



This briefing summarises some of what has been done in 2018.

We also state our current areas of focus at the start of 2019.

We cover specific areas in which we have been, and will be, active.

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Nuisance Calls

So-called 'bans' on Claims Management and Pensions cold calling

The government has (as is now familiar) engaged in excessive hype in its description of very modest measures in respect of some unsolicited direct marketing of some financial services. See our briefing – [Why the so-called “bans” on cold calling ... are overhyped](#).

We have struggled to point out that most of the nuisance-causing activity relating to these topics is already undertaken in breach of the pre-existing regulations and the scams which are allegedly covered are already criminal activity. Maybe the hype itself will cause a change in behaviour, maybe due to a reduction in the effectiveness of the activity. Obviously this would be welcome.

We cannot however commend these very modest measures in respect of the modest tweaks which they represent. This is part of an extended sequence of such measures.

In both cases, all that has been done is to remove the implied consent to receipt of unsolicited direct marketing telephone calls when made by a live operator to a number not registered with the Telephone Preference Service. This change has however only been applied in respect of calls that may be found to fall within the two specific categories.

Explicit consent continues to be required in respect of all attended calls to numbers registered with the TPS, automated calls, text messages and emails, when unsolicited and made for the purpose of direct marketing. These are unaffected by the change, so there is no reason to assume that the vast level of illegal nuisance already reported will diminish.

No sound argument has been advanced for the continuation of the nonsense of assumed consent - the TPS opt-out, which applies to all other topics.

The EU directive on which these rules are based entertains the foolish idea that someone may explicitly “consent” to a direct marketing contact without actually “soliciting” it. All general legislation must respect this principle.

For this reason, we campaign for the particular regulators, which cover most areas where electronic cold calling is common, to simply prohibit the practice of unsolicited direct marketing by telephone altogether. This prohibition would apply to those who actually do the business, not necessarily those who make the calls (who may be offshore) and would cover the use of leads obtained through cold calling.

This latter approach this would not enable the worst offenders to be caught and punished, it would however stop their activities by drying up their source of revenue.

Investments targeted on those withdrawing pensions pots (not covered by the new regulations), pension schemes themselves and Claims Management Companies fall within the regulatory scope of the **Financial Conduct Authority (FCA)**. Other areas of concern in relation to cold calling, e.g. pay-day loans are also covered. For this reason we target the **FCA**.

We also target the **Scottish Government**, whose “Green Deal” arrangements make Scots suffer more nuisance calls than the rest of the UK. We also believe that **Ofgem** and the **Fundraising Regulator** (a voluntary body) should also ban unsolicited direct marketing by telephone.





Powers for the ICO to penalise directors

We recognise that the deterrent effect of potential enforcement action in respect of nuisance calls has not been seen to work.

Many tweaks have been made to the powers of the **Office of the Information Commissioner (ICO)** - see [‘Ineffective tweaks’ to the regulations said to be intended to “rid society of the plague of nuisance calls”](#), however there is no evidence of any effect on the extent of the nuisance suffered.

Disregarding the fact that the volume of calls found to have been made by those who are caught and penalised is but a tiny fraction of those being received, the government – spurred on by those who seek vengeance – turns its attention to those who are fined, but evade payment.

There are many areas of law in which one may justifiably wish to see an individual punished, rather than a financial penalty being imposed on a company. Many of these would probably be granted a higher priority than the offence of making Nuisance Calls.

The **ICO** is limited in its powers to impose financial penalties in that the level of penalty cannot be so great as to cause the firm serious financial difficulties in paying it. There have however been a few cases where companies have been wound up with an unpaid civil penalty imposed by the **ICO** well down the list of creditors.

To perhaps save embarrassment in such cases, the **ICO** now has a specific power to impose the penalty on a responsible director of the company.

We wait to see how much success the **ICO** will have in applying the necessary degree of culpability on an individual. It will also be interesting to see how the rules for determining the capacity of an individual to pay a financial penalty will work out in practice. One suspects that the legal profession will have plenty to get its teeth into.

The typical gap between the date of the “offence” and the imposition of a penalty is generally over 12 months at present. One suspects that preparing the grounds for the imposition of a penalty of an individual (with the hope of defeating an appeal) will take much longer.

It may be, as suggested, that news of this new power will send shivers around the boardrooms of offending companies. If so, then we cannot complain.

Given the clear failure of the deterrent – largely based on the low probability of being the subject of enforcement action – it is hard to feel confident that this move will make any difference. It could be that this will simply switch attention to offshore operators, outside the scope of this UK regulation.

Whilst we recognise the natural desire to see those responsible for the appalling effects of Nuisance Calls severely punished, we also recognise that only a few of those engaged in unsolicited direct marketing are able to be brought to justice.

We are pressing for measures focussed on eliminating the problem, through regulatory structures that attain compliance with far more effective rules – i.e. genuinely banning cold calling. There remains this absurd idea that some people can cold call without causing nuisance and it is only those who do cause nuisance (by breaking unduly loose rules) who should be punished.





Directory Enquiries

In May 2017 the **fair telecoms campaign** presented a number of recommendations for action in relation to Directory Enquiries and related facilities. We were delighted to see that the vast majority of these were acted on during 2018 – see [Campaigning Success - Progress with attainment of our Recommendations in relation to Directory Enquiry Services](#).

The important elements of these are covered below.

Price cap

The introduction of a cap on the **rate of charge** for a call, **not the total cost**, is to be welcomed as it cuts off some obvious scam services and forces unduly expensive services to reduce their charge, or leave the market.

It does not however ensure that those who have a need for these services will always get the best deal. **Ofcom** recognises that competition is not working to the benefit of consumers in this market, however “consumer-champion” **Which?** has not stepped forward to research the market and offer guidance, so as to apply the consumer power that is required for a market to work.

The **fair telecoms campaign** does not have the resource, nor the proper role, to help with this. We will therefore keep up the pressure on **Which?** to perform the role that it claims to fulfil.

Prohibition of improper promotion

One scam that has been closed off, subject to enforcement action, is use of the technique of prompting calls to rip-off DQ numbers through messages placed on out-of-use geographic number ranges. Calls to numbers in these ranges have been encouraged by the selection of numbers likely to be the misdialled version of commonly used numbers and also by the “wangiri” technique.

“Wangiri”, which is an offence in itself, involves making a very short call that cannot be answered, in the hope that the recipient will call back to the number given as CLI. Consumers may be wary of calling back to a premium rate number, but many were trapped by calling a geographic number that encouraged a call to a Directory Enquiry service, promoted on the basis that it could provide a connection with the caller.

Extended regulation of call connection services

Information, Connection and Signposting Services (ICSS) are subject to special regulation by the **Phone-paid Services Authority (PSA)**.

These include numbers promoted through search engine results offering contact with many frequently called organisations. These are however Premium Rate numbers costing vastly more than the (normally free of call charge) numbers promoted by the organisations themselves. Callers are generally unaware that they are calling through a Premium Rate service, as are the organisations being contacted until, that is, that the charge is later seen on the phone bill.

Numbers beginning 084 are generally excluded from the scope of this **PSA** regulation, however an exception has now been made in respect of those used for this type of service. All such numbers will now be subject to regulation by the **PSA**. The regulations are already severe, but we are engaged in ensuring that they are tightened further.





The end of the 070 number rip-off

Work on the 070 range was excluded from the major “UK Calling” project undertaken by **Ofcom** between 2011 and 2014. We are however delighted that this was picked up again, through both a consultation and a definitive statement in 2018.

With effect from 1 October 2019 calls to 070 numbers will not yield any revenue to the phone company or user of the number. Insofar as they continue to be used, there will be no reason for them to be treated any differently from standard 07 mobile numbers, so far as charging is concerned.

Decisions facing Hospedia and other hospital bedside phone providers

Apart from outright scammers, this will have a major effect on **Hospedia** and other hospital bedside phone providers, who partly fund their systems from the money (roughly 39p per minute) they make from calls to the bedside phones.

We address this issue, as well as the **Ofcom** change more widely, in our briefing - [Twelve months for mis-users \(and users\) of 070 numbers to mend their ways](#).

Contract terms

A lot of fuss has been made in 2018 (notably by Citizens Advice) about how the encouragement of “active consumerism” has had a negative effect on those consumers who remain loyal to their providers and the terms of contracts they have entered into.

Whilst we can have no objection to those who benefit from being “active consumers” and any benefit that their activity delivers to others – under the principle of market theory – we strongly question the way that this delivers true fairness. Indeed, we recognise that market competition and consumer engagement in market activity is only effective in certain circumstances and can produce unwanted effects. One inevitable such effect is the “loyalty penalty”.

In the telecoms field in 2018, **Ofcom** has started to take some steps to address this. These are however aimed at mitigating the ill effects, given that **Ofcom** is committed, by its principle duties, to the concept of competitive markets, whilst it wholly endorses active consumerism.

Notice of termination of minimum period

Ofcom held a consultation regarding demands for providers to give clear notice of the approach of the end of a contractual minimum period. This is intended to ensure that consumers are able to shop around or renegotiate suitable new terms as soon as their commitment to specific contracts comes to an end.

This was primarily focussed on the scandal of consumers over-paying for mobile handsets (see below), but applied to all forms of fixed term contracts for telecoms services. We presented a strongly worded response - see [Response to consultation on \(end-of / out-of\) Contract Notifications](#) - and await a further statement from **Ofcom**.

Whilst we welcome the idea that consumers should be reminded of the possible need for action as a contract comes to an end, the most important issue is that they understand the terms of a contract as they enter into it and information about the contract is available throughout.





Terms for mobile handsets

Further to the consultation mentioned above, **Ofcom** also consulted on the specific issue of the way in which most consumers pay for mobile handsets.

This has long been a contentious issue and, again, we issued a strongly worded response – see [Response to Ofcom "Mobile Handsets" consultation](#). The thrust of our position is that clarity and fairness is achieved by “unbundling” component parts of any arrangement, albeit that we cannot oppose the application of a transparent discount for the purchase of multiple items.

In effect, consumers enter into a “lease purchase” arrangement for a handset, alongside a fixed term contract to take certain network services from the same provider. This arrangement however enables the providers to evade the strict regulations applied to a “lease purchase” agreement by the Financial Conduct Authority. This means that the same charges continue after the cost of the handset has been fully paid off.

It is argued that if the “lease purchase” were properly treated as such, this would disadvantage providers and thereby consumers. It is further argued that this would remove the opportunity for discounts to be offered on the basis of multiple services being acquired.

We challenge this argument – is the FCA not serving the needs of consumers? How can it possibly be right for consumers to be able to continue paying for something after the cost has been paid off in full?

We will continue to engage in strong argument on these points as **Ofcom** moves to its final position in 2019.

Openreach – its role and operations

Major concerns have been raised around the role and operations of **Openreach** during 2018.

Ofcom has reached an accommodation with **BT** around operational separation of this part of the **BT plc** group from others, notably **BT Retail**. Given its fundamental role in providing the network services on which the vast majority of home phone and broadband rely, and the terms they are thereby able to offer to their customers, we remain very dissatisfied with the current position.

It is not clear whether much stricter regulation of **Openreach** within the **BT plc** group would be sufficient to put things right. We are not necessarily calling for its total independence, although it may be that it needs to be totally reconstituted as the owner and operator of the majority of the UK’s land-based retail telecoms network.

Two specific issues have raised concern and will be the focus for campaigning activity in 2019. These are however simply indicative of an inappropriate and unfair situation. After further study we are likely to come forward with specific recommendations.

In one case, we found that wholly inappropriate action by **Openreach** and delivery of false information to a broadband provider left a customer without service, whilst paying for it from another provider, for many months. Another case highlighted the absurd situation where consumers may be required to pay for technician call-outs for no sound reason.





Continuing misuse of 084/087 numbers

We have had many earlier successes in this area:

- ☺ Call charges are now unbundled. The Service Charge in respect of all premium rate calls has to be declared by the provider of the Service. The Access Charge, common to all premium rate calls, has to be set and declared by the caller's phone company.
- ☺ Use of these numbers by NHS bodies and service providers (e.g. GPs) has long been prohibited. Compliance with this prohibition has been painfully slow, but is now almost complete.
- ☺ Use of these numbers by Central government departments is now prohibited, and has ceased. Their use by other public sector bodies is strongly deprecated. There are still some examples, but happily relatively few, and the number is diminishing, partly due to our efforts.
- ☺ Use of these numbers for enquiries from existing customers is prohibited. There are some breaches, but compliance has been greater and was swifter than we expected.

We continue to pursue cases of non-compliance with the prohibitions referred to. These actions are mostly successful, although remaining cases will continue to receive attention. See [Rip-off surcharge on local authority payment lines](#).

The problem however continues in areas not covered by the specific prohibitions. We continue to highlight examples and draw media attention to them from time to time.

... by charities

We recognise that charities appreciate the cost offsetting achieved by use of 084 / 087 numbers. They nonetheless probably fail to recognise the extraordinary burden that this places on callers, due to the fact that all calls to premium rate numbers attract an Access Charge set at single level.

If, for example, a Charity wishes to earn around 5p a minute from calls to offset its costs, it levies a Service Charge of 7p per minute (including VAT). Callers also pay the Access Charge, which in the case of a landline is around 13p per minute, giving a total cost of 20p per minute – i.e. on 25% of what is paid goes to the charity. For a call from a mobile the Access Charge is typically 55p per minute, giving a total cost of 62p per minute – more than 10 times what is being earned.

We regularly update our list - '[Free' Charity Helplines that impose "Service Charges" on callers by use of 084 / 087 telephone numbers](#) - also identifying those who have changed their ways. N.B. The rates given are not the maximum. The same principle applies in other cases.

... by football clubs

We have attracted repeated media coverage as we update our list for each season - [The un - fair telecoms football league table - 2018/9](#).

We may produce lists for other sporting clubs in 2019.

... other whinge-worthy cases

We have published other lists in the past – e.g. [The theatre and concert ticketing rip-off](#).

We also highlight cases on twitter as  [@ft_whinger](#).





Summary – more information

We continue to campaign for **fair telecoms** – see <http://www.fairtelecoms.org.uk/aims.html>.

Major topics are covered by articles – see <http://www.fairtelecoms.org.uk/issues.html>

We regularly publish briefings and press releases – see <http://www.fairtelecoms.org.uk/docs>

We are commonly featured in the media – see:

 <http://www.fairtelecoms.org.uk/news.html>

 <http://www.fairtelecoms.org.uk/radio.html>

 <http://www.fairtelecoms.org.uk/tv.html>

Follow our announcements

All new developments are announced on Twitter - <https://twitter.com/fairtelecoms>.

These tweets may be viewed from our web home page - <http://www.fairtelecoms.org.uk/>.

For facebook users, our tweets are also replicated at <https://www.facebook.com/fairtelecoms/>.

Those who wish to be notified of our announcements by email, no more than once a day, can get free notifications at <https://feedburner.google.com/fb/a/mailverify?uri=fttweets>.

Get involved

The **fair telecoms campaign** has a totally open structure.

Anyone who wishes to help us in attaining our objectives is very welcome to contribute in any way they can and wish. This includes anyone who simply wants to raise an issue or engage in conversation.

We can be contacted directly or by email through - <http://www.fairtelecoms.org.uk/contact.html>.

Media

We are very open to engagement with the media in any way, by providing briefings on any telecoms issue, offering exclusive comment and by contribution to news or feature items.

All requests by email to media.enquiries@fairtelecoms.org.uk will receive a prompt response.

Funding

It must be noted that the **fair telecoms campaign** is an entirely voluntary campaign group. We are very grateful for the re-imburement of expenses that are directly incurred in some of our activities, however costs are mostly met from the (dwindling) resources of contributors.

Whilst a great deal has been achieved on many fronts, there is much more to do, including with topics that have been prominent throughout the life of the campaign.

There are no current plans to change the nature of the campaign, however the present structure cannot be sustained indefinitely. We are open to suggestions!

