

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: RHAP Limited

Of: Fernhills House, Foerster Chambers, Todd Street, Bury BL9 5BJ

1. The Information Commissioner ("the Commissioner") has decided to issue RHAP Limited ("RHAP") 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. RHAP, whose registered office is given above (Companies House Registration Number: 11856484) 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. RHAP provides repair, supply and support services for white goods. It also provides service plans, under which customers make monthly or

one-off payments for RHAP services. RHAP trades under the name Britannic Appliance Services.

17. RHAP is registered with the ICO under registration number ZA548172. The contact person named in RHAP's ICO registration is also the sole director of the company.
18. RHAP first came to the Commissioner's attention through investigations into organisations making unsolicited telephone calls to vulnerable individuals about white goods maintenance and warranty products.
19. During the course of the Commissioner's investigations, RHAP was linked to a TPS complaint made in August 2021 in relation to a call received from call line identification ("CLI") number 02081910873. The complainant made the following statement:

"My vulnerable mum received a call from a Jane at Britannic. selling her appliance cover on her washing machine.. My mum is vulnerable and 90 years old and suffers with confusion. Her number has been registered with the TPS for many years. It would appear that a company called White Goods Protection contacted my mum (although they said they were from Britannic Appliance Services) and got her to sign up for an appliance insurance product with Britannic Appliance Services (see details about this company). She was extremely confused and unclear what was happening. I contacted White Goods Protection on 0208 191 0873 who advised that there was a 14 day cooling off period and would cancel the contract. When I asked how they got my mum's details they advised it was a separate marketing team at White Goods Protection. I can find no details about this company. I also contacted Britannic

Appliance Services who advised that White Goods Protection are not connected to them but undertake marketing on their behalf."

20. On 9 September 2021, the Commissioner submitted a third party information notice to [REDACTED] requesting information about the subscriber for CLI 02081910873, including call detail records ("CDRs") for the period 1 June 2021 to 31 August 2021.
21. [REDACTED] confirmed that RHAP was the subscriber for CLI 02081910873. It also provided details of 11 additional CLI numbers that had been allocated to RHAP, including 02039510430 (referenced below).
22. As part of its investigation, the Commissioner reviewed the website www.britannicapplianceservices.co.uk. The privacy policy on the website stated that Britannic Appliance Services was a trading name of RHAP. It also set out the phone number 02039510430 on its contact page.
23. On 14 September 2021, the Commissioner attempted to contact RHAP through the telephone number it had provided with its ICO registration. RHAP did not answer or respond to the message left. The Commissioner also rang the customer service number from the Britannic Appliance Services website. A customer service agent directed the Commissioner to send email correspondence to info@britannicapplianceservices.co.uk. The Commissioner then sent an initial investigation letter to the email address which gave RHAP until 5 October 2021 to respond.

24. The initial investigation letter requested information to support the Commissioner's assessment of RHAP's compliance with PECR. This included a request for information about:

- the volume of calls connected over the period 1 January 2021 to 31 August 2021;
- the source of data that RHAP used to promote its business (i.e. obtained directly from customers or purchased from third parties);
- how RHAP ensured that it had consent to make marketing calls and a request for evidence of the consent obtained for certain calls it had made;
- an explanation of how RHAP was connected to the organisation, White Goods Protection, which was referenced in the TPS complaint above; and
- any explanation RHAP could provide for the number of complaints received about it to the TPS.

25. The Commissioner included with the initial investigation letter information about the following TPS complaints relating to CLI numbers allocated to RHAP. These complaints were all made by individuals, who were not called directly, but were concerned about the calls which had been received by their elderly parents.

- The complaint set out above at paragraph 19. The telephone number called had been registered with the TPS since 23 March 2010. The CLI calling the number was 02081910873, which was a CLI allocated to RHAP.
- A call to a telephone number that had been registered with the TPS since 27 November 2004. The CLI calling the number was

02039510430, which was a CLI allocated to RHAP. The complainant stated:

"Selling breakdown cover for washing machine. My mother is vulnerable and her number is X-directory and on TPS. She does not remember speaking to anyone but she has early onset dementia and so the time of the call I am not sure. As her daughter I hold Power of Attorney for my mother Mrs XXXX. She has early dementia and has no idea what she is doing when she receives a marketing call. She does not hold a debit or credit card as we do that for her and so this company was cold calling as she is on the TPS and x-directory. They must have asked her to get a bank statement to read the details as she has no debit card. I have contacted the company sending them my power of attorney doc and asked them to explain why they called her without checking TPS and have not received a reply. The policy they have set up is under number BAS/20211604.10 I am waiting for the DD to show on her bank to be able to cancel it before they can take a payment."

- A call to a telephone number that had been registered with the TPS since 24 December 2004. The CLI calling the number was 02039510430, which was a CLI allocated to RHAP. The complainant stated:

"Selling Home Appliance Insurance to my elderly mother who has Dementia.. Telephone conversation was rude and forceful."

26. The Commissioner also provided RHAP with details of a complaint which had been submitted to the ICO through the Online Reporting Tool (OLRT). The complainant stated that they had been called by the CLI 02081910727 which is allocated to RHAP. They further stated that they had consented to the call and initially believed it to be in regard to an existing white goods insurance policy held by them. After expressing an initial interest in taking up the offer the complainant states that they received a call back:

"...I was called and she said she was from Brittanica Insurance and would I like to take up the offer and it was then I asked if they were from [REDACTED] who my machine is currently insured with and she said she was not [REDACTED] I said I would look at my policy to see if it was due for renewal and she said she would call back. She called again and I said my machine was still insured and that the initial caller had not stated their company name or that it was an offer and that I would report it as mis-selling and ended the call."

27. From the 14 September 2021 (sending of the initial investigation letter) to 5 December 2022 (sending of the end of the investigation letter), the Commissioner sought to engage with RHAP, its sole director and other third parties to gather evidence to assess whether calls made by RHAP were in compliance with PECR.

28. The Commissioner requested CDRs from [REDACTED] for the period 1 January 2021 to 1 May 2021 relating to calls made by RHAP. iNet returned the CDRs to the Commissioner covering the period of January 2021 to August 2021.

29. On the 13 October 2021, RHAP had not responded to the initial investigation letter. The Commissioner therefore contacted RHAP on the telephone number provided with its ICO registration. RHAP did not answer or respond to the message left by the Commissioner. The Commissioner also rang the customer service number from the Britannic Appliance Services website again and spoke with a customer service agent. This resulted in the Commissioner being contacted later that day by another person from Britannic Appliance Services, who stated that the company had not received an email from the Commissioner and that they did not have information about the address the Commissioner should use to contact the director of RHAP. An email was sent by the Commissioner to the director of RHAP at the email address provided in RHAP's ICO registration. The Commissioner requested that the director confirm their contact details. The director did not respond to the email.
30. A hard copy of an updated initial investigation letter was sent by Royal Mail Special Delivery to the contact address provided with RHAP's ICO registration. On 15 October 2021, a hard copy was also hand delivered by ICO staff to RHAP registered office address. The initial investigation letter had been updated to include information about previous attempts to contact RHAP and its director. The letter set out that a response would be due from RHAP by 4 November 2021.
31. On 3 November 2021, a letter dated 28 October was received by the Commissioner from RHAP which contained a request for a 28-day extension to the 4 November 2021 deadline. It also asked that all correspondence be sent to the address on RHAP's ICO registration and not via email or telephone. The Commissioner granted the requested extension and set a response date of 25 November 2021.

32. On 29 November 2021, a letter dated 23 November 2021 was received by the Commissioner containing a response from RHAP to the initial investigation letter. In the letter, the director, inter alia, stated that RHAP:

- did not buy in data lists;
- did not undertake any form of direct marketing;
- accepted referrals from third party businesses, which came with express opt-in consent to make the call;
- had not appointed any other business to conduct marketing on RHAP's behalf;
- only made solicited calls;
- had evidence of customer consent in all cases where RHAP has called someone;
- typically contacts a potential customer following the customer making a request for a call-back from RHAP;
- would on the initial call-back call check the individual had requested that RHAP calls them;
- had not historically screened telephone numbers against the TPS register as RHAP had a specific request for a call-back; and
- had consent to call the individuals identified in the example complaints shared with RHAP by the Commissioner.

In addition, RHAP provided transcripts of calls purporting to provide evidence of consent for two of the calls that were complained about.

33. On 9 December 2021, the Commissioner sent further queries to RHAP, which included unanswered questions from the initial investigation letter. The questions, inter alia, sought to gather the following information:

- confirmation from RHAP of the CLIs it used;

- the volume of calls made and connected during the period 1 January 2021 to 31 August 2021;
 - the source of data used to promote RHAP's business (i.e. obtained directly from customers or purchased from third parties);
 - details of RHAP's consent gathering, suppression management and TPS screening processes;
 - details about RHAP's relationship to an organisation called White Goods Protection (mentioned in one of the complaints) and any organisations RHAP buys data from or receives referrals from;
 - copies of scripts for any direct marketing calls made by RHAP, training materials for staff about lawful contact with customers and policies and procedures covering RHAP's responsibilities under PECR; and
 - call recordings for the complaints detailed in the initial investigation letter and for recordings of a sample of calls made in July 2021 as selected by the Commissioner.
34. On 31 December 2021, RHAP provided the Commissioner with recordings of the two calls which they had previously sent as transcripts with their response dated 23 November 2021. In the call recordings, the agent calling on behalf of RHAP asked the call recipient to confirm they had consented to receiving the call through previous contact with "APUK" and "Appliance Plan UK".
35. On 11 January 2022, a letter dated 31 December 2021 was received by the Commissioner from RHAP. The letter reiterated RHAP's position that it had consent to make the calls. It also stated that it seemed *"wholly disproportionate that a small number of complaints would trigger a formal investigation"* and that RHAP was *"becoming increasingly concerned that not only have [the ICO] asked for more examples of compliance, but [the ICO] also want [RHAP] to answer*

several questions around PECR. As previously stated, the calls [RHAP] make are solicited therefore they fall outside of PECR".

36. On the 24 February 2022, the Commissioner responded to RHAP's letter explaining that an investigation may start with a small number of complaints and the Commissioner may ask an organisation questions to understand the organisation's business model and compliance. The Commissioner also confirmed it was following standard lines of enquiry.
37. At this stage of the investigation, RHAP had still not provided responses to all of the questions. The Commissioner therefore asked for a response to its questions by 3 March 2022. It informed RHAP that unless the information requested was provided the case would proceed on the evidence available.
38. As no further response was received before the deadline of 3 March 2022, an end of investigation letter was sent to RHAP on 9 March 2022.
39. On 10 March 2022, the Commissioner requested further information from RHAP in relation to its relationship with White Goods Protection and Appliance Plan UK. The Commissioner also asked RHAP to provide the address that RHAP was making its calls from.
40. On 23 March 2022, a letter dated 16 March 2022 was received from RHAP in which they stated that White Goods Protection did not conduct marketing on behalf of RHAP and RHAP had never instructed another business to conduct marketing on its behalf. RHAP maintained its position that it had consent to contact the individuals associated with the complaints shared by the Commissioner and the other TPS registered numbers it had called. It also stated a large percentage of those calls were service calls.

41. On 13 April 2022, the Commissioner served an Information Notice on the director of RHAP, requiring a response by 18 May 2022. The Information Notice required information about:
- referrals to RHAP and their relationship with the third party businesses that provided those referrals;
 - communication service providers and CLIs used by RHAP;
 - the address RHAP made calls from;
 - the volume of calls connected during the period 1 January 2021 and 31 August 2021;
 - RHAP's relationship with APUK and Appliance Plan UK and contact details for the same; and
 - how RHAP ensures that individuals called by RHAP have not, for the time being, objected to being called by RHAP.
42. On 9 May 2022, RHAP lodged an appeal against the Information Notice with the First Tier Tribunal (Information Rights).
43. On 26 September 2022, the Commissioner was informed that RHAP had sought to withdraw its appeal against the Information Notice and the Tribunal had agreed to this.
44. On 27 September 2022, the Commissioner sent a letter to RHAP requiring compliance with the Information Notice by 1 November 2022.
45. On 5 November 2022, a third party information notice was sent to iNet, who confirmed that the CLIs allocated to RHAP were still in use by RHAP.
46. On 8 November 2022, the Commissioner received a response to the Information Notice dated 31 October 2022. An overview of the

information provided in the response to the Commissioner's questions is provided below.

- RHAP stated that it did not accept referrals "... *from any other business, and this applies to the entire period between the date of the information Notice and today*". The response did not provide information about whether RHAP had accepted referrals from companies before the date of the Information Notice.
- RHAP did not provide copies of contracts with third party businesses but did provide a blank, undated copy of an agreement previously used.
- RHAP did not provide any costs relating to referrals.
- RHAP confirmed that 10,170 referrals were made between 1 January 2021 and 31 August 2021 but did not provide the name of any referring company.
- RHAP did not provide a list of CLIs used by RHAP and stated, "*All of the CLI's used are detailed on our [REDACTED] account, which you already have had disclosure of from [REDACTED] between 9 September and 13 September 2021*".
- Similarly, with regard to ICO's question relating to volume of connected calls, RHAP stated that the ICO already has that information from [REDACTED] RHAP did not confirm the information directly.
- RHAP provided an address for APUL or Appliance Plan UK of [REDACTED]
- RHAP did not provide evidence of how the company ensures individuals called by them have not, for the time being, objected to being called. It did, however, state that anyone that has expressed that they do not want to be contacted will be added to RHAP's "do not call" list.
- RHAP provided a generic copy of a 'Referral Agreement', which was blank and undated. The agreement stated that RHAP is

"desirous of gaining additional customers..." and that the "referrer may refer potential customers to RHAP Ltd. RHAP Ltd will pay referral a fee for these referrals". The agreement details the compensation RHAP will pay for successful referrals. It also stated that the referrer will not refer any potential customer unless it has their "full overriding consent to do so".

47. On 24 November 2022, a request for information was sent to the management company of [REDACTED] under Section 131 of the Data Protection Act 2018. The management company informed the Commissioner that it does not have any record of Appliance Plan UK Limited or APUK Limited.
48. On 5 December 2022, a further search was made of complaints received by the TPS and ICO OLRT using the names 'Britannic', 'RHAP', 'APUK' or 'Appliance Plan UK' but no additional complaints were found. A search was also made of the TPS and OLRT complaints for the CLIs allocated to RHAP which also resulted in no further complaints being identified.
49. On 5 December 2022, an end of investigation letter was sent to RHAP.
50. The Commissioner is satisfied that the 15,288 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA 2018.
51. The Commissioner has made the above findings of fact on the balance of probabilities.

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

The contravention

53. The Commissioner finds that RHAP contravened regulations 21 and 24 of PECR.
54. The Commissioner finds that the contravention was as follows:
55. Between 1 January 2021 and 31 August 2021, RHAP used a public telecommunications service for the purposes of making 15,288 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 4 complaints being made to the TPS and the Commissioner.
56. The Commissioner is also satisfied for the purposes of regulation 21 that these 15,288 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 RHAP that they did not object to receiving such calls.
57. 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.

58. 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.
59. 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.
60. The Commissioner has considered the lack of evidence of any notifications obtained by RHAP and is concerned that 15,288 calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and who in each case for the purposes of Regulation 21(4) had not notified RHAP that they did not object to receiving such calls.
61. It is the Commissioner's view that RHAP provided limited evidence that call recipients listed on the TPS had provided their consent to receive calls from RHAP. On the two call recordings provided by RHAP, one of its agents names a third party, "APUK" or "Appliance Plan UK" as gaining permission on behalf of RHAP for the call. RHAP has not provided any evidence to demonstrate how APUK or Appliance Plan UK gained consent for them to make the call. Further, RHAP has not provided any evidence that would demonstrate to the Commissioner

how RHAP or any third party are notified by call recipients listed on the TPS that they do not, for the time being, object to calls from RHAP.

62. Further, RHAP 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.
63. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

64. 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 RHAP arising from the organisation's activities between 1 January 2021 and 31 August 2021, and this led to 15,288 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified RHAP that they were willing to receive such calls, and five complaints being made as a result.
65. Analysis of complaints about RHAP calls reveals that it has been making calls to vulnerable persons whose telephone numbers are listed on the TPS.
66. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

67. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that RHAP's actions which constituted that contravention were deliberate actions (even if RHAP did not actually intend thereby to contravene PECR).
68. The Commissioner considers that in this case RHAP did deliberately contravene Regulations 21 and 24 of PECR. The behaviours of RHAP throughout the Commissioner's investigation appear to have been attempts by RHAP to conceal its operations. In particular, at the close of the investigation, questions put to RHAP remain unanswered and evidence demonstrating compliance with Regulations 21 and 24 of PECR has not been provided.
69. For the above reasons, the Commissioner is satisfied that this breach was deliberate.
70. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA 1998 is met.

The Commissioner's decision to issue a monetary penalty

71. The Commissioner has taken into account the following aggravating features of this case:
- There has been a lack of engagement and attempts to frustrate the investigation. As noted above, at the close of the investigation questions put to RHAP remain unanswered and evidence demonstrating compliance with Regulations 21 and 24 of PECR has not been provided. In particular, RHAP has not revealed the source of the data it uses to identify and contact call

recipients or how it or third parties gather consent from call recipients listed on the TPS to receive calls from RHAP.

- RHAP made 17,222 calls between January 2021 and August 2021. Of the 17,222 calls made, 15,288 were to phone numbers registered on the TPS register. This equates to 89% of calls made by being to phone numbers registered with the TPS. The total calls to TPS registered telephone numbers are the equivalent of 1,911 calls per month or 450 calls per week.

72. The Commissioner does not find any mitigating factors in this case.

73. 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.

74. 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 RHAP.

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

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

77. The Commissioner has considered the likely impact of a monetary penalty on RHAP. He has decided on the information that is available to

him, that RHAP has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship.

78. 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.
79. 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.
80. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

81. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of £65,000 (sixty five thousand pounds) is

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

Conclusion

82. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 11 October 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.
83. If the Commissioner receives full payment of the monetary penalty by 10 October 2023 the Commissioner will reduce the monetary penalty by 20% to £52,000 (fifty two thousand pounds). However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
84. 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.
85. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
86. Information about appeals is set out in Annex 1.

87. 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.

88. 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 13 day of September 2023.

Signed



Andy Curry
Head of Investigations
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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)).