

# Compliance Newsletter

October 2019

*Compliance News for Customer People*

## This Month's Headlines

- Is the ICO crowd-sourcing cookie compliance? [CMA](#) takes on [Salesforce](#)
- Home improvements firm [fined £150,000](#) for calling TPS numbers
- [Research](#) shows marketers' data privacy understanding getting worse
- [RNLI](#) ditches its consent-only fundraising stance
- [Burger King](#)'s milkshake tweet upsets the [ASA](#)

Tired of worrying about Brexit and global warming! Maybe you could get worked up about compliance and regulation instead? Take 10 minutes to read through this newsletter and afterwards you should be better informed about the compliance challenges when acquiring, retaining and servicing customers. No need to worry.

**Welcome to the fifth edition**



The CMA's [current caseload](#) ranges from drugs and pubs to hospitals and satellites – and just about everything in between.

However, as we think most of our readers will be familiar with [Salesforce](#), this month we'll look at this case:

Salesforce's \$15bn purchase of Tableau is being investigated, on the basis that the merger may reduce competition. If you move quickly you can still [share your thoughts on this](#) with the CMA.

*Tableau is the 60th firm Salesforce has acquired over the years and it seems to some observers that they may soon take over the world. Maybe only the CMA can save us?*



### **ePrivacy Regulation**

The Finnish EU presidency has published a [new, revised text](#) of the proposed ePrivacy Regulation which will replace the European rules enshrined in PECR. Experts with a better eye for detail than us will interpret what these latest changes would mean – but it's still a long way from being agreed.

## ICO Enforcement Actions

Swansea-based home improvements firm, Superior Style, generated nearly 100 consumer complaints in a 12 month period between 2017 & 2018 by making telemarketing calls to numbers registered with the Telephone Preference Service (TPS).



Superior Style couldn't justify why they didn't screen their outbound calling database – which they said had been purchased from another home improvement company two years earlier – against the TPS and was [fined £150,000 by the ICO](#) for breaking the PECR rules..



### ICO's Cookie Cutter?

As explained in our [July-August issue](#), the ICO has recently updated its cookies guidance, The ICO now demands organisations gain 'GDPR-standard' detailed and specific consumer consent to different types of tracking and analysis cookies.

At the time, the ICO freely said that enforcement of the stricter cookie rules wouldn't be a priority, but just a couple of months later it is publicising a reporting portal for consumers to use to report intrusive cookie usage.

The ICO's move comes at the same time as a [European judgement](#) on Planet49, a German gaming site underlined that consumers' consent to the use of cookies must be overt. which they said had been purchased from another home improvement company two years earlier – against the TPS and was [fined £150,000 by the ICO](#) for breaking the PECR rules..

*Does your organisation by any chance know anyone with a grudge against it? If so, keep your fingers crossed they don't find their way to the ICO's cookie reporting tool.*

*Odds are that your website still isn't compliant (most aren't) and now that the ICO seems to be democratising enforcement anyone, could report your weaknesses.*

## BA case may open floodgates for psychological claims

SEPTEMBER 16, 2019 9:45 AM



Legal action against British Airways over last year's data breach will be the test case for whether lawyers can prove customers have suffered psychological injury or distress as a result of having their personal information compromised, and, if successful, could leave other brands wide open to huge compensation payouts.

The writing has been on the wall for years. As far back as October 2017, *Decision Marketing*

Most experts are sceptical that there's a compensation goldmine to be found by law firms organising class actions for consumers impacted by large-scale data breaches. However, BA's data breach - [which has already generated a proposed £183m fine from the ICO](#) - has attracted 3 law firms which are recruiting BA customers claiming psychological harm as a result of BA's negligent breach of their personal data. Decision Marketing shared [this story](#).

If the firms get their claims as far as a court and if the court finds in their favour (two big 'ifs') then big brands will have even more to be worried about when they lose control of their customers' data...



The [Data and Marketing Association](#) (DMA)'s latest data privacy research paper shows a 35% reduction in the proportion of respondents who claimed a good understanding of what GDPR would mean for their organisation.



*If marketers' confidence in their own understanding of data privacy regulations is reducing, then maybe they should sign up to receive this Newsletter!*



FUNDRAISING  
REGULATOR

The [Fundraising Regulator](#) has published its [first list of investigations](#) held as a result of fundraising complaints. Controversially, the list - featuring big charity names like NSPCC, Macmillan, Alzheimer’s Society, the Salvation Army and Just Giving - includes both upheld and rejected investigations.

MACMILLAN  
CANCER SUPPORT

JustGiving™

NSPCC



Lifeboats

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*How the RNLI's decision will work out isn't yet clear. As we know, organisations can't just flip their legal basis, so the RNLI surely won't be able to suddenly decide that part of their previous supporter database that didn't provide fundraising consent is now contactable? But in any event, it's hard to imagine that the third sector won't echo with a chorus of charity fundraisers saying "told you so"!*



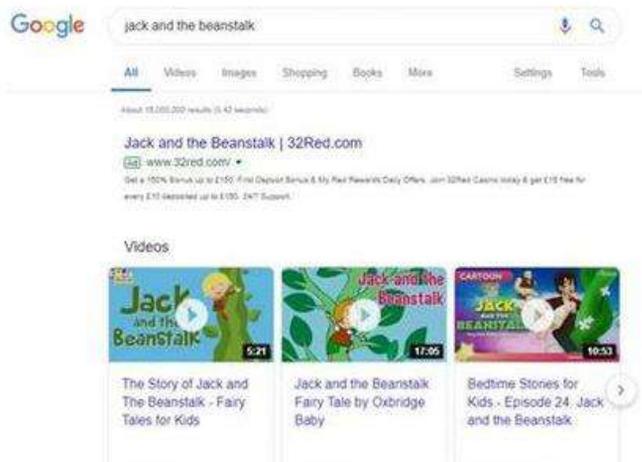
Fairness for  
customers

Decision Marketing has [highlighted](#) that – alone amongst the big players – [Three](#) hasn't signed up to Ofcom's [Fairness for Customers](#) pledge. The Pledge is voluntary, but it will be interesting to see if Ofcom choose to publicise Three's failure to play nicely.



In ASA (Advertising Standards Authority)'s [recent rulings](#) some big brands' advertising - across channels - have been found wanting. Here are a couple of examples...

A complaint about TalkTalk's email to customers wrongly implying that they were close to breaching their broadband data allowance limits was upheld and TalkTalk mustn't use the same approach to up-sell again.



Online gambling firm [32 Red](#) was found in breach of rules banning the promotion of gaming to children. 32 Red used paid Google ads to take top position in the results when consumers (or their children) searched "jack and the beanstalk".

Finally, complaints that Burger King's provocative tweet, reminding Scots consumers that they sold milkshakes at the same time as Nigel Farage was addressing meetings in Scotland\* encouraged violence and anti-social behaviour were upheld.



*\* in case anyone's forgotten about what happened earlier in the summer:*

## **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 14<sup>th</sup> October 2019.

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