

**Privacy and Electronic Communications (EC Directive) Regulations
2003 ("PECR") as amended and the Data Protection Act 1998**

Monetary Penalty Notice [PECR]

Dated: 17 June 2013

Name: Nationwide Energy Services Ltd

**Address: 1st Floor, Alpha Building, Northern Boulevard, Matrix
Park, Swansea, SA6 8RE.**

Statutory framework

1. Nationwide Energy Services Limited, ("Nationwide") whose registered office is at 1st Floor, Alpha Building, Northern Boulevard, Matrix Park, Swansea, SA6 8RE (Companies House Registration Number: 05630973) is the person in this notice alleged to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to Regulation 21 the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 and by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 ("PECR 2011").

2. PECR came into force on 11 December 2003 and revoked the Telecommunications (Data Protection and Privacy) Regulations 1999. PECR adopted Part V entitled, 'Enforcement', and Schedules 6 and 9 of the Data Protection Act 1998 (the "Act"). By virtue of Regulation 31 subparagraph 2 of PECR the Information Commissioner (the "Commissioner") was made responsible for the enforcement functions under PECR.
3. On 26 May 2011, PECR 2011 amended Regulation 31 of PECR to adopt sections 55A to E of the Act and introduced appropriate adaptations to those sections.
4. Under sections 55A and 55B of the Act the Commissioner may, in certain circumstances, where there has been a serious contravention of the requirements of PECR, serve a monetary penalty notice on a person requiring the person to pay a monetary penalty of an amount determined by the Commissioner and specified in the notice but not exceeding £500,000.
5. The Commissioner has issued statutory guidance under section 55C (1) of the Act about the issuing of monetary penalties ("Guidance"). The Guidance was approved by the Secretary of State and laid before Parliament. The Guidance was amended to take the changes to PECR into account and was published on 30 January 2012 on the Commissioner's website. It should be read in conjunction with the Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 and the Data Protection (Monetary Penalties) Order 2010.

Power of Commissioner to impose a monetary penalty

6. Section 55A

Section 55A of the Act as adopted by PECR 2011 states:-

- (1) The Commissioner may serve a person with a monetary penalty notice 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) the contravention was of a kind likely to cause substantial damage or substantial distress, and
 - (c) 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 –
 - (i) that there was a risk that the contravention would occur, and
 - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
 - (b) failed to take reasonable steps to prevent the contravention.”

Background

7. Nationwide was incorporated on 21 November 2005. It has been operating under its current name since 23rd May 2006. It has three Directors on record. Mr Jonathan Blakemore, who is the Financial Director, Mr Neville Wilshire and Mr Roy Davies. Nationwide is a national company which describes itself on its website as a business providing a service to home-owners and businesses to assist them to claim the government grants available to make energy efficient upgrades to their properties. It is formally registered at Companies House as a business of a general service nature carrying out call centre activities.
8. Nationwide is on the Commissioner's statutory register of data controllers. Their registration number is Z9928131. This registration covers Nationwide for the processing of personal data for the purposes of staff administration, advertising, marketing, public relations, consultancy and advisory services.
9. OFCOM is the Office of Communications established by section 1 of the Office of Communications Act 2002 to facilitate the regulation of communications. Under Regulation 26 PECR, OFCOM 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. Telephone Preference Service Limited ("TPS") is a limited company set up by OFCOM to carry out this role. Businesses who wish to carry out direct marketing by telephone can subscribe to TPS for a fee and receive from them monthly a list of numbers on that register.

10. Nationwide's business involves direct marketing to consumers by telephone. It is a fundamental requirement of the PECR, and well-known throughout the direct marketing industry, that a consumer's consent must have been notified to the company before it makes direct marketing telephone calls to that consumer if the consumer is registered with TPS. Therefore, it is a necessary step for businesses undertaking telesales to make arrangements to ensure that they do not make direct marketing calls to those consumers who have subscribed to TPS, unless the business holds reliable records showing that those consumers have given their informed consent to that business to receive such calls.
11. To that end, it is also a necessary step for a business involved in direct marketing to register with the TPS, to ensure that the business has access to a monthly update of the TPS list as new numbers are registered daily by consumers. Furthermore, the business should hold a 'suppression list' of those consumers who have informed it directly that they do not wish to receive direct marketing calls.
12. Between 26 May 2011 and end of December 2012, ("period of complaint") TPS received 1,601 (One thousand six hundred and one) complaints from persons registered with them who had received unsolicited direct marketing calls. 1,051 of those complaints were made between 26 May 2011 and 4 July 2012 and then a further 550 were received from 5 July 2012 to end December 2012 during a time when Nationwide were engaged in correspondence with the Commissioner about the contraventions of PECR. TPS referred all those complaints to Nationwide and also notified the Commissioner.

13. In addition, during the period of complaint, the Commissioner has also received 42 complaints about unsolicited marketing calls to individual subscribers registered with the TPS. This figure is made up of 33 complaints on the Commissioner's on-line survey and 9 other complaints directly attributable to Nationwide.

14. The overall total of complaints about such calls both to TPS and the Commissioner in this case during the period of complaint is 1,643 (one thousand six hundred and forty three).

15. On 14 May 2012 a letter was sent to Nationwide. It explained the amendments to the Regulations contained in PECR 2011 and stated that they enable the Commissioner to issue civil monetary penalties up to £500,000 for serious breaches. The letter also stated that Nationwide were the subject of a number of complaints to TPS and asked Nationwide the following questions;

- What is the source of their marketing information?
- If information is obtained from third parties what checks are carried out to confirm 'third party opt ins' (appropriate consent)?
- Is the information screened against the TPS register?
- Do they operate an internal suppression list?
- Could they offer any explanation for the number of complaints made to the TPS?

The letter gave Nationwide the opportunity to provide information to assist the Commissioner in his decision as to what action to take and required a response within 21 days.

16. On 5 July 2012 Nationwide responded to the Commissioner's letter as follows:

- Their primary supplier of data is a third party who is a member of the Direct Marketing Association.
- All records provided to them were "cleansed against the TPS, MPS, GAS, PAF, Morta Screen and Bereavement Register" prior to being received from the third party and they had contracts in place to "reflect such".
- They will "ensure that all data received is monitored as thoroughly as possible" (Though they did not say what monitoring methods they would use.) They said they believed this "thorough monitoring" would "ensure that such incidents do not reoccur."

The letter was signed by the Finance Director, Jonathan Blakemore. It was notable that no copies of any corporate policies, procedures or guidelines were provided.

17. Despite these assurances made by the Finance Director, from the date of his letter TPS received a further 550 complaints about unsolicited marketing calls made by Nationwide. This adds to the previous total of complaints received by the TPS of 1,051 for the period 26 May 2011 to 4 July 2012 (making a total of 1,601 complaints).

18. On 4 August 2012 the Commissioner wrote to Mr Jonathan Blakemore the Finance Director at Nationwide asking the following:

- Who cleanses the data list used by Nationwide? Is it the list providers or is it done internally?
- Does Nationwide monitor the source of data which is the subject of complaints to the TPS, if so does this lead to your data suppliers being challenged as to the quality and source of the data?
- Does Nationwide maintain its own internal suppression list?

19. The letter also informed Nationwide that the Commissioner would be reviewing the matter in October 2012 to see if there had been a reduction in the number of complaints received by TPS during the months of July August and September.

20. On the 13 August 2012 the Commissioner received a response dated 10 August 2012 from Mr Blakemore as the Group Financial Director for both Nationwide and We Claim U Gain Limited, (its 'sister company') as follows:

- "Historically" Nationwide and its sister company relied upon their contractual arrangements with the data providers to filter out TPS customers.
- They had taken immediate steps to implement new and improved internal screening for TPS purposes. They had acquired a licence

from TPS which means they now screen all data sold to them against the TPS register.

- They stated that they would not be screening the 'opt in' data because it is their understanding that acquiring data in this way and using it specifically for 'opt in ' purposes is permissible.
- Further they asked the Commissioner to note that they were in the process of joining the Direct Marketing Association which they said meant that they had "reviewed their internal procedures already to ensure compliance with their requirements."
- "Historically" they had not monitored the source of data which is subject to complaints to the TPS and state they had now "immediately implemented policy which will ensure that any TPS complaints will be cross referenced to our data, traced to source and those providers will be challenged."
- Prior to the date of the letter both companies updated their system with "each and every TPS complaint received" in order to ensure the complainants "do not receive any further contact from us on any future campaigns."

This letter ended with a request by Nationwide for the Commissioner's monitoring of complaints to begin from the date of that letter for a specified three month period so that it covered the period 10 August 2012 to 10 November 2012.

21. In the period of time August 2012 to December 2012 the Commissioner received 28 of its total of 42 complaints referred to in

paragraph 13. above about Nationwide. In those 28 complaints the following issues were raised:

- 28 of those complaints related to calls made to subscribers of the TPS 'do not call' list;
- 7 also stated that they had received repeat calls made by Nationwide to the subscriber.

22. After examining the 42 complaints received by the Commissioner during the period of complaint the following specific complaints were identified and a sample of 10 of those has been imported into spread sheets shown at Annex 2 (a) and (b) with extracts from comments by the complainants:

- (a) Four of the complainants said that the caller made representations causing them to believe that the call was from an official body responsible for handing out government grants. For example, on one occasion introducing themselves as the "Government Grants Adviser" and on another that they represented HMG re a new government Grant called the Eco Grant. (see N1, N2, N3 and N4 on Annex 2 (a))
- (b) One complainant said that the caller was 'very aggressive and threatening' and said he would repeatedly call despite the complainant stating they did not wish to be contacted. The complainant explained that the call had woken their baby and the caller repeated that he would continue to phone. At this point the complainant resorted to unplugging the telephone line in order to avoid further disturbance stating they felt "extremely threatened" by the caller. (see N7 on Annex 2 (b))

- (c) One of the complainants was undergoing chemotherapy treatment and was receiving repeated calls disturbing their sleep and recovery. (see N8 on Annex 2 (b))
- (d) One complainant, being 82 years old and vulnerable, felt so harassed by calls being received that she purchased a call blocker in order to prevent further disturbance.(see N3 on Annex 2 (a))
- (e) One complainant's husband is vulnerable because he has dementia. This complainant said they have received repeated calls despite telling the callers and emailing the company expressing their wish for the calls to stop. (see N9 on Annex 2 (b))
- (f) One complainant was so distressed they felt compelled to issue their complaint through their local Member of Parliament, who has since launched a political campaign about the problem of unsolicited calls. (See N11 on Annex 2 (a))

23. When a person complains to the TPS, TPS refer the complaint to the caller. Nationwide were contacted on 1,601 occasions. On 1,580 of those occasions Nationwide responded to TPS citing 'Human Error'. On three occasions they cited 'Programming Error'. On six occasions between the dates 3 August 2012 and 21 August 2012 Nationwide responded citing they "Called before [they were] aware of Regulations", a claim made after the previous correspondence and guidance from both the TPS and the Commissioner. On 7 occasions no response was given. On 219 occasions Nationwide failed to confirm to TPS that the subscriber number would be suppressed. On three occasions they said they had no record of a call being made by them

and on one occasion they said they were not screening their list against TPS.

24. Nationwide stated in their letter of 10th August 2012 that they had purchased a new TPS list in order to reduce the complaints made against the company. Information received from TPS indicated that Nationwide do not subscribe directly to their list, but that their sister company 'We Claim U Gain' did apply for a list on 1 August 2012. That list was only downloaded twice, once on 29 August some three months after the Commissioner's first letter to Nationwide and then again on 5 December. (TPS have the facility to monitor remotely the use made by the organisations of the lists.)

Grounds on which the Commissioner imposes the monetary penalty

Breaches of Regulation 21

25. The relevant provision of PECR is Regulation 21 paragraph (1) (a) and (b) which provides that,

"..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."(c.f. the TPS register see paragraph 10 above)

Regulation 21 paragraphs (2), (3), (4) and (5) provide :-

- “(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).
- (3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.
- (4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.
- (5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—
- (a) the subscriber shall be free to withdraw that notification at any time, and
- (b) where such notification is withdrawn, the caller shall not make such calls on that line.”

Definitions

26. The term “person” applies to limited companies as well as individuals. It is defined in Schedule 1 of the Interpretation Act 1978 as follows:

“ ‘Person’ includes a body of persons corporate or unincorporate”.

27. The following are defined in Regulation 2 (1) of PECR :

- (a) The term “public electronic communications service” is defined as having the meaning given in section 151 of the Communications Act 2003 which states that it means any electronic communications service that is provided so as to be available for use by members of the public.
- (b) The term, “individual” is defined as, “a living individual and includes an unincorporated body of such individuals;”
- (c) The term, “subscriber” is defined as, “a person who is a party to a contract with a provider of public electronic communications services for the supply of such services;”
- (d) The term “call” is defined as “a connection established by means of a telephone service available to the public allowing a two-way communication in real time;”
- (e) The term, “direct marketing” is defined in the Data Protection Act at section 11 as “the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.”

28. 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 TPS, then that individual must have given their consent to that company to receive such calls.

29. The Commissioner is satisfied that on various dates during the period of complaint, Nationwide used, or instigated the use of a public telecommunications service for the purposes of making 1,643 unsolicited calls for direct marketing purposes 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 OFCOM in accordance with Regulation 26, contrary to Regulation 21 (1) (b) of the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended.
30. The total of 1,643 is made up of 1,601 unsolicited marketing calls complained about to TPS, referred to in paragraph 12. above and a further 42 unsolicited marketing calls complained about to the Commissioner referred to in paragraph 13. above.
31. The Commissioner is further satisfied that the 1643 subscribers had registered with TPS at least 28 days prior to receiving the calls and they had not given their prior consent to Nationwide to receive the calls. Therefore the Commissioner is satisfied that Nationwide has acted in breach of Regulation 21.

Serious (S55A (1) (a))

32. The Commissioner is satisfied that these contraventions of PECR have been serious as required by Section 55A (1) (a) because there have been multiple breaches of Regulation 21 by Nationwide arising from its activities and these led to an extremely large number of complaints to TPS.

33. These complaints were from individuals who were registered on the TPS 'do not call' list, but had not given their consent to Nationwide to receive calls. Each of the 1,601 complaints were sent by TPS to Nationwide inviting a response, but Nationwide's responses were inadequate.
34. The Commissioner received 42 complaints about unsolicited marketing calls from individual subscribers with 33 of those coming from an on-line survey.
35. During the period of complaint, according to records held by TPS and the Commissioner, they were one of the organisations about which the most complaints were being received.
36. In determining whether the contravention was serious consideration has to be given to the Commissioner's Guidance. The guidance gives an example of a serious contravention on page 13 as follows:

"Making a large number of automated marketing calls based on recorded messages or sending large numbers of marketing text messages to individuals who have not consented to receive them, particularly if distress and anxiety is caused to the recipients."

This is a case which is comparable to that example.

37. Therefore the Commissioner is satisfied that the case meets the 'seriousness threshold' because of the nature, duration and extent of the breach.

Likely to cause substantial damage or substantial distress (S55A (1) (b))

38. The Commissioner is satisfied that the contravention is of a kind likely to cause substantial damage or substantial distress as required by section 55 (1) (b) because of the very large numbers of unsolicited calls about which formal complaints were made.
39. Although the distress in every individual complainant's case may not always have been substantial, the cumulative amount of distress suffered by the large numbers of individuals affected, means that the overall the level was substantial.
40. When looking at the meaning of "substantial" in terms of the levels of distress, the Commissioner has had regard to section 2, page 14 of his Guidance. This says that the Commissioner considers that "if damage or distress that is less than considerable in each individual case is suffered by a large number of individuals the totality of the damage or distress can nevertheless be substantial".
41. The Commissioner is satisfied that the above evidence shows that the unsolicited marketing calls were of a kind "likely to cause substantial distress" as required by Section 55. This is supported by the fact that some calls have actually caused substantial distress.

Knew or ought to have known that there was a risk that the contravention would occur and that it would be of a kind likely to cause substantial damage or distress (S55A (3)(a)(i) and (ii)).

42. The following facts demonstrate that Nationwide knew or ought to have known there was a risk of contravention and that it would be of a kind likely to cause substantial damage or substantial distress.

- From the nature of the business of Nationwide, the fact that it relied heavily on direct marketing, making approximately one million calls each week, and the fact that this issue of unsolicited calls was widely publicised by the press as being a problem, it is reasonable to infer that they should have been aware of their responsibilities under PECR and aware that there was a high likelihood of a contravention.
- During the period of complaint the TPS had written to Nationwide on 1,601 occasions reminding them of their responsibilities under the PECR.
- Complaints continued to be received by TPS even after the Commissioner's letters and Nationwide's assurances by way of responses referred to in the Background above.
- Complainants asked Nationwide employees to stop calling them but despite this Nationwide continued to do so.
- Nationwide failed to screen calls effectively against a current TPS list.

43. The sheer volume of the complaints received from TPS regarding the marketing calls should have indicated to Nationwide that they were continually breaching PECR and that it was only a matter of time before substantial damage or substantial distress occurred.

44. The Commissioner is therefore satisfied that section 55A (3) of the Act applies in that during the period of complaint Nationwide knew or

ought to have known that there was a risk that the contravention would occur, and that such a contravention would be of a kind likely to cause substantial damage or substantial distress.

Failed to take reasonable steps to prevent the contravention (S55A (3) (b))

45. Nationwide is a company which has been in existence since 2005, and has been operating under PECR since then. Nationwide is heavily reliant upon direct marketing to consumers. It is a fundamental requirement of the PECR that TPS registered numbers have to be suppressed and that consent is required from consumers who are TPS registered before marketing calls can be made to them.
46. Nationwide has provided no evidence of any formal policies and procedures in place for the staff to follow to ensure they know how to comply with PECR. There should have been effective systems in place to prevent the breaches of PECR.
47. Nationwide failed to buy a TPS list for it to use but stated that it relied upon the fact that its sister company, We Claim U Gain, had downloaded the list. In fact the list was only downloaded by We Claim U Gain twice and the first time was not until three months after the intervention of the Commissioner.
48. Therefore the Commissioner is satisfied that reasonable steps were not taken to prevent the contraventions.

Aggravating features the Commissioner has taken into account in determining the amount of a monetary penalty

49. Nature of the contravention:

- The Commissioner has had cause to raise concerns with Nationwide on previous occasions
- The contraventions are continuing.
- 15 of the 42 who complained to the Commissioner have said that they told the caller that they did not want to receive calls but nevertheless did receive them.
- Some callers have been described as aggressive.

50. Effect of the contravention:

- There were large numbers of and a wide variety of people affected by the calls due to the indiscriminate nature of the contravention.
- Substantial distress was actually caused to particular individuals.

51. Behavioural issues by Nationwide:

- Nationwide only engaged in a limited form of co-operation with the Commissioner and exhibited a complete disregard for PECR by failing to change its business practices despite a very large number of complaints made to it via TPS.
- No steps were taken during the period of complaint to ensure the business was complying with PECR.
- There were complainants who had directly requested to be removed from their list but the company failed to suppress them thus ignoring recognised industry practices designed to prevent breaches of PECR.
- Nationwide is inextricably linked to We Claim U Gain by virtue of being in the same company group owned by Save Britain Money Ltd. Both Nationwide and We Claim U Gain have the same registered office and the same Financial Director and similar contraventions of PECR have been alleged against both.

52. Impact on Nationwide:

- Nationwide is a private organisation within a competitive direct marketing industry where continuous breaches of PECR could create an unfair advantage.

Mitigating features the Commissioner has taken into account in determining the amount of the monetary penalty

53. Behavioural issues:

- Nationwide did co-operate with the Commissioner but only to the extent that it responded to correspondence sent to it.
- Nationwide may have believed that the personal data/telephone numbers the company was purchasing had been screened by the seller and therefore that the telephone numbers belonged to people who had consented to receive the calls.

54. Impact on Nationwide:

- Nationwide has sufficient financial resources to pay the penalty without undue financial hardship.
- There is a potential for damage to reputation of Nationwide which may affect future business.

Other considerations

55. The Commissioner's underlying objective in imposing a monetary penalty is to promote compliance with the PECR. The making of unsolicited direct marketing calls is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. This is an opportunity to reinforce the need for businesses to ensure that they are only telephoning consumers who want to receive the calls.

Notice of Intent

57. A notice of intent (NOI) was served on Nationwide dated 18 March 2013. The Commissioner received written representations from Nationwide's solicitors in a letter dated 16 April 2013.
56. After considering the representations the Commissioner provided to Nationwide's solicitors information intended to supplement the NOI in the form of Annex 2 (a) and (b) and the TPS schedule showing all 1,601 complaints including the dates the calls were made, the telephone numbers the calls were made to and the response given by Nationwide to the complaint.
57. Nationwide's solicitors then made further representations by e-mail requesting further clarification of this information to which the Commissioner has responded.
58. The Commissioner has considered all the written representations made by letter, e-mail and fax in relation to this notice of intent and the supplementary information provided when deciding whether to serve this monetary penalty notice. In particular, the Commissioner has taken the following steps:
- reconsidered the amount of the monetary penalty generally, and whether it is a reasonable and proportionate means of achieving the objective which the Commissioner seeks to achieve by this imposition;
 - ensured that the monetary penalty is within the prescribed limit of £500,000; and
 - ensured that the Commissioner is not, by imposing a monetary penalty, acting inconsistently with any of his statutory or public law duties and that a monetary penalty

notice will not impose undue financial hardship on an otherwise responsible data controller.

Amount of the monetary penalty

58. The Commissioner considers that the contravention of PECR is serious and that the imposition of a monetary penalty is appropriate. Further that a monetary penalty in the sum of £125,000 (One hundred and twenty five thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Payment

59. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **15 July 2013** 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.

Early payment discount

60. If the Commissioner receives full payment of the monetary penalty by **14 July 2013** the Commissioner will reduce the monetary penalty by 20% to £100,000 (One hundred thousand pounds).

Right of Appeal

61. 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.

Any Notice of Appeal should be served on the Tribunal by 5pm on **15 July 2013** at the latest. If the notice of appeal is served late the Tribunal will not accept it unless the Tribunal has extended the time for complying with this rule.

Information about appeals is set out in the attached Annex 1.

Enforcement

62. The Commissioner will not take action to enforce a monetary penalty unless:
- the period specified in 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 the data controller to appeal against the monetary penalty and any variation of it has expired.

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 or any sheriffdom in Scotland.

Dated the 17 June 2013

Signed:

David Smith
Deputy Information Commissioner
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 which was adopted by Regulation 31 PECR gives any person upon whom a monetary penalty notice or variation notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the issue of the notice and the amount of the penalty specified in the notice.

2. If you decide to appeal and if the Tribunal considers:-

- a) that the notice against which the appeal is brought is not in accordance with the law; or
- b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:
GRC & GRP Tribunals
First Tier Tribunal (Information Rights)
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ
 - a) The notice of appeal should be served on the Tribunal by 5pm on **15 July 2013** at the latest.
 - 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;
 - d) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
 - e) 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 sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)). Also Article 7 of the Data Protection (Monetary Penalties) Order 2010 (SI 2010/910), s.49 of, and Schedule 6 to, the Data Protection Act 1998 have effect in relation to appeals for PECR as they have effect in relation to appeals under the DPA, s.48(1).

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Annex 2 (a)



REDIRECTED

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Annex 2 (b)



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