



**Reply to Nicola Parish blog post  
“ We back the ban – and advisers need to as well”**

We respond here to [this blog posting](#) by **Nicola Parish - Executive Director of Frontline Regulation – The Pensions Regulator**, dated 16 January 2019.

Nicola highlights a major problem with the government’s so-called “Pensions cold calling ban”.

Firstly, in most respects cold calling (“unsolicited direct marketing by telephone”) has been banned, under the terms of the regime used by the government, since 2003. Numerous tweaks to this regime over the years have failed to halt the problem of nuisance and scams. (See [‘Ineffective tweaks’ to the regulations said to be intended to “rid society of the plague of nuisance calls”](#)).

Secondly, the government has no intention of totally banning cold calling. In this case, it only seeks to prohibit its use by those intending to commit the criminal offence of scamming. In general it supports the practice and is restricted in its powers to apply a ban through general statutory regulations, due to its over-liberal interpretation of an EU Directive.

The effect of tolerance is to do nothing to help potential victims. They remain, as stated, having to work out for themselves whether they may have somehow consented to an unexpected call. They must also determine if a caller is genuine and furthermore is authorised to cold call them.

The **fair telecoms campaign** continues to call for the **FCA** to apply a total ban on “cold calling”, for the purpose of direct marketing, across the whole of the financial services sector. The **FCA** is not constrained, as is the government, and also has stronger powers of enforcement.

This ban would cover those seeking to sell unwise investments to those in a position to withdraw their pension pots in cash – not covered by the recent tweak to the government regulations.

It would also focus on those authorised to operate in the UK, by prohibiting their use of leads obtained through cold calling. This regulation would thereby dry up the revenue to overseas “lead farmers”. Those who purchase their leads are covered by UK regulations, whereas they are not.

The **FCA** is able to apply such a ban (as it has already in respect of mortgages). It is also required, through its statutory duty, to use its capacity to go a step further than the government.

The fundamental principle embedded in our [“Campaign to End Nuisance Calls”](#) is that nobody should ever receive an unexpected business call on their home landline or personal mobile. People must be free to choose when to dedicate their personal time to business matters. This is achieved when contact is by text message, email or post, as none of these, unlike the telephone call, demand an immediate response. A telephone call only happens when it is answered.

For this reason, any business telephone call to a personal number should only be made at the explicit request of the person being contacted. There may be cases of urgency or importance which cause this to be overridden, but the preference or convenience of the caller should not.

Our definition of “**cold**”, in relation to any business **call** therefore covers any situation where the call has not been explicitly requested. Any claim to having “banned”, or desisted from making, “cold calls” should apply this definition. This is essentially about good business practice and regulations that promote and demand it. **The direct marketing cold call must be wholly banned.**

(Regulations relating to the protection and use of personal data and the possibility of consent to contact by text message or email are an essentially separate, albeit possibly related, issue.)