

ico.

Information Commissioner's Office

**FEP HEATCARE LTD FINED £180,000
FOR MAKING AUTOMATED CALLS**

ENFORCEMENT NOTICE

TEL: 0843 005 9576*

TPS Services

Telephone: 0843 005 9576*

Fax: 0844 774 8411

www.tpsservices.co.uk

TPS Checker

Telephone: 0844 774 8410*

Fax: 0844 774 8411

www.tpschecker.co.uk

I Want That Ltd

Unit A, 5 Colville Road
Acton, London, W3 8BL

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*Calls cost 5p per minute plus your phone company's access charge.

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: F.E.P. Heatcare Limited

of: 194 Cumbernauld Road, Chryston, Glasgow, G69 9NB

1. The Information Commissioner ("Commissioner") has decided to issue F.E.P. Heatcare Limited ("FEP") with an enforcement notice under section 40 of the Data Protection Act 1998 ("DPA"). The notice is in relation to a contravention of regulations 19 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") by FEP.
2. This notice explains the Commissioner's decision.

Legal framework

3. Regulation 19 of PECR provides that:

"(1) A person shall neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except in the circumstances referred to in paragraph (2).

(2) Those circumstances are where the called line is that of a subscriber who has previously notified the caller that for the time being he consents to such communications being sent by, or at the instigation of, the caller on that line.

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

(4) For the purposes of this regulation, an automated calling system is a system which is capable of—

(a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and

(b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called."

4. 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 –

(a) in relation to a communication to which regulations 19 (automated calling systems) and 20 (facsimile machines) apply, the particulars mentioned in paragraph (2)(a) and (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."

5. "Direct marketing" is not defined in PECR. By virtue of regulation 2(2), "direct marketing" is to have the same meaning as in the DPA. "Direct marketing" is defined in section 11(3) of the DPA as "the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals".
6. The DPA contains enforcement provisions at Part V which are exercisable by the Commissioner. Those provisions are modified and extended for the purposes of PECR by Schedule 1 PECR.
7. Section 40(1)(a) of the DPA (as extended and modified by PECR) provides that if the Commissioner is satisfied that a person has contravened or is contravening any of the requirements of the Regulations, he may serve him with an Enforcement Notice requiring him to take within such time as may be specified in the Notice, or to refrain from taking after such time as may be so specified, such steps as are so specified.
8. Regulation 32 of PECR provides that either OFCOM or a person aggrieved by an alleged contravention of any of the requirements of the Regulations may request the Commissioner to exercise his enforcement functions in respect of that contravention. The Commissioner may also exercise his enforcement functions in the absence of any such requests.
9. The Commissioner is satisfied that FEP has instigated the sending of automated marketing calls to subscribers without their prior consent. The Commissioner is also satisfied that FEP did not identify itself as the person who was sending or instigating the

automated marketing calls or provide an address or a telephone number on which it could be reached free of charge.

10. In the circumstances, the Commissioner is satisfied that FEP has contravened regulations 19 and 24 of PECR.
11. The Commissioner has considered, as he is required to do under section 40(2) of the Act (as extended and modified by the Regulations) when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage. The Commissioner has decided that it is unlikely that actual damage has been caused in this instance.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that FEP shall within 35 days of the date of this Notice:

Neither transmit, nor instigate the transmission of, communications comprising recorded matter for direct marketing purposes by means of an automated calling system except:

(a) where the called line is that of a subscriber who has previously notified FEP that for the time being he consents to such communications being sent by, or at the instigation of, FEP; and

(b) where the communication includes the name of FEP and either the address of FEP or a telephone number on which FEP can be reached free of charge.

Right of Appeal

12. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

13. Any Notice of Appeal should be sent so that it is received by the Tribunal within 28 days of the date on which this Notice is sent.

Dated the 14th day of March 2016

Signed:

Stephen Eckersley
Head of Enforcement
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

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)).