

**Guide to the, widely, if inappropriately, celebrated “ban” on Cold Calling in the Financial Guidance and Claims Act 2018**

Now that the parliamentary battles over the relevant provisions have ended, we identify and comment on the content of the Act, which received notification of Royal Assent on 10 May 2018.

The provisions covering Cold Calling are in three parts, covering respectively Claims Management, Pensions and Other Financial Services. The method of enactment is different in each case.

## 1. Claims Management

The nature of the “ban”, which reflects the government approach, expected to be seen in its enactments in other areas, is laid out in [Section 35](#).

The “ban” which has been in place for 15 years covering automated telephone calls, faxes, text messages and emails is retained unchanged. (These are covered by regulations 19, 20 and 22 of the [Privacy and Electronic Communications \(EC Directive\) Regulations 2003](#).) Those who hoped for any new or strengthened action in respect of these types of contact are disappointed.

Likewise the provisions of regulation 21, covering those who have registered their number with the **Telephone Preference Service** to stop attended telephone calls, is also unchanged. The only change is to extend this protection to those who have not registered their number with the **TPS**.

Whilst the **Office of the Information Commissioner (ICO)** does carry out enforcement action against major breaches, the experience of receiving “illegal” unsolicited direct marketing calls is very common. If the only problem being addressed were that of the failure by 12% of the population to register their number with the **TPS**, then this measure could be treated as if it represented a meaningful ban. In truth, it can only be treated as a bluff!

## 2. Pensions

[Section 21](#) of the Act enables regulations to be made, subject to the affirmative SI procedure, prohibiting unsolicited direct marketing relating to “pensions”.

This “ban” arose from fears about investment schemes being targeted at those able to withdraw funds from pension pots, using the new pension “freedoms”. Addressing only “Pensions” could limit to scope of the measure to only “pension products” or cases where the word “pension” was mentioned. There could even be doubt over whether an “annuity” is a “pension” product. (It may be noted that the terms of the SI, once tabled cannot be amended by parliament.)

The government has undertaken to introduce this measure before the end of June 2018. It is likely that the necessary parliamentary procedures to grant approval could be completed before the Summer Recess, with near immediate implementation.

We fully expect the terms of the SI to mirror those of Section 35 of the Bill. Given the choice to use the **PECR** and the powers of the **ICO**, there is little more that can be done using this mechanism.

Whilst there may be merit in supporting the “bluff” that there is a new and powerful “ban” on Cold Calling being introduced, the **fair telecoms campaign** will not join in this deceit.

The **Financial Conduct Authority** already holds the necessary powers to impose and enforce a strict and effective ban on both the practice of Cold Calling and the use of leads obtained by this means. We believe that it should simply use these powers to this end, regardless of this nonsense.





### 3. Other Financial Services

[Section 22](#) of the Act enables the introduction of measures identical to those under Section 21, but in relation to any other type of financial service.

It refers to the powers of the **Single Financial Guidance Body**, established under the terms of this Act, to make suggestions about where consumer detriment has been experienced as a result of Cold Calling. These are granted by [Section 3\(7\)\(b\)](#).

Many of us believe that the power under 3(7)(a) is however probably more relevant, as this could be used to advise the FCA to use its powers to ban Cold Calling.

### Reflections on the issue of banning cold calling

For many years, the **fair telecoms campaign** has been pressing the **Claims Management Regulatory Unit** of the **Ministry of Justice** to impose a meaningful ban on the use of telephone Cold Calling as a means of marketing these services.

Cold Calling in person is already banned by its rules and solicitors providing Claims Management services are prohibited from Cold Calling by the **Solicitors Regulatory Authority**. Operators are also “advised” to use due diligence in examining the original source of leads passed to them.

The transfer of responsibility from the **CMRU** to the **FCA** seemed to provide an ideal opportunity to ensure that the regulations are cleaned up, to apply a total ban on what has long been recognised as the most commonly reported source of nuisance calls.

The government however seems to remain obsessed with the idea that Cold Calling is an issue of data privacy, to be covered by statutory regulations enforced by the **ICO**, rather than an issue of business practice, to be covered by the relevant business regulator.

Not only do we see this approach as misguided, we can also all see how the **ICO** has not been able to be effective in controlling this business practice, despite numerous tweaks to the regulations and its powers over the years.

The **fair telecoms campaign** will continue to campaign on this point. (See [this link](#).)

The need to do something about “pensions” arose not from the marketing of pension products, but out of a need to protect those exercising newly granted “pension freedoms” from those keen to relieve them of their pension pots, without pausing to access proper Guidance.

The necessary measures therefore had to address all regulated providers of financial services and bring those on the fringes within the scope of effective regulation.

Given that, as in many areas, those making the calls will not necessarily fall within the effective scope of regulation, it is imperative to prohibit use of leads obtained by Cold Calling. Those actually providing the financial service must fall within the scope of industry regulation, so such a prohibition would effectively cut off the source of revenue to lead farmers.

Given that the primary purpose of the Act is to ensure that those using financial services have access to, and are encouraged to use, proper Guidance, an effective ban on the practice of Cold Calling, across the sector can only make sense. It is now for the **FCA** to act.

