

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Intelling Ltd

Of: Southmoor House Southmoor Road, Wythenshawe, Manchester, M23 9XD

1. The Information Commissioner ("the Commissioner") has decided to issue Intelling Ltd ("Intelling") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of Regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. Intelling, whose registered office address is given above (Companies House Registration Number: 08157548) is the organisation stated in this notice to have transmitted unsolicited communications by means of electronic mail to individual subscribers for the purposes of direct marketing contrary to regulation 22 of PECR.
4. Regulation 22 of PECR states:

- "(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.*
- (2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.*
- (3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—*
- (a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;*
 - (b) the direct marketing is in respect of that person's similar products and services only; and*
 - (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.*
- (4) A subscriber shall not permit his line to be used in contravention of paragraph (2)."*

5. Section 122(5) of the Data Protection Act 2018 "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 and paragraphs 430 & 432(6) to Schedule 19 of the DPA18).
6. From 1 January 2021, consent in PECR has been defined by reference to the concept of consent in the UK GDPR as defined in section 3(10) of the DPA 2018^[1]: see regulation 2(1) of PECR, as amended by Part 3 of Schedule 3, paragraph 44 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419. Article 4(11) of the UK GDPR sets out the following definition: *"'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her"*.
7. Recital 32 of the UK GDPR materially states that *"When the processing has multiple purposes, consent should be given for all of them"*. Recital 42 materially provides that *"For consent to be informed, the data subject should be aware at least of the identity of the controller"*. Recital 43 materially states that *"Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case"*.
8. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.

^[1] The UK GDPR is therein defined as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

9. 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"*.
10. "Electronic mail" is defined in regulation 2(1) of PECR as *"any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service"*.
11. The term "soft opt-in" is used to describe the rule set out in in Regulation 22(3) of PECR. In essence, an organisation may be able to e-mail its existing customers even if they haven't specifically consented to electronic mail. The soft opt-in rule can only be relied upon by the organisation that collected the contact details.
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. Intelling is a marketing outsourcing company that generates mobile and broadband leads for communication service providers. Intelling was incorporated on 26 July 2012 and is registered at Companies House under registered number 08157548.
17. Mobile users can report the receipt of unsolicited marketing text messages to the Mobile UK’s Spam Reporting Service by forwarding the message to 7726 (spelling out “SPAM”). Mobile UK is an organisation

that represents the interests of mobile operators in the UK. The Commissioner is provided with access to the data on complaints made to the 7726 service.

18. Intelling first came to the attention of the Commissioner as a result of 1,103 complaints received through the Mobile UK's Spam Reporting Service between 1 January and 11 November 2021. The complaints stated Intelling offered either mobile phone or broadband deals via SMS and email, an example of which is provided below:

*"We've got some amazing mobile deals just for you! Discover your new deal today! [REDACTED]
[REDACTED]"*.

19. Given the large number of complaints, on 11 November 2021, the Commissioner sent Intelling an initial investigation letter. The letter requested information to help ascertain Intelling's compliance with PECR and outlined the Commissioner's powers. Over the course of several emails, Intelling provided the Commissioner with information in relation to the complaints received and its related business practices.
20. In respect of SMS messages, Intelling advised the Commissioner that when its calls had reached an answer machine on four consecutive occasions, an SMS ("Answer Phone SMS") was sent to that individual relating to mobile or broadband deals. Likewise, an SMS ("No Answer SMS") was sent where Intelling's calls had not been answered on four consecutive occasions.
21. Intelling advised the Commissioner that an Answer Phone SMS and a No Answer SMS comprised of the same message. An example for mobile deals is provided below:

"Hey @firstname its [REDACTED]! You missed our call and we have a great mobile deal especially for you, do not worry you can call us FREE on [REDACTED]".

22. An example for broadband deals is provided below:

"Hey @firstname its [REDACTED] You missed our call and we have a great Broadband deal especially for you, don't worry you can call us FREE on [REDACTED]".

23. Intelling also advised the Commissioner that once a broadband customer had been on its system for 15 days, or 45 days for mobile customers, the individual was sent an SMS ("Remarketing SMS") to check whether they still required their mobile or broadband services. An example of a Remarketing SMS for mobile deals is provided below:

*"Still looking for a great mobile deal? Use our deal finder to unlock new exclusive offers and discounts! [REDACTED]
[REDACTED]".*

24. An example of a Remarketing SMS for broadband deals is provided below:

*"@firstname still looking for a great broadband deal? Click here for some exclusive offers just for you! [REDACTED]
[REDACTED]".*

25. Remarketing SMS messages were often accompanied with an [REDACTED] voucher, an example of which is provided below:

"Hey @firstname ! Get a FREE £25 [REDACTED] Voucher with your Mobile deal today! Find out more [REDACTED] [REDACTED]".

26. 20 days after an individual had purchased a mobile contract, Intelling sent individuals an SMS ("Cross Selling SMS") to promote broadband deals and related products. An example of a Cross Selling SMS is provided below:

"Looking for fast reliable internet? See new and exclusive offers just for you! To find out more click [REDACTED] [REDACTED]".

27. Intelling provided the Commissioner with a breakdown of the number of messages sent and delivered. During the contravention period, Intelling sent a total of 958,235 SMS, of which 924,180 were received. This comprised of 354,645 Remarketing SMS, 332,492 of which were received; 130,266 Answer Machine SMS, 128,801 of which were received; 81,254 No Answer SMS, 80,159 of which were received; and 392,070 Cross Selling SMS, 382,728 of which were received.
28. In respect of emails, Intelling sent two types of marketing emails to individuals. Firstly, a welcome email to customers following the purchase of a mobile or broadband deal. This includes promotion of Intelling's other products. Secondly, a newsletter which was sent intermittently to individuals who Intelling state had opted-in during the last 12 months, to promote its products and services.
29. Intelling also told the Commissioner it has suppression lists in place, along with campaign level 'do not call' ("DNC") lists and a master DNC list that is provided by their clients. Intelling explained if an individual

opts-out from marketing via calls, all future telephone, email and SMS marketing ceases.

30. Intelling sent marketing communications to individuals whose data they had collected directly and also to individuals whose data had been purchased from data suppliers, namely [REDACTED] and [REDACTED].
31. [REDACTED] appeared to be the largest data supplier, with 581,261 of the 704,537 leads generated by Intelling relating to individuals whose data had been purchased from [REDACTED]. 33,661 leads were generated relating to individuals whose data was purchased from [REDACTED]. 36,147 leads were generated relating to individuals whose data was generated internally. [REDACTED] provided data relating to 53,468 individuals although Intelling did not use this to send unsolicited SMS direct marketing.
32. Intelling provided the Commissioner with details of the 29 domains that it used to collect consent for marketing communications. 23 of the domains were used by Intelling to send SMS messages, 19 of which were [REDACTED] domains including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Three domains were owned by [REDACTED], including [REDACTED], [REDACTED] and [REDACTED]. One domain was owned by Intelling, which was [REDACTED].
33. [REDACTED] is a website through which individuals can input details of their current broadband or mobile deal to be recommended a new plan.
34. In respect of consent, once a plan has been recommended, individuals are asked to input their contact details, including a phone number and

email address before clicking 'submit'. At this point they are told that by doing so they consent to be contacted by the service provider via telephone, email and SMS. The individual cannot continue without agreeing to be contacted via all three communication channels. No further information is provided about marketing. The privacy policy states [REDACTED] will send information about products and services they think may be of interest to individuals, as well as those of the partner companies within the Intelling Group.

35. All three websites operated by [REDACTED] contain the same consent statement as [REDACTED]. The privacy policies on each website are identical. They state individuals will be sent information about products and services that might be of interest '*for example by email, post or social media*'. [REDACTED] is listed as a company that data is shared with but only for the purpose of contacting the individual regarding the broadband or mobile deal enquired about.
36. The remaining 19 websites were operated by [REDACTED]. [REDACTED] operate websites [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. All websites included the same consent statement as [REDACTED]. The individual can view a list of partners by clicking a link under the terms and conditions check box, however neither Intelling nor [REDACTED] are mentioned. Each partner has a tick box next to their name but there is no explanation of what this means or whether it is an opt-in or opt-out. Individuals must accept the terms and conditions to proceed. The privacy policy for all 19 websites are identical. It states personal data is provided to third party organisations for their own future marketing purposes. There is a list of 35 companies who personal data '*may*' be shared with, including

██████████. This list contains 24 more companies than the list of partners containing tick boxes.

37. ██████████ operate ██████████. By clicking *'getting started'* individuals agree to be contacted by ██████████ to provide further relevant offers. Individuals cannot accept the terms and conditions without agreeing to be contacted by ██████████ and their partners. *'Partners'* is hyperlinked to a list of companies, which includes Intelling. The privacy policy attempts to rely upon legitimate interest as the lawful basis for sending promotional messages via email and SMS. Intelling are not listed as a partner in the privacy policy.

38. ██████████ operate ██████████. The consent statement states by clicking *'accept'* individuals agree to be contacted by *'a reputable mobile phone partner by telephone, email and SMS to discuss options (with no obligation)'*. Individuals cannot continue without clicking *'accept'*. *'Reputable mobile phone partner'* is hyperlinked to a list of four partners, including ██████████. The privacy policy does mention that information may be disclosed to third party service providers for various purposes, including hosting services. However, there is no mention of marketing from these third parties. Intelling, trading as ██████████, is named as a company who personal data is shared with but there is no information about ██████████ using this data for marketing purposes.

39. ██████████ operate ██████████ and ██████████. Both domains contain the same consent statement, which states individuals agree to be contacted by ██████████ and by a *'reputable phone partner'* by telephone, email and SMS. There is no mention of *'marketing'*, only *'contact'*. Individuals cannot continue without agreeing to the consent statement. The privacy policy lists service providers who the personal data would be shared with, including

Intelling. It also states these *'trusted third parties'* would contact the individual with regards to utility switching, including via phone, *'only where [the individual] has opted in to allow [redacted] to do so'*.

40. [redacted] operate [redacted]. The consent statement states individuals agree to be contacted by [redacted] and by a *'reputable mobile phone partner'* by telephone. There is no reference to SMS, email, marketing or any details of the *'reputable mobile phone partners'*. Individuals cannot continue without agreeing to the consent statement. The privacy policy appears to state [redacted] [redacted] is a trading style of [redacted], who operate another website that provides personal data to Intelling via [redacted], as detailed at paragraph 41 below. Intelling are listed as a company who personal data is shared with. There is no mention of marketing.
41. [redacted] operate [redacted], which does not relate to mobile phones. However, it was used to send one marketing message. The website was not active at the time of the Commissioner's investigation therefore Intelling provided a copy of the consent statement and privacy policy. The consent statement requires individuals to tick a box to agree to be contacted by [redacted] *'and partners'* by email and telephone *'with more interesting offers concerning automotive, retail, finance, insurance, travel, lifestyle, general [and] utilities'*. *'Partners'* was hyperlinked to a list of nine partners, which did not mention Intelling. There is no mention of SMS. Within the documentation provided by Intelling was an offer to claim a free sim card and receive double data, minutes and texts. Individuals had the option to accept or decline this offer but by accepting, they agreed to be contacted by via phone, SMS and email. The privacy policy states that data will be shared with external partners and lists nine sectors from which they operate, including telecoms.

42. ██████████ operate '██████████'. This does not require any form of positive action, nor a tick box, to agree to the consent statement. Instead, individuals provide their name, mobile number and email address and by clicking 'submit', the individual consents to be contacted via phone email and SMS by ██████████ and their '*certified partners*'. Individuals cannot receive mobile deals without clicking 'submit'. The privacy policy states personal data will be shared with third parties for services of interest, namely broadband, mobile and energy comparison services and only via the contact methods chosen by the individual. It also states ██████████ will not share the data for marketing purposes with any more than one party every 30 days.
43. ██████████ operate ██████████. The consent statement asks individuals to tick the box if they want to receive the best deal. Under the '*compare deals now*' button is a statement that reads '*by clicking this button [the individual] agrees to be contacted by telephone, SMS and email from ██████████ partners regarding [their] mobile phone deal. We will never share these details with any third parties not listed*'. It also states the individual can opt out at any time and provides an email address to contact to do so. Individuals cannot continue without agreeing to this statement. A list of partners is provided. The privacy policy states marketing and communications data will be collected, including preferences to receive marketing from '██████████ and *[their] third parties*'. It also states they will obtain consent from individuals before sending third party direct marketing communications and that they will obtain individuals' '*express opt-in consent*' before sharing personal data with any third party for marketing purposes.
44. ██████████ is a finance company that operate ██████████. Individuals must enter their full name, phone number and email address. The

consent statement is the same as [REDACTED], which individuals agree to by clicking *'get accepted'*. *'Reputable mobile phone partner'* is hyperlinked to a list of partners, which includes Intelling. There is also a statement that seeks to rely on the soft opt-in exemption, which reads *'to enable us to find the product or service (or related product or service) that you have requested, we would like to keep in touch via email and SMS'*. Individuals must untick this box if they do not want to receive such communications. The privacy policy states by submitting a smart phone offer application, individuals consent to be contacted by a panel of mobile phone providers, whose data is shared with. Intelling are listed as mobile phone providers but third party marketing is not mentioned.

45. [REDACTED] operate [REDACTED], which is not related to mobile or broadband deals but appears to be a competition website. The registration page requires the individual to enter their name, address, energy provider and phone provider. By clicking *'submit'* the individual agrees to receive a call from [REDACTED]. There is no reference to Intelling, marketing or any communication channel other than calling. The privacy policy states every individual taking part in an [REDACTED] has the option to opt-in to receive offers from their partners and can choose their preferred method of communication. A list of 35 partners is provided.
46. [REDACTED] was not active at the time of the investigation, so the Commissioner asked Intelling to provide a copy of the consent statement. Intelling provided a screenshot of a website called [REDACTED] which contained the question *'are you interested in hearing about receiving a sim card deal with [REDACTED]?'*. There was no mention of how any marketing would occur. Intelling sent 72 marketing SMS' in relation to broadband deals to individuals who signed up to this statement.

47. Out of the 1,103 complaints made via the Mobile UK's Spam Reporting Service, 995 concerned data generated by [REDACTED] and 96 from data generated internally by Intelling. The remaining 12 were not ascribed to any third party data supplier.
48. Intelling informed the Commissioner some of the complaints were due to the introduction of a new SMS messaging platform in July 2021. Intelling explained the new platform was introduced to separate the types of SMS' into notifications of missed calls and marketing communications. An error occurred that resulted in the Cross Selling SMS' being sent two days after the individual had purchased the deal, instead of 20 days.
49. In respect of due diligence, Intelling stated they always have a formal contract or insertion order when sourcing data from third parties. The third parties must also complete a due diligence check and questionnaire however, the questions were broad and often lacked sufficient detail.
50. For example, [REDACTED] due diligence questionnaire included questions such as '*does your company comply with the ICO's guidance for Direct Marketing?*' and '*do you comply with PECR?*'. [REDACTED] answered 'yes' to both questions but were not prompted to elaborate on how they comply.
51. Question 31 explained how valid consent was given and asked how [REDACTED] ensured it met the criteria. [REDACTED] said it gave clear information about who will contact individuals and how contact will be made, the request for consent was unbundled, a link to the privacy policy was provided and positive action was required from the data subject. Whilst this may be the case for the solicited calls, there was no mention of any subsequent direct marketing messages. Furthermore, [REDACTED]

consent statement did not include a tick box to consent. Instead, consent was obtained by the individual submitting the form, and was bundled up as a condition to access the deals.

52. Question 41 asked if [REDACTED] consent captures third-party marketing permission. [REDACTED] answered 'no', but Intelling still used this data for marketing purposes.
53. Intelling told the Commissioner they did not provide a due diligence questionnaire to [REDACTED] because they have a '*formal data management contract*' with them, as a data supplier since 2016. Intelling provided the Commissioner with a copy of the contract, which contained obligations on [REDACTED] to use '*all reasonable endeavours to ensure [it obtains] all necessary consents*' in compliance with data protection legislation. This does not provide sufficient information about how [REDACTED] will comply.
54. Intelling also explained they have a data management partner who is responsible for controlling the third party data suppliers. They stated a contract has been in place since the end of 2018 that requires Intelling to undertake interim performance reviews, which are reviewed annually, as well as monthly audits of all partners that captures screenshots of advertisements, consent statements and privacy policies. This information is checked against the due diligence questionnaire responses. Random confirmatory dip sampling checks are also conducted.
55. Upon the Commissioner's request, Intelling provided multiple policies and procedures it had in place. Although the data protection policy had some discussion of consent, it did not mention direct marketing or PECR.

56. Intelling also provided three Data Protection Impact Assessments ("DPIAs"), which it had created in December 2018 and updated in November 2019.
57. Intelling explained all their employees had data protection training during their induction, plus an annual refresher.
58. On 4 April 2022, the Commissioner sent Intelling a letter that stated the investigation had ended and that a decision would be made on whether formal enforcement action is appropriate.
59. The Commissioner has made the above findings of fact on the balance of probabilities.
60. The Commissioner has considered whether those facts constitute a contravention of regulation 22 of PECR by Intelling and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

61. The Commissioner finds that Intelling contravened regulation 22 of PECR.
62. The Commissioner finds that the contravention was as follows:
63. The Commissioner finds that between 1 January 2021 and 11 November 2021 there were 1,164,877 direct marketing electronic communications received by subscribers. The Commissioner finds that Intelling transmitted those direct marketing messages, contrary to regulation 22 of PECR.

64. Intelling, as the sender of the direct marketing, is required to ensure that it is acting in compliance with the requirements of regulation 22 of PECR, and to ensure that valid consent to send those messages had been acquired.
65. In this instance, Intelling collected consent through several channels as described above. Personal data was sourced by Intelling directly and through two third party data suppliers, [REDACTED] and [REDACTED], whose data Intelling used to send unsolicited electronic mail. Many of the consent statements in place required individuals to receive marketing communications via calls, emails and SMS'. Individuals were not able to proceed without agreeing to be contacted via all three channels. Therefore, the consent was not freely given.
66. Some websites, such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED], did not inform individuals their data would be used for marketing purposes, nor did they specify through which channel this would take place. In almost all cases there was no mention of unsolicited marketing, only that individuals would be contacted regarding the deal they had enquired about. Therefore, the consent was not specific or informed.
67. The Commissioner's direct marketing guidance says *"organisations need to be aware that indirect consent will not be enough for texts, emails or automated calls. This is because the rules on electronic marketing are stricter, to reflect the more intrusive nature of electronic messages."*
68. However, it does go on to say that indirect consent may be valid, but only if it is clear and specific enough. If categories of organisations are referred to then those categories must be tightly defined and the organisation wanting to use the consent must clearly fall within the

description. Consent is not likely to be valid where an individual is presented with a long, seemingly exhaustive list of categories of organisations.

69. For consent to be valid it is required to be “freely given”, by which it follows that if consent to marketing is a condition of subscribing to a service, the organisation will have to demonstrate how the consent can be said to have been given freely. Intelling has not demonstrated the consent obtained was freely given as explained at paragraph 65.
70. Consent is also required to be “specific” as to the type of marketing communication to be received, and the organisation, or specific type of organisation, that will be sending it. Intelling has not demonstrated all consents obtained were specific as explained at paragraph 66. Further, Intelling was not always identified. For example, [REDACTED] consent statement contained a link to a list of partners who may contact the individual but neither Intelling nor [REDACTED] were included. Therefore, individuals were not fully aware of who may contact them.
71. Consent will not be “informed” if individuals do not understand what they are consenting to. Organisations should therefore always ensure that the language used is clear, easy to understand, and not hidden away in a privacy policy or small print. Consent will not be valid if individuals are asked to agree to receive marketing from “similar organisations”, “partners”, “selected third parties” or other similar generic description. Intelling has not demonstrated the consent obtained was informed as explained at paragraph 66. Moreover, consent statements often included vague descriptions of third parties, such as *'reputable mobile phone providers'* and *'partners'*. Although a link to a list of organisations was provided, it did not reflect the true position.

72. The Commissioner has considered the 'consents' obtained and is concerned that in each case the consent statements do not meet the requirements of being freely given, specific and informed.
73. The Commissioner has considered the legal representations made by Intelling Ltd in relation to Answer Phone SMS and No Answer SMS. The Commissioner is satisfied that these messages constitute unsolicited marketing SMS.
74. The Commissioner is therefore satisfied from the evidence he has seen that Intelling did not have the necessary valid consent for the 1,164,877 direct marketing messages received by subscribers.
75. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

76. The Commissioner is satisfied that the contravention identified above was serious. This is because between 1 January 2021 and 11 November 2021, a confirmed total of 1,164,877 direct marketing messages were sent and successfully delivered by Intelling. These messages contained direct marketing material for which subscribers had not provided valid consent. Furthermore, the Commissioner is satisfied that Intelling cannot rely on the soft opt-in exemption.
77. In addition, although 1,164,877 unsolicited direct marketing communications were delivered, Intelling had actually sent 1,201,583 during the contravention period. 958,235 were SMS' and 243,348 were emails. This evidences an attempt to send further marketing messages to individuals without consent to do so.

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

Deliberate or negligent contraventions

79. The Commissioner has considered whether the contravention identified above was deliberate. The Commissioner does not consider that Intelling deliberately set out to contravene PECR in this instance.

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

81. Firstly, he has considered whether Intelling knew or ought reasonably to have known that there was a risk that these contraventions would occur. He is satisfied that this condition is met, since Intelling's due diligence questionnaire that was provided to suppliers sets out exactly how consent should be collected compliantly. Additionally, the DPIAs state they conduct monthly audits of the data collection sites. Therefore, Intelling should have known what they had to do to ensure compliance with data protection legislation, why the websites they generated data from did not fulfil these obligations and that sending unsolicited marketing to individuals in this way would breach these requirements.

82. The Commissioner has published detailed guidance for those carrying out direct marketing explaining their legal obligations under PECR. This guidance gives clear advice regarding the requirements of consent for direct marketing and explains the circumstances under which organisations are able to carry out marketing over the phone, by text,

by email, by post, or by fax. In particular it states that organisations can generally only send, or instigate, marketing messages to individuals if that person has specifically consented to receiving them; and highlights the difficulties of relying on indirect consent for electronic mail. The guidance also provides a full explanation of the "soft opt-in" exemption. The Commissioner has also published detailed guidance on consent under the GDPR. 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.

83. It is therefore reasonable to suppose that Intelling should have been aware of its responsibilities in this area.
84. Secondly, the Commissioner has gone on to consider whether Intelling failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
85. The Commissioner's direct marketing guidance makes clear that organisations acquiring marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, and that they have the necessary consent. It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. Whilst Intelling required its data suppliers to complete a due diligence questionnaire, the questions were not sufficiently detailed and did not require the data supplier to justify their compliance. Further, where Intelling had contracts in place, the data supplier was under a 'reasonable endeavours' obligation to ensure website operators obtained all necessary consents. Again, no detail was provided about how the supplier would ensure compliance with data protection legislation.

86. Intelling had the necessary processes and procedures in place that should have allowed them to foresee the data they were generating, or purchasing, was not compliant with data protection legislation in relation to direct marketing. The DPIAs that were completed should have identified this data was not meeting the threshold for compliance. Intelling demonstrated a fundamental misunderstanding of the regulations. Although Intelling assessed compliance of its data suppliers, the metrics it was assessed against were flawed which resulted in the serious contravention occurring.
87. Furthermore, the Commissioner produces clear guidance via its website on the rules of direct marketing. A helpline is also provided which organisations should use if they require further clarification or assistance with specific enquiries.
88. In the circumstances, the Commissioner is satisfied that Intelling failed to take reasonable steps to prevent the contraventions.
89. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

90. The Commissioner did not identify any aggravating factors.
91. The Commissioner acknowledges the mitigation action taken by Intelling to improve its processes in light of the Commissioner's investigation.
92. The Commissioner has considered the likely impact of a monetary penalty on Intelling. He has decided on the information that is available to him, that Intelling has access to sufficient financial resources to pay

the proposed monetary penalty without causing undue financial hardship.

93. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending of unsolicited direct marketing messages 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. The issuing of a monetary penalty will reinforce the need for businesses to ensure that they are only messaging those who specifically consent to receive direct marketing.
94. 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.

The amount of the penalty

95. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£70,000 (seventy thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

96. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **16 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.
97. If the Commissioner receives full payment of the monetary penalty by **15 December 2023** the Commissioner will reduce the monetary penalty by 20% to £56,000 (fifty 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.
98. 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.
98. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
99. Information about appeals is set out in Annex 1. 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

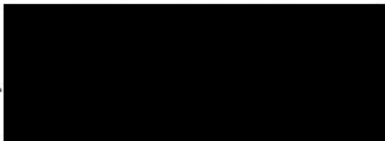
- the period for appealing against the monetary penalty and any variation of it has expired.

100. 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

Dated the 16 day of November 2023

Signed .

A large black rectangular redaction box covers the signature area. A dotted line extends from the right side of the box to the right.

Andy Curry
Head of Investigations
16 November 2023

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)).