Ban on cold calling for consumer financial services and products: Consultation and call for evidence

Response to be sent to financial.coldcallingban@hmtreasury.gov.uk by 27 September 2023.

This response is being sent on behalf of The Chartered Trading Standards Institute (CTSI) and has been compiled by:

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ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection. And, after more than 140 years of progress, we remain immensely proud of our close association with the Trading Standards profession and the vital work it continues to do – promoting fair business practices, tackling rogue traders and, ultimately, protecting UK consumers.

At CTSI and through the trading standards profession, we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety, and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence-based policy advice to support local and national stakeholders including central and devolved governments. CTSI is responsible for business advice and education in the area of trading standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations. CTSI is also responsible for the Consumer Codes Approval Scheme which facilitates high principles of assisted self-regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

CONSULTATION RESPONSE

Question 1: In your experience, what are the main harms caused by cold calling to market financial services and products?

By providing a ban to all cold calling on financial services and products, this will allow a very clear message to all consumers that any calls relating to financial services are scams and illegal. This will stop all legitimate callers from selling these products via cold calls and any callers making these calls are criminals.

A couple of case studies illustrating the harm to consumers below:

Case Study A

- Large-scale fraud relating to domestic appliance repair cover plans
- Criminals have obtained details of thousands of vulnerable/elderly victims
- Criminals using forceful dialogue to trick victim/s into providing personal details
- This victim has been targeted on multiple occasions
- Thousands of pounds have been lost
- Victim is lacking mental capacity or cognitive ability
- Victim has lost the ability to defend themselves

Case Study B

- Adult social care received a referral from a housing officer
- Concerns around the number of direct debits taken from victims' bank account
- Trading standards officer met with the victim in the autumn of 2021
- Direct debits appeared to be for insurances on household goods and maintenance contracts
- Victim appeared to understand but couldn't remember if they had received any phone calls or letters relating to these contracts/household goods
- Victim agreed to being accompanied to the bank by the TS officer to speak with them
- Victim was referred to adult social care for a safeguarding visit
- TS Investigator confirmed that the individual could well be a victim
- Victim was visited again in the autumn of 2022 for a welfare check
- Victim agreed they would visit the bank in the autumn of 2022 but cancelled due to not feeling well
- Concerned for the victim's welfare, the TS officer attended the address again where a relative confirmed that the victim was in hospital
- In early winter 2023 it was confirmed that the victim had died

In relation to current trends with investment fraud, dealt with by a law enforcement partnership in the City of London which includes Trading Standards, there now seems to be less emphasis on telephone cold calling. The business model now involves criminals or associated lead generators using social media routes to promote investment products and the intended victim is asked to respond by sending their name and contact details. The 'boiler rooms' will then call these victims who have expressed an interest and give the hard sell and sign victims up and take life-changing sums of money. The proposals to ban cold calling will therefore be pointless in relation to investment fraud which is running at £900 million per annum and growing fast. The only solution is to define a "cold call" as one that is made in response to a consumer expressing an interest in a product, but I can imagine that this would be a request too far.

It should also be noted that when consumers are cold-called, they are unlikely to listen fully or have the full facts to make an informed transactional decision. They are pressurised and the companies use strong and enticing language to hook them. Often the caller will position themselves as a trusted advisor, essentially grooming the victim over a period of time in order to enable a repeated, or ongoing fraudulent relationship involving considerable harm (both financial, and then the wider impact on the victim's health, wellbeing, and sense of self-image when the fraud later becomes apparent).

Financial services are a complex and complicated area, and consumers are often vulnerable when they are contacted by someone who offers to help them through a financial minefield. At a time when consumers are financially strapped for cash, they may be easily convinced by a cold call offering them a 'guaranteed return'. A ban means that consumers are more likely to do their research before investing.

There is also the impact on legitimate businesses as many of the unscrupulous businesses will either use a name that could, in the consumer's mind, be associated with a well-known company. Therefore, companies suffer reputational damage and trust from consumers diminishes.

Question 2: Do you agree that the cold calling ban should capture live telephone calls to an individual?

See question one.

Yes. A ban should cover live telephone calls but also web chats, chatbots, and text exchanges that may be initiated when consumers are browsing the internet. Consumers are more likely to be cold-called over the phone than on the doorstep.

Question 3: To what extent does direct unsolicited marketing of financial services or products take place through live, electronic communications, other than telephone calls? What is the impact if these communications are not captured by the cold calling ban?

We would suggest you consider including social media platform calling facilities, such as Facebook, WhatsApp, Instagram, TikTok calls, Snapchat, and other methods of calling. If we do not include social media communication as a 'cold call', we could see the criminals moving to these platforms to avoid being pursued by law enforcement, but also to legitimise any of their offers or scams. Criminals will target consumers through all available means, and social media is a way of attracting a certain demographic. We would welcome the ban to be as broad as possible to protect consumers.

This would also make prevention and protection messaging regarding 'pig-butchering' easier for consumers to grasp; the commercial intent is being hidden, but it's an investment fraud regardless. I would also like to include where consumers register interest via adverts on social media which then result in a callback. In some respects, slick-looking social media ads are worse than cold-calls, because if potential victims register an interest with them, the success rate will be higher than with cold-calls, which many people regard with cynicism. However, I recognise in practice this may be difficult to enact without being overly restrictive.

Question 4: Are there existing safeguards in place via social media organisations which already offer protection against fraudsters using social media voice and video calls for the purposes of cold calling?

We are not aware of any existing safeguards that may be in place. General experience is that social media platforms do not take their role as enablers of crime very seriously at all, and Government are not robust enough in designing legislation to control social media activities.

We are aware that many scams originate on social media and are largely unchallenged. Financial scams can have a huge impact on consumers and many vulnerable individuals are particularly susceptible to social media voice and video calls. The Online Safety bill doesn't appear to take this into consideration. Facebook offers reporting services but often don't react to consumers. Platforms such as Facebook and Tiktok are enablers and don't do much in the line of due diligence. We know also have to take cognizance of the A.I and deep fake scams that use fake voice accounts and imaging to endorse products. To the extent that there are, or may be, it is clear from the amount of fraud and levels of loss originating from social media platforms that they aren't effective.

Question 5: To what extent does marketing of financial services or products take place through door-to-door selling?

We have not seen a huge number of reports concerning door-to-door financial services sales. However, if we ban cold calling for all other communication methods, you could end up pushing it to the doorstep. It could be an unintended consequence of changing the law so we believe a blanket ban on all methods of cold calling is a better idea.

Door-to-door marketing still takes place but is probably associated more with green energy initiatives (solar panels, heat pumps, etc.) where finance is offered to allow consumers to purchase products. Door-to-door selling of financial products predominantly happens in areas of social deprivation, where loan sharks thrive. A blanket ban is necessary to ensure the issue doesn't merely migrate to face-to-face/doorstep selling to avoid the ban.

Question 6: How could a cold calling ban be made to be effective in preventing door-to-door selling for financial services and products?

See question 5.

For many years, TS have promoted 'No Cold Calling Zones' with varying degrees of success. Preventing cold calling on the doorstep requires appropriate resources to enforce and monitor such a ban.

This could create a strict liability offence, easier to enforce if there is no grey area about canvassing and selling – the cold call ban should include any service at consumers' houses.

Question 7: Are there other forms of cold calling aside from electronic communications and in-person selling that cause harm to consumers?

Misleading flyers and letters coming through the door and telephone calls to landlines.

Question 8: Should sole traders and other types of partnerships (outside of limited liability partnerships and Scottish Partnerships) be captured in this ban on consumer financial services and products?

Yes, again this would be a way criminals could diversify and avoid the ban. Not only would it be easy to avoid the ban without it being all-encompassing, but it dilutes the message to consumers if there are exceptions and exemptions and makes prevention and protection messaging difficult, confusing, and far less effective. Consistency is needed. We saw issues with Claims Management companies in Scotland; they are not regulated by the Ministry of justice here.

Question 9: Do you agree that the scope of the ban should include the services and products set out in the section above? Are there any other products that should fall within the scope of the proposed ban on consumer financial services and products cold calling?

Numerous consumers nationally were receiving unsolicited telephone calls from entities offering “white goods” electrical and home breakdown cover plans (most of which were non-insurance backed and as such avoided FCA scrutiny) to victims. The methodology was to contact a consumer and through aggressive and persistent engagement to obtain bank details and enrol the consumer into these plans (to date our enquiries have revealed that no claims appear to have been paid to consumers contacted by the team). The entities then target the individuals with repeated contact and charges for duplicate or non-existent cover plans. Of the victims visited all have been targeted multiple times. One individual had 58 different plans, and another had 23 plans and was living in sheltered accommodation with all services provided. A further victim has lost £14,000 in an 18-month period. Paperwork obtained from the victims identified a clear pattern and a number of similarities to company names, registered addresses, and payment processors.

Indian based call centres, previously targeting the UK with a variety of scams, have now also started to call consumers with the same MO, namely offering these cover plans. There has also been an influx of cold calls being received offering green energy solutions on finance. These green energy solutions are often misleading, unsafe, not fit for the consumer and overpriced.

We have seen an increased use of enhanced data lists by criminals which allow focused targeting of victims, which in turn provides higher returns and larger individual detriment to consumers. UK based criminals emerging onto the landscape, engaging in fraudulent telephone sales to a specific demographic of consumers (elderly/situationally vulnerable). Increased use of the telephone and internet by criminals creating more sophisticated frauds.

The number of victims identified with multiple plans strongly suggests that data lists are being shared and are refined and targeted to specific consumers. The volume of calls made by the subjects is significant with a high proportion being made to consumers registered with the Telephone Preference Service. Intelligence obtained clearly shows that the fraudsters are actively targeting the most vulnerable in society.

Use of web-based banking facilities and financial intermediaries by criminals to avoid fraud detection in the main “high street” banking sector. Use of UK enablers to provide print, packaging, mail delivery, and financial processing for criminals.

Increase in the practice of “subscription traps” by criminals engaging with victims and offering plausible products and services to disguise their criminal intentions.

The product in this case appears legitimate but the intentional selling of multiple plans (subscriptions) without providing full information to the consumers regarding the plan, price, and arrangements for payment is causing significant detriment.

Increased use of social engineering tactics by the criminals to ensure positive engagement by the intended victim. The fraudsters use this technique within their script. It has been identified that the consumer is initially engaged regarding “their appliance insurance”, which often solicits a positive reply. The caller then manipulates this from the training. They use phrases designed to cause panic, immediate decision making, and ideas of a “bargain”. Often calls can become threatening.

Artificial intelligence and social engineering technology is being used to engage and obtain higher returns from potential victims. Fraudsters are using a number of advanced, but readily available technologies to target consumers. This includes auto-dialling technology which is linked to AI. The recipient of the call receives a realistic voice which is computer-generated and dependent on answers then engages with the victim. Once a level is attained the software transfers to a live call handler to engage using the social engineering techniques as above.

The ban should cover all of the above. I’d like it to be broadened to encompass home repair/improvement works (including retro-fitting and green energy) as well, where significant consumer harm continues.

Question 10: Are there any consumer financial services and products which should not be captured by this ban?

No – creating exceptions would cause confusion and potential loopholes. Only a blanket ban creates certainty with consumers and law enforcement alike. Anything else becomes overly complicated and difficult to enforce.

Question 11: Do you have any views on whether to include an exception in this cold calling ban, for situations where the caller is an FCA or PRA authorised business and there is an existing client relationship between the caller and the recipient, such that the recipient envisages receiving cold calls?

No exceptions. Otherwise, the illegitimate companies will simply state they’re FCA authorised. Or they’d copy-cat legitimate businesses with similar-sounding names & falsely use the legitimate business’s FCA details etc.

Question 12: Do you agree that the proposed approach achieves the aim of restricting unsolicited direct marketing calls in relation to financial services and products, bar the exceptions outlined, without restricting legitimate non-marketing calls?

Yes. We need to ban, not restrict.

Question 13: Do you have any views on the enforcement mechanism set out in paragraphs 4.11 and 4.12 above?

No.

Question 14: How else can the government best ensure consumers are aware of the ban?

A joint multi-agency social media campaign.

Use recognised fraud education routes, such as friends against scams to get the message to the public.

Ask the TELCOs to push this message to their customer base.

Include messaging on government-backed consumer advice/education campaigns.

There needs to be ring-fenced resources to monitor/enforce a ban along with a communication strategy so consumers understand that cold calling is illegal. Just because cold calling is illegal doesn't mean it will stop, particularly if calls originate from outside the UK.

The Scottish Government/Consumer Scotland absolutely needs to be on board with this and show a unified approach, not amendments or exceptions.

Publicity for this matter will be key, including engagement on online platforms.

Question 15: What are the key considerations when designing the legislation to ensure that it is clear and impactful for the public?

Clear and concise messaging, with significant penalties in order to act as a meaningful deterrent (in addition to additional funding to ensure enforcement is practicable).

Relevant and timely.

Call to action.

Law enforcement needs to have the ability to disrupt communication networks used by criminals such as telecoms, social media, and websites. Presently, there is no fully effective way to disrupt against criminals and their enablers who may be based outside of the UK.

Question 16: In your experience, how could firms' business models be affected as a result of the ban?

The impact on legitimate businesses will be minimal. It shouldn't have a major impact if the ban relates just to cold calling.

Question 17: Are you aware of any groups of businesses, organizations, and/or individuals that will be particularly affected by these proposals?

No, reputable financial institutions do advertise on social media and they may be affected if the ban extends to social media.

Question 18: What impacts would you expect to see on persons with the protected characteristics mentioned above as a result of a ban on cold calling for consumer financial services and products? How can the government design the ban to promote positive impacts and mitigate any disproportionate impacts on persons sharing protected characteristics?

No comment.

Question 19: Do you have any other views or information the government should consider in relation to the proposed ban on cold calling in relation to financial services or products?

No further comments.

FOR FURTHER INFORMATION

CTSI is happy to work with the HM Treasury and other agencies and contribute to work in this area in order to protect consumers and protect reputable businesses.

Please contact Duncan Stephenson, Director of External Affairs for further information (duncans@tsi.org.uk or 07557 229 774)