



ASSOCIATION OF CONSULTING ACTUARIES

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16 August 2018

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Dear Sirs

**Ban on cold calling in relation to pensions: consultation on regulations**

I am writing on behalf of the Association of Consulting Actuaries in response to the above-named consultation issued by HM Treasury.

Our comments on the specific questions raised in the consultation are set out in the Appendix.

We hope that you find the contents of this letter of assistance. We would be happy to discuss them further if that is helpful.

Yours faithfully

**Jane Beverley**

Deputy Chair, Pension Schemes Committee

On behalf of the Association of Consulting Actuaries Limited

### Ban on cold calling in relation to pensions: consultation on regulations

#### Consultation questions

**1. Do you agree that the proposed regulations achieve the aim of restricting all unsolicited direct marketing calls in relation to pension, bar the exemptions outlined, without restricting legitimate non-marketing calls?**

Whilst we are not lawyers, we would agree that these regulations largely achieve the stated aim of restricting unsolicited direct marketing calls whilst not restricting legitimate non-marketing calls. However, we have two observations:

- (a) Regulation 21B(3)(a) refers to a 'TPR-regulated person', which (6)(c) defines as having 'the meaning given in section 355(1) of the Financial Services and Markets Act 2000'. However, the term is not defined there – instead section 355(1) contains the definition of a 'PRA-regulated person'. It may be that the intention was to exempt callers who are PRA-regulated persons rather than TPR-regulated persons.

In fact, the term 'TPR-regulated person' does not seem to be defined anywhere in legislation, perhaps not surprisingly as TPR does not generally regulate persons. Should the definition rather be along the lines of 'the trustees or managers of an occupational pension scheme regulated by TPR' (the definition used in section 3 of the consultation document)? However, it is unclear why such a definition is needed at all, given that the trustees of bona fide schemes are unlikely to making unsolicited direct marketing calls in relation to pensions.

- (b) In regulation 21B(3)(b), there is a reference to a relationship between caller and recipient 'such that the recipient envisages receiving unsolicited calls for the purpose of direct marketing in relation to pension schemes'. However, what the recipient 'envisages' is subjective, and this might therefore be better replaced with a term such as 'might reasonably be expected to envisage'.

**2. Do you agree that the proposed regulations capture the wide range of activities through which people could be encouraged to use their pensions savings in order to invest in inappropriate or scam investments?**

These regulations are likely to capture the sub-set of scam activities that are carried out by means of cold calling. However, they will not capture scam activity that occurs face-to-face (for example at factory gates or seminars sponsored by scammers).

In addition, where the calls are made from outside the UK, enforcement may well be difficult as the ICO is unable to act against overseas firms.

We note that the intention is that the draft regulations are only intended to cover live calls (and not other forms of electronic communications). The consultation document refers to texts and emails in the context of existing PECR restrictions on electronic mail, but we think that the definition of 'electronic mail' should also cover contacts via social media, as the ICO suggests (<https://ico.org.uk/for-organisations/guide-to-pecr/electronic-and-telephone-marketing/electronic-mail-marketing/>).

We would also encourage the Treasury to confirm that telephone calls made via the internet (such as Skype) fall within the definition of 'public electronic communications service'.

**3. Do you agree that the proposed regulations are sufficiently flexible and future proofed to prevent the evolution of scam pensions cold calls that circumvent the ban?**

It is never possible to draft legislation to cover all possible future scenarios. However, these regulations seem adequate to restrict the limited set of scam activities that they cover in all currently conceivable situations.

**4. Do you agree that the proposed regulations prevent 'workarounds'?**

Given that calls are permitted to be made by FCA-regulated and TPR-regulated persons (as drafted) in certain circumstances, it is likely that cold callers will claim to be such individuals (and members will have no easy way of determining that they are lying and therefore that the law is being broken).

It is also likely that scammers will seek opportunities to gain consent (for example in face-to-face meetings or via SMS message) and then their calls will fall outside the scope of this legislation because their calls will not be unsolicited.

Whilst these are real problems, it is hard to see what can be done in practice to prevent such workarounds taking place. The ban on cold-calling is at least a start towards tackling scammers. However, if the ban is to be at all effective, then the following will also be necessary:

- (a) Clear communications to members through a wide range of channels so that they are aware that pensions cold-calling is illegal – and ideally some guidance as to how they can check whether callers are regulated persons when they claim to be;
- (b) A straightforward way for members to report any cold calls they do receive;
- (c) Prompt action by the ICO where cold calling has occurred; and
- (d) Successful criminal prosecutions where cold callers have been guilty of fraud (or attempted fraud).

**5. What will be the quantifiable impact of the ban on the legitimate business of firms which undertake pensions cold calling?**

- **how many legitimate pensions cold calls are taking place?**
- **how many legitimate pensions cold calls lead to a successful transaction and what is the average value of these transactions?**
- **how many legitimate pensions cold calls will be captured by the ban?**

We have no information in respect of any firms which undertake pensions cold calling, and therefore cannot comment on this question.

## About the Association of Consulting Actuaries (ACA)

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes.

The ACA is the representative body for UK consulting actuaries, whilst the Institute and Faculty of Actuaries is the professional body.

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