

**Prohibiting Telephone Cold Calling
in the Financial Services sector**

The **fair telecoms campaign** has been engaged with the issue of regulation of unsolicited direct marketing by telephone for many years. Unlike other forms of marketing contact, the telephone call demands the immediate attention of the person contacted and, being interactive, enables the unduly prompt conclusion of business, without access to independent guidance or careful consideration. It is therefore wholly inappropriate for use in the marketing of financial services.

We have noted past, present and upcoming action on this issue through statute, using the limited enforcement powers of the **ICO** under the Data Protection Act. We have therefore long been pressing for sectoral regulators to use their stronger powers to attain compliance by taking on their responsibility to ban cold calling, insofar as this is possible and to the degree necessary.

To this end, we are now calling for the **FCA** to introduce a total prohibition of use of the telephone for unsolicited direct marketing of all products and services by “authorised persons”. In particular, we believe that the case for such a prohibition is fully proved in respect of **Pensions, Payday loans** and especially in respect of **Claims Management**, when this comes within the scope of the **FCA**.

We note that there is significant concern about the activities of those who are not authorised persons, both in creating nuisance and in practicing fraud. We address these points.

It is imperative that a restriction on authorised persons must include prohibiting the use of leads and referrals obtained through unsolicited telephone marketing. Where there is a duty of care in selecting sources of information from third parties this must be firmed up into a specific requirement to establish that unsolicited telephone marketing has not been used. This action does not hit the lead-farming nuisance callers directly, but it dries up their source of revenue.

No regulatory measure will ever have any direct bearing on those who are already engaged in criminal activity. It is however of enormous benefit to be able to advise consumers that any unsolicited direct marketing telephone call must be illegal.

There can be no exemptions from this prohibition on unsolicited direct marketing, e.g. on the basis of what may be understood to be “consent” or the existence of some relationship.

If a customer explicitly solicits contact by telephone covering the terms of an existing relationship, then such contact could not be unsolicited direct marketing. If however the contact strays beyond the terms of the existing relationship, then it should fall foul of the prohibition.

Forthcoming EU regulations on electronic communications will impose a much stricter definition of “consent” (that already found in the GDPR) for the purposes of general regulation. We suggest that the **FCA** permits only contact for marketing purposes in response to requests that are totally explicit in respect of the caller, the material and the timing.

Whilst we can see merit in compelling the **FCA** to make the necessary changes to its rules through legislation, this is not essential as a means of achieving the desired effect. The difficulties involved in finding a suitable legislative vehicle and in forming the precise terms to guide the drafting of the required provisions (which the **FCA** would have to do under consultation anyway) are seen to frustrate the desires of those who wish to see this action taken promptly.

The **FCA** must listen to the voices from government, parliament and the people, all of which are heard calling for this prohibition, and accept its responsibility to act as an independent regulator.

The **fair telecoms campaign** does not give a damn about who takes political credit for this action, we simply call for a ban to be put in place in the most effective and speedy way possible.

