



**Notes on Banning Cold Calling - with reference to the provisions of the Financial Guidance and Claims Bill**

These notes are intended to help those struggling with what to do about the “ban on cold calling” in respect of Claims Management, Pensions and other Financial Services, which is now seen as an objective for the Financial Guidance and Claims Bill. Regrettably, time constraints prevented full consideration of these issues in the Commons; they will now have to be covered by “ping-pong”.

## **Cold Calling is already “banned”**

Under the terms of the [Privacy and Electronic Communications \(EC Directive\) Regulations 2003](#), unsolicited direct marketing is already banned, unless “consent” has been granted.

This is specified under the terms of the following regulations: #19 – automated telephone calls, #20 – faxes, #22 – email and text messages.

In respect of attended telephone calls (#21), the ban is only applied if the number called is registered with the Telephone Preference service.

The landlines of over 88% of UK households already have this protection. Since recent changes to the mechanism for registration, the number of mobile phones registered is growing rapidly.

The statutory “ban” which many seek, is therefore already in place.

## **This “ban” is not effective**

If all reports of improper or unwanted Cold Calls were in respect of attended calls (not automated calls, texts or emails) to the relatively small proportion of the population who were not registered with the TPS, then the remedy would be obvious.

I do not however believe that this is what is being claimed, by the government which is calling the remedy reflected by [Clause 34 of the Financial Guidance and Claims Bill](#) a ban on Cold Calling.

The government has outlined its approach, which is reflected in Clause 34 for Claims Management and is understood to be intended to be followed for Pensions and other Financial Service on the addition of New Clauses 9 and 4 at Report Stage.

This simply adds regulation 21A to the PECR, removing the requirement for TPS registration according to the purpose of the call, i.e. “Claims Management”, “Pensions” etc..

This government approach implies that the ban currently in place in respect of attended calls to those registered with the TPS, automated calls, faxes, text messages and emails is sufficient. It seeks only to apply the same (ineffective) ban to the 12% of households and greater number of mobile phones that are not yet covered. Its ineffectiveness is not being addressed.

Whatever the merits of alternative approaches, this approach surely cannot be accepted as having any significance. The ineffectiveness of the “ban” already in place must be addressed.

## **Cold Calling - business practice, not misused personal data**

The provisions of data protection legislation are vitally important to prevent the misuse of personal data. In some cases, it may be relevant to have “consent” to a particular use of data. For some purposes, consent may be fairly assumed by the existence of a relationship between the data controller and the subject.





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We believe that use of these principles to cover prohibition of cold calling represents a fundamental error. This approach is reflected in EU directives and forthcoming regulation, so our general statutory regulatory structure is required to work this way.

In reality however, cold calling is undertaken by using names and numbers in published telephone directories and / or by lists of working numbers in an allocated range. Such information is readily available and has nothing to do with the protection of personal data. Connection to the telephone network and the publication of one's contact details in the telephone directory should not be seen as representing an open invitation for direct marketing contact.

It is also common for a business to believe that the existence of a relationship with a customer may be taken as permission for any type of marketing contact in whatever manner the business wishes, as distinct from the provision of necessary information about the existing relationship.

## Setting rules for business practice

Whilst the ICO is rightly responsible for ensuring and enforcing compliance with data protection legislation, regulation of business practices is undertaken on a sector-by-sector basis by specialist regulators.

The business areas from which most unsolicited direct marketing by telephone arises are all covered by direct regulators: the FCA for Claims Management and Financial Services, Ofgem for Energy Supply, Ofcom for Telecoms, the Fundraising Regulator for Charities, the Gambling Commission for Betting, etc. (Nuisance Calls that represent attempted fraud are the responsibility of the Police, through Action Fraud.)

The practice of making unsolicited direct marketing calls must therefore be prohibited through the rule books of those bodies – except where it can be successfully argued that the inevitable consequent nuisance is outweighed by the public benefit of the practice. (The issue of “consent” has no place here, anyone requiring **direct** marketing contact by telephone would expressly “solicit” such contact.)

## Relevance to the Financial Guidance and Claims Bill

For the point at issue – Claims Management, Pensions and other Financial Services – the body is the Financial Conduct Authority. The FCA already prohibits unsolicited direct marketing of Mortgage products, as the SRA prohibits unsolicited direct marketing of Claims Management services by solicitors.

There is another highly relevant point in the context of the Single Financial Guidance Body, being established by this legislation. A primary objective of direct marketing is to secure business directly, i.e. seeking to avoid the prospective customer looking around at other options, or ...  
TAKING INDEPENDENT ADVICE.

A total and effective prohibition of unsolicited direct marketing for Financial Services would therefore sit very well within the aims of this legislation.

In the case of Claims Management, one of the aims of the Bill is for a tighter regulatory structure than that which has led to an appalling volume of nuisance calls, and cold calls that draw people into making false claims.

