fair telecoms campaign **news release**

Reaction to Which? Nuisance Calls Task Force report

These comments are further to our earlier release - The continuing failure to address the problem of Nuisance Calls. There we outlined the reasons for the failure of the current regime and our positive proposals for the action that is necessary, as a result of this failure. **We cannot continue to rely on a failed regime.**

We have now reviewed the 15 recommendations made by the Which? Task Force and can comment on what is covered, **and omitted**.

We regret that this, as part of the entire Government 'Nuisance Calls Action Plan', fails to offer the radical action that is necessary in respect of the scale to which the problem of Nuisance Calls has grown.

Whilst the proposals may appear sensible, at best, they amount to simply "more of the same" failed approach that has led us to the situation that we are in at present. In one respect they make things worse, by pressing for more "co-operation" between different regulators and other bodies, rather than seeking for clear lines of accountability to be drawn – this is the major flaw of the 'Action Plan' in general.

Specific comments on the generality of the Task Force recommendations follow:

- When considering the issue of "consent" to "unsolicited" marketing, which is the basis of the current regulation, the Task Force has failed both consumers and businesses by failing to recognise and resolve the inherent contradiction.

  How can I consent to being given information about something of which I am unaware?

- It fails to recognise that there are some (perhaps many) sectors in which direct marketing by telephone and text should be considered to be wholly inappropriate – we suggest that **payday loans**, claims for **PPI** refunds and **accidents**, **green deal** arrangements and **debt management** services are already recognised as not only falling within this category, but also being the major causes for current complaints.

  If prohibition were applied to all use of information obtained in this way, then that would cut off the source of income for many of the overseas Nuisance Callers, which can never be directly covered.

  Only the appropriate sectoral regulators (e.g. the Claims Management Regulator, the Financial Conduct Authority and OfGEM) could apply and enforce such a prohibition, wherever it is required.

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- Reference is commonly made to the upper limit of £500,000 which applies to Monetary Penalty Notices issued by the ICO. A far more significant constraint on the ICO's powers is however the requirement to take into account "***the size, financial and other resources of a person***" and set the amount so as "***not to impose undue financial hardship***". When giving evidence to the Culture Media and Sport Committee in 2013, Simon Entwhisle of the ICO confirmed that he was directed by the government as follows: ***"We don't want you to put people out of business"*** (see this link to the published evidence).

  It is only the appropriate 'sectoral' regulators who hold the power to achieve compliance with proper and proportionate regulations, the role of the ICO is unsuited to a strong and robust regime.

- The task force has totally missed the vital and necessary point in respect of the situation as it stands and as it will be likely to remain for some time. Notwithstanding even the best regulatory efforts, telephone users, especially the vulnerable, need access to effective call filtering technology. This must avoid the trap of cutting them off from receiving wanted calls, by blocking certain calls according to the apparent origin. Allowing through calls from recognised numbers, whilst challenging unknown callers to identify themselves – by voice, before the phone rings – has been proven to be a most effective technique. It is only by accepting a call, after the caller has identified themselves that consent to receipt of a voice telephone call can be granted.

  Telephone service providers (landline and mobile) must now urgently to proceed with the implementation of effective call filtering services.

- The Task Force appears to have failed to note that regulation 22 of the PECR refers to both SMS text messages and emails, requiring that "consent" be given to all such "unsolicited" communications. Even if it were to propose that nothing further be done about the total failure to address spam email, this may have been worth a mention. When addressing the unsuitability of the ICO to provide the necessary protection to targets of direct marketing, it is important not to forget that this applies to emails as well as automated telephone calls (#19), faxes (#20) and attended telephone calls (#21).

  The failure of the ICO to provide proper protection is a much wider issue, requiring far more radical measures.

Please refer to the earlier release, which in turn contains links to other briefing material, and get in touch for more information and comment.

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