

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Maxen Power Supply Limited

Of: Olympic House, 28-42 Clements Road, Ilford, Essex, IG1 1BA

1. The Information Commissioner ("the Commissioner") has decided to issue Maxen Power Supply Limited ("Maxen Power") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulations 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. Maxen Power, whose registered office is given above (Companies House Registration Number: 10298693) 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 regulations 21 and 24 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 a subscriber who has a telephone number which is registered with the Telephone Preference Service Ltd ("TPS"), or Corporate Telephone Preference Service ("CTPS"), then that subscriber must have notified the company that they do not object to receiving such calls from it.

5. Regulation 21(A1) of PECR provides:

"(A1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making calls (whether solicited or unsolicited) for direct marketing purposes except where that person—

(a) does not prevent presentation of the identity of the calling line on the called line; or

(b) presents the identity of a line on which he can be contacted."

6. Regulation 21(1) of PECR provides:

"(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."

7. Regulation 21 paragraphs (2), (3), (4) and (5) of PECR provide:

"(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not make such calls on that line."

8. 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."*

9. 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.
10. 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).

11. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
12. 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"*.
13. 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.

14. 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.

15. 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.
16. 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

17. Maxen Power is a business energy provider. Maxen Power was incorporated on 27 July 2016 under the name Hawking Energy Supply Limited. Maxen Power currently has one director, Ishtiaq Ahmad. The company has been registered with the Commissioner since 28 January 2020.
18. Maxen Power Supply first came to the attention of the Commissioner in April 2021. A search of the complaints received by ICO and the TPS identified over 100 complaints about Maxen Power and Caller Line Identities ("CLIs") associated with Maxen Power between February 2019 and March 2021.
19. The complaints indicated that Maxen Power was making calls from overseas call centres while purporting to be from National Grid or the customer's current energy supplier. The calls were mainly to businesses, some of whom were registered with the TPS or the CTPS. Complainants also reported receiving repeated calls despite opt-out requests. Examples included:

- i. "Sales call for energy supply. We have received over 20 nuisance calls from this company. We have asked the sales agents not to call again. We have also spoken to the company head office on three occasions and they have been extremely unhelpful and refused to stop the calls unless we put a complaint in writing. The lady we have spoken to at Maxen Power HQ is called [REDACTED] and works in the customer care team."*
 - ii. At first, they say they are calling you from YOUR OWN electricity company about being overcharged on your contract. Then they go on to saying they can save you 25% to switch contracts. When I asked them which company supplies my business they did not know. So I asked them which company are you calling from and they said Maxen Power."*
 - iii. "Said they could save me 25% off my bill and wanted to know my current supplier and meter readings"*
20. The searches also identified a data protection complaint dated 29 March 2021 from a small business owner whose phone number has been registered with the TPS since 2005. The complainant had submitted a subject access request to Maxen Power for copies of call recordings and documents relating to a mis-sold energy contract. The complainant enclosed a letter he had sent to Maxen Power which explains the background to his request. The following is an extract from the letter:

"I had originally been using the services of [REDACTED] a company that specialises in obtaining rebates from energy companies. A gentleman who claimed to be from [REDACTED] contacted me and recommended

Maxen Power and quoted to me tariffs that were much cheaper than our suppliers at the time. He also confirmed that a rebate in excess of £700 would be due in the near future. As a result of these assurances I agreed to switch suppliers when my renewal date was due.

Since then, we have received our first bills from Maxen Power. They are approximately EIGHT times as much as our previous suppliers. No rebate has been forthcoming.

Additionally, I have been back in touch with [REDACTED] and they told us that it was not their company policy to recommend another supplier and they had never heard of Maxen Power."

21. Further analysis of the complaints received about Maxen Power identified several CLIs that had been used to make the calls. Searches of the third party information notice ("3PIN") spreadsheet revealed that 3PINs had already been issued in relation to three of the numbers prior to the current investigation into Maxen Power. The responses suggested that the call centres were using spoofed numbers and numbers allocated to individuals.
22. In November 2021, further searches of the ICO and TPS complaints databases were conducted which revealed that several more complaints had been received about Maxen Power since the initial searches were conducted in April. The complaints related to several different presentation CLIs.
23. During November 2021 various 3PINs were sent to telecoms providers requesting subscriber details regarding CLIs linked to Maxen Power. One of these providers revealed that the relevant number was assigned

to the following end user Aims Contact Technologies Pvt Ltd ("Aims Tech"), 1st Floor, Regent Mall, Chen One Road, Faisalabad, Pakistan.

24. Research uncovered that Aims Tech was making sales calls into the UK on behalf of Maxen Power. Additionally, it was uncovered that Aims Tech was subject to a total of 24 complaints from 20 separate subscribers, 14 of whom were registered with the TPS or CTPS.

Complaints included:

- i. *"Claimed from [REDACTED] [REDACTED] wanting to save me money on energy. Called 3 times and would not stop. When I asked for their details they laughed and said they were Boris Johnson." [sic]*
 - ii. *"A vicious campaign by this one company been harassing me for a few years to change supply Always the same people but change number several times such harassment that i now refuse to accept landlines numbers. harassing for years and affecting my business by keeping the lines busy" [sic]*
 - iii. *"Trying to sell energy services. . This company keep calling us. We told them we were registered to TPS and we do not want to receive marketing calls from them and we are not interested what they offer but they don't stop." [sic]*
25. On 10 December 2021, an initial investigation letter was sent to Maxen Power. The letter was sent by email to [REDACTED] [REDACTED], as the designated contact on Maxen Power's ICO registration. The letter outlined the requirements of PECR and the enforcement powers available to the ICO and asked her to provide answers to several questions by 31 December. Attached to the email was a redacted copy of the spreadsheet listing the 24 complaints received about Aims Tech between January 2020 and November 2021.

26. A substantive response was received from Maxen Power on 18 January 2022. To summarise, Maxen Power claimed that it worked with a number of independent contractors/ third party intermediaries ("TPIs"), including Aims Tech. All independent contractors working with Maxen Power had protocols to ensure compliance with TPS. Maxen Power went on to claim that *"Till today, we have not received a single complaint that our TPIs has breached the guidelines of TPS or PECR"*.
27. On 28 January 2022, an email was sent to Maxen Power requesting further information. [REDACTED] responded on 10 February 2022, providing a list of 26 TPIs used by Maxen Power during the relevant period.
28. On 21 February, an email was sent to [REDACTED] requesting further information, including a detailed description of the procedure used by Aims Tech for screening numbers against the TPS/CTPS. A response was received on 7 March 2022. However, the response was lacking in detail and did not adequately address the issues raised by the ICO. For example, instead of providing a detailed description of the procedure used by Aims Tech for screening numbers against the TPS/CTPS, [REDACTED] stated that *"Aims Tech were using data scrubbing"*.
29. On 18 March 2022, further searches of the ICO and TPS complaints databases were conducted which identified a further complaint about Maxen Power dated 16 March 2022. The complainant statedo
"This person, who speak VERY bad English keeps calling me and argues that he supplies power to this building and needs the meter readings. He is TRYING to hijack the account. It is with [REDACTED] [REDACTED] [REDACTED] for Electric, not them. He is extremely abusive and refuses to remove my

number from the system. He has use absolutely FOWL [sic] language on me."

The complainant's telephone number has been registered with the TPS since 9 October 2004.

30. In light of the above, The Commissioner has concluded that Maxen Power used overseas call centres, including Aims Tech, to make unsolicited direct marketing calls to small businesses.
31. As such, The Commissioner is satisfied that a large number of calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18. Due to the use of false company names, spoofed CLIs and overseas telecoms providers, it has not been possible to confirm the exact number of complaints received or the total number of contraventions.
32. The Commissioner has made the above findings of fact on the balance of probabilities.
33. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by Maxen Power and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

34. The Commissioner finds that Maxen Power contravened regulations 21 and 24 of PECR.
35. The Commissioner finds that the contravention was as follows:

36. Between 1 January 2020 and 31 December 2021, Maxen Power instigated the use of a public electronic telecommunications service for the purposes of making 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 a large amount of complaints being made to the TPS and the Commissioner. Since 2018 the ICO and TPS have received several hundred complaints about other CLIs that appear to be associated with Maxen Power.
37. The Commissioner is also satisfied for the purposes of regulation 21 that these unsolicited direct marketing calls were either:
- (i) made to subscribers who had registered with the TPS or CTPS at least 28 days prior to receiving the calls, and who for the purposes of regulation 21(4) had not notified Maxen Power that they did not object to receiving such calls; or
 - (ii) made to subscribers who had previously notified the company they did not wish to receive such calls.
38. For notification to be valid under regulation 21(4), the subscriber 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 subscriber'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 subscriber's willingness to receive such calls.

39. The notification must clearly indicate the subscriber's willingness to receive marketing calls specifically. Companies cannot rely on subscribers opting in to marketing communications generally, unless it is clear that this will include telephone calls.
40. Further, the notification must demonstrate the subscriber's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of regulation 21(4) if subscribers are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
41. Further, Maxen Power failed to provide the recipient of the calls with the particulars specified at regulation 24(2) of PECR, and prevented the presentation of a line on which it could be contacted in contravention of regulation 21(A1) of PECR.
42. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

43. 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 Maxen Power arising from the organisation's activities between 1 January 2020 and 31 December 2021 and this led to unsolicited direct marketing calls being made to subscribers who were registered with the TPS or CTPS and who had not notified Maxen Power that they were willing to receive such calls, and a large amount of complaints being made as a result.

44. The contravention was also serious due to the frequency and content of the calls. Complainants reported receiving multiple calls over a short period of time, despite repeated opt-out requests. The callers used aggressive and misleading sales tactics to persuade businesses to switch energy suppliers, causing distress to individuals who were on the receiving end of the calls and potential financial damage to businesses who agreed to switch suppliers based on inaccurate information.
45. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

46. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Maxen Power's actions which constituted that contravention were deliberate actions (even if Maxen Power did not actually intend thereby to contravene PECR).
47. The Commissioner considers that in this case Maxen Power did deliberately contravene regulations 21(1)(a), 21(A1) and 24 of PECR. This is due to the persistent nature of the calls, ignoring of suppression requests, spoofed CLI numbers and withholding caller name and identity.
48. Additionally, Maxen Power's business model appears to have been designed to avoid Maxen Power being identified as the instigator of the calls. Maxen Power used a network of overseas call centres who it referred to as "independent contractors" or "third party

intermediaries". It denied responsibility for the complaints raised with it by the TPS.

49. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
50. Further and in the alternative, the Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 51. Firstly, he has considered whether Maxen Power 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, for the following reasons:
 52. The Commissioner 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.
 53. Where it is able to identify the organisation making the calls, it is standard practice of the TPS is to contact that organisation on each occasion a complaint is made. The Commissioner has evidence that Maxen Power was written to by the TPS on 12 occasions between February 2019 and January 2021 to inform it of complaints made. That

there were a large amount of complaints made to the TPS over the period of the contravention should have made Maxen Power aware of the risk that such contraventions may occur and were indeed occurring.

54. It is therefore reasonable to suppose that Maxen Power should have been aware of its responsibilities in this area.
55. Secondly, the Commissioner has gone on to consider whether Maxen Power failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met. Reasonable steps could have includedo
- i. Checking the information provided by Aims Tech on the TPI application form rather than entering into an agreement with it the same day;
 - ii. Asking Aims Tech to provide details of its standard operating procedures for screening data against the TPS and CTPS;
 - iii. Conducting proper due diligence on Aims Tech rather than simply asking it to complete a quality assurance and self-assessment form confirming its compliance with 37 compliance statements;
 - iv. Investigating complaints from the TPS and taking appropriate remedial action;
 - v. Screening the data against the TPS itself before providing it to the call centres.
 - vi. Providing call scripts for the call centres to use during the initial part of the call rather than just at the point of sale.

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

The Commissioner's decision to issue a monetary penalty.

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

- i. Maxen Power made multiple calls on the same day to certain individuals.
- ii. Marketing techniques used were reported to be aggressive in nature.

58. The Commissioner found there to be no mitigating factors.

59. 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.

60. 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 Maxen Power on this matter.

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

62. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
63. The Commissioner has attempted to consider the likely impact of a monetary penalty on Maxen Power but has been unable to do so given the lack of recent publicly available information. Maxen Power was invited to provide financial representations in response to the Notice of Intent, but failed to do so. The Commissioner considers in the circumstances that a penalty remains the appropriate course of action.
64. 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 subscribers who are not registered with the TPS or CTPS and/or specifically indicate that they do not object to receiving these calls.
65. 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.

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

The amount of the penalty

67. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£120,000 (one hundred and twenty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

68. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **30 June 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.
69. If the Commissioner receives full payment of the monetary penalty by **29 June 2023** the Commissioner will reduce the monetary penalty by 20% to **£96,000 (ninety six thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
70. 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.
71. Any notice of appeal should be received by the Tribunal within 28 days
of the date of this monetary penalty notice.
72. Information about appeals is set out in Annex 1.
73. 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.
74. 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 30th day of May 2023



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)).