fair telecoms campaign **open message**

Urging support for amendments to the Financial Guidance and Claims Bill to stop Nuisance Calls

The message is addressed to peers seen to have an interest in the issue of Nuisance Calls. It offers many reasons to support the amendments, and suggests arguments to be advanced in debate.

It is also copied to journalists who have expressed an interest in the specific topic and to selected organisations that have publicly supported a ban on direct marketing calls in relation to Claims Management and/or one or more financial services.

Latterly through the **fair telecoms campaign**, I have been campaigning on the issue of Nuisance Calls for over 10 years.

It is from this position that **I urge support** for the specific provisions of **Amendment 42** and the general provisions of **Amendment 2** to the Financial Guidance and Claims Bill [HL], as it is debated at Report Stage, initially on **Tuesday 24 October** in the House of Lords.

The text of these amendments, with our brief comments, is published as follows:

- Legislation to prohibit cold calling in relation to Claims Management
- Legislation to facilitate statutory prohibition of cold calling in relation to all Financial Services

Effective Regulation, in general and on this point

It is acknowledged that the effective regulation of business activity must be directly related and sensitive to the needs and appropriate standards of a particular sector. It has become increasingly clear that this applies no less to the issue of direct marketing than any other common activity.

In most cases, a direct (sectoral) regulator has some form of meaningful on-going relationship with those it regulates. It forms rules in a way that is relevant to the business activities undertaken, addressing the needs and circumstances of all stakeholders in the relevant market(s). Regulatory provisions are communicated directly and clearly, and a high degree of compliance is achieved.

In the event of non-compliance, appropriate and potentially severe proportionate sanctions may be applied. Where a licensing or registration regime is in force, a company in breach may hazard its very existence, and the ability of its principals to operate in the sector.

These points are highly relevant, and chosen to highlight the difference between the situation of any direct regulator and that of the **Office of the Information Commissioner** (ICO), seeking to enforce the **Privacy and Electronic Communications Regulations (EU Directive) 2003** (PECR).

The PECR will shortly be replaced, on the promised adoption of the forthcoming "**Protection of personal data in electronic communications**" regulation (PPDECR). **It is however unlikely that the general regime will change.** The PPDECR contains a specific provision allowing the UK to retain its assumption of consent to unsolicited direct marketing by telephone, subject to opt-out through the Direct Marketing Association's Telephone Preference Service. *(The PPDECR is sometimes referred to as the "e-Privacy Regulations" or ePR. This is misleading, because the regulation only addresses communications, not electronic storage of private data, which is covered by the GDPR.)*

Whatever, if any, new constraints may be imposed on the practice of direct marketing in general, the most effective way of imposing and enforcing compliance with appropriate regulations for any sector of business is through its regulator, where one already exists to perform this role.

The benefits of direct, specific regulation to address the problem of Nuisance Calls

A direct regulator may determine that unsolicited direct marketing approaches to citizens are inappropriate for an area that it covers. For example, there may be no way that approaches can be targeted (to minimise the nuisance of unwanted calls), nor any way in which recipients could possibly grant prior consent to a business without expressly soliciting further contact.

This is unquestionably true in respect of Claims Management and almost certainly true in respect of many Financial Services. The Claims Management Regulatory Unit has already determined that doorstep approaches are inappropriate and prohibited them. The FCA has done the same, but only in relation to mortgage products. The logic of these decisions must surely apply more widely.

Another significant advantage of direct regulation is that there are cases, e.g. Claims Management, where it is realistic and proportionate to impose a requirement to verify the method by which third party providers obtain their leads. The same requirements imposed on regulated bodies, e.g. prohibition of unsolicited direct marketing, may therefore be, implicitly and effectively, imposed on un-regulated bodies.

By cutting off the source of income for the many ("dodgy") direct marketing agencies that feed regulated businesses through improper methods, one is effectively regulating their activities and benefitting from the deterrent effect of the threat of enforcement action. This applies even though they may operate outside the scope of UK regulation and may feel confident in avoiding detection or the impact of any penalty.

Whilst some may be disappointed that cutting them off denies the public the satisfaction of seeing them punished, the primary objective must be to stop the nuisance.

We urge support for these amendments, and exposure of the government's case against the most effective way of dealing with the problem of nuisance calls.

The arguments made here apply both to, and also well beyond, the scope of action that may be possible through the addition of these amendments to this Bill.

We see the opportunity presented by these amendments, amendment 42 in particular, to set the course to be followed by all regulators, and the FCA more widely, with or without prompting by legislation or other interventions.

The proportionality of a total prohibition of cold calling

We believe that it is the duty of each regulator in particular, and the government in general, to weigh the benefits and disbenefits of any course of action.

In the light of common reaction to any mention of the topic of unsolicited direct marketing telephone calls, and other unsolicited approaches, we believe that it is for regulators and the government to clearly make their case against prohibition, when a proper and effective means of imposing such a prohibition is proposed.