

Compliance Newsletter

March 2020

Compliance News for Customer People

This Month's Headlines

- The [ICO](#) says it will go easy as firms struggle to cope with COVID-19 - but fraud risks multiply with the rush to home-working
- £500,000 fine for Scots firm responsible for 193 million unconsented robo-calls
- How secure is access to your marketing database? Don't do a [Virgin Media](#)
- Field marketing agency's directors jailed for dodging HMRC
- [CMA](#) takes care homes to court, highlights blinds and gears up to take on Google, Facebook & Amazon
- [Misguided](#) fails the [ASA](#)'s objectification test (either accidentally or on purpose). Can you pass?

It's not all Covid-19 doom and gloom...

Read up on the compliance and regulation changes that matter to you & your business. 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.

It's been a busy month, so there's lots to cover. Welcome to the tenth issue:



ICO Promises Crisis Tolerance and Understanding. Scammers and Fraudsters Don't
Organisations are experiencing unprecedented changes and challenges due to coronavirus and the ICO realises that it needs to avoid being seen as standing in the way of coping strategies (and avoid stories like this hysterical - and since thoroughly debunked - [stuff in the Daily Mail](#)).

The ICO has said:

"We understand that resources, whether they are finances or people, might be diverted away from usual compliance or information governance work. We won't penalise organisations that we know need to prioritise other areas or adapt their usual approach during this extraordinary period"

However, it would be best not to treat this as an extended data protection 'Get Out of Jail' card.

Rushed data protection decisions and short cuts taken in March will need to be reviewed and made good as new ways of working are extended.

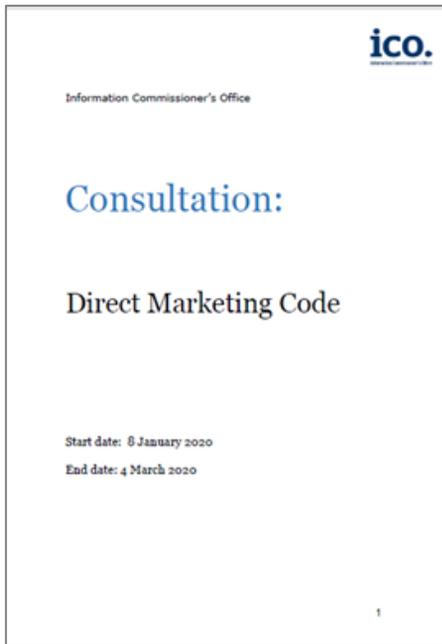
More of our staff will be homeworking during the pandemic. What kind of security measures should my organisation have in place for homeworking during this period?

Data protection is not a barrier to increased and different types of homeworking. During the pandemic, staff may work from home more frequently than usual and they can use their own device or communications equipment. Data protection law doesn't prevent that, but you'll need to consider the same kinds of security measures for homeworking that you'd use in normal circumstances.

No, data protection laws aren't *necessarily* a barrier to home working, but they do create technical and behavioural hurdles.

If you've successfully managed to shift all or most of your staff to be able to work from home, what you really need to worry about next isn't the ICO. It's the threat of financial fraud and data theft - both external and internal.

Your business-saving efforts can create a massive opportunity for criminals.



Draft Direct Marketing Code

All the consultation responses to the ICO's Draft Direct Marketing Code of Practice have been received. Those of us involved in marketing and customer experience will have to wait until the end of the year to see what the finalised text contains.

Here's an [article](#) about the draft Code we co-wrote for the [Data & Marketing Association \(DMA\) Contact Centres Council](#).

ICO Enforcement

CRDNN (formerly known as Contact Reach) has been [fined a maximum \(under the old Data Protection Act\) of £500,000](#) for making over 193 million automated, unconsented marketing calls between June and October 2018. The automated calls were to do window scrappage [*whatever that is*], debt management, window, conservatory and boiler sales. CRDNN's breaking of the PECR rules was compounded by 'spoofing' false Caller Line Identification (CLI) numbers – and continuing to make calls after the ICO had raided its premises!



Cathay Pacific has been fined [£500k for a 4 year period in which multiple personal data breaches were possible](#), from four different systems, exposing the personal data of over 9 million passengers.

Handily for Cathy Pacific the data was apparently secured 10 days before GDPR and the 2018 Data Protection Act went live.

Funny that!



Next up on the ICO's Data Breach Naughty Step is likely to be [Virgin Media](#). It has revealed that since at least spring 2019 its marketing database of 900,000 names was left unprotected online - and was accessed by an unauthorised 3rd party on at least one occasion. So, due to the timescales, there will be no opportunity to avoid 'GDPR era' fines. And - embarrassingly for Virgin - the data breach wasn't identified by them, but by an independent data security firm [Turgensec](#).

In a fascinating [post](#), Turgensec have since gone on to challenge Virgin's response – both the accuracy of the information they have shared with customers and their acknowledgement of Turgensec's role in alerting them to the breach.

Virgin Media may well be experiencing some uncomfortable conversations internally – and as it was the marketing database that was left unprotected then perhaps it won't just be the IT and InfoSec departments facing a grilling.

Who have you given access to your marketing database?

Probably lots of suppliers and agencies.

Is that access secure? Are you sure?



Meanwhile, the ICO is due to update us by the end of the month on how much it will actually fine BA and Marriott for their historic data breaches. Last summer the ICO said it intended to fine them [£183m and £99m](#), respectively, but that's looking increasingly unlikely - especially in light of COVID-19's impact on both businesses.

Getting Data Protection Done!

Thanks to [Decision Marketing](#) for highlighting that Aaron Banks' Eldon Insurance (now [Somerset Bridge](#))'s failure on appeal to overturn the ICO's fines for it and [Leave.EU](#)'s illegal data sharing leading up to the Brexit referendum.



ICO 2 Aaron Banks O: Brexit chief fails to overturn fines

SEARCHED: 2020-04-23



The Information Commissioner's Office has struck a double blow to Aaron Banks after the arch-Brexiteer's attempts to overturn a double fine for both Leave EU and Eldon Insurance (now Somerset Bridge) have been booted out by the First Tier Tribunal.

In February last year, Leave EU, which was

The ICO: Still Spinning?

More creative marketing from the ICO.

In its monthly "Action taken by the ICO against nuisance marketers" email it highlights the [jailing of a gang from Portsmouth](#) who defrauded mostly local BT customers (a Pompey fraud for local Pompey people). However, the press reports all suggest that this case was handled by BT and the police with no "Action taken by the ICO" at all...



Portsmouth BT account scammers jailed for £358,000 fraud

[Scammers who illegally accessed BT customer accounts as part of a "sophisticated" £358,000 fraud have been jailed.](#)

The gang targeted in excess of 2,000 people, mainly from the Portsmouth area, between May 2014 and July 2016.

Seven people were jailed for between 16 and 44 months for their part in the fraud.

[Read more](#)

FCA & ICO Data Breach Mash Up!

LCF scammers milk watchdog data breach

By Adam Williams

VICTIMS of collapsed savings firm London Capital & Finance (LCF) say they have been bombarded by messages from scammers, and blame a major data breach at the City watchdog. LCF customers were among 1,600 people whose records were wrongly published on the website of the Financial

Conduct Authority (FCA) - and they believe they were targeted after this personal information was exposed. The list included the records of people who made a complaint between January 2018 and July 2019, including high-profile Brexiteer and businessman Aaron Banks.

LCF fell into administration in January 2019 owing £237m to more than

12,000 people. Following the firm's collapse, many customers lodged complaints about the conduct of the FCA after it emerged that the regulator had failed repeatedly to act on warnings from whistleblowers.

Details of these complainants were then incorrectly posted on the regulator's website between November 2019 and this month.

Red faces all round as the [FCA](#) has had to admit to failing to secure and breaching the details of 1,600 consumers who had been ripped off by [LCF](#) (London Capital & Finance). As a result, these defrauded customers have been targeted by scammers.

One for the ICO to have a look at, when they're back in the office...



The Insolvency Service

Webb of Onions

Two dodgy field marketing company directors - Gareth Onions and David Webb - have been [jailed for 5 and 4 years, respectively](#), after failing to pay HMRC £5m owed and hiding behind repeated pre-pack insolvencies of The Brand Company.

Unhealthy Lifestyle Choices

Three bosses of failed healthcare supplements firm, Vivid Lifestyle, have been [banned from acting as company directors](#) for 7 years. The directors failed to manage or regulate the sales tactics of its offshore contact centre. Telesales agents claimed to represent the NHS and made untruthful claims in order to sell expensive supplements to vulnerable and elderly customers.



The Competition and Markets Authority (CMA)

The CMA has been quick to provide business [guidance around cooperation in order to alleviate the impact of COVID-19](#), such as is started to be seen amongst major food retailers. In essence, the CMA will tolerate cooperation as long as it is strictly designed to deliver public benefits through the crisis period, but it has warned that this is not a 'free pass' for price fixing, market collusion and exploitative practises.



CMA approach to business cooperation in response to COVID-19

25 March 2020
CMA118

The CMA has [started court proceedings](#) against care home providers, [Barchester](#) and [Care UK](#). Both are accused of breaking consumer protection laws through their historic imposition of non-refundable up-front fees and post-death charges, for which neither justification of costs or proper notice were provided.



Just because there is long established custom and practice in your business sector for certain pricing and fees that's no guarantee that they are legal or appropriate

HunterDouglas 



Amazingly, the UK made to measure blinds market is worth £150m annually. The biggest player - Hunter Douglas - is buying on of its leading competitors, 247 Blinds and [the CMA is investigating](#), worried that the transaction will be anti-competitive.

Arguably one for the competition geeks, but CMA's publication of the [Terms of Reference](#) for its Digital Markets Taskforce - including "...how to promote competition, and how to address the anti-competitive effects that can arise from the exercise of market power in digital platform markets" is important. It's a reminder to Facebook, Google, Amazon - and all the marketers who use their platforms and ecosystems - that significant changes are promised when the Taskforce eventually reports.

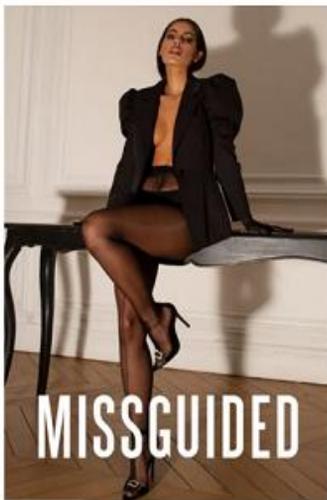


Somehow, BT-owned EE managed to not implement Ofcom's 118 Directory Enquiries price cap in time, last year, resulting in 6,000 customers being overcharged £10,000.

Partly because 118 usage is most prevalent among older and more vulnerable customers, Ofcom has [fined BT £245,000](#) and ensured that all customer are compensated.



The **ASA (Advertising Standards Authority)** has again returned to the question of the appropriate representation of women in advertising.



Advert A



Advert B

[Missguided](#) has had a poster – which was placed at tube and railway stations last Autumn – banned from re-use by the ASA due to its “overly sexualised” content and “objectification” of women.

The ASA's investigation looked at two similar posters (see above). In summary, the reason that Poster A was not acceptable, but Poster B was is down to the degree of sexualisation of the images and poses. The full ASA ruling is [here](#).

If you're an agency or brand in the fashion world – or just keen to feature incompletely-dressed young women in your advertising – you need to master the degree of nuance the ASA deploys when assessing adverts.

And even if you're quite happy to get your ads 'banned' in order to gain the free publicity, you still need to know how!

ofgem



GnERGY has folded and [its customer accounts have been transferred to Bulb Energy](#).

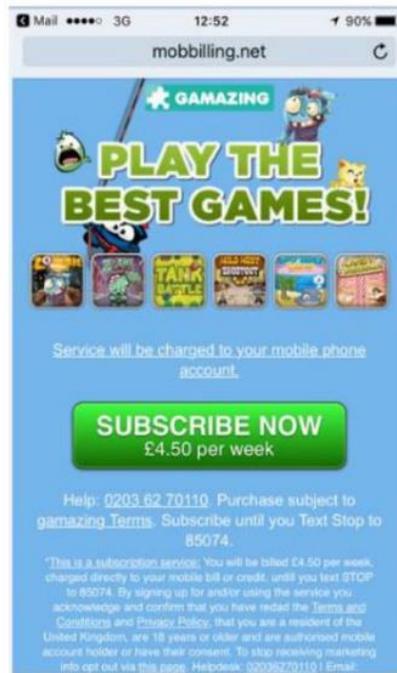
GnERGY was a niche provider with just 9,000 customers and had been under pressure from Ofgem for some time over its unpaid debts. Based in Farnborough, GnERGY targeted the UK Nepalese market and was 'managed by former Gurkas'. Honestly.

At the same time, Ofgem has banned 5 suppliers - Daligas Limited, Enstroga Ltd, Entice Energy Supply Limited, Northumbria Energy & Symbio Energy - from acquiring new customers, because they have failed to get properly set up to interact with smart meters. Presumably that puts them in strong contention to be the next suppliers to go bust...

PSA

Phone-paid Services Authority

The PSA has [fined MobBill \(UK\) £400k](#) for running its Gamazing service, which generated thousands of complaints after consumers were unable to cancel due to the text unsubscribe facility not working and the customer care operation being unable to handle calls.





The Fundraising Regulator has published its [2018/19 Complaints report](#).

Complaints received by the FR were down by 33%, but charities were found to be in breach of the [Code of Fundraising Practice](#), with the key areas of fundraiser failing being

:

- the safeguarding vulnerable people;
- the use of misleading information in fundraising communications; and
- a failure to observe 'no charity bag' signs when fundraising using clothing collections

The FR has published the results of its [survey](#) of registered charities. Just under 10% responded and those that did seemed happy with the FR and 92% had "engaged with" its revised Code of Practice.

Before you go

Are we covering the regulatory bodies and areas that keep you awake at night - or would a different approach make sense in these changeable times? Who and what else would you like to see covered in subsequent 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

This content is accurate as of 26th March 2020.

Channel Doctors is a trading name of Murphy Sullivan Associates Limited, a company registered in England and Wales with Registration Number 4830889.

Subscribe here <http://eepurl.com/gqxzw5> and you will receive next month's edition direct to your in-box in April