fair telecoms campaign **briefing**

Why the so-called "bans" on cold calling in respect of claims management and pensions are overhyped

This briefing explains why these so-called "bans" are nothing more than further ineffective tweaks to a regime that has been shown to fail over 15 years – see the summary of what they actually are.

If the effect of the hype applied in these announcement and surrounding comment is to convince those who break the law to cease their illegal practices, then one must be grateful. It is however dishonest to misrepresent the actual terms of modest legislative changes.

We refer to the following announcements, and consequent further publications:

- DCMS news release 8 Sep 2018 - Tough new measures to end the blight of nuisance calls … will ban cold calls offering to settle personal injury or payment protection insurance claims
- Treasury announcement by Minister 19 Dec 2018 – "Pensions cold calling … the ban will officially come into force on 9th January"

Cold calling is already "banned"

The simple fact is, by the terms in which these announcements are expressed, all cold calling has been "banned" since 2003. This is when the regime, enforced by the **Office of the Information Commissioner** (**ICO**), came into force.

The concern, which these announcements are probably trying to address, is that this regime has never been effective in securing compliance, despite many other tweaks – see 'Ineffective tweaks' to the regulations said to be intended to "rid society of the plague of nuisance calls".

This regime established the requirement for explicit consent to be given for the receipt of unsolicited direct marketing by electronic means. Regulations #19 - #22 of the Privacy and Electronic Communications Regulations (EU Directive) 2003 cover automated calls, faxes, attended voice calls and emails / text messages, respectively.

The relevant tweaks, covering only attended voice calls, are regulations 21A and 21B.

Most people find an attended telephone call to represent the greatest nuisance, but there is a get-out in respect of these. All those who fail to register their telephone number with the **Telephone Preference Service** of the **Direct Marketing Association** (the **TPS**) are treated as having given consent to receipt of these calls. It is only this requirement which is adjusted.

It is estimated that 80% of UK households have their numbers registered with the **TPS**. There is nonetheless an enormous volume of illegal nuisance activity. There is also a large amount of attempted fraud – which is a criminal offence. These so-called "bans" do not affect the illegal activity already going on – i.e. most nuisance calls in these areas, which are already "banned".

Furthermore, they do nothing to eliminate the nonsense whereby a call that has not been "solicited" may be legal if it may be deemed to be covered by some form of "consent". (We are campaigning for this nonsense to be effectively removed from relevant regulations.)

Summary

These measures do no more than remove the assumed consent of those who fail to register their number with the TPS, to Claims Management and Pensions calls.

… / (continued)

- ☹ **Only people not already registered with the TPS may stand to benefit from these "bans".**
- ☹ **Only cold callers who already check numbers against the TPS are affected by these "bans".**
- ☹ **The likelihood of a modest regulatory change affecting those who deliberately set out to scam – a criminal offence – must be deemed low.**

The "Pensions" ban misses the target

The measure in respect of "Pensions" also falls short of hopes and expectations in two ways. Firstly, it limits the definition of consent by permitting calls that the recipient has a reasonable expectation of receiving – regardless of their failure to actively consent.

Secondly, it fails to address the concern which prompted calls for special treatment over the last few years – the effect of the "Pensions Freedoms", notably the ability to withdraw cash and invest it in some vehicle other than an annuity. This led to likely pension holders reaching retirement age being bombarded with offers of (mostly unsuitable) investment opportunities.

The definition of "pensions" in the new measure explicitly excludes investments targeted at those in a position to invest their pension pot, other than in another pension or an annuity.

How the problem should be addressed

We and many others have long been pressing for the practice of unsolicited direct marketing by telephone to be simply prohibited. The obvious means for such a prohibition to be applied in respect of Claims Management, Pensions and all other Financial Services is through rules being set by the **Financial Conduct Authority** (**FCA**). Similar prohibitions should apply in other sectors.

To address the fact that much of actual cold calling is undertaken by small agencies, unlikely to come to the attention of the **ICO** or perhaps operating from overseas, the prohibition must include a ban on the use of leads obtained through cold calling.

A clear benefit derived from a ban being imposed by the **FCA** includes the fact that it need not be constrained by the (rather liberal) terms of the relevant EU directive and regulations, which apply to statutory restrictions imposed by parliament.

The enforcement powers available to the **FCA** are also much more severe than those available to the **ICO**. For example, a Claims Management Company could suffer the withdrawal of its licence to trade, or even the suspension of its licence whilst investigations are being undertaken.

Perhaps the strongest argument in favour of a ban being imposed by the **FCA** is that its rules, certainly by comparison with the corresponding **ICO** regime, achieve a high degree of compliance.

Our objective is to see the practice of unsolicited direct marketing by telephone cease. This happens through compliance, not through headline-grabbing imposition of financial penalties.

The government maintains the idea that there are circumstances in which making unsolicited direct marketing calls to home phones or personal mobiles is an acceptable practice. It is "legitimate", because that is what the regulations allow, because of the absurd nonsense of "consent". We disagree and believe that all regulators must accept their responsibility to properly defend their failure to prohibit the practice.