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Secure Home Systems Ltd

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Monetary Penalty Notice

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DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Secure Home Systems Ltd

Of: 25 Wellington Road, Bilston, West Midlands, WV14 6AH

1. The Information Commissioner ("Commissioner") has decided to issue Secure Home Systems 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 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. Secure Home Systems Ltd, whose registered office is given above (Companies House registration number: 09015475), 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.

4. Regulation 21 of PECR states:

“(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where –

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.

(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.”

5. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have registered 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 to carry out this role. Organisations that wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.

6. Section 11(3) of the DPA defines direct marketing as "the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals". This definition also applies for the purposes of PECR (see regulation 2(2)).

7. Section 55A of the DPA (as amended by the Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2011 and the Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2015) 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, 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 implemented 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 the PECR regulations so as to give effect to the Directives.
10. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of that Act).

Background to the case

11. Secure Home Systems Ltd is a provider of home security systems.
12. Secure Home Systems Ltd came to the Commissioner's attention in October 2017 as a result of a high volume of complaints about unsolicited direct marketing calls being made by the company.

13. Secure Home Systems Ltd explained that they purchased data from various third parties which were added to a central file and used to make marketing calls.
14. Secure Home Systems Ltd claimed it had received assurances that the data purchased had been screened against the TPS register. However, it had no contract with any of the third parties from whom it had bought the data and had carried out no due diligence into the companies selling the data, the source or quality of the data.
15. Secure Home Systems Ltd did not screen any of the data it bought against the TPS register itself.
16. The Commissioner was provided with Secure Home Systems Ltd's call records by its telecommunications provider in response to a Third Party Information Notice. The telecommunications provider was only able to provide call data from September 2017 as this was when its contract with Secure Home Systems Ltd had begun.
17. An analysis of the data provided confirmed that between 1 September and 31 December 2017 Secure Home Systems Ltd had made calls to 84,347 subscribers who were registered with the TPS.
18. Between 6 January 2016 and 28 February 2018, 268 complaints were made to the TPS, or direct to the Commissioner, about unsolicited direct marketing calls made by Secure Home Systems Ltd. All of these complaints were made by individual subscribers who were registered with the TPS.
19. Examples of some of the complaints received are as follows:
 - *"Claire claimed to be aware of a spate of burglaries in our area and talked about representatives cleared by the police would be visiting our*

road shortly. There was a silent system to detect theft, fire etc direct to the services. I said are you working for the police and services or the council/govt or a company. She said she worked for Secured Homes. She denied it was not a sales call. So I said we are on the TPS and why are you calling. She apologised and I hung up."

- *"I was angry and disturbed that they had obtained my number AND ignored the fact we're registered with the TPS."*
- *"I asked why he was making this call given my TPS membership. He wasn't bothered. As far as he was concerned they buy lists in and it's up to the list supplier to vet TPS issues. Nothing to do with him."*
- *"Said they were not trying to sell me anything but they were installing crime prevention equipment in the area. Equipment is free but there is a reduced charge of £299 for installation. I asked why they were breaking the law by calling me without my permission - she disappeared!"*
- *"Trying to sell me some security product unsolicited. When I asked where they got my number they said 'a data broker'."*

20. The Commissioner has made the above findings of fact on the balance of probabilities.

21. The Commissioner has considered whether those facts constitute a contravention of regulation 21 of PECR by Secure Home Systems Ltd and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

22. The Commissioner finds that Secure Home Systems Ltd contravened regulation 21 of PECR.
23. The Commissioner finds that the contravention was as follows:
24. Between 1 September 2017 and 31 December 2017 Secure Home Systems Ltd used a public telecommunications service for the purpose of making 84,347 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the line called was a number listed on the register of numbers kept by the Commissioner in accordance with regulation 25, contrary to regulation 21(1)(b) of PECR.
25. The Commissioner is also satisfied for the purposes of regulation 21 that these calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls and had not given their prior consent to Secure Home Systems Ltd to receive calls.
26. The Commissioner is satisfied that Secure Home Systems Ltd was responsible for the contravention.
27. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

28. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches

of regulation 21 of PECR by Secure Home Systems Ltd's activities over a four month period. This led to a significant number of complaints about unsolicited direct marketing calls to the TPS and the Commissioner.

29. In addition, it is likely that the period and scale of the contravention would have been far higher because those who went to the trouble to complain represent only a proportion of those who actually received calls. Furthermore, on its own account Secure Home Systems Ltd made some 684,000 direct marketing calls between 1 January 2016 and 9 October 2017, of which 513,000 had connected. It did not screen any of these calls against the TPS register.
30. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Deliberate or negligent contraventions

31. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Secure Home Systems Ltd's actions which constituted that contravention were deliberate actions (even if Secure Home Systems Ltd did not actually intend thereby to contravene PECR).
32. The Commissioner considers that in this case Secure Home Systems Ltd did not deliberately contravene regulations 21 of PECR in that sense.
33. The Commissioner has gone on to consider whether the contravention identified above was negligent.

34. First, she has considered whether Secure Home Systems Ltd knew or ought reasonably to have known that there was a risk that this contravention would occur. She is satisfied that this condition is met, given that Secure Home Systems Ltd relied heavily on direct marketing due to the nature of its business, and the fact that the issue of unsolicited calls has been widely publicised by the media as being a problem.
35. The Commissioner has published detailed guidance for companies carrying out marketing explaining the legal requirements under PECR. This guidance explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax. Specifically, it states that live calls must not be made to any number registered with the TPS, unless the subscriber has specifically consented to receive calls. The guidance also makes it quite clear that extra care must be taken when buying marketing lists from third parties. Rigorous checks should be taken to ensure that the third party obtained the personal data fairly and lawfully, that the individuals understood their details would be passed on for marketing purposes, and that they have the necessary consent. A reputable list broker should be able to demonstrate that the marketing list for sale is reliable, by explaining how it was compiled and providing full details of what individuals consented to, when and how. If the seller cannot provide this information, a buyer should not use the list. The guidance further advises that bought-in call lists should always be screened against the TPS.
36. In addition, Secure Home Systems Ltd was clearly aware of the existence and purpose of the TPS register. The training material provided to call staff gives an explanation of what the TPS is and notes that "it is a legal requirement that all organisations ... do not make

[unsolicited marketing] calls to numbers registered with the TPS unless they have your consent to do so”.

37. It is therefore reasonable to assume that Secure Home Systems Ltd were well aware of the requirements of PECR and the risk that such a contravention could occur.
38. The Commissioner has gone on to consider whether Secure Home Systems Ltd failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
39. Reasonable steps in these circumstances could have included Secure Home Systems Ltd screening the data itself against the TPS register irrespective of any assurances that might have been given by the providers of the data; carrying out proper and adequate due diligence into the providers of the data and the source and quality of that data; asking the provider of the data for evidence that the subscribers had consented to receiving calls from Secure Home Systems Ltd.
40. Each time a complaint is made to the TPS, the TPS inform the company complained about. Secure Home Systems Ltd would therefore have been aware that complaints were being made by TPS subscribers which should have prompted them to take steps to investigate the reasons for this and to address any deficiencies in their practices.
41. Secure Home Systems Ltd failed to take these or any reasonable steps to prevent the contravention.
42. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

43. For the reasons explained above, the Commissioner's view is that the conditions for issuing a monetary penalty under section 55A have been met in this case.
44. She is also satisfied that the procedural rights under section 55B have been complied with. This has included the issuing of a Notice of Intent, in which the Commissioner set out her preliminary views. In reaching her final view, the Commissioner has taken into account the representations made by Secure Home Systems Ltd in response to that Notice of Intent.
45. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
46. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. This is an opportunity to reinforce the need for businesses to ensure that they are only telephoning consumers who want to receive these calls.
47. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the monetary penalty

48. The Commissioner has taken into account the following mitigating features of this case:
- Secure Home Systems Ltd stopped making unsolicited marketing calls and closed its calls centres in early 2018, shortly after the commencement of the Commissioner's investigation.
49. Taking into account all of the above, the Commissioner has decided that a 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.

Conclusion

50. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **29 November 2018** 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.
51. If the Commissioner receives full payment of the monetary penalty by **28 November 2018** 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 decide to exercise your right of appeal.
52. 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.
53. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
54. Information about appeals is set out in Annex 1.
55. 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.
56. 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 29th day of October 2018

Signed



Stephen Eckersley
Director of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the (First-tier Tribunal) 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;
 - 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 (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)).