

## **DATA PROTECTION ACT 1998**

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

#### **MONETARY PENALTY NOTICE**

To: Complete Marketing Services Ltd

Of: Stanmore Business Innovative Centre, Howard Road, Stanmore,  
Middlesex, HA7 1BT

1. The Information Commissioner ("the Commissioner") has decided to issue Complete Marketing Services Ltd ("CMS") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA 1998"). 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. CMS, Companies House Registration Number 11745446, whose registered office is given above, is the organisation stated in this notice to have instigated the use of a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to Regulation 21 of PECR.

4. Regulation 21 applies to the making of unsolicited live direct marketing calls. 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 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 DPA 2018 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) DPA 2018).
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 1998 (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 1998 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 1998 remain in force for the purposes of PECR notwithstanding the introduction of the DPA 2018: see paragraph 58(1) of Schedule 20 to the DPA 2018.

### **Background to the case**

16. CMS is a company notified at Companies House as an "Advertising Agency". It has no web presence.
17. CMS first came to the attention of the Commissioner in December 2021 when data pertaining to complaints about unsolicited live direct marketing calls regarding road traffic accidents ("RTA") and personal injury claims was reported by the TPS.
18. The company names used in the calls included AMS, Accident Management Services, National Accident Bureau and EMS.
19. The calling line identification numbers (CLI's) presented during the unsolicited live marketing calls followed the sequence [REDACTED]. The Commissioner identified a further 18 CLI's which followed this pattern.
20. Using Third Party Information Notices, the Commissioner made enquiries with the communication service providers (CSPs) for these CLIs. This led to the confirmation that 14 of the 18 numbers were allocated to the same subscriber. The subscriber details provided by the communications service provider was Mr Pratik Patel of CMS.
21. The CSPs confirmed that a total of 147 CLIs were allocated to CMS. From these 147 CLIs the Commissioner found a total of 106 valid complaints had been lodged between the dates of 10 June 2021 and 26 January 2022. This was made up of 25 complaints to the TPS and 81 complaints direct to the Commissioner via the Commissioner's online reporting tool ("OLRT")

22. Again, using Third Party Information Notices, the Commissioner made further enquiries with the relevant CSPs and was provided with Call Detail Records (CDRs) for each of the 147 CLIs.
23. Examination of these CDRs from 8 June 2021 to 4 February 2022 showed that 2,490,525 outgoing calls were connected. Of those, 242,497 calls were to subscribers registered with the TPS on or before 10 May 2021, representing 9.74% of the overall number of total connected calls.
24. The following are examples of complaints received via the OLRT or TPS:

*"A car accident claim that I never had in regards to gaining compensation.. This is one of numerous calls that i receive in regards to claims for car accidents that I have never had. They know nothing about my history and are fishing to see if I have had any legitimate accidents to make claims against"*

*Said I have been involved in an accident in the last 2 1/2 years and they can help me. Complete SCAM! I challenged the caller to provide information on when and where the accident happened and what insurer i am with and what car i was driving. He could not provide any of the requested information. He tried to convince me it was a genuine call and gave me my home address which was actually my old address. Wasted my time and frustrated me as it is clearly a SCAM and he was trying to defend his company and himself which just made me more frustrated with the nerve of these people.*

*A man called and said his name was Ben from EMS. He said he'd been passed my file in relation to a road traffic incident in the last two years.*

*He couldn't give me any specifics at all, but, told me I was due compensation. I don't even drive.*

*Phoning about my "recent accident" (I've not had any accidents). The caller knew my first name and threatened that I would continue to receive these calls if I didn't provide information, then hung up.*

*Asking me about a motor accident I had. They knew my name. Claimed to get my details from Motor Insurance Bureau and that they work with UK Legal Assist*

25. On 10 March 2022, the Commissioner contacted CMS using the contact email details for the company set out in its Register of Controllers. In response on the same day, the Commissioner received an email from Mr Pratik Patel at CMS stating that he was the sole director of the business, and that all correspondence should be directed to him.
26. On 10 March 2022, the Commissioner sent a letter to the organisation expressing his concerns regarding CMS's compliance with regulation 21. The letter outlined the use of live telephone calls for direct marketing purposes and required CMS to provide evidence of consent relied upon to instigate its marketing calls to each individual that had made a complaint.
27. On 5 May 2022, Mr Patel responded to the Commissioner's letter of 10 March 2022. Mr Patel stated that only a single CLI was used by CMS, [REDACTED]. No complaints from the TPS or the OLRT were identified that related to this CLI. Mr Patel stated that 480 calls had been made from this CLI over the period starting from 1 June 2021 to 10 March 2022, and that 375 of those had connected.



28. Mr Patel stated that most of CMS's customers had been generated by word-of-mouth, through social media or through referrals from previous clients. He stated that if somebody did not wish to proceed then CMS would delete their information and not contact them again.
29. Mr Patel also stated that the complaints provided by the Commissioner in the correspondence of 10 March 2022 were made by a company called [REDACTED]. He stated: *"the data had been purchased by them and they have carried out the calls at their own accord. We were not aware of any calls attached on the spreadsheet."*
30. Mr Patel stated that CMS had started to work with [REDACTED] in July 2021 on a business-to-business marketing campaign regarding the mis-selling of business energy supply deals to companies. He confirmed that no calls were made to individual consumers.
31. Mr Patel confirmed that the Director of [REDACTED], Mr [REDACTED], was provided with access to the CMS dialler system together with the authority to make any required technical changes to the system including changes to the presentation CLI's.
32. Mr Patel stated that [REDACTED], being able to change the presentation CLIs used in calls, had done so without his knowledge to make calls about other marketing campaigns not authorised by him and not connected to CMS.
33. Mr Patel stated that CMS did not purchase data from third parties. Consequently, he was unable to provide any information of opt-in data.
34. Mr Patel stated that CMS contacted individuals only where consent for calls had been granted previously. Consequently, data was not

screened against the TPS, and no internal suppression list was available.

35. On 5 May 2022, the Commissioner sent a follow-up enquiry to CMS requesting further information about its working relationship with [REDACTED]. Mr Patel replied on the same day and confirmed that [REDACTED] had worked with CMS from July 2021 to January 2022. He also confirmed that no written contract existed between CMS and [REDACTED]. He provided several further documents including a screenshot of an email dated 27 July 2021 between himself and [REDACTED] relating to payment for staff at [REDACTED] who had undertaken a campaign on behalf of CMS. The email was entitled [REDACTED] [REDACTED] – UK RTA – July Invoice – Att. Pratik".
36. On 26 May 2022, the Commissioner spoke by telephone with Mr [REDACTED] at [REDACTED]. He provided the following information regarding [REDACTED] and its relationship with CMS:
- [REDACTED] was a call centre based in [REDACTED] engaging in lead generation, sales and marketing campaigns for clients.
  - [REDACTED] had worked with CMS for approximately six months from May 2021 to December 2021. This was on the basis of a verbal agreement and no written contract existed.
  - Calls made by [REDACTED] on behalf of CMS were "business to customer" calls – calls made to individuals as opposed to companies.
  - The "business to customer" calls requested by CMS related to lead generation for personal injury claims resultant from RTA's.
  - CMS had provided a call script to [REDACTED] for use in making the lead generation calls.
  - All call data was supplied and uploaded by CMS itself to its dialler.

- [REDACTED] was able to change the outgoing CLI within the CMS dialler but stated that he had done so on only a handful of occasions when staff from CMS or the dialler service provider, [REDACTED] [REDACTED] were not available.
- Positive leads (where a call recipient wished to pursue a personal injury claim) were passed back to CMS to undertake a "call back" in the UK.
- CMS had requested [REDACTED] conduct a separate "business-to-business" live marketing calls campaign related to the mis-selling of business energy supply deals. These calls had been undertaken for three weeks towards the end of the business association between [REDACTED] and CMS and were cancelled by Mr Patel.
- The only calls made by [REDACTED] on behalf of CMS related to the RTA and energy supply deal campaigns. [REDACTED] had not conducted any marketing campaign using the CMS dialler system beyond these and had not used the dialler system in any unauthorised manner.

37. On 5 July 2022, the Commissioner wrote again to Mr Patel seeking clarification of details previously provided and an explanation for the "UK RTA" heading used in the invoice from [REDACTED] of 27 July 2021, provided by Mr Patel on 5 May 2022. However, no further information was received by the Commissioner.

38. On 22 August 2022, Mr [REDACTED] from [REDACTED] contacted the Commissioner stating that he had been mistaken in his initial statement as the RTA work had not been done with Mr Pratik Patel at CMS but in fact with another client with a similar name called "Patrick". The Commissioner requested full details of "Patrick", but no further correspondence was received from Mr [REDACTED].

39. The Commissioner is satisfied that the 2,490,525 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA 2018.
40. The Commissioner has made the above findings of fact on the balance of probabilities.
41. The Commissioner has considered whether those facts constitute a contravention of Regulations 21 and 24 of PECR by CMS and, if so, whether the conditions of section 55A DPA 1998 are satisfied.

### **The contravention**

42. The Commissioner finds that CMS contravened Regulations 21 and 24 of PECR.
43. The Commissioner finds that the contravention was as follows:
44. Between 8 June 2021 and 4 February 2022, CMS instigated the use of a public telecommunications service for the purposes of making 242,497 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 106 complaints being made to the TPS and the Commissioner.
45. The Commissioner is also satisfied for the purposes of Regulation 21 that these 242,497 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 CMS that they did not object to receiving such calls.

46. 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.
47. 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.
48. 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.
49. The Commissioner has considered the lack of evidence of any notifications obtained by CMS and is concerned that 242,497 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 CMS that they did not object to receiving such calls.

50. Further, CMS 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.
51. The Commissioner has gone on to consider whether the conditions under section 55A DPA 1998 are met.

**Seriousness of the contravention**

52. 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 CMS arising from the organisation's activities between 8 June 2021 and 4 February 2022, and this led to 242,497 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified CMS that they were willing to receive such calls, and 106 valid complaints being made as a result.
53. CMS has failed to provide any evidence that the calls were made to subscribers who did not otherwise object to receiving those calls from CMS.
54. CMS has failed to provide any evidence that the calls were screened by itself, requested that the calls were screened by [REDACTED] or anyone else, nor supplied pre-screened data for use in its campaign.
55. CMS in its instigated calls also used generic company names rather than its own name.

56. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA 1998 is met.

**Deliberate or negligent contraventions**

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

58. The Commissioner does not consider that CMS deliberately set out to contravene PECR in this instance.

59. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:

60. Firstly, he has considered whether CMS 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:

61. As CMS is a marketing company, familiarity with the law regarding marketing is essential to its business, and CMS should be fully conversant with the law.

62. 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.

63. Where it is able to identify the organisation making the calls, it is standard practice of the TPS to contact that organisation on each occasion a complaint is made. It is reasonable to believe that CMS would have been sent a notification from the TPS for the complaints being made in this case. That there were 25 complaints made to the TPS alone over the period of the contravention should have made CMS aware of the risk that such contraventions may occur and were indeed occurring.
64. It is therefore reasonable to suppose that CMS should have been aware of its responsibilities in this area.
65. Secondly, the Commissioner has gone on to consider whether CMS failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
66. The Commissioner's direct marketing guidance makes clear that organisations acquiring and/or utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary notifications for the purposes of Regulation 21(4). It is not acceptable to rely on assurances given by third party suppliers without



undertaking proper due diligence. No such checks were undertaken, and it is not clear from where CMS obtained the data.

67. Reasonable steps in these circumstances may have included:

- Putting in place, providing training on and enforcing appropriate policies covering the steps the organisation was taking to comply with direct marketing and data protection laws;
- If using purchased marketing lists, being able to evidence from whom they were purchased;
- Conducting appropriate due diligence checks on the suppliers of any such marketing lists (as stated above) as well as the providers of its outbound calls;
- Ensuring that call data was screened against the TPS and rescreened every 28 days;
- Conducting regular checks of marketing lists to ensure that any TPS screening outsourced to a third party is working correctly;
- Maintaining clear records of any notifications from individuals registered on TPS who do not object to marketing calls from the specific organisation;
- Monitoring the use of dialler systems and authorisations provided to the call handling organisation to prevent inappropriate and/or unlawful use of such systems and authorisations;
- Ensuring that the name of the company is stated in calls, or the call displays a number to subscribers on which the company can be contacted;
- The number displayed in the call is valid, used solely by CMS and can be return called;
- Ensuring that all customers are requested to opt-in to marketing on acceptance of service rather than being automatically opted in;

- Providing adequate staff training to ensure suppression requests are identified and acted upon, by way of a suppression list which is regularly screened against at least every 28 days;
- Monitoring and sampling calls for quality control purposes and to ensure policies and processes are being adhered to;
- Performing regular reviews of marketing databases to ensure the data is fit for purpose and PECR compliant; and
- Reducing the number of calls made to individuals if they have shown little interest in the products advertised.

68. Given the volume of calls and complaints, it is clear that CMS failed to take those reasonable steps.

69. 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**

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

- the discrepancies between what was said by CMS and by ██████;
- CMS' limited co-operation with the Commissioner, only providing incomplete details;
- the validity of an alternative client of ██████ named "Patrick", as referred to in ██████ email from ██████ to the Commissioner on 22 August 2022; and
- CMS failure to take responsibility for ██████ whose services CMS had engaged on the basis of a verbal contract.

71. The Commissioner has not identified any mitigating features in this case.
72. 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.
73. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. However, no representations were made by CMS in response to that Notice.
74. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
75. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
76. The Commissioner has considered the likely impact of a monetary penalty on CMS. In doing so, the Commissioner has given careful consideration to representations made by CMS in response to the Notice of Intent. However, the Commissioner has decided that a penalty remains the appropriate course of action in the circumstances of this case.
77. 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.

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

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

80. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£150,000 (one hundred and fifty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

## Conclusion

81. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **13 December 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.
82. If the Commissioner receives full payment of the monetary penalty by **12 December 2023** the Commissioner will reduce the monetary penalty by 20% to **£120,000 (one hundred and twenty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
83. 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.

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84. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
85. Information about appeals is set out in Annex 1.
86. 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.

87. 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 9<sup>th</sup> day of November 2023.

Signed ..

A large black rectangular redaction box covering the signature of the official.

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)).