

# Compliance Newsletter

April 2021

*Compliance News for Customer People*

## Inept tech firm's bad advice

- Taking advice from a tech provider? Maybe think again
- Digital advertising market shaken up by Apple's new privacy-friendly iOS
- TikTok sued for un-consented capture and use of children's personal data
- BA and Marriott get to pay their shrunken ICO data breach fines extra slowly
- O2 & Virgin Media merger cleared by the competition regulator
- ASA bans Katie Price's 'hidden' ad for a claw grabber (whatever that is)
- Claims management firms vs pay day lenders - who's your money on?

Even though the ICO's fines flurry has suddenly ground to a halt, there's plenty else going on in the 'customer' world from a regulation and compliance perspective (and our first ever story featuring Katie Price).

Intrigued? Read on.

**Welcome to our 22<sup>nd</sup> newsletter:**

## The stupidity of (tech) crowds. Be warned!

**Carrier-flagged:** This type of flag can be avoided by ensuring the dialer you are using is configured with the proper features and you are applying the proper dialing practices.

Using a dialer inappropriately can cause your number to make more outbound calls to connect, raising the likelihood of getting flagged. Recommended dialing practices include:

- **Multiple caller ID:** Cycle through a set of valid caller ID numbers to reduce the total number of calls from a single number.
- **Local presence:** Obtain a number for every region, state or area code you are calling, and automatically change to that caller ID when calling that area.
- **Area mixing:** Mix up the geographic area you are calling to spread calls over as many receiving

I came across the advice given above in an article written by one of the biggest contact centre tech providers, published in a leading industry digital journal. When you're running complex and commercially critical customer acquisition operations in an ever-changing world it's vital to expose yourself to others' experiences and insights.

***Unfortunately, if you follow this guidance you will more than likely be considered to be breaking Ofcom's guidelines, making you liable to fines and restrictions on your customer communications – and on a fast-track to investigation by the ICO,*** which always takes a dim view of organisations using multiple, rotating caller IDs (CLIs).

In fairness to the authors, it's clear if you read the article thoroughly that they are giving advice relating to the US market and how to avoid the telco networks' blocks on large-volume outbound dialling numbers.

Likewise, it's maybe not reasonable to expect on-line journals to be experts on all the areas covered by third party content.

**But this does mean that you have to tread warily when taking advice about things which are regulated and have compliance rules and restrictions. So, caveat lector!**



Information Commissioner's Office

The ICO has abruptly stopped its flurry of fines, but there's plenty else going on in the world of data protection and privacy.

## Apple's New iOS Upsets Zuckerberg (and the whole of the adtech world)



Apple's latest iOS release, 14.5, is being rolled out right now and includes a new pop-up that asks iPhone users to agree to apps tracking their activity. And most users are expected to say "no". This has - understandably - upset Facebook and the rest of the digital advertising world, but they are going to have to learn to live with it. Just like advertisers will need to adapt to Google's looming ban on third party cookies. There are big changes looming for brands and agencies

## Irish Data Protection Regulator Faces Criticism

Meanwhile, the Irish data protection regulator – the Data Protection Commission (DPC) - which has the unenviable of being the EU's lead regulator of a number of the big US tech firms under the 'one stop shop' arrangements - has been having to [defend its record in the face of criticism](#) for going too soft on the likes of Twitter, Facebook and Google.

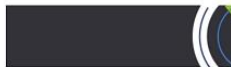
## TikTok in the Dock



The former Children's Commissioner is suing TikTok for sharing of children's data. TikTok has said it will vigorously contest the claim.

## Fine Now, Pay Later for BA and Marriott

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HOME NEWS VIEWS REVIEWS IDOL GOSSIP INDEPTH THE LOVIN' SPOONFUL ABOUT US  
HOT TOPICS APRIL 29, 2021 9:46 AM | ASA HALLS DATA SCIENCE FOR COMBATING RISE OF ROGUE ADS

### BA and Marriott to pay £38.4m GDPR penalties 'on tick'

MARCH 29, 2021 9:17 AM



**British Airways and Marriott International** have agreed to cough up the combined £38.4m they owe in GDPR fines, although it will be "years" before the penalties are finally settled as they have both secured confidential payment plans.

The Information Commissioner's Office

A fascinating story from [Decision Marketing](#) explains that hot on the heels of negotiating 90% reductions in their data breach fines from the ICO, BA and Marriott are now enjoying a payment plan so they pay on the 'never never'.

Conversely, the ICO has explained that it has applied for the winding up of CRDNN - which traded as Contact Reach - after CRDNN failed to pay the £500,000 fine imposed on it in March last year. CRDNN was responsible for making over 193 million automated, unconsented marketing calls between June and October 2018. It's not clear whether it was offered the opportunity to pay the fine using a generous ICO payment plan.



Despite reams of advice and guidance from the ASA, it seems that advertisers and their agencies still just don't get the rules about advertising on social media platforms. A cynic might think that, like BrewDog and RyanAir, they just choose to ignore the rules so that they can get free publicity when the ASA 'bans' their adverts. But that doesn't usually happen with social media ads using influencers without making it clear that the content is advertising.

Unless the influencer is, say, as famous as Kate Price and the ASA's ruling will get [written up in the Sun](#).

In this particular case it wasn't made clear that Ms Price was advertising an app-controlled claw machine.

The ASA didn't explain what on earth an app-controlled claw machine is, though.



Back in the real world, for reasons best known to the CMA, it has [provisionally approved](#) the presumably competition-stifling merger of Virgin Median & Mobile with O2.





## "Calm down! Calm down!" Pleads FCA as Claims firms row with Pay Day Lenders

Claims management companies (CMCs) and High Cost Lenders (HCLs) are probably the FCA's least favourite groups of people. So when they start arguing and dragging the FCA in to referee their scraps it's no great surprise that the [FCA gets cross](#).

That's what it has done this month as CMCs identify the customers of high cost lenders as a potential rich seam of claims for overcharging now that PPI claims are a distant memory.

Disputes between the CMC and HCLs identified by the FCA include:

- Some HCLs have identified instances of a CMC having presented a claim, but the HCL insists that the customer had never taken out a loan with them.
- HCLs may suspend lending to clients who bring complaints while the claim is being investigated, potentially denying those customers an important source of credit. Faced with this, some customers may withdraw the complaint, possibly resulting in the CMC charging the customer a cancellation fee.
- Some HCLs have expressed concern that CMCs may be using 'catch all' letters of authority (LoAs) to pursue claims against more than one HCL rather than ensuring that a customer agrees a separate LoA for each HCL against which a claim is being made. We expect LoAs to provide sufficient information to HCLs to allow them to confirm the CMC has the customer's consent to act on their behalf.
- Some CMCs have expressed concerns that HCLs' checking of LoAs may be excessive and deliberately being used to hinder a customer's ability to progress their complaint using a CMC.
- Some HCLs appear to be unwilling to share information efficiently – for example by agreeing streamlined claims processes – with CMCs who are exploring potential claims. This has resulted in some CMCs using full Data Subject Access Requests (DSARs) to get this information from HCLs.

As a result, the FCA has asked the CMCs to ensure that all their claims actions are specific, justified and authorised by the borrowers.

That sounds quite reasonable, but I can't help thinking this one will just run and run.



All quiet this month for our other usual suspect regulators.

### The Small Print

This content is accurate as of 28<sup>th</sup> April 2021.

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