fair telecoms campaign **consultation response**

Response to "Ban on cold calling in relation to pensions: consultation on regulations"

The two pages which follow contain the formal response presented by the fair telecoms campaign to the consultation - Ban on cold calling in relation to pensions: consultation on regulations.

This was presented to HM Treasury today, requesting that the content of our published briefing –

ft Why the so-called 'ban on pensions cold calling' is not what it pretends to be

– be considered as part of the response, as it explains the points made in more detail.

To set the response in context, readers may also wish to refer to other documents we have published on this topic:

ft The FCA and banning cold calling

ft Is Pensions Cold Calling to be "banned", or is it just a matter of "buyer beware"?

ft Guide to the "ban" on Cold Calling in the Financial Guidance and Claims Act 2018

Many briefings were published as the Financial Guidance and Claims Bill made its way through the Lords and the Commons.

These may all be found in our documents index - http://www.fairtelecoms.org.uk/docs.

We may be contacted through our website - http://www.fairtelecoms.org.uk/contact.html.

Media enquiries may be directed to media.enquiries@fairtelecoms.org.uk

The formal consultation response follows …

David Hickson

Friday, 17 August 2018

fair telecoms campaign consultation response

Response to "Ban on cold calling in relation to pensions: consultation on regulations"

Throughout the passage of the Financial Guidance and Claims Bill and thereafter, the **fair telecoms campaign** has stated its views on the issue addressed by this consultation:

- A "ban on cold calling" can only be imposed, in any meaningful sense, if it prohibits the business practice of unsolicited direct marketing. It must apply to all those who may engage in this activity, or undertake relevant business initiated through a cold call made by any party.
- We wholly reject the absurd notion that cold calling may be undertaken with "consent". Business contact to a private telephone number should only be made when such contact has been explicitly solicited. Marketing, by its very nature, cannot be subject to specific consent.
- References to "pensions" must cover: pensions savings schemes, retirement annuities and, most significantly, any investment vehicle that may be used by someone withdrawing cash from a pensions savings scheme. This issue was brought to the attention of the government in relation to the latter, following the introduction of the "pensions freedoms".

The proposed measures fail on all three counts.

The only way to apply a "ban on cold calling in relation to pensions" is for the FCA to prohibit the practice as part of its code. It must also prohibit undertaking business where the initial contact with the consumer was through a cold call, even if made by an unregulated organisation.

Use of the PECR cannot enable imposition of such a prohibition. It can only address the maker or initiator of the contact and it is further constrained by the nonsensical concept of "consent".

The concept of "consent" to the use of personal data is relevant to the field of data protection, where personal data is provided to a specific party (data controller), for use with "consent". A specific telephone number may be obtained from public records (e.g. a telephone directory) or even derived from the public records of ranges of allocated numbers. It, alone, is not private data.

It may be reasonable to assume that "consent" to contact by mail (and perhaps email) could be granted on a general basis, not least because this requires use of data that is personal and private. As a separate point, the interruption to life that is caused by a telephone call, or incoming text message, demands that this only occurs by explicit invitation, when in relation to a business issue.

As the source of funding for any cash investment may be cash withdrawn from a pension savings scheme, the desired protection cannot be limited to situations where the term "pension" is used, or implied, in the content of marketing material.

The importance of careful consideration and access to advice when acquiring any financial service – the key focus of the Financial Guidance and Claims Act – demands the banning of all cold calling in relation to any financial service (now including Claims Management). The very nature of cold calling is to encourage a swift decision with minimal consideration.

The notion of there being a "legitimate" cold call, serves to aid scammers. A ban can only be effective on those who comply with regulations, not those with deliberate criminal intent. If the proposed "ban" were to be effective, then scammers would know that victims no longer expected illegitimate cold calls. If the proposed "ban" is ineffective, nothing will have been achieved.

Unsuccessful "legitimate" unsolicited direct marketing telephone calls cause considerable public nuisance. Proponents must justify this as being outweighed by the public benefit derived.

Further detailed comments

We have other general points to make in response to this consultation and more detail to add to the material provided above.

These are all published in our briefing – "**Why the so-called 'ban on pensions cold calling' is not what it pretends to be**", published at http://www.fairtelecoms.org.uk/docs.html?govbanpcc - which we wish to be regarded as part of our response to this consultation.

Specific consultation questions

We offer a (limited) response to the questions posed:

Question 1: Do you agree that the proposed regulations achieve the aim of restricting all unsolicited direct marketing calls in relation to pension, bar the exemptions outlined, without restricting legitimate non-marketing calls?

Unless the clear principle that all business contact by telephone, text message (and possibly email) must be explicitly invited is well established and respected, then all manner of perfectly proper business communications will continue to be classified as "Nuisance Calls".

This problem has resulted from the failure of the PECR and its enforcement to address the issue of "Nuisance Calls". There is nothing in this proposal to even start addressing this serious problem.

(It is interesting to note that the declared aim of the measures is stated here as being to "restrict", rather than "ban", even before the "exemptions" are mentioned.)

Question 2: Do you agree that the proposed regulations capture the wide range of activities through which people could be encouraged to use their pensions savings in order to invest in inappropriate or scam investments?

Of course not.

Even the FCA/TPR advertising campaign suggests that all listed providers are acceptable cold callers, even though their products may be highly **inappropriate** for any particular consumer. If any consumer is exposed to normal cold calling approaches by competent sales personnel, they are very likely to make a poor decision under the pressure that is fairly exerted.

Question 3: Do you agree that the proposed regulations are sufficiently flexible and future proofed to prevent the evolution of scam pensions cold calls that circumvent the ban?

Not in the slightest.

Widespread publicity of what are understood to be the techniques used by scammers helps ensure that they will always be one or more steps ahead of even the best informed consumer.

The notion that there is such a thing as a "legitimate" cold call provides a clear invitation for scammers to continue using this method of approach.

Question 4: Do you agree that the proposed regulations prevent 'workarounds'?

The difficulties that the ICO has encountered with the terms of the PECR in the past – in one case compelling an unnecessary change – leave one in no doubt that the added complexity proposed in the terms of these measures will leave the ICO even more timid and ineffective in future.