



Another example of why direct regulators, e.g. the FCA, must ban cold calling, rather than relying on the powers of the ICO

This comment on a current news story follows on from the points made in our briefing on recent relevant activity in parliament.

See - [Debate on alternative proposals relating to Cold Calling by Claims Management Companies](#).

We continue to make the argument that the powers of the **Office of the Information Commissioner (ICO)**, unlike those of direct regulators, are inadequate as a means of effectively controlling the marketing activities of companies.

Whilst there is no direct regulator of Home Improvement companies, the **ICO** has itself reported that the powers it is able to use are ineffective in making companies comply with a code of practice for the conduct of a particular class of business. See - [Company previously fined for making nuisance calls is prosecuted for failing to change its ways](#).

The **Financial Conduct Authority (FCA)** holds the necessary powers to ensure compliance by providers of financial services and may use them to that specific end, as appropriate.

This example demonstrates how the **ICO** may only impose financial penalties, which cannot be so great as to seriously impact the continuation of the business.

Where it is seen that a penalty has not had the desired effect, it may, as in this case, attempt to secure a criminal conviction in respect of, what appears to be, a single instance.

There is no reason to believe that the activity which led to the original penalty, occurring between 29 April 2015 and 29 September 2015, and penalised in March 2016, has not been continuing ever since and still continues.

One must wonder how, if a penalty of **£50,000** did not cause the practice of making unsolicited direct marketing calls to cease, a further penalty amounting to **£808.08** is likely to do the trick.

We are not calling for every industry to be subjected to specific, direct and effective regulation of its business practices. The **ICO** must do the best it can.

Where a sector, e.g. Financial Services, does have a fully empowered regulator in place, it is imperative that this body, e.g. the **FCA**, holds the primary role in the regulation of direct marketing activity. The objective is to stop improper activity occurring, not to penalise it several years later.

Where appropriate, as must be the case with Financial Services, this must include a total prohibition of unsolicited direct marketing by telephone, both by and on behalf of the licensed / registered company.

The powers of the **ICO**, designed specifically to ensure that personal data is only used with consent, do not serve the necessary purpose.

