fair telecoms campaign

open messages

Sequence of exchanged messages on the topic of - "Opting-in" to receipt of unsolicited direct marketing calls

This collection of messages includes the following, presented in reverse chronological sequence:

- Open Message to Margot James MP - Minister of State for Digital, cc: MPs & peers
  "Opting-in" to receipt of unsolicited direct marketing calls
  Wednesday, 12 September 2018

- Response from Margot James – DDCMS
  Tuesday, 25 September 2018

- Reply to response
  Wednesday 26 September 2018

David Hickson

Wednesday, 26 September 2018

fair telecoms campaign **open message**

Reply to Response from Margot James to -
"Opting-in" to receipt of unsolicited direct marketing calls

Many thanks for your reply to our open message.

The points you make are fair and reasonable, however they fail to cover the issue of the failure of the current regime to seriously address the issue. We cannot see how modest tweaks to this regime can ever be expected to make any significant difference, let alone going so far as to "***end the blight of nuisance calls***".

If you seriously believe that the act of businesses making **unsolicited** direct marketing calls can be supported by some process whereby consumers give consent in advance, then I am curious to know how you see such a process as working.

I look forward to your invitation to discuss the steps that you are considering to create an environment in which consumers approach businesses to give consent to **unsolicited** direct marketing calls, whilst not actually soliciting telephone contact. I must however state now that we believe this to be a nonsense.

I do however fully accept your point that this is an issue which requires engagement by regulators (statutory and voluntary). It is they who must shoulder the responsibility for tolerating, rather than prohibiting, specific methods of marketing in their sector.

The terms of the current EU directive and the forthcoming EU ("e-privacy") regulation constrain the scope of general legislation. The "opt-in" regime could however be made universal, rather than being limited to claims management and "pensions".

This constraint does not apply to sectoral regulators, which exist specifically to go beyond the terms of general regulation for those within the scope of their powers.

The **fair telecoms campaign** "**campaign to end nuisance calls**" has now been formally launched through a news release, in which we quote the phrase used in your recent release – see The actual steps needed to "end the blight of nuisance calls". This is aimed primarily at regulators, businesses and telephone service providers.

We are however in complete agreement with your view that this problem requires a "***multifaceted approach***" involving "***government, regulators, industry and consumer groups***" and will be delighted to contribute to discussion of "***alternative ways we can address this problem***", other than through further legislation.

I take this as a potential welcome for the proposals (demands) made in our specific campaign on this issue, and a willingness to assist in taking these points forward.

I look forward to working with you and your officials to this end.

It would perhaps be helpful for this meeting to take place before your colleagues in the Treasury bring forward the SI to implement the provisions of section 21 of the Financial Guidance and Claims Act 2018, as covered by a recent consultation, to which we responded – see Response to "Ban on cold calling in relation to pensions: consultation on regulations".

That SI could be used as a vehicle to remove the "opt-out" across the board!

David Hickson

Wednesday, 26 September 2018

Department for
Digital, Culture,
Media & Sport

Margot James MP
Minister for Digital and the Creative Industries
4th Floor
100 Parliament Street
London SW1A 2BQ

E: enquiries@culture.gov.uk

www.gov.uk/dcms

25th September 2018

David Hickson
david@fairtelecoms.org.uk

Our Ref:
MC2018/12776/SAS

Dear David

Thank you for your correspondence of 12 September, regarding your concerns about nuisance calls and updating me on the recent work of the Fair Telecoms Campaign.

As you are aware, the issue of nuisance calls and messages is one that the government takes extremely seriously. We continue to explore ways in which we can take action, both through legislation and by non-legislative means, against this unscrupulous practice and those that persistently operate outside of the law. As you will know, we have recently made amendments to the Privacy and Electronic Communications Regulations 2003 (PECR) to ban unsolicited calls for the purposes of direct marketing in relation to claims management services. Such calls are lawful only where the consumer has opted-in to receive them. We are also in the process of considering the responses to our consultation, 'Nuisance calls and messages: action against directors'. I thank you for your considered response to this consultation.

Whilst we are committed to taking action against those in breach of the law, we recognise the importance of the telemarketing industry in the UK. In 2016, contact centres employed over 700,000 around the UK, making up 4% of the UK's workforce. It is therefore right that we continue to create a regulatory landscape that allows those that abide by the rules to continue business, whilst putting a stop to those that operate illegally.

We continue to work closely with regulators and industry to look at alternative ways we can address this problem. We have always been clear that the issue of nuisance calls is a shared responsibility between government, regulators, industry and consumer groups, and requires a multifaceted response. As part of this, we are considering holding meetings with stakeholders to discuss further steps the government can take in this area. If you would be interested in attending such a meeting, I will ask my officials to extend an invitation to you in due course.

Best wishes
Margot

Margot James MP
Minister for Digital and the Creative Industries

POSITIVE ABOUT DISABLED PEOPLE

fair telecoms campaign **open message**

To: Margot James MP - Minister of State for Digital cc: MPs & peers

"Opting-in" to receipt of unsolicited direct marketing calls

This open message is presented with the hope of a meaningful reply, but also as a briefing to parliamentarians concerned about this issue of Nuisance Calls.

The **fair telecoms campaign** has now launched "The campaign to end Nuisance Calls".

We see this approach, involving government and other parties, as representing the action that is required to "***end the blight of nuisance calls***". To pretend that the only problem is with attended calls relating to Claims Management, made to those not registered with the TPS, is a very bold claim that surely cannot be sustained – see Tough new measures to end the blight of nuisance calls.

You may be aware that we were also involved in a considerable amount of media coverage of the issue on Saturday – see Media coverage of a government announcement about Nuisance Calls made on Saturday 8 September 2018.

We feel you could have been a little clearer in explaining that the "opt-in" approach already exists for all automated calls, text messages, faxes and emails and for those who already have their telephone number recorded on the Direct Marketing Association "Telephone Preference Service" register. You also could have been clearer in explaining that the change of approach, in respect of attended direct marketing calls to numbers not registered with the TPS, applies only to calls about Claims Management Services.

Regrettably, many media outlets misunderstood the very limited terms of the action being taken. It is natural and predictable to suggest that the government, once again, grossly over-hyped a very limited measure; that is however Politics.

To take this matter forward, I was interested to hear you outlining the general position that an "opt-in" approach to unsolicited direct marketing is a positive step forward in the battle against Nuisance Calls.

You will be aware that the **fair telecoms campaign** sees no useful purpose being served by this approach. We hold the view that the relevant business regulators should simply prohibit the practice of unsolicited direct marketing, by telephone call and probably also by text message and email, unless they can make a strong case to show that the practice is in the public interest, so as to sustain their existing qualified tolerance of the practice. Such a prohibition should extend to the use of leads obtained through cold calling by other parties (notably those who are overseas or who would fall outside the scope of PECR enforcement action for other reasons).

In respect of Claims Management and vehicles for the investment of withdrawn pension funds (as will be covered by a forthcoming SI), it is the Financial Conduct Authority who holds the responsibility for regulating the activities of the relevant businesses, in the public interest.

You are seen to oppose the idea of total prohibition, arguing that an unsolicited direct marketing contact is acceptable if made with "consent".

Given the strengthened definition of consent which applies under the terms of Data Protection Act 2018, it is very hard to understand how consent to an **unsolicited** direct marketing call could ever come to be given.

I would therefore be most grateful to hear of how you see this regime working, as an alternative to the outright prohibition which we advocate.

David Hickson

Wednesday, 12 September 2018

fair telecoms campaign **open message**

To: Margot James MP - Minister of State for Digital cc: MPs & peers

"Opting-in" to receipt of unsolicited direct marketing calls

As you, and ministerial colleagues in the Treasury, MoJ and DWP will be aware, the **fair telecoms campaign** followed the progress of the (then) Financial Guidance and Claims Bill through parliament.

We were very concerned about the way in which the issue of unsolicited direct marketing calls was being handled, with reference to Claims Management, Pensions and Other Financial Services.

We issued briefing to MPs and peers at various stages, expressing our views and suggestions. A final briefing dealt with the ultimate result – Guide to the "ban" on Cold Calling in the Financial Guidance and Claims Act 2018.

We recognise the terms of the EU Directive which lies behind the terms of the PECR and the decision by a previous government to avail itself of the option to adopt an "opt-out" regime in respect of attended voice calls.

Nobody can complain about the decision to commence the provisions of Section 35 of the FG&C Act, as announced on Saturday, and we look forward to a similar measure being brought forward in respect of "Pensions" shortly. These may however be characterised, along with other measures, as meaningless tweaks to a regime that has been shown to fail over the 15 years that it has been in place.

We are very concerned about how far this measure will alter behaviour, given the extent to which the existing regulations are already widely flouted. You must be aware that many automated calls, text messages and emails, as well as calls to numbers registered with the TPS, are made without consent at present. Removing the assumed "opt-in" in respect of attended telephone calls to numbers not on the TPS register surely cannot be expected to make any significant difference.

I would be delighted to have the opportunity to discuss how you see the "opt-in" regime working and why you feel this is a better approach than a simple prohibition of the practice of **unsolicited** direct marketing calls – albeit that the latter would have to be imposed by the relevant business regulator.

We feel that 15 years of attempts to address the issue through enforcement of the PECR has demonstrated that Nuisance Calls, insofar as they derive from unsolicited direct marketing, cannot be effectively dealt with as a data protection issue. We note that the ICO does its best but it cannot hope to have a serious impact on the problem. This derives from its remoteness from the businesses engaged in the process, its reliance on consumer complaints and the relative weakness of its enforcement powers.

We see that the issue of unsolicited direct marketing must be dealt with as a business process, by the relevant regulators. Misuse of personal data (for any purpose) is obviously a matter that must also be dealt with, by the ICO, but it is false to suggest or imply that such a breach is necessarily involved whenever a Nuisance Call is received.

Our comprehensive approach - "The campaign to end Nuisance Calls" – must be seen as a counter to the government approach of believing that all can be dealt with through a regime that has clearly been shown to fail.