

紀律研訊個案一 未得客戶同意下使用其個人資料作直接促銷

從業員在業務過程中需要經常收集和處理客戶的個人資料。監管局提醒從業員，在處理客戶的個人資料時，必須謹慎及遵守《個人資料(私隱)條例》(《私隱條例》)，否則不但可能被監管局紀律處分，更可能因違反《私隱條例》而被法庭定罪。

某地產代理公司曾經替一位客戶購入物業，因而取得其個人資料。在交易完成後，該客戶要求地產代理公司不要使用他的個人資料作直接促銷，但仍然收到該地產代理公司的直接促銷電話。

該客戶其後向香港個人資料私隱專員公署及該地產代理公司的一位董事作出投訴。該董事向他表示，

其公司的職員不會再致電他，並已將他的資料列入「拒絕服務名單」。然而，其後該地產代理公司一位從業員仍繼續致電該客戶作直接促銷。該客戶遂向警方報案。

監管局後來就事件作出調查。監管局紀律委員會認為，地產代理公司和從業員在客戶要求停止使用其個人資料後，仍然致電客戶作促銷活動，並因而違反《私隱條例》而被法院定罪，未有遵守《操守守則》第3.1.1段中所述「地產代理和營業員在執業時必須避免從事可能觸犯法律的活動」。委員會決定對該公司作出譴責及罰款\$30,000，並對該從業員作出譴責及暫時吊銷其牌照七天。

Inquiry hearing case — Using a client's personal data for direct marketing without consent

Practitioners collect and handle personal data of their clients in the course of carrying out estate agency work. The EAA would like to remind practitioners that they must be prudent and abide by the Personal Data (Privacy) Ordinance (PDPO). Failure to do so may not only result in disciplinary action by the EAA but also a court conviction for contravention of PDPO.

An estate agency company handled a property purchase for a client and obtained her personal data. The client requested the company not to use her personal data for direct marketing upon completion of the transaction. However, she still received direct marketing calls from the company.

The client then lodged a complaint with the Office of the Privacy Commissioner for Personal Data and with a director of the estate agency company. The director told the client that the staff of the company would not call her

again and the company had also put the client's personal data in the "opt-out list". However, a practitioner working for the company still called the client for direct marketing. The client therefore made a report to the Police.

The EAA instigated an investigation into the case. Despite the client's request to stop using her personal data, the estate agency company and the practitioner still made direct marketing calls to the client and were convicted by the court for contravening the PDPO. The EAA Disciplinary Committee found the company and the practitioner did not comply with paragraph 3.1.1 of the Code of Ethics, which states that "estate agents and salespersons shall refrain from activities during their practice which may infringe the law". The EAA Disciplinary Committee reprimanded the company and imposed a fine of \$30,000, and reprimanded the practitioner and suspended her licence for seven days.