DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: MCP Online Ltd

Of: 20-22 Wenlock Road, London, England, N1 7GU

1. The Information Commissioner ("the Commissioner") has decided to issue MCP Online Ltd ("MCP") 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 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").

2. This notice explains the Commissioner's decision.

Legal framework

3. MCP, whose registered office is given above (Companies House Registration Number: 12571050) is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.

4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls promoting a product or service to an individual who has a telephone number which is registered with the Telephone Preference Service Ltd

("TPS"), then that individual must have 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. 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 –

...

(b) in relation to a communication to which regulation 21 [or 21A] (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(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."

8. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Limited ("TPS") is a limited company 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.

9. Section 122(5) of the DPA18 defines direct marketing as "*the communication (by whatever means) of advertising 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).

10. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".

11. 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*".

12. 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.

13. 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.

14. 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.

15. 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

16. MCP was incorporated on 24 April 2020 and the registered office is listed as 20-22 Wenlock Road, London, England, N1 7GU. There is one director currently appointed, James Miller. However, from the start of

the investigation until 23 September 2022, the listed director was Craig Peter Power ("Power").

17. On 23 September 2022, a termination of appointment of Power as director of MCP was filed electronically but backdated to 4 January 2021, and a cessation of Power as a person with significant control was filed electronically but backdated to 26 January 2021. Section 167 of the Companies Act 2006 states that Companies House should legally be notified within 14 days of a termination of director.

18. The nature of the business undertaken by MCP is listed on Companies House as *"retail sale of mobile telephones"*. MCP is not registered as a data controller with the ICO, but Power is; his sector is listed as *"marketing provider"* and his nature of work as *"lead generator"*.

19. MCP came to the ICO's attention following a review of complaints made to the TPS in November 2021, in relation to unsolicited pension calls. The telephone number "02921690260" was identified as being used to make an unsolicited marketing call regarding pensions. The company name given was "The Review Team" and the overview of the call was:

> *"Finance/Pension. Despite explaining the day before that I was on the TPS register and that I did not want to receive unsolicited calls, I was called again the following day. The caller was unapologetic and didn't have a clue what the TPS register is. I told them not to call me and he continued to try to talk to me. I made sure to take more details about the company on this occasion."*

20. On 17 January 2022, the Commissioner issued a third party information notice to the communications service provider ("CSP"),

[redacted] in regard to this number. On the same day, [redacted] responded to state that the subscriber's name was *"Craig Power – Peter Power"*. A list of 12 telephone numbers allocated to the subscriber was provided. The contact information for the account contact point was 20-22 Wenlock Road, London, N1 7GU, the registered address of MCP.

21. All the call records on the account were for inbound calls. Given the nature of the complaint, the Commissioner considered it likely that the subscriber, *"Craig Power – Peter Power"*, was obtaining numbers from [redacted] and presenting the numbers when making outbound sales calls using a separate account, possibly with another CSP. Therefore, an investigation was opened to consider whether there had been a breach of Regulation 21 of the PECR.

22. Searches of the Companies House register established that Power was listed as a director of three companies: MCP Online Ltd (Companies House Registration Number: 12571050); My Lead Locker Ltd (Companies House Registration Number: 13304288) and Webcomms Online Ltd (Companies House Registration Number: 12880644).

23. A search of the ICO registration database did not identify any entries for the above companies, however, an account for Power was identified. The contact point email address was given as [redacted] with a mobile number of [redacted]. This was the same mobile number as that given on the [redacted] account. Associated trading names for Power were listed on the ICO registration database as The Review Team TRT; My Loan Refund; My HDR Claim; HDR Claim and My Utility Checker.

24. The Commissioner also conducted an online search of "MCP Online Ltd" which identified the website "hdr-claim.co.uk". This stated that "My HDR Claim" and "hdr-claim.co.uk" are trading styles of MCP Online Ltd and provided a contact email of [redacted].

25. Between 4 March 2022 and 11 March 2022, [redacted] provided the Commissioner with copies of correspondence with the Power subscriber account via the [redacted] email address. Within the correspondence were three attachments of recordings to be added for when inbound calls were received. The recordings were as follows:

Recording A

"Hi and thank you for calling TRT. We have tried to contact you regarding a survey to see if we can find free eco products for your home. If you wish to receive free information, please press one to be connected to an agent. Thank you."

Recording B

"Thank you for calling TRT. If you had a missed call from us, then it's nothing to worry about. We are conducting a free lifestyle survey to see if you can claim or save money. To opt out from these calls press nine now or to take part and speak to an advisor press one now"

Recording C

"Thank you for calling Best Card Payments. We may have contacted you about your card payment system. To speak to an advisor press one on your keypad now or alternatively press nine to opt out"

26. These recordings indicated that calls were being made using the names "TRT" or "Best Card Payments" and that the calls were likely lead generation calls.

27. The correspondence provided to the Commissioner by [redacted] further revealed that on several occasions numbers were set to divert to [redacted] if the caller pressed the option to speak to an agent, which appeared to be Power's personal mobile number.

28. The correspondence provided by [redacted] also showed that the Power subscriber account asked for a list of all callers who had pressed option nine to opt out as *"we are calling the same people who have opted out, and don't want this to cause some complaints"*. This indicated possible activity in breach of Regulation 21 of the PECR, as individuals who have opted out should not be contacted again.

29. Information obtained as part of the investigation ascertained that Power was using the CSP [redacted] to make calls. On 8 March 2022, the Commissioner therefore issued a third party information notice to [redacted] to request subscriber information in connection with the number '[redacted]. On 5 April 2022, [redacted] responded to state that the subscriber was [redacted] However, [redacted] also provided a copy of the [redacted] report that was run on the subscriber as part of the due diligence when setting up a new account. The check was run on MCP Online Ltd on 30 July 2021. This indicated that the [redacted] subscriber was actually MCP.

30. A further third party information notice was sent to [redacted] for all correspondence with the subscriber. A response was provided on 8 April 2022. Chat transcripts listed the subscriber as [redacted]

[redacted] which is understood to mean the account was "formally known as" [redacted]

31. On 11 April 2022, a further third party information notice was sent to [redacted] regarding the number [redacted] which was referenced in the correspondence provided by [redacted]. A response was received on 13 April 2022 which provided an updated list of allocated CLIs; this time the subscriber was given as "Craig Power".

32. On 4 May 2022, the Commissioner made enquiries with [redacted], the company operating the Wenlock Road address, where MCP is registered. A response was received on 16 May 2022 which confirmed that Power had two active accounts, and for both accounts the contact number for Power was [redacted].

33. Third party information notices were also sent for the other numbers that Power had asked calls to be diverted to in the [redacted] correspondence. [redacted] was activated on 6 January 2019 but no account information is held; [redacted] is registered to Mr Craig Power of [redacted] and was activated on 2 July 2021; and [redacted] was activated on 13 January 2021 and is an unregistered Pay As You Go account, although an email address of [redacted] had been added to the account.

34. Further enquiries by the Commissioner revealed that a third party information notice had previously been issued to the CSP [redacted] as part of an investigation into unsolicited debt management marketing. Complaints had been received via 7726, the spam text reporting service, regarding text messages from "07418370258" about the following message:

"The Debt Breathing Space scheme. STOP creditors from contacting you TODAY for 60 days. Stop repayment demands. Stop enforcement action. Stop Interest & Charges. FREE TO ARRANGE. Text YES for further info."

35. The CSP confirmed that the subscriber is Craig Power, and the company name is "MCP" of 20-22 Wenlock Road, London, N1 7GU. The invoice payer was detailed as "Webcomms Online Ltd". In light of this information, a further third party information notice was sent to the CSP to request copies of correspondence with Power's account. The response included correspondence from 7 April 2022, the date the account was created, which came from [redacted] and was signed off as "Craig Power of MCP".

36. There was also correspondence from 12 July 2022 showing that [redacted] temporarily restricted the account after text messages were sent without including any means of opting out, which would be a contravention of PECR. The subscriber's response again came from MCP.

37. On 14 April 2022, the Commissioner sent an initial investigation letter to MCP by post at the Companies House registered address. The investigation letter outlined the Commissioner's concerns, the relevant regulations, and the powers available to the ICO. It also asked a range of questions, including confirmation as to where MCP operated from, the trading names used during calls, and the source of data. A response was due by 5 May 2022.

38. No response was received to the investigation letter sent by post to MCP. Therefore, on 25 May 2022 an updated investigation letter was

sent by email to the email address on Power's sole trader account, [redacted], and to [redacted], which came from the information provided by [redacted]. Delivery receipts were received for both email addresses. A response was due by 15 June 2022.

39. No response was received, so a chaser attaching the investigation letter was sent on 20 June 2022 to the same email addresses as before but also [redacted], from one of Power's [redacted] accounts, and [redacted], from the [redacted] account Delivery receipts were received for all email addresses. A response was due by 27 June 2022.

40. Given the lack of response from MCP, the Commissioner also attempted to contact Power using the [redacted] number. The person who answered the phone confirmed they were Power and stated that they moved to Thailand in July 2018 and no longer has any ties to the UK. When asked about the two companies in his name (MCP Online Ltd and Webcomms Online Ltd), Power stated that someone has obtained his passport and is impersonating him, and the companies are nothing to do with him. Power stated that he did not use any of the email addresses that had been used to send the investigation letter to. Power said someone is presenting the number [redacted] and pretending to be him; that he has been getting missed calls to this number and that when he answered one of the calls the caller said they had been called from a call centre using the number [redacted].

41. On 23 September 2022, the Commissioner sent an updated investigation letter to MCP by email to [redacted], which is the email address used for correspondence on the [redacted] account. A response was due by 14 October 2022.

42. On 23 September 2022, notifications were received from Companies House stating that Power had been terminated as director and person of significant control of MCP Online Ltd; the same notifications were received for Webcomms Online Ltd on 26 September 2022. Mr James Miller was appointed as director of both companies on the same dates and backdated to January 2021.

43. In light of this change of director, on 20 October 2022 a final letter was sent to MCP by post to the registered address. The letter stated that if no response was received the ICO would base any formal enforcement action on the information available. The same letter was also sent to Mr James Miller at his correspondence address, which is listed as 23 Hayton Grove, Hull, HU4 6JU. Both letters were sent by special delivery and no response has been received to date, but neither have the letters been returned as undelivered. The same letter was sent by email to [redacted] from the [redacted] contact page, [redacted] from the [redacted] contact page, [redacted] from the DVLA and the [redacted] account, [redacted] from the [redacted] account, and [redacted] from Power's ICO registration. An undeliverable message was received for [redacted] but the other email addresses did not generate any form of bounce back or undeliverable message. No response has been received by email to date.

44. On 21 October 2022, a third party information notice was sent to [redacted] for updated outbound call records. The call records provided from [redacted] were TPS screened by the Commissioner. From 8 January 2022 to 28 September 2022, MCP made 19,507 connected calls to numbers that had been registered with the TPS for longer than

28 days at the time of the call. During the same period, 1,451 calls were also made to CTPS registered numbers. These calls generated one complaint to the TPS, two complaints to the CTPS, and two complaints to the ICO. Accounting for calls removed during the de-duplication process, in total 20,939 calls were made to numbers that had been registered with the TPS or CTPS for more than 28 days at the time of the call.

45. The Commissioner also sent a further third party information notice to [redacted] for all text messages sent by the subscriber account linked to Power. [redacted] response confirmed that, between 7 April 2022 to 28 September 2022, the Power account related to MCP sent 109,648 text messages, of which 92,265 were successfully delivered. The Commissioner considers that the text message scripts constitute direct marketing and in total they generated 386 spam text complaints via the 7726 spam text reporting service.

46. On 15 December 2022, an end of investigation letter was sent by post to the MCP registered address and the service address for the current listed director. The end of investigation letter was also sent electronically to [redacted]. The end of investigation letter confirmed to MCP that contraventions of Regulations 21 and 22 were going to be considered and invited MCP to engage with the ICO to provide any relevant evidence and to receive a copy of the unsolicited text complaints. A delivery receipt was received for [redacted]. No delivery receipt for [redacted] was received.

47. The Commissioner is satisfied that the 20,939 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA 2018.

48. The Commissioner has made the above findings of fact on the balance of probabilities.

49. The Commissioner has considered whether those facts constitute a contravention of Regulations 21 and 24 of PECR by MCP and, if so, whether the conditions of section 55A DPA 1998 are satisfied.

The contravention

50. The Commissioner finds that MCP contravened Regulations 21 and 24 of PECR.

51. The Commissioner finds that the contravention was as follows:

52. Between 1 January 2022 and 28 September 2022, MCP used a public telecommunications service for the purpose of making 20,939 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 five complaints being made to the TPS and the Commissioner.

53. The Commissioner is also satisfied for the purposes of Regulation 21 that these 20,939 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 notified MCP that they did not object to receiving such calls.

54. 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.

55. 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.

56. 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.

57. Further, MCP failed, as required by Regulation 24 of PECR, to provide the recipient of the calls with the particulars specified at Regulation 24(2) of PECR.

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

Seriousness of the contravention

59. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of Regulations 21 and 24 by MCP arising from the organisation's activities between 1 January 2022 and 28 September 2022, and this led to 20,939 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified MCP that they were willing to receive such calls, five complaints being made as a result.

60. Furthermore, the complaints evidence indicated that callers were unable to satisfactorily explain where subscriber data was obtained from, that MCP appeared to display a wilful disregard for TPS or CTPS registration status, and at times even became abusive to the complainants. In addition, the marketing activity of MCP includes sectors where unsolicited activity can cause financial harm and affect vulnerable individuals.

61. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

62. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that MCP's actions which constituted that contravention were deliberate actions (even if MCP did not actually intend thereby to contravene PECR).

63. The Commissioner considers that in this case MCP did deliberately contravene Regulations 21 and 24 of PECR. MCP appears to have taken deliberate steps to try to mask its activity and, despite the Commissioner's investigation involving several attempts to contact MCP, there has been no response or cooperation and unsolicited marketing activity has continued even after the initial investigation letter was sent.

64. For the above reasons, the Commissioner is satisfied that this breach was deliberate.

65. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

66. Firstly, he has considered whether MCP 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, as any company conducting direct marketing calls should take appropriate and necessary steps to comply with the regulations. The guidance available on the Commissioner's website is clear that companies must not make calls to TPS or CTPS registered numbers without receiving prior notification that subscribers do not object to the calls. The requirements for sending unsolicited direct marketing messages are also clearly set out on the Commissioner's website.

67. Furthermore, the Commissioner has previously issued a monetary penalty for breaches of PECR to Help Direct UK Limited, with whom Power was involved. Power was therefore aware of the remit of the Commissioner and the existence of PECR, prior to conducting

unsolicited marketing activity.

68. 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.

69. It is therefore reasonable to suppose that MCP should have been aware of its responsibilities in this area.

70. Secondly, the Commissioner has gone on to consider whether MCP failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.

71. Reasonable steps in these circumstances may also have included ensuring that data was screened against the TPS and CTPS, or that appropriate notifications had been received from subscribers prior to calling them. MCP has provided no evidence to demonstrate that personal data was sourced in a compliant manner, nor have any training materials, policies or procedures to demonstrate an attempt to comply with PECR been provided. The complete lack of engagement with the Commissioner's investigation is indicative of an absence of any reasonable steps taken to try to prevent the contravention.

72. Given the volume of calls and the fact of resultant complaints, it is clear that MCP failed to take those reasonable steps.

73. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

74. The Commissioner has taken into account the following aggravating features of this case:

- MCP has not engaged with the Commissioner's investigation despite multiple attempts to establish contact.

- MCP appears to have taken steps to deliberately mask its activity with its registered address being a mail drop address, the lack of any identified operational premises, the [redacted] account being set up in Power's name rather than MCP and the [redacted] account being set up in the name of [redacted].

- The termination of appointment for Power as a director at MCP was filed on 23 September 2022 but was backdated to 4 January 2022, contrary to the Companies Act and making it appear that Power was not the director for the contravention period, which the Commissioner considers was not the case.

- MCP failed to file accounts and instead set up under the slightly different name of MCP Online Group Limited which may be an attempt to phoenix and/or evade regulatory action.

- In addition to the contraventions of Regulation 21, there has also been a serious breach of Regulation 22, as 92,265 text messages were delivered by MCP generating 386 SPAM text complaints.

75. The Commissioner has not identified any mitigating features in this case.

76. 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.

77. The latter has included the issuing of a Notice of Intent, dated 6 July 2023 in which the Commissioner set out his preliminary thinking. However, no representations were made by MCP in response to that Notice.

78. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

79. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.

80. 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

81. 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.

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

The amount of the penalty

83. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£55,000 (fifty five thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

84. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **1 November 2023** 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.

85. If the Commissioner receives full payment of the monetary penalty by **31 October 2023** the Commissioner will reduce the monetary penalty by 20% to **£44,000 (forty four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

86. 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.

87. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

88. Information about appeals is set out in Annex 1.

89. 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.

90. 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 28th day of September 2023.

Signed .....[redacted].....

Andy Curry
Head of Investigations
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

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)).