

## **DATA PROTECTION ACT 1998**

### **SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

#### **MONETARY PENALTY NOTICE**

To: Skean Homes Ltd

Of: Wilson House, 2 Lorne Park Road, Bournemouth, BH1 1JN

1. The Information Commissioner ("the Commissioner") has decided to issue Skean Homes Ltd ("Skean") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is in relation to a serious contravention of regulations 21 and 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR").
2. This notice explains the Commissioner's decision.

#### **Legal framework**

3. Skean, whose registered office is given above (Companies House Registration Number: 13011912) is the organisation stated in this notice to have used and/or instigated the use of a public electronic communications service for the purpose of making unsolicited calls for the purposes of direct marketing contrary to regulation 21 of PECR.
4. Regulation 21 applies to the making of unsolicited calls for direct marketing purposes. It means that if a company wants to make calls

promoting a product or service to an individual who has a telephone number which is registered with the Telephone Preference Service Ltd ("TPS"), then that individual must have notified the company that they do not object to receiving such calls from it.

5. Regulation 21 paragraph (1) of PECR provides that:

*"(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."*

6. Regulation 21 paragraphs (2), (3), (4) and (5) provide that:

*"(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.”*

7. Regulation 24 of PECR provides:

*“(1) Where a public electronic communications service is used for the transmission of a communication for direct marketing purposes the person using, or instigating the use of, the service shall ensure that the following information is provided with that communication –*

*...*

*(b) in relation to a communication to which regulation 21 [or 21A] (telephone calls) applies, the particulars mentioned in paragraph (2)(a) and, if the recipient of the call so requests, those mentioned in paragraph (2)(b).*

*(2) The particulars referred to in paragraph (1) are –*

*(a) the name of the person;*

(b) *either the address of the person or a telephone number on which he can be reached free of charge.*"

8. Under regulation 26 of PECR, the Commissioner is required to maintain a register of numbers allocated to subscribers who have notified them that they do not wish, for the time being, to receive unsolicited calls for direct marketing purposes on those lines. TPS is a limited company which operates the register on the Commissioner's behalf. Businesses who wish to carry out direct marketing by telephone can subscribe to the TPS for a fee and receive from them monthly a list of numbers on that register.
9. Section 122(5) of the DPA18 defines direct marketing as "*the communication (by whatever means) of advertising material or marketing material which is directed to particular individuals*". This definition also applies for the purposes of PECR (see regulation 2(2) PECR & Schedule 19 paragraphs 430 & 432(6) DPA18).
10. "Individual" is defined in regulation 2(1) of PECR as "*a living individual and includes an unincorporated body of such individuals*".
11. A "subscriber" is defined in regulation 2(1) of PECR as "*a person who is a party to a contract with a provider of public electronic communications services for the supply of such services*".
12. Section 55A of the DPA (as applied to PECR cases by Schedule 1 to PECR, as variously amended) states:

*"(1) The Commissioner may serve a person with a monetary penalty if the Commissioner is satisfied that –*

*(a) there has been a serious contravention of the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 by the person,*

*(b) subsection (2) or (3) applies.*

*(2) This subsection applies if the contravention was deliberate.*

*(3) This subsection applies if the person –*

*(a) knew or ought to have known that there was a risk that the contravention would occur, but*

*(b) failed to take reasonable steps to prevent the contravention.*

13. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.
14. PECR were enacted to protect the individual's fundamental right to privacy in the electronic communications sector. PECR were subsequently amended and strengthened. The Commissioner will interpret PECR in a way which is consistent with the Regulations' overall aim of ensuring high levels of protection for individuals' privacy rights.
15. The provisions of the DPA remain in force for the purposes of PECR notwithstanding the introduction of the DPA18: see paragraph 58(1) of Schedule 20 to the DPA18.

## **Background to the case**

16. At all material times, Skean operated as a home improvement company with the aim of improving energy efficiency and reducing household bills. Skean was incorporated on 11 November 2020 at the registered office address of 41 Manor Road, Bournemouth, BH1 3EU. The registered address for Skean was amended at Companies House on 17 August 2023 to Wilson House, 2 Lorne Park Road, Bournemouth, BH1 1JN.
17. Skean has one active director, Manasa Veena Mamidi, who was appointed on 11 November 2020.
18. Skean first registered with the Information Commissioner's Office as a data controller on 6 January 2021, under registration number ZA840651.
19. Skean has been authorised by the Financial Conduct Authority as an introducer appointed representative since 7 April 2021.
20. Skean first came to the attention of the Commissioner in 2022 as part of an operation formed to assess and analyse complaint trends in relation to the energy and home improvement sector. The Commissioner identified a number of complaints against "Eco Hub", "Driveway Solutions" and "Eco Driveways", in which complainants stated that the calls were promoting energy grants for resin driveways and the caller had a strong Middle Eastern accent.
21. On 15 June 2022, the Commissioner issued a third party information notice to [REDACTED], the communications service provider, to identify the subscriber to the calling line identifiers ("CLIs") referenced in the complaints.

22. On 17 June 2022, ██████ responded to confirm that the CLIs were allocated to Skean. ██████ provided a copy of an invoice issued to Skean dated 4 February 2022. ██████ also provided three months of call records for the period 2 March 2022 to 31 May 2022 ("the Contravention Period").
23. The Commissioner reviewed the call records provided by ██████. The records show that Skean made a total of 614,342 connected calls to numbers registered with the TPS for more than 28 days.
24. The Commissioner's Online Reporting Tool ("OLRT") received 20 complaints about direct marketing calls from the CLIs allocated to Skean, during the contravention period.
25. During the contravention period, the TPS received a total of 11 complaints about the CLIs allocated to Skean.
26. The complainants stated the following:

*"Loft insulation. This number has repeatedly called over many days."*

*"Replacing driveway surface. The caller said that they were part of my local council when I asked what name he could not and said it was Southampton company."*

*"It was the 5th time I had been called by them. I had told them NOT to call me again after the second time."*

*"We are registered with TPS - illegal call."*

*"This is the second call I have had about Resin Drives. I find its annoying when you tell someone you don't want a resin drive, or any drive resurfaced but they still keep at you."*

27. On 1 August 2022, the Commissioner sent an initial investigation letter to Skean, enclosing a password protected spreadsheet of the complaints. The letter requested information from Skean to ascertain their compliance.
28. On 8 August 2022, Skean's director, Manasa Mamidi, responded to the Commissioner to request the password for the spreadsheet of complaints.
29. On 17 August 2022, the Commissioner was contacted by ██████████, solicitor, to advise that he was instructed by Skean. ██████████ requested an extension to respond to the Commissioner's initial investigation letter. That same day, an extension of time was granted to 8 September 2022.
30. On 20 September 2022, ██████████ provided a substantive response to the Commissioner's initial investigation letter. The response confirmed that:
- Data was sourced from a lead generator based in ██████████ called ██████████, which conducts lifestyle surveys for several sectors including home improvements. The response explained that an individual will express their interest in a service and their details were passed to a team within ██████████ to make a follow up call or arrange an appointment for the service required. The data was supplied to Skean once the appointment was made.
  - Skean was not named in the lifestyle survey, and therefore admitted that they did not have the consent required for those listed on the TPS register. However, the recipients of the calls had *"explicitly stated that they would like to hear from a home improvement company and, indeed, arranged an appointment."*

Skean failed to provide any supporting evidence to demonstrate this.

- ■ screened calls against the TPS register before a call was made. The calls were made through the call agent's computer which contained the screening software and did not allow a call to be made to anyone listed on the TPS register.
- ■ ran a suppression list or a "do not call list" for any person who expressed that they did not wish to receive a further call from the company. This is operated through a computer, so it is not possible to call a number once it has been suppressed.
- It was Skean's understanding that ■ complied with PECR. However, they failed to provide any supporting evidence to show if any due diligence checks had been conducted to ensure compliance with the legislation.
- Skean accepted there were a number of breaches on their CLIs, which they apologised for, but stated these occurred over a short period of time and they would have investigated sooner if they had been made aware of them.
- Skean had given ■ access to their predicative dialler and use of telephone numbers for five to six weeks as they had a technical issue with their dialler. This was on the explicit agreement that ■ would not use the lines for cold calling and that all calls were TPS screened. Skean suggested something untoward may have occurred with the TPS screening facility, suggesting a technical glitch or a rogue employee hacking/cloning the CLIs.

31. Skean failed to provide any policies or procedures relating to PECR compliance or staff training.

32. On 21 September 2022, the Commissioner issued a third party information notice to [REDACTED] to obtain further information about Skean. Through multiple exchanges with [REDACTED] between 27 September 2022 and 31 October 2022, the Commissioner established that:

- Manasa Mamidi was added to the account at the point of sign up on 3 February 2022 and was removed on 10 August 2022.
- The account was not transferred to a third party between 1 March 2022 and 5 June 2022.
- The payee associated with the account was [REDACTED], a director of a company called [REDACTED]).

33. The Commissioner sent further enquiries to Skean on 27 September 2022. On 11 October 2022, Mr [REDACTED] provided a response to the Commissioner's further enquiries on behalf of Skean. The response stated that:

- Skean was not the "instigator", as they did not "*encourage, incite, incentivise or ask*" [REDACTED] to make live direct marketing calls.
- Skean was unable to provide any evidence that individuals had explicitly stated that they would like to be contacted by a home improvement company.
- Skean did not have consent to override the TPS, and this occurred due to a technical error with their dialler. Skean provided a letter from [REDACTED] addressed to them at their registered office. The letter confirmed that [REDACTED] had encountered a technical issue with the dialler between 2 March and 25 July 2022, meaning that the predicative dialler failed to recognise certain telephone numbers as TPS registered.

34. The letter from ■ included ■s company information in the header. The Commissioner identified from the header that the telephone number associated with ■ is listed under the 'Contact Us' page on the website of ■.
35. ■ was incorporated on 5 June 2019 and is registered at Companies House at the same address as Skean. The organisation has two directors, Manasa Veena Mamidi, and ■.
36. On 7 November 2022, the Commissioner made further enquiries of Skean, requesting further information about due diligence, contracts and how data was sourced or obtained.
37. Mr ■ responded on behalf of Skean on the 28 November 2022, stating that:
- Skean only purchased leads for individuals who had indicated an interest in home improvement services.
  - Skean granted access to their dialler to ■, as ■ experienced technical issues with their own dialler.
  - ■ has limited public information available, as they are a sole trader.
  - Skean did not contribute to the wording of any campaigns and only obtained leads which included a person's name, telephone number and address. They received approximately 25 leads per week and paid a fee per lead.
  - Orders were placed by telephone with ■, and no formal agreement was in place.

38. The Commissioner carried out open-source research on [REDACTED]. On the company registration documents, it is noted that the legal name of the company in [REDACTED] is recorded as [REDACTED]. This is also, according to LinkedIn, the name of the business development manager at Skean.
39. On 16 January 2023, the Commissioner sent an end of investigation letter to Skean to explain that the enquiries had concluded, and formal action would be considered.
40. In conclusion, the Commissioner is satisfied that:
- The 614,342 calls were all made for the purposes of direct marketing as defined by section 122(5) DPA18.
  - Skean failed to identify themselves in calls, instead various false names were used (including "Eco Hub", "Driveway Solutions" and "Eco Driveways")
  - The director of Skean, Manasa Mamidi was added to the [REDACTED] account at the point of sign up on 3 February 2022, and was removed from the account nine days after receiving the initial letter from the ICO on 10 August 2022.
  - The account was not transferred to a third party during the contravention period.
41. The Commissioner has made the above findings of fact on the balance of probabilities.
42. The Commissioner has considered whether those facts constitute a contravention of regulations 21 and 24 of PECR by Skean and, if so, whether the conditions of section 55A DPA are satisfied.

### **The contravention**

43. The Commissioner finds that Skean contravened regulations 21 and 24 of PECR.
44. The Commissioner finds that the contravention was as follows:
45. Between 2 March 2022 and 31 May 2022, Skean used and/or instigated the use of a public telecommunications service for the purposes of making 614,342 unsolicited calls for direct marketing purposes to subscribers where the number allocated to the subscriber in respect of the called line was a number listed on the register of numbers kept by the Commissioner in accordance with regulation 26, contrary to regulation 21(1)(b) of PECR. This resulted in 31 complaints being made to the TPS and the Commissioner.
46. The Commissioner is also satisfied for the purposes of regulation 21 that these 614,342 unsolicited direct marketing calls were made to subscribers who had registered with the TPS at least 28 days prior to receiving the calls, and who for the purposes of regulation 21(4) had not notified Skean that they did not object to receiving such calls.
47. For such notification to be valid under regulation 21(4), the individual must have taken a clear and positive action to override their TPS registration and indicate their willingness to receive marketing calls from the company. The notification should reflect the individual's choice about whether or not they are willing to receive marketing calls. Therefore, where signing up to use a product or service is conditional upon receiving marketing calls, companies will need to demonstrate

how this constitutes a clear and positive notification of the individual's willingness to receive such calls.

48. The notification must clearly indicate the individual's willingness to receive marketing calls specifically. Companies cannot rely on individuals opting in to marketing communications generally, unless it is clear that this will include telephone calls.
49. Further, the notification must demonstrate the individual's willingness to receive marketing calls from that company specifically. Notifications will not be valid for the purposes of regulation 21(4) if individuals are asked to agree to receive marketing calls from "similar organisations", "partners", "selected third parties" or other similar generic descriptions.
50. Skean has not provided any evidence of the notifications or consents obtained.
51. Further, Skean failed, as required by regulation 24 of PECR, to provide the recipient of the calls with the particulars specified at regulation 24(2) of PECR.
52. The Commissioner has gone on to consider whether the conditions under section 55A DPA are met.

### **Seriousness of the contravention**

53. The Commissioner is satisfied that the contravention identified above was serious. This is because there have been multiple breaches of regulations 21 and 24 by Skean arising from the organisation's activities between 2 March 2022 and 31 May 2022, and this led to 614,342 unsolicited direct marketing calls being made to subscribers who were registered with the TPS and who had not notified Skean that

they were willing to receive such calls, and 31 complaints being made as a result.

54. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

### **Deliberate or negligent contraventions**

55. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Skean's actions which constituted that contravention were deliberate actions (even if Skean did not actually intend thereby to contravene PECR).
56. The Commissioner does not consider that Skean deliberately set out to contravene PECR in this instance.
57. The Commissioner has gone on to consider whether the contravention identified above was negligent. This consideration comprises two elements:
  58. Firstly, he has considered whether Skean knew or ought reasonably to have known that there was a risk that this contravention would occur. He is satisfied that this condition is met. Given that Skean relied heavily on direct marketing due to the nature of their business, it should reasonably have sought to familiarise itself with the relevant legislation. Skean had also been registered with the Information Commissioner's Office as a data controller and should therefore have been aware of the requirements of PECR compliance.

59. The Commissioner has also published detailed guidance for companies carrying out marketing explaining their legal requirements under PECR. This guidance explains the circumstances under which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax. Specifically, it states that live calls must not be made to any subscriber registered with the TPS, unless the subscriber has specifically notified the company that they do not object to receiving such calls. In case organisations remain unclear on their obligations, the ICO operates a telephone helpline. ICO communications about previous enforcement action where businesses have not complied with PECR are also readily available.
60. It is therefore reasonable to expect that Skean should have been aware of its responsibilities in this area.
61. Secondly, the Commissioner has gone on to consider whether Skean failed to take reasonable steps to prevent the contravention. Again, he is satisfied that this condition is met.
62. The Commissioner's direct marketing guidance makes clear that organisations utilising marketing lists from a third party must undertake rigorous checks to satisfy themselves that the personal data was obtained fairly and lawfully, that their details would be passed along for direct marketing to the specifically named organisation in the case of live calls, and that they have the necessary notifications for the purposes of regulation 21(4). It is not acceptable to rely on assurances given by third party suppliers without undertaking proper due diligence. Skean did not provide any evidence of due diligence undertaken.

63. Skean did not identify itself on the calls and/or provided false company names including 'Eco Hub, Driveway Solutions and Eco Driveways'.
64. Reasonable steps in these circumstances may also have included: screening the data itself against the TPS register (regardless of any assurances that might have been given by third parties); maintaining clear records of any consent provided by an individual for Skean to contact them; providing suitable training to employees to ensure they understand their data protection obligations; performing regular reviews of their marketing databases to ensure data is fit for purpose; carry out due diligence checks on third parties; ensure appropriate agreements are in place with third parties providing or handling data; and monitor and record compliance issues where necessary.
65. Given the volume of calls and complaints, it is clear that Skean failed to take those reasonable steps.
66. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

**The Commissioner's decision to issue a monetary penalty**

67. The Commissioner identified no additional aggravating factors.
68. The Commissioner did not identify any mitigating features of this case.
69. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A (1) DPA have been met in this case. He is also satisfied that the procedural rights under section 55B have been complied with.

70. The latter has included the issuing of a Notice of Intent, in which the Commissioner set out his preliminary thinking. In reaching his final view, the Commissioner has taken into account the representations made by Skean on this matter.
71. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
72. The Commissioner has considered whether, in the circumstances, he should exercise his discretion so as to issue a monetary penalty.
73. The Commissioner has considered the likely impact of a monetary penalty on Skean. In doing so, the Commissioner has given careful consideration to the representations made by Skean in response to the Notice of Intent. However, the Commissioner has decided that a penalty nevertheless remains the appropriate course of action in the circumstances of this case.
74. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with PECR. The making of unsolicited direct marketing calls is a matter of significant public concern. A monetary penalty in this case should act as a general encouragement towards compliance with the law, or at least as a deterrent against non-compliance, on the part of all persons running businesses currently engaging in these practices. This is an opportunity to reinforce the need for businesses to ensure that they are only telephoning consumers who are not registered with the TPS and/or specifically indicate that they do not object to receiving these calls.
75. In making his decision, the Commissioner has also had regard to the factors set out in s108(2)(b) of the Deregulation Act 2015; including: the nature and level of risks associated with non-compliance, including

the risks to economic growth; the steps taken by the business to achieve compliance and reasons for its failure; the willingness and ability of the business to address non-compliance; the likely impact of the proposed intervention on the business, and the likely impact of the proposed intervention on the wider business community, both in terms of deterring non-compliance and economic benefits to legitimate businesses.

76. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

#### **The amount of the penalty**

77. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£100,000 (one hundred thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

#### **Conclusion**

78. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **14 February 2024** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
79. If the Commissioner receives full payment of the monetary penalty by **13 February 2024** the Commissioner will reduce the monetary penalty by 20% to **£80,000 (eighty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

80. There is a right of appeal to the First-tier Tribunal (Information Rights) against:

(a) the imposition of the monetary penalty  
and/or;

(b) the amount of the penalty specified in the monetary penalty  
notice.

81. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

82. Information about appeals is set out in Annex 1.

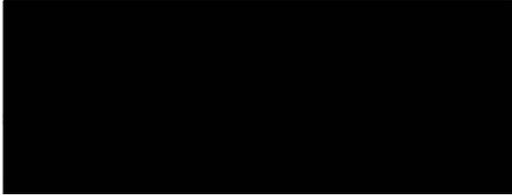
83. The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified within the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not been paid;
- all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
- the period for appealing against the monetary penalty and any variation of it has expired.

84. In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Dated the 11 day of January 2024.

Signed ..



Andy Curry  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **ANNEX 1**

### **SECTION 55 A-E OF THE DATA PROTECTION ACT 1998**

#### **RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER**

1. Section 55B(5) of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.

2. If you decide to appeal and if the Tribunal considers:-

a) that the notice against which the appeal is brought is not in accordance with the law; or

b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber  
HM Courts & Tribunals Service  
PO Box 9300  
Leicester  
LE1 8DJ

Telephone: 0203 936 8963

Email: grc@justice.gov.uk

a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.

b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.

4. The notice of appeal should state:-

a) your name and address/name and address of your representative (if any);

b) an address where documents may be sent or delivered to you;

c) the name and address of the Information Commissioner;

d) details of the decision to which the proceedings relate;

e) the result that you are seeking;

f) the grounds on which you rely;

g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;

h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time

and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in section 55B(5) of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).