

The Information Commissioner's response to the HM Treasury consultation 'Ban on cold calling for consumer financial services and products'.

About the ICO

1. The Information Commissioner's responsibilities include promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

Our response

2. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to His Majesty's Treasury's (HMT) consultation 'Ban on cold calling for consumer financial services and products'. We also valued the opportunity to engage with HMT and other stakeholders in the preparation of this consultation.
3. The Privacy and Electronic Communications Regulations 2003 (PECR) regulate the use of electronic communications for the purpose of direct marketing to people and organisations, the use of cookies (or similar technologies), the security of public electronic communications services, and maintaining the privacy of customers using communications networks or services. In particular, PECR restricts unsolicited direct marketing by phone, email, text or other electronic mail messages, with different rules for each type of communication.¹
4. As the law stands, organisations must not make live marketing calls to telephone numbers registered with the Telephone Preference Service² (or the corporate version) unless the person or business they are calling has agreed to receiving the calls. They also must not make marketing calls to anyone who has previously objected to receiving

¹ [Guide to Privacy and Electronic Communications Regulations | ICO](#)

² [Telephone Preference Service \(tpsonline.org.uk\)](#)

their calls. There are stricter rules for live marketing calls about claims management services and for calls about pension schemes.³In addition, under UK GDPR, people have the absolute right to object to the processing of their personal data for direct marketing purposes. There are no exemptions or grounds for refusal.

5. In the year 2022-2023, the ICO received more than 50,000 reports of concerns arising under PECR, including more than 42,000 reports about telesales calls involving both live marketing calls and recorded marketing messages.⁴ These reports related to marketing for a wide range of products and services, including financial products and services. We have also taken enforcement action, including issuing monetary penalties, against organisations that have contravened PECR⁵.
6. The examples given in the consultation document⁶ are typical of the type of issues and concerns that people bring to us about the direct marketing calls they receive. Our analysis of reported concerns highlights predatory marketing communications targeting people who are, or may be, at most risk of harm or potentially likely to respond to high-pressure marketing practices. Restricting the circumstances when organisations can lawfully make unsolicited direct marketing calls is likely to be a helpful aid in reducing the incidence of such predatory behaviour as well as supporting public awareness campaigns about the risks of fraud and scams from such calls.
7. If government prohibits unsolicited live telephone calls to individuals for the purpose of direct marketing in relation to financial services and products through amendments to PECR, the legislation must clearly and comprehensively define the financial products and services in scope, together with any exceptions or conditions. This will ensure that the public understands which calls are likely to be scams and will set clear boundaries for organisations that want to market their products and services in a legitimate way. Clear definitions will also be essential to support the ICO in providing regulatory certainty to

³ [Telephone marketing | ICO](#)

⁴ [ICO Annual report 2022-23](#)

⁵ [Enforcement action | ICO](#) and Box 3 [Coldcalling consultation- final clean.pdf \(publishing.service.gov.uk\)](#)

⁶ Boxes 1 and 3 [Coldcalling consultation- final clean.pdf \(publishing.service.gov.uk\)](#)

organisations and to support us in taking appropriate enforcement action against those who contravene the law.

8. As highlighted in the consultation, sole traders and some types of partnerships are individual subscribers as defined under PECR, whereas other types of businesses are defined as corporate subscribers. We appreciate that some businesses that are individual subscribers may be content to continue to receive unsolicited marketing calls about financial services and products relating to their business. However, the scope of any legislative proposal for a prohibition of unsolicited marketing calls that still allows calls to some categories of individual subscribers will need to be very clear. This will ensure that organisations can easily understand the circumstances when they can or cannot lawfully make marketing calls for financial products or services. We would welcome engagement with HMT on this specific point, if such a scenario is likely.
9. If government proceeds with proposals to amend PECR by imposing a prohibition on cold calling for financial products and services, it is likely that the ICO will see a rise in the numbers of concerns that people report to us. Our enforcement activity is also likely to increase. These proposals will therefore need to factor in any additional costs and resources required to meet any such increased demand.
10. We also note that the consultation discusses other potential areas of regulation, for example relating to door to door selling. Where this is carried out door to door without details of the occupant, this is not likely to involve the processing of personal data or come within the scope of PECR, so would not be an area that the ICO would expect to regulate, if government is minded to adopt proposals to restrict such activity.

Further consultation

11. Article 36(4) UK GDPR imposes a requirement on government to consult with the ICO during the preparation for legislative measures which relate to the processing of personal data. We therefore look forward to continuing engagement with HMT and other relevant stakeholders as these proposals develop.

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