

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Simply Connecting Ltd

Of: 15 Eskbank Tanhouse, Skelmersdale, England, WN8 6EQ

1. The Information Commissioner ("the Commissioner") has decided to issue Simply Connecting Ltd ("SCL") 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. SCL, whose registered office address is given above (Companies House Registration Number: 12285087) is the organisation stated in this notice to have transmitted or instigated the transmission of 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. From 1 January 2021, consent in PECR has been defined by reference to the concept of consent in the UK GDPR as defined in section 3(10) of the DPA 2018^[1]: see regulation 2(1) of PECR, as amended by Part 3 of Schedule 3, paragraph 44 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419. Article 4(11) of the UK 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".*
8. Recital 32 of the UK GDPR materially states that *"When the processing has multiple purposes, consent should be given for all of them"*. Recital 42 materially provides that *"For consent to be informed, the data*

^[1] The UK GDPR is therein defined as Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

subject should be aware at least of the identity of the controller”.

Recital 43 materially states that *“Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case”.*

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. *“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”.*
12. 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."

13. 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.
14. 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.
15. 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

16. At all material times SCL operated as a marketing agency, particularly in relation to lead generation for housing disrepair claims, debt solutions and personal injury claims.
17. SCL's registered office address was 20-22 Wenlock Road, London, N1 7GU between 28 October 2019 and 2 February 2023.

18. SCL's sole director is Kieran Thomas Flannery, a British national residing in Thailand. Mr Flannery has been a director of numerous companies operating lead generation marketing since March 2010.
19. SCL was registered with the Commissioner as a data controller from 5 February 2021 to 4 February 2023, under registration number ZA876599. The contact was listed as Kieran Flannery.
20. SCL first came to the attention of the Commissioner in March 2022 as a result of complaints received in February and March 2022 via Mobile UK's Spam Reporting Service. Mobile UK is an organisation that represents the interests of mobile operators in the UK. Mobile users can report the receipt of unsolicited marketing text messages to Mobile UK's Spam Reporting Service by forwarding the message to 7726 (spelling out "SPAM"). The Commissioner is provided with access to the data on complaints made to the 7726 service and this data is  used to ascertain organisations in breach of PECR.
21. Further enquiries of the 7726 database by the Commissioner identified a total of 2,935 complaints about SMS messages containing the opt-out address "OptOut.co" between 24 February 2022 and 23 March 2022.
22. The content of the messages was as follows:

"[Name], We can help you Claim Compensation & get work done Free if your property has disrepair, Find out more at www.home-disrepair.com or 2stop OptOut.co"

"Hi [Name] Reduce all of your unaffordable debts with new legislation. Find out if you Qualify Free at www.debt-reduced.com or opt-out at OptOut.co"

"Hi [Name] Reduce all of your unaffordable debts with new legislation. Find out if you Qualify Free at www.debt-deduct.com or opt-out at OptOut.co"

"[Name], If you have suffered an injury, accident or negligence we can help you claim compensation, Find out Free at www.quick-claims.co or 2stop OptOut.co"

23. The senders were shown as "hdrc", "dsps", "drps", "drsp" and "qccs", respectively.
24. The website www.home-disrepair.com offers services to tenants experiencing disrepair issues with their rented accommodation, including "free" home surveys and "no win no fee compensation". Tenants are invited to provide their name, contact details and the nature of their disrepair issues, before ticking a box confirming that *"I consent to have my data processed according to the privacy policy"*. The privacy policy identifies the controller as SCL. It states that SCL may share personal data with third parties within the UK claims management services industry.
25. The websites www.debt-reduced.com and www.debt-deduct.com offer indebted individuals the opportunity to "cancel" most of their debts and obtain "impartial advice and solutions" in relation to their debt. Individuals are asked to provide their name and contact details, estimated total debt, number of debts, employment status and residential status. The consent statement is identical to that of

- www.home-disrepair.com, except that it refers to either debt-reduced.com or debt-deduct.com. The privacy policy on www.debt-reduced.com and www.debt-deduct.com identifies the controller as SCL. It states that SCL may share personal data with third parties within the UK financial services industry.
26. The website www.quick-claims.co offers individuals "fast settlements" and "maximum compensation" on a "no win no fee" basis. Individuals are invited to provide their name and contact details, the nature of the claim and whether the accident or negligence occurred within the last three years. The consent statement is identical to that on www.home-disrepair.com, www.debt-reduced.com and www.debt-deduct.com, except that it refers to quick-claims.co. The privacy policy on www.quick-claims.co identifies the controller as SCL. It states that SCL may share personal data with third parties including providers of "*Private Health Cover & Insurance Plans, Financial Compare Offers & Other Similar Services*".
27. The website OptOut.co consists of a single page headed "*To optout please enter your mobile number below*", below which is a box to enter a mobile number and a button marked "*SUBMIT*". The website does not contain any company details and there is no privacy policy.
28. On 24 March 2022, the Commissioner sent an initial investigation letter to SCL, informing it of the complaints received and requesting a response by 14 April 2022. The letter was sent by email only to [REDACTED], the contact email address listed on the Commissioner's data protection register for SCL.
29. The Commissioner did not receive any acknowledgement or response to the letter. On 1 April 2022 and 19 April 2022, the Commissioner

sent reminder emails to [REDACTED]. The Commissioner also made an attempt to contact SCL by phone, using the phone number on the data protection register, but there was no answer.

30. On 20 April 2022, the Commissioner sent a chaser letter to the registered office address of SCL, enclosing a copy of the initial investigation letter and requesting a written response within seven days. The Commissioner highlighted that failure to respond may result in an information notice being served on SCL under section 43 of the DPA. No response was received.
31. On 28 April 2022, an information notice was sent by special delivery to the registered office address of SCL, requiring it to provide the specified information within 35 days. The Commissioner reminded SCL that a failure to respond to an information notice is a criminal offence. A copy of the notice was sent by email to [REDACTED]. The notice was delivered on 29 April 2022 and was signed for. It was subsequently returned to the Commissioner.
32. On 6 May 2022, a request for information was sent to [REDACTED] ("[REDACTED]"), the operator of the registered office address of SCL. [REDACTED] confirmed that the account was registered to Kieran Thomas Flannery and provided a forwarding address and a residential address, both of which were in Thailand. They also provided a UK mobile number and an email address ([REDACTED]).
33. On 9 May 2022, a third party information notice was issued to the telecoms provider, [REDACTED] ("[REDACTED]") to request details for the sender of the "dsps" messages, a list of the campaigns conducted and the IP address captured when the organisation accessed their system.

34. No response was received to the information notice issued to SCL on 28 April 2022. A chaser letter was sent to the registered office address of SCL on 8 June 2022. The letter was delivered at 10:10 on 9 June 2022 and was signed for by [REDACTED]. The letter was subsequently returned to the Commissioner marked "RTS".
35. On 9 June 2022, copies of the chaser letter and information notice were sent by email to [REDACTED] and [REDACTED]. SCL was asked to provide the information requested in the notice within seven days and was warned that failure to comply with the request may result in prosecution. SCL acknowledged receipt the following day.
36. On 17 June 2022, SCL sent a holding email advising that it was collating the information and requesting an extension.
37. On 27 June 2022, the Commissioner responded to ask SCL how much additional time it required to collate the information.
38. On 29 June 2022, SCL responded indicating that it was still gathering the requested information. The Commissioner responded to extend the deadline to 1 July 2022. SCL was asked to provide as much information by that date, and any outstanding information as it became available.
39. On 7 July 2022, [REDACTED] responded to the third party information notice issued on 9 May 2022. [REDACTED] was unable to locate any messages containing the sender ID "dsps".
40. [REDACTED] identified messages containing the sender IDs "hdrc" and "drsp". The messages were sent from an account in the name of Kieran

Flannery ([REDACTED]), a "sole trader". The account was created on 9 December 2020 and the last login was on 18 March 2022.

[REDACTED] confirmed that the account was no longer active.

41. [REDACTED] provided details relating to five campaigns conducted by the account between 3 and 8 March 2022.

42. The content of the messages was as follows:

"We can help you Claim Compensation & get work done Free if your property has disrepair, Find out more at www.home-disrepair.com or 2stop OptOut.co"

"Reduce all of your unaffordable debts with new legislation. Find out if you Qualify Free at www.debt-reduced.com or opt-out at OptOut.co"

43. The total number of SMS messages sent over these five campaigns was 39,903. The total number of delivered messages was 29,116.

44. On 12 July 2022, the Commissioner sent an end of investigation email to SCL and Mr Flannery, including the information received from [REDACTED]. The email added that if SCL or Mr Flannery had any relevant evidence or information, it should be provided in the following seven days.

45. On 13 July 2022, SCL sent a holding response advising that it was still awaiting provision of the opt-in information from its data provider.

46. The Commissioner responded on the same day to advise that SCL should respond to the remaining enquiries, notwithstanding the missing information.
47. On 19 July 2022, the Commissioner received a substantive response from SCL. SCL advised that the data was sourced from [REDACTED] ("[REDACTED]"). SCL provided a message from "[REDACTED]", which stated:
- "We have full optin [sic] status ofcourse [sic] but we never have to use it as the customers are all fully aware that they opted in for contact..."*
48. SCL provided two screenshots showing payments made to [REDACTED] on 24 February 2022 and 1 March 2022.
49. SCL also provided screenshots of email correspondence with [REDACTED] as evidence of its attempts to obtain the requested opt-in information.
50. SCL confirmed that a total of 152 leads were generated from the SMS messages, 100 of which were referred to [REDACTED] ("[REDACTED]").
51. SCL advised that it contacted the individuals enquiring about housing disrepair claims itself to establish if they had an eligible claim. If successful, SCL indicated that they would have been sent to [REDACTED] [REDACTED] ("[REDACTED]") however no applicants were eligible and no contract was made with [REDACTED].
52. Open source research conducted by the Commissioner revealed that [REDACTED] was dissolved on 23 July 2019, more than two years before the data was purchased from [REDACTED], who was the former director of [REDACTED].

53. On 20 July 2022, the Commissioner sent further enquiries to SCL to confirm the identities of the companies it had been dealing with and request information about the due diligence it had carried out.
54. On 26 July 2022, SCL responded to confirm that the data provided by ██████████ consisted of loan application data. ██████████ had always been referred to as "*a credible and compliant data provider*" and had provided examples of the opt-ins, including the URL and the date and time of the application. SCL was unaware of the current legal status of ██████████.
55. On 27 July 2022, the Commissioner sent an email to SCL asking if it was able to provide any examples of the opt-ins provided by ██████████
56. SCL responded that it was unable to access the examples previously provided by ██████████. It explained that the data consisted of loan websites with IP address, exact time and date of the application, loan amount, purpose and "*other fields*". SCL confirmed that it had requested the examples be resent, along with the full opt-in information for the complaints. SCL noted that there seemed to have been a breakdown in communication with ██████████.
57. On 15 August 2022, further enquiries were made with ██████████ who responded on 22 September 2022 to provide evidence of the SMS campaigns sent from Mr Flannery's account since the account was created on 9 December 2020. Between 9 December 2020 and 9 March 2022, a total of 810,295 messages were sent, 441,830 of which were delivered. The messages related to private health care, life insurance, home insurance, debt solutions and housing disrepair claims.

58. Searches of the 7726 database identified a further 1,024 complaints received about these messages between 9 December 2020 and 2 October 2022. This totals 3,959 complaints identified.
59. The Commissioner's online reporting tool ("OLRT") identified a total of six complaints between 9 December 2020 and 4 August 2021. The following are examples of some of the comments made by complainants:

"I'm very careful about never giving my number out so I have no idea how they got it. I texted back "how did you get this number" and it couldn't send as the number was hidden; consequently I cannot block them. I'm concerned it's a scam and don't want to use their opt out for that reason, irrespective of that, I never consented to receiving this message in the first place."

"I am very annoyed that somehow this company has managed to obtain my mobile phone number. I keep my number very restricted. This should be illegal and they should be required to explain how they have obtained my number."

"Disturbed that they had obtained my name and mobile number."

60. On 7 October 2022, the Commissioner sent an email to SCL advising of the information provided by [REDACTED], enclosing a spreadsheet of complaints received by the 7726 spam reporting service and requesting any evidence held to show that the subscribers to the mobile numbers listed in the spreadsheet had consented to receiving unsolicited direct marketing messages from SCL. No response was received.

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

The contravention

63. The Commissioner finds that SCL contravened regulation 22 of PECR.
64. The Commissioner finds that the contravention was as follows:
65. The Commissioner finds that between 9 December 2020 and 9 March 2022 there were 441,830 direct marketing SMS messages received by subscribers. The Commissioner finds that SCL transmitted or instigated the transmission of those direct marketing messages, contrary to regulation 22 of PECR.
66. SCL, as the sender or instigator 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.
67. The Commissioner's direct marketing guidance says "*organisations need to be aware that indirect consent will not be enough for texts, emails or automated calls. This is because the rules on electronic marketing are stricter, to reflect the more intrusive nature of electronic messages.*"

68. However, it does go on to say that indirect consent may be valid, but only if it is clear and specific enough. If categories of organisations are referred to then those categories must be tightly defined and the organisation wanting to use the consent must clearly fall within the description. Consent is not likely to be valid where an individual is presented with a long, seemingly exhaustive list of categories of organisations.
69. For consent to be valid it is required to be “freely given”, by which it follows that if consent to marketing is a condition of subscribing to a service, the organisation will have to demonstrate how the consent can be said to have been given freely.
70. Consent is also required to be “specific” as to the type of marketing communication to be received, and the organisation, or specific type of organisation, that will be sending it.
71. Consent will not be “informed” if individuals do not understand what they are consenting to. Organisations should therefore always ensure that the language used is clear, easy to understand, and not hidden away in a privacy policy or small print. Consent will not be valid if individuals are asked to agree to receive marketing from “similar organisations”, “partners”, “selected third parties” or other similar generic description.
72. The Commissioner has considered the evidence provided by SCL who asserted that it purchased data relating to individuals who had recently applied for loans and who had consented to receiving SMS, email and/or telephone communications about third party products or services. However, it failed to provide any evidence that the individuals

who received the messages had provided valid consent for SMS messages sent by or at the instigation of SCL.

73. The Commissioner is therefore satisfied from the evidence he has seen that SCL did not have the necessary valid consent for the 441,830 direct marketing messages received by subscribers.
74. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

75. The Commissioner is satisfied that the contravention identified above was serious. This is because between 9 December 2020 and 9 March 2022 a confirmed total of 441,830 direct marketing messages were sent by or at the instigation of SCL. These messages contained direct marketing material for which subscribers had not provided valid consent. The messages resulted in 3,959 complaints to the 7726 spam reporting service and six complaints to the Commissioner.
76. In addition, SCL also sent or instigated the sending of a further 368,465 marketing messages. Although these were not received by individuals, it may indicate an attempt to send large volumes of marketing messages to individuals without consent to do so.
77. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

Deliberate or negligent contraventions

78. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that SCL's actions which constituted that contravention were deliberate actions (even if SCL did not actually intend thereby to contravene PECR).
79. The Commissioner does not consider that SCL deliberately set out to contravene PECR in this instance.
80. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
81. Firstly, he has considered whether SCL 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, given that SCL relied entirely on direct marketing due to the nature of its business, it should reasonably have sought to familiarise itself with the relevant legislation. The director, Mr Flannery, has worked in the direct marketing industry since 2010 and one of his previous companies was investigated by the Commissioner in 2015 for sending unsolicited SMS messages in contravention of PECR. In response to that investigation, he provided assurances that he would no longer rely on generic third party consent.
82. 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 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 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.

83. It is therefore reasonable to suppose that SCL should have been aware of its responsibilities in this area.
84. Secondly, the Commissioner has gone on to consider whether SCL failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
85. The Commissioner's direct marketing guidance makes clear that organisations acquiring or utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, and that they have the necessary consent. It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence.
86. The Commissioner would have expected SCL to have sought advice either from the Commissioner or from an independent legal advisor in relation to the basis on which it proposed to send its unsolicited direct marketing but failed to do so. SCL should also have conducted proportionate due diligence on the data being relied upon, including asking its third party data providers for evidence of the valid consent

received and entering into appropriate, written agreements with the third party.

87. In the circumstances, the Commissioner is satisfied that SCL failed to take reasonable steps to prevent the contraventions.
88. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

89. The Commissioner does not consider that there are any aggravating features or mitigating features in this case.
90. 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.
91. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking and invited SCL to make representations. In accordance with the requirements of section 65 of the DPA, the Notice of Intent was served on the registered office of SCL. The Commissioner believes that SCL may no longer be operating from that address and that Mr Flannery has failed to inform Companies House. The Notice of Intent was also sent to the email address used by Mr Flannery in his communications with the ICO in the course of the investigation. Despite this, no representations were received from SCL in response to the Notice of Intent.

92. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
93. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
94. The Commissioner has attempted to consider the likely impact of a monetary penalty on SCL but has been unable to do so given the lack of recent publicly available information. SCL was invited to provide financial representations in response to the Notice of Intent, but failed to do so. The Commissioner considers in the circumstances that a penalty remains the appropriate course of action.
95. 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.
96. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the

proposed intervention on the wider business community, both in terms of deterring non-compliance and economic benefits to legitimate businesses.

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

The amount of the penalty

98. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£40,000.00 (forty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

99. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **5 September 2023** 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.
100. If the Commissioner receives full payment of the monetary penalty by **4 September 2023** 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.
101. 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.

102. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

103. Information about appeals is set out in Annex 1.

104. 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.

105. 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 3rd day of August 2023

Signed

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)).