CHANNEL DOCTORS

Compliance Newsletter

March 2021

Compliance News for Customer People

Contemptible, Clueless or Inept?

- **The ICO's on a £1.2m fining frenzy (but it's not all about the GDPR)**
- **Is being clueless better than being inept? Discuss**
- **BA data breach case looms with giddy hopes of a £2.4bn payout**
- **ASA finds that advertisers are still targeting junk food, booze and weight loss products at children online**
- **FCA's demands more protection for the vulnerable and plans to police the funeral plan 'wild West'**
- **The Guardian's exclusive reveal's contact centre giant's PR disaster home worker monitoring plans**
- **5 key questions to ask your tech provider in order to keep you cyber secure**

This month we delve into exactly who's getting fined by the ICO during its current enforcement flurry - and why. As well as the usual canter around the world of customer experience compliance and regulation. Read on to find out more.

Welcome to our 21st newsletter:

Information Commissioner's Office

The Leads (Don't) Work and Pulled Muscles as the ICO ramps up enforcement and fines

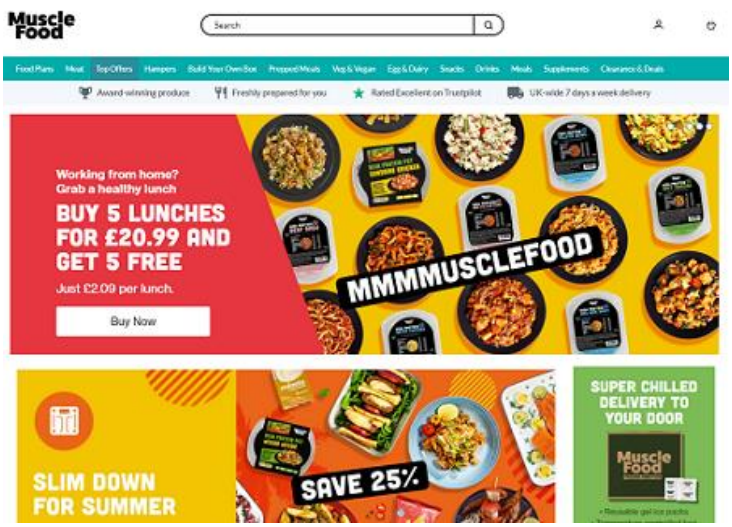
By the start of March the ICO had levied fines on 11 companies for breaking the marketing laws in 2021, just one less than the total for the whole of 2020.

The two latest fines were of a pair of widely contrasting firms.

Leads Work is a lead generating organisation that generated a record volume of consumer complaints to the SMS text 7726 complaints service. The 3 million texts were sent using the Avon brand, but weren't directly authorised by Avon as they were to help field sales agent recruit sub-agents to work on their behalf.

> "In lockdown and want to earn extra cash? Avon is now FULLY ONLINE, FREE to do and paid weekly. Reply with your name for info. 18+ only. Text STOP to opt out."

However, Leads Work had no clear consent to do so and as the ICO identified "no mitigating factors" in the case, it fined LW £250,000.



Muscle Foods is a subsidiary of DB Foods ("the UK's leading independent wholesaler of meat, poultry, game, deli and sundry supplies"). DB's turnover is in the 9 figures; it's a substantial, well-resourced organisation. Unfortunately, that didn't stop Muscle Foods sending over 135 million illegal emails and 6 million texts to consumers advertising its foods and food supplements. In its ruling announcing a £50,000 fine, the ICO highlighted that Muscle's *online checkout journey did not make it clear that customers would receive subsequent marketing communications*, made worse by Muscle not stopping its marketing efforts while the ICO carried out its investigation.

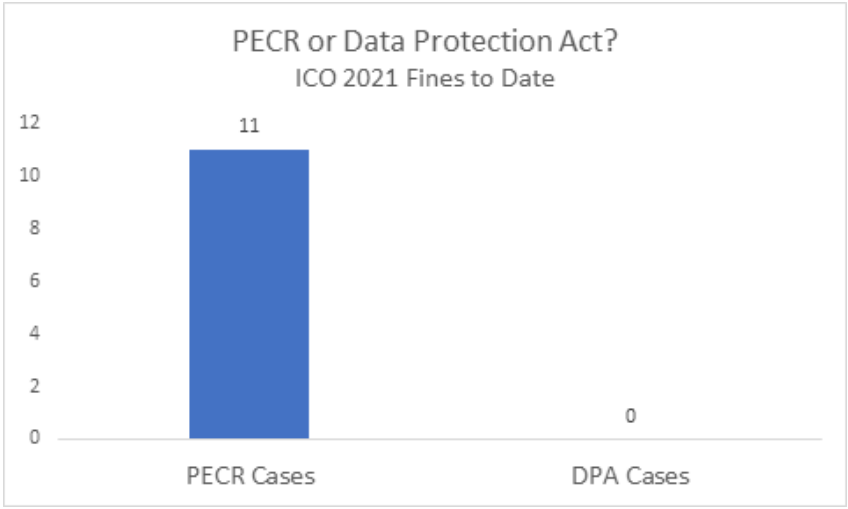
New Fines, Same Old Rules

Although both firms were operating in very different markets, they were equally guilty of pretty fundamental errors and illegal activity in their consumer marketing.

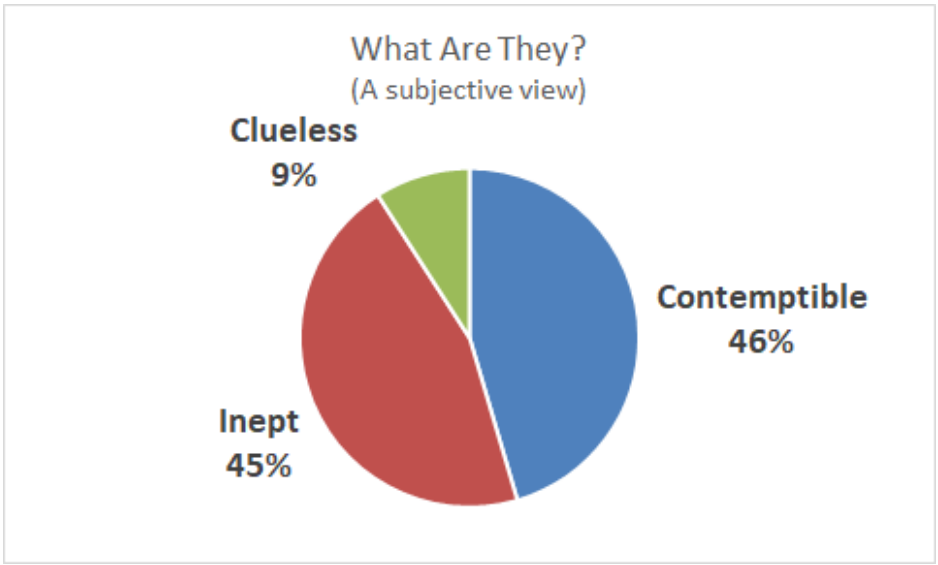
But the ICO wasn't making use of the GDPR and the 2018 Data Protection Act (DPA) when bringing them to book. No, all 11 fines so far this year have been for companies breaking the nearly 20 years old PECR (Privacy and Electronic Communication Regulation) rules.

The rules on phone, email and SMS consent, etc, should be very well understood by now. So, why do these fundamental mistakes continue to be made? Especially when they are typically made by firms that - either because of their size or their role in sales and marketing services - should definitely know better.

We decided to do a bit of analysis...



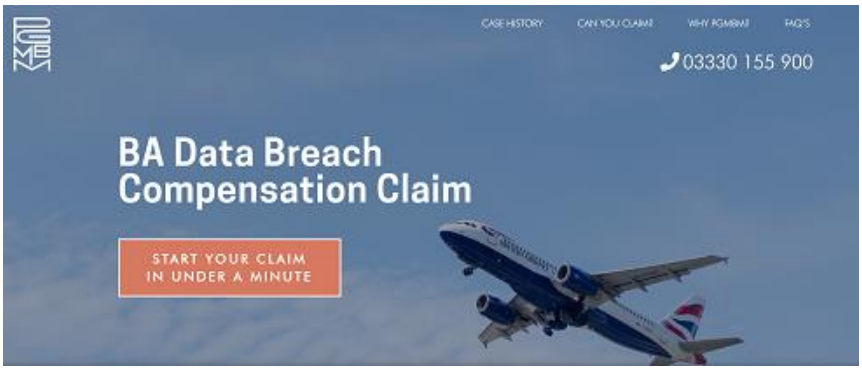
What's 46% contemptible, 45% inept and 9% clueless? The ICO's fined felons, that's what



Read the full article here.

Youth fashion site, Just Hype (not heard of it, grandad?) also made a ill-advised move into the selling of (fashionable) face masks. Hundreds of thousands of promotional SMS messages were sent by Just Hype, both to previous customers whose checkout journey wouldn't have led them to understand they would receive marketing texts and 3rd parties who had no relationship with or awareness of Just Hype at all (which was blamed - like so much in life - on an unnamed "IT Consultant").
The ICO has fined Just Hype £60,000 and acknowledged various changes it has made to its internal processes and customer communications.

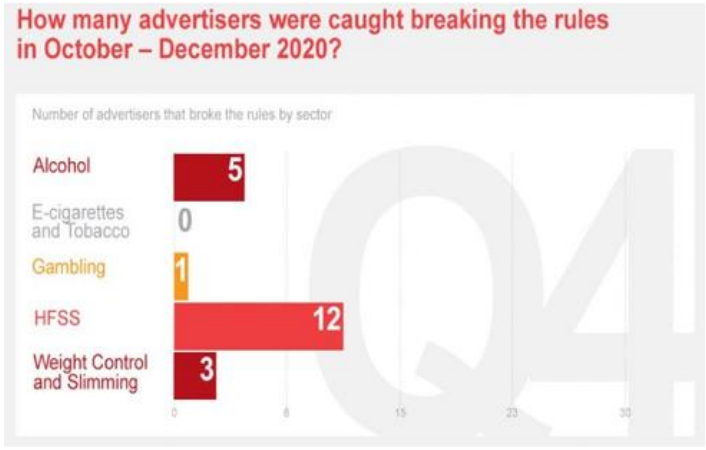
£2.4bn - A case of hope over expectation



Invigorated by the ICO's £20m fine of BA for its 2018 data breach, the 'Group Litigation Order' (class action) being organised to seek compensation for BA customers exposed to the breach continues. The deadline to join in is the end of April, but I can't help but feel that estimates of a pay out of up to £2.4bn are a bit on the optimistic side.

Calm Across the Channel, Stormy Over the Atlantic - A 2 Minute Data Protection Re-Cap

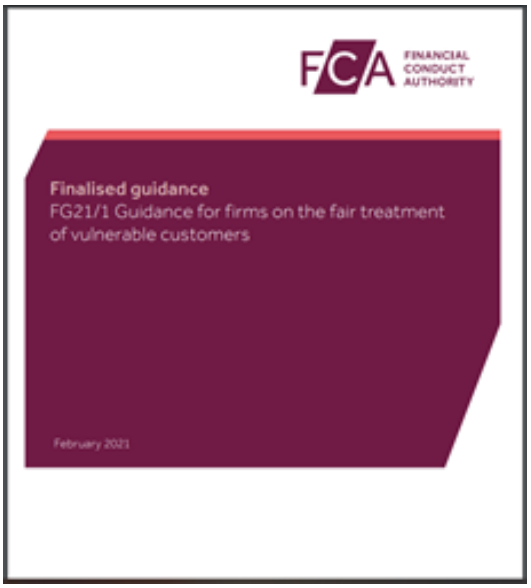
Here's a quick-read article we wrote earlier this month for Sheffield's finest, the Contact Centre Panel.



The ASA's sweep of websites and YouTube has shown that advertisers are still breaking the rules by placing ads for adult goods and services where children are likely to see them. All the advertisers have been made to remove their ads - and for once BrewDog doesn't seem to have pushed its way onto the naughty step.

The CMA has forced Sainsbury's-owned Argos to refund over 100,000 customers after failing to be open and transparent with them when selling extended warranties on electrical goods.
Although as Argos is giving refunds via £5 e-cards then the redemption rate will probably be so low that it will be a bargain sanction for Argos.

Updated Vulnerable Consumer Guidance



The FCA's long-awaited updated guidance on the fair treatment of vulnerable customers has been published.
The new requirements - which include the expectation that fair treatment of vulnerable customers is both 'led from the top' and baked into firms' processes - include:

- Understand the needs of its target market/customer base
- Ensure staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- Respond to customer needs throughout product design, flexible customer service provisions and communications
- Monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability and make improvements when this is not happening

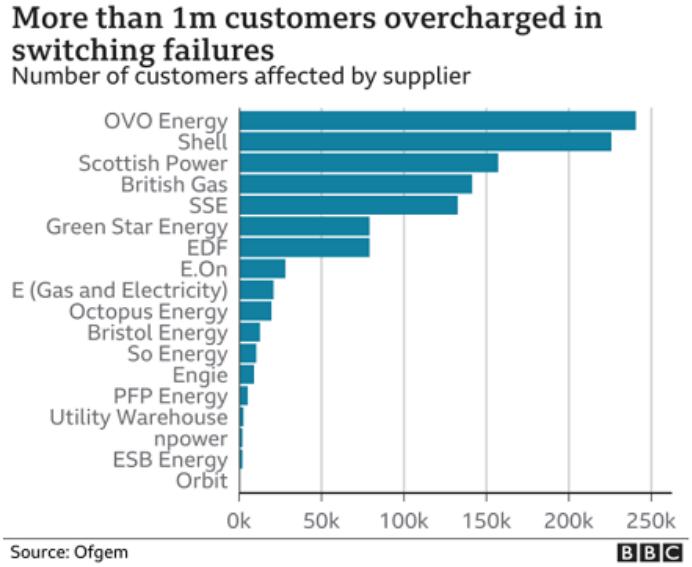
RIP for Dodgy Funeral Plan Sales?

The FCA has published a consultation on how it will regulate the Pre-Paid Funeral Plan sector once it ceases to be self-regulated and falls under the FCA's jurisdiction in July 2022. The consultation is a hefty 355 pages long, but key planned changes from a 'customer' perspective are:

- An end to sales through 'cold calling'
- Stopping up front commission payments (up to £900) for funeral plan sales intermediaries
- A requirement for funeral plan firms to truly understand, audit and manage their sales supply chains, including lead generation

All of which will signal massive change in the existing sector's structure, processes and business models.

Over a million energy customers will be refunded after suppliers inadvertently overcharged them through the transition from old provider to new.



Secure & Productive Homeworking Webinar

Our friends at Contact Centre Panel recently kindly asked me to join their panel to discuss Secure & Productive contact centre homeworking - and followed it up with this summary article.

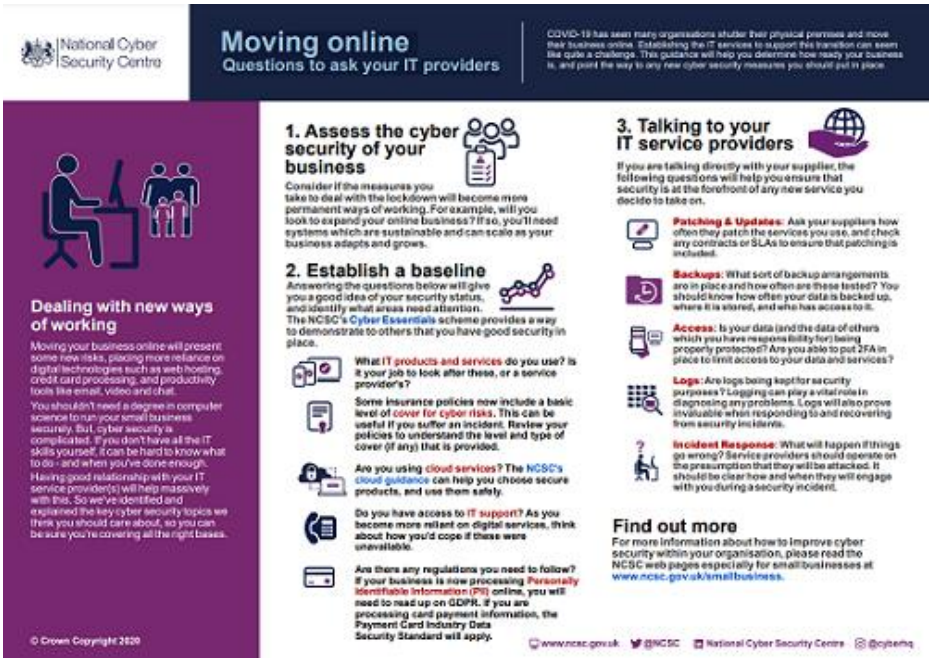
PR Corner

Global contact centre outsourcing giant Teleperformance won't have enjoyed this story from last weekend's Guardian.

Just now, most contact centre employers are grappling with the performance, morale and ethical challenges of managing and supporting a hybrid or solely-home based workforce. There are plenty of tech providers eager to fill the 'command and control' gap created by the move from more traditional work models.

However, Teleperformance's plans to deploy a webcam solution that *"monitors and tracks real-time employee behaviour and detects any violations to pre-set business rules, and sends real-time alerts to managers to take corrective actions immediately"* hasn't gone down well with employees, The Guardian (which, ironically, uses Teleperformance's services in the UK) or - presumably - clients and other stakeholders.

In the article the firm denied that it had any plans to use the technology with UK staff. But it still announced the 'big brother' regime - which would identify unrecorded breaks, or lengthy pauses in typing & talking and so on - to UK colleagues and warned the presumed whistle-blower that their revelation amounted to gross misconduct.



Infosec and Cyber Security - What questions to ask your techies

Our friend and all-round business resilience and continuity guru Julie Goddard of Humanex Resilience shared this really useful, practical infographic from the National Cyber Security Centre (NCSC). It's primarily designed for small businesses, but it is useful for 'customer people' in all sorts of organisations.

PSA Phone-paid Services Authority

FR FUNDRAISING REGULATOR

Ofwat

Ofcom

All quiet this month for Ofcom, Ofwat, PSA and the Fundraising Regulator.

The Small Print

This content is accurate as of 28th March 2021.

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