IAC-FH-CK-V1

The First-tier Tribunal
(General Regulatory Chamber)
Claims Management Services

Tribunal Reference: CMS/2015/0003

Heard in London
On 21 March and 12 May 2016

Before

JUDGE PETER LANE
SUE DALE

Between

COMPLETE CLAIM SOLUTIONS LIMITED

Appellant

and

THE CLAIMS MANAGEMENT SERVICES REGULATOR

Respondent

Representation:

For the appellant: Andrew Hogarth, Managing Director
Simon Roberts, Operations Manager

For the respondent: Brendon McGurk, Counsel, instructed by the Government Legal Department

DECISION AND REASONS

A. Introduction

1. The appellant appeals against the decision of the respondent dated 14 October 2015 to impose upon the appellant a financial penalty of £91,845 in respect of breaches of the appellant's conditions of authorisation to act as a claims management company. The appeal was heard over two days in March and May 2016. The Tribunal heard oral evidence and submissions from Andrew Hogarth, the appellant's Managing Director, and Simon Roberts, its Operations Manager. For the respondent, the Tribunal heard oral evidence from Kate Moore, Regulation and Policy Manager and Greg Williams, Principal Officer, leading the Claims Management Services Regulator unit's Direct Marketing Team. The Tribunal received oral submissions from Mr Hogarth, Mr Roberts and Mr McGurk.

2. The written evidential materials and submissions are contained in the Tribunal bundle, as well as in accounts materials filed by the appellant, together with a written statement for the 10 May hearing from Mr Roberts, with attachments. In reaching our unanimous decision, we have taken account of all the oral and written evidence, materials and submissions.

B. Legislation, rules, code of conduct and guidance

3. The relevant legislation is as follows:

> "**Compensation Act 2006**
>
> **4 Provision of regulated claims management services**
>
> (1) A person may not provide regulated claims management services unless –
>
> (a) he is an authorised person,
> (b) he is an exempt person,
> (c) the requirement for authorisation has been waived in relation to him in accordance with regulations under section 9, or
> (d) he is an individual acting otherwise than in the course of a business.
>
> (2) In this Part –
>
> (a) 'authorised person' means a person authorised by the Regulator under section 5(1)(a),
> (b) 'claims management services' means advice or other services in relation to the making of a claim,
> (c) 'claim' means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made –

(i) by way of legal proceedings,
(ii) in accordance with a scheme of regulation (whether voluntary or compulsory), or
(iii) in pursuance of a voluntary undertaking,

(d) 'exempt person' has the meaning given by section 6(5), and
(e) services are regulated if they are –

(i) of a kind prescribed by order of the Secretary of State, or
(ii) provided in cases or circumstances of a kind prescribed by order of the Secretary of State.

(3) For the purposes of this section –

(a) a reference to the provision of services includes, in particular, a reference to –

(i) the provision of financial services or assistance,
(ii) the provision of services by way of or in relation to legal representation,
(iii) referring or introducing one person to another, and
(iv) making inquiries, and

(b) a person does not provide claims management services by reason only of giving, or preparing to give, evidence (whether or not expert evidence).

(4) For the purposes of subsection (1)(d) an individual acts in the course of a business if, in particular –

(a) he acts in the course of an employment, or
(b) he otherwise receives or hopes to receive money or money's worth as a result of his action.

(5) The Secretary of State may by order provide that a claim for a specified benefit shall be treated as a claim for the purposes of this Part.

(6) The Secretary of State may specify a benefit under subsection (5) only if it appears to him to be a United Kingdom social security benefit designed to provide compensation for industrial injury.

5 The Regulator

(1) The Secretary of State may by order designate a person ('the Regulator') –

(a) to authorise persons to provide regulated claims management services,
(b) to regulate the conduct of authorised persons, and
(c) to exercise such other functions as are conferred on the Regulator by or under this Part.

(2) The Secretary of State may designate a person only if satisfied that the person –

(a) is competent to perform the functions of the Regulator,
(b) will make arrangements to avoid any conflict of interest between the person's functions as Regulator and any other functions, and
(c) will promote the interests of persons using regulated claims management services (including, in particular, by –

(i) setting and monitoring standards of competence and professional conduct for persons providing regulated claims management services,
(ii) promoting good practice by persons providing regulated claims management services, in particular in relation to the provision of information about charges and other matters to persons using or considering using the services,
(iii) promoting practices likely to facilitate competition between different providers of regulated claims management services, and
(iv) ensuring that arrangements are made for the protection of persons using regulated claims management services (including arrangements for the handling of complaints about the conduct of authorised persons)).

(3) **[…]**

(4) The Regulator shall –

(a) comply with any directions given to him by the Secretary of State;
(b) have regard to any guidance given to him by the Secretary of State;
(c) **[…]**
(d) try to meet any targets set for him by the Secretary of State;
(e) provide the Secretary of State with any report or information requested (but this paragraph does not require or permit disclosure of information in contravention of any other enactment).

(5) **[…]**

(6) The Secretary of State may pay grants to the Regulator (which may be on terms or conditions, including terms and conditions as to repayment with or without interest).

(7) A reference in this Part to the Regulator includes a reference to a person acting on behalf of the Regulator or with his authority.

(8) The Secretary of State may by order revoke a person's designation under subsection (1).

(9) While no person is designated under subsection (1) the Secretary of State shall exercise functions of the Regulator.

(10) The Secretary of State may by order transfer (whether for a period of time specified in the order or otherwise) a function of the Regulator to the Secretary of State.

13 Appeals and references to Tribunal

(1) A person may appeal to the [First-tier Tribunal ('the Tribunal')] f the Regulator –

(a) refuses the person's application for authorisation,
(b) grants the person authorisation on terms or subject to conditions,
(c) imposes conditions on the person's authorisation,
(d) suspends the person's authorisation, **[…]**
(e) cancels the person's authorisation **[**, or**]**
[(f) imposes a penalty on the person.**]**

(1A) A person who is appealing to the Tribunal against a decision to impose a penalty may appeal against –

(a) the imposition of the penalty,
(b) the amount of the penalty, or
(c) any date by which the penalty, or any part of it, is required to be paid.

(2) The Regulator may refer to the Tribunal (with or without findings of fact or recommendations) –

(a) a complaint about the professional conduct of an authorised person, or
(b) the question whether an authorised person has complied with a rule of professional conduct.

(3) On a reference or appeal under this section the Tribunal –

(a) may take any decision on an application for authorisation that the Regulator could have taken;
(b) may impose or remove conditions on a person's authorisation;
(c) may suspend a person's authorisation;
(d) may cancel a person's authorisation;
(da) may require a person to pay a penalty (which may be of a different amount from that of any penalty imposed by the Regulator);
(db) may vary any date by which a penalty, or any part of a penalty, is required to be paid;
(e) may remit a matter to the Regulator;
(f) may not award costs.

(3A) In the case of appeals under subsection (1), Tribunal Procedure Rules –

(a) shall include provision for the suspension of decisions of the Regulator while an appeal could be brought or is pending;

(b) shall include provision about the making of interim orders;
(c) shall enable the Tribunal to suspend or further suspend (wholly or partly) the effect of a decision of the Regulator;
(d) shall permit the Regulator to apply for the termination of the suspension of a decision made by the Regulator.

(4) **[…]**

Financial Services (Banking Reform) Act 2013

139 Power to impose penalties on persons providing claims management services

(1) The Schedule to the Compensation Act 2006 (claims management regulations) is amended as follows.

(2) In paragraph 8 (rules about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert -

'(ia) provision enabling the Regulator to require an authorised person to pay a penalty;'.

(3) In paragraph 9 (codes of practice about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert –

'(ia) enable the Regulator to require an authorised person to pay a penalty;'.

(4) In paragraph 10 (complaints about conduct of authorised persons), after sub-paragraph (2) insert –

'(3) Regulations under sub-paragraph (1) may enable the Regulator to require an authorised person to pay a penalty.'

(5) In paragraph 11 (requirement to have indemnity insurance), in sub-paragraph (2)(b), after 'Regulator' insert 'to require the payment of a penalty by an authorised person or '.

(6) In paragraph 14 (enforcement), in sub-paragraph (4), for the words from 'impose' to 'authorisation' substitute 'require an authorised person to pay a penalty, or to impose conditions on, suspend or cancel a person's authorisation, '.

(7) After paragraph 15 insert -

'**16 Penalties: supplementary provision**

(1) This paragraph applies in any case where regulations include provision enabling the Regulator to require an authorised person to pay a penalty.

(2) The regulations –

(a) shall include provision about how the Regulator is to determine the amount of a penalty, and
(b) may, in particular, include provision specifying a minimum or maximum amount.

(3) The regulations –

(a) shall provide for income from penalties imposed by the Regulator to be paid into the Consolidated Fund, but
(b) may provide that such income is to be paid into the Consolidated Fund after the deduction of costs incurred by the Regulator in collecting, or enforcing the payment of, such penalties.

(4) The regulations may also include, in particular –

(a) provision for a penalty imposed by the Regulator to be enforced as a debt;
(b) provision specifying conditions that must be met before any action to enforce a penalty may be taken.'

(8) In section 13 of the Compensation Act 2006 (appeals and references to Tribunal) –

(a) in subsection (1), omit the 'or' at the end of paragraph (d) and after paragraph (e) insert ', or

(f) imposes a penalty on the person.';

(b) after subsection (1) insert –

'(1A) A person who is appealing to the Tribunal against a decision to impose a penalty may appeal against –

(a) the imposition of the penalty,
(b) the amount of the penalty, or
(c) any date by which the penalty, or any part of it, is required to be paid.';

(c) in subsection (3), after paragraph (d) insert –

'(da) may require a person to pay a penalty (which may be of a different amount from that of any penalty imposed by the Regulator);
(db) may vary any date by which a penalty, or any part of a penalty, is required to be paid;'.

Compensation (Claims Management Services) (Amendment) Regulations 2008

49. - Determining the amount of a penalty

(1) The Regulator must determine the amount of any penalty that an authorised person is required to pay under regulation 48 in accordance with this regulation and regulation 50.

(2) The amount of the penalty must be –

(a) for an authorised person whose business has a relevant turnover of less than £500,000, no more than £100,000;
(b) for an authorised person whose business has a relevant turnover of £500,000 or more, no more than 20 per cent of that turnover.

(3) The amount of the penalty may be the same as or greater or less than the proposed amount set out in the notice under regulation 51(1)(b).

(4) When determining the amount of the penalty that an authorised person is required to pay under regulation 48(1), (2) or (4) the Regulator must have regard to –

(a) the nature and seriousness of the acts or omissions giving rise to the Regulator's decision to exercise the power to require the authorised person to pay a penalty; and
(b) the relevant turnover of the business of the authorised person.

50. - Relevant turnover

(1) In this Part 'relevant turnover' means the figure determined by the Regulator in accordance with this regulation.

(2) The Regulator must determine such figure as the Regulator considers appropriate for the turnover of the business of the authorised person.

(3) The turnover to be determined is the turnover of the authorised person's business from regulated claims management services.

(4) The turnover to be determined is for the period of 12 months prior to the date on which the Regulator gives the notice under regulation 51(1).

(5) When determining the relevant turnover of an authorised person under this regulation the Regulator must have regard to –

(a) any figure for the annual turnover or the expected annual turnover used by the Regulator for the purposes of calculating the authorised person's most recent fee for authorisation;
(b) any more up to date information on turnover.

(6) When determining the relevant turnover of an authorised person under this regulation the Regulator may estimate amounts.

51. - Notice of proposed penalty and written submissions

(1) Before requiring an authorised person to pay a penalty, the Regulator must give written notice to the authorised person –

(a) stating that the Regulator proposes to require the authorised person to pay a penalty;
(b) setting out the proposed amount of the penalty;

(c) setting out the proposed date by which the penalty would be required to be paid or the proposed date by which each part of the penalty would be required to be paid;
(d) setting out the figure used by the Regulator for the relevant turnover and the basis on which the Regulator determined that figure;
(e) setting out the reasons for the Regulator's decision, and a summary of the evidence on which the Regulator relies;
(f) inviting the authorised person to make a written submission in relation to the matters in the notice; and
(g) specifying a reasonable period within which the authorised person must do so.

(2) The Regulator must take into account any written submission made by the authorised person within the period allowed under paragraph (1)(g) or any further period allowed by the Regulator –

(a) in determining whether to require an authorised person to pay a penalty;
(b) in determining the amount of the penalty; and
(c) in determining the date by which the penalty is required to be paid or the date by which each part of the penalty is required to be paid."

4. It is common ground that a condition of the appellant's authorisation by the respondent is that the appellant must comply with the Conduct of Authorised Persons Rules 2014. The following Rules are relevant:-

"**General Rule 5 –** a business shall observe all laws and regulations relevant to its business. This includes:

Regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003:

'**Unsolicited calls for direct marketing purposes**

21. - (1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where -

(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.

(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his –

(a) the subscriber shall be free to withdraw that notification at any time, and
(b) where such notification is withdrawn, the caller shall not make such calls on that line.'

Client Specific Rule 4 – cold calling in person is prohibited. Any marketing by telephone, email, fax or text shall be in accordance with the Direct Marketing Association's Code and any related guidance issued by the Direct Marketing Association.

Client Specific Rule 8 - where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the Rules governing solicitors' conduct. This includes:

> 'Outcome 8.3 of the Solicitors Regulation Authority 'SRA' (Code of Conduct) – you do not make unsolicited approaches in person or by telephone to members of the public in order to publicise your firm …'

Indicative Behaviour 9.1 of the SRA Code of Conduct – being satisfied that any client referred to an introducer has not been acquired as a result of marketing or other activities which, if done by a person regulated by the SRA, would be contrary to the principles or any requirements of the Code."

5. SRA Code of Conduct 2011

"**O(8.3)** you do not make unsolicited approaches in person or by telephone to members of the public in order to publicise your firm or in-house practice or another business"; (original emphases).

6. Finally, guidance has been issued in respect of the imposition of a financial penalty by the respondent:

"**Claims Management Regulation: Financial Penalties Scheme Guidance (December 2014)**

From 29 December 2014, the imposition of a financial penalty becomes an additional available enforcement sanction for use against non-compliant authorised persons under the following circumstances:

- As a consequence of a failure to comply with the Conduct of Authorised Persons Rules

…

In practice under the CMR Unit's revised Enforcement Policy, a financial penalty is likely to be considered where:

- Breaches have continued despite previous compliance advice or warnings
- Detriment caused to consumers or third parties in general can be clearly monetised
- Any financial gain or loss avoided by the business can be monetised
- The business has sufficient financial means to pay a penalty
- No previous formal enforcement action has been imposed
- Action to vary, suspend or cancel the authorisation of a business would be disproportionate under the circumstances.

This list is non-exhaustive but sets out some relevant indicators that are likely to be considered when deciding whether to initiate the penalty calculation process or move to consider the other formal enforcement sanctions.

…

Calculation of a penalty

Where a financial penalty is deemed necessary an appropriate penalty amount will be considered. Overall, specific penalty amounts will not be attributed to specific individual breaches of the Rules but rather the overall nature and seriousness of a breach or collection of breaches.

…

Nature Consideration Categories

The nature of a breach or collection of breaches will initially be assessed and will be set out under 3 general levels, each carrying a score.

Basic – Score: 1

The nature of breaches that fall under this category will be the least serious, are likely to be relatively minor and may also relate to more basic administrative failings. Breaches are not likely to be linked to any significant systemic failures, a business is likely to have cooperated fully with the investigation and may have taken significant steps to remedy the issues raised.

Escalated – Score: 2

The nature of breaches that fall under this category are likely to be more serious with a number of factors causing increased concern. It is likely that the authorised person would not have taken on board any previous compliance advice or warnings. There may have been less cooperation with the investigation from the authorised person generally.

Severe – Score: 3

The nature of breaches that fall under this category will be the most concerning with a number of factors causing significant regulatory issues. Breaches that fall into this category are generally likely to be deemed as intentional, reckless and negligent. It is likely that the authorised person would have ignored previous compliance advice or warnings and there may have been no cooperation with the investigation from the authorised person.

…

The example behaviours mentioned in each category listed are not exhaustive but provide an idea of the relevant factors that could contribute to the overall assessment of the nature of a breach or group of breaches.

Seriousness Consideration Categories

The second element of consideration consists of an assessment of the overall seriousness of a breach or collection of breaches. The level of seriousness is effectively based on the overall impact of the breaches identified and how far the non-compliance has affected other parties.

Low – Score: 2

Breaches that fall into this category will be the least serious and are unlikely to have any wide impact on consumers or other organisations. A business placed in this category is likely to be in a position where a clear breach of the Rules has been identified but are likely to be administrative or technical breaches which do not have a wide impact.

Medium – Score: 4

Breaches that fall into this category are likely to have affected a number of consumers or other organisations. The detriment caused may have affected a group of consumers or limited numbers of other organisations however there is likely to be potential for even further, more widespread detriment if action is not taken.

High – Score: 6

Breaches that fall into this category are likely to have already affected large numbers of consumers or other organisations over a considerable period of time. The detriment caused is likely to be widespread and consumers or defendant businesses may have incurred significant costs as a result of the business' practices.

Final Score Calculation

The scores attributed from both the Nature and Seriousness categories are then added together to give a final score. As a result of the different factors being considered as part of the assessment, it will be possible for a breach or collection of breaches to be placed at different levels of each step.

Once a final score is reached, an assessment of the business' means will also need to be conducted. A business' means will play a pivotal role in the consideration of the appropriateness of a penalty and, in conjunction with the final score derived from the initial nature and seriousness assessment, will provide an indication of an appropriate penalty range.

Businesses' turning over less than £500k per annum can be subject to a penalty of no more than £100k. Businesses with a turnover of £500k or more per annum will be subject to penalties based on a percentage of their turnover which ultimately can not exceed more than 20% of their turnover.

Annex A provides some examples of the types of considerations that may affect an assessment of the nature and seriousness of a breach or group of breaches.

Annex B provides details of the relevant penalty bands in which a non-complaint, authorised person may be placed.

Annex A: Nature & Seriousness Scoring Table

Nature	Score
…	
Escalated • Minimal/Some cooperation from authorised person with regulatory investigation • Breach as intentional, negligent or reckless but minor in nature • Breaches continued after notification of non-compliance • Breach may have formed a pattern of misconduct or resulted from systemic failures	2

…	

Annex B: Penalty Band Table

Band	Nature/ Seriousness Rating	Score	Penalty Range (Fixed) - Turnover less than £500,000 in previous 12 months	Penalty Range (%) - Turnover £500,000 or more in previous 12 months
A	…			
B	Escalated/Low	4	£3,000 - £12,500	0.6% - 2.5%
	Basic/Med	5	£12,500 - £25,000	2.5% - 5%
	Severe/Low			
C	…			
D	…			
E	…			

…"

C. The decision to impose a penalty

7. On 13 October 2014, the respondent wrote to Mr Hogarth, a "letter of warning", following its audit of the appellant in September 2014:

> "**SRA Code of Conduct**
>
> Client Specific Rule 8 of the Conduct of Authorised Persons Rules 2013 (2) ('CAPR') states that your business must not act in a way that puts a solicitor in breach of the rules governing their conduct.
>
> Rule 7.03 of the SRA Code of Conduct prohibits solicitors from publicising their firm or practice by making unsolicited approaches in person or by telephone to a member of the public. Rule 7.05 states that solicitors must not authorise any other person to conduct publicity for their firm or practice in a way which would be contrary to Rule 7.
>
> Your business markets the services of your panel of solicitors via a live telemarketing campaign. Such marketing could place the solicitors in breach of their code of practice, and consequently your business in breach of Client Specific Rule 8 of the CAPR. Due to the seriousness of this matter, I feel it necessary to warn you about the conduct of your business.
>
> **You must put measures in place to ensure that your business's marketing activity does not place your panel of solicitors in breach of the SRA Code of Conduct.**"
>
> **Telephone Preference Service ('TPS')**
>
> The Regulator is aware of a number of complaints made to the Office of Communications ('Ofcom') by TPS registrants who have received an unsolicited telemarketing call from your business. Your response to Ofcom states that the data was supplied by a third party and/or you had consent to make a call. The Regulator

has also received a number of complaints directly from TPS registrants who have received an unsolicited telemarketing call from your business.

Client Specific Rule 4 of the CAPR requires that all cold calling is carried out in accordance with the Direct Marketing Associations Direct Marketing Code of Practice ('DMA Code of Practice'). Rule 3.1 of the DMA Code of Practice requires members to follow all legislation relating to the processing of data, including The Privacy and Electronic Communications (EC Directive) Regulations 2003 ('PECR'). Failure to comply with PECR would therefore constitute a breach of the DMA Code of Practice and consequently Client Specific Rule 4 and General Rule 5 of the CAPR.

Regulation 21 of PECR prohibits the making of unsolicited telemarketing calls to any number registered against the Telephone Preference Service ('TPS'), unless the recipient of the call has notified your business that, for the time being, they do not object to receiving such calls. In order to override TPS, consumers must have 'opted in' to receiving marketing calls from Complete Claim Solutions Ltd, or a declared trading name, specifically. Upon review of the 'opt ins' supplied post-audit, it is evident that your business does not have overriding consent to make unsolicited telemarketing calls to numbers registered against the TPS.

You advised at audit that your business does not currently screen its data against the TPS prior to calling. TPS screening is undertaken by your data suppliers prior to the purchase of data. It is insufficient to rely on assurances made by a third party that data has been screened against the TPS. As it is your business that is making the call and marketing its services, it would be deemed to be the instigator and therefore liable for any breaches of PECR.

In order to ensure compliance with Regulation 21 of PECR, I recommend that you screen data against the TPS in-house at least 28 days prior to calling. If this is not feasible, you must ensure that you have rigorous systems in place to monitor your data suppliers and to ensure that TPS screening is undertaken.

All businesses were advised of their legal obligations in relation to direct marketing in Bulletin 23, which is also accessible on our website http://www.justice.gov.uk/claims-regulation/information-for-businesses. I therefore feel it necessary to warn you about the conduct of your business.

You must ensure that your business screens all data against the TPS at least 28 days prior to calling, and any number registered against it is not called. If TPS screening will be undertaken by a third party, you must ensure that you have systems in place to certify that screening is undertaken in accordance with PECR.

…

Action Required

You are now required to take the following action:

- Put measures in place to ensure that your business's marketing activity does not place your panel of solicitors in breach of the SRA Code of Practice. Please

explain how you will achieve this and provide evidence support your explanation.

- Ensure that your business screens all data against the TPS at least 28 days prior to calling and any number registered against is not called. Please explain how you will achieve this and provide evidence support your explanation.

- If TPS screening will be undertaken by a third party, ensure that you have systems in place to certify that screening is undertaken in accordance with PECR. Please explain how you will achieve this and provide evidence support your explanation."

8. Scott Robert LLP wrote to the respondent on 12 November 2014, giving the appellant's response to the letter of warning.

"**3. Telemarketing**

3.1. Our client advises that all data purchased has been opted in. The consumers have opted in to be contacted from third parties and have solicited to the call. This marketing method therefore does not breach any of the panel solicitor's Code of Conduct. Our client will obtain the opt in evidence from the providers on a periodic basis to ensure that this remains the case.

3.2. Call Credit Marketing Solutions is a trading name of The Trading Floor Limited. Its address is One Park Lane, Leeds, LS3 1EP. Company number 5749125. Our client previously purchased leads from this firm but no longer does so. It may however purchase leads from the firm in the future.

3.3. Our client's data providers screen all records against the Telephone Preference Service (TPS) register. In addition to this our client is implementing a due diligence procedure to monitor that the third party is undertaking these checks correctly. It will check that a certain percentage of records have been screened against the TPS register each time that it purchase any volume of records from the providers.

3.4. Our client confirms that these actions have been undertaken. We enclose a copy of the client's procedure in respect of the purchase of data.

…

SRA Code of Conduct

As detailed in the above audit report response our client's business model currently operates in a manner that ensures solicitors are not put in breach of their Code of Conduct. It will obtain opt in evidence on a regular basis to maintain this.

Telephone Preference Service ('TPS')

As detailed in the above audit report all data is screened by our client's data providers prior to its transfer. Our client will not use any of this data after a 28 day period and will undertake a due diligence check each month on a percentage of the records it is supplied to ensure that it has been TPS checked.

…"

9. The decision letter of 14 October 2015 includes the following:

"1. The complaints demonstrate you have continued to contact consumers registered with the TPS without their consent, despite being advised to cease doing so in our letter of warning dated 15 October 2014. Although the number of complaints is small in comparison to the volume of calls you made, they indicate a wider systemic problem.

2. The TPS is the official central opt-out register on which consumers can record their preference not to receive unsolicited sales or marketing calls. TPS screening ensures that you do not contact the individuals that are registered; however this would not ensure that any telephone calls you make are solicited. You confirmed in an email dated 1 April 2015 that you only provide leads to solicitors, and you provided sample opt-ins relating to the data you used to market for personal injury claims. These opt-ins were not sufficient for your marketing to be deemed solicited for the purposes of the Solicitors Regulation Authority ('SRA') Code of Conduct, therefore any leads introduced to a solicitor as a result of such marketing will have put the solicitor in breach. Your failure to provide evidence of a sufficient opt-in also demonstrates that these breaches are systemic.

3. Although you acquired sample opt-ins as part of your due diligence, you failed to identify that they were insufficient for generating personal injury leads ultimately being introduced to a solicitor. The due diligence you carried out was therefore inadequate. You also relied on a third party to screen data against the TPS for you despite the repeated complaints. Furthermore, using authorised businesses does not negate the requirement for you to undertake appropriate due diligence.

4. The guidance note contains a list of circumstances in which a financial penalty is likely to be considered. The guidance specifies that this list is not exhaustive, and simply sets out some indicators that could initiate the penalty calculation process. You have been provided with prior advice in relation to the rule breaches identified and you have been afforded sufficient time to rectify these breaches. Therefore an undertaking to 'prove TPS screening' is unlikely to be effective in bringing you to compliance, and would not ensure you comply with the other rule breaches identified.

5. We deem the nature of the breaches to be escalated. Contrary to your representations, you have not followed previous advice to cease contacting TPS registered consumers or ensure you prevent putting your panel of solicitors in breach of the SRA Code of Conduct. Furthermore, you failed to identify, when conducting due diligence, that the opt-in obtained did not make your telephone calls solicited; therefore the breaches are not purely administrative.

We also deem the seriousness of the breaches to be medium. From the evidence you have supplied, all referrals to solicitors were made as a result of an unsolicited approach. Although you state that 47 complaints does not constitute a large number of consumers, the complaints indicate wider systemic failures. These pose a nuisance to consumers and a detriment to solicitors who are subsequently in breach of the SRA Code of Conduct.

6. The level of the financial penalty has been determined in accordance with reference to your turnover, and it is proportionate and reasonable in the circumstances. However, I accept that paying the full financial penalty with 28 day payment terms could make it difficult for your business to constitute to trade in its current capacity. I am therefore imposing the financial penalty across three instalments as specified below.

7. Your activities are subject to separate investigations as they are focused on different complaints, professional conduct issues, and potential breaches, which need to be assessed separately. I have considered the evidence for this specific investigation and I am satisfied that you have failed to comply with a condition of your authorisation and that you should be required to pay a penalty. The other investigation led by Mr Clive Sellek remains ongoing.

As a consequence, I am requiring Complete Claim Solutions Limited to pay a penalty in accordance with Regulation 52:

Amount of financial penalty: £91,845
Number of payments: 3
The date by which the first instalment of £30,615 is required to be paid: 11 November 2015
The date by which the second instalment of £30,615 is required to be paid: 14 February 2015
The date by which the third instalment of £30,615 is required to be paid: 14 June 2015".

10. At 4-153 of the bundle there is to be found a table setting out the respondent's reasoning regarding the nature and seriousness of the alleged breaches by the appellant:

"…

Nature	**Score**	**Met by CCS?**	**Reasoning**
Basic • Authorised person has cooperated fully with regulatory investigation		Yes	CCS responded to all requests for information, although did request a number of extensions.

• Breach was not intentional, negligent or reckless	1	No	The failure to conduct adequate checks on the data purchased and ensure that TPS screening was undertaken was reckless at the very least.
• Breach has ceased after authorised person notified of non-compliance		No	We continued to receive complaints from consumers after the letter of warning was sent to the business regarding the same matters i.e. telemarketing breaches.
• Brach did not form a pattern of misconduct or result from systemic failures		No	Breaches did form a pattern of misconduct.
• Administrative/Technical breaches (i.e. renewals, change of details on application form etc.)		No	The breaches were not administrative, they related to material breaches of the CAPR which led to consumer detriment.
Escalated			
• Minimal/Some cooperation from authorised person with regulatory investigation		Yes	As above.
• Breach as intentional, negligent or reckless but minor in nature	2	Yes	As above. The breaches could have been avoided by TPS screening in-house, instead of relying on a third party, and by undertaking adequate checks on the data at to ensure sufficient consent. As we did not receive a huge volume of complaints, however, and there was no financial detriment to consumers, we felt it would fall within escalated rather than severe.
• Breaches continued after notification of non-compliance		Yes	As above.
• Breach may have formed a pattern of misconduct or resulted from systemic failures		Yes	The complaints received suggest a pattern of calls being made to consumers where the business cannot evidence sufficient consent

Severe • Authorised person has been uncooperative during investigation		Yes	As above.[1]
• Breach was intentional, negligent or reckless	3	Yes	As above. We classed it as escalated rather than severe due to the relatively low number of consumer complaints received and the lack of financial detriment suffered by consumers.
• Breaches continued after notification of non-compliance		Yes	As above.
• Breach formed a pattern of misconduct or resulted from systemic failures		Yes	As above.
Seriousness			
Low • Inconvenience but no/minimal loss, detriment, impact or risk to consumers/other persons or bodies	2	No	We have received complaints from consumer regarding CCS's telemarketing activity, which suggests that they did suffer some kind of detriment.
• Administrative/Technical breaches (i.e. renewals, change of details on application form etc)		No	The breaches were not administrative or technical.
Medium • Moderate loss, detriment, impact or risk to consumers/other other persons or bodies	4	Yes	The complaints received indicate moderate loss in the form of annoyance, irritation or distress at receiving an unwanted marketing call, rather than any significant loss, such as loss of money.
• Potential for moderate loss, detriment, impact or risk to consumers/other other persons or bodies		Yes	The breaches identified also have the potential to cause moderate detriment to consumers
High			

[1] In oral evidence, Ms Moore confirmed that this entry was wrong, in that, as indicated by the first entry in the table, the appellant had co-operated.

• Significant loss, detriment, impact or risk to consumers/vulnerable consumers)/other persons or bodies	6	No	We did not receive any complaints which indicate significant loss, such as financial loss suffered by consumers.
• Potential for significant loss, detriment, impact or risk to consumers/vulnerable consumers/other persons or bodies		No	Any potential loss is unlikely to be significant as there was no evidence of financial detriment to consumers.
• Wide scale detriment		No	As we received a relatively small number of complaints, we did not think that the breaches resulted in wide scale detriment.

…"

D. Grounds of appeal

11. In its grounds of appeal, the appellant stated:-

> "In our response to the proposed financial penalty (B1) we acknowledged that of the 63 reported incidents, we had been responsible for 47 of these calls. We acknowledged that any call to a TPS registered number is one too many and outlined our position on the improvements made. In B1 we outline that for the five month period of October 2014 – February 2015 we had 33 breaches which equates to 0.000919% of the total calls made from our company. We go on to state that in the three months following this period the 14 confirmed breaches equates to 0.000484% of the total calls made from our company. We conclude by highlighting that for the two periods assessed the amount and proportion of these breaches has halved and that at the time of writing we had not been notified of any breaches whatsoever for the period of June onwards.
>
> We concede that by contacting these 47 people over the course of the last year we have failed to conduct thorough enough TPS screening, however we reject that these 47 people constitute 'a substantial volume' or that they 'indicate a wider systemic problem' as Mr Rousell has asserted. We have acted in good faith and have shown improvements and willingness to comply with PECR since receipt of the letter of warning received in October of last year and to impose such a large financial penalty in response to a relatively low number of breaches which have already been remedied, and to date not repeated is grossly unjust. We have fully cooperated and been transparent with the MOJ throughout our 7 years' trading and this was referred to in document A5 wherein a Senior Claims Management Officer acknowledges our cooperation.
>
> …

In B1 we detailed our due diligence when dealing with data suppliers and reminded Mr Rousell that our main data supplier 'The Data Partnership' are regulated by the Ministry of Justice and according to The Data Partnership have received glowing audit reports. Considering that they are one of the largest data centres in the UK we can see that no investigations have ever been undertaken from the Ministry of Justice or any enforcement actions made. The data partnership provides data to regulated Claims Management Companies throughout the country and to date we appear to be the only company being challenged by the Claims Management Regulator about the due diligence surrounding their opt-ins. To date the data partnership has not been warned by the Ministry of Justice that their opt-ins are unsatisfactory or may place potential Claims Management Companies in breach of their obligations to the Conduct of Authorised Persons Rules. In light of this we cannot concede that we have failed to conduct appropriate due diligence in relation to data acquisition.

In response to the claim that CCS failed to ensure the data was TPS screened by our third party suppliers, we acknowledged in B1 that we accepted this assertion and as a result changed our operating procedures to ensure that we did not repeat this oversight. As referenced in section 1 of this appeal document we agree that the level of TPS screening has not been immaculate, but deny that the number of resultant breaches is substantial and indicates a wider systemic problem.

…

We acknowledge that if we were to introduce a potential client to a solicitor who had been registered against the TPS that the approach would be deemed unsolicited as we did not obtain overriding consent. For this reason as stated in B1 we manually perform a third check against the TPS register for each client introduced to make sure with total certainty that we do not place the solicitor in breach of its obligations to the SRA. We have received no notification from our panel of solicitors that they have received complaints of this nature from their clients, or warnings in relation to this from their R regulator. We work proactively with all of the solicitors on our panel to ensure our processes and practices are compliant to all regulatory standards for both us as a Claims Management Company and them as a solicitor. We had a detailed conference call with one of our solicitors and a data provider detailing the level of opt-ins and they were satisfied that this would not put them in breach of their obligations to the SRA.

In A2 Mr Rousell asserts that if one of the 47 consumers contacted by CCS were to be introduced by us, to a solicitor on our panel, then we would be in breach of client specific rule 8. However as none of the 47 consumers contacted by CCS were ever introduced to a solicitor on our panel, and in light of our procedures that have successfully ensured this has never been the case we cannot accept that we have actively breached a condition of our authorisation. In light of this we view a financial penalty on this basis to be an unjustified act.

…

> *'Escalated – Score: 2*
>
> *The nature of breaches that fall under this category are likely to be more serious with a number of factors causing increased concern. It is likely that the authorised person would*

not have taken on board any previous compliance advice or warnings. There may have been less cooperation with the investigation from the authorised person generally.'

We disputed the suitability of this category and instead suggested that the following would be more appropriate:

'Basic – Score: 1

The nature of breaches that fall under this category will be the least serious, are likely to be relatively minor and may also relate to more basic administrative failings. Breaches are not likely to be linked to any significant systemic failures, a business is likely to have cooperated fully with the investigation and may have taken significant steps to remedy the issues raised.'

We argued that this category was the most appropriate as contacting 47 consumers registered over the course of 12 months we deem to be relatively minor and as the result of a basic administrative failing; one which we have already identified and remedied with no reoccurrence to date. To receive an escalated score 2 the criteria suggests that 'It is likely that the authorised person would not have taken on board any previous compliance advice or warnings' however in document A5, a letter of correspondence from a Senior Claims Management Officer with the Claims Management Regulation Unit she remarks that 'I can, however, confirm that you have complied with all advice provided at audit and this will be recognised should any further issues arise with your business…'

Mr Rousell asserted that the following category applied to our case:

'Medium – Score: 4

Breaches that fall into this category are likely to have affected a number of consumers or other organisations. The detriment caused may have affected a group of consumers or limited numbers of other organisations however there is likely to be potential for even further, more widespread detriment if action is not taken.'

We disputed the suitability of this category and instead suggested that the following would be more appropriate:

'Low – Score: 2

Breaches that fall into this category will be the least serious and are unlikely to have any wide impact on consumers or other organisations. A business placed in this category is likely to be in a position where a clear breach of the rules has been identified but are likely to be administrative or technical breaches which do not have a wide impact.'

We argued in our representations that this category was the most appropriate as the breaches which we acknowledge have been the issue of contacting 47 consumers who were registered against the TPS however not progressing to introduce those consumers to solicitors. As none of these clients were introduced to a solicitor we did not cause the solicitor to breach their obligations to the SRA and as such the breaches did not have a wide impact on consumers or other organisations. We have readily agreed the administrative error which led to the contact of the 47 consumers throughout the 12

months and as such feel this category is the most fitting should a financial penalty be suitable at all."

E. Evidence and submissions

12. Mr Hogarth and Mr Roberts, on behalf of the appellant, contended that, although the appellant had been guilty of calling a number of members of the public who had registered under the Telephone Preference Scheme (TPS), in breach of the appellant's conditions of authorisation, these had been relatively very few in number (compared with the total numbers called) and the appellant had endeavoured to put in place arrangements that would prevent (or at least minimise) the risk of further infringements. So far as the issue of compliance with the SRA Code was concerned, both Mr Hogarth and Mr Roberts began by effectively reiterating the appellant's stance, as set out in the grounds of appeal. They denied that the appellant was in breach. It was sufficient for the purposes of the conditions of authorisation if a person had "opted in", on the basis indicated in the sample Data Permission Statement set out at pp 4-35 of the bundle. Mr Hogarth's stance was that he could not see how the sector of the industry in which the appellant worked could operate if, as contended by the respondent, a person had to consent, compatibly with the SRA Code, to be contacted on behalf of a solicitor about a claim.

13. As the hearing in March 2014 progressed, however, it became apparent, particularly under cross-examination by Mr McGurk, that Mr Hogarth accepted the legal position regarding the SRA Code. The appellant's stance became that the respondent should have advised the appellant specifically about the importance of the Code. Mr Hogarth and Mr Roberts placed particular emphasis upon the respondent's CMR Bulletin 26, issued on 15 October 2015, which contained the following:-

> "3. **Cold calling for personal injury claims – reminder**
>
> CMCs are not permitted to make unsolicited cold calls for personal injury claims. Client specific Rule 8 of the Conduct of Authorised Persons Rules prohibits businesses from acting in a way that would put a solicitor in breach of the Rules governing their conduct. The SRA Code … requires solicitors to satisfy themselves that any client introduced to them has not been acquired by way of an unsolicited approach by telephone or in person.
>
> You must ensure that any telemarketing calls made to consumers, who are subsequently introduced to a solicitor, are solicited. This means that you cannot contact a consumer by telephone unless:
>
> (a) they have explicitly agreed to be contacted about making a claim; and
> (b) their contact details were not obtained as a result of an unsolicited approach, in person or by telephone, by your business or any other party.
>
> If you purchase data from a third party, general Rule 2 e) requires you to undertake professional diligence to ensure any referrals, leads or data have been

> obtained in accordance with the requirements of the legislation and Rules. You must ensure that you document this due diligence in order to comply with general Rule 2 d)."

14. For the respondent, Ms Moore told the Tribunal that the respondent had decided to impose a penalty by reference to 5% of turnover, which she described as the basic level for the "moderate" category. She denied that the "TPS" issue had been at the forefront of the respondent's thinking in imposing the penalty; both that and the SRA issue had been considered. Ms Moore said that, since the appellant had not supplied the respondent with examples of actual "opt-ins" at the relevant time, it had not been possible for the respondent to tell the appellant that the opt-ins were not, in fact appropriate for SRA purposes

15. Ms Moore also told the Tribunal that, in her view, it was not for the respondent to advise regulated bodies and that these should take their own advice. Nevertheless, she considered that the SRA Rules actually explained precisely what such bodies should be doing.

16. In cross-examination by Mr Hogarth, Ms Moore said that if the appellant had supplied accounts at the appropriate time, then these would have been considered in determining the level of penalty.

17. Mr Williams explained how the appellant had been the subject of an investigation undertaken by the respondent in 2013, which led to a warning in October 2013 that the appellant was acting in breach of its authorisation. A further letter of warning was issued on 13 October 2014. The respondent's investigation had been closed, following the Scott Robert letter of 12 November 2014, advising that all data purchased had been opted in and that marketing "therefore does not breach any of the panel solicitor's Code of Conduct".

18. In oral evidence, both in-chief and under cross-examination, Mr Williams made it clear that the respondent was led to believe from the Scott Robert letter that requirements of the SRA Rules were being met by the appellant. It subsequently emerged that this was not, in fact, the case, as a result of which breaches of the SRA requirements continued.

19. Mr Williams said that, in his view, the warning letter of 13 October 2014 had made it plain how the SRA's requirements were relevant to the appellant.

F. Discussion

(1) Breaches of conditions of authorisation

20. The evidence shows plainly that telephone calls by the appellant to persons who were registered under the TPS were made in breach of the appellant's authorisation,

for a period of almost two years from the point when interest in the appellant on the part of the respondent began. From that point at least (if not before), the appellant should have been taking proper steps to remedy the position. Having heard the evidence, we prefer that of the respondent to the claims of the appellant that it did what was reasonably necessary. The breaches were significant.

21. The breaches of the SRA Code of Conduct, and the attitude taken towards this by the appellant, are particularly serious. The appellant's stance on this issue has been grossly inconsistent. Under cross-examination by Mr McGurk, Mr Hogarth admitted that he was "familiar with the Code of Conduct". Mr Hogarth did not even recall talking to Messrs Scott Robert in connection with the letter which that firm wrote in November 2014 on behalf of the appellant.

22. Mr Hogarth's belated attempt to place the blame for the SRA non-compliance on the respondent is, we find, entirely unjustified. As a commercial operator whose clients were solicitors, the appellant was reasonably to be expected to ensure that the SRA requirements were met. The legal position was made abundantly plain by the respondent in its warning letter of 5 August 2015, but the warning went unheeded.

23. In short, the Tribunal finds that those representing the appellant have wrongly attempted to blame others, when the appellant knew or – at best – was reckless as to whether it was complying with the requirements stemming from the SRA Code of Conduct.

24. Remarkably, in its attempts to justify its account of its financial position, the appellant saw fit in connection with the May 2016 hearing to put forward a letter dated 28 April 2016 from LA Law Limited. LA Law is a client of the appellant. Its director is Ms Lucy Allen. She is Mr Hogarth's wife, although the couple are said to be involved in divorce proceedings. The letter contends that "as a matter of law the agreement between our companies is void" and that "there is no reasonable prospect of Complete Claim Solutions Limited … supplying again to L A Law, given the compliance issues". We then see the following:-

> "You will recall that on 23 September 2014, the two companies entered into a written agreement to document their relationship which was to apply from 9 April 2013. This reflected the fact that the written agreement between the two parties was inadequate and was in the form of an email until that date.
>
> Under clause 4 of the relevant Agreement, and particularly clause 4.8, where Complete Claim Solutions undertook not to introduce to L A Law any client acquired as a consequence of marketing, advertising, publicity or other activities, which if done by a solicitor would be in breach of the SRA Code of Conduct 2011, and in particular, not by cold calling, or through misleading or inaccurate publicity, and you will recognise immediately that the Sunday Times investigation and the Ministry of Justice investigation indicate a breach of this term.
>
> Under clause 4.9 Complete Claim Solutions also undertook to use your best endeavours to comply with three sections of the SRA Code of Conduct, which we

believe the actions outlined by the Sunday Times, and which led to the Ministry of Justice investigation, are breached."

25. The appellant has not disclosed to the Tribunal a copy of the agreement of 23 September 2014. We are not aware that the appellant denies its existence or that the appellant takes any issue with the veracity of what Ms Allen, a practising solicitor, has to say in this regard.

26. The letter of 28 April 2016 serves to confirm the Tribunal's conclusion, that it has not been told the truth about the SRA issue and that the appellant has, at all material times, known about the relevant requirements but has, at best, acted recklessly in respect of them.

(2) The appellant's financial position

27. At the hearing in March 2016, the appellant filed a document entitled "Report of the Director and Unaudited Financial Statements for the Year Ended 31 July 2015 for Complete Claim Solutions Limited". The document was a draft and was unsigned. Amongst other things, it showed a turnover for 2014 of £3,833,884 and a turnover for 2015 of £3,139,978. An operating profit for 2014 of £299,081 had, according to the draft, become an operating loss for 2015 of £820,779. Administrative expenses had apparently increased from £3,171,186 in 2014 to £3,950,530 in 2015.

28. Directions were given by the Tribunal following the March hearing, with the aim of identifying matters that could be agreed between the parties regarding the appellant's financial position. Amongst other things, the respondent, pursuant to directions, sought the appellant's profit and loss account for 2013/2014. This was not provided. Nor were the management accounts on the basis of which the 2014/2015 accounts, handed to the Tribunal in March, were said to have been produced. Also sought was financial information in relation to those whom the respondent understood to own and control the appellant (Mr Hogarth and Ms Allen). A reply was received, which the respondent did not consider to be helpful.

29. The respondent also asked about the cost of sales. This was given as £363,617 for 2014 but only £10,227 for 2015. The respondent asked for details as to the dramatic fall but, according to the respondent, the appellant refused to supply such evidence.

30. A bad debt in the sum of £1,065,000 is shown under the heading "Expenditure" in the profit and loss account for 2015.

31. In his "Response to Questions Raised", Mr Roberts contended, on behalf of the appellant, that the respondent now had sufficient information to draw meaningful conclusions about the financial health of the appellant and that the latter failed to see why any further information would be of relevance to the issues to be determined. The relevant "bad debt" was, according to Mr Roberts, a debt owed by LA Law Limited:-

> "who are currently refusing to make payment on this debt and have made their position clear that they believe the debt to be invalid due to contractual dispute. The appellant is considering its options regarding litigation to settle this debt however the company lacks the resources both financially and in personnel to devote to another lawsuit at the moment. As a result the debt has been rendered unrecoverable".

It was apparently for this purpose that the appellant adduced the letter of 28 April 2016 from LA Law, to which reference has earlier been made.

32. Having heard the evidence and submissions on the issue of the financial position of the appellant, the Tribunal is not satisfied that the appellant has given it a reliable picture. We accept that the respondent was informed by the appellant that the appellant's turnover for 2015 was in the region of £1,800,000. This turns out to be entirely inaccurate. The contention on behalf of the appellant that £1,800,000 was the amount of turnover in respect of England and Wales is problematic, given that the relevant regulatory regime does not require or permit turnover that might relate to other parts of the United Kingdom to be excluded for this purpose.

33. So far as cost of sales was concerned, the appellant's representative said that the remarkable reduction was in error. However, despite being asked by the respondent, the appellant does not see fit to give any details. Likewise, the Tribunal has not been given any satisfactory explanation for the steep rise in administrative expenses.

34. The letter of 28 April from L A Law was apparently written in response to an email to Ms Allen from Mr Hogarth. Despite being asked for it by the respondent, this email has not been supplied. The blithe assertion by Mr Roberts that, although the appellant is, "considering its options regarding litigation", a lack of financial and personnel resources means that "the debt has been rendered unrecoverable" is entirely unpersuasive. At the very least, one would expect a responsible company to take legal advice before intimating to its accountants that a debt of this size and kind is irrecoverable.

35. In all the circumstances, the Tribunal is unable to place any weight on the materials adduced by the appellant regarding its financial position. The appellant has failed to show, on balance, that the imposition of the penalty of £91,845, payable in instalments, would reasonably result in the appellant going out of business.

36. Mr Hogarth has, at various points, urged the respondent to withdraw the appellant's authorisation, rather than impose the financial penalty. Given that we do not find the imposition of the penalty would reasonably result in the appellant's ceasing to be able to act as a regulated body, we find no merit in this request. The respondent was, in the circumstances, entitled to conclude that the imposition of the financial penalty was a proportionate response to the appellant's breaches and that, on the evidence available to the respondent, terminating the appellant's authorised status would, by contrast, have been disproportionate.

(3) Penalty

37. On the basis of our findings of fact, we are satisfied that the respondent's ascertainment of the penalty was fully compliant with the December 2014 Guidance. The scores and conclusions reached by the respondent, as set out in the table in paragraph 10 above, have not been shown by the appellant to be wrong, except for the answer regarding co-operation, which Ms Moore said was incorrect (see footnote 1 on page 20 above). We find that this slip has not materially affected the respondent's ascertainment of the overall penalty. Whilst the Tribunal's power to interfere with the respondent's decisions is not dependent upon finding that the respondent has behaved irrationally, as a statutory regulator the respondent's decisions in the regulatory sphere should be accorded due weight (Hope and Glory Public House Ltd v City of Westminster Magistrates Court [2011] EWCA Civ 31). Having done so, we find that there is no proper basis for disturbing the conclusions reached as to the size of the penalty.

G. Decision

38. This appeal is dismissed.

Judge Peter Lane
Dated: 15 July 2016