



This mis-described measure is in fact yet another ineffective tweak to the Privacy and Electronic Communications Regulations 2003.

Many such tweaks to this, and related legislation, have been applied over recent years. They have been ineffective, largely because the regime operated by the ICO has no clear basis for attaining compliance. Furthermore, many of those who breach these regulations are aware that they are doing so and are therefore unaffected by any tweaks.

This measure is specifically targetted on "Pension Scammers", people who are aware that they are breaching far more serious regulations, in many cases the criminal law. Compliance is unlikely!

It is important to understand the scope of this change to regulation. It focuses on a requirement for "consent", and thereby only covers those cases where the recipient of an unsolicited direct marketing call has not already withdrawn their (otherwise assumed) consent by placing their telephone number on the Telephone Preference Service Register.

This change in regulation will only affect the behaviour of callers who are currently checking numbers on the TPS register before making calls. For those who do not it simply adds to the cases that may be the subject of action by the ICO, rather than making any significant change.

Targets with their numbers on the TPS – the basis for many of the statistics given about the volume of calls alleged to be covered – are not affected in any way by this measure. It is understood that 80% of UK households have their number recorded on the TPS. At best, this measure can only affect the remaining 20%.

One potential benefit of such a change in regulation would be to send a message that all "Pensions Cold Calling" is illegal. This is however undermined by the creation of exemptions.

The specification of the exemptions even includes a definition of "consent" much weaker than that contained in the GDPR, and in the "e-privacy" regulations that will shortly replace the PECR. A "**freely given, specific, informed and unambiguous indication of the data subject's wishes**" is rejected in favour of "**might reasonably envisage**" in respect of exempted callers.

Not only is this not a "ban", in this respect it is more permissive of pensions cold calling than the general state of regulations.

[The 2016 Consultation](#) referred to the fear that "**the increase in flexibility, post-April 2015 might make people more vulnerable to investment scams involving their pension savings**", reflected by "**nearly £19 million in suspected pension liberation fraud between April 2015 and March 2016 – twice as much as for the same period in 2014-15**". "Pensions freedom" prompted this measure.

The regulations are however drafted only to cover cases where there is specific reference to "**funds held, or previously held, in an occupational pension scheme or a personal pension scheme**". Cases in which the caller fails to make specific reference to the source of the funds that may be used for an unwise investment are thereby not covered.

A final point to be noted is that these regulations do not address, or in any way affect, cold calling by text message or automated telephone call. These are already covered by the terms of the PECR as requiring explicit consent. This further confirms the limited scope of this measure.





Other material

Further material on this topic, published by the **fair telecoms campaign** includes:

- ft** [Comments on a House of Lords debate covering measures to "ban pensions cold calling"](#) – this relates to the equivalent debate in the House of Lords on 28 November 2018.
- ft** [Response to "Ban on cold calling in relation to pensions: consultation on regulations"](#) - our response to the consultation on this draft SI.
- ft** [The actual steps needed to "end the blight of nuisance calls"](#) - our briefing on the steps required to seriously address the issue of Nuisance Calls.
- ft** [The FCA and banning cold calling](#) - our comments on the failure of the FCA to fulfil its duty and use its statutory powers so as to achieve what we are all seeking.

Our plea to members engaged in the debate

There is no sound reason to object to the terms of this SI being applied, for the limited benefit that they may provide.

We strongly urge members not to get caught up in any of the improper hype that has always surrounded measures of this type. We recognise that any government will be, as they all have been, keen to be seen to be getting tough with Nuisance Callers. We take no joy in exposing the pretended toughness as a sham, possibly causing those who seek to cause this nuisance feeling that they have little to fear from the law. We cannot however countenance any dishonest and complacent approach to measures that will not have any significant effect on the issue.

Parliament has already granted the FCA the powers it needs to impose and enforce a total prohibition on all cold calling. This could, and should, cover claims management, pensions investments and investment of funds possibly withdrawn from pension pots, indeed all financial services. Such a measure should be complemented by a prohibition on use of leads gained through cold calling by third parties, who may be un-regulated or beyond the scope of UK regulation.

The FCA powers are superior to those of the ICO, not only by the nature of the sanctions that may be imposed, but also by the FCA rule book being far more effective in securing compliance with proper procedures than the terms of the PECR and any potential forthcoming ICO document.

Most significantly, the FCA is unconstrained by the unduly liberal approach of the EU Directive and forthcoming regulations, which provide for the absurd concept of "consent" to an "unsolicited" direct marketing approach being applied. If the purpose of "marketing" is to convey information that is unknown to the recipient, then it can only be "unsolicited" and cannot possibly be subject to "explicit, informed" consent. Without this absurd constraint, which applies to statutory UK regulation, the FCA is free to apply a complete "ban on cold calling" in respect of pensions.

As stated elsewhere, we see the duty imposed on the FCA by parliament as requiring it to "ban cold calling" in respect of pensions, investment of funds that may have been withdrawn from pensions and indeed all financial services.

We urge members to support us in this call.

