Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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20 October 2023

By email: financial.coldcallingban@hmtreasury.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to HMT consultation on the ban on cold calling for consumer financial services and products

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of financial services policy and regulation in the UK.

Our focus is predominately on the work of the FCA, however, we also look at the impact on consumers of other bodies' activities and policy where relevant to the FCA's remit.

The Panel welcomes the opportunity to respond to the HM Treasury Ban on cold calling for consumer financial services and products consultation and call for evidence. Financial scams are a scourge on our society that not only devastate victims' financial health and wellbeing but also, and all too often, their physical and mental health. It is essential that we recognise that all consumers (including micro businesses and SMEs) can potentially be victims of scams, particularly where and when they are vulnerable. Scams can and do result in substantial financial loss and can have significant emotional and inter-generational financial planning impacts.

The Panel hold that given advances in Artificial Intelligence, machine learning and digital communication, and importantly, the difficulty in identifying a vulnerable customer, the cold calling ban should be future proofed. The scope should not only capture live calls, but also texts, emails, door to door sales and importantly, all forms of electronic and social media communication. In terms of future proofing and closing opportunities for fraudsters to engage consumers and/or capture their data, the Panel encourage HM Treasury to take a broad approach and think beyond those products and services that currently sit within the FCA's perimeter.

We strongly support the Government's initiative to protect consumers and whilst it may not stop scams altogether, a cold calling ban in relation to financial services and products has the potential to be a significant barrier to those intent on committing fraud. UK Finance estimated that circa £1.3 billion was stolen due to financial fraud in 2021[1] with these scams often beginning with an unsolicited approach from someone via phone, text, or social media messaging or door-to-door cold calling, and therefore The Panel would recommend that HMT consider widening the scope of this work to be a Ban on Cold-Contact for Consumer Financial products and Services.

[1] https://www.ukfinance.org.uk/news-and-insight/press-release/over-ps12-billion-stolen-through-fraud-in-2022-nearly-80-cent-app

Our responses to the questions posed in the consultation are included at Annex A below, please note our position that the ban should apply to all cold-contact in the widest sense, not just cold-calling.

Yours sincerely,

Helen Charlton

Chair, Financial Services Consumer Panel

Annex A – responses to questions

Q1. In your experience, what are the main harms caused by cold calling to market financial services and products?

Financial scams are a scourge on our society that not only devastate victims' financial health and wellbeing but also, and all too often, their physical and mental health. It is essential that we recognise that all consumers, irrespective of their knowledge of financial services and products (including micro businesses and SMEs) are potential scam victims, particularly those that are vulnerable. Scams can and do result in substantial financial loss and they can have significant emotional and inter-generational financial planning impacts.

The Panel welcomes the Government's initiative to protect consumers and whilst we do not believe it will not stop scams altogether, a cold calling ban in relation to financial services and products has the potential to be a significant barrier to those intent on committing fraud. UK Finance estimated that circa £1.3 billion was stolen due to financial fraud in 2021[2] with these scams often beginning with an unsolicited approach from someone via phone, text, social media messaging or door-to-door cold calling.

In addition to the risk of being scammed, cold calls, texts, emails, and social media messaging can result in the purchase of inappropriate FCA regulated or unregulated products and services. Examples of these, which the Panel has seen advertised on social media recently, include non-advised and overpriced life insurance, IVA's and crypto products.

Q2. Do you agree that the cold calling ban should capture live telephone calls to an individual?

The Panel hold that given advances in Artificial Intelligence, machine learning and digital communication, and importantly, the difficulty in identifying a vulnerable customer, the cold calling ban should be future-proofed. The scope should not only capture live calls, but also texts, emails, door to door sales and importantly, all forms of electronic and social media communication. Furthermore, The Panel recommends that HMT consider widen the scope of this work to be a **Ban on Cold-Contact** for Consumer Financial Products and Services.

In terms of future proofing and closing opportunities for fraudsters to engage consumers and/or capture their data, the Panel encourage HM Treasury to take a broad approach and think beyond those products and services that currently sit within the FCA's perimeter.

Q3. 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?

The Panel are aware of significant levels of unsolicited social media messaging in relation to both regulated and unregulated products and services. These range from life insurance, IVA's to crypto assets and more. Much of this activity is instigated from outside the UK and is focused on capturing customer data for the generation of sales and/or the sale of data as "sales leads".

[2] https://www.ukfinance.org.uk/news-and-insight/press-release/over-ps12-billion-stolen-through-fraud-in-2022-nearly-80-cent-app

Q4. 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?

The Panel would argue not.

Whilst there is a Direct Marketing Code of Practice[3], a joint Information Commissioners Office (ICO) and Ofcom joint plan, Directors Liability re nuisance calls plus regulatory direct marketing restrictions these only apply to bona fide firms.

Social media platforms, telecommunications providers (and the like) need to do more to prevent fraudsters using their platforms/tools to engage with consumers, regarding financial services products and services, without a consumer-initiated invitation to do so.

Q5. To what extent does marketing of financial services or products take place through door-to-door selling?

As mentioned within the consultation document[4], whilst the door-to-door marketing and sales of financial services products and services is not as extensive as it has been historically, it still occurs and is potentially harmful, particularly to vulnerable consumers.

The Panel suggest HM Treasury consider further research in relation to door-to-door selling. The Panel also see value in partnering with community-based consumer groups and charities such as the Research Institute for Disabled Consumers. The Panel's rationale for this is that consumers may find it difficult to differentiate the door-to-door selling of financial services products from the sale of other products and services, including the door-to-door collection of regulated credit product payments etc.

Q6. How could a cold calling ban be made to be effective in preventing door-to-door selling for financial services and products?

The Panel view strong and accessible consumer messaging as being critical to the success of a door-to-door selling of financial services and products ban.

Whilst the door-to-door marketing and sales of financial services products and services is not as extensive as it has been historically, it still occurs and is potentially harmful, particularly to vulnerable consumers.

The Panel suggest HM Treasury consider further research in relation to door-to-door selling. The Panel also see value in partnering with community-based consumer groups and charities such as the Research Institute for Disabled Consumers. The Panel's rationale for this is that consumers may find it difficult to differentiate the door-to-door selling of financial services products from the sale of other products and services, including the door-to-door collection of regulated credit product payments etc.

Q7. Are there any other forms of cold calling aside from electronic communications and in person selling that cause harm to consumers?

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[3] https://ico.org.uk/media/for-organisations/direct-marketing-guidance-and-resources/direct-marketing-guidance-1-0.pdf

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1175770/Coldcalling_consultation-_final_clean.pdf

The Panel hold that given advances in AI, machine learning and digital communication plus, and importantly, the difficulty in identifying a vulnerable customer, the cold calling ban should be future proofed with its scope not only capturing live calls but additionally texts, emails, door to door sales and importantly, all forms of social media messaging. In terms of future proofing and closing opportunities for fraudsters to engage consumers and/or capture their data, the Panel encourage HM Treasury to take a broad approach and think beyond those products and services that currently sit within the FCA's perimeter.

Q8. 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?

The Panel agree that these firms should be captured. It is also essential that a consistent approach is taken with the Consumer Duty.

Q9. 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?

In reducing harms and closing opportunities for fraudsters to engage consumers and/or capture their data, the Panel encourage HM Treasury to take a broad approach and think beyond those products and services that currently sit within the FCA's perimeter. This could be done through consumer testing or research to give HM Treasury a greater insight into the products and services that are sold and marketed through cold calling and the harms consumers face.

Q10. Are there any consumer financial services and products which should not be captured by this ban?

The Panel are cognisant of the fine line that HM Treasury will be required to draw between on the one hand removing harm and on the other, ensuring that consumers do not miss out on financial support and opportunities. We recognise that this is particularly difficult given that the Consumer Duty places an increased expectation on firms to improve communication with clients and offer them products of better value, service, and support.

The Panel encourage HM Treasury to consider the media through which firms are contacting their clients. It is important that communications are delivered securely and that they are personalised. This can give consumers confidence that the person and/or entity the are engaging with is legitimate and acting in their best interest to improve their understanding, receive value, service and/or support.

Q11. 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?

The Panel are cognisant of the fine line that HM Treasury will be required to draw between on one hand removing harm and on the other, ensuring that consumers do not miss out on support and opportunities. We recognise that this is particularly difficult given that the Consumer Duty places an increased expectation on firms to improve communication with clients and offer them products of better value, service, and support.

The Panel encourage HM Treasury to consider the media through which firms are contacting their clients. It is important that communications are delivered securely and that they are personalised. This can give consumers confidence that the person and/or entity the are engaging with is legitimate and acting in their best interest to improve their understanding, receive value, service and/or support.

The Panel hold that the end position should be that cold calling, texting, social media messaging and other electronic communications promoting a financial services product, should solely be made in a way that consumers, particularly vulnerable consumers, had knowingly approved on the purchase and/or renewal of the product. The medium used should be one that the consumer recognises, trusts, and, importantly, that protects them from being duped or rendered susceptible to scams or fraud.

Q12. Do you agree that the proposed approach achieves the aim of restricting unsolicited direct marketing calls in relation to financial services or products, bar the exceptions outlined, without restricting legitimate non-marketing calls?

Yes.

The Panel hold that the end position should be that and cold calling, texting, social media messaging and other electronic communications should solely be made in a way that consumers, particularly vulnerable, had knowingly approved on the purchase and/or renewal of the product. The medium used should be one that the consumer recognises, trusts, and, importantly, that protects them from being duped or rendered susceptible to scams or fraud.

Q13. Do you have any views on the enforcement mechanism set out in paragraphs 4.11 and 4.12 above?

The Panel encourage HM Treasury to clearly communicate the benefits and scope of the ban to consumers, commit to strong enforcement, and work with firms to ensure that they use the channels that their customers have signed up to.

Q14. How else can the government best ensure consumers are aware of the ban?

The Panel stress the need for consumer testing and strongly support the Government working with consumer groups and partners at the outset to best ensure that consumers are aware of and understand the scope of the ban. Consumers should be able to both recognise if the ban is breached and know-how and who to complain to if it is breached.

HM Treasury should also use research to identify the consumer profile of those who are likely to experience cold calling or have been victims of fraud through cold calling, to better understand the types of communications that would be beneficial and reach such consumers. If HM Treasury does not have this data, the Panel would encourage HM Treasury to undertake research to build a consumer profile.

The Panel would also encourage HM Treasury to consider using all different mediums of communication to ensure all consumers are aware of the ban.

Q15. What are the key considerations when designing the legislation to ensure that it is clear and impactful for the public?

The Panel stress the need for consumer testing and strongly support the Government's working with consumer groups and partners at the outset to ensure that consumers are aware of, and understand the scope of the ban, and both recognise and know how to complain if it is breached.

HM Treasury should also use research to identify the consumer profile of those who are likely to experience cold calling or have been victims of fraud through cold calling, to better understand the types of communications that would be beneficial and reach such consumers. If HM Treasury does not have this data, the Panel would encourage HM Treasury to undertake research to build a consumer profile.

The Panel would also encourage HM Treasury to consider using all different mediums of communication to ensure all consumers are aware of the ban.

Q16. In your experience, how could firms' business models be affected as a result of the ban?

No comment.

Q17. Are you aware of any groups of businesses, organisations and/or individuals that will be particularly affected by these proposals?

No comment.

Q18. 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?

The Panel hold that the ban will be beneficial to vulnerable consumers, protecting them from harm; it should also better protect those with reduced financial resilience to shocks, pressures and, importantly, it should help to shield those with protected characteristics. The ban and its communication should be inclusive by design based on solid consumer testing and lived experience. The Panel recommend that Government consult with appropriate consumer groups and charities such as Age UK, Citizens Advice, Fair by Design, Scope, Money and Mental Health Policy Institute, Carers UK, Gingerbread, Shelter, Neurological Alliance, Autistica, Carers UK, Macmillan, and the Research Institute for Disabled Consumers to list but a few.

Q19. 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 comment.