



Comments on a House of Lords debate covering measures to “ban pensions cold calling”

These comments address remarks made in the House of Lords debate on 28 November 2018 granting approval to the draft SI “Privacy and Electronic Communications (Amendment) (No. 2) Regulations 2018” – alleged to represent a “ban on pensions cold calling”.

The format of this briefing quotes remarks made by peers in the debate – see [Hansard](#) – each being covered by a comment from the **fair telecoms campaign**.

We regard this measure as yet another “meaningless tweak” to a failed regime – see [Budget unravels - No pensions cold calling ban](#). An effective ban on cold calling in relations to pensions products and investments targeted on withdrawn pension pots could however be introduced by the **Financial Conduct Authority**. This is one of the measures called for in our “campaign to end nuisance calls”. See [The actual steps needed to “end the blight of nuisance calls”](#).

Speaking	Quote	Our comment
Lord Bates	the most recent statistics show that 97% of pension fraud cases brought to it originated from a cold call	A more relevant statistic is that over 80% of UK households already enjoy the same (supposed) protection offered by this measure, because their number is already recorded on the Telephone Preference Service register. This measure only affects calls made to those not already enjoying this (supposed) protection. It would be interesting to know how many of the cold calls referred to were made to numbers registered with TPS, and thereby are not addressed by this measure.
	the ban does not have an unnecessary or disproportionate impact on legitimate activities	Making unsolicited direct marketing calls to home phones and personal mobiles is essentially a “legitimate” activity. Most people however believe that it is not a proper or acceptable activity. The whole purpose of imposing a ban is to make what was previously legitimate to be illegitimate.
	The ban will make it clear to consumers that any pensions cold call they receive from an unknown caller is illegal and likely to be a scam call, so they should hang up	The existence of exceptions wholly undermines this claimed clarity. Any scammer is bound to claim that they are covered by an exception, so we are back to square one. If it is intended that consumers hang up on unsolicited calls about pensions, then there is no point in having exceptions to the prohibition.
Baroness Drake	Most cases involving pension scams start with cold calling ... these regulations will make a significant contribution to protecting individuals.	One must question the likelihood of those who are prepared to engage in criminal activity choosing to desist on account of the low risk of incurring a civil penalty, due to action by the ICO.



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Baroness Bowles	... much of the problem with cold calling is ... the introducers. The UK buyer of those leads would then presumably be committing an offence by following them up with a cold call	Following up a lead (by the UK purchaser) is perfectly legitimate, as that is no longer “marketing”. Any such action by telephone would not be “unsolicited”, and even if it were deemed so, then “consent” would have been “obtained” in the course of the original call. We continue to press the FCA to impose a prohibition on use of leads gained through cold calling, as well as a total prohibition on cold calling – we need support!
	Ultimately, we may have to look at more than just pensions.	The FCA has powers and a duty given by parliament to regulate the marketing of all financial services. It should be pressed to fulfil that duty and use the powers it has – by banning cold calling.
Lord Tunicliffe	I am sure many people will value the fact that cold calling is reduced	We understand that most people will see unsolicited direct marketing by telephone to home phones and personal mobiles as something that should be totally eliminated, rather than confined to selected parties. Even then, a regime with a poor record of attaining compliance provides very poor value.
Lord Bates	the scourge of nuisance calls ... the legitimate direct marketing industry	The scourge of nuisance calls is largely unsolicited direct marketing by telephone to home phones and personal mobiles. This is an activity undertaken within the law, unchanged by this proposed revision, by the legitimate direct marketing industry.
	the definition of “reasonably envisage” ... would be determined on a case-by-case basis	Once again, the objective of providing “clarity” for consumers is wholly undermined.
	The GDPR provides a very high threshold for consent.	Until the e-privacy regulation replaces the PECR, the definition of “consent” in this area is not that of the GDPR.
	... the FCA is not prohibiting the use of personal data collected by third parties through cold calling. Organisations are already required to process or handle personal data in accordance with the Data Protection Act	Receipt of a lead (an implicit or explicit request to be contacted) and pursuance thereof is a perfectly legitimate activity under the DPA. An explicit prohibition on use of leads obtained through unsolicited direct marketing by telephone needs to be applied by the FCA for the markets that it regulates, as part of its code. Parliament is prevented from doing so, or totally banning cold calling, as a result of EU Treaties. Dialling randomly selected telephone numbers (a common technique used by telephone marketers) is not handling personal data.