fair telecoms campaign **open message**

Open Message to Margot James MP – Minister for Digital
"Action necessary to 'end the blight of Nuisance Calls'"

Ms James (copied to parliamentarians concerned about the issue of Nuisance Calls)

This open message is presented with the hope of a meaningful reply, but also as a briefing to parliamentarians concerned about this issue of Nuisance Calls.

The **fair telecoms campaign** has now launched "The campaign to end Nuisance Calls".

We see this approach, involving government and other parties, as representing the action required to "***end the blight of nuisance calls***". To pretend that the only problem is with attended calls relating to Claims Management, made to those not registered with the **TPS**, is a very bold claim that surely cannot be sustained – see Tough new measures to end the blight of nuisance calls.

You may be aware that we were also involved in a considerable amount of media coverage of the issue on Saturday – see Media coverage of a government announcement about Nuisance Calls made on Saturday 8 September 2018.

We feel you could have been a little clearer in explaining that the "opt-in" approach already exists for all automated calls, text messages, faxes and emails and for those who already have their telephone number recorded on the **Direct Marketing Association** "**Telephone Preference Service**" register. You also could have been clearer in explaining that the change of approach, in respect of attended direct marketing calls to numbers not registered with the **TPS**, applies only to calls about Claims Management Services.

Regrettably, many media outlets misunderstood the very limited terms of the action being taken. It is natural and predictable to suggest that the government, once again, grossly over-hyped a very limited measure; that is however Politics.

I was interested to hear you outlining the general position that an "opt-in" approach to unsolicited direct marketing is a positive step forward in the battle against Nuisance Calls.

You will be aware that the **fair telecoms campaign** sees no useful purpose being served by this approach. We hold the view that the relevant business regulators should simply prohibit the practice of unsolicited direct marketing, by telephone call and probably also by text message and email, unless they can make a strong case to show that the practice is in the public interest, so as to sustain their existing qualified tolerance of the practice. Such a prohibition should extend to the use of leads obtained through cold calling by other parties (notably those who are overseas or who would fall outside the scope of **PECR** enforcement action for other reasons).

In respect of Claims Management and vehicles for the investment of withdrawn pension funds (as will be covered by a forthcoming SI), it is the **Financial Conduct Authority** which is responsible for regulating the activities of the relevant businesses, in the public interest.

You are seen to oppose the idea of total prohibition, arguing that an unsolicited direct marketing contact is acceptable if made with "consent".

Given the strengthened definition of consent which applies under the terms of **Data Protection Act 2018**, it is very hard to understand how consent to an **unsolicited** direct marketing call could ever come to be given. I am therefore very keen to hear of how you see this regime working, as an alternative to the outright prohibition which we advocate.

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As you, and ministerial colleagues in the Treasury, MoJ and DWP will be aware, the **fair telecoms campaign** followed the progress of the (then) Financial Guidance and Claims Bill through parliament.

We were very concerned about the way in which the issue of unsolicited direct marketing calls was being handled, with reference to Claims Management, Pensions and Other Financial Services.

We issued briefing to MPs and peers at various stages, expressing our views and suggestions. A final briefing dealt with the ultimate result – Guide to the "ban" on Cold Calling in the Financial Guidance and Claims Act 2018.

We recognise the terms of the EU Directive which lies behind the terms of the **PECR** and the decision by a previous government to avail itself of the option to adopt an "opt-out" regime in respect of attended voice calls.

Nobody can complain about the decision to commence the provisions of Section 35 of the FG&C Act, as announced on Saturday, and we look forward to a similar measure being brought forward in respect of "Pensions" shortly. These may however be characterised, along with other measures, as meaningless tweaks to a regime that has been shown to fail over the 15 years that it has been in place.

We are very concerned about how far this measure will alter behaviour, given the extent to which the existing regulations are already widely flouted. You must be aware that many automated calls, text messages and emails, as well as calls to numbers registered with the **TPS**, are made without consent at present. Removing the assumed "opt-in" in respect of attended telephone calls to numbers not on the **TPS** register surely cannot be expected to make any significant difference.

I would be delighted to have the opportunity to discuss how you see the "opt-in" regime working and why you feel this is a better approach than a simple prohibition of the practice of **unsolicited** direct marketing calls – albeit that the latter would have to be imposed by the relevant business regulator.

We feel that 15 years of attempts to address the issue through enforcement of the PECR has demonstrated that Nuisance Calls, insofar as they derive from unsolicited direct marketing, cannot be effectively dealt with as a data protection issue. We note that the **ICO** does its best but it cannot hope to have a serious impact on the problem. This derives from its remoteness from the businesses engaged in the process, its reliance on consumer complaints and the relative weakness of its enforcement powers.

We see that the issue of unsolicited direct marketing must be dealt with as a business process, by the relevant regulators. Misuse of personal data (for any purpose) is obviously a matter that must also be dealt with, by the ICO, but it is false to suggest or imply that such a breach is necessarily involved whenever a Nuisance Call is received.

Our comprehensive approach - "The campaign to end Nuisance Calls" – must be seen as a counter to the government approach of believing that all can be dealt with through a regime that has clearly been shown to fail.