

# Compliance Newsletter

May 2021

*Compliance News for Customer People*

## Step 1: Ditch the group-think & wishful thinking, Amex!

- **ICO fines American Express for wishful thinking and group-think, breaking the basic rules of emailing**
- **Covid tech start-up fined for marketing consumers without consent**
- **Have you appointed an EU data protection representative, yet? You might need to**
- **Strong Customer Authentication deadline confusion threatens customer experience chaos for ecommerce**
- **Ofcom demands better customer care from firms as call wait times double in a year**
- **FCA's new Consumer Duty means customers will need to be treated even more fairly**

American Express show that being a very big and employing lots of clever people doesn't make you compliant, ecommerce payments and customer journeys are going to get messy, why you may well need a European data protection representative (despite the EU/UK data deal) and customer service call waiting times for broadband, mobile and landline customers double in a year.

**Welcome to our 23<sup>rd</sup> newsletter:**



*Two companies - one massive and venerable, one new and small - have been fined by the ICO this month for breaking the PECR rules on email marketing.*

## **American Express: Wishful Thinking vs Being Compliant**

American Express has just [been fined £90,000 by the ICO](#) for including marketing messages and promotional materials in over 4 million emails sent to Amex card members who had opted out of marketing communications.

~~The wisdom of crowds?~~



**The stupidity of group-think**

You can read [my blog post about the case](#) here, but the key take away for me is that lots of highly-paid and smart people at Amex - be they responsible for risk, compliance, proposition development or marketing - all seem to have displayed collective wishful thinking and fallen into group think. You can see some of their optimistic and plain fuzzy thinking about what is an unusually black and white aspect of data privacy regulation over the page.

AMEX between 22 February 2019 and 25 April 2019. As with previous complainants, the complainant had initially contacted AMEX and received a response justifying the emails on the basis they were "servicing" rather than "marketing" in nature. AMEX's response to the complaint stated that "we feel that Card Members would be at a disadvantage if they were not aware of these campaigns and promotional periods". The second complaint concerned marketing emails from AMEX between November 2018 and April 2019. Again, the complainant initially contacted AMEX. On 1 May 2019, they received a response which stated "the emails you are receiving are logged as benefits reinforcement, rather than marketing materials. As discussed in our telephone call, all correspondence classed as marketing has been opted-out for your account".

A £90,000 fine for Amex won't break the bank (it's c. 0.0003% of turnover) and perhaps demonstrates that the ICO doesn't see it as far along the scale of seriousness, but it's an unnecessary embarrassment for one of the world's most recognisable brands.

***Sometimes it pays to get an outsider's perspective to avoid wishful think and group-think about compliance.***

## Tech Start Up Trips Up Over PECR Regs



At the other end of the scale, a Covid-era tech start up, Tested.Me ("Our mission is to help you share your health data more easily and securely") has been collared by the ICO for disregarding the PECR rules regarding marketing. The firm used the email contact data it had acquired from consumers using its QR codes to share and demonstrate their Covid status to market Tested.Me's "Digital Health Passport App". The ICO said that Tested.Me couldn't demonstrate consumer consent to these emails, in contravention of PECR.

The [fine was a relatively modest £8,000](#) but the Enforcement Notice was unusually detailed about the names and identities of the firm's founding directors, using their credible backgrounds to highlight that they 'should have known better'.

## Non-Standard Contractual Clauses

[Privacy Laws & Business](#) has picked up on the ICO's announcement at its recent virtual conference (respectfully delayed a couple of weeks after the death of HRH the Duke of Edinburgh) that it was working on its own 'UK' Standard Contractual Clauses'. These are not to be confused with the EU's Standard Contractual Clauses which are currently being updated.

*I am a bit confused by all this. Best talk to a lawyer to see if they can make sense of it...*

## UK Firms Still Need to Appoint European Data Protection

### Representatives

Be honest, did you know that despite the 99% likelihood of the UK gaining a data privacy 'adequacy' ruling from the EU, British firms processing EEA/EU citizens' personal data will still need to appoint representative agents for data protection matters? Well, I didn't but the ever-entertaining Decision Marketing [reminded us last week](#). And here's the ICO [guidance on the matter](#).

### Payments



Introduction of Strong Customer Authentication for card-based eCommerce payments



The Financial Conduct Authority has [announced another delay](#) - to 14th March 2022 - in the implementation of Strong Customer Authentication (SCA) for online card-based payments. This may be good news and offer a bit more of a breathing space for UK eCommerce sellers, but not if they have customers in Europe. The EU's SCA implementation date remains 31st December this year. So, online vendors need to work out how to manage newly differentiated processes and customer experiences in a way that minimises revenue loss and customer defection from the 1st of January.

Ofcom's latest [update on its Fairness for Customers initiative](#) has highlighted customer care and support as the area telco providers most need to make improvements in.



## Telecoms

### Telecoms firms should go further on customer service

Ofcom has today published a [review](#) of progress made by major telecoms providers against our Fairness for Customers commitments.

In 2019, the UK's biggest broadband, phone and pay-TV providers committed to putting fairness at the heart of their businesses and going beyond their legal obligations for how they treat their customers.

Many companies have taken steps to provide fairer deals, clearer information and better support for their customers. But further action is needed in all areas, particularly customer service.

We have also today published our annual [Comparing Customer Service report](#), which compares how the major providers performed last year and reveals which ones get the best and worst satisfaction scores from their customers.

A [news release](#) is available with more detail.

The wider context for this is provided in research that shows a doubling in call waiting times for landline, broadband and mobile customers in 2020 compared to 2019. Whether levels of service have yet reverted to pre-Covid levels remains to be seen.

We're also concerned about customer service levels. At the start of the pandemic, many providers' call centres were significantly affected by social distancing rules and staff sickness.

Our research today reveals broadband and landline customers waited an average of 4 minutes and 9 seconds to get through to an advisor last year, around twice as long as it took in 2019. Mobile customers saw average waits of 2 minutes 7 seconds (up from 1 minute 18 seconds in 2019). And only around half of broadband (52%) and mobile (57%) customers were satisfied with how their complaints were handled.

While many firms have been able to bring call waiting times back down, some companies have struggled. More than a year since the pandemic began, we expect performance to return to at least 2019 levels, as restrictions ease.

**“** *Telecoms companies adapted quickly to meet soaring demand for their services last year – helping to keep the country connected.*

*But some have struggled with customer service problems. We're challenging them to act now, so the telecoms industry becomes the gold standard for customer service.*

— Lindsey Fussell, Ofcom's networks and communications group director



The value of bitcoin has varied widely in recent weeks and suffered from [Elon Musk's concerns](#) about its environmental impact. However, the ASA may be able to help.

A series of adverts for bitcoin by crypto exchange Ludo telling consumers "it's time to buy" appeared on London buses and on the underground, but have been [banned by the ASA for failing to highlight the risks in crypto trading](#). A slap on the wrist from the ASA has never done the likes of BrewDog any harm, so maybe it will be the boost bitcoin needs.



Teletext Holidays is now in the last chance saloon. It has missed the CMA's 24 March deadline to refund holiday makers £7m due to Covid holiday cancellations and now the [CMA is threatening court action](#).

## "Treat Customers *even more* Fairly" demands FCA

The FCA is consulting on the [introduction of a new 'Consumer Duty'](#) regime which is expected to require financial services firms to change propositions, processes and customer interactions from 2022.

*"The new Duty will drive a shift in culture and behaviour for firms, meaning that consumers always get products and services that are fit for purpose, that represent fair value and are clearly communicated and understandable."*

The Consumer Duty, which firms will have to follow or face regulatory action, including enforcement investigations if they fail to do so, will have 3 key elements:

1. The Consumer Principle, which will reflect the overall standards of behaviour the FCA expects from firms. The wording being consulted on is: 'a firm must act in the best interests of retail clients' or 'a firm must act to deliver good outcomes for retail clients'.
2. Cross-cutting rules which would require 3 key behaviours from firms, which include taking all reasonable steps to avoid foreseeable harm to customers, taking all reasonable steps to enable customers to pursue their financial objectives and to act in good faith.
3. It will also be underpinned by a suite of rules and guidance that set more detailed expectations for firm conduct in relation to 4 specific outcomes – communications, products and services, customer service and price and value.

# PSA

Phone-paid Services Authority

## New PSA Code of Practice

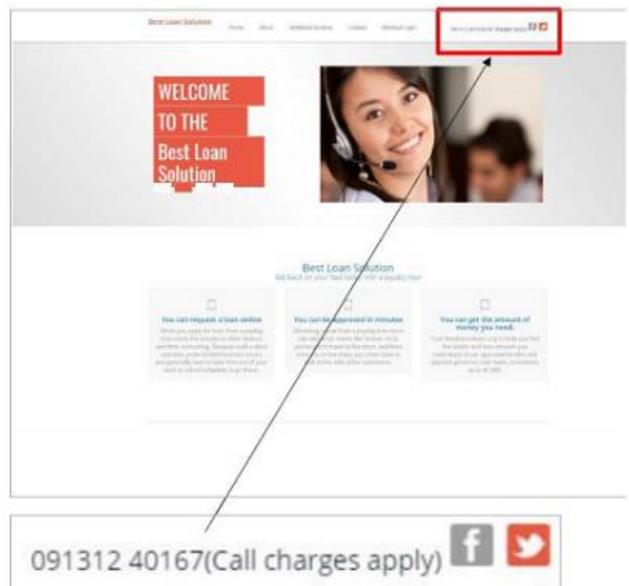
A new PSA [Code of Practice](#) – aiming to make the PSA more proactive and focused on prevention of harm whenever possible - is going through a period of consultation. You can get involved [here](#).

# Uplink IT Solutions fined £250,000

The kind of dodgy operation the new Code will seek to identify and close down more quickly will be Uplink IT, which has been barred from the industry for 7 years, been ordered to provide refunds to duped consumers and [fined £250,000](#).

Like a lot of similar firms it wasn't clear about the extortionate rates (£2.50 per minute) it charged – but even worse, rather than provide the 'IT support' services it claimed it was actually being called by people looking for loans on the (now closed) [www.bestloansolution.org](http://www.bestloansolution.org) website.

Screenshot taken 29 January 2020:



Ofwat has started to seek water consumers' feedback and experiences through the pandemic. As far as I can tell, [#ListenCareShare](#) hasn't yet gone viral, but maybe if it does then Ofwat's findings will inform future water industry regulations and customer service standards.

## The Small Print

This content is accurate as of 26<sup>th</sup> May 2021.

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