

Compliance Newsletter

July & August 2020

Compliance News for Customer People

This Edition's Headlines

- Money Supermarket firm fined £90,000 for sending illegal marketing emails
- Privacy Shield goes the way of Safe Harbour and EU-US data transfers get a lot more tricky (which doesn't bode well for Brexit Blighty)
- The ICO's 'GDPR era' multi-million £ fines just get smaller and smaller...
- The Competition & Markets Authority sees no concerns as Amazon wades into the food delivery market (but highlights the dangers of middle aged men colluding in Wetherspoons)
- Shell's loyalty scheme radio advertising banned for being insufficiently 'carbon neutral'
- Dodgy 'number look up' site fined £1.1m for misleading consumers

As the regulators - mostly - continue their sleeping lions act, we're treating us all to a bit of a summer break with a merged July and August edition of the newsletter.

There are a few pieces of news and pointers to the regulators' thinking and how they may affect you & your customers.

Read them slowly on your non-holiday.

Welcome to our 14th newsletter:



The ICO has taken its first enforcement action in months and [fined Decision Technologies £90,000](#).

[Decision Tech](#) is a subsidiary of Money Supermarket, engaged in providing comparison site technologies to other businesses and - it

seems; the [Enforcement Notice](#) is very opaque and full of redactions - using non-compliant aggregators to send illegal marketing communications.

Decision Tech's infringement of the PECR rules was related to 14 million direct marketing emails sent without the recipients' permission back in 2017 and 2018.

As we explained last month, PECR continues to be the regulation that derails most marketers, not GDPR or the 2018 Data Protection Act.

If you need some help with this stuff, just get in touch hello@channeldoctors.co.uk

Privacy Shield is the scheme which allowed for the relatively easy - and, some would argue, commercially vital - sharing of personal data between organisations and firms in Europe and the US. Less than 5 years after the EU Court of Justice struck down the Privacy Shield's predecessor structure, Safe Harbour, it has now also been ruled inadequate.



This leaves the status of data transfers between the EU and the US rather up in the air. It's assumed that there will be a grace period granted to allow firms to put alternatives in place and reassuringly for many the fallback legalese Standard Contractual Rules can be adapted to ensure US organisations respect EU's data subjects' GDPR data rights. However, this isn't guaranteed in all cases - here's [Osborne Clarke's](#) more detailed [summary of the situation](#).

The succesful challenge to the Privacy Shield was inspired by concerns about US security agencies' access to and treatment of personal data. Ominously, these are the same concerns that many EU members have and which are likely to stand in the way of a ruling that will grant UK data protection law adequacy status with the EU - which is needed to maintain a 'level playing field' for post-Brexit data transfers to the UK from the EU/EEA any time soon

The ICO and its Australian equivalent the Office of the Australian Information Commissioner (OAIC) have announced a [joint investigation](#) into [Clearview AI](#) to understand how exactly it has managed to scrape 3 billion faces from the web....



Meanwhile, the saga of BA and Marriott's disappearing fines continues.

As Mischon de Reya's Jon Baines [explained to The Register](#), it looks like BA has negotiated it's fine down to £20m - little more than 10% of what the ICO originally proposed - and Marriott has secured a further extension to its negotiation period, into the autumn.



Finally, in uncertain times the Information Commissioner can be a source of profound, wise words and guidance. A consolation to us all:



Welcome from Elizabeth Denham, Information Commissioner

It feels at the moment that everything has changed,
and yet nothing has changed.
Among the many changes the COVID-19 pandemic



Financial Conduct Authority updating its vulnerable customer guidance

In late July the FCA announced [a consultation on proposed updates to its guidance](#) for the fair treatment of vulnerable customers.

This is not just significant for financial services firms, but for all people managing their businesses' interactions with customers. The concept of customer vulnerability has gone from a slightly left-field concern to a mainstream issue. As such, the FCA's guidance is likely to be used by firms in other sectors to guide their policies and procedures.



The [DMA Contact Centre Council](https://dma.org.uk/vulnerable-guidelines) was one of the first bodies to seriously address the tricky question of how to protect people experiencing vulnerability, without straying into unintentional condescension and marginalisation.

Its guidance is a few years old, now, but still offers a good starting point:

<https://dma.org.uk/vulnerable-guidelines>



The Competition and Markets Authority (CMA)

Surprisingly, the CMA has lifted its objections to Amazon's proposed 16% part-purchase of Deliveroo. At an earlier stage in the CMA's investigations Deliveroo declared that without Amazon's investment it would go bust. However, Covid transformed its fortunes and - presumably - it could now do without Amazon's cash.

No matter, the CMA now says that Amazon's part ownership won't distort competition - but that it might adopt a different view if Amazon subsequently looks to expand its shareholding.

Which it surely will.



The CMA is continuing its [campaign](#) highlighting the dangers - and illegality - of

- price fixing
- bid rigging, and
- market sharing

Worryingly for me, it's doing this with an illustration of middle aged men sat in a gloomy pub devoid of social distancing.



All quiet from Ofcom since the last newsletter (though it has fined Royal Mail £1.5m for missing its first class post next day delivery target - 93% as it happens).



The **ASA (Advertising Standards Authority)** has issued some useful guidance about [the advertising rules specifically relating to Snapchat](#) - which regularly trips up unwary brands and agencies.



Harvey water softeners has been banned from repeating advertising claiming that its products can result in "glossier hair and softer skin", as its evidence was less than compelling.



Shell has had a radio ad for its Shell GO+ loyalty scheme banned by the ASA as it ruled that a claim to offer "carbon neutral" driving - through a carbon credit purchase scheme - would not be clearly understood by consumers.

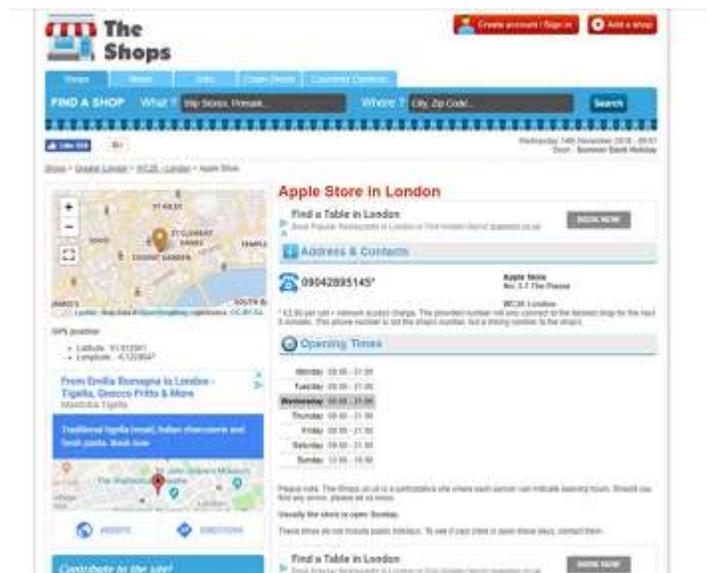


No news of note from Ofgem - and another month has gone by without a supplier going out of business.



Phone-paid Services Authority

The PSA has fined Plus Que PRO SAS £1.1m for running a misleading number look up site called "The Shops". Consumers calling retailers via the indirect numbers it promoted were charged £2.50 irrespective of how short the call was (and "The Shops" frequently presented details for non-existent shops or reassigned its premium rate numbers to other retailers).



The PSA has also ordered further sanctions on the owner of Best VIP Games, Inter Inventory Company Ltd, after it failed to pay its £375,000 fine imposed in 2019.



The Fundraising Regulator has been quiet over the summer, aside from producing a guide for the public on [5 things you can expect from fundraisers during the Coronavirus pandemic](#) -

including that fundraisers won't shout at the public or make sudden movements towards them that would breach social distancing guidelines....

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 9th August 2020.

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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



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