

# Compliance Newsletter

September 2019

*Compliance News for Customer People*

## This Month's Headlines

- Subject Access Requests - rip up the process as they've got quicker and trickier
- Cold calling culprit gets struck off for 5 years
- Fake Mo lands vaping firm in hot water
- 3 more years for the [DMA](#) and the [TPS](#)
- £160,000 fine for boiler firm calling opted-out consumers
- [PETA](#) fail to see the wool for the trees

Summer's over and the nights are drawing in, but if you're responsible for acquiring, retaining and servicing customers then you need to be ever more aware of the compliance and regulatory requirements and challenges you face. Our newsletter is designed to help!

**Welcome to the fourth edition**

## The Competition and Markets Authority (CMA)



The Deliveroo / Amazon merger is being [investigated by the CMA](#) (after it ordered a stop to their business integration efforts in July). Although Amazon had only bought a minority stake in Deliveroo, the CMA are minded to see the move as an effective takeover and merger, breaking competition rules.

*The CMA runs scores of investigations simultaneously, often in the most obscure areas. This one highlights how it can stand in the way of even the biggest companies' well-crafted plans.*



The [Data and Marketing Association](#) (DMA) has won the [ICO's](#) tender to continue operating the [Telephone Preference Service](#) for another 3 - and potentially 5 - years. [Decision Marketing's article](#) says the DMA makes £100k annually from the contract and that the recent data cleanse - see below - has been despite "DMA resistance". Is that really true?

We're friends of the DMA, but they clearly say they were in favour of cleaning up the database.

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The home of direct, data and digital marketing



### DMA fights off competition to retain £5m TPS contract

AUGUST 15, 2019 9:05 AM



The DMA has retained the account to run the Telephone Preference Service and Corporate TPS - worth a tidy £5m over five years - following a tender run by the Information Commissioner's Office, which had been delayed for 18 months.

*Surely the key question, now, is whether TPS will celebrate its new lease of life with a new website to replace the [current version](#) - which seems to date from the mid-1980s?*



Information Commissioner's Office

You may have heard the sound of Subject Access Request (SAR) procedures being ripped up across the country as the ICO quietly [reduced the window to respond to SARs by one day](#) .

And to show that this stuff matters [Hudson Bay Finance Limited](#) has had its knuckles rapped by the ICO for not responding to a SAR request – and ignoring the ICO’s enquiries, too...



The ICO is expected to issue its proposed new, post-GDPR Direct Marketing Guidance to replace [the current version](#) shortly. If you're involved in or responsible for direct marketing - which in ICO terms means pretty much anything but broadcast TV, outdoor or press advertising - then this will be very important. The GDPR and the 2018 Data Protection Act weren't written to provide practical advice about how to market without infringing data protection rules. The ICO guidance should do just that (at least in theory), so watch this space...

Just when SARs looked quite confusing enough, a [paper](#) presented to the US [Black Hat](#) information security conference in August was reported as showing that GDPR gave a green light to identity theft and fraud. This is how the BBC covered the [story](#):



*So, is the GDPR flawed, at least when it comes to [SARs](#) (Subject Access Requests)? Certainly there's a lack of best practice guidance and even with the best of intentions, many organisations struggle to meet consumers' Personal Data Access Rights.*

*The operational challenge the Black Hat paper highlighted goes full circle to most customer service experts' initial thoughts when described the SAR process – “How do you know the person lodging the SAR is who they say they are?”. In truth it's no surprise the law doesn't help with operational best practice guidance; it's a problem you have to work out yourself.*

*But while you contend with that, here's a characteristically pithy and world-weary [dissection of the paper's authors' claims](#) from [Tim Turner](#).*

## ICO Enforcement Actions

Although the ICO has had a bit of an enforcement holiday over the summer, it still found time to fine [Making It Easy](#) – a boiler repair and replacement firm based outside of Glasgow – £160,000 for [breaking the PECR rules](#).

From May to December last year Making It Easy was responsible for over 850,000 calls to numbers registered with the [Telephone Preference Service \(TPS\)](#). To compound matters, although Making It Easy did present a valid CLI number, (well, 17 actually) it didn't refer to a proper or traceable trading name and when probed agents were evasive about who was responsible for the calls.



In an interesting twist, Making It Easy told the ICO that – quite sensibly in the circumstances, it would seem - it had stopped outbound calling customer acquisition from September 2018. Making It Easy said it had transitioned to being an “opt-in call centre through web”. This claim was rather discredited when the ICO continued to receive consumer complaints about outbound calls through to March 2019.

*Spend long enough looking at [ICO enforcement actions](#) in the direct marketing space and you feel like you could cut and paste most of the PECR ([Privacy and Electronic Communications Regulations](#)) transgressions that lead to enforcement, fines (and often business closure).*

*The Making It Easy case displays a number of the old favourites:*

- *Use of multiple CLIs (the display number that appears on a consumer's phone when they receive calls) without good reason ✓*
- *Use of various and misleading brands when making calls ✓*
- *A (claimed) assumption that a third party prospect data provider would ensure numbers were screened against the Telephone preference Service database ✓*
- *Not having a contract in place with a third party data provider ✓*

Jonathon De Sousa ran Xternal Property Renovations which was [fined £80,000 by the ICO](#) in 2018 for breaching PECR and telemarketing numbers on the TPS register. Shortly after the fine was levied Mr De Sousa placed the company into Creditors Voluntary Liquidation.

As a result of the fine not being paid - and, in truth, more likely due to Xternal also owing [HMRC](#) £250,000 in unpaid taxes - Mr De Sousa has been [barred from acting as a company director for 5 years](#).





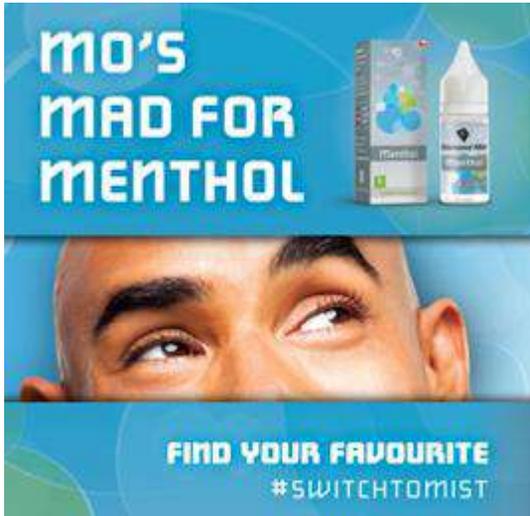
[Giffgaff](#) has been [fined a whopping £1.4m](#) by [Ofcom](#) for billing errors. It failed to immediately switch customers to bundle pricing once a bundle was purchased. Not a billing system change like [PlusNet](#) (see the [June](#) and [July & August](#) newsletters), but still a PR disaster stemming from billing difficulties. NB The fine would have been much bigger if Giffgaff hadn't reported it to Ofcom as soon as it became aware of the fault (incidentally, it seems that no customers ever noticed).



The **ASA (Advertising Standards Authority)** really hit the headlines over the summer when it acted to ban adverts from both [Volkswagen](#) and [Philadelphia](#) which were deemed in contravention of its new rules against gender stereotyping.



*Whether the ASA's rulings really banned humour, irony or just lazy creatives ([opinions vary](#)), it should be noted that the [VW](#) & [Philadelphia](#) adverts generated just 4 complaints in total an advertisement featuring “a female ballet dancer, a male drummer and a male rower” from [Buxton water](#) got the ASA's green light So, this gender stereotyping looks like it could be tricky. Marketers and agencies, you have been warned!*

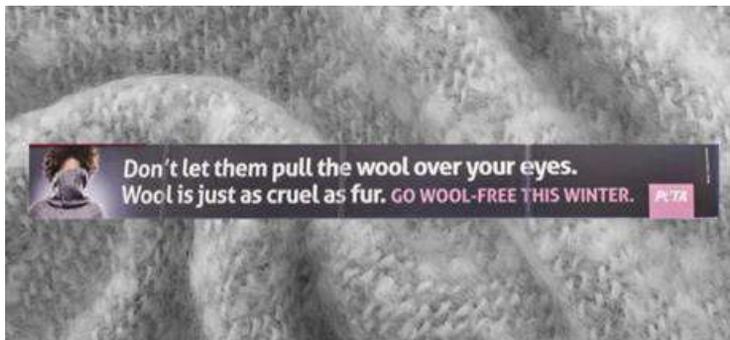


Less challengingly, advertisers shouldn't pretend to have celebrity endorsements they don't have

Unsurprisingly, [Diamond Mist Eliquids'](#) vaping products advert featuring a character called Mo, who looked very much like Sir Mo Farah – but wasn't – was [deemed misleading and can not be repeated.](#)

[Greenstar](#), a Colchester plumbing firm, had its claim to be the only firm with a "100% transparent ... pricing system" [rejected](#) as it was based on Greenstar's ThreeBest assessment.

As [ThreeBest](#) only reviews three local firms the ASA ruled that Greenstar's claim wasn't tenable.



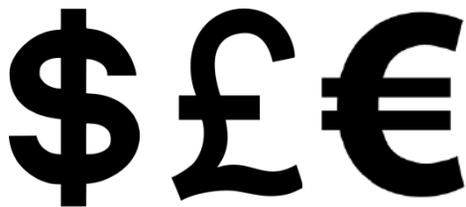
[PETA's](#) claim – which appeared on the side of buses in Glasgow this February – that "wool is just as cruel as fur" was [rejected by the ASA](#) on the reasonable basis that sheep don't get killed for their wool, unlike animals farmed for fur.

The PSA has further penalised [Powertel](#), banning it from operating in the phone-paid space for 5 years, as a result of it not paying its £200,000 fine from last autumn. Powertel's business model was to buy up brands' old, disused customer service numbers and point them to a directory enquiries service which charged nearly £7 for connection alone...



It's also banned Simon Boyle from the industry for 5 years due to his leading role in the activities of Flipcove, which the PSA fined £250,000 in December last year. Similarly Eliad & Meital Shenar have had 5 year bans imposed after Halak Online failed to pay its fine.

## Payments



It's 'panic over' for plenty of organisations taking and processing online payments after the [FCA formally confirmed](#) a 18 month phasing in period for the Strong Customer Authentication (SCA) rules, part of the EU's 2nd Payment Services Directive (PSD2), rather than sticking to the original 'big bang' date of 14<sup>th</sup> September.

NB Different European regulators have adopted different approaches to this – so if you're part of an organisation with operations or customers across Europe you'll need to reflect the respective national regulators' guidance

### Before you go

Are we getting this right? 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 17<sup>th</sup> September 2019.

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