



Information Commissioner's Office  
Promoting public access to official information  
and protecting your personal information

## Privacy and Electronic Communications (EC Directive) Regulations 2003

### When and How to Complain

The Information Commissioner is an independent official appointed by the Queen. He is responsible for administering the Data Protection Act 1998 and the Freedom of Information Act 2000. In addition he is responsible for a number of secondary legislation one of which is the Privacy and Electronic Communications (EC Directive) Regulations 2003.

The Privacy and Electronic Communications Regulations ("PECR") sets out rules for those who conduct **marketing** by electronic means, and includes requirements for the security and confidentiality of services, the processing of traffic and location data and the use of directories.

PECR does not cover other non-marketing electronic communications which you may receive.

### What does the Information Commissioner do?

The Information Commissioner's duties include providing information and advice to organisations about the regulations to enable them to use the technology properly and taking action against those who refuse to take the law seriously.

He also advises individuals about the requirements of the regulations and the steps that they can take to protect themselves against unwanted marketing communications.

### What do I do if the regulations have been breached?

If you think the regulations have been breached (for further information see 'What do the regulations say?' below) you can ask the Commissioner to enforce compliance with the law. He does, however, have wide discretion regarding any action he may choose to take.

Before reporting a matter to the Commissioner you can contact the organisation you think might have contravened the regulations. You should bring the problem to their attention and allow them to take steps to put things right. In many instances the matters can be resolved quickly without the Commissioner's intervention. You can also call our Helpline for advice about steps you can take to resolve the matter on 01625 545 745.

## **What if I cannot resolve the matter myself?**

If you have contacted the organisation about the problem but have been **unable to resolve it** then the Commissioner may be able look into the complaint provided that the criteria for making complaints can be met.

**The Commissioner's main focus is to change the organisation's behaviour so that they comply with the Regulations in the future.** He has no powers to punish or fine an organisation for a contravention of the Regulations and he cannot award compensation.

## **What do the regulations say?**

### **Faxes**

Marketing faxes should not be sent to individuals without their prior permission, and should not be sent to **anyone** (individual or business) who has registered their number on the Fax Preference Service (FPS).

In addition such faxes should not be sent to anyone who has informed the organisation directly that they do not wish to receive them. If you wish to register such an objection, we advise you to do so in writing and keep a copy.

### **When to complain to the Commissioner**

1. Where you have been sent a fax consisting of marketing or promotional material;
2. the sender can be identified;
3. the fax is sent to an individual who has not asked for it; or
4. the fax number is registered with the FPS; or
5. you have a record showing you had previously informed the organisation that you do not wish to receive marketing faxes from them.

### **Automated calls**

Automated marketing calls are pre-recorded messages which transmit direct marketing communications to subscribers.

Automated calling systems cannot be used for direct marketing without the prior permission of any subscriber.

Automated calls do not include 'live' sales calls, voicemail messages or 'silent calls'. Silent calls often occur where automated diallers call a range of numbers and there is a delay in connecting a call centre worker to the number. In this instance no marketing message is actually being communicated and so the regulations do not apply. For further advice about silent calls please contact Ofcom by phoning 020 7981 3040 or visiting [Ofcom](http://Ofcom).

## When to complain to the Commissioner

1. Where you have received a pre-recorded message consisting of marketing or promotional material;
2. where the caller is based in the UK;
3. where the caller can be identified; and
4. where you have not previously consented to the call.

You should be aware that the Commissioner does not have the powers to compel third parties, such as a telephone company, to provide us with information that may identify a caller. This means that if you have been unable to obtain any information about the identity of the caller, we will be unable to pursue the matter.

If the automated call invites you to call a premium rate number (one beginning with 090), then you can ask ICSTIS the premium rate regulator for advice. For further information please see [ICSTIS](#).

## Electronic mail

Electronic mail refers to emails, SMS (text), picture, video, 'Bluetooth' and answer phone messages.

Marketing electronic mail messages should not be sent to individuals without their prior permission unless:

- The marketer has obtained the details of the individual through a sale or negotiations for a sale;
- the messages concern similar products or services offered by the sender; **AND**
- the individual was given an opportunity to refuse the marketing when their details were collected and, where they did not refuse, they are given a simple way to opt out in every future communication.

Marketing electronic mail messages sent to businesses are not caught by the regulations.

## When to complain to the Commissioner

1. Where you have received an electronic communication consisting of marketing or promotional material;
2. where the sender is based in the UK; and
3. where the sender can be identified.

## Spam

It is widely recognised that most bulk 'spam' is sent from outside the UK. If you have a general problem with world wide bulk spam then there is little help we can provide. However, you could speak to your internet service provider (ISP) for advice on spam filters, or see [our spam webpage](#) for general practical advice.

## Telesales

Telesales calls are 'live' direct marketing calls, where you actually speak to a sales person. Telesales do not include genuine market research calls, recorded messages or 'silent calls' (see above).

Telesales calls should not be made **any** subscriber who has registered with the Telephone Preference Service (TPS) or the Corporate Telephone Preference Service (CTPS), unless they have also advised the caller that they wish to receive such calls.

In addition telesales calls should not be made to anyone who has informed the caller directly that they do not wish to receive calls. If you wish to register such an objection, you should put your objection in writing and keep a copy.

### When to complain to the Commissioner

1. Where you have received a marketing call;
2. where the caller is based in the UK;
3. where the caller can be identified; and
4. where you have registered with the TPS or CTPS; or
5. you have a record showing you had previously informed the caller that you did not wish to receive marketing calls from them.

For more details on the direct marketing requirements of the regulations please see the Privacy and Electronic Communications Regulations 2003 [guidance - part 1](#) on our website.

### What else do the regulations cover?

- Security
- Confidentiality of communications (use of cookies)
- Traffic and Location Data
- Itemised Billing
- Calling or Connected Line Identification (CLI)
- Directories

If you wish to make a complaint regarding one of these other provisions please see the relevant sections in the Privacy and Electronic Communications Regulations [guidance - part 2](#). Please put your complaint in writing giving full details about what has gone wrong attaching any supporting documents you might have, and send it to the address at the end of this leaflet.

For further information about the requirements of the regulations please call our Helpline on 01625 545 745.

## How do I complain to the Commissioner?

To complain to the Information Commissioner about a possible breach of the regulations, firstly you should check using the information above that this is a matter he can pursue. Then you should complete our “Privacy and Electronic Communications Regulations 2003 Complaint Form” which will help you provide us with all the information we need. You can download the form from our [website](#) or you can request a copy from our Helpline on 01625 545 745.

If you are not sure whether your complaint is one that is appropriate to refer to the Commissioner, please call our Helpline or read the Privacy and Electronic Communications Regulations [guidance](#).

## What supporting documents does the Commissioner need?

The Commissioner will not be able to investigate complaints regarding faxes or emails unless you provide him with copies of documents evidencing your allegations. **You should not forward all your spam to us** but you can send copies of the emails along with the complaints form.

You should also provide copies of **correspondence between you and the organisation/individual concerned attempting to rectify the matter**.

Where applicable you should also send copies of relevant correspondence between you and any other organisation (e.g. industry regulator or ombudsman) attempting to rectify the problem you have raised.

**Please note that you should only send documents that are of direct relevance to your complaint.**

In most cases we expect the complaint process to be conducted in writing. We are normally unable to accept evidence by the telephone and we would therefore not expect to receive large numbers of telephone calls or to speak to you at length.

## How will my complaint be dealt with?

We will examine your complaint to decide how it should be handled. Our initial response will contain a unique reference number which you should use whenever you contact us about that matter. **If we need further information from you we will write and let you know.**

If we identify your complaint as one that is relevant for the Commissioner to investigate we will usually make contact with the organisation concerned.

If we identify your complaint as something that is not primarily a PECR problem we will let you know, and where appropriate direct you to the relevant regulatory body.

Up to date details about our response times are available from our Helpline on 01625 545 745.

### **What will happen to my supporting documents?**

In most cases any documents you send us will be destroyed after 6 months. You should, therefore aim to send us only copies of these documents, being sure to retain the originals. We may need these at a later date.

If you are unable to provide us with copies you should be sure to ask us to return your original documents. Although there is a tick box in section 14 of the Complaint Form, **you will need to make it clear every time you send something you would like us to return to you.**

### **If my complaint is upheld will the organisation be punished?**

Where he is satisfied that the regulations have been contravened the Commissioner can ask the organisation to take steps to rectify that problem.

His main focus is to change the organisation's behaviour so that they comply with the regulations in the future. He has no powers to punish an organisation for a contravention of the regulations.

In the majority of cases the organisation agrees to take the remedial steps he recommends voluntarily, without the need for further action.

### **If my complaint is upheld will I be entitled to compensation?**

Where you have suffered **damage** by reason of any contravention of the Regulations you may be entitled to compensation. All compensation claims must be pursued through the Court. **The Commissioner has no powers to award compensation.**

The right to apply to the court for compensation applies whether or not the matter has been reported to the Commissioner and whether or not he has agreed that the regulations have been contravened.

For further information please see our guidance note "Claiming Compensation" which is available from our website ([website](#)) or from our Helpline on 01625 545 745.

### **What happens when an organisation will not rectify the problem voluntarily?**

In the unlikely event that the Commissioner cannot achieve compliance voluntarily he may consider serving an enforcement notice where he thinks it appropriate. This is a legally binding document that sets out the things an organisation must do (or stop doing) in order to comply with the regulations.