



The FCA needs to ban unsolicited direct marketing calls - the Financial Guidance and Claims Bill is a necessary step

The **Financial Guidance and Claims Bill** will be debated at Second Reading in the House of Commons on **Monday 22 January**.

The government has committed to amend the Bill to incorporate provisions to compel the **Financial Conduct Authority** to prohibit use of unsolicited direct marketing contact by telephone.

Part 1 of the Bill already includes a provision relating to all Financial Services, notably **Pensions**, Investment Funds for withdrawn **Pension pots** and **Pay-day Loans**. Part 2 of the Bill will include an explicit provision relating to **Claims Management**.

See [our Briefing to MPs](#), with links to other related briefings.

The need for the **FCA**, the direct regulator for all Financial Services, to take control and impose a total prohibition, is highlighted by recent action by the **ICO**.

The **ICO** has recently used its far **less severe powers** and **less effective regulatory control** in taking action against 5 firms operating in the sector, as covered by the Bill, as a result of breaches of the loose and weak statutory regulations against nuisance calls that it enforces.

This action was announced by two statements:

- 11 January 2018 - [Firms behind 44 million spam emails, 15 million nuisance calls and one million spam texts fined by the Information Commissioner's Office](#)
- 17 January 2018 - [Company which made 75 million nuisance automated calls in four months is fined by the ICO](#)

There must be doubt about how much of the total of £950,000 in fines will be recovered. It is common practice for the legal entities subject to this civil penalty to be wound up, to evade payment; in at least one case there is evidence that this process is already underway.

These cases cover nuisance being caused as long ago as **6 April 2015** and only apply to activity up to **5 May 2017**, at the latest. This is not timely intervention to prevent the nuisance.

These cases derive from 332 complaints to the ICO. This represents 0.7% of the roughly 50,000 complaints about nuisance calls, relating to financial services, received by the ICO in 2017.

Whilst we may have no problem with the **ICO** doing what it can, there is no question that more effective action is required to have a significant impact on the issue of nuisance calls. This can only come from the regulator directly responsible for monitoring, and in many cases licensing, the operations of businesses within the financial service sector.

We strongly believe that unsolicited direct marketing by telephone cannot be a proper way of selling financial services. It is the responsibility of the FCA to ensure that this principle is firmly embedded in its codes of practice, to cover both "authorised persons" and any leads they obtain from (unregulated) third parties.

It is not wrong for wrongdoers to be penalised for their activities even long after the event. What we need however is the necessary regulatory action to prevent the wrongdoing from happening.

Proper action through the Financial Service and Claims Bill will set the FCA on course.

