

## **DATA PROTECTION ACT 1998**

### **SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

#### **MONETARY PENALTY NOTICE**

To: Green Logic UK Ltd

Of: Office 1.8 Litchurch Plaza, Litchurch Lane, Derby, DE24 8AA

1. The Information Commissioner ("the Commissioner") has decided to issue Green Logic UK Ltd ("**GLUK**") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of Regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

#### **Legal framework**

3. GLUK, whose registered office address is given above (Companies House Registration Number: 11659845) is the organisation stated in this notice to have used a public electronic communications service to make unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.
4. 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 the Telephone Preference Service Ltd ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it. The Corporate Telephone Preference Service ("CTPS") is the central opt-out register for organisations wishing to opt out from receiving sales and marketing calls.

5. Regulation 21 of PECR states:

*"(A1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making calls (whether solicited or unsolicited) for direct marketing purposes except where that person—*

*(a) does not prevent presentation of the identity of the calling line on the called line; or*

*(b) presents the identity of a line on which he can be contacted.*

*(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 [paragraphs (A1) or (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.*

6. Regulation 24 of PECR states that

*"(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—*

..

*(b) in relation to a communication to which regulation 21 [or 21A] (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(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."*

7. Under regulation 26 of PECR, the Commissioner 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 TPS is a limited company which operates the register on the Commissioner's behalf. Businesses who 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.
8. 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).

9. "Individual" is defined in regulation 2(1) of PECR as *"a living individual and includes an unincorporated body of such individuals"*.
10. 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"*.
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**

#### Complaints

15. GLUK is a home improvement company, specialising in insulation, roof upgrades, conservatories, and single storey extensions.
16. Between January 2020 and December 2020, complaints were made to the Telephone Preference Service (TPS) and the Information Commissioner's Office (ICO) relating to unsolicited marketing calls.
17. 15 complaints were made to the TPS and 17 complaints were made to the ICO Online Reporting Tool. Most complainants did not provide the details of the organisation that made the call; some complainants identified the calling party as Green Energy Media, Green Home Media, and Greener Homes, one complainant did however identify "Green Logic" as the company.

## The Investigation

18. To confirm the identity of the caller, enquiries were made with the relevant service providers, which established that the telephone numbers identified by the complaints were allocated to GLUK.
19. The ICO wrote to GLUK on 8 December 2020, providing a copy of the complaints and setting out several questions about its business operations and the complaints. A response was requested within 28 days.
20. On 6 January 2021, GLUK replied asking for an extension to the response time due to the offices being closed because of the Coronavirus pandemic (the pandemic). An extension to 3 February 2021 was agreed.
21. The ICO further agreed to pause the investigation until 15 February 2021 due to the pandemic/issues that GLUK had with accessing offices.
22. Further correspondence followed in March which established that [REDACTED] anticipated a return to the office on 12 April 2021. The ICO requested that a full response be provided by 16 April 2021 and reminded [REDACTED] of the Commissioner's powers, as set out in the original 8 December 2020 letter.
23. Through correspondence received during April, May and June 2021 and following further extensions of time for replies, it was established that:
  - i. The trading names used during calls were Greener Homes, Spray the UK, Green Logic.

- ii. Data was purchased by GLUK from different companies, for which invoices were produced which showed that GLUK purchased at least 425,214 records during the period of investigation from multiple different sources. However, they contained no information about the sources of the data, whether consent was obtained or TPS registration status. The due diligence checks that were described, making sure it was a reputable company and that they have been established for some time, would not enable GLUK to confirm that the requirements of the PECR have been met. GLUK had not carried out due diligence checks into the data it had bought and had simply assumed it would be compliant and screened against the TPS register.
  - iii. GLUK did not have in place sufficient measures to ensure that the numbers called were screened against the TPS. GLUK did not have in place adequate training and policies for employees.
  - iv. GLUK hold data purchased indefinitely.
24. GLUK confirmed that it made 2,933,868 attempted calls, of which 384,029 had connected, between 1 January 2020 and 31 December 2020. GLUK was unable to provide full records of the calls made so it is not possible to determine how many of those 384,029 calls were made to TPS subscribers. Evidence provided by GLUK's communications service provider showed that of 58,731 calls made in this period, 11,741 were made to TPS subscribers 84 were made to CTPS subscribers.
25. GLUK have been unable to provide a response to the majority of the ICO's questions, and when a response has been provided it has been limited. It is acknowledged that the effects of the covid pandemic and



██████████ personal circumstances contributed to the limited responses.

26. The Commissioner has made the above findings of fact on the balance of probabilities.
27. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by GLUK and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

28. The Commissioner finds that GLUK contravened regulations 21 and 24 of PECR.
29. The Commissioner finds that the contravention was as follows:
30. The Commissioner finds that between 1 January 2020 and 31 December 2020 there were 11,825 unsolicited calls for the purpose of direct marketing which were connected 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 the Commissioner in accordance with regulation 26, contrary to regulation 21(1)(b) of PECR.
31. The Commissioner is also satisfied for the purposes of regulation 21 that these unsolicited direct marketing calls were made to subscribers who had registered with the TPS and CTPS at least 28 days prior to receiving the calls, and who for the purposes of regulation 21(4) had not notified GLUK that they did not object to receiving such calls.

32. For such notification to be valid under regulation 21(4), the individual must have taken a positive action to override their TPS/CTPS registration and indicate their willingness to receive marketing calls from the company. The notification should reflect the individual's choice about whether they are willing to receive marketing calls. Therefore, where signing up to use a product or service is conditional upon receiving marketing calls, companies will need to demonstrate how this constitutes a clear and positive notification of the individual's willingness to receive such calls.
33. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting into marketing communications generally, unless it is clear that this will include telephone calls.
34. Further, the notification must demonstrate the individual's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of regulation 21(4) if individuals are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
35. The Commissioner is therefore satisfied from the evidence he has seen that GLUK made 11,741 unsolicited direct marketing calls to subscribers who had been registered with the TPS for not less than 28 days and 84 unsolicited direct marketing calls to subscribers who had been registered with the CTPS for not less than 28 days, and who had not previously notified GLUK that they did not object to receiving such calls.

36. The Commissioner is further satisfied that GLUK failed, as required by regulation 24 of PECR, to provide the recipient of the calls with the particulars specified at regulation 24(2) of PECR.
37. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

**Seriousness of the contravention**

38. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulations 21 and 24 by GLUK arising from the organisation's activities between 1 January 2020 to 31 December 2020, and this led to 11,825 unsolicited direct marketing telephone calls being made to subscribers who were registered with the TPS/CTPS and who had not notified GLUK that they were willing to receive such calls.
39. In addition, it is reasonable to suppose that the contravention could have been far higher given that GLUK itself claims that it made 384,029 connected calls during the period of the contravention, rather than just the 58,731 identified by its service provider.
40. The lack of formal training, no clear policies in respect of lawful contact with customers, the overall lack of due diligence and the inability or unwillingness of GLUK to answer the ICO's questions or provide information are factors which contribute to the seriousness of this contravention.
41. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

### **Deliberate or negligent contraventions**

42. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that GLUK'S actions which constituted that contravention were deliberate actions (even if GLUK did not actually intend thereby to contravene PECR).
43. The Commissioner does not consider that GLUK deliberately set out to contravene PECR in this instance.
44. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
  45. Firstly, he has considered whether GLUK knew or ought reasonably to have known that there was a risk that these contraventions would occur. He is satisfied that this condition is met, for the following reasons;
    - I. no due diligence has been undertaken to ensure that the data GLUK use is opted-in and compliant
    - II. The requirements of Regulation 21 and 24 of the PECR are clear and unambiguous. Had GLUK taken the time to review the guidance on the ICO's website and/or sought guidance from other sources, it is likely a contravention would not have occurred.
46. 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 requirements of consent for direct marketing and explains the circumstances under which

organisations can 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 subscriber registered with the TPS, unless the subscriber has specifically notified the company that they do not object to receiving such calls. 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.

47. Standard practice of the TPS is to contact the organisation making the calls on each occasion a complaint is made. It is therefore reasonable to believe that GLUK would have received a notification from the TPS for each of the complaints being made in this case. Which should have made it aware of the risk that such contraventions may occur and were indeed occurring.
48. It is therefore reasonable to suppose that GLUK should have been aware of its responsibilities in this area.
49. Secondly, the Commissioner has gone on to consider whether GLUK failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
50. The Commissioner's direct marketing guidance makes clear that organisations acquiring marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary notifications for the purposes of regulation 21(4). It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence.

51. GLUK failed to undertake proper due diligence checks on its data suppliers, and failed to screen calls against the TPS/CTPS register, both of which are steps which would have been reasonable for GLUK to have taken.
52. In the circumstances, the Commissioner is satisfied that GLUK failed to take reasonable steps to prevent the contraventions.
53. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

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

54. The Commissioner has taken into account the following aggravating features of this case:
  - Inconvenience caused to subscribers; specifically the calls were persistent, misleading and caused annoyance and/or anxiety to subscribers.
  - Complaints against GLUK continued to be generated, despite an on-going investigation regarding their compliance with the PECR. It is evident GLUK were still making unsolicited calls whilst at the same time failing to respond to the ICO's investigation.
  - GLUK's actions were carried out for financial gain.
  - GLUK failed to provide meaningful engagement with the ICO investigation. It is acknowledged that the effects of the covid

pandemic and [REDACTED] personal circumstances contributed to the limited responses.

- GLUK have stated that the company is ceasing trading due to the Coronavirus pandemic; to date there is no indication that GLUK have ceased trading. 21 complaints were received between January 2021 to 18 October 2021; 11 complaints were registered with the ICO, the remaining 10 received by TPS.

55. 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.
56. 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 GLUK on this matter. GLUK requested an extension of time in order to provide further financial representations, which was granted, however, no further representations were received.
57. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
58. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
59. The Commissioner has considered the likely impact of a monetary penalty on GLUK. He has decided on the information that is available to him, **that a penalty remains the appropriate course of action in the circumstances of this case.**

60. 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. 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.
61. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

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

62. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£40,000** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

#### **Conclusion**

63. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **30 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.
64. If the Commissioner receives full payment of the monetary penalty by **29 October** the Commissioner will reduce the monetary penalty by 20% to **£32,000 (thirty two thousand pounds)**. However, you



should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

65. 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.
  
66. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
  
67. Information about appeals is set out in Annex 1.
  
68. 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.
  
69. 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 **30** 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](mailto: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)).