

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Halfords Limited

Of: Icknield Street Drive, Washford West, Redditch, Worcestershire
B98 0DE

1. The Information Commissioner ("the Commissioner") has decided to issue Halfords Limited ("Halfords") 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. Halfords, whose registered office address is given above (Companies House Registration Number: 00103161) 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. Consent in PECR, between 29 March 2019 and 31 December 2020, was defined by reference to the concept of consent in Regulation 2016/679 ("the GDPR"): regulation 8(2) of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. Article 4(11) of the 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. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
8. 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"*.
9. "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"*.
10. 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.

11. 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."

12. 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.

13. 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.

14. 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

15. Halfords came to the attention of the Commissioner following a complaint being received from an individual about an unsolicited direct marketing email (the "email") which had been sent to them without consent from Halfords. The email concerned a 'Fix Your Bike' Government Voucher Scheme, which was a scheme run by the UK government, initiated on 28 July 2020, which allowed members of the public to receive a voucher worth up to £50 towards the cost of repairing a bicycle. The voucher could be used with bike repairers or mechanics that were registered for the scheme in England.
16. The individual who complained to the Commissioner had received the email referencing the voucher scheme, and encouraging the recipient to book a free bike assessment and to redeem the voucher at their chosen Halfords store. The email contained a disclaimer stating, "*This is a service message and does not affect your marketing opt-in status*", however, noting the promotional aspect of the email, the Commissioner was concerned that the email did appear to contain direct marketing material and was therefore subject to PECR.
17. The Commissioner carried out internal research to see how many related complaints had been received via the Commissioner's Online Reporting Tool and discovered two (2) additional complaints about Halfords which

stemmed from the same voucher scheme email campaign. The Commissioner knows this to be the case from the detail of the complaint records which outlined the content of the email received, specifically referencing the 'Fix Your Bike' scheme.

18. On 15 February 2021, the Commissioner wrote to Halfords setting out his concerns regarding the content of the email, and seeking clarity as to Halford's reasoning for believing that the email was a 'service' message, rather than direct marketing; and to ask how many individuals who had not opted-in to receive direct marketing had been sent a copy of the email.
19. In its response of 5 March 2021, Halfords advised that:

"Legitimate interest was used as the Legal basis for sending the email to customers. The email seeks to inform customers of the launch of the Fix your bike voucher scheme provided by the department for transport. It was deemed legitimate as it is in the interest of the customer to be notified of this scheme as they have previously purchased a cycle from Halfords and may be eligible. The scheme aims to encourage people to repair cycles that are no longer roadworthy and therefore not safe to ride".

20. It was further advised that:

"The email was sent to 498,062 customers who had not previously opted into marketing. All customers had purchased a bike from Halfords within the last 3 years"

21. The Commissioner noted that Halfords' response failed to explain its reasoning for suggesting that the email was a 'service' message rather

than direct marketing, and requested an explanation for this. Halfords responded on 9 April 2021 to state that:

"[...] it was believed by our Marketing team and former DPO that this constituted a service message as it sought to inform customers that had previously purchased a cycle from Halfords of the new government voucher scheme, rather than promoting products and services at Halfords. Notwithstanding, we appreciate that this could be interpreted by customers as a Marketing communication."

22. The Commissioner decided that it would be appropriate to investigate further and on 27 May 2021 wrote to Halfords outlining his concerns about its compliance with PECR. The Commissioner asked a series of questions relating to the email campaign, including its duration and the total number of emails sent. Wider questions regarding Halfords' policies and procedures in respect of PECR were also asked.
23. Halfords provided its response on 19 July 2021, responding to the Commissioner's specific questions, and setting out its position on how it had deemed the email to be a service message. In essence, Halfords claimed that the *"purpose of the message [was] to promote a government initiative and not a Halfords product or service"*. Halfords provided details of the *"campaign objective"*, stating:

"The scheme was launched in phases, and as per our competitors, we made our customer base aware of the scheme and the fact they could obtain this Government backed offer. This was carried out as below. Audiences are mutually exclusive:

1. *Customers who had registered their interest in the scheme, using an online form, were all contacted operationally as the scheme went live.*
 2. *All opted in customers with a recent Cycling interest were made aware of this new service.*
 3. ***Opted out customers who had made a bike purchase were also made aware of this service.***
(sic)
24. In support of the claim that the email was a 'service' message, Halfords stated that: *"There are no links to the provision of Halfords services, sales or offers, only to the terms and conditions of voucher usage", and "The only messages in the campaign relate to how to obtain and redeem the voucher".*
25. Halfords went on to deny that a breach of PECR had taken place, stating that:
- "3,700+ people took up the opportunity and claimed the voucher. There were only 7 complaints arising from almost half a million email service messages. [...] Finally, this was a one-off campaign to assist the government, and the UK, in its response to the pandemic in unique and unprecedented circumstances. Halfords acted entirely in the public interest in its support of the government initiative and did not try and take advantage of this collaboration by promoting its own goods or services off the back of this service message."*
26. In its particular responses to the Commissioner's questions, Halfords confirmed that the email campaign took place over one day - 28 July

2020 – to coincide with the Government's 'Fix Your Bike' Voucher Scheme announcement¹. It stated at this time that a total of 513,587 emails were sent in total to individuals in Halfords' database. The Commissioner understood from previous correspondence that 498,062 emails were sent to individuals who had not opted in to receive direct marketing, and so had asked how many of these 498,062 'sent' messages had been 'delivered'. Halfords, in response to this specific question confirmed that 97% of those were successfully delivered to individuals². Halfords also confirmed that a total of 7 complaints about the campaign were received, and that all data used is sourced directly from its customers (i.e. no third-party data providers). In terms of recording individuals' marketing preferences, Halfords confirmed that "[I]f a customer advises us that they do not want to receive marketing or now wish to opt out having previously opted in, their customer record is updated accordingly".

27. When asked for copies of any policies or procedures regarding its responsibilities under PECR, Halfords stated: "*We do not have a specific PECR policy as all campaigns require a [Data Protection Impact Assessment] and sign off by the [Data Protection Officer]*". When asked for a copy of any advice provided by the Data Protection Officer regarding the processing in question, Halfords stated: "*The discussion and DPO advice leading to this email was conducted via MST chat. Unfortunately we can no longer access the content.*" It was however able to provide a copy of an internal email from Halfords' Data Protection Officer dated 30 June 2021 advising that the emails should contain a hyperlink to the Government website, "*so that [Halfords] can not be accused of linking to a marketing site*" (sic).

¹ [Withdrawn] Fix Your Bike Voucher Scheme - GOV.UK (www.gov.uk)

² There appears to be a discrepancy in the figures provided by Halfords up to this point, which the Commissioner sought to clarify in later correspondence – see Paragraph 31 of this Monetary Penalty Notice.

28. Halfords further confirmed the criteria for the intended recipients of the email campaign under investigation by the Commissioner as: *"England only, opted out who have bought an adult or junior bike in the last 3 years. Audience exclusions will be a) bought CycleCare ever, b) had a free Bike Check in last 6 months where repairs have already been carried out."*³
29. It also stated that the email did not contain an unsubscribe link, but that there was a 0.4% unsubscribe rate from this email campaign. As the unsubscribe link was not included in the email, the unsubscribes came from email providers directly unsubscribing to emails from Halfords.
30. An 'End of Investigation' email was sent to Halfords on 31 August 2021.
31. On 16 May 2022, having noted the discrepancy in the figures provided by Halfords during the investigation for the number of emails sent/delivered to individuals who had not opted-in to receive direct marketing⁴, the Commissioner wrote to Halfords again to request clarity. Halfords responded on 26 May 2022 to advise that *"513,587 [Fix Your Bike] service emails were sent to those who weren't opted in, of which 498,179 were delivered (97% of 513,587). The remaining 15,408 were not delivered for various reasons such as inactive email accounts"*.
32. Whilst Halfords has maintained that its emails were 'service' messages, the Commissioner is satisfied that the 498,179 emails received by individuals were all sent for the purposes of direct marketing as defined by section 122(5) DPA18.

³ i.e. Category 3 from Halfords' response of 19 July 2021.

⁴ See Footnote to Paragraph 26 of this Monetary Penalty Notice.

33. The Commissioner has made the above findings of fact on the balance of probabilities.
34. The Commissioner has considered whether those facts constitute a contravention of regulation 22 of PECR by Halfords and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

35. The Commissioner finds that Halfords has contravened regulation 22 of PECR.
36. The Commissioner finds that the contravention was as follows:
37. The Commissioner finds that on 28 July 2020 there were 498,179 direct marketing emails received by subscribers. The Commissioner finds that Halfords transmitted those direct marketing messages, contrary to regulation 22 of PECR.
38. Initially, as indicated in its response to the Commissioner of 9 April 2021, Halfords appeared to concede that its email "*could be interpreted by customers as a Marketing communication*", however during the investigation it changed its stance to state that the email was a service message, and categorically not direct marketing. The Commissioner is not persuaded by this argument and finds that the content of the email did indeed constitute direct marketing within the definition of the legislation. This finding is based on the following facts:

38.1. The email contains the text for 'Halfords', 'Free £50', and 'Fix Your Bike' in the orange font of the Halfords brand,

implying a connection between Halfords and the Government scheme, and emphasising the service provided by Halfords.

38.2. Individuals are told to “*Visit halfords.com to find out more now*”, which not only signposts individuals to the Halfords website but includes a sense of urgency in the messaging, which is a typical marketing strategy.

38.3. The email gives instructions to “*Bring your bike, Government voucher and approved form of identification to your chosen Halfords store*”. This statement encourages individuals to redeem the voucher specifically at a Halfords store. The email makes no mention of the fact that the voucher can be redeemed with any participating mechanic/repair shop taking part in the scheme.

38.4. The Commissioner’s publicly available existing Direct Marketing Guidance⁵ at Paragraph 35 states that direct marketing “*covers any advertising or marketing material, not just commercial marketing. All promotional material falls within this definition, including material promoting the aims of not-for-profit organisations. [...] It will also cover any messages which include some marketing elements, even if that is not their main purpose*”⁶. Whilst Halfords has maintained that it was simply advising individuals of the availability of the Government’s ‘Fix Your Bike’ Scheme, the fact that the emails contain even *some* promotional material is sufficient for it to constitute direct marketing.

⁵ Direct marketing guidance (ico.org.uk)

⁶ The Upper Tribunal in the case of *Leave.EU Group Ltd and Eldon Insurance Services Ltd -v- Information Commissioner [2021] UKUT 26 (AAC)* agreed with the Commissioner [at Paragraph 38 of its decision] that, when considering regulation 22 PECR, “*there is no merit in the notion that some form of primary purpose test should be read into [it]*”.

38.5. Whilst the email does provide recipients with some information about the national Government scheme, it also clearly provides recipients with material which promotes Halfords and its services, and steers recipients towards its website, rather than objectively informing recipients that this service is available from all participating retailers⁷. This can be seen in its 'Redeeming your voucher' steps, where it states:

- "1. Book your free bike assessment.*
- 2. Bring your bike, Government voucher** and approved form of identification to your chosen Halfords store.*
- 3. Approve the repairs and apply your voucher.*
- 4. Book a repair appointment for your repairs to be completed.*
- 5. Collect your bike.*

*** if you haven't applied for your voucher yet, you can learn more on halfords.com. We'll also provide you with a link to the Government application portal once you complete your bike assessment booking."*

These steps clearly advertise a service which Halfords provides, i.e. a free bike assessment/health check and bike repair, for which individuals may be able to redeem a government voucher to claim a discount to the value of £50 against the work to be carried out.

⁷ For clarity, and for the avoidance of doubt in light of representations made by Halfords to the Notice of Intent in this case, the Commissioner does not say that if Halfords had included details of other retailers with whom the recipient could redeem the voucher then it would not constitute direct marketing. Rather, it is the fact that the email is advertising the services of Halfords which makes it a marketing message, not the fact that it failed to also advertise its competitors.

38.6. Whilst Halfords has suggested that its emails were service messages, the Commissioner's online guidance⁸ should have provided Halfords with some certainty that the messages it was seeking to send did not fall within this bracket. Specifically, the online guidance states: "*Routine customer service messages do not count as direct marketing – in other words, correspondence with customers to provide information they need about a current contract or past purchase (eg information about service interruptions, delivery arrangements, product safety, changes to terms and conditions, or tariffs). General branding, logos or straplines in these messages do not count as marketing. However, if the message includes any significant promotional material aimed at getting customers to buy extra products or services or to renew contracts that are coming to an end, that message includes marketing material and the rules apply.*" Whilst recipients could put the 'Fix Your Bike' voucher towards the cost of the bike repairs, it may not have covered the whole cost – this is expressly clear from the email itself where in small type it states: "**Redeemable value dependent upon work required. [...]*".

39. Accordingly, the Commissioner is satisfied that these 498,179 unsolicited communications contained 'direct marketing', and are subject to the rules under PECR.
40. Halfords has sought to claim during the Commissioner's investigation that its emails were sent "*on behalf of the Government*"⁹, however the Commissioner is not persuaded that this is the case. Whilst Halfords may have been registered with the Government scheme, it does not follow

⁸ Electronic and telephone marketing | ICO

⁹ As claimed in Halfords' correspondence of 26 May 2022 in response to a series of questions from the Commissioner.

that its messages were sent “*on behalf of the Government*”. Indeed, Halfords’ claim that it has acted on behalf of the Government in sending these emails appears to be an attempt to characterise itself as a pseudo-government agency or representative, which it is not. The Commissioner takes the view that Halfords is clearly a commercial entity, entirely separate to the Government, which was seeking to encourage business by offering its own services to subscribers with the proposition that they could redeem the Government voucher on its site. Halfords has provided evidence in representations to the Notice of Intent in this case which shows that it was in consultation with the Government prior to the scheme being launched. Whilst it is acknowledged, and perhaps to be expected, that in launching the ‘Fix Your Bike’ scheme the Government would have sought the support of prominent bodies in the cycling sector to facilitate its initiative, Halfords has provided no evidence that the Government sought to encourage these bodies to do so by sending unsolicited direct marketing messages to individuals without consent.

41. Halfords, 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, or that the soft opt-in applied.
42. Halfords has previously sought to claim a reliance on ‘Legitimate Interest’ as justification for the transmission of its unsolicited direct marketing messages, however it is the case that where e-privacy laws require consent (as is the case with regulation 22 PECR), an organisation which does not hold consent cannot rely on ‘Legitimate Interest’ in the alternative.
43. The 498,179 unsolicited direct marketing messages received by subscribers in this instance were sent specifically to individuals who had,

in Halfords' terms, "[...] opted out [and] who have bought an adult or junior bike in the last 3 years". Halfords therefore was aware that it did not hold valid consent to send direct marketing to these individuals, but specifically targeted them anyway. Aside from its flawed reliance on 'Legitimate interest', Halfords mistakenly believed that it did not require consent in any event, as it was of the view that the emails were 'service' messages, however this was evidently not the case.

44. The Commissioner is satisfied that the 'soft opt-in' exemption cannot apply, not least since the targeted recipients had already opted out of marketing (or rather had not opted in), and were in any event denied the opportunity of opting out at the point of receiving the email since it did not contain a simple means of refusing the use of their contact details for the purposes of direct marketing (i.e. an 'unsubscribe' link) contrary to regulation 22(3)(c) PECR.
45. The Commissioner is therefore satisfied from the evidence he has seen that Halfords did not have the necessary valid consent for the 498,179 direct marketing messages received by subscribers.
46. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

47. The Commissioner is satisfied that the contravention identified above was serious. This is because on 28 July 2020, a confirmed total of 498,179 unsolicited direct marketing messages were received by subscribers, having been sent by Halfords. These messages contained direct marketing material for which subscribers had not provided valid consent, furthermore the Commissioner is satisfied that Halfords cannot

rely on the soft opt-in exemption. The Commissioner received a total of three complaints regarding this campaign.

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

Deliberate or negligent contraventions

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

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

51. Firstly, he has considered whether Halfords knew or ought reasonably to have known that there was a risk that these contraventions would occur. This is not a high bar and he is satisfied that this condition is met.

52. Halfords were clearly aware of the risks of contravening PECR, and demonstrated this knowledge by considering and framing the wording of its emails in such a way as to avoid the appearance of the messages as direct marketing; it did this by placing a 'service message' disclaimer within the body of the email, and by selectively including a link to a government website so that it could not "*be accused of linking to a marketing site*". However, to any extent to which Halfords were unaware of its obligations, it would be reasonable for any organisation engaging in direct marketing, particularly one of Halfords' size, to consider the available public guidance to make itself aware that 'direct marketing' extends to any promotional or advertising material contained within a

communication, and that by encouraging recipients to visit a Halfords store and utilise a Halfords service it would clearly constitute 'direct marketing'.

53. 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 definition of direct marketing, the requirements of consent for direct marketing and 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. 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.
54. It is therefore reasonable to suppose that Halfords were, or should have been, aware of its responsibilities in this area.
55. Secondly, the Commissioner has gone on to consider whether Halfords failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
56. Halfords failed to ensure that it held valid consent for the direct marketing messages which it sent, or that it met the necessary criteria to rely on the soft opt-in provisions of Regulation 22 PECR. Indeed, Halfords intentionally targeted individuals for which it knew it did not

hold consent, on the mistaken basis that the email was a 'service' message, rather than direct marketing.

57. Given the clear risk involved with sending such communications, particularly to individuals who have already communicated to Halfords that they do not wish to receive electronic marketing, it would be reasonable to expect Halfords to have sought independent legal advice, or advice from the Commissioner, prior to engaging in its campaign. There is no evidence that it sought to do this. In its representations, Halfords has highlighted the potential delay to its campaign that would have been incurred in seeking such advice. The Commissioner is not persuaded by this suggestion; on 15 April 2020, in light of the covid-19 pandemic, the Commissioner published a document¹⁰ setting out the Commissioner's regulatory approach during that time. In it, the Commissioner stated that "*[w]e recognise that organisations are having to react quickly to new risks and initiatives; we will assist organisations by providing advice and guidance on data protection laws and how to meet their obligations in response to new requirements and initiatives*"; and, "*We will continue to identify and fast track advice, guidance or tools that will have the most impact in helping public authorities and businesses*". This makes it clear to organisations that the Commissioner would "fast track" advice for businesses having to "*react quickly to new [...] initiatives*". There is no evidence that Halfords sought to contact the Commissioner to seek advice on its proposed marketing campaign, and it is not sufficient for Halfords to now claim without basis, as it does in its representations, that seeking "*independent legal advice or advice from the Commissioner would in all likelihood have taken days, if not weeks, to receive a response*". Furthermore, it is apparent from the representations provided to the Notice of Intent, that discussions

¹⁰ How we will regulate during coronavirus | ICO

between Halfords and the Government were taking place about the 'Fix Your Bike' campaign at least as early as mid-June 2020, with the email being sent out on 28 July 2020. There was, in the Commissioner's view, more than enough time in that period to consult the Commissioner, or independent legal advisors, for advice.

58. All that has been provided in respect of any purported advice on its intended campaign is a copy of an internal email from Halfords' Data Protection Officer dated 30 June 2021 advising that the unsolicited email should contain a hyperlink to the Government website, "*so that [Halfords] can not be accused of linking to a marketing site*" (sic). Given the gravity of the campaign being undertaken, the Commissioner takes the view that this is insufficient. The Commissioner would separately note here that whether or not an unsolicited email contains a weblink to a separate marketing site is not determinative of whether that email constitutes direct marketing.
59. In the circumstances, the Commissioner is satisfied that Halfords failed to take reasonable steps to prevent the contraventions.
60. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

61. Having considered the seriousness of the contravention, the fact that it appears to have been a negligent breach rather than a deliberate breach, and having considered comparator cases, the Commissioner believes that a penalty starting point of £30,000 is appropriate in this case.

62. The Commissioner has gone on to consider whether there were any substantive **mitigating** or **aggravating features** to the contravention.
63. He does not find there to be any substantive aggravating or mitigating features to warrant a change to the starting point of the penalty. Therefore, the Commissioner is not minded to amend the starting point for the penalty amount.
64. 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 the procedural rights under section 55B have been complied with.
65. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by Halfords on this matter.
66. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
67. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
68. The Commissioner gone on to consider the likely impact of a monetary penalty on Halfords, including having regard to regard to the factors set out in s108(2)(b) of the Deregulation Act 2015. He has decided on the information that is available to him that Halfords has access to sufficient financial resources to pay the proposed monetary penalty without causing undue financial hardship. Halfords chose not to make any

representations in respect of its ability to pay a monetary penalty of the amount proposed.

69. 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.
70. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

71. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£30,000 (thirty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

72. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **5 October 2022** 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.

73. If the Commissioner receives full payment of the monetary penalty by **4 October 2022** the Commissioner will reduce the monetary penalty by 20% to **£24,000 (twenty-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.
74. 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.
75. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
76. Information about appeals is set out in Annex 1.
77. 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.

78. 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 2nd day of September 2022.

Andy Curry
Head 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 (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)).