

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Verso Group (UK) Limited

Of: Cleedon House, 42 Coldharbour Lane, Harpenden, Herts AL5 4UN

Introduction

1. The Information Commissioner ("the Commissioner") has decided to issue Verso Group (UK) Limited ("Verso") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The amount of the monetary penalty is £80,000.
2. The penalty is based on Verso obtaining and selling large volumes of personal data to be used for direct marketing purposes. The Commissioner's view is that, in all the circumstances, those activities constituted serious contraventions by Verso of the first data protection principle ("DPP1") from Schedule 1 to the DPA.
3. The Commissioner further considers that the conditions for issuing a monetary penalty are satisfied, that it is appropriate to issue such a penalty in this case, and that the amount of £80,000 is reasonable and proportionate.

Relevant factual background

4. The Commissioner has conducted a number of investigations into the sending of direct marketing communications in contravention of the Privacy and Electronic Communications Regulations 2003 ("PECR"). These have included investigations into companies called EMCAS and Pro Dial Limited. Both ultimately received monetary penalties in the amounts of £70,000 (EMCAS) and £350,000 (Pro Dial Limited). During those investigations, it came to the Commissioner's attention that Verso had supplied those companies with large volumes of personal data that they then used in contravention of PECR.
5. Accordingly, on 17 March 2016, the Commissioner commenced an investigation into whether or not Verso had obtained and/or supplied the relevant personal data in compliance with DPP1. The Commissioner corresponded extensively with Verso over the period 17 March to 28 November 2016.
6. In that correspondence, Verso explained how it obtained and supplied personal data. For example, it provided information about some of its transactions with companies such as EMCAS and Pro Dial Limited. For other transactions – in particular, Verso's sale of personal data to a company called [REDACTED] – the Commissioner had to contact that company to obtain information about its transactions with Verso.
7. Verso referred the Commissioner to a list of companies and websites from which Verso said it had obtained personal data. The Commissioner considered those websites, as well as Verso's own website. In particular, she considered the terms and conditions and privacy policies on those websites (as far as possible, for the period during which the personal data at issue in this case was obtained).

8. Verso provided the Commissioner with evidence of its due diligence measures in respect of some companies that had supplied Verso with personal data.
9. Verso also provided the Commissioner with an account of its own telemarketing campaigns through which it obtained personal data and supplied the scripts for those telephone calls.
10. The Commissioner has also considered an adjudication of the Direct Marketing Commission ("DMC") published in August 2016 concerning Verso's supply of data of over 2 million consumer records to be used for an SMS marketing campaign by a gambling company. Verso sourced that data from a company called [REDACTED] and provided it to a company called [REDACTED]. The DMC found that Verso had contravened a number of provisions of the Direct Marketing Association's (DMA) Code, including rule 3.11, which provides as follows:

3.11 When buying or renting personal data, members must satisfy themselves that the data has been properly sourced, permissioned and cleaned.

11. The Commissioner noted that Verso's appeal to the Independent Appeals Commissioner against the DMC's decisions was dismissed.
12. The Commissioner was mindful of the fact that the DMC is not tasked with assessing compliance with the DPA. In light of the other evidence summarised above, however, the Commissioner is satisfied on the balance of probabilities that the DMC's adjudication correctly described how Verso had obtained and provided personal data.

13. Based on the evidence summarised at paragraphs 5-12 above, the Commissioner has concluded on the balance of probabilities that Verso obtained and provided personal data as set out in Annex 2 to this Notice. Annex 2 groups Verso's activities into 12 broad transactions.
14. For the reasons given below, the Commissioner's conclusion is that those activities constituted serious contraventions by Verso of DPP1.

Legal framework

15. The DPA implements Directive 95/46/EC ("the Directive"), which aimed at the protection of the individual's fundamental right to the protection of personal data. The DPA must be applied so as to give effect to that Directive.
16. Verso is a data controller of the personal data it obtains and sells. Section 4(4) of the DPA provides that, subject to section 27(1) of the DPA, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which he is the data controller.
17. Both the obtaining and the onward sale of personal data constitute acts of processing.
18. Schedule 1 of the DPA contains the eight data protection principles. In the present case, the relevant principle is DPP1, which stipulates as follows:

*1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
(a) at least one of the conditions in Schedule 2 is met...*

19. As regards the fairness requirement of DPP1, the interpretative provisions in Part II of Schedule 1 to the DPA provide inter alia that:

1(1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

...

2(1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless—

(a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and

(b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(2) In sub-paragraph (1)(b) "the relevant time" means—

(a) the time when the data controller first processes the data, or
(b) in a case where at that time disclosure to a third party within a reasonable period is envisaged—

(i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,

(ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or

(iii) in any other case, the end of that period.

(3) The information referred to in sub-paragraph (1) is as follows, namely—

(a) the identity of the data controller,

(b) if he has nominated a representative for the purposes of this Act, the identity of that representative,

(c) the purpose or purposes for which the data are intended to be processed, and

(d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

20. As explained below, the Commissioner's view is that, in these circumstances, Verso should have ensured that the data subjects whose personal data it obtained and sold were provided with sufficiently specific information about the companies to whom their personal data would be provided for direct marketing purposes. Verso did not do so. It therefore processed that personal data unfairly, contrary to DPP1.

21. In addition to the duty to process personal data fairly, DPP1 also requires that a condition from Schedule 2 to the DPA be met. In the context of marketing activity, the Commissioner's view is that two conditions are conceivably relevant. These are conditions 1 and 6(1), which are as follows:

1. The data subject has given his consent to the processing.

6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

22. The Commissioner's view is that condition 6(1) will generally not be met in circumstances such as these. In part, this is because unsolicited direct marketing communications are likely to cause unwarranted prejudice to the rights of data subjects. This is particularly so where those communications have been sent in contravention of PECR. As indicated above, at least some proportion of the personal data processed by Verso was used in contravention of PECR. The

Commissioner also considers that condition 6(1) will generally not be satisfied where – as in this case – data subjects were not provided with sufficiently clear information about how and by whom their personal data may be used.

23. The Commissioner therefore considers condition 6(1) to be inapplicable to this case. The only potentially relevant condition is therefore condition 1.
24. "Consent" must be construed in accordance with the Directive. By Article 2(h) of the Directive:

(h) 'the data subject's consent' shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.

25. The Commissioner has considered the terms and conditions and privacy notices applicable to the personal data at issue in this case, to the extent that such information is available. She is not satisfied that the data subjects consented to their personal data being supplied to Verso and/or for onward sale to other companies for direct marketing purposes.
26. Section 55A DPA empowers the Commissioner to issue monetary penalties. The relevant provisions are as follows:

(1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—
(a) there has been a serious contravention of section 4(4) by the data controller,
(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 data controller—

(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.

27. As explained below, the Commissioner is satisfied that the above conditions were met in this case.
28. 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.
29. The Commissioner has issued and published statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties. She has taken that guidance into account in reaching her views in this case.

The contraventions

30. The Commissioner's conclusion is that each of the 12 transactions summarised in Annex 2 contravened DPP1 in that:
- (1) As regards personal data obtained by Verso itself (transaction 1), Verso failed to provide the data subjects with sufficiently clear information about the companies to whom Verso intended to disclose their personal data for direct marketing purposes. Neither Verso's telephone call scripts nor its website provided sufficiently clear information in this respect. Verso thus obtained this personal data unfairly and without satisfying any condition from Schedule 2 DPA.

- (2) As regards personal data obtained by Verso from other sources (transactions 2-8), Verso failed to ensure that the data subjects had been provided with sufficiently clear information about the companies (including Verso) to whom their personal data would be disclosed for direct marketing purposes. That failure arose from inadequate due diligence of and contractual arrangements with Verso's suppliers of personal data; the inadequate terms and conditions and privacy notices used by those suppliers and Verso's failure to take any other adequate steps to satisfy itself that data subjects had been provided with sufficiently specific information. Verso thus obtained this personal data unfairly and without satisfying any condition from Schedule 2 DPA.

- (3) As regards personal data sold by Verso to other companies (transactions 9-12), Verso sold personal data which it had obtained unfairly (see subparagraphs 1 and 2 above). Accordingly, Verso's onward sale of that data was also unfair and no condition from Schedule 2 DPA was satisfied.

The issuing of a monetary penalty

31. The Commissioner's view is that the conditions for issuing a monetary penalty under section 55A were met in this case.

32. The Commissioner considers that these contraventions were serious, in that:
 - (1) They involved large volumes of personal data and large numbers of data subjects.

- (2) Verso's contraventions were systemic: they were not isolated, one-off or occasional errors.
 - (3) There were numerous contraventions extending over a period of years.
33. The Commissioner considers that these contraventions were of a kind likely to cause substantial damage or substantial distress, in that:
- (1) As a result of Verso's contraventions, the affected data subjects could not have known who would be obtaining and using their personal data. At least some proportion of the affected data subjects were likely to be distressed by that uncertainty and loss of control over their personal data.
 - (2) At least some proportion of the affected data subjects were likely to suffer damage and/or distress on account of the unsolicited direct marketing communications which were facilitated by Verso's contraventions. Such communications would have intruded upon data subjects' privacy. There was also a significant and weighty chance of some data subjects suffering damage by acting on some of the marketing communications facilitated by Verso's contraventions: see for example the marketing of gambling services referred to in the DMC's adjudication.
 - (3) Given the nature and circumstances of Verso's contraventions, at least some of its activity was likely to contribute to contraventions of PECR – as was indeed the case. Data

subjects were likely to be distressed by the risk of their personal data being used unlawfully by a range of companies.

- (4) Even if some of the likely damage and distress outlined above was less than 'substantial' on an individual-by-individual level, the cumulative impact was likely to be substantial, in light of the number of data subjects affected by each of Verso's contraventions.

34. The Commissioner considers that Verso contravened the DPA deliberately. The activities underlying Verso's contraventions were deliberate and systemic. As explained below, the Commissioner considers on the balance of probabilities that Verso knew its activities contravened the DPA, but persisted with them nonetheless. She also considers that Verso deliberately obstructed her investigation into this matter. This is relevant to the Commissioner's decision to issue a monetary penalty. It is also relevant to the amount of that penalty.

35. In any event, even if Verso did not contravene the DPA deliberately, it knew or ought reasonably to have known that there was a risk that these contraventions would (a) occur, and (b) be of a kind likely to cause substantial damage or substantial distress. The Commissioner further considers that Verso failed to take reasonable steps to prevent such a contravention, in that:

- (1) Verso failed to undertake adequate due diligence when selecting its data suppliers in order to ensure that it received and used personal data fairly.

- (2) Verso failed to incorporate adequate contractual terms requiring its data suppliers to ensure that personal data was obtained and provided to Verso fairly.
- (3) Verso failed to take practical steps to satisfy itself that data subjects were provided with sufficiently specific information to help them understand what would be done with their personal data. For example, Verso could have examined the terms and conditions and privacy policies used by its data suppliers. Had it done so, Verso would (or should) have detected the inadequacies and taken appropriate action.
- (4) When obtaining personal data from data subjects (see transaction 1 in Annex 2), Verso should have provided sufficiently specific information about the companies to whom Verso would provide personal data.
- (5) Verso has worked in this sector for several years. It describes itself as "the UK's Premier Lead Generation Provider". It was aware of the Commissioner's investigations into and enforcement actions against some companies with whom Verso worked. Verso's director between 10 November 2015 and 28 July 2017, Dene Walsh, was a Council member of the DMA. In the circumstances, Verso should have been aware of the requirements of the DPA and with guidance published by the Commissioner and the DMA. Verso should have acted in accordance with those requirements and guidance documents.

The Commissioner's decision to impose a monetary penalty

36. The Commissioner's view is therefore that the statutory conditions for issuing a monetary penalty were met in this case. She has considered all the circumstances and has reached the view that it is appropriate to issue a monetary penalty in this case.
37. That view is based on Verso's multiple, systemic and serious contraventions over a number of years, as well as its unhelpful and obstructive conduct during the course of the Commissioner's investigation. The Commissioner has also considered the importance of deterring future contraventions of this kind, both by Verso and by others. The Commissioner considers that the latter objective would be furthered by the issuing of a monetary penalty in this case.
38. Having considered all the circumstances, the Commissioner's view is that this case is at the lower end of the most serious category of contraventions, i.e. category E in her guidance document entitled "Internal Procedure for Issuing Monetary Penalties".
39. The Commissioner has taken into account the following **mitigating features** of this case:
- Verso provided the Commissioner with some relevant information about its practices during the course of her investigation.
 - The penalty could have a significant reputational impact on Verso.
40. The Commissioner has also taken into account the following **aggravating features** of this case:
- Verso's contraventions were numerous, systemic and serious. They took place over a number of years and affected many thousands of

data subjects.

- Verso was unhelpful and obstructive during the Commissioner's investigation. It failed to provide some requested information, obfuscated in many of its answers and declined to co-operate adequately on a number of occasions. The Commissioner had to threaten to issue formal information notices in order to obtain answers to some of her questions.
 - As regards a number of the transactions listed in Annex 2, Verso was unable to demonstrate how it had taken steps to ensure compliance with the DPA.
 - In the circumstances, the Commissioner considers Verso to have acted in disregard of its legal obligations.
41. The Commissioner has also taken into account her underlying objective in imposing a monetary penalty notice, namely to promote compliance with the DPA. She considers that, given the nature, seriousness and potential consequences of the contravention arising in this case, that objective would not be adequately served by an unduly lenient penalty.

Conclusion and amount of penalty

42. The Commissioner confirms that she has taken account of Verso's written and oral submissions in response to her Notice of Intent.
43. Notwithstanding those submissions, the Commissioner has decided that she can and should issue a monetary penalty in this case, for the

reasons explained above.

44. Finally, the Commissioner has considered the information currently available to her about Verso's financial position, including its assets as at 31 May 2017.
45. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£80,000 (Eighty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.
46. The Commissioner has considered evidence of Verso's financial position. She does not consider that the payment of a penalty of the above amount would cause Verso undue hardship.
47. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **17 November 2017** 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.
48. If the Commissioner receives full payment of the monetary penalty by **16 November 2017** the Commissioner will reduce the monetary penalty by 20% to **£64,000 (Sixty four thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
49. 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.

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

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

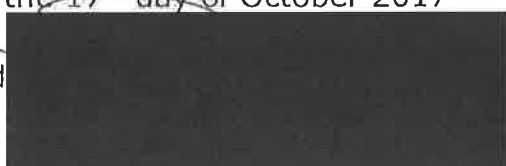
52. The Commissioner will not take action to enforce a monetary penalty unless:

- 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.

53. 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 17th day of October 2017

Signed

A large black rectangular redaction box covering the signature of the official.

Stephen Eckersley
Head of Enforcement
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 48 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:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- 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 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)).