

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Quick Tax Claims Limited

Of: Woolwich House, 61 Mosley Street, Manchester, M2 3HZ

1. The Information Commissioner ("the Commissioner") has decided to issue Quick Tax Claims Limited ("**QTC**") 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 22 and 23 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

Legal framework

3. QTC, whose registered office address is given above (Companies House Registration Number: 14377745) 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. Regulation 23 of PECR states that "A person shall neither transmit, nor instigate the transmission of, a communication for the purposes of direct marketing by means of electronic mail –
- (a) where the identity of the person on whose behalf the communication has been sent has been disguised or concealed;
 - (b) where a valid address to which the recipient of the communication may send a request that such communications cease has not been provided
 - (c) where that electronic mail would contravene regulation 7 of the Electronic Commerce (EC Directive) Regulations 2002; or
 - (d) where that electronic mail encourages recipients to visit websites which contravene that regulation."
6. 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).
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

^[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.

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 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. Mobile users can report the receipt of unsolicited marketing text messages to the Mobile UK's Spam Reporting Service by forwarding the message to 7726 (spelling out "SPAM"). Mobile UK is an organisation that represents the interests of mobile operators in the UK. The Commissioner is provided with access to the data on complaints made to the 7726 service and uses this data to identify breaches of PECR.
17. The contravention period for the purpose of the Commissioner's investigation of QTC is 12 February 2023 to 12 May 2023.
18. QTC is a claims management company, focussing on PPI tax refunds. QTC was incorporated in September 2022 and is registered with Companies House with its address listed as: Woolwich House, 61 Mosley Street, Manchester, England, M2 3HZ. QTC is also registered with the Commissioner as a Data Controller (Reference Number: ZB404111).
19. QTC currently has one active Director, Ali Omar ("Mr. Omar"). Mr Omar was the only Director of QTC during the contravention period.
20. During the contravention period, a total of 66,793 reports were made to the 7726 spam reporting service in relation to messages sent by QTC. This large volume of reports prompted the Commissioner to conduct a further review of QTC.

21. The Commissioner established that of the 66,793 reports made, 93% related to SMS which did not contain a valid opt-out option, in contravention of Regulation 22 3(c) of PECR. An example of the SMS sent by QTC is as follows:

██████ *claim your PPI tax refund today! The Personal Savings Allowance means you may be owed Â£100s. Start your claim now: quicktaxclaims.co.uk/?s=WR1341*

22. On review of QTC's website (www.quicktaxclaims.co.uk), QTC states it charges a fee of 48% of any refund obtained on behalf of the customer. QTC also deduct a minimum fee of £30 for any successful claim. QTC also advise further additional fees may be applicable to any claim made by its customer.
23. Due to the Commissioner's concerns regarding QTC's possible exploitation of its customers, and concerns regarding QTC's adherence to Regulations 22 & 23 PECR, the Commissioner commenced an investigation into the practices of QTC.
24. On 12 May 2023, the Commissioner sent an initial investigation letter to QTC. The Commissioner also provided QTC with a copy of the complaints made to the 7726 service during the contravention period. The complaints contained instances where the same data subject was contacted more than once by QTC, but no valid opt-out option was provided. The Commissioner also provided QTC with copies of five complaints made to the Commissioner via its online reporting tool. The initial investigation letter requested that QTC provide the Commissioner with:
- The full list of telephone numbers/sender IDs/websites used by QTC;

- The volume of messages sent over the contravention period;
 - The volume of messages delivered over the contravention period;
 - The source of data used by QTC to promote their business;
 - For each source of data, how QTC ensures that individuals have consented to receiving marketing text messages from QTC;
 - Any evidence QTC can provide demonstrating how the subscribers to the mobile numbers contained within the UK Mobile list consented to receiving unsolicited direct marketing material from QTC;
 - Contracts, invoices and details of any due diligence taken regarding any information purchased by QTC;
 - Any details regarding any procedures followed by QTC for dealing with opt-out requests;
 - Confirmation from QTC if QTC also engage in email, automated call, or live direct marketing campaigns;
 - Any copies of training procedures provided by QTC to its staff regarding lawful contact with customers;
 - Any policies or procedures regarding responsibilities under PECR implemented by QTC;
 - Any explanation QTC can provide in relation to the number of complaints received during the contravention period; and
 - Any additional information QTC may think would be useful for the Commissioner in order to help the Commissioner understand how QTC operates.
25. On 15 May 2023, Mr. Omar responded to the Commissioner and assured the Commissioner of QTC's full cooperation.
26. On 6 June 2023, QTC provided its initial response to the Commissioner's investigation letter. Mr. Omar confirmed that during the contravention period, QTC had sent 7,863,547 SMS messages, of

which 4,983,449 SMS messages were successfully delivered. Mr. Omar confirmed QTC acquired data from third parties, and the documentation was reviewed to ensure compliance and verify consent mechanisms. Mr. Omar also provided documentation such as copies of invoices and due diligence forms related to QTC's data suppliers for the Commissioner to review. Finally, Mr. Omar advised the Commissioner that since QTC only employs one person, no formal training procedures had been developed, however Mr. Omar reassured the Commissioner that he had a comprehensive understanding of lawful practices and strictly adheres to relevant regulations and data protection requirements.

27. On 20 June 2023, the Commissioner requested QTC provide the consent data referred to in its initial response to the Commissioner.
28. On 28 June 2023, QTC responded to the Commissioner and provided screenshots of consent statements from [REDACTED] and [REDACTED]. QTC also provided screenshots of the privacy policies for [REDACTED] [REDACTED] (" [REDACTED] ") and [REDACTED]; two companies QTC purchased data from.
29. On 1 August 2023, the Commissioner requested QTC provide details of every data supplier it used during the contravention period. The Commissioner also requested all details available regarding any marketing campaigns conducted via SMS, email and live calls during the contravention period. The Commissioner requested QTC provide the details of their communications service provider and once again requested evidence of consent for each subscriber. Finally, QTC were asked to provide screenshots of the consent journey for each data source. The Commissioner requested that this information be provided by 8 August 2023.

30. On 8 September 2023, QTC provided a response. QTC had made multiple extension requests during the interim period. QTC confirmed that it only conducted SMS marketing campaigns and confirmed its communications service provider was [REDACTED] ("[REDACTED]"). QTC advised the Commissioner that an opt-out link is provided where one is applicable. QTC provided the Commissioner with details of the URLs used to obtain leads by each supplier and a copy of the privacy policy for each website. QTC confirmed it had three third party data suppliers namely: [REDACTED] ("[REDACTED]"), [REDACTED] and [REDACTED] ("[REDACTED]").
31. During the investigation, it was established that [REDACTED] was the owner of the competition site '[REDACTED]'. [REDACTED] required all site users to enter their personal details (including name, date of birth, address and telephone number) in order to have a chance of winning a prize. The Commissioner noted the following statement on [REDACTED]'s website "by clicking 'Register Now!' below, you consent to allowing [REDACTED] to process your registration and to use the data you supply to show you targeted offers and marketing communications from our partners". The Commissioner found that in order to enter a competition, site users were required to tick a box to confirm that they had read and agreed to the terms and conditions and consented to [REDACTED]'s partners contacting them via email, phone, text or post. Upon review of the terms and conditions, the Commissioner found that there was no clear way for the site users to opt-out of receiving marketing communications if they wanted to enter any of the competitions on [REDACTED]'s site. The Commissioner's investigation found that [REDACTED]'s privacy policy listed 174 organisations from which users could receive marketing. QTC confirmed that it had received data for 19,172 complainants from [REDACTED]. The Commissioner found that leads obtained through this site

could not be used by QTC to send direct marketing as users were not fully informed at the time of entering their personal details.

32. In relation to [REDACTED], the Commissioner found that [REDACTED] operated a competition site, on which site users could enter their personal details (including name, address and telephone number) to be entered into a prize draw. In order to submit their entry, site users were required to accept the site's terms and conditions by ticking a box. The site featured an additional checkbox which, by ticking, site users consented to [REDACTED]'s partner contacting them via email, phone, SMS or post with "interesting offers and marketing communications or important information". In order to submit their entries and claim their reward from [REDACTED], users were required to consent to receiving marketing communication from [REDACTED]'s partners. The Commissioner found that the site did not allow users to "opt-out" from marketing communications until after they had submitted their details. QTC confirmed that it had received data for 39,483 complainants from [REDACTED]. The Commissioner found that leads obtained through [REDACTED]'s site could not be used by QTC to send direct marketing, as consent was not obtained freely from the site users.
33. In relation to [REDACTED], the Commissioner found [REDACTED] to be the owner of [REDACTED], a website which claimed to promote savings by offering deals on insurance, utilities, green energy and other. The insurance section of [REDACTED] invited site users to enter their personal data in order to receive more information about insurance deals. The small print on the page stated that by entering those details site users consented to [REDACTED]'s terms and conditions and provided a link to the privacy notice. The notice permitted [REDACTED] to share personal data of the users with third parties "included but not limited to" 57 companies listed in

the notice. The Commissioner found that consent obtained by [REDACTED] was not valid, because it was not freely given. The site users were required to give consent to data sharing in order to receive their insurance quotations and [REDACTED] failed to provide users with an option to "opt out" from third-party marketing, at the time it initially collected their details. QTC confirmed that data for 9,565 complainants was sourced through this domain. The Commissioner found that leads obtained through this site could not be used by QTC for direct marketing purposes as the site users had not consented for the time being to receive such communication.

34. On 14 September 2023, QTC provided the Commissioner with spreadsheets from each data supplier which listed the subscriber's telephone number, opt-in time and date.
35. On 19 September 2023, the Commissioner requested that QTC provide both the total number of unsubscribe requests received and any complaints QTC had received directly during the contravention period. QTC were also asked to advise the Commissioner how many sales were generated from the marketing conducted during the contravention period. Finally, the Commissioner requested that QTC explain why some complaints reported to Mobile UK did not contain an opt-out option.
36. Further on 19 September 2023, The Commissioner issued a Third Party Information Notice (3PIN) to [REDACTED], QTC's communication service provider. On 2 October 2023, [REDACTED] confirmed a total of 7,682,681 SMS messages over the specified contravention period had been sent, of which 4,983,449 SMS messages had been delivered. [REDACTED] also confirmed the activation dates for QTC's account as 11 October 2022 until 12 May 2023.

37. On 29 September 2023, QTC replied to the Commissioner's letter of 19 September 2023 and advised that during the contravention period, QTC had directly received 14 opt-out requests and a further 631 opt-out requests via their SMS management platform. QTC also advised the Commissioner they had received nine Subject Access Requests. QTC advised the Commissioner that texts which did not include an opt-out option were subject to agreements with the data supplier whereby QTC were restricted from including an opt-out option, and, as such, these data subjects were only contacted once.
38. The Commissioner reviewed the list of complaints received by the 7726 service and discovered that many data subjects had been contacted on more than one occasion, and no valid opt-out option was ever provided in these messages.
39. On 5 October 2023, the Commissioner asked QTC to confirm if they had appointed any third-party organisations to send out marketing material on their behalf.
40. On 24 October 2023, QTC responded to the Commissioner and advised it had appointed [REDACTED] to send marketing SMS on its behalf.
41. On 25 October 2023, the Commissioner requested that QTC provide the total volume of delivered and sent messages by [REDACTED] on behalf of QTC. The Commissioner also requested that QTC provide the dates which [REDACTED] provided services to QTC and asked QTC to confirm if the source of [REDACTED]'s marketing's leads were taken from the [REDACTED] data previously provided to the Commissioner.

42. On 30 October 2023, QTC confirmed to the Commissioner that [REDACTED] had taken its leads from the [REDACTED].
43. On 12 November 2023, QTC advised the Commissioner that [REDACTED] did not send any SMS on behalf of QTC during the contravention period. It stated that its response stating otherwise was due to a miscommunication. QTC confirmed it had sent 7,863,547 SMS during the contravention period, of which 4,983,449 were successfully delivered.
44. On 13 November 2023, the Commissioner sent an end of investigation letter to QTC. The end of investigation letter provided QTC with a seven-day period to provide any further relevant information.
45. On 21 November 2023, QTC contacted the Commissioner to highlight it had cooperated with the Commissioner and stated that it had made its best efforts to bring its data collection and processing activities into compliance with the law. QTC stated that it had implemented policies to better comply with UK data protection laws and wished for the Commissioner to consider this.
46. The Commissioner has made the above findings of fact on the balance of probabilities.
47. The Commissioner has considered whether those facts constitute a contravention of regulations 22 and 23 of PECR by QTC and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

48. The Commissioner finds that QTC contravened regulations 22 and 23 of PECR.
49. The Commissioner finds that the contravention was as follows:
50. The Commissioner finds that between 12 February and 12 May 2023, there were 4,983,499 unsolicited direct marketing SMS messages received by subscribers. The Commissioner finds that QTC transmitted those direct marketing messages, contrary to regulation 22 of PECR.
51. QTC, as the sender of the direct marketing SMS, 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.
52. In this instance, QTC did not have valid consent to send marketing to the leads it purchased from its third party data suppliers, as the sites used to generate this data did not meet the consent requirements of UK GDPR.
53. 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.
54. 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.

55. 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.
56. The Commissioner has considered the 'consents' obtained by QTC and its data suppliers and is concerned that in each case there are issues regarding whether the consents can be said to be freely given, specific, and informed.
57. The Commissioner has considered each of the QTC's data suppliers individually and arrived at the following conclusions:
- In relation to [REDACTED], the Commissioner found that the consents obtained through this site could not be used by QTC to send direct marketing communications because site visitors were not fully informed at the time of entering their details into the site. The Commissioner found that the majority of consents had been collected before QTC's incorporation as 85% of the consents were generated before 26 September 2022, so QTC could not have been listed in the site's privacy policy. The Commissioner considered that it was not possible for users to give informed consent to a company before it was incorporated. Further, [REDACTED]'s site listed 251 companies in receipt of the site visitors' personal data. Each of those companies had their own privacy policies and data sharing agreements. For consent to be valid, it must be precise and easy to understand. The Commissioner considered that for those consents collected after QTC incorporated, it was impossible for users to give informed consent considering the volume of information presented

to them by [REDACTED].

- Turning to [REDACTED], the Commissioner found that the consents obtained through this site could not be used by QTC for direct marketing purposes. This was because site users were prevented from entering a competition without consenting to third party marketing. QTC informed the commissioner that an opt-out was provided after the user submitted their details, however an opt-out was not provided at the time that the user's details were initially collected. Consent was not freely given, as site users were not able to "opt-out" from sharing their personal data with [REDACTED]'s partners, until after they had submitted their details.
- In relation to [REDACTED], the Commissioner found that QTC should not be using their leads for direct marketing as site users were required to enter their personal data and agree to receive direct marketing from [REDACTED]'s partners in order to receive their insurance quotations. Therefore, consent was not obtained freely by [REDACTED]. Further, the consent given by the site users was not informed, as QTC was listed as one of 57 organisations in [REDACTED]'s privacy policy. The Commissioner opined that it would be unreasonable to expect site users to read through all of the 57 privacy policies to understand what will happen with their information. In addition, the wording of the consent policy was not consistent with the way in which QTC contacted individuals. The initial registration form on [REDACTED] website advises that site users could be contacted by [REDACTED] partners via telephone calls. QTC has been contacting individuals via SMS. Moreover, since QTC does not offer insurance products, site users would not expect to receive marketing from them.

58. The Commissioner is therefore satisfied from the evidence he has seen that QTC did not have the necessary valid consent for the 4,983,499 direct marketing messages received by subscribers.
59. The Commissioner is further satisfied that the actions of QTC have contravened regulation 23 PECR. The Commissioner's investigation uncovered that of the complaints reported to 7726 spam reporting service, 93% of SMS did not include a valid opt-out. QTC stated that the subscribers receiving these messages did not require an opt-out as the lead was arranged to be single use, meaning they would not receive any further messages from QTC. However, the 7726 complaints data demonstrates 50 instances where the subscriber had received more than one message from QTC, which did not contain an opt-out.
60. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

61. The Commissioner is satisfied that the contravention identified above was serious. This is because between 12 February 2023 and 12 May 2023, a confirmed total of 7,863,547 direct marketing messages were sent by QTC. These messages contained direct marketing material for which subscribers had not provided valid consent, furthermore the Commissioner is satisfied that QTC cannot rely on the soft opt-in exemption.
62. The above contravention is serious. QTC sent over seven million unsolicited direct marketing SMS, of which 4,983,499 were delivered, at a time when people were struggling with their finances due to a cost-of-living crisis. Recipients may have been more susceptible to

QTC's marketing and may have interacted with their services as a result of this, unaware that they could process their claims without paying a third party to do so.

63. In its terms and conditions, QTC states that it charges a fee of 48% of any refund obtained on behalf of the customer. In addition to this charge, QTC also deduct a minimum fee of £30 for any successful claim. The terms and conditions outline further additional fees for instances such as the re-issuing of checks and delays in providing the required information to QTC. An individual using QTC's service, following receipt of a marketing SMS, will receive only a proportion of the claim due to high fees and charges.
64. QTC were asked whether [REDACTED] had sent marketing on its behalf. QTC initially confirmed that [REDACTED] had sent marketing on its behalf, but later retracted this statement when asked to provide specific quantities for the marketing.
65. During the course of the investigation, a substantial number of complaints were identified relating to marketing SMS sent by [REDACTED]. The messages were in relation to PPI Tax refunds and included a link to a landing page which is similar to the landing page used by QTC. In its terms and conditions, [REDACTED] states that it also retains 48% of the fee and lists QTC as one of its clients, alongside two other organisations. One of these, [REDACTED] are cited in QTC's privacy policy as the organisation responsible for handling the claim.
66. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

Deliberate or negligent contraventions

67. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that QTC's actions which constituted that contravention were deliberate actions (even if QTC did not actually intend thereby to contravene PECR).
68. The Commissioner does not consider that QTC deliberately set out to contravene PECR in this instance.
69. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
 70. Firstly, he has considered whether QTC 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 QTC relied entirely on direct marketing due to the nature of its business, it should reasonably have sought to familiarise itself with the relevant legislation.
 71. 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 guidance also provides a full explanation of the "soft opt-in"

exemption. The Commissioner has also published detailed guidance on consent under the UK 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.

72. It is therefore reasonable to suppose that QTC should have been aware of its responsibilities in this area.
73. Secondly, the Commissioner has gone on to consider whether QTC failed to take reasonable steps to prevent the contraventions. Again, he is satisfied that this condition is met.
74. The Commissioner's direct marketing guidance makes clear that organisations acquiring and 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. QTC have failed to provide the Commissioner with any evidence that any appropriate checks were carried out once the marketing list had been provided to QTC.
75. When asked about the due diligence QTC conducted into its data suppliers, QTC stated, *'To ensure compliance, we review documentation provided by data providers to verify consent mechanisms.'* QTC were asked whether it conducted any further due diligence when it purchased data from its suppliers. QTC stated *'We reviewed our Data Suppliers' Privacy Policies and their Consent Form to ensure that they were compliant with the UK Data Protection Act 2018, UK PECR, and the ICO's Guidance on Marketing SMS and Data Sharing*

(CE20). QTC provided the ICO with copies of due diligence forms which had been completed by its data suppliers.

76. QTC informed the ICO that it has a comprehensive understanding of lawful practices and strictly adheres to data protection requirements. QTC ought to have known that further due diligence would be required to ensure the data it was purchasing was compliant. Considering this, QTC failed to take reasonable steps to prevent the reoccurrence by only conducting minimal due diligence.
77. QTC stated it had directly received 25 complaints over the contravention period and provided details of these complaints. QTC ought to have known to question why it had received so few opt-out requests in comparison to the substantial number of SMS sent. The predominant theme of the complaints is individuals requesting QTC to confirm how the company obtained their data and to be removed from future marketing. Considering this, QTC ought to have considered reviewing the data it was using to send marketing, to ensure recipients were aware that they were agreeing to receive marketing from QTC.
78. In the circumstances, the Commissioner is satisfied that QTC failed to take reasonable steps to prevent the contraventions.
79. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

The Commissioner's decision to issue a monetary penalty

80. The Commissioner has taken into account the following aggravating feature of this case:

- The Commissioner identified a breach of Regulation 23 of the PECR by QTC as an aggravating factor. The investigation found, from complaints registered with the 7726 spam reporting service, 93% of messages sent did not include a valid opt-out facility.

81. The Commissioner has taken into consideration QTC's representations on mitigation however, the Commissioner has concluded that there are no mitigating features of this case.
82. 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.
83. 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 QTC on this matter.
84. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
85. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
86. The Commissioner has considered the likely impact of a monetary penalty on QTC. 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.

87. 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.
88. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

The amount of the penalty

89. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£120,000 (one hundred and twenty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

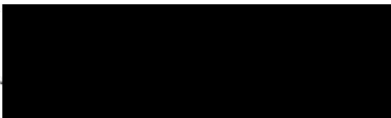
90. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **29 October 2024** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
91. If the Commissioner receives full payment of the monetary penalty by **28 October 2024** the Commissioner will reduce the monetary penalty

by 20% to **£96,000 (ninety-six thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

92. 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.
93. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
94. Information about appeals is set out in Annex 1.
95. 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.
96. 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 26th day of September 2024

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)).