



Compliance Newsletter

December 2019

Compliance News for Customer People

This Month's Headlines

- [Nationwide](#) sanctioned by the [CMA](#) for not talking about PPI *enough*
- Are SARs a pain in the **** for your business? The [ICO](#) wants to [know](#)
- The [PSA](#)'s new rules put the squeeze on premium rate scammers
- How to turn a £80,000 ICO fine into a £90,000 fine [in one easy move](#)
- [Deliveroo](#) and [Wowcher](#) are misleading (but not sexist) and [KFC](#) are just being rude, rules the [ASA](#)

All I want for Christmas is... ..a pithy summary of compliance news? Not top of your list maybe, but like sprouts it'll do you good. Read on!

If you can't avoid compliance and regulation, then why not get a better understanding of it? Better informed, you can meet the compliance challenges when acquiring, retaining and servicing customers.

Welcome to the festive seventh issue

As usual the CMA's [investigations and announcements](#) over the past month have ranged widely - from tech to trains and drugs to concrete. Some cases of interest include:



[Ovo](#)'s £500m purchase of SSE's retail energy business - turning Ovo from a challenger into the UK's 2nd largest energy supplier - has been approved by the CMA.



However, it has started an investigation into Google's purchase of BI and analytics provider Looker. Google is busy adding functionality and services to its cloud platform, but the CMA has [competition concerns](#).



And everyone's favourite mutual, [Nationwide](#), has been [ordered to pay compensation](#) - estimated to add up to £2m - to thousands of customer who weren't sent annual PPI cover statements in line with earlier directions from the CMA.

After approximately 8 years of every person in Britain being asked "did you have PPI?" on a daily basis, you'd have to have a heart of stone not to be amused by Nationwide getting slammed for not reminding its customers about their PPI policies often enough!



ePrivacy Regulation

Despite what we thought (ok, what law firm [Osborne Clarke](#) - who you'd think would know about these things - thought) the final text of the ePrivacy Regulation wasn't agreed at the start of December after all and any agreement is now in the 2020 long grass. So, the UK is due to be out of the EU and its transition period ended by the time our [PECR](#) marketing rules would otherwise need to be changed to meet the ePrivacy Directive.

We'll see... and revisit ePrivacy again next year.

ICO Enforcement Actions

It's been another month of no enforcement actions from the ICO relevant to the 'customer world'. They may be saving up a Christmas spectacular enforcement action. Or have just knocked off until the New Year.

Of course, the ICO's financial penalties can always be appealed. But like other things, the size of ICO fines can go up as well as down.

Claims management call centre Alistar Green Legal Services (AGLS) was fined £80,000 in January for calling TPS numbers during 2017. AGLS appealed the ICO's fine, but at the First Tier Tribunal hearing in Wigan its penalty was upheld and – in light of additional damning evidence from the ICO – *increased* by £10,000. Decision Marketing has the full story [here](#).

AGLS's Director Kabir Sharif used to run Lumen Corporation – another company investigated for calling TPS numbers, which folded before the ICO could take action.

I'm pretty sure the phrase "having 'form' " doesn't appear in any ICO guidance on what increases the chances of enforcement actions for rogue marketing behaviour, but it should

The ICO has started a [consultation into the Right of Access](#) reiterated in the GDPR and 2018 Data Protection Act, which most consumer facing organisations experience as Subject Access Requests (SARs)*.

For many organisations the tsunami of SARs predicted in the lead-up to GDPR hasn't happened (or has gone from a dribble to a small trickle). Others - such as the Word of Warcraft and Call of Duty creator [Blizzard](#) and the [Brexit Party](#) - have apparently experienced the "weaponisation of SARs" according to [BoingBoing](#) and [Decision Marketing](#), respectively.



Irrespective, your customer-facing teams are likely to know all about SARs and you have until February to share your thoughts with the ICO. It's promised that nothing provided as part of the consultation process will be used to "consider any regulatory action", so you can be honest, too!).

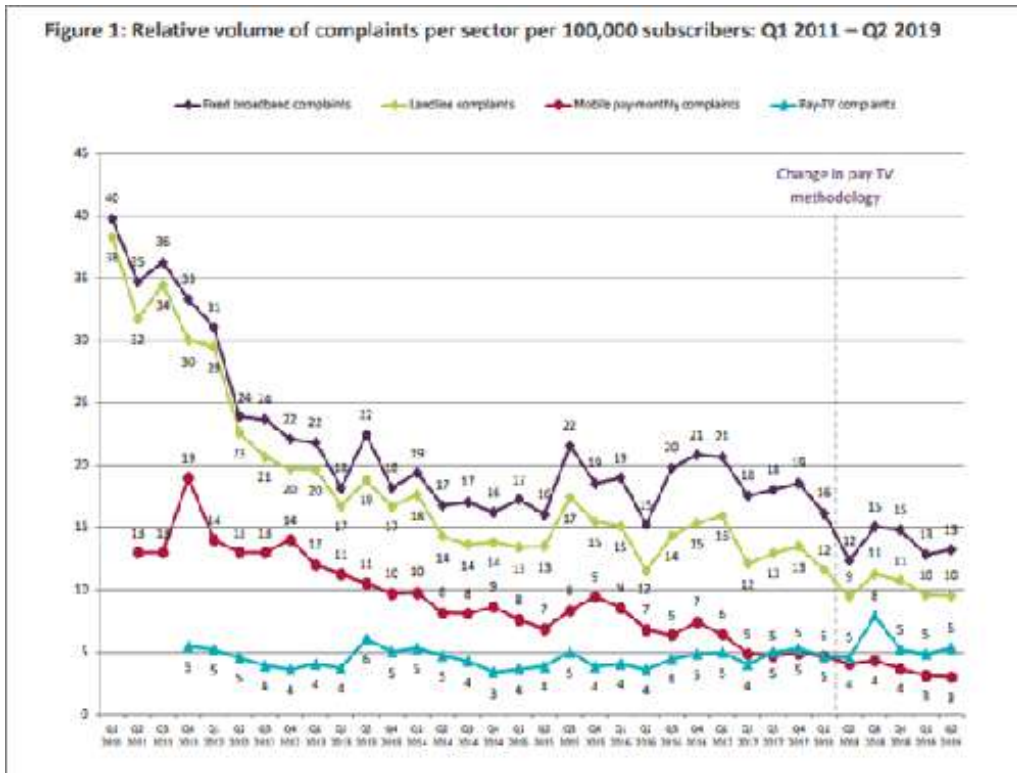
* or Data Subject Access Requests (DSARs). Each to his own; we needn't fall out over it



onestream

As regular readers will have noticed, Ofcom rarely takes enforcement action over the sales and marketing practices of regulated firms. However, at the start of December it [fined](#) telecoms re-seller [Onestream](#) £35,000 (close to 10% of turnover) for 'slamming' – telesales forcing often elderly customers to switch their landlines to Onestream.

Ofcom's [quarterly \(April to July\) complaints data](#) was published in late November. The overall trend is that over 8 years of Ofcom reporting complaints have fallen, with just the occasional supplier-specific blip like [PlusNet's](#) new system-generated problems of late 2018 and early 2019.



The ASA (Advertising Standards Authority)'s [recent rulings](#) include some interesting examples of brands' adverts getting banned - for reasons that seem wholly unsurprising...



[KFC's](#) poster and press ad from September was banned by the ASA as they decided it alluded to an expression which features a well known expletive (despite agreeing with KFC that chickens do, indeed, say "cluck") Read it all [here](#)

What would the Colonel say?



In its second upheld transgression of the advertising regulations in two months, [Deliveroo](#) has been [banned](#) from airing its "All your family favourites, now on Deliveroo" TV ad again. The advertisement featured a woman doling out a variety of different takeaways to her huge and idle family (including Burger King, Wagamama, Zizzi, KFC, Five Guys, Pho, Greggs, Yo!, Fridays, Tortilla, Wahaca, Papa John's, Pret and Taco

Bell) which appeared to come from the same Deliveroo delivery – even though in reality each would have to be ordered separately.

The bigger surprise is that this ad didn't also fall foul of the ASA's rules on [gender stereotyping in advertising](#)



[Wowcher](#) has been [banned from using fake \(or at least, misleading\) "countdown clocks"](#) in their online advertising. This commonly-used behavioural science technique increases sales by driving the sense of scarcity through suggesting a consumer has a limited period of time to take up an offer. That's fine if that's actually the case, but if the clock simply re-sets and prices don't go back up then the ASA has ruled that that's misleading.

Wowcher may not have known about the ASA's view of online "countdown clocks", but the ASA's advice is almost exactly the same as that publicly given to [Boohoo](#) just a year ago

Madlenka – a ‘contact number look up’ site, which misleadingly directed callers to expensive directory enquiry services – was fined £250,000 in June (as we reported in the [July/August newsletter](#)). The fine’s still not been paid, so the PSA has now further ruled that Madlenka can’t take part in the operation of any premium rates services for 5 years.



Premier Ventures - formerly known as Umbrella Support Limited – has been [fined £200,000](#), ordered to pay refunds and been banned from the sector for 5 years. Premier ran a similar service to Madlenka, offering a spurious, indirect connection to HM Passport Office. The Service cost £1.50 for the first minute and £1.50 for each additional minute plus network access charges.

The Authority’s new rules are now live which mandate that premium rate phone subscription services must:

1. Use a 2-stage sign up process – *thus making deceptive or hidden sign ups virtually impossible*
2. Provide greater clarity to consumers – *most current complaints to the PSA are from consumers saying they had no idea they had signed up for a subscription service*
3. Provide a receipt after every payment is made – *which again should stop the unnoticed payments of a few pounds per month that consumers often fail to register*

The new rules are [here](#) and the PSA offers compliance guidance for companies via compliance@psauthority.org.uk

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 2020's monthly newsletters about the world of regulation and compliance as it affects customer engagement? Let us know at hello@channeldoctors.co.uk

The Small Print

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