

PEC Reg 19 – Use of automated calling systems

Scottish National Party v IC

EA/2005/0021

15th May 2006

Cases:

Facts

Following various EC directives regulating the use of communication systems the UK introduced regulations to implement the provisions. The last set of regulations was the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PEC) which has remained in force. PEC regulates, amongst other things, the way electronic communications are used to market to individuals or data subjects.

The IC issued guidance notes on the interpretation of PEC and its predecessors which included particular guidance for political parties and other not-for-profit organisations. The IC's last guidance was entitled "Promotion of Political Parties" and was issued in May 2004 in readiness for the 2005 election. He took the view that where a recorded message was played to the person who answers the phone that was strictly prohibited by PEC Reg 19 unless the subscriber had given his/her prior consent. The SNP was advised by follow up letters from the IC, as were other political parties, as to the IC's views on automated calling systems (ACSs). Despite this the SNP used ACSs in the lead up to the 2005 general election. Some 200,000 calls were made to telephone subscribers with an automated message from Sir Sean Connery asking subscribers to vote SNP.

The IC issued an enforcement notice requiring the SNP to stop the practise.

Findings

Does Reg 19 extend to direct marketing by political parties?

The SNP argued that PEC did not apply to political parties despite the IC's views on the matter for a number of reasons including the Recitals to the 2002 Privacy Directive, which PEC implemented, refer to safeguarding subscribers from 'unsolicited **commercial** communications' and such a restriction would be a in breach of Article 10 of the European Convention on Human Rights by not allowing political parties to impart their ideas.

The Tribunal found that the 2003 Regulations do apply to political parties and their campaigning activities and that the automatic calls made by the SNP were in contravention of Regulation 19, because the SNP did not obtain the consent of data subjects to the use of an automated calling system before making those calls. The Tribunal, preferred the legal arguments of the IC, in particular that the 2002 Privacy Directive, the DPA and the 2003 Regulations do not exclude from regulation the direct marketing of not for profit organisations such as political parties.

In coming to this decision the Tribunal found that:

1. to accept that political parties were outside the remit of Reg 19 would then mean they were outside the remit of PEC;
2. this would also mean that other not-for-profit organisations would also be outside the remit of the Regs.;
3. the SNP despite contending Reg 19 did not apply still checked the TPS so as not to call those registered which showed they considered PEC applied at least on an opt-out basis;
4. neither the SNP nor other political parties queried the IC's guidance until threatened with an enforcement notice;
5. the only limitation being placed on the SNP was as to the method of conveyance of a communication, not as to its contents, and only to the extent that an individual had not previously consented or opted-in.

Conclusion

The Tribunal found that the Enforcement Notice served on the SNP by the IC was in accordance with the law and that the IC exercised his discretion properly when issuing the notice. The Tribunal dismissed the appeal.