

Compliance Newsletter

June 2021

Compliance Clarity for 'Customer People'

Fines piling up for pizza houses, politicians & lots more

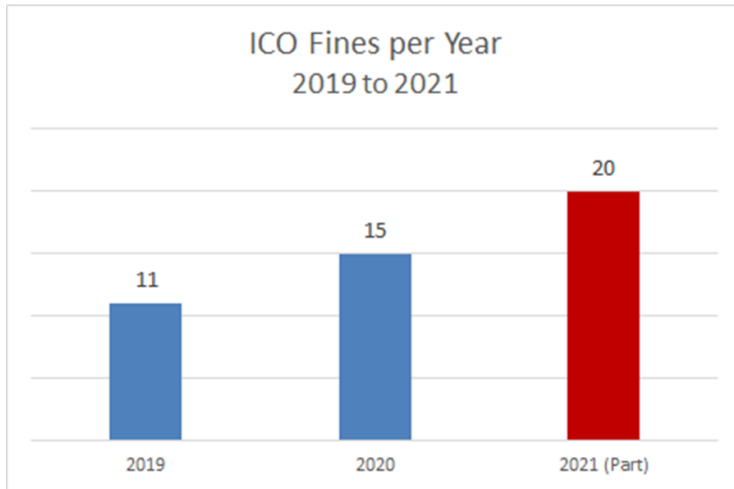
- The ICO goes into a fining frenzy - pizzas, politicians, charities and more find their marketing's broken the law
- Involved in the pre-paid funeral plan sector? What you need to do right now (and a heads-up on the FCA's new Consumer Duty)
- Competition & Markets Authority targets big tech - Amazon, Google and Apple's anti-competitive behaviour is probed
- What Ofcom's vulnerable customer research findings can teach all brands and customer care operations
- Sshhh! BT's big fine for failing customers over premium rate numbers which no-one seems to have noticed

Lots of news this month across multiple business sectors and types & channels of customer engagement. If you're responsible for targeting, acquiring, retaining or serving customers then there's something here for you.

It's what you don't know that hurts you... find out who's getting fined and for what before it happens to you.

Read on.

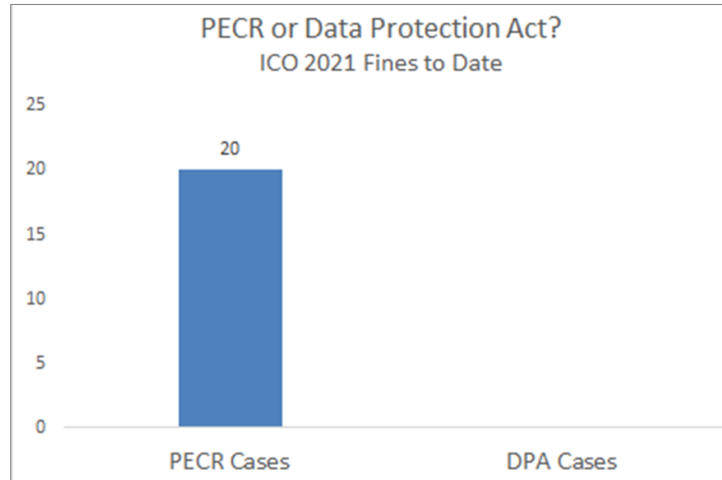
Welcome to our 24th newsletter:



You wait months for some ICO fines --- and then 7 come along at once. What is happening at the ICO's offices in Wilmslow? I'm not sure but the fines are flooding out.

So far this year there have been more companies fined for data protection breaches than in the whole of 2020.

And they've all been fines for breaking the rules around marketing and all are under the old and dusty PECR rules. GDPR and the 2018 Data Protection Act don't get a look in.



It's an especially varied group of organisations that have fallen foul of the data protection and data privacy laws. Starting at the top (or perhaps not, dependent on your point of view):

Rt Hon Boris Johnson: Guilty



The Conservative party has been [fined a relatively modest £10,000](#) for breaking the email marketing rules around the time of the last general election and sending marketing messages about party membership to people who had only signed up for surveys and newsletters. What the Conservative party did doesn't really sound excessive - despite generating a number of complaints to the ICO - but the ICO regularly warns political parties about their often cavalier approach to data privacy.

As yet there's no word as to who will be asked to cough up the £10,000...

Charity fined for "expecting not inspecting"



Global One is a development charity which has been found guilty of sending over half a million fundraising SMS messages without consent, and has also been fined £10,000. Judging by the [ICO's quite detailed enforcement notice](#), Global One seems to have been guilty of naivety more than anything else, accepting the advice of an - unnamed - fundraising agency which assured Global One that it was acting appropriately and that the 3rd party data could be used for fundraising.

Most of the bigger charities have a thorough and risk-averse approach to their fundraising activities, but smaller and expending charities haven't benefitted from that painful experience and will well advised to seek external, unbiased guidance before looking to expand their fundraising and outreach efforts.

Papa John's (Pizza) Doughy Understanding of the 'Soft Opt-In' *



Papa John's has been [fined a surprisingly low £10,000](#) after sending over 168,000 'nuisance' SMS marketing messages without consent. Papa John's had a valid reliance on the 'soft opt-in' to use the mobile numbers of customers who had previously ordered on line, but it mistakenly applied the same treatment to the numbers of customers who had phoned in their orders. These customers wouldn't have had explained the possibility of future marketing communications or given the opportunity to opt out.

*Leave me alone! I need to find my entertainment when and where I can

This is 'marketing compliance 101' stuff, that reputable, established brands like Papa John's really don't have an excuse for misunderstanding - in the same way as American Express and other legitimate businesses which have been fined recently.

And the usual suspects...

The rest of the fines are more typical of the type of organisations that attract most PECR enforcement actions, but all point to the fundamental rules that everyone in the 'customer world' has to understand and obey.

Colour Car Sales of Stoke drummed up car finance leads using a variety of brands and trading names. It has been fined £170,000 for sending millions of spam marketing SMS messages without consent.



LTH Holdings Ltd

LTH Holdings, an outbound calling lead generation outfit in Cardiff is unlikely pay [its £145,000 fine](#) as it has already lodged a proposal with Companies House to be struck off. LTH made over 1.4m calls without consent to numbers registered with the Telephone Preference Service (TPS), promoting and selling funeral plans. The illegal calls - which were often reported to be rude or even abusive and apparently targeted vulnerable consumers - help explain why the funeral plan sector is about to become FCA regulated (see the FCA section, below).



Solarwave also made tens of thousands of marketing calls to numbers which has been registered with the TPS. Again, the ICO is unlikely to get its [£100,000 fine](#) paid as Solarwave is now in liquidation.



Finally, Colour Coat has been [fined £130,000 for making over 400,000 calls to TPS-registered numbers](#) promoting its home improvement products, hiding behind a variety of trading names and identities and using 15 separate mobile CLIs (caller line identification numbers) to help avoid detection.

New EU Standard Contractual Clauses (not to be confused with the UK ones)

The EU has published its revised Standard Contractual Clauses (SCCs), a set and framework of boilerplate legal terms that will be used by most organisations looking to compliantly transferring data in and out of the EU/EEA. These aren't to be confused with the UK SCCs which are something different. But similar.

This led Field Fisher to start riffing on a Star Wars ("A new hope") when it welcome the new EU SCCs. Once lawyers starting joking it's generally best to leave them to it...

INSIGHT

The updated standard contractual clauses "A new hope?"

And so, at last, they're here. Met with a level of anticipation — and, it must be said, apprehension — equal only to the announcement of a new Star Wars film, the new European Union standard contractual clauses for "the transfer of personal data to third countries" (that's international transfers, to you and me) were adopted by the European Commission June 4, 2021.



EU adequacy ruling. At last!



You might think that the EU had already given the UK the vital ruling that its data protection laws and rules are 'adequate', in order to allow the continuance of a relatively free flow of data. That's because it was thought to be 99% certain to be given and this month the European Council gave its approval, so the positive ruling now seems to be in the bag.

Here's what [our friends at the DMA say about it](#).



Ofcom's research shows vulnerable customers' experiences remain inconsistent

Hot on the heels of last month's [update on its Fairness for Customers initiative](#) highlighting that mobile, broadband and landline firms need to improve customer service - and research showing that average telco contact centre wait times had [doubled during 2020](#) - this month Ofcom has highlighted firms inconsistent provision of support for customers experiencing vulnerability.



© Ofcom

The three areas the Ofcom says firms need to address will be familiar to most brands seeking to deliver customer management services that can identify and respond to vulnerability.

We've told providers they should:

- **train staff** to make sure they can recognise the potential characteristics, behaviours or verbal cues of someone who might be vulnerable and proactively offer appropriate help, support and services;
- **identify vulnerable customers** and record their needs (with consent); and
- **actively promote** to all customers the services and support available.

Over the past few years, vulnerability has gone from being a niche area of concern to one firmly on the list of challenges and priorities for most ethical organisations. The areas Ofcom have highlighted above encompass the smart use of data and insights, staff training and coaching, as well as how product owners and marketers reflect and adapt to vulnerability.

These are challenges for all organisations and - as is often the case - regulated sectors like Ofcom's can act of 'leading indicators' for the rest of us; over time more and more businesses will be required to address them, whether they want to or not!



Still confused by the ASA's rules? Guidance is at hand!



As so many brands and agencies get caught out breaking the ASA's rules of advertising and promotions (most of whom should frankly know better) there is good news in the shape of [quick, easy to understand 'what to do' guides available.](#)

"Hold on," you might think, "doesn't that say CAP? I thought it was the ASA!". Well, they're sort of the same thing and it doesn't really matter. A bit like Ant & Dec.

Amazon's data and market abuse due to be investigated, claims the FT

Amazon.com + Add to myFT

UK competition regulator plans probe into Amazon's use of data

CMA likely to follow EU's lead in investigating whether online retailer unfairly advances its own products



An investigation may focus on whether Amazon gives prominence to merchants that also use its logistics services © Denis Charlet/AFP/Getty Images

Javier Espinoza in Brussels and Kate Beoley in London 8 HOURS AGO



The UK's competition watchdog is planning a formal competition investigation into Amazon, mirroring a continuing investigation by the EU, according to three people familiar with the situation.

The Competition and Markets Authority has been analysing Amazon's business for months, focusing on how the online retailer uses the data it collects on its platform. It has also scrutinised how Amazon decides which merchants appear in the crucial "buy box" — the white panel to the right-hand side of a product

In stark contrast to some other regulators I could name, the CMA is quite willing to take on big tech. The [FT has reported](#) that the CMA is about to start an investigation into Amazon and how it uses data and potentially skews competition in the way it decides which vendors and products appear in the coveted Amazon search 'buy box' - a multi-billion pound market.

And just in case you're not sure what exactly the 'buy box' is, here's a handy guide from [Big Commerce](#):

What is the Amazon Buy Box?



© www.bigcommerce.co.uk

Of course I knew. Honest.

CMA investigates Apple & Google's "effective duopoly" in mobile



Apple and Google investigated by UK competition body

15 June



The UK's Competition and Markets Authority (CMA) has confirmed it is investigating Apple and Google over their dominant position in the mobile phone market.

It is "taking a closer look" at the "effective duopoly" the two firms have.

That includes the operating systems Android and iOS, both app stores, and Safari and Chrome web browsers.

Officials are examining whether the pair are "stifling competition across a range of digital markets".

Uncontroversially, the CMA believes that Google/Android and Apple have an [effective duopoly in the mobile phone market](#). Well, I could have told them that, but they never asked.

Of more interest will be what they decide to do about it... watch this space.

More detail on the FCA's planned new Consumer Duty

Last month we explained that the FCA was consulting on the [introduction of a new 'Consumer Duty'](#) regime from 2022.

For a more detailed and expert view, here are the thoughts of my [DMA Contact Centre Council](#) colleague, Axa's [Rachel Goddard](#) in the Council's monthly [Regulation Hub Update](#):

*"Released on 14 May 2021, the **FCA** has set out plans for a new Consumer Duty which will set a higher level of consumer protection in retail financial markets. The **FCA** seeks to expand its existing rules and principles to ensure firms provide a higher level of protection consistently that enable consumers to get good outcomes. The **FCA** want to achieve a shift in culture and behaviours.*

*Sheldon Mills, Executive Direct of Consumers and Competition at the **FCA** said 'we want firms to be putting themselves in the shoes of the consumers and asking, 'would I be happy to be treated the way I treat my customers?' We (the **FCA**) want consumers to be able to advance their financial wellbeing and build positive futures for themselves and their families.*

The Consumer Duty will be underpinned by a suite of rules and guidance for firms which will provide more detailed expectations for a firm's conduct in relation to its communications, products and services, customer service and price and value as well as introducing the consumer principle. There will also be cross-cutting rules which will require three key behaviours from firms. These include taking all reasonable steps to avoid foreseeable harm to consumers, taking all reasonable steps to enable customers to pursue their financial objectives and to act in good faith.

*For those in the contact centre industry, it is worth highlighting expectations around service with the **FCA** outlining the following as a practice that causes poor outcomes. 'Poor customer service that hinders the consumer from taking timely action to manage their financial affairs and making use of products and services or increases their costs in doing so'.*

*The consultation is a must-read for anyone in financial services and may benefit across industries to demonstrate how the bar is being set by this regulator. The **FCA** is collating responses to the consultation which closes at the end of July. The aim of the **FCA** is to implement new rules by July 2022."*

Funeral plan sector regulation - what it might mean for you

A couple of months ago we explained that the pre-paid funeral plan would become FCA regulated from next year. Though the sector is relatively small, there are wide variety of organisations whose activities relate to it, all of which will now be mulling the implications of FCA regulation.

[Here are some thoughts](#) from me and my [Contact Centre Panel](#) colleagues:



The future of pre-paid funeral plans FCA announce significant regulation changes

New legislation - what does it mean?

Parliament has voted to bring the funeral plan sector under the regulation of the Financial Conduct Authority (FCA). The FCA has started a consultation on how it proposes to regulate the funeral plans sector from 29 July 2022.

If you intend to continue trading in the funeral plan sector, you'll need to make significant changes due to FCA regulation

Possible implications?

1

Broader proposition

It's possible that a broader set of products will be made available to consumers on a more level playing field. If that's the case, then both sales and service contact centre staff are likely to need to be more skilled, better informed and be provided with improved support.

2

Full disclosure

Funeral plan providers won't just be required to generate consultative supportive dialogue at the point of sale, but they will also need to prove this throughout the entirety of the product lifecycle. The FCA seeks 'full disclosure' at all times.

3

Cold call to warm call

Press coverage of the FCA's plans has focused on a 'ban on cold call selling'. But in a post-GDPR world true cold calling is already dead. Firms reliant on a cold calling model need to change radically and quickly.

4

FCA conduct rules

Firms in the sector who choose to remain active will find that just about every employee will fall under FCA Conduct Rules. This will amount to a step-change in firms' experience of regulation and how their internal processes need to be adapted.

5

Outsourcing solution

Outsourcing can be a great option to meet tactical or strategic customer management needs, but you can't outsource compliance so clients need ensure all the right behaviours and controls are in place to outsource compliantly.

6

Supplier management

If you are in the business of either generating prospect sales leads for funeral plan or acting as an intermediary selling plans, then anticipate a great deal of change if you want to retain those roles. You should expect a much more thorough degree of process audit and due diligence from your clients.

The BT fine no-one seems to have noticed

There seems to have been surprisingly little coverage of the PSA's [decision to fine BT Agilemedia](#) £330,000 for a number of failures to follow the PSA's and BT's own DRAC (due diligence, risk assessment and control) requirements. These failing were regarded by the PSA as "serious breaches" and come only a year after [Ofcom fined BT-owned EE](#) for its compliance failings.

Mobtech UG fined £200,000

A PSA adjudication has resulted in a [£200,000 fine of a firm](#) – Mobtech UG - which ran 'Secret Sales Codes', providing consumers with voucher codes for retail stores. Unfortunately, a number of consumers claimed that they had never signed up for the £4.50/month service and amongst other failing Mobtech was unable to demonstrate consumer consent.



All quiet this month with some of the other regulators in the 'consumer world'.

Question Time: Complaints May 2021

Katie May
CMR
As Head of Partnerships at CMR Group, Katie wins and then manages projects for clients within Complaints, Customer Relations, Remediation and Affordability. These assignments can include major ramp up and turnaround solutions for clients due to a backlog in Complaints, functional Health Checks, ad hoc Critical Friend consultancy and mentoring support within the Vulnerable Customer space.

Mat Cornish
Avaya
Complaints should be seen and handled as the best instrument (and data points) to drive continuous EX and CX improvement. Invaluable information is to be gained from the complainer and the recipient of the complaint. Successful companies handle complaints well and moreover innovate based on the input received.

Sally Greenaway
PremierCX
Complaints are often viewed as an opportunity to gain valuable insights from customers and help organisations to improve customer service...we're told to embrace complaints rather than be fearful of them. But how does it feel for the customer? What can be done pre-Agent to improve their caller experience and help FCR?

Damien Morrissey
Virgin Media
With the ever challenging targets set on conversion, the ability to take a step back listen to the customer understand the failure in expectation and empowering a team of experts to fix any issues is vital. At a strategic level root cause understanding fed back into the change delivery teams provides an opportunity to fix issues at source. Successful people Internal & External, platform and change working well will deliver operational improvements and return a high performing bottom line.

Steve Sullivan
Channel Doctors
Are you just complaining or is this a Complaint? How process & measurement can impede dialogue. The daisy hand of regulation. The Department of Failure. The feedback loop Whose loop? Pragmatism vs. Defeatism. Being brave Empowerment and learning to say no. Authority - unpredictability.

Join us for this bi-monthly opportunity to ask contact centre influencers your questions on their area of expertise and influence.

HURRY! Book your places to attend this great session. Register today.

Date Thursday, 13th May
Time 2pm - 3pm

Finally, here's a link to a really fascinating and wide-ranging [CallNorthWest](#) & [South West Contact Centre Forum](#) 'Question Time' discussion about Complaints. that I was lucky enough to be part of, last month.

There are loads of insightful facts, techniques and perspectives from the lovely panel which included Katie May from [Customer Management Resourcing Group \(CMR\)](#), Mat Cornish of [Avaya](#), Sally Greenaway of [Premier CX](#) and [Virgin Media's](#) Damien Morrissey.

Worth popping the kettle on for!

Link:

<https://lnkd.in/dsG6XNR>

Passcode:

pH@10f49

The Small Print

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