of Lotto Express*  
*Aim: To re-activate previously active customers for the Lotto Express client. The promotion offers customers to take part in a syndicate play of The Irish Lottery."*
39. █████'s response suggested that data was obtained from Lotto Express, that this was existing customer data and that any contract for this data would be held by DRT. The nature of the scripts that █████ had provided indicated that these existing customers may have responded to a previous Lotto Express mailshot. Other customers had opted-in to receiving a call regarding Lotto Express during a call they had received

regarding other products such as Supercard or Premier Offers, which are [REDACTED] products.

40. When the Commissioner previously asked [REDACTED] whether Lotto Express TPS screened their data and requested that they provided an explanation on how Lotto Express customers opted-in to receive calls, [REDACTED] responded:

*"Lotto express also collect and store positive opt-ins for the data that they supply, [sic] this data source is compiled of customers who have joined the lotto express previously via physical means such as responding to a mail pack or insert. The positive opt-ins are documented by lotto express and data is also screened against internal suppression lists by both [REDACTED] and Lotto Express before marketing.*

*[...]data is collected from opt-ins obtained via data that is initially generated by written responses, these are either mail packs or inserts. The example of the written response forms can be found in the file labelled "Lotto Campaign Response." This form generates the customer for this client, at which time once the customer calls the client directly to make a further purchase the customer is asked if they wish to be opted in for future calls and time sensitive lotto draws. Only positive responders to this question are then supplied for outbound calling."*

41. The "Lotto Campaign Response" referenced in [REDACTED] response was a free entry form into the Irish Lotto free prize draw entry and a free information pack. The entry form asked individuals to provide information such as their name, address, telephone number (for notification of winnings), mobile number, email and date of birth. Below this is a disclaimer that states:

*"By completing and returning this form, you agree that ██████████ trading as Lotto Express and its group of companies may contact you in future by post, phone and/or email to keep you updated with exciting jackpots, new offers and other promotions, products and services. Please tick here if you do not wish to be contact for this purpose [by post / By email / By telephone / by text message]. ██████████ may also pass your details to its carefully selected partners. Please tick here if you would not like to receive information from our partners which may be of interest."*

42. This opt-in statement relies on inertia to be opted-in and does not satisfy the criteria set out in Regulation 21 of PECR, and so TPS registered numbers should not have been called based on data obtained this way.
43. Whilst ██████ had previously informed the Commissioner that the Lotto Express calls were made using either internal data or data provided by Lotto Express, a breakdown they had provided on 18 August 2022 contradicted this. The data had identified that the single largest source of data is listed as "external Optin", which was said to be data from ██████ and ██████. This constituted 176,474 of the 179,313 calls which equates to 98.4%.
44. In order for the calls to the individuals marked as "External Optin" to be compliant with Regulation 21 of PECR, they must not have been made to individuals whose numbers were registered with the TPS and who had not objected to receiving calls from ██████.
45. The Commissioner found that ██████ relied on 'legitimate interest' as the lawful basis for processing personal data and individuals had to opt-out if they did not wish to receive calls; ██████ obtains opt-in consent via telephone calls but does not identify which third parties may contact

the individual; and [REDACTED] also obtains opt-in consent from the websites of several [REDACTED] catalogues, five of which relied on an opt-out process and one relied on a pre-ticked box that did not mention live call direct marketing. DRT provided the Commissioner with a copy of an order page from a physical [REDACTED] catalogue, which contained no reference to marketing.

46. None of these consent statements can be relied upon as a justification for contacting TPS registered numbers. Therefore, any marketing calls promoting Lotto Express made to TPS registered individuals using data from [REDACTED] and [REDACTED] were made in contravention of Regulation 21 of PECR as the TPS registered individuals had not notified [REDACTED] that they do not for the time being object to their calls.
47. Between 11 February 2021 and 22 March 2022 ("Contravention Period"), the Commissioner received one valid complaint via the ICO's Reporting Tool regarding a Lotto Express call. The complainant stated that they did not get the name of the company that had called and that the caller "*tried to get me to join the Irish Lottery*". This call was listed in the call records provided by [REDACTED]
48. The TPS also received one valid complaint over the contravention period, however, this call is not confirmed in the call records. The complainant said the caller identified themselves as being from the Irish Lottery Syndicate, when in fact this was not true as they were calling on behalf of [REDACTED]. The complaint stated:

*"He had all my personal details which he said he had got from [REDACTED] following my purchase of UV Garden Parasols. He was trying to persuade me to buy cut-price lottery tickets for the Irish Lottery and said I would then receive free tickets if I gave him my credit card details. I said I would not give any card details over the phone as I had*

*no way of checking where he was calling from. I asked him to send me an email so I could carry out due diligence on this offer and the company. He said he could not do that unless I bought the tickets first. I was not prepared to do this and so ended the call."*

49. This reveals that [REDACTED] data was used to make a call promoting [REDACTED]. It also suggests the caller used pressure tactics to try to obtain credit card details, whilst providing as few details as possible about the product or the company and this is supported by the episode of [REDACTED].
50. From the various spreadsheets provided to the Commissioner by a communications service provider ("CSP") regarding the Lotto Express calls, 179,313 were listed as "connected", some of which were dispositioned as "busy" or "not answered" by the call handler, and 175,989 calls were dispositioned as "answered" by the call handler.
51. [REDACTED] also stated that the date of some of the calls as provided by the CSP were inaccurate and so [REDACTED] provided the Commissioner with a "corrected date" column. The Commissioner used the "corrected date" when screening the call records against the TPS register, which identified 80,916 of the calls had been made to individuals registered with the TPS for more than 28 days at the time of the call.
52. The Commissioner has focused his investigation on just the Lotto Express calls made to individuals marked as "*External Optin*". This totalled 173,185 "answered" calls, of which 80,240 were made to numbers that had been on the TPS register for more than 28 days at the time of the call. Therefore, discounting the other data sources, between 11 February 2021 and 24 January 2022, DRT instigated the making of a minimum of 80,240 calls that promoted Lotto Express to TPS registered individuals. The external opt-in data used to make the

calls, which came from [REDACTED] or [REDACTED], did not satisfy the requirements of Regulation 21 of PECR.

53. As part of his investigation into DRT, on 25 July 2022, the Commissioner asked DRT whether they obtain data from a third party other than [REDACTED] which they then provide to [REDACTED] for the purpose of making the calls, and if so, to provide the Commissioner with all contracts and campaigns with these data suppliers.

54. The Commissioner did not receive a response and so on 2 August 2022, a further letter was sent to DRT requesting the same information.

55. On 3 August 2022, DRT responded stating:

*"We do carry out the same campaigns for [REDACTED] and receive a relatively small amount of data from them.*

*All information will have been supplied by [REDACTED] as to the how this data is compiled. DRT supplies the same products described for these campaigns."*

56. DRT's response on 3 August 2022 contradicts their statement on 20 July 2022 that identified [REDACTED] as their only data source. On neither occasion did DRT mention Lotto Express.

57. That same day, the Commissioner asked DRT to provide a copy of any contracts between DRT and [REDACTED], a copy of a physical [REDACTED] catalogue that shows how individuals opt-in to receive marketing calls, and any contracts covering agreements with any data suppliers other than [REDACTED] and [REDACTED]. DRT were asked, in the alternative, to confirm that they only provide data and instigate calls through [REDACTED].

58. On 25 August 2022, DRT responded to the Commissioner providing a spreadsheet of [REDACTED] data sources, a copy of a catalogue order page and [REDACTED] mailing instructions, and stated:

*"There is no formal agreement with [REDACTED] for data. Data is paid on a commission basis based on sales made... Data is supplied on a monthly basis directly from [REDACTED]..."*

*...[DRT] only use data from the sources mentioned and all calls are instigated via [REDACTED] who receive all data directly from source. There are no other data sources or contracts".*

59. Throughout the investigation, DRT's responses were not signed off by a specific individual. Despite being asked to name the correspondent, the responses were signed from "Dr Telemarketing." However, one response was sent as a Microsoft Word file and the metadata of the file showed that it was last modified by [REDACTED]. Mr [REDACTED] has been a director of [REDACTED] since 2 August 2022, and was the point of contact for [REDACTED] during the Commissioner's investigation into that organisation.

60. On 13 September 2022, the Commissioner sent DRT an end of investigation letter which referred to Commissioner's powers that were set out in the initial investigation letter.

61. In order to understand why DRT had contracted [REDACTED] to make the Lotto Express calls, on 20 October 2022, the Commissioner asked DRT:

- Why DRT contracted [REDACTED] to make calls regarding *"The Irish Lottery on behalf of Lotto Express."*
- What was the connection between DRT and Lotto Express.



- Whether DRT contracted ██████ to make these calls of its own volition, or whether DRT itself contracted to make these calls on behalf of a third party and sub-contracted this to ██████
  - Whether DRT was contracted to make the calls and if so, to confirm which organisation instigated the calls and to provide a copy of the contract in place covering this relationship.
  - Whether data provided by ██████████ was used to make calls regarding Lotto Express, or if not, where the data used to make such calls was sourced from.
62. DRT had until 27 October 2022 to respond to the above questions.
63. As no response was received by the above date, on 31 October 2022 the Commissioner sent a chaser letter to DRT. Again, no response was received.
64. On 19 December 2022, the Commissioner gave DRT a final opportunity to respond to the questions regarding Lotto Express calls and informed them that they should provide relevant evidence or information to the Commissioner by 3 January 2023. DRT were also advised that the Commissioner would base the decision on whether to proceed with formal enforcement action on the information available. No further response was received from DRT prior to the conclusion of the investigation.
65. Therefore, on 9 February 2023, the Commissioner made enquiries with Mr ██████, the founder and CEO, of ██████. The Commissioner asked Mr ██████ whether ██████████ had contracted DRT or ██████ to make these calls and requested an explanation.
66. On 15 February 2023, Mr ██████ responded to the Commissioner attaching a letter dated 16 February 2023 which explained that ██████

data was used by [REDACTED] to make calls regarding Lotto Express although these calls ceased in October 2021. Mr [REDACTED] further explained:

*"The Lotto product was not sold to [REDACTED]'s customers by way of cold calling. Details relating to the Lotto product offering were contained in some of [REDACTED]'s catalogues during the relevant period and customers who wished to participate in the offer had to provide their phone number so that they could then be called to enter into the lotto product offering."*

67. On 1 March 2023, the Commissioner put his findings to [REDACTED] namely that:
- He has had sight of calls made during the Contravention Period, which goes beyond the timeframe specified by Mr [REDACTED] (October 2021).
  - Lotto Express appears to be a trading name of [REDACTED], which seems to be a different entity to the one named in the catalogue extract provided by Mr [REDACTED]; and
  - The Commissioner is in possession of scripts that indicate these lottery calls were marketing calls.
68. The Commissioner also provided [REDACTED] with the script used that advertised Lotto Express. Mr [REDACTED] was asked whether or not [REDACTED] were aware of and had instigated calls to [REDACTED] customers promoting [REDACTED] trading as Lotto Express.
69. On 10 March 2023, Mr [REDACTED] responded to the Commissioner explaining that his previous letter dated 16 February 2023 had referenced a free entry into the UK national lottery campaign, which

was a completely separate product to the Lotto Express campaign. He further stated:

*"I don't believe that [REDACTED] called [REDACTED] customers to promote the Lotto Express Irish national lottery syndicate offering. If they did then I further confirm that [REDACTED] was not aware of it, did not initiate it and did not receive any payments/commission for the use of its customer data."*

70. The Commissioner is satisfied that the 80,240 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
71. The Commissioner has made the above findings of fact on the balance of probabilities.
72. The Commissioner has considered whether those facts constitute a contravention of Regulation 21 of PECR by DRT and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

73. The Commissioner finds that DRT contravened Regulation 21 of PECR.
74. The Commissioner finds that the contravention was as follows:
75. Between 11 February 2021 and 22 March 2022, DRT instigated the use of a public telecommunications service for the purposes of making 80,240 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 two complaints being made to the TPS and the Commissioner.

76. The Commissioner is also satisfied for the purposes of Regulation 21 that these DRT unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and who for the purposes of Regulation 21(4) had not provided notification that they did not object to receiving such calls.
77. For such notification to be valid under Regulation 21(4), the individual must have taken a clear and positive action to override their TPS registration and indicate their willingness to receive marketing calls from the company. The notification should reflect the individual's choice about whether or not they are willing to receive marketing calls. Therefore, where signing up to use a product or service is conditional upon receiving marketing calls, companies will need to demonstrate how this constitutes a clear and positive notification of the individual's willingness to receive such calls.
78. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.
79. Further, the notification must demonstrate the individual's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of Regulation 21(4) if individuals are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.

80. DRT has not provided any evidence that the TPS registered individuals had provided notification that they did not object to receiving their calls.
81. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

### **Seriousness of the contravention**

82. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of Regulation 21 by DRT arising from the organisation's activities between 11 February 2021 and 22 March 2022, and this led to 80,240 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not provided notification that they were willing to receive such calls, and two complaints being made as a result.
83. Further, the calls that were made regarding Lotto Express were highly exploitative and the calls deliberately targeted vulnerable individuals to maximise profit, which adds to the seriousness of the contravention.
84. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

### **Deliberate or negligent contraventions**

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

actions (even if DRT did not actually intend thereby to contravene PECR).

86. The Commissioner considers that in this case DRT did deliberately contravene Regulation 21 of PECR. DRT appears to be part of a network of individuals and companies conducting these kind of predatory marketing calls. There are links between [REDACTED] and DRT. [REDACTED] were investigated and subsequently fined for making these calls, so the act of these entities carrying on is regarded as a deliberate act.
87. In addition, of the 80,240 calls made to TPS registered numbers, 3,317 of these were dispositioned by callers as "DNC TPS", equating to 4% of the calls. The Lotto Express campaign was conducted within the wider context of a total 1,264,515 calls that were dispositioned this way by [REDACTED] who had been contracted to make the calls by DRT. The fact that this disposition was even needed shows an awareness that TPS registered numbers were being contacted.
88. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
89. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
90. Firstly, he has considered whether DRT knew or ought reasonably to have known that there was a risk that this contravention would occur. He is satisfied that this condition is met because DRT had contractual obligations from one supplier [REDACTED] that the data was TPS screened, and simply took this at face value. DRT did not have any

contract in place with [REDACTED] and has not provided evidence of a contract with [REDACTED] either. TPS screening responsibility should have been contracted to cover all data providers as a minimum, as well as procedures to ensure this was occurring effectively. Even where there have been tens of thousands of dispositions set as "DNC TPS" by [REDACTED] there does not appear to have been any mechanism to identify this and mitigate it.

91. 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 any subscriber registered with the TPS, unless the subscriber has specifically notified the company that they do not object to receiving such calls. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.
92. It is therefore reasonable to suppose that DRT should have been aware of its responsibilities in this area.
93. Secondly, the Commissioner has gone on to consider whether DRT failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
94. The Commissioner's direct marketing guidance makes clear that organisations acquiring marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed

along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary notifications for the purposes of Regulation 21(4). It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. DRT has provided no evidence to show that such checks were carried out.

95. Reasonable steps in these circumstances may also have included requiring confirmatory due diligence or mechanism to identify TPS screening was in place and having a written agreement in place with all data suppliers. As DRT did not clearly outline all data sources to the Commissioner indicates a lack of oversight regarding the data that was used by ██████ to conduct call campaigns under the Partner Centre Contract.
96. Given the volume of calls, and the two complaints received, it is clear that DRT failed to take those reasonable steps.
97. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

98. The Commissioner has taken into account the following aggravating features of this case:
  - DRT stopped engaging with the Commissioner part way through the investigation.
  - DRT has not provided a satisfactory explanation for the Lotto Express calls involved in the contravention.
  - High pressure sales tactics came to light as part of the episode of ██████ ██████.



99. The Commissioner has not identified any mitigating factors.
100. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. He is also satisfied that the procedural rights under section 55B have been complied with.
101. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by DRT on this matter.
102. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
103. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
104. The Commissioner has considered the likely impact of a monetary penalty on DRT. In doing so, the Commissioner has given careful consideration to the representations made by DRT in response to the Notice of Intent. However, the Commissioner has decided that a penalty nevertheless remains the appropriate course of action in the circumstances of this case.
105. 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 are not registered with the TPS and/or specifically indicate that they do not object to receiving these calls.

106. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the proposed intervention on the wider business community, both in terms of deterring non-compliance and economic benefits to legitimate businesses.
107. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

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

108. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£100,000 (one hundred thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

### **Conclusion**

109. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **19 March 2024** 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.

110. If the Commissioner receives full payment of the monetary penalty by **18 March 2024** the Commissioner will reduce the monetary penalty by 20% to **£80,000 (eighty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
111. 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.
112. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
113. Information about appeals is set out in Annex 1.
114. 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.

115. 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 15<sup>th</sup> day of February 2024

Signed: 

Andy Curry  
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 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty 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 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:

General Regulatory Chamber  
HM Courts & Tribunals Service  
PO Box 9300  
Leicester  
LE1 8DJ

Telephone: 0203 936 8963

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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 (Information Rights) are contained in section 55B(5) 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)).