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The Telegraph Media Group has been reminded, at a cost of £30,000, of the limits of the “soft-opt in” rule for direct email marketing.

Direct marketing is defined in the Data Protection Act as being “any advertising or marketing material which is directed to particular individuals”.

Under Regulation 22 of the Privacy and Electronic Communications Regulations 2003 (known as “PECR”), there is a general prohibition of sending unsolicited marketing emails without the prior consent of the recipient.

The exception to that rule (known as the “soft opt-in” rule) is (i) where the sender has obtained the contact details of the recipient in the course of the sale or negotiation for sale of a product or service to that recipient, (ii) the direct marketing is in respect of the sender’s similar products and services only and (iii) the recipient has been given a simple free method of opting out of these emails at the time the details were collected and has not opted out since.

The facts were quite simple. The Telegraph kept an “editorial content” mailing list of subscribers who wished to receive general editorials, some of whom had “opted-out” of receiving marketing communications.

On the morning of 7 May 2015 (the date of the last general election), the database team was told to include a letter from the editor of the Telegraph in addition to the usual editorial email. The letter urged readers to vote for the Conservatives.

Unfortunately for the Telegraph this was in breach of PECR not just for subscribers who had opted out from marketing emails, but also for those where the soft opt-in rule applied. This is because the soft opt-in rule applies only to products and services, and does not apply to non-commercial promotions such as charity fundraising and political campaigning.

The Information Commissioner, in his capacity as arbiter under PECR, decided that the breach was serious enough to warrant a fine of £30,000. The Information Commissioner took into account the aggravating factor that there were 17 complaints made (to the ICO or the Telegraph) about the letter.

Universities looking to fundraise from alumni therefore need to ensure that they comply with PECR and have express consent from all recipients for any fundraising emails they send.

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