

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED 19th August 2010

To: Direct Response Security Systems Limited

of: 4 Emmanuel Court
Reddicroft
Sutton Coldfield
West Midlands
B72 1TJ

1. The Data Protection Act 1998 (the "Act") came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. Since 30 January 2001, by virtue of Section 18(1) of the Freedom of Information Act 2000, the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
2. The Privacy and Electronic Communications (EC Directive) Regulations 2003 (the "Regulations") came into force on 11 December 2003.

Regulation 21 of the Regulations states –

- "(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.*
- (2) ...*

- (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 - b) where such notification is withdrawn, the caller shall not make such calls on that line.”*
3. “Direct marketing” is not defined in the Regulations. By virtue of Regulation 2(2), “direct marketing” is to have the same meaning as in the Act. “Direct marketing” is defined in section 11(3) of the Act as “the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals”.
4. Regulation 26 of the Regulations states –
- “(1) For the purposes of regulation 21 OFCOM shall maintain and keep up-to-date,...a register of the numbers allocated to individual subscribers, in respect of particular lines, who have notified them that they do not for the time being wish to receive unsolicited calls for direct marketing purposes on the lines in question...”*
5. A list under Regulation 26 is that held by the Telephone Preference Service (“TPS”), a service maintained by Telephone Preference Service Limited on behalf of OFCOM.
6. The Act contains enforcement provisions at Part V which are exercisable by the Commissioner. Those provisions are modified and extended for the purposes of the Regulations by Schedule 1 of the Regulations.
7. Section 40(1)(a) of the Act (as extended and modified by the Regulations) provides that if the Commissioner is satisfied that a person has contravened or is contravening any of the requirements of the Regulations, he may serve him with an

8. Regulation 32 of the Regulations provides that either OFCOM or a person aggrieved by an alleged contravention of any of the requirements of the Regulations may request the Commissioner to exercise his enforcement functions in respect of that contravention. The Commissioner may also exercise his enforcement functions in the absence of any such requests.
9. The Commissioner has received numerous complaints via the TPS and from individuals directly who are subscribers to specific telephone lines. The individuals allege that they have received unsolicited marketing calls on those lines, from various individuals acting on behalf of Direct Response Security Systems Limited, marketing the company and its goods and/or services. Each individual states that they have previously notified Direct Response Security Systems Limited that such calls should not be made on that line and/or have registered their number with the TPS. Many of the individuals allege that they have continued to receive such calls despite complaints to Direct Response Security Systems Limited, the Commissioner and/or the TPS.
10. The Commissioner is satisfied that Direct Response Security Systems Limited has contravened Regulation 21 in making such calls for direct marketing purposes to subscribers.
11. The Commissioner has considered, as he is required to do under section 40(2) of the Act (as extended and modified by the Regulations) when deciding whether to serve an enforcement notice, whether any contravention has caused or is likely to cause any person damage. He does not consider that any such damage has been caused in this instance.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that Direct Response Security Systems Limited shall within 35 days of the date of this notice:

- (2) Immediately suppress the number of any subscriber who has notified Direct Response Security Systems Limited that calls should not be made on that line and keep a list of all such number suppressions;
- (3) Take all reasonable steps to ensure that data used by Direct Response Security Systems Limited to make unsolicited marketing calls is TPS screened;
- (4) Operate a call cycle of no more than 28 days and take all reasonable steps to ensure that any data used to make unsolicited marketing calls outside of the 28 day period is re-screened against the TPS prior to its use;
- (5) Take all reasonable steps to ensure that any unsolicited marketing calls made by Direct Response Security Systems Limited use data which has been screened against the suppression list and the TPS referred to in paragraphs 1 to 3 above.

Dated the 19th day of August 2010

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF