

**ico.**

Information Commissioner's Office

**ICO FINE PRODIAL LTD**

**£350,000**

**Monetary Penalty Notice**

**TEL: 0843 005 9576\***

**TPS Services**

Telephone: 0843 005 9576\*

Fax: 0844 774 8411

[www.tpsservices.co.uk](http://www.tpsservices.co.uk)

**TPS Checker**

Telephone: 0844 774 8410\*

Fax: 0844 774 8411

[www.tpschecker.co.uk](http://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**

**MONETARY PENALTY NOTICE**

To: Prodial Ltd

Of: c/o Bridgestones Ltd, 125-127 Union Street, Oldham, Lancashire OL1  
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1. The Information Commissioner ("Commissioner") has decided to issue Prodial Ltd with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is being issued because of a serious contravention of regulation 19 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by Prodial Ltd.
2. This notice explains the Commissioner's decision.

**Legal framework**

3. This notice is issued by virtue of regulation 19 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").
4. 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 DPA. By virtue of regulation 31(2) of PECR the Commissioner was made responsible for the enforcement functions under PECR.

5. Prodiat Ltd, whose registered office is given above (Companies House registration number 09300430), is the person stated in this notice to have used an automated calling system for the purpose of making recorded direct marketing calls contrary to regulation 19 of PECR.

6. 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.”

7. Under section 55A (1) of the DPA (as amended by PECR 2011 and the Privacy and Electronic Communications (Amendment) Regulations 2015) 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, and

(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.

8. 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.

9. PECR implements European legislation (Directive 2002/58/EC) aimed at the protection of the individual's fundamental right to privacy in the electronic communications sector. PECR were amended for the purpose of giving effect to Directive 2009/136/EC which amended and strengthened the 2002 provisions. The Commissioner approaches PECR so as to give effect to the Directives.

**Background to the case**

10. Prodiat Ltd ("Prodiat") generates leads in relation to individuals making a claim for a PPI refund.
11. Between 30 January and 4 September 2015, the Commissioner's office received 1,122 complaints via the online reporting tool. 719 of those complaints were received after 6 April 2015. The gist of the complaints was that a number of automated marketing calls had been received by subscribers in relation to claiming a PPI refund. The calls allowed either an option to press 5 if interested, or an option to press 9 to be removed from the list. The calls did not identify the sender and the option of speaking to a person or suppressing the number was not always effective.
12. The following are examples of the complaints received by the Commissioner's office:
  - "I receive this same recorded message, same voice, regularly from different numbers or number withheld. I have never purchased payment protection insurance and do not know where they got my number from. They do not give an option for opting out of calls other than "If you have already had your refund..." I have not had a refund, have never purchased it in the first place and do not want to indicate

that I have as I do not know what records this outfit are keeping or who they are sharing them with. This is getting really annoying.”

- “They have called me repeatedly over a period of months. I have repeatedly pressed 9, to opt out of further calls. Since this didn't work I pressed 5, to receive a call back. When I spoke to a lady today who called from [REDACTED], I asked them not to call me anymore but she hung up. Feel very helpless that I can do nothing to stop these calls. They are very intrusive and call at all time of day and evening. They sometimes pester me 4 or 5 times in 1 day!”
- “I am very careful about who I give my mobile number to as I use it for people to contact me in emergencies. I was expecting an important call and was upset when I answered the call to find out it was a recorded message about PPI. I am very concerned about where they have obtained my mobile number from. It distresses me when I receive these types of call and especially when they come through to my mobile.”
- “This little mobile phone is merely used for my disabled husband to reach me on the rare occasions that I leave him at home in his wheelchair. It is a pay-as-you-go, not a smartphone. I do not use it otherwise, and do not give the number out to anyone, though our GP surgery has it. I cannot understand how the PPI people got my number, and they call me every week or so if the phone is on when I am out. It is inconvenient and a worry, as I think that my husband has had a mishap.”
- “I am a doctor in a hospital so have to answer calls in case of emergency. Constantly receiving unwanted spam calls interferes with my work and it becomes very frustrating.”

- “This is the latest in a series of calls from this number. They either come in when I’m working or driving home. Neither is convenient and interrupts what I am doing. It is particularly annoying when driving because I have pulled over to take the call. I have been registered with TPS for several months and other unsolicited calls have stopped. This is the persistent one.”
  - “I am self-employed so use my phone for work. At the time of the call I was fitting a new bath and not happy at having to climb out from underneath to answer a marketing call starting with lies about trying to contact me about PPI that I have never had.”
13. On further investigation, it was discovered that the CLI’s identified by the complainants were used by Prodial. Between 6 April and 21 August 2015, Prodial sent or instigated 40,204,838 automated marketing calls that were all connected.
  14. On 21 August 2015, the Commissioner’s office wrote to Prodial to remind the organisation of its obligations under regulation 19 of PECR (among other things) and asking Prodial to provide evidence that the recipients of the calls had consented to receiving automated marketing calls from Prodial.
  15. Subsequently, Prodial informed the Commissioner’s office that it had purchased “opt-in” data from a reputable supplier and that the data had been screened against the TPS list before it was added to its database. However, Prodial failed to produce any evidence that it had the prior consent of the recipients to send or instigate the calls. Prodial has since stopped trading.

16. The Commissioner has made the above findings of fact on the balance of probabilities.
17. The Commissioner has considered whether those facts constitute a contravention of regulation 19 of PECR by Prodiat and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

18. The Commissioner finds that Prodiat contravened the following provisions of PECR:

Prodiat has contravened regulation 19(1) and (2) of PECR.

19. The Commissioner finds that the contravention was as follows:

Between 6 April and 21 August 2015, Prodiat sent or instigated 40,204,838 automated marketing calls to subscribers without their prior consent.

20. The Commissioner is satisfied that Prodiat was responsible for this contravention.
21. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

### **Seriousness of the contravention**

22. The Commissioner is satisfied that the contravention identified above was serious. This is because Prodiat sent or instigated



40,204,838 automated marketing calls to subscribers without their prior consent. These calls were all connected to subscribers over a five month period resulting in 719 complaints to the Commissioner's office after 6 April 2015. Prodiel made repeat calls to subscribers (sometimes on the same day) even though they had pressed option 9. When they pressed option 5, subscribers weren't always able to speak to a person.

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

**Deliberate or negligent contraventions**

24. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Prodiel's actions which constituted that contravention were deliberate actions (even if Prodiel did not actually intend thereby to contravene PECR).
25. The Commissioner considers that in this case Prodiel did deliberately contravene regulation 19 of PECR in that sense.
26. The Commissioner has 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 marketing material can only be transmitted via an automated system with the prior consent of the subscriber.

27. Whilst Prodiat may not have deliberately set out to cause distress, it did deliberately send or instigate automated calls on a massive scale to subscribers.
28. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

**The Commissioner's decision to issue a monetary penalty**

29. 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 section 55A(3A) and the procedural rights under section 55B have been complied with.
30. The latter has included the issuing of a Notice of Intent dated 8 January 2016, in which the Commissioner set out his preliminary thinking. Prodiat did not make any representations in response to that Notice of Intent. In reaching his final view, the Commissioner has taken into account the representations made by Prodiat in other correspondence on this matter.
31. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
32. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
33. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The sending or instigating of automated 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 sending automated marketing calls in compliance with PECR.

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

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

35. The Commissioner has also taken into account the following **aggravating features** of this case:

- Prodiat may obtain a commercial advantage over its competitors by generating leads from unlawful marketing practices.

36. The Commissioner has also taken into account the fact that Prodiat has contravened regulation 24 of PECR in that it did not identify the person who was sending or instigating the automated marketing calls and provide the address of the person or a telephone number on which this person could be reached free of charge.

37. Taking into account all of the above, the Commissioner has decided that the appropriate amount of the penalty is **£350,000 (Three hundred and fifty thousand pounds)**.

### **Conclusion**

38. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 28 March 2016 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.

39. If the Commissioner receives full payment of the monetary penalty by 25 March 2016 the Commissioner will reduce the monetary penalty by 20% to **£280,000 (Two hundred and eighty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
40. 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.
41. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
42. Information about appeals is set out in Annex 1.
43. 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.

44. 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 24<sup>th</sup> day of February 2016

Signed .....

Stephen Eckersley  
Head of Enforcement  
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)).