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Compliance Newsletter

June 2020

Compliance News for Customer People

This Month's Headlines

- Our research shows that 2 years on, it wasn't the GDPR we should have been worried about, but PECR!
- Lloyds fined £64m by the FCA for not managing mortgage collections processes properly and fairly
- The Competition & Markets Authority tries to head off (another) digital advertising near-monopoly
- Ofcom advises consumers to avoid the Test & Trace scammers (*who may be up & running before the government is*) - and gives Vodafone some good news
- Energy suppliers can re-start debt collecting after a Covid pause - but to be nice, say Ofgem
- £1m fine for rip-off customer service number 'look up' sites
- Still not sure what you need to have in place for home-working? Here's an article we wrote for the CCMA that should help

Even as lock-down eases, these are strange times for you, your customers and prospects. 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 13th newsletter:

Information Commissioner's Office

It's not the GDPR, it's PECR!

As the ICO remains very quiet in the marketing and customer space - instead focusing on the personal data protection of employees and citizens - we've done some research.
Cast your mind back a couple of years, to the run up to 'GDPR Day' on 25th May 2018 when the GDPR - by way of the UK 2018 Data Protection Act - was implemented. Back then it wasn't just *The Sun* that was warning of massive fines and dislocation to how UK businesses marketed to and engaged with customers.


THE Sun

MORE NEWS

EXCLUSIVE

THEY'RE COMING FOR EU

Builders, cleaners and gardeners could face huge fines just for sending an EMAIL to drum up business thanks to draconian EU laws on data protection

The Sun's considered opinion in 2018

So, what happened?
Well, a lot of internal processes changed, millions of (usually needless) 're-consenting' emails were sent and quite a few marketing databases went in the digital skip. But, in the UK at least, the GDPR's impact on UK marketing, advertising and customer experience sectors has been hard to discern - at least in terms of the ICO's enforcement and fines ("Financial Penalties").
In the 2 years since May 2018 there have been 25 ICO fines related to marketing activities. But only 2 of the cases have been enforcing the Data Protection Act (DPA). And in both cases that was the old, 1998 DPA, as the infringements pre-dated May 2018.

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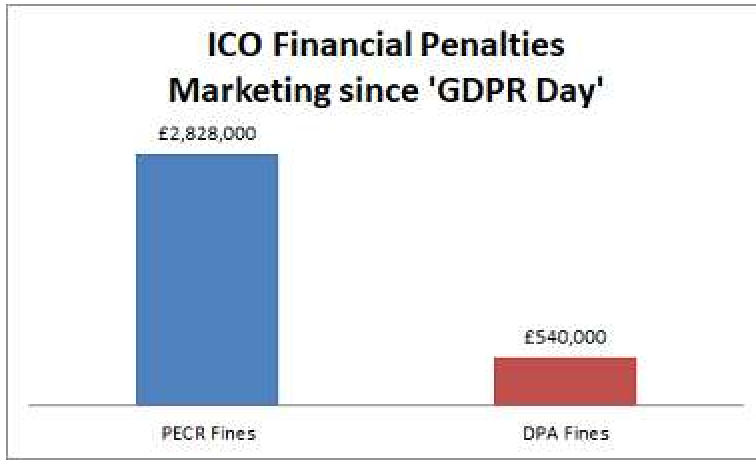
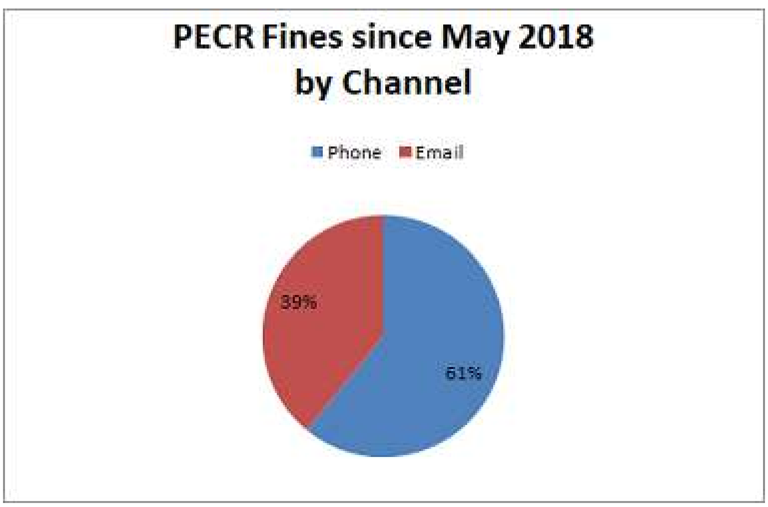
The other 23 cases all related to infringements of the long-established Privacy and Electronic Communications Regulations (usually referred to as PECR or 'PEC Regs'). And the total value of fines is similarly skewed towards PECR cases.



PECR forms the rules (nearly 20 years old, now) which guide the personal data rules and protections around 'electronic communications' - phone, email, text, messaging apps (by implication; they hadn't been invented in 2003) and fax (ask your parents).

Even though the GDPR / 2018 Data Protection Act made increasing and explicit demands on the industry to be transparent and open about its treatment of consumers' personal data, most organisations that fall foul of the ICO do so because of the way they use that data across marketing and communication channels.



There's a lot of detail to be understood in our analysis, but high level the two key things marketers need to remember about their use of channels haven't changed in many years:

1. You need consent to send B2C marketing emails

2. You need to screen against the TPS before you make marketing calls (unless you're very confident of a robust legal basis for not doing so for your prospects)

If you need some help with this stuff, just get in touch

hello@channeldoctors.co.uk

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Financial Conduct Authority fines Lloyds £64m

Back in a sector where big fines and robust enforcement action are commonplace, Lloyds has been hit by a £64m fine and has had to pay out £300m in compensation to over half a million mortgage customers. Between 2011 and 2015 these customers were in financial difficulty and/or vulnerable, but rigid practises in Lloyds' mortgage collections contact centre meant that many were not treated fairly.

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NEWS

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Lloyds fined £64m for failing struggling mortgage customers

By Kevin Peachey
Personal finance reporter

11 June 2020

Share

Potentially good news for all the mortgage customers who will be finding themselves in arrears over the next few months as the Covid crisis 'mortgage holidays' are wound down.

The Competition and Markets Authority (CMA)

In a move that shows great chutzpah, the two leading providers of 'recommended content' advertising on publishers' pages (from which publishers take a cut of revenue) are wanting to merge. If Taboola's takeover of Outbrain is completed the shared entity will control 80% of the UK market.

Taboola and Outbrain say that together they can challenge the Google & Facebook digital advertising duopoly, but the CMA - and, presumably, Taboola & Outbrain's publisher clients - has its doubts.

Ofcom has given guidance to members of the public in anticipation of fraudsters exploiting the NHS Test & Trace scheme (***assuming that the crooks don't hit the same problems the government has with getting their operation fully up and running***):

So, here's some advice on what to expect from a genuine test and trace call.

The only website the service will ask you to visit is https://contact-tracing.phe.gov.uk.

On a genuine call, contact tracers will **never**:

- ask you to dial a premium rate number (for example, those starting 09 or 087);
- ask you to make any form of payment;
- ask for any details about your bank account;
- ask for your social media identities or login details, or those of your contacts;
- ask you for any passwords or PINs, or ask you to set up any passwords or PINs over the phone;
- ask you to purchase a product – including a test;
- ask you to download any software to your device or ask you to hand over control of your PC, smartphone or tablet; or
- ask you to access any website that does not belong to the Government or NHS.

If you receive a call from somebody claiming to be from the NHS, and they ask you to do any of these things, hang up and report the call:

- to Action Fraud, by calling 0300 123 2040 or by visiting its website, if you are in England, Wales or Northern Ireland; or
- to the Police, via 101, if you are in Scotland.

Quarterly Complaints Data - No Complaints from Vodafone

We mentioned Ofcom's quarterly complaints data in the last newsletter. Although there's still no sign of the usual accompanying report and commentary, there has been an adjustment to some of the figures, which is good news for Vodafone. It's complaint levels in some areas are now much closer to the sector averages.

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ofgem

Ofgem has ended its Covid crisis moratorium on energy suppliers' collections efforts to get unpaid bills paid. However, Ofgem's CEO has warned *"We will not tolerate sharp practice or aggressive debt collection and suppliers could face enforcement action where this is the case."*

Meanwhile, its final proposals to help raise the performance and customer service standards of suppliers have been published (these are an extension of standards already imposed on new market entrants. *If indeed there are any energy market entrants, nowadays?*).
If you are moved to comment on the proposals, Ofgem is running a consultation until late August.

PSA
Phone-paid Services Authority

The PSA has fined Salvatet Inversiones SL a round £1,000,000 for various infringements of its rules on premium rate numbers.
Salvatet ran a 'number look up' service which used a wide range of Google Ads-promoted landing pages (including www.taxphonenumbers.com, www.uk-customerservices.com, www.ukfinancialnumbers.com, www.uk-telephonenumbers.com, www.uk-contactnumbers.com, www.energy-phonenumbers.com, www.call-phonenumbers.com, www.ukairlinephonenumbers.com, www.couriersphonenumbers.com, www.uk-appointments.com, www.connectionphone24h.com, www.ukcontactnumbers.com).
The sites offered consumers a 'service' to access big organisations' customer service numbers, but if they connected to big brands via the redirection service the calls cost £3.60 per minute.

That many customers inadvertently used the service and found themselves hit by mobile phone bills in excess of £100 as a result - and that the PSA considered Salvatet's presentation of its charges unclear and obscure - is sadly par for the course. However, the PSA's ruling highlighted a couple of novel aspects:

- A third of the number re-directions didn't even work
- All calls were automatically cut off after 500 seconds, which was explained as being due to the EU's new PSD2 payment rules. 500 seconds equated to £40, the PSD2's approximate limit for some sorts of transactions. Of course, most consumers immediately re-dialled, thus guaranteeing Salvatet even more revenue

The Fundraising Regulator has teamed up with the Institute of Fundraising to produce guidance for charities looking to re-start fundraising activities as they look to move on from the Covid era, especially with public and door-to-door campaigns.

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

The Small Print

This content is accurate as of 29th June 2020.

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