

**The Privacy and Electronic Communications (EC Directive) Regulations  
2003 as amended**

**Monetary Penalty Notice [PECR]**

**Dated: 26 March 2015**

**Name:** Direct Assist Ltd

**Registered Office:** 41, Chorley Road, Bolton BL1 4QR

**Statutory framework**

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1. This monetary penalty notice ("Notice") is issued by virtue of Regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 and by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 ("PECR 2011").
2. Direct Assist Ltd, whose registered office is given above (Companies House Registration Number: 062666633) is the person 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.
3. PECR came into force on 11 December 2003 and revoked the Telecommunications (Data Protection and Privacy) Regulations 1999. PECR adopted Part V entitled, 'Enforcement', and Schedules 6 and 9 of the Data Protection Act 1998 (the "Act"). By virtue of Regulation 31(2) of PECR the Information Commissioner (the "Commissioner") was made responsible for the enforcement functions under PECR.

4. On 26 May 2011, PECR 2011 amended Regulation 31 of PECR to adopt sections 55A to E of the Act and introduced appropriate adaptations to those sections.
5. Under sections 55A and 55B of the Act the Commissioner may, in certain circumstances, where there has been a serious contravention of the requirements of PECR, serve a monetary penalty notice on a person requiring the person to pay a monetary penalty of an amount determined by the Commissioner and specified in the notice but not exceeding £500,000.
6. The Commissioner has issued statutory guidance under section 55C (1) of the Act about the issuing of monetary penalties ("Guidance"). The Guidance was approved by the Secretary of State and laid before Parliament. The Guidance was amended to take the changes to PECR into account and was published on 30 January 2012 on the Commissioner's website. It should be read in conjunction with the Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 and the Data Protection (Monetary Penalties) Order 2010.

## **Power of Commissioner to impose a monetary penalty**

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### **7. Section 55A**

Section 55A of the Act as adopted by PECR 2011 states:-

"(1) The Commissioner may serve a person with a monetary penalty notice 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) the contravention was of a kind likely to cause substantial damage or substantial distress, and
- (c) 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 –

(i) that there was a risk that the contravention would occur, and

(ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but

(b) failed to take reasonable steps to prevent the contravention.”

## **Background**

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8. Direct Assist Ltd, trading as and hereafter referred to as Direct Assist, is a company that provides a service offering direct access to a Solicitor to any individual in the UK who wishes to pursue a claim for personal injury.
9. OFCOM is the Office of Communications established by section 1 of the Office of Communications Act 2002 to facilitate the regulation of communications. Under Regulation 26 of PECR, OFCOM 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 set up by OFCOM to carry out this role. Businesses who wish to carry out direct marketing by telephone can subscribe to TPS for a fee and receive from them monthly a list of numbers on that register.
10. Direct Assists' business involves direct marketing to consumers by telephone. It is a fundamental requirement of PECR, and well-known in the direct marketing industry, that a consumer's consent must have been notified to the company before it makes direct marketing telephone calls to that consumer if the consumer is registered with TPS. Therefore, it is a

necessary step for businesses involved in telesales to make arrangements to ensure that they do not make direct marketing calls to those consumers who have subscribed to TPS, unless the business holds records showing that those consumers have given their informed consent to that business to receive such calls.

11. To that end, it is also a necessary step for a business involved in direct marketing to register with the TPS, to ensure that the business has access to a monthly update of the TPS list which is updated as consumers apply to be registered. Furthermore, the business should hold a 'suppression list' of those consumers who have informed it directly that they do not wish to receive direct marketing calls.
12. The Commissioner's office identified Direct Assist as the most complained about organisation in its monthly threat assessment for the month of October 2013. On further investigation, it was discovered that the TPS and the Commissioner's office had received a total of 227 complaints at that time in relation to Direct Assist's failure to comply with PECR.
13. On 5 December 2013 the Commissioner wrote to Direct Assist explaining that the amendments to the Regulations contained in PECR 2011 enabled him to issue civil monetary penalties up to £500,000. The letter also stated that Direct Assist was the subject of a number of complaints to TPS and asked (among other things) the following questions:
  - What is the source of your marketing information?
  - If information is obtained directly from customers, how do you ensure that they have consented to receiving marketing calls?
  - If information is obtained from third parties what checks are carried out to confirm 'third party opt ins'?
  - Is the information screened against the TPS register?
  - Do you operate an internal suppression list?
  - What is the process that you have in place to run any marketing lists against the TPS register and any in-house suppression list?
  - Can you provide copies of your training procedures used to inform staff about lawful contact with customers?

- Can you provide copies of any policies and procedures regarding contact with customers and your responsibilities under PECR?
- Can you provide a copy of the script used?
- Can you offer any explanation for the number of complaints made to the TPS and the Commissioner?

The letter gave Direct Assist the opportunity to provide information to assist the Commissioner in his decision as to what action to take and required a response within 21 days.

14. On 10 January 2014 Direct Assist responded to the Commissioner. It explained as follows:
  - Direct Assist was aware of several organisations that were using their name without authority.
  - They relied on 'opt-in' data purchased from third parties.
  - There may have been some human error which resulted in a second call being made to some of the complainants.
  - Direct Assist has now purchased a TPS licence.
15. Direct Assist provided no further explanation for the breaches nor responded to the specific questions that the Commissioner had asked.
16. The Commissioner understands from the TPS that Direct Assist purchased an 'ad hoc' licence in December 2013 and June 2014 that both lasted for 30 days. Direct Assist only accessed the TPS database twice, in January and June 2014.
17. On 14 January 2014 the Commissioner again wrote to Direct Assist to ask for further information as follows:
  - Can you provide any evidence that organisations have been using Direct Assist's name without authority?
  - Can you provide details of all Direct Assist's third party suppliers?
  - Can you provide details of the due diligence checks conducted on the data purchased by Direct Assist from third parties?
  - Can you provide a sample of any recordings of calls made by Direct Assist staff?

- Can you provide details of all Call Line Identifications ('CLIs') used by Direct Assist?

18. On 4 and 19 February 2014 Direct Assist again responded to the Commissioner. It explained as follows:

- There was another business called Direct Assist operating in Oldham ([REDACTED]), although none of their CLIs appeared in any of the complaint data.
- A disgruntled ex-employee had been calling members of the public pretending to be Direct Assist.
- Direct Assist confirmed that they had not conducted any due diligence checks on the data purchased from third parties, although the data was now being screened in house against the TPS register.
- They explained that the calls complained about had either been made before Direct Assist were aware of PECR, or when an organisation called '[REDACTED]' was used for list screening.
- Direct Assist also provided the Commissioner with a sample of their call recordings and admitted CLIs.

19. On 21 March 2014 the Commissioner again wrote to Direct Assist to ask for further information as follows:

- Can you explain why Direct Assist had not previously mentioned the existence of [REDACTED] to either the TPS or the Commissioner?
- Can you provide us with the date that Direct Assist first became aware of PECR?
- Can you explain why the telephone number given to individuals by Direct Assist's staff in the call recordings was not one of Direct Assist's admitted CLIs?

20. On 11 April 2014 Direct Assist responded to the Commissioner as follows:

- Direct Assist had not previously mentioned the existence of [REDACTED] because their business relationship had been terminated.
- They explained that they were aware of PECR but did not appreciate how those rules operated in practice until the Commissioner contacted them.

- Direct Assist didn't include the CLI given to individuals by their staff because it was an inbound only number. They also provided several other CLIs they use as inbound numbers which had not been previously admitted.
21. On 14 April 2014 the Commissioner informed Direct Assist that they would be placed under a period of monitoring until the end of July 2014. Direct Assist confirmed that they would continue to investigate any organisations that are using their name without authority and would update the Commissioner.
  22. Despite the assurances given, the Commissioner and TPS continued to receive complaints which could be directly linked to Direct Assist by using the information obtained from their telephone service provider together with the up to date list of CLIs they provided following a visit to their Bury call centre on 15 May 2014.
  23. Between 1 January 2013 and 31 July 2014, (the 'period of complaint') the TPS received 525 (five hundred and twenty five) complaints from individuals registered with them who had received unsolicited direct marketing calls from Direct Assist. The TPS referred all those complaints to Direct Assist and also notified the Commissioner.
  24. Attached at Annex 2 is a spread sheet detailing the 525 complaints made by individual subscribers to the TPS. This list includes the subscribers' name and telephone number together with the date and time of the call (under the headings, 'complaint date' and 'complaint time') and the date that the complaint was processed by the TPS. In all cases, by virtue of the fact that the subscribers have placed their number on the TPS 'do not call list', the company has breached Regulation 21(1)(b) PECR by calling those numbers.
  25. The only explanations provided by Direct Assist to the TPS for making these calls is as follows:
    - On 10 occasions Direct Assist did not make the call.
    - On 4 occasions Direct Assist said the number was not on their database.

- On 12 occasions Direct Assist said they had 'opt in' from the complainant.
- On 1 occasion Direct Assist said that the call was made in error.
- On 35 occasions Direct Assist said that they were using a third party to screen the list.

26. Also during the period of complaint, the Commissioner received 276 complaints from individuals who had received unsolicited direct marketing calls from Direct Assist. All of these complaints were made by individual subscribers who were registered with the TPS. Attached at Annex 3 is a spread sheet detailing the 'Snap Survey' complaints made to the Commissioner.

27. The following are examples of the complaints received by the Commissioner among the 276 referred to in paragraph 25 above:

- One complainant states that she is elderly and deaf and that getting to the phone presents a challenge. She also states that the conduct of the callers have left her in fear of answering the phone which she relies on to maintain contact with her family. This is vital due to her disability. Direct Assist has been informed of this in the past but continue to call.
- One complainant states that the conduct of the callers leave her feeling 'wound up'. She also has an autistic daughter who can hear the conversation, knows that something is wrong and becomes upset. Direct Assist has been informed of this on many occasions.
- One complainant states that he had a car accident over a year ago, and the repeated calls from Direct Assist have caused him to re-live the accident. He also claims that the conduct of the callers makes him worry that someone thinks he is going to make, or has made, a false insurance claim. The complainant also states that these calls are upsetting his elderly parents as his mother has dementia and has just had brain surgery.
- One complainant states that he is disabled and ill. The calls interrupt his sleep and he now suffers from severe pain and breathlessness rushing to get to the phone.



- One complainant states that he is being repeatedly called by Direct Assist. He states that they do not listen when he explains that he has no claim to make and that they also laugh at him when he complains about repeated calls.
- One complainant states that the caller became very aggressive when they were told that he had suffered no injury and so there was no claim to make. He also states that they are disabled and that they found the conduct of the call distressing.
- One complainant states that they are disabled and that their accident was dealt with through another company. When they informed Direct Assist of this fact the callers become very rude and aggressive. The complainant has also asked the organisation to stop calling and to remove their details on multiple occasions but to no avail.
- One complainant states that, among other things, she has been receiving calls from Direct Assist for months but that over the past two weeks the calls have been relentless. She also states that sometimes Direct Assist call from an identifiable number but they also call from withheld numbers.
- One complainant states that he was told by Direct Assist that he was likely to be called for three years until he made a claim despite his repeated requests for his details to be removed.
- Two complainants state that they have been called 470 times by Direct Assist.

28. The total number of complaints about Direct Assist made by individual subscribers to both the TPS and the Commissioner during the period of complaint is 525 plus 276 which makes a total of 801.

### **Grounds on which the Commissioner proposes to serve a monetary penalty notice**

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#### **Breaches of Regulation 21**

29. The relevant provision of PECR is Regulation 21 paragraph (1) (a) and (b) which provides that,

"..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."

Regulation 21 paragraphs (2), (3), (4) and (5) provide :-

- "(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).
- (3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.
- (4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.
- (5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—
  - (a) the subscriber shall be free to withdraw that notification at any time, and
  - (b) where such notification is withdrawn, the caller shall not make such calls on that line."

## **Definitions**

- 30. The term 'person' applies to limited companies as well as individuals. It is defined in Schedule 1 of the Interpretation Act 1978 as follows:

“ ‘Person’ includes a body of persons corporate or unincorporate”.

31. The following are defined in Regulation 2 (1) of PECR :

- (a) The term ‘public electronic communications service’ is defined as having the meaning given in section 151 of the Communications Act 2003 which states that it means any electronic communications service that is provided so as to be available for use by members of the public.
- (b) The term, ‘individual’ is defined as, ‘a living individual and includes an unincorporated body of such individuals;’
- (c) The term, ‘subscriber’ is defined as, ‘a person who is a party to a contract with a provider of public electronic communications services for the supply of such services;’
- (d) The term ‘call’ is defined as ‘a connection established by means of a telephone service available to the public allowing a two-way communication in real time;’
- (e) The term, ‘direct marketing’ is defined in the Act at section 11 as ‘the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.’

32. 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 TPS, then that individual must have given their consent to that company to receive such calls.

### **The contraventions**

33. The Commissioner is satisfied that on various dates during the period of complaint, Direct Assist used, or instigated the use of a public telecommunications service for the purposes of making 801 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 OFCOM in accordance with Regulation 26, contrary to Regulation 21(1)(b) of PECR.

34. The Commissioner is also satisfied for the purposes of Regulation 21 that the 801 complaints were made by subscribers who had registered with TPS at least 28 days prior to receiving the calls and they had not given their prior consent to Direct Assist to receive calls.
35. Therefore the Commissioner is satisfied that Direct Assist has acted in breach of Regulation 21 of PECR.

### **Serious (S55A (1) (a))**

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36. The Commissioner is satisfied that this contravention of PECR has been serious as required by Section 55A(1)(a) because there have been multiple breaches of Regulation 21 of PECR by Direct Assist arising from its activities over a long period of time and these led to a large number of complaints about unsolicited direct marketing calls to TPS. In addition, it is reasonable to suppose that considerably more calls were made by Direct Assist because those who went to the trouble to complain are likely to represent only a proportion of those who actually received calls.
37. These complaints were from individuals who were registered on the TPS 'do not call' list, but had not given their consent to Direct Assist to receive calls. Each of the 525 complaints was sent by TPS to Direct Assist inviting a response, but Direct Assists' responses were inadequate. The Commissioner also received 276 complaints from individual subscribers registered with the TPS.
38. Direct Assist was in the monthly Top 20 list of companies about which the TPS received the most complaints on three occasions in 2013, and on four occasions in 2013.
39. In determining whether the contravention was serious consideration has to be given to the Commissioner's Guidance. The guidance gives an example of a serious contravention on page 13 as follows:

'Making a large number of automated marketing calls based on recorded messages or sending large numbers of marketing text messages to individuals who have not consented to receive them, particularly if distress and anxiety is caused to the recipients.'

This is a case which is comparable to that example.

40. Therefore the Commissioner is satisfied that the case meets the seriousness threshold because of the nature, duration and extent of the breach.

**Likely to cause substantial damage or substantial distress (S55A (1) (b))**

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41. The Commissioner is satisfied that the contravention is of a kind likely to cause substantial damage or substantial distress as required by section 55 (1)(b) because of the large numbers of individuals who complained about these unsolicited calls and the nature of some of the complaints they gave rise to.
42. Although the distress in every individual complainant's case may not always have been substantial, the cumulative amount of distress suffered by the large numbers of individuals affected, coupled with the distress suffered by some individuals, with some receiving multiple calls, means that overall the level was substantial.
43. When looking at the meaning of 'substantial' in terms of the levels of distress, the Commissioner has had regard to section 2, page 14 of his Guidance. This says that the Commissioner considers that 'if damage or distress that is less than considerable in each individual case is suffered by a large number of individuals the totality of the damage or distress can nevertheless be substantial'.
44. The Commissioner is satisfied that the above evidence shows not only that the unsolicited marketing calls are of a kind 'likely to cause

substantial distress' as required by section 55, but that in fact they have, in the case of some particular individual complainants, actually done so.

## **Deliberate**

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45. Direct Assist acted deliberately in using or instigating the use of a public telecommunications system for the purposes of making unsolicited calls for direct marketing purposes. There is evidence that Direct Assist instructed its staff to remove markers to suppress a number and then repeat the call using a different name. Direct Assist claimed to be putting in place procedures to ensure compliance with PECR but failed to do so.

## **Knew or ought to have known that there was a risk that the contravention would occur and that it would be of a kind likely to cause substantial damage or substantial distress (S55A (3)(a)(i) and (ii)).**

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46. The following facts are indicative of the fact that Direct Assist knew or ought to have known there was a risk of contravention and that it would be of a kind likely to cause substantial damage or substantial distress.
- Due to the nature of the business of Direct Assist and the fact that it relied heavily on direct marketing, and the fact that the issue of unsolicited calls was widely publicised by the media as being a problem, it is reasonable to suppose that they should have been aware of their responsibilities in this area and aware that there was a high risk of contravention.
  - Direct Assist has been aware of its obligations under PECR since at least 5 December 2013 when the Commissioner first raised his concerns with them.
  - The volume of complaints received from TPS should have made Direct Assist aware of the risk of a contravention and that such a contravention would be of a kind likely to cause substantial distress.
  - The TPS contacted Direct Assist 525 times regarding complaints.
  - Complaints continued to be received by TPS and the Commissioner even after the Commissioner's letters and Direct Assists' assurances.

- Complainants asked Direct Assist to stop calling them but despite this Direct Assist continued to do so.
- Direct Assist admitted internal problems and failed to screen calls effectively against a current TPS list.

47. The fact that Direct Assist knew that people were complaining about calls they were receiving and that the recipients of those calls had asked not to receive them shows that Direct Assist knew of the risk of contraventions. Direct Assist therefore ought to have known that it was only a matter of time before substantial distress to recipients of the calls was likely to be caused.
48. The Commissioner is therefore satisfied that section 55A(3) of the Act applies in that during the period of complaint Direct Assist knew or ought to have known that there was a risk that the contravention would occur, and that such a contravention would be of a kind likely to cause substantial damage or substantial distress.

**Failed to take reasonable steps to prevent the contravention (S55A (3) (b))**

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49. Direct Assists' business is reliant upon direct marketing to consumers. It is a fundamental requirement of PECR that TPS registered numbers have to be suppressed and that consent is required from consumers who are TPS registered before marketing calls can be made to them.
50. Direct Assist purchased an 'ad hoc' licence in December 2013 and June 2014 that both lasted for 30 days. Direct Assist only accessed the TPS database twice, in January and June 2014.
51. Direct Assist has provided no evidence of any formal policies and procedures in place for the staff to follow to ensure they know how to comply with PECR. Direct Assist should have been able to demonstrate that they had effective systems in place to prevent the breaches of PECR.

**Aggravating features the Commissioner has taken into account in determining the amount of a monetary penalty**

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52. Nature of the contravention:

- Some of the complainants said that despite informing the caller that they did not want to receive calls they nevertheless continued to receive them.
- Complaints to the TPS and the Commissioner have continued after the period of complaint.
- There is no sign that any of the controls said to have been implemented have worked.
- Some of the complainants said that the caller withheld its number in contravention of Regulation 24 of PECR.

53. Behavioural issues by Direct Assist:

- Direct Assist only engaged with the Commissioner in a limited way in its responses to the Commissioner's letters.
- Of the 525 occasions on which it was contacted by the TPS, Direct Assist failed to respond on numerous occasions.
- Direct Assist exhibited a complete disregard for PECR by failing to change its business practices and to use the TPS list effectively despite a large number of complaints made to it via TPS.
- No reasonable steps were taken during the period of complaint to ensure the business was complying with PECR and there was no evidence given to the Commissioner of any policies or procedures for Direct Assists' staff to follow or evidence of checks made on any bought-in lists of data.
- There is evidence that some of the calls made were of a rude and aggressive nature.

54. Impact on Direct Assist:

- Direct Assist is a private organisation within a competitive direct marketing industry where continuous breaches of PECR could create an unfair advantage.



## **Mitigating features the Commissioner has taken into account in determining the amount of the monetary penalty**

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### 55. Nature of the contravention:

- Direct Assist may have believed that the telephone numbers the company was purchasing had been screened by the seller of the data and therefore that the telephone numbers belonged to people who had consented to receive the calls.

### 56. Impact on Direct Assist:

- A significant penalty may have an adverse financial impact on Direct Assist.
- There is a potential for damage to reputation of Direct Assist which may affect future business.

## **Other considerations**

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57. The Commissioner's underlying objective in imposing a monetary penalty is to promote compliance with the 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 want to receive the calls.

## **Notice of Intent**

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58. A notice of intent dated 14 January 2015 was served on Direct Assist. The Commissioner received written representations in response to the notice of intent in a letter and email from Direct Assist's Solicitor dated 18

February and 17 March 2015 respectively. The Commissioner has considered those representations when deciding whether to serve a monetary penalty notice. In particular, the Commissioner has taken the following steps:

- reconsidered the amount of the monetary penalty generally, and whether it is a reasonable and proportionate means of achieving the objective which the Commissioner seeks to achieve by this imposition;
- ensured that the monetary penalty is within the prescribed limit of £500,000; and
- ensured that the Commissioner is not, by imposing a monetary penalty, acting inconsistently with any of his statutory or public law duties and that a monetary penalty notice will not impose undue financial hardship on an otherwise responsible person.

### **Amount of the monetary penalty**

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59. The Commissioner considers that the contravention of Regulation 21 of PECR is serious and that the imposition of a monetary penalty is appropriate. Further that a monetary penalty in the sum of **£80,000 (eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

60. In reaching this decision, the Commissioner considered other cases of a similar nature in which a monetary penalty had been imposed, and the facts and aggravating and mitigating features referred to above.

### **Payment**

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61. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 28 April 2015 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.

### **Early payment discount**

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62. If the Commissioner receives full payment of the monetary penalty by 27 April 2015 the Commissioner will reduce the monetary penalty by 20% to **£64,000 (sixty four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decided to exercise your right of appeal.

### **Right of Appeal**

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63. 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.

64. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice. If the notice of appeal is served late the Tribunal will not accept it unless the Tribunal has extended the time for complying with this rule.

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

## Enforcement

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66. 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.

67. 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 26<sup>th</sup> day of March 2015

Signed .....

David Smith  
Deputy Information Commissioner  
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 48 of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice or variation notice has been served a right of appeal to the (First-tier Tribunal) General Regulatory Chamber (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:

GRC & GRP Tribunals

PO Box 9300

Arnhem House

31 Waterloo Way

Leicester

LE1 8DJ

- 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;

- d) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
  - e) 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 (General Regulatory Chamber) are contained in sections 48 and 49 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)).

**ANNEX 2**

TPS Complaints



**ANNEX 3**

SnapSurvey Complaints