fair telecoms campaign **news release**

Pressing on with our
'campaign to end nuisance calls'

What is going wrong

We launched our **campaign to end nuisance calls** just as the government announced the bringing into force of one of the "meaningless tweaks to a failed regime" that we have long been criticising.

For some years now the government has been obsessed with "tweaking" the terms of the **Privacy and Electronic Communications Regulations (PECR)** and the associated enforcement powers. It has long been seen, since their introduction in 2003, that these regulations are widely flouted and the enforcement regime has been unable to achieve compliance. None of these "tweaks" has had, nor can be expected to have, any significant effect on the extent of the problem of nuisance calls.

Subsequently, two further "meaningless tweaks" have been applied. This release is in response to the second of these and it picks up on points made in the associated press release from **DCMS** – "No escape for company bosses responsible for nuisance calls", from which we ***quote***.

Directors' liability for nuisance calls

The **Office of the Information Commissioner (ICO)** will impose penalties on those who have been found (generally around 18 months previously) to have breached the terms of the **PECR**. It can only take action in a limited number of cases, partly due to difficulties in obtaining evidence given that (apparently) only 0.0003% (1:30,000) of instances are reported.

Because, unlike sectoral regulations, the **ICO** is not directly engaged with the businesses it regulates, it has to rely almost entirely on reports of breaches in an attempt to achieve compliance with the regulations it has to enforce. With such a limited vision of the area it is expected to regulate, it is of little surprise that it cannot be truly effective.

We are therefore dismayed that the government seeks to rely exclusively on this regime to fulfil its alleged desire to "***rid society of the plague of nuisance calls***".

Which? has made a number of demands through its Nuisance calls and texts campaign. These are now all fulfilled through the introduction of the possibility of director liability. (Other measures, of no concern to **Which?**, have also been taken.)

These are listed in the **DCMS** release, under the heading "***The Government has already:***" - see ineffective tweaks. There is no evidence that these measures have had any significant effect on the problem. The release actually stresses the continuing extent of the problem with the shocking statement that "***British consumers were bombarded with 3.9 billion nuisance phone calls and texts last year***". The ICO receives around 125,000 reports of cases each year (i.e. 1:30,000).

One notes the assumption "***Complaints … have fallen … suggesting the action taken is working***", One must however suggest that a fall in the number of complaints could also be due to victims finding that no complaint ever leads to a meaningful result.

The most remarkable comment about the introduction of directors' liability is found in this comment from the Minister – "***…the small minority of rogue directors …***". Firstly, this indicates that this measure is only targeted on a small proportion of those companies responsible for Nuisance Calls. Secondly, it implies contentment with the state of affairs in relation to the rest.

This is not good enough, as we have long said "radical action is required" … …

David Hickson

Tuesday, 18 December 2018

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Our three demands

1 – Direct marketing by telephone to be prohibited in regulated sectors

The overwhelming majority of marketing nuisance calls relate to areas where business practices are regulated, including the manner in which leads may be generated (by any party), e.g.

- **The FCA** - Financial services, including Pensions and Claims Management
- **Ofgem** – Energy provision
- **Ofcom** – Communications products and services
- **The Fundraising Regulator** – Charities

Notwithstanding weak general regulations, each of these bodies has the power to effectively halt any method of marketing that it deems inappropriate, i.e. cold calling by phone, text or email.

We call of each of these bodies to apply a **total** (unqualified by the silly notion of consent) ban on use of direct marketing by telephone call to a home phone or personal mobile. This must include prohibiting regulated bodies using of leads obtained through cold calling by an agent, possibly offshore or otherwise unable to be caught by the general PECR enforcement mechanism.

It is their duty to apply such a prohibition or offer a clear justification for why their failure to do so is in the interests of the citizens they have a duty to protect.

2 – Use of Protocols to avoid unexpected and unverifiable Service Calls

Any business with a need to initiate telephone contact with customers must ensure that their call is expected, or in some way readily identified as being genuine.

There are various techniques that could be used. It is essential that no customer is ever left in any doubt about whether a genuine call is indeed genuine.

Many scams are operated on the basis that the victim is being contacted by an organisation of which they are a customer. As these are not "direct marketing" calls they fall outside the provisions of the **PECR** and the **ICO** enforcement regime. They are nonetheless "nuisance calls" in cases where the scam is not completed.

The purpose of this demand is to make it less likely that a potential victim be convinced that the call is not genuine – which demands clear statement of, and rigid adherence to the terms of the suggested Protocol. "***We will never contact you by telephone, except at your explicit request***" is the best and clearest protocol, which we recommend.

If properly applied, this approach may cause the scammers to cease efforts that are fruitless.

3 –Effective call filtering available to all telephone users

The approach offered by the **trueCall** device, unchallenged as an effective technique for blocking nuisance calls, should be deployed on all telephone networks – fixed and mobile.

This ensures that no unknown caller ever gets to speak to a potential victim of nuisance or a scam.

Talk Talk and **Sky Talk** already offer this, as a free service. It should be available on all networks.

David Hickson

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