

# Compliance Newsletter

April 2020

*Compliance News for Customer People*

## This Month's Headlines

- The ICO again promises 'regulation lite' as we cope with Covid-19 and highlights the cyber security dangers of homeworking
- Telemarketing firm fined £171,000 for misleading consumers and making 240,000 calls to TPS numbers
- Morrisons ruled not liable for rogue employee's data breach - avoiding a £55m compensation claim
- Ofgem eases some requirements on energy suppliers, but demands continued multi-channel access for customers
- ASA comes down hard on firms marketing vitamin C drips as a coronavirus cure
- Scam text competition service fined £250,000

*We're going through a time of momentous changes in terms of how to acquire, retain and service customers. Regulators are moderating some of their expectations and requirements on organisations, but none have changed their rules and standards. Navigating compliance rules and regulations may be about to get even more tricky.*

***Welcome to our 11th newsletter:***



Information Commissioner's Office

## ICO Focuses on Cyber Security Risks

The ICO has reiterated that it will seek to regulate and enforce the law in a measured manner, displaying an awareness of the strange times we are living through:

Elizabeth Denham, Information Commissioner, said:

“Regulators apply their authority within the larger social and economic situation.

“We see the organisations facing staff and capacity shortages. We see the public bodies facing severe front-line pressures. And we see the many businesses facing acute financial pressures.

“Against this backdrop, it is right that we must adjust our regulatory approach.

We will take a pragmatic approach to enforcement during this time. Compliance with regulatory obligations continues to be important. However, we recognise that the impact of the coronavirus means that it will not always be possible to meet these obligations. In such circumstances, industry should take decisions that support critical services, vulnerable people and those who are relying on communications services. We will support those decisions where they are in the interests of consumers and businesses.

### Homeworking – general principles

- ❑ We have clear policies, procedures and guidance for staff who are remote working. These include topics such as accessing, handling and disposing of personal data.
- ❑ We are using the most up-to-date version of our remote access solution.
- ❑ Our staff have been reminded to use unique and complex passwords.
- ❑ We have checked if multi-factor authentication is available and configured it where possible.

The ICO has recognised that the greatest personal data security risk from the shift to homeworking lies in poor data security, so its communications have focused on this area of risk.

## ICO Enforcement

No doubt ICO enforcement actions will diminish over the next few months, but at the end of March it [levied a £171,000 fine](#) on a firm which made over 240,000 marketing calls to TPS registered numbers. Black Lion Marketing (BLM) of Brighton made the calls out of a total of over 7 million made between July 2018 and April 2019 at which point the ICO raided BLM's premises and BLM attempted to wind itself up.

A couple of telling and interesting features of this case:

- BLM's sole director, Kurlos Asaad, had been variously investigated by the ICO since 2017, through prior companies which has come to the Commissioner's notice. As we've noted before, having 'form' with the ICO is often a precursor to aggressive enforcement action
- Most of the facts used in the case weren't obtained from the ICO's raid of BLM's premises, but through a Third Party Information Notice applied to data archive firm used by BLM's communications service provider, which held the detailed CDRs (call detail records)
- But what materials seized in the raid did show is that BLM used multiple identities and brands when calling, to disguise its true identity

The ICO's Penalty Notice doesn't go into much detail as to the nature of the marketing calls or BLM's business, but it does refer to "... leads generated by the direct marketing calls being made were subsequently being referred on to law firms for remuneration" which suggests that BLM was in the murky world of claims management.

*Even though the ICO is adopting a different approach to enforcement, it is still taking action against rogue organisations that disregard the rules and exploit consumers' personal data*

## BA and Marriott's Data Breach Fines, the Wait Goes On...

Still no word as to the final size of the fines that the ICO will impose on BA and Marriott for their respective data breaches. We can be certain that they won't total the thick end of £300m [as the ICO originally proposed](#). And as BA plan to [make 12,000 staff redundant](#), the imposition of a massive fine probably wouldn't be a good look for the ICO.



## Morrisons Off the Hook, Rules Supreme Court

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**Morrisons**

### Morrisons not liable for massive staff data leak, court rules

UK supreme court says retailer not to blame for actions of employee with grudge

PA Media  
Wed 1 Apr 2020 13:53 BST



▲ Andrew Skelton posted the personal details of about 100,000 Morrisons staff on the internet. Photograph: Chris Radburn/PA.

The UK's highest court has ruled that **Morrisons** should not be held liable for the criminal act of an employee with a grudge who leaked the payroll data of about 100,000 members of staff.

The Supreme Court has over-turned lower courts' decisions and ruled that Morrisons isn't vicariously liable for the 2014 breach of 126,000 of its employees' personal and salary data. The breach was made maliciously by an internal auditor who had a grudge against Morrisons and was subsequently jailed for 8 years for his actions.

The court's ruling means that Morrisons isn't liable for an employee group's claim for £55m in damages as a result of "distress, anxiety, upset and damage". As [Mishcon de Reya's Jon Baines explains](#), if a company has appropriate data protection measures in place then the Supreme Court deems that the inappropriate actions of a (criminally) rogue employee can't automatically be blamed on the employer.

### Where Have All the Data Breaches Gone?

No high-profile data breaches seem to have been reported in April. Especially with the rushed explosion of home working, it seems very unlikely that breaches aren't happening, so maybe we can look forward to a flurry of announcements later in the year.





## The Competition and Markets Authority (CMA)

The CMA has created a [COVID-19 taskforce](#) to monitor companies' misbehaviour – sales and pricing abuses - during the pandemic.



The sellers of hand sanitiser were among the first to [get warnings](#) about exploitative price increases, back in the days when access to sanitiser seemed like a big deal to lots of people.

The CMA's armoury also includes enforcement actions and the potential to seek additional, emergency regulatory powers from the government.

The CMA has also created an [online form](#) for consumers to report companies acting unfairly during the crisis.



Ofcom's [regulatory approach during Covid-19](#) is flexible and forgiving, but focused on supporting the most vulnerable consumers.

We will take a pragmatic approach to enforcement during this time. Compliance with regulatory obligations continues to be important. However, we recognise that the impact of the coronavirus means that it will not always be possible to meet these obligations. In such circumstances, industry should take decisions that support critical services, vulnerable people and those who are relying on communications services. We will support those decisions where they are in the interests of consumers and businesses.



The **ASA (Advertising Standards Authority)**'s approach during the crisis can be best summarised as being generally pragmatic (and maybe even starving Brew Dog and other serial offenders of the free oxygen of 'banned ads' publicity for a while), while coming down hard on those selling fake Covid-19 cures and blatantly exploiting the pandemic situation:

It means a commitment to act quickly and robustly against ads that **exploit people's health-related anxieties** and the difficult financial or employment circumstances that many people are now facing. A refusal to tolerate ads that grossly undermine public health advice or that seriously misjudge **public and minority group sensitivities**. And, an eagle-eyed diligence to spot any emerging advertising practices that grossly undermine the principles of fair competition generally accepted in business or where we see evidence of ads that irresponsibly take advantage of current retail conditions.

At the same time, it means being acutely sensitive to the existential threat faced by many businesses and to the plurality of media that depends on a healthy advertising market. It means knowing when to reduce to a minimum our regulatory interventions and when to prefer an advisory approach over an investigatory one in circumstances where the advertising indiscretion is relatively minor or could not have been foreseen, e.g. the lack of product availability for reasons connected to COVID19. And, most importantly, it means being open and understanding to the concerns of all of our stakeholders and not sticking rigidly to process and procedure where a tailored approach may be merited.



For example, [REVIV's website promotion of its 'IV drip' vitamin products](#) fell foul of the ASA's rules by claiming that they

"Help protect and prevent against the new strand of virus (known as the Coronavirus) with a REVIV Megaboost® IV Therapy containing a high dose of Vitamin C" and the claims must not be repeated.

There were very similar rulings against the advertising of similar products by ['the London Lip Queen' Dr Rita Rakus](#) and the [Harley Street Clinic](#).



Although not as explicitly as the ICO, Ofgem has also made clear that its regulatory approach will be somewhat more pragmatic through Covid-19. In a [letter to energy suppliers](#) it has set out a number of expectations and changes including:

- A blanket ban on cutting off customers in debt
- Noting that some suppliers have stopped active debt collection activities
- Expecting suppliers to maintain **a full range of contact channels for consumers** – and that contacts are prioritised by reason at a time when resources stretched
- Extending the deadline for Q1 regulatory performance reporting

And Ofgem are doing their bit by trying to manage the expectations of consumers when contacting suppliers:

Please be aware you may experience longer call waiting times than normal when contacting supplier and support helplines due to high volumes of customers trying to get through and/or staff shortages because of the coronavirus. Please try online options where you are able to such as via their website, app, email or social media. This will help leave phone lines free for emergencies.



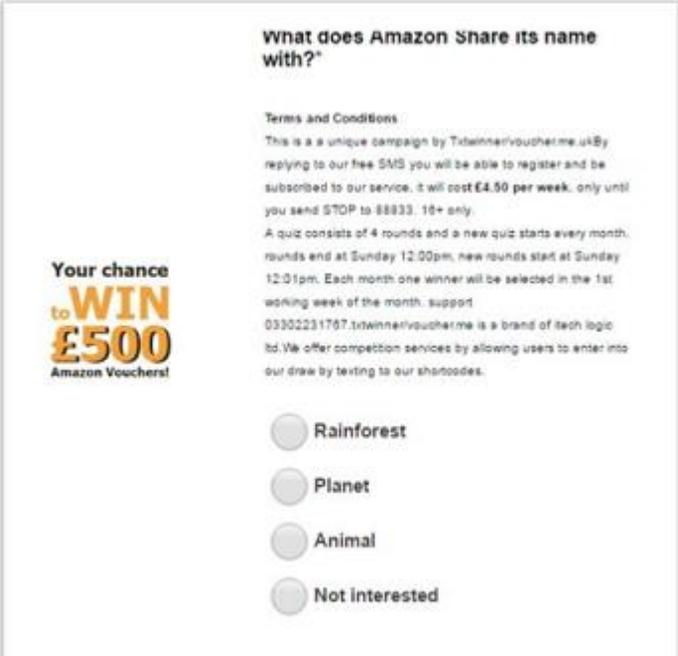
Although the PSA has delayed some changes and – in line with the other regulators – extended consultation periods [due to Covid-19](#), the core message is that it will still be busy coming down on scammers.

As most of those are in the business of selling access to quizzes and pornography via mobile phones at a time when their potential audience of bored consumers has grown massively, this seems wise.

### Our current priorities

We remain committed to delivering our core regulatory functions as best we can. Our contact centre remains open, our compliance and industry support function is operating effectively and we will continue our investigations and enforcement activity.

Accordingly, the PSA [has fined Itech Logic £250,000](#) for poor customer service and slow, partial or denied refunds over a number of years. The competition service was operated under Itech's txtwinner, voucher.me, britsms, smsunltd and txtintl brands and featured tricky questions like this:



**What does Amazon Share its name with?**

**Terms and Conditions**  
This is a unique campaign by Txtwinner/voucher.me. By replying to our free SMS you will be able to register and be subscribed to our service, it will cost **£4.50 per week**, only until you send STOP to 88833. 16+ only.  
A quiz consists of 4 rounds and a new quiz starts every month, rounds end at Sunday 12:00pm, new rounds start at Sunday 12:01pm. Each month one winner will be selected in the 1st working week of the month, support 03302231767.txtwinner/voucher.me is a brand of itech logic ltd. We offer competition services by allowing users to enter into our draw by texting to our shortcodes.

**Your chance to WIN £500 Amazon Voucher!**

- Rainforest
- Planet
- Animal
- Not interested



The Fundraising Regulator's recent [guidance on fundraising under Covid-19](#) includes a ban on face-to-face and event fundraising and an acknowledgement that direct marketing and non-face to face methods will become even more vital in maintaining charities' incomes.

### **Before you go**

Are we on the right lines? Or would a different approach make sense in these changeable times? Who and what else would you like to see covered in future monthly 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 28<sup>th</sup> April 2020.

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