

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: ColourCoat Ltd

Of: 77 Bohemia Road, St. Leonards-On-Sea, TN37 6RJ

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

Legal framework

3. ColourCoat, whose registered office is given above (Companies House Registration Number: 10405998), is the organisation stated in this notice to have used a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to Regulations 21 and 24 of PECR.

¹ The provisions of the Data Protection Act 1998 remain in force for the purposes of PECR notwithstanding the introduction of the Data Protection Act 2018 (see paragraph 58(1) of Part 9, Schedule 20 of the 2018 Act).

4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. Regulation 21 paragraph (1) of PECR provides that:

“(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where-

- (a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
- (b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.”

5. Under Regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified the ICO that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. The Telephone Preference Service Ltd (“**TPS**”) is a limited company set up to carry out this role. For a fee, it provides businesses who wish to carry out direct marketing by telephone a monthly list of numbers on two registers: the Telephone Preference Service register (“**TPS Register**”) for individuals’ numbers and the Corporate Telephone Preference Service register (“**CTPS Register**”) for businesses’ numbers.

6. In general terms, Regulation 21 paragraph (1)(b) provides that companies cannot make unsolicited calls for direct marketing purposes to telephone numbers on the TPS Register or CTPS Register, unless the individual or business associated with the number has given their consent to receive such calls.

7. Regulation 21 paragraphs (2)-(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.”

8. Regulation 21 paragraph (A1) provides that companies making calls for direct marketing purposes must not disguise their identity. Paragraph (A1) states:

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

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

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

9. Regulation 24 of PECR concerns the information which must be provided when, *inter alia*, a business makes marketing calls which Regulation 21 applies to. Regulation 24 provides, insofar as relevant:

"(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication –

...

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

(2) The particulars referred to in paragraph (1) are –

- (a) the name of the person;

(b) either the address of the person or a telephone number on which he can be reached free of charge.”

10. Section 122(5) of the Data Protection Act 2018 (DPA 2018) 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 DPA 2018 Schedule 19, paragraphs 430 and 432(6)).
11. Consent is defined in Article 4(11) of the General Data Protection Regulation 2016/679 as “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”.
12. “Individual” is defined in Regulation 2(1) of PECR as “a living individual and includes an unincorporated body of such individuals”.
13. 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”.
14. The DPA contains, at Part V, enforcement powers which are exercisable by the Commissioner. Under section 55A(1) of the DPA (as amended by the Privacy and Electronic Communications (Amendment) Regulations 2011 and the Privacy and Electronic Communications (Amendment) Regulations 2015), 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, and

(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.”

15. 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.
16. The Commissioner has issued statutory guidance under section 55C(1) of the DPA about the issuing of monetary penalties that has been published on her website.
17. PECR implemented European legislation (Directive 2002/58/EC) aimed at the protection of the individual’s fundamental right to privacy in the electronic communications sector. PECR were amended for the purpose of giving effect to Directive 2009/136/EC, which amended and strengthened the 2002 provisions. For the purposes of this notice, as EU law applied at the time of the breaches of PECR, the Commissioner approaches PECR so as to give effect to the Directives.

Background to the case

18. The Companies House listing for ColourCoat records the nature of its business as "other building completion and finishing". ColourCoat's website (<http://colourcoat.co.uk>) states that it "specialise[s] in Hydrophobic Thermal coatings for your home" and provides roof coating, roof cleaning, wall coating, "EcoSolve PureAir", spray insulation and flat roofing services. Mr Callum Henry Jones has been the sole director of the company since it was incorporated on 1 October 2016. ColourCoat has been registered with the Information Commissioner's Office ("**ICO**") since 11 March 2019 and with the Financial Conduct Authority since 17 September 2019. ColourCoat's Financial Conduct Authority listing records its principal place of business as Room 327, Century House, 100 Menzies Road, St Leonards on Sea, TN38 9BB, and its trading names as: "COLOUR COAT", "Colour Coat", "ColourCoat", "Coloured Coatings" and "EcoSolveUK".
19. The privacy policy on ColourCoat's website contains references to a company called Home Logic UK Ltd, and appears to have been copied from Home Logic UK's website (<https://www.homelogic.co.uk/privacy>). (Home Logic UK Ltd was fined by the Commissioner in August 2017 for making unsolicited direct marketing calls in breach of Regulation 21 of PECR.)
20. ColourCoat first came to the ICO's attention in February 2020 when complaints about unsolicited direct marketing calls received in January 2020 were consolidated into a "Direct Marketing Monthly Threat Assessment" report compiled by the Commissioner. The eleventh most complained about number in the report was the mobile number 07726 140368. Six complaints had been received in January 2020 about live

calls from this number by a company calling themselves "Home Advice Bureau". An ICO officer called 07726 140368 and was connected to a pre-recorded message which stated that the call was in relation to a free heat loss and moisture assessment. The message gave another number to call – 01422 770119 – to change an existing appointment.

21. On 3 March 2020, the Commissioner sent third party information notices to EE Ltd ("**EE**") and Antheus Telecom Ltd ("**Antheus**"), the respective telecoms service providers for the numbers 07726 140368 and 01422 770119.
22. Antheus responded on 4 March 2020, identifying the subscriber of the 01422 770119 number as ColourCoat Ltd of 77 Bohemia Road, St Leonards-on-Sea, TN37 6RJ; the contact name as Callum Jones; and the email address as info@colourcoat.co.uk. Antheus notified the Commissioner that, in addition, it had rented 3 further numbers to ColourCoat: 01424 869239, 01242 806190, and 0333 898 0107. Antheus also confirmed that all four numbers were still active.
23. In response to the third party information notice, Antheus also provided call detail records ("**CDRs**") for ColourCoat. These records showed that, between 1 and 31 January 2020, ColourCoat had made a total of 315,528 connected outbound calls between 1 and 31 January 2020, using various presentation Caller Line Identities ("**CLIs**") (for example, the mobile numbers 07726 140368 and 07596 452616). The Commissioner screened these records against the TPS and CTPS Registers. This process revealed that 135,923 of the 315,528 calls were made to numbers that had been registered with the TPS for more than 28 days and that 434 calls had been made to numbers registered with the CTPS for more than 28 days.

24. The Commissioner subsequently searched her complaints database and the TPS complaints database for complaints relating to the presentation CLIs used by ColourCoat for calls originating from the four numbers rented from Antheus. This revealed a total of 18 complaints to the TPS (including the 6 complaints received in January 2020) and 9 complaints to the ICO, received between August 2019 and January 2020.
25. The Commissioner sent ColourCoat an initial investigation letter on 6 April 2020, informing it of the ICO and TPS complaints, setting out ColourCoat's obligations under PECR and the ICO's enforcement powers, and asking ColourCoat to provide answers to a number of questions by 27 April 2020.
26. A substantive response was received from ColourCoat's solicitor, [REDACTED] [REDACTED] on 1 June 2020. This email set out the following:
 - a. ColourCoat had made a total of 1,527,816 calls between 1 August 2019 and 31 March 2020, of which 200,180 calls connected.
 - b. ColourCoat provided 8 different numbers it had used as presentation CLIs for the purpose of making these calls.
 - c. ColourCoat used the "Homes Advice Bureau" and "Eco Solve UK" trading names during calls.
 - d. Data was purchased from a number of third parties, including [REDACTED] and [REDACTED] [REDACTED]. ColourCoat accepted that it did not carry out sufficient due diligence on the data and it only became fully

aware of its obligations in early 2020. Once ColourCoat became aware of its obligations, it started in February 2020 a process of TPS screening, using a third party company, [REDACTED].

- e. At the time of the letter, ColourCoat did not have any written policies or procedures regarding lawful contact with customers, but were in the process of developing these. Though ColourCoat stated that it operated an internal "Do Not Call List".
- f. Attached to the email was a copy of the call script used by ColourCoat. The script encouraged ColourCoat employees to state that they were "following up on the recent government incentive which topped up loft insulation or cavity wall insulation" and that "the insulation which was originally commissioned by the government has been causing a number of issues that now need to be assessed". The script also encouraged ColourCoat employees to state they were calling on behalf of "Homes Advice Bureau".

- 27. On 28 April 2020, the Commissioner issued Antheus with a further third party information notice, requesting CDRs for August 2019 to December 2019 and February 2020 to March 2020. Antheus responded on 3 June 2020. The CDRs provided listed a total, excluding the 315,528 calls made during January 2020, of 653,745 connected calls made by ColourCoat between 1 August 2019 and 19 March 2020.
- 28. The CDRs for these calls were screened against the TPS and CPS. This process revealed that 315,143 calls were made to numbers that had been registered with the TPS for more than 28 days and that 1,311

calls had been made to numbers registered with the CTPS for more than 28 days.

29. Further searches of the TPS and ICO complaints databases, using the presentation CLIs provided by both ColourCoat and Antheus Telecom, revealed that there had been a total of 24 complaints to the TPS and 10 complaints to the ICO between August 2019 and March 2020.
30. The complaints recorded that ColourCoat used various different presentation CLIs and various false company names, including "Homes Advice Bureau", "EcoSolve UK" and on one occasion, "Citizens' Advice Bureau". Some complainants reported that they had received repeated calls from different ColourCoat numbers despite opt-out requests. The following are examples of the comments made by the complainants:
- "They say they have an inspector in the area to do free insulation inspections. It is the 2nd call I recieved [sic] from them this week and I get a call every day of every week and they said they have never contacted us before. I said I want them to delete my number and I will be contacting the ICO"
 - "Claimed to be an independent government body organising surveys of homes previously fitted with cavity wall insulation due to issues reported in the local area. Became quite rude / aggressive when challenges."
 - "Asked me about an address I lived at more than 9 years ago (same phone no!) and about a new government insulation scheme. I said shouldn't be calling me as on TPS - he said he wasn't to know. I said he should be screening and asked who he was calling from - he said Citizens advice and I said you're

having a laugh I'll speak to the manager then. Apparently he was in the toilet and as I said that's fine I'll just report to ICO and he then hung up."

- "To inform me that I had arranged an appointment about loss and moisture assessment (which I hadn't !) When I phoned the number back another recorded message directed me to another number which was 0142277019 - which I did not do as I realised that it was a scam and if I did I might be charged a considerable amount of money for the call."
- "I have had several similar calls and this is obviously a scam. these people know my name address and I feel a threatened."
- "Insulation. Something to do with a government backed scheme. Asked for their website and they gave the one given above - but this does not exist."
- "someone called Michelle - offering free heating and insulation survey. They have been asked not to call before, but do not take any notice. When this number was dialled back, a recorded message says to contact 0144 806190, but when this number is dialled it is not a correct number. Original called was very abusive and would not take 'we are not interested' as an answer"
- "Rude woman called Wendy offering heat loss and moisture assessment. She def shouldn't be in any kind of customer service Also use the number 01424 806190 on their ansaphone [sic] but it is identified as an incorrect number when you call. Total scam"

31. EE responded to the 3 March 2020 third party information notice regarding the 07726 140368 number on 26 June 2020. EE stated that the number was associated with an ASDA prepay mobile account in the name Mr John Smith of [REDACTED]. The account was activated on 2 April 2019 and the first payment was made on 10 December 2019.
32. A Google Maps search conducted by an ICO officer revealed that [REDACTED] is only 1.9 miles from ColourCoat's registered office at 77 Bohemia Road.
33. EE also provided CDRs for all outgoing calls from this number between 1 and 31 January 2020. These revealed a total of 2,121 calls. There was a high number of short duration calls, sometimes several calls per minute, all during the working day. No calls were made during evenings or weekends. All the calls were to mobile numbers. Only 101 of the numbers called were registered with the TPS. The Commissioner therefore considered that number 07726 140368 was primarily being used by ColourCoat as a presentation CLI when making calls from numbers rented from Antheus.
34. The Commissioner emailed ColourCoat's solicitor, [REDACTED], to inform him of EE's response, and to ask him to explain the relationship between Mr John Smith and ColourCoat and why ColourCoat were using this number as a presentation CLI. [REDACTED] responded on 24 July 2020, explaining that the number was purchased by ColourCoat, the name John Smith had been given to avoid the purchaser receiving spam and unwanted communications, the other mobile numbers used by ColourCoat were also purchased by ColourCoat, and that ColourCoat had used these mobile numbers as presentation CLIs following the receipt of informal guidance that this was permitted.

35. ██████ called the ICO on 3 August 2020 stating that, though marketing was not a core part of ColourCoat's business, it admitted it had made mistakes. The Case Officer told ██████ the investigation was complete. ██████ offered to send the Commissioner a document outlining ColourCoat's mitigation by 10 August 2020. No such document has been received to date.
36. In conclusion, the Commissioner is satisfied that:
- a. 969,273 connected calls were all made for the purposes of direct marketing as defined by section 122(5) DPA 2018.
 - b. Of these calls, 452,811 were made to numbers which had been registered on the TPS or CTPS Registers for more than 28 days.
 - c. ColourCoat made repeat calls to subscribers who had informed ColourCoat that they did not wish to receive such calls.
 - d. ColourCoat used telephone numbers on which the recipients of the calls could not contact ColourCoat.
 - e. ColourCoat used various false company names (including "Homes Advice Bureau", "EcoSolve UK" and "Citizens Advice") and/or did not identify itself.
37. The Commissioner has made the above findings of fact on the balance of probabilities.

38. The Commissioner has considered whether these facts constitute a contravention of Regulations 21 and 24 of PECR by ColourCoat and, if so, whether the conditions of section 55A DPA are satisfied.

The contraventions

39. The Commissioner finds that ColourCoat contravened Regulations 21 and 24 of PECR.
40. The Commissioner finds that the contraventions were as follows:
41. Between 1 August 2019 to 31 March 2020, ColourCoat used public telecommunications services for the purposes of making total of 969,273 connected unsolicited calls for direct marketing purposes. These calls resulted in 24 complaints being made to the TPS and 10 complaints to the Commissioner.
42. ColourCoat made repeat calls to subscribers who had informed ColourCoat that they did not wish to receive such calls, in breach of Regulation 21(1)(a) of PECR.
43. In breach of Regulation 21(1)(b) of PECR, 452,811 of the calls in question were to subscribers where the number allocated to the subscriber of the called line was a number listed on the TPS or CTPS Registers maintained in accordance with Regulation 26 of PECR. The Commissioner is satisfied for the purposes of Regulation 21 that these 452,811 unsolicited direct marketing calls were made to subscribers who had registered with the TPS or CTPS at least 28 days prior to receiving the calls, and they had not given their prior consent to ColourCoat to receive calls.

44. In relation to the 969,273 total connected calls, ColourCoat used numbers on which the recipients of the calls could not contact ColourCoat. This was done using various presentation Caller Line Identities ("**CLIs**"). ColourCoat also used various false company names (including "Homes Advice Bureau", "EcoSolve UK" and "Citizens Advice") and/or did not identify itself. ColourCoat was therefore in breach of:
- a. Regulation 21(A1) of PECR, not to prevent presentation of the identity of the calling line on the called line, and to present the identity of a line on which it could be contacted; and
 - b. Regulation 24(1)(b) of PECR, to provide the recipient of the calls with its name and either its address or a telephone number on which it could be reached free of charge.
45. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

Seriousness of the contravention

46. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of Regulations 21 and 24 of PECR by ColourCoat arising from its activities over an eight month period and this led to a substantial number of unsolicited direct marketing calls being made. Between 1 August 2019 and 31 March 2020 there were 969,273 connected calls, equating to an average of 121,159 calls per month or 29,372 calls per week. This includes 452,811 connected calls to numbers on the TPS or CTPS Registers, equating to an average of 56,601 calls per month or 13,722 calls per week.

47. Furthermore:
- a. A significant proportion of ColourCoat's marketing calls were to numbers that had been registered on the TPS and CTPS Registers for more than 28 days.
 - b. ColourCoat made repeat calls to subscribers after they had informed ColourCoat that they no longer wished to receive such calls.
 - c. ColourCoat used presentation CLIs to prevent call recipients from contacting it. It also failed to identify itself on the calls and/or provided false company names.
48. Many of the calls in question were simultaneously in breach of various PECR requirements.
49. ColourCoat acted in a manner which complainants described as "rude", "aggressive" and "abusive", and which made one complainant feel "threatened". Multiple complainants reported that the calls made them feel "annoyed and/or anxious".
50. The Commissioner is therefore satisfied that condition (a) from section 55A(1) DPA is met.

Deliberate or negligent contraventions

51. The Commissioner has considered whether the contravention identified above was deliberate or negligent.

Deliberate contravention

52. The Commissioner is satisfied that ColourCoat deliberately contravened Regulations 21(A1) and 24 of PECR for the following reasons:

- a. ColourCoat used 15 different presentation CLIs, rather than the CLIs which had been assigned to it by Antheus, in order to prevent call recipients from contacting it;
- b. ColourCoat set up a mobile phone account with a false name in order to make it harder to identify ColourCoat's use of that number as a presentation CLI; and
- c. ColourCoat did not identify itself on the calls and/or provided false company names, including "Homes Advice Bureau", which is not registered with Companies House or the Financial Conduct Authority.

53. The Commissioner considers that ColourCoat deliberately contravened Regulation 21(1) of PECR for the following reasons:

- a. In relation to Regulation 21(1)(a) and (b), as particularised above, ColourCoat deliberately sought to disguise its identity to avoid detection.
- b. In relation to Regulation 21(1)(a), ColourCoat was aware from previous marketing calls that subscribers no longer wished to receive such calls.
- c. In relation to Regulation 21(1)(b), ColourCoat received notification by individual call recipients (who had complained to the ICO or TPS) that their numbers were registered with the TPS or CTPS and should not be called for direct marketing

purposes. These notifications would have made ColourCoat aware of the fact that contraventions were occurring.

Negligent contravention

54. Further and in the alternative, the Commissioner has gone on to consider whether the contraventions identified above was negligent. This consideration comprises two elements:
55. First, the Commissioner has considered whether ColourCoat knew or ought reasonably to have known that there was a risk that these contraventions would occur. She is satisfied that this condition is met for the following reasons:
- a. Mr Jones was appointed to ColourCoat in October 2016 and therefore had sufficient time and opportunity to become aware of his full fiduciary duties, including his obligations of ensuring compliance with PECR.
 - b. Though ColourCoat told the ICO that marketing was not a core part of its business, the fact that ColourCoat engaged in a high volume of marketing calls (969,273 connected calls over the period in question) indicates that direct marketing was an important part of its operations. As such, ColourCoat should reasonably have sought to familiarise itself with the relevant statutory regime.
 - c. Advice concerning the requirements imposed by PECR on businesses which make direct marketing calls is widely available. For example, the ICO website is easily accessible and contains "Direct Marketing Guidance", which sets requirements imposed by PECR on businesses. This guidance

explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax. Specifically, it states that live calls must not be made to subscribers who have told an organisation that they do not want to receive calls; or to any number registered with the TPS, unless the subscriber has specifically consented to receive calls. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about enforcement action where businesses do not comply with PECR are also readily available.

ColourCoat was registered with the ICO as a data controller and should have been aware of the ICO website and telephone helpline.

- d. ColourCoat ignored, or failed to act upon, notification by individual call recipients (who had complained to the ICO or TPS) that their numbers were listed on the TPS or CTPS Registers and should not be called for direct marketing purposes. This reaction should have served as a warning to ColourCoat that it was not complying with the law.

- 56. It is therefore reasonable to suppose that ColourCoat should have been aware of its responsibilities in this area.
- 57. Secondly, the Commissioner has gone on to consider whether ColourCoat failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met.
- 58. The Commissioner's "Direct Marketing Guidance" makes clear that organisations acquiring and using marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal

data was obtained fairly and lawfully, that personal details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that the organisation buying the data has the necessary consent. It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. ColourCoat accept that it did not carry out sufficient due diligence on the data purchased from third parties, had no written policies with regards to PECR, and that it only became fully aware of their obligations in early 2020.

59. Reasonable steps in these circumstances may also have included a combination of the following:

- a. Asking the third-party data providers for evidence that subscribers had specifically consented to receiving direct marketing calls from ColourCoat.
- b. Screening the third party data against the TPS and CTPS Registers, as ColourCoat began to do in February via [REDACTED], before using that data for marketing purposes.
- c. Ensuring that ColourCoat's internal "Do Not Call List" was accurate and effectively applied.
- d. Using the CLIs provided by Antheus Telecom and the company name registered with Companies House and the FCA.

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

The Commissioner's decision to issue a monetary penalty

61. The Commissioner has taken into account the following **aggravating features** of this case:

- ColourCoat sought to evade identification by using presentation CLIs to prevent call recipients from contacting it, and by failing to identify itself on the calls and/or providing false company names including "Homes Advice Bureau". ColourCoat also purported to be calling on behalf of the Citizens' Advice Bureau and the Government.
- ColourCoat made repeat calls to subscribers who had informed ColourCoat that they did not wish to receive such calls.
- ColourCoat acted in a manner which complainants described as "rude", "aggressive" and "abusive", and which made one complainant feel "threatened". Multiple complainants reported that the calls made them feel "annoyed and/or anxious".
- ColourCoat ignored, or failed to act upon, obvious indications that it was acting in breach of PECR. In particular:
 - ColourCoat ignored, or failed to act upon, notifications by individual call recipients that their numbers were registered with the TPS or CTPS and should not be called for direct marketing purposes.
 - Mr Jones, as ColourCoat's sole director, ought to have known, as part of his fiduciary duties, of ColourCoat's obligations arising under PECR prior to ColourCoat beginning to trade, or at the very least upon the receipt of complaints by call recipients and the TPS.

62. The Commissioner has taken into account the following **mitigating features** of this case:
- ColourCoat began TPS screening in February 2020. However, this factor carries significantly reduced weight, as its contravention of Regulation 21(1) of PECR continued until 31 March 2020.
 - ColourCoat operates an internal "Do Not Call List". However, in the absence of further evidence from ColourCoat relating to when this list was introduced and how it has been applied, the Commissioner has given this factor very limited weight.
63. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A(1) DPA have been met in this case. She is also satisfied that the procedural rights under section 55B have been complied with.
64. The latter has included the issuing of a Notice of Intent in which the Commissioner set out her preliminary thinking. In reaching her final view, the Commissioner has taken into account the representations made by ColourCoat in this matter.
65. The Commissioner is not persuaded to alter her position as expressed in the Notice of Intent.
66. The Commissioner is accordingly entitled to issue a monetary penalty in this case.

67. The Commissioner has endeavoured to consider the likely impact of a monetary penalty on ColourCoat. She has decided on the information that is available to her, and in the particular circumstances of this case, that a monetary penalty remains an appropriate and proportionate response.
68. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. This is an opportunity to reinforce the need for businesses to ensure that they meet the strict criteria to engage in such activities and are only telephoning consumers who want to receive these calls.

The amount of the penalty

69. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£130,000 (One hundred and thirty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

70. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **17 July 2021** 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.

71. If the Commissioner receives full payment of the monetary penalty by **16 July 2021**, the Commissioner will reduce the monetary penalty by 20% to **£104,000 (one hundred and four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right to appeal.
72. There is a right to 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.
73. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
74. Information about appeals is set out in Annex 1.
75. 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 appealing against the monetary penalty and any variation of it has expired.
76. 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 of Scotland.

Dated the **16th** day of **June** 2021

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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 or variation 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 she ought to have exercised her 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)).