

# Compliance Newsletter

June 2019

## *Compliance News for Busy People*

Keeping on top of multiple statutory regulators, industry bodies charged with policing self-regulation, changing laws and commercial environments is a job in itself.

So, we're here to help. We keep an eye on the key regulators which impact your ability to acquire and retain customers, let you know what they are up to and what that tells you about how you run your business – leaving you to concentrate on the things you're best at.

Welcome to our second monthly newsletter.

## This Month's Headlines

- PayPal, Apple, receipt rolls and microscopes all come under the CMA's spotlight
- ICO orders HMRC to ditch 5m biometric voice records
- Latest ICO fine again highlights the dangers of using 3<sup>rd</sup> party lead gen sites
- A botched new billing system lands Plusnet on the Ofcom naughty step
- €57bn loss in online sales due to new payment rules (claims payment services provider)

**The Competition and Markets Authority (CMA)** sometimes hits the front-page headlines - like last month when it blocked the Sainsbury's - Asda merger – but the UK's most influential and powerful market regulator is constantly at work...



Apple has pledged to be “clearer and more upfront” with iPhone users about how to better manage battery usage and life, including the performance-degrading impact of operating system updates. About time, too!

[www.gov.uk/government/news/apple-pledges-clearer-information-on-iphone-performance](http://www.gov.uk/government/news/apple-pledges-clearer-information-on-iphone-performance)

The CMA has cleared PayPal's takeover of Swedish iZettle. Both are key players in the 'omnichannel payments' market, allowing firms to take payments both online and offline through the same provider. However, as Barclaycard and Worldpay still account for 60% of the smaller merchants' market, the CMA didn't feel that this merger would impede competition or innovation.



*Some CMA investigations are of more obscure areas...*

1. CMA has raised competition raised concerns about US firm Tobii Dynavox's purchase of Smartbox, a UK provider of disability communication devices, often used in schools to help children with communication challenges enter mainstream schooling.



2. A merger of Thermo Fisher Scientific and Roper – two firms involved in the market for electron microscopes and associated peripherals – has been abandoned after the CMA raised competition objections.



3. The merger of 3 paper receipt suppliers has been challenge by the CMA as likely to have significant anti-competitive effect in the UK. This is despite the EU approving the EU-wide merger, on the basis that the UK market for paper receipt rolls was more restricted than elsewhere in the EU.



*You might justifiably think that if you're not involved in the world of learning aids, scientific equipment, or even be pretty confident your firm has never purchased a paper till roll, then none of this is relevant to you. It probably isn't, but it provides clear demonstrations that the CMA's remit runs wide and deep - and that the impact of its regulatory actions can be profound for businesses.*



Meanwhile, the Department of Culture, Media & Sport (DCMS) is still consulting on restrictions on the advertising of products that are high in Fat, Sugar & Salt (HFSS)

[www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/795412/hfss-advertising-consultation-10-april-2019.pdf](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795412/hfss-advertising-consultation-10-april-2019.pdf)



### ePrivacy Regulation

Finns next – Finland picks up the rotating EU Presidency from July. And after the Romanians failed to get ePrivacy finalised, the Finns will now have to try to do so...

Some rather implausible GDPR research from data cleansers Wilmington Millennium via our pals at Decision Marketing ([www.decisionmarketing.co.uk](http://www.decisionmarketing.co.uk)). It says that 28% of Bristolians had requested organisations delete their data, whereas 2% off them had contacted the ICO with a complaint, in contrast to 16% of people in Sheffield who'd done so.

If that was reflected nationally, the ICO would be getting over 10 million complaints! (which we can confidently say they're not)

[www.wilmingtonmillennium.co.uk/news-repository/gdpr-north-south-divide.aspx](http://www.wilmingtonmillennium.co.uk/news-repository/gdpr-north-south-divide.aspx)

## ICO Enforcement Actions

**Farrow & Ball** has become the first organisation to appeal the ICO's imposition of a fine (£4000) for not paying its Data Protection Registration fee on time. They lost. This Mishcon de Reya article explains (but doesn't explain why Farrow & Ball thought their appeal would be successful)

[www.mishcon.com/news/tribunal-rejects-first-appeal-of-fine-for-non-payment-of-data-protection-fee](http://www.mishcon.com/news/tribunal-rejects-first-appeal-of-fine-for-non-payment-of-data-protection-fee)



HALL & HANLEY

**Hall & Hanley** a PPI claims company from Manchester has been fined £120,000 for infringing the PECR rules.

Over 1,000 complaints were received about Hall & Hanley's texts, either directly by the ICO or via the 7726 Spam SMS reporting service. Hall & Hanley confirmed they were responsible for sending over 3.5m text messages in the first half of 2018.

Although the messages were despatched by third parties, the ICO considered Hall & Hanley to be the 'instigator' of the texts. The data used was 3<sup>rd</sup> party data for which Hall & Hanley didn't obtain proper consent. The lead generation sites were:

[www.getyaoffers.co.uk](http://www.getyaoffers.co.uk)

GETYA OFFERS.co.uk

[www.petesdeals.co.uk](http://www.petesdeals.co.uk)

Pete's DEALS

[www.prizereactor.co.uk](http://www.prizereactor.co.uk)

PrizeReactor

[www.myloanoffers.co.uk](http://www.myloanoffers.co.uk)

When the ICO reviewed these lead gen sites' privacy policies they found that either Hall & Hanley didn't appear at all or else as part of long lists of brands, with users not given the ability to opt out of contact from any or all of them.

The ICO's notice specifically refers to the 'Opted in Data Supply Agreements' that Hall & Hanley had with its third party data suppliers:

[www.ico.org.uk/media/action-weve-taken/mpns/2614866/hall-and-handley-ltd-mpn-201905.pdf](http://www.ico.org.uk/media/action-weve-taken/mpns/2614866/hall-and-handley-ltd-mpn-201905.pdf)

**HM Revenue & Customs** has agreed to delete 5 million voice biometric records because it failed to get full consent from users for the processing.



HM Revenue  
& Customs

Data rights group Big Brother Watch ([www.bigbrotherwatch.org.uk](http://www.bigbrotherwatch.org.uk)) had filed a complaint about HMRC in June 2018.

[www.accountingweb.co.uk/tax/hmrc-policy/hmrc-to-wipe-five-million-voice-id-records-after-ico-intervention](http://www.accountingweb.co.uk/tax/hmrc-policy/hmrc-to-wipe-five-million-voice-id-records-after-ico-intervention)

*So what?*

*It's all about transparency – and not getting carried away with new technology, even when it appears to benefit both the organisation and the consumer. In GDPR terms, a recording of me saying “my voice is my password” is personal data.*

*Just now, most use of voice biometrics for identification purpose is in the financial services sector (and it can be very helpful to provide Strong Customer Authentication [SCA] which we cover elsewhere in the newsletter). But usage is spreading, so if voice biometrics would help your business then be sure to think through the data privacy implications first.*

In **India** the proposed new Data Protection Authority would establish a national data protection regulator for the first time. Anglo-Indian business groups are working to establish UK-Indian collaboration in advance [www.ukibc.com/ukibc-data-collaboration-roundtable-exploring-the-future-of-the-uk-india-tech-partnership/](http://www.ukibc.com/ukibc-data-collaboration-roundtable-exploring-the-future-of-the-uk-india-tech-partnership/)



The Insolvency  
Service

Although various company directors have been struck off and barred by the Insolvency Service over the past month, none are of particular interest for our purposes.

Watch this space...

## ASA (Advertising Standards Authority) & Wickes

In August & September 2018 Wickes' website offered 'half price' deals on kitchens – but only after doubling their prices immediately before the start of the promotion.



According to the ASA's ruling Wickes attempted to justify their sleight of hand by saying that the offer was very clearly a 'multi-buy' deal and that the 50% 'discount' was only available when consumers bought five or more units.

The ASA was unimpressed, especially when Wickes' own analysis showed that very few customers bought kitchen units in quantities of less than five at a time.

[www.asa.org.uk/rulings/wickes-building-supplies-ltd-a18-462969.html](http://www.asa.org.uk/rulings/wickes-building-supplies-ltd-a18-462969.html)

Wickes has been banned from repeating their online advertising, but perhaps more significantly has suffered a rash of bad publicity:



**Wickes ad banned after DIY chain advertises item for 50% off then ...**

Mirror.co.uk - 8 hours ago

Banning the **ad**, the **ASA** told **Wickes** not to alter list prices in a way that gave ...

"Today's **ruling** indicates that this offer from **Wickes** should never ...

**Wickes** '50% discount' offer banned after retailer doubled prices on ...

The Independent - 6 hours ago

Which? complaint against **Wickes** kitchens upheld by **ASA**

Which? - 13 hours ago

**Wickes** '50% off' discount BANNED after retailer doubled prices on the ...

The Sun - 2 hours ago

**ASA** rules against **Wickes** on advert where it put prices up on day of ...

kbbreview - 3 hours ago



In what may well have come as a shock to them, Ofcom has told broadband providers that they must “put fairness at the heart of their business



**Fairness for customers**

[www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/broadband-and-phone-firms-put-fairness-first?](http://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/broadband-and-phone-firms-put-fairness-first?)

BT, EE, Giffgaff, O2, Plusnet, the Post Office, Sky, TalkTalk, Tesco Mobile, Three, Virgin Media and Vodafone have all signed Ofcom’s Fairness for Customers pledge.

Nothing very novel-sounding if you provide financial services and have had years of being required to Treat Customer Fairly, of course.

In parallel, Ofcom’s new rule requiring firms to provide end of contract notices to their customers (and thus make it less likely that those customers will passively continue to pay what is probably an uncompetitive price for a deal) has taken effect: [www.bbc.co.uk/news/technology-48268427](http://www.bbc.co.uk/news/technology-48268427)

Ofcom’s latest quarterly complaints figures for telco providers

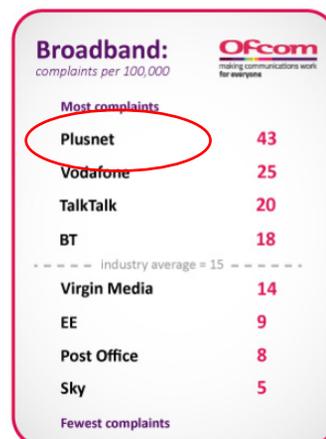
[www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/best-and-worst-telecoms-customer-service-revealed](http://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/best-and-worst-telecoms-customer-service-revealed)

demonstrate that if you can’t implement a new billing system well, then you be best off not bothering at all. Plusnet’s complaints doubled in the wake of their installing a new, flawed billing system.

Landline telephone complaints per 100,000 customers



Home broadband complaints per 100,000 customers



## Payments



### New rules will cost €57bn in Online Sales

According to a paper [www.stripe.com/reports/451-research-sca](http://www.stripe.com/reports/451-research-sca) from 451 Research ([www.451research.com](http://www.451research.com)) commissioned by payments firm Stripe ([www.stripe.com](http://www.stripe.com)) – who aren't what you would call a disinterested observer, to be fair – new requirements stemming from the EU's Second Payment Services Directive (PSD2) may reduce EU-wide ecommerce revenues by 10% or €57bn annually.

PSD2 introduces Strong Customer Authentication (SCA) which broadly means that consumers will have to verify their identity more often when making online payments. SCA will be mandatory from September, but (unsurprisingly) according to 451 most people have never heard of it- and nor have a lot of merchants selling online.

So, if you don't want to be hit by confused customers and a 10% drop in online sales this autumn what should you do? Well, SCA's all rather complex (no surprises there), but there's plenty of guidance available online and for starters have a word with your bank or payment processing provider.

Meanwhile, it seems that most organisations taking card payment from customers over the phone remain blissfully unaware of the Payment Cards Industry (PCI) Security Standards Council's updated Guidance ([www.pcisecuritystandards.org/documents/Protecting\\_Telephone\\_Based\\_Payment\\_Card\\_Data\\_v3-0\\_nov\\_2018.pdf](http://www.pcisecuritystandards.org/documents/Protecting_Telephone_Based_Payment_Card_Data_v3-0_nov_2018.pdf)).

But if you're not up to speed with those rules, look on the bright side; phone payments and mail order won't be covered by SCA.



# PSA

Phone-paid Services Authority

No tribunal decisions from the PSA since the last newsletter, so the purveyors of unasked-for mobile subscription quiz, joke, gossip and porn services can rest easy a little while longer.



The Fundraising Regulator has published its revised Fundraising Code of Practice. This isn't different in terms of content or what it requires of fundraisers, but rather seeks to be more intelligible and accessible.

[www.fundraisingregulator.org.uk/more-from-us/resources/code-fundraising-practice-october-2019?utm\\_medium=email&utm\\_campaign=new-fundraising-code-oct19&utm\\_source=newsletter](http://www.fundraisingregulator.org.uk/more-from-us/resources/code-fundraising-practice-october-2019?utm_medium=email&utm_campaign=new-fundraising-code-oct19&utm_source=newsletter)

### **Before you go**

Are we covering the regulatory bodies and areas that keep you awake at night? Who and what else would you like to see covered in future months' newsletters about the world of regulation and compliance as it affects customer engagement? Let us know at [hello@channeldoctors.co.uk](mailto:hello@channeldoctors.co.uk)

### **The Small Print**

This content is accurate as of 15<sup>th</sup> June 2019.

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