HM Treasury

Ban on cold calling for consumer financial services and products

Consultation and call for evidence

August 2023

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Foreword

Cold calling for financial services and products has long been used by fraudsters to manipulate and trick members of the public into scams. These criminals will often purposely target the most vulnerable members of our society and use a range of deceitful tactics to take advantage in any way they can.

The government will not tolerate this behaviour. This is why we announced in the Fraud Strategy that government will ban cold calling for all consumer financial services and products. This ban will make the public aware that they will never be called by a legitimate firm trying to market a financial product without their consent. Any unsolicited calls of this type should be viewed as scams, and the public should feel empowered to put the phone down and report these calls. This will stop the fraudsters dead in their tracks and prevent the emotional and financial harm that cold calling can cause.

In this consultation, the government would like to explore the best way to design and implement this ban. Our objective is to maximise the effectiveness of this ban in stopping fraudsters, while limiting any unintended impacts on legitimate contact by firms selling useful financial services and products. Responses to this consultation will help inform the government's approach in achieving this goal, including on questions related to the precise scope of this ban and how best to communicate it to the public.

We can work together to tackle the fraudsters head-on by cutting off their ability to deploy the high-pressure tactics of cold calling. We want the public to know that any unsolicited call marketing financial products such as a cryptoasset or insurance is a scam, and not to fall prey to fraudsters.

This ban on cold calling for consumer financial services and products will be designed to protect you and your loved ones, and I look forward to receiving your input on how best to achieve this.

Andrew Griffith MP

Economic Secretary to the Treasury

Chapter 1
Introduction

1.1 Fraud is often a faceless crime facilitated through a range of technological and communication methods. As set out in the government's recent Fraud Strategy, fraud is the largest crime type and now accounts for over 40% of all estimated crime in England and Wales.[1] In 2022 there were 3.7 million estimated fraud offences, and 1 in 15 adults were a victim of fraud.[2] The total cost to society of fraud against individuals in England and Wales was estimated to be at least £6.8 billion in 2019- 20.[3] This includes the money lost by victims, the cost of supporting victims, and the costs of recovery, investigation, and prosecution of fraudsters.

1.2 One of the most prevalent channels used by criminals to commit fraud is through telecommunications networks and services. The government has taken a number of recent actions to restrict the use of such channels by criminals including the banning of SIM farms, reviewing the use of mass text aggregators and working alongside Ofcom to stop spoof calls. Alongside these actions, this government is committed to taking further action on cold calling practices.

1.3 Cold calling involves individuals or organisations making unsolicited calls to consumers to market a service or product. In some cases, these calls are made by direct marketing companies in breach of relevant privacy regulations, but in other cases the products and services being marketed do not exist and the call is fraudulent.

1.4 It is estimated that between August and November 2022, over half of all UK landline users received a suspicious call.[4] Landline owners who report receiving suspicious calls also reported being contacted much more frequently than those receiving calls to their mobile. Around 80% of landline owners who have reported receiving suspicious calls state that they receive them at least once a month.[5]

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1 The Telephone-operated Crime Survey for England and Wales, year ending December 2022

2 The Telephone-operated Crime Survey for England and Wales, year ending March 2022 Crime in England and Wales: Appendix tables - Office for National Statistics (ons.gov.uk): Table A3

3 The Economic and Social Costs of Crime 2022. This figure estimates wider costs to society including preventative spending, emotional harms and the law enforcement response to fraud committed against individuals.

4 https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/tackling-scam-calls-and-texts

5 https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/tackling-scam-calls-and-texts

The threat to the general public from cold calling regarding financial services and products

1.5 The government recognises the marketing and sale of financial services and products plays a key part in the UK economy, with the financial services sector contributing c.£173.6 billion in 2021.[6] However, many financial products are complex and carry risk as well as opportunity. It is imperative that consumers are provided with clear information in a non-pressured environment when making choices about these products and services, so they can consider what is the right product or service for them.

1.6 The practice of cold calling to market a financial service or product does not align with these conditions. Consumers are likely to feel under pressure to sign up to something immediately or be coerced into agreeing to be contacted further when they are cold called. This can lead to poor outcomes for consumers, and the government does not recognise cold calling as a suitable route for the marketing of financial services and products. As a result, the use of cold calling for marketing financial services and products is already significantly restricted by financial services legislation.

1.7 In addition to rarely being an appropriate marketing tool, cold calling also poses fraud risks. Fraudsters often use cold calling to pose as a legitimate business so they can benefit from the high pressure they place on the people they call. The use of real time calls offers a unique opportunity to manipulate potential victims, enabling the fraudster to adapt their approach and tactics instantaneously. In some cases, it has been recorded that the perpetrators will research security protocols such as two factor authentication for online banking in advance and reassure and coach the victim on how to go through them. In these situations, the warnings that exist at the point of payment may not be effective in disrupting scams.

1.8 Fraudulent and nuisance calls can have significant and devastating impacts on people's lives, particularly the most vulnerable in society. Even in cases where a scam is not successful, cold calling is still a problem for recipients. National Trading Standards found that exposure to landline enabled fraud can have a quantifiable negative impact on the recipient's wellbeing, regardless of whether any money is taken.[7]

1.9 It is likely that the impacts of cold calling are not evenly distributed, with a small number of people disproportionately experiencing the effects of cold calling scams. Of those who reported receiving fraudulent live calls via landline, 13% of recipients have

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6 https://researchbriefings.files.parliament.uk/documents/SN06193/SN06193.pdf

7 https://www.nationaltradingstandards.uk/site_assets/files/National%20Trading%20Standards%20Scams%20Team%20-%20Call%20Blocking.pdf

reported having received them at least once a day.[8] Older people are much more likely to be exposed to fraud attempts by landline.[9] There is also some evidence to suggest that perpetrators will specifically target older groups based on assumptions about their trusting nature. The number of victims contacted by multiple scams after they have fallen prey to one suggests that enhanced data lists are being shared to refine targeting to the most vulnerable consumers.

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

Investment Fraud

1.10 In 2019, following the rise of pension scams perpetrated via phone calls, the government banned companies making unwanted, unsolicited phone calls to people about their pensions. However, fraudsters are sophisticated and will divert their attention to target individuals' assets in other ways.

1.11 Investment fraud is the fastest growing fraud category and one of the most harmful. In 2022-23, there were 23,900 reports of investment fraud to Action Fraud, the national reporting service for fraud and cybercrime, with a total reported loss of almost £750 million.[10] Unsolicited calls are one of the most common tactics used by investment fraudsters to dupe people into buying fake investments or financial products.[11] The latest data from the Information Commissioner's Office (ICO) for the first five months of 2023 states that around 1,200 cases of nuisance calls and messages relating to investments were reported to the ICO.[12]

8 https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/tackling-scam-calls-and-texts

9 https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/tackling-scam-calls-and-texts

10 https://colp.maps.arcgis.com/apps/dashboards/0334150e430449cf8ac917e347897d46

11 https://www.fca.org.uk/publication/research/qual-study-understanding-victims-investment-fraud.pdf

12 https://ico.org.uk/action-weve-taken/nuisance-calls-and-messages/

Complaints made to the ICO

"Sharon's mother feels harassed and is getting to the point when she does not want to answer her phone at home"

"Amrit has lost £5,710 and doesn't know if she has heard the last of the suspects or if they will try and contact her again under a new alias"

"Scott is worried that the suspect has personal details including his date of birth and banking information which they could use to commit further crimes"

*Names have been changed

Box 1

The government's intended ban

1.12 The government has already implemented various prohibitions and restrictions on cold calling for financial services and products, often in recognition of the risks outlined above. However, without a broad ban on cold calling, scammers can simply move from one financial product to another in attempt to bypass the law or exploit loopholes.

1.13 **The government now intends to ban cold calling for all financial services and products.** This ban will fill the gaps that exist in the current prohibitions and ensure that:

- Consumers will know that no legitimate firm will contact them to market financial services or products, in an unsolicited manner.
- Consumers feel empowered to terminate and report as a scam any financial services cold call that they receive.
- Legitimate businesses have a clear set of restrictions to follow when marketing financial products.
- Enforcement action can be taken against UK firms which continue to cold call consumers to market financial products and services.
- Scammers have no opportunity to claim they are acting outside the prohibition by changing the financial product they focus on.

1.14 The government aims to maximise the impact of this ban in reducing fraud, whilst minimising any unintended consequences on legitimate business activity that is to the benefit of consumers. Responses to this consultation will inform the government's approach to achieve this aim.

1.15 This ban will work alongside other government measures to stop fraud attempts from reaching people before the criminals behind them can cause harm. The government is already taking several actions to challenge fraudulent marketing more widely, including:

- The Online Advertising Programme will tackle fraudulent paid-for advertising and will work in conjunction with the measures being introduced through the Online Safety Bill. The Bill will require social media and search engine companies to take robust, proactive action to ensure that their users are not exposed to illegal content or fraudulent advertising on their platforms.
- The progression of the Data Protection and Digital Information Bill, which includes measures to promote data-sharing where necessary to tackle crime.
- Launching an Online Fraud Charter with the tech and online sectors. This will include private and public actions that will drive down fraud in these sectors.

1.16 In this consultation, the government invites responses on the scope of the activities, persons and products captured in a ban on cold calling for financial services and products, as well as a proposed method for how the government will enact this ban. Respondents are invited to comment on each of the questions set out in each chapter, and to include in their responses any further relevant input that would not otherwise be captured. The consultation covers:

- the current restrictions in place on cold calling for different financial services and products [Chapter 2];
- what the proposed overall ban on financial services cold calling could look like, including the scope of the ban and how it could be enforced [Chapters 3 and 4];
- how the government can publicise this ban [Chapter 5]; and
- potential impacts of this ban, particularly noting impacts to businesses and to persons with protected characteristics [Chapter 6].

1.17 The consultation will be open for 8 weeks, closing on 27 September 2023. The government will then assess the responses. The government welcomes responses from a wide range of interested stakeholders to ensure future policy decisions are well informed. Alongside this, we are launching a call for evidence to collect information and data that will allow more accurate estimates of the impacts to be made.

1.18 Responses may be made public after the consultation closes and may be subject to disclosure under the Freedom of Information Act. Please indicate if you regard all, or some of, the information you provide as confidential. If HM Treasury and/or the Home Office receives a request for disclosure of this information, we will take your indication(s) into account but cannot give an assurance that confidentiality can be maintained in all circumstances.

Case study: Debt relief

Karim* received a cold call from a debt management firm informing him that his Debt Relief Order (DRO) had been cancelled. To rectify the situation, the fraudster advised Karim that for £90 a month he could instead agree to an Individual Voluntary Agreement (IVA) which would help clear his debt. The fraudster proceeded to hassle Karim enquiring how much money he had in his account to make the first payment. This was not news Karim was expecting to hear and the call has left him really worried.

What could banning cold calling do here? The recipient would know that no legitimate firm would cold call about a financial service or product, so will not be taken advantage of by the fraudster's attempts to manipulate them.

*Name has been changed

Box 2

Chapter 2

Existing restrictions on cold calling

2.1 The current legal position on 'cold calling' (also known as 'unsolicited direct marketing') can be difficult to understand as it encompasses activities which are covered by a variety of different regimes. Currently the Financial Conduct Authority (FCA), the Information Commissioner's Office (ICO) and Ofcom each have powers to regulate cold calls to an extent, but these overlapping rules can cause a lack of clarity on what types of unsolicited marketing are allowed.

2.2 Under the existing Privacy and Electronic Communications Regulations (PECR), a caller does not need consent to make live marketing calls to people and businesses if:

- the recipient has not objected to receiving live marketing calls from the caller; or
- the number is not listed on the Telephone Preference Service (TPS), or the Corporate Telephone Preference Service (CTPS).

2.3 However, there are stricter rules for direct marketing calls about claims management services and pension schemes, which the ICO enforce. In addition, the FCA regulates the financial promotions made by FCA and Prudential Regulation Authority (PRA) authorised persons. This includes restrictions to cold calling on specific products such as mortgages, investments and funeral plan contracts.

2.4 Ofcom can request that providers block access to telephone numbers or services where these numbers or services have been misused, and Ofcom can withdraw number allocations. Under the Communications Act 2003, Ofcom can take enforcement action against a person who has persistently misused a communications network or service, which may include where communications services are used to facilitate scams.

2.5 This combination of regulations on and restrictions to cold calling for financial services and products is difficult for both the public and businesses to understand. At present, it is difficult for a consumer to know when an unsolicited marketing call for a financial product could be a legitimate approach.

2.6 By implementing a ban on cold calling for all financial services and products, the public can be given the simple message that anyone contacting them to sell financial services products in an unsolicited manner is acting unlawfully.

Enforcement case study: The ICO issues fine to tackle illegal pension cold calls in December 2021

In December 2021, the Information Commissioner's Office (ICO) issued a fine of £140,000 to a firm for instigating over 107,000 illegal cold calls to people about pensions.

The firm came to the attention of the ICO during a wider investigation into organisations making pension cold calls. The company had asked lead generators to make calls on its behalf and paid up to £750 for the referrals.

The ICO investigation showed that this marketing campaign made 107,003 illegal pension cold calls between 11 January 2019 and 30 September 2019. The ICO found that the firm did not have the valid consent - freely given, specific and informed – to instigate the making of these calls. The ICO concluded that the firm contracted the lead generators to make the calls, knowing the cold calling ban was in place, in order to try and bypass the law.

A cold calling ban for all financial services and products allows similar enforcement to be taken as necessary.

Box 3

Chapter 3

Scope

3.1 As announced in the Fraud Strategy in May 2023, the government will extend the pensions cold calling ban to cover cold calling for all consumer financial products and services. This consultation is designed to help determine what type of communications should be captured by this 'cold calling' ban, as well as establishing the financial services and products that should be captured. These decisions on the scope of this ban will inform the approach that the government takes to enact and enforce the ban.

3.2 A ban with a wider scope would generally be simpler for consumers to understand, as any live, unsolicited direct marketing communication relating to financial services and products would be illegal. A wide scope will also limit fraudsters' ability to adapt their strategies to avoid the ban and exploit any loopholes.

Case study: Investment fraud

Tony* received a cold call offering an investment opportunity in mini bonds. The fraudster followed up on this phone call over a couple of weeks trying to persuade Tony to invest and discussed potential return opportunities from a large investment. Tony was interested and decided to transfer £50,000 into the fraudster's bank account. Since investing, Tony has received no correspondence on how the investment is performing and grew suspicious when scheduled payments from the investment should've been paid into his bank account. Tony has attempted to contact the fraudster various times to no luck and has now contacted his bank to report the scam. Tony is currently £50,000 out of pocket.

<u>What could a cold calling ban achieve in a case like this?</u> There are existing rules prohibiting some cold calls for investments. However, the current 'patchwork' approach to regulation is not easily understandable for consumers.

Through an outright ban on cold calling for all financial services and products, the potential victims are more likely to be immediately suspicious of this type of call as they would know it was illegitimate.

*Name has been changed

Box 4

3.3 However, it is possible that a broad scope could negatively impact business practices which can create value for the customer, such as the ability for firms to advise consumers where alternative products are better suited to their needs.

3.4 This chapter explores the scope of this ban for cold calling in financial products and services, exploring the detail of the 'how' (the means of communication), the 'who' (the consumers) and the 'what' (the products and services) that the government intends to be captured in this ban.

How cold calling takes place

Telephone calls

3.5 Telephone calls offer scammers a number of helpful advantages in achieving their goals. They are able to draw consumers in and persuade them that they are legitimate more effectively over the phone, compared to other forms of communication such as e-mails, which consumers can more easily disregard. Real time communication creates a higher-pressure environment for the recipient, that allows them to be more easily manipulated into responding in the moment.

3.6 The existing pensions cold calling ban prohibits unsolicited telephone calls to an individual for the purpose of direct marketing in relation to pension schemes unless specific circumstances apply. It is proposed that the ban on cold calling for all consumer financial services and products will similarly capture 'unsolicited calls to an individual for direct marketing'.

3.7 A ban sends consumers a strong message not to engage with cold callers, including where the caller is ringing from overseas. Regulators have a more restricted ability to act against firms making calls from overseas, although the UK GDPR can apply to overseas organisations in some scenarios, and the FCA's financial promotion restriction applies to overseas communications that are capable of having an effect in the UK.

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

Electronic communications

3.8 The legislative approach taken to ban cold calling for pensions applies to unsolicited, direct telephone calls. The government recognises that there may be a case for extending this proposed ban on financial services cold calling to other forms of live electronic communications, beyond telephone calls. Communications such as social media video and voice calls could provide a similar opportunity for scammers to persuade and manoeuvre their victims in in real time settings.

3.9 However, extending the proposed ban to capture these may require a different legislative approach to the pensions cold calling ban, and could delay when a ban would come into force.

3.10 The government therefore invites any views on the extent to which cold calling takes place on live, electronic communications, such as social media video or voice calls. This feedback will help determine what the impact would be of this cold calling ban specifically targeting telephone calls only.

3.11 The government is also interested in if there are protections and integrated reporting processes in place via social media organisations that mitigate the risk of fraudsters using these channels to cold call.

3.12 In this consultation, the government has focussed on the role and risks of live electronic communications rather than non-live electronic communications, such as text messages and emails. There are already restrictions in PECR that prohibit sending marketing emails or texts to individuals without specific consent, with a limited exception for previous customers who still need to be offered an opt-out.

3.13 In addition, the government is taking other specific action to address the tactics employed in non-live electronic communications scams. These includes banning SIM farms which are used by criminals to send thousands of scam texts at once, as well as empowering members of the public to forward any suspicious emails more effectively and easily to law enforcement via the National Cyber Security Centre's Suspicious Email Reporting Service.

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?*

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?*

In person unsolicited marketing

3.14 In the House of Lords' 2022 report 'Fighting Fraud: Breaking the Chain', the Digital Fraud Committee note that, although the focus of their inquiry was the rise of digital fraud, 'analogue' approaches such as scam door-to-door sales continue to be used by some fraudsters to target victims. Scams may target specific demographics through these methods, such as those who are digitally excluded. The House of Lords Committee advised that the government should not ignore the threat of these methods of fraud.[13]

3.15 The government recognises that in-person, unsolicited, marketing activities such as door-to-door selling at consumers' homes can be used by fraudsters. The domestic setting and face-to-face interaction in these cases can bring particular risks of pressure selling and consumer harm.

3.16 There are existing regulations which guide how in-person selling on domestic premises can take place, such as the Consumer Protection from Unfair Trading Regulations 2008 which prohibits ignoring a consumer's request to leave or not to return when conducting personal visits for trading. The Consumer Credit Act 1974 also prohibits the canvassing of debtor-creditor agreements in this setting.

3.17 There is currently a lack of evidence that in-person techniques are used for the unsolicited marketing of financial products and services specifically. It is also unclear that extending the cold calling ban to include in-person unsolicited marketing would be an effective means of preventing consumer detriment in this space.

3.18 However, the government is interested in whether there is a case to consider extending the ban on cold calling in future to include in-person, unsolicited marketing on domestic premises.

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

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

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

Types of call recipients

3.19 This ban is aimed at cold calls to consumers about financial products and services. However, businesses can also be the recipients of unsolicited calls from other businesses who are marketing financial services and products.

3.20 The government intends to take a balanced and proportionate approach in protecting consumers from fraudsters, while minimising

13 https://committees.parliament.uk/publications/31584/documents/177260/default/

the impacts for businesses in situations where the risk of public harm is lower. Unsolicited marketing from one business to another business can be inherently lower risk, as there is less opportunity for fraudsters to target vulnerable individuals and prey on a lack of knowledge.

3.21 Businesses are often sophisticated and well informed as customers, and as such unsolicited direct marketing contact from businesses to other businesses can be a credible marketing approach. Therefore, business-to-business cold calling for financial services and products is not planned to be captured in this ban.

3.22 There are existing protections which businesses can opt into if they do not wish to receive unsolicited direct marketing calls. A business can register on the Corporate Telephone Preference Service, as it is a legal requirement that all organisations do not make marketing calls to numbers on the CTPS register, unless they have clear consent to do so. Those who are in breach of the regulations are reported to the ICO, as the body responsible for enforcement.

3.23 Businesses are classed as “corporate subscribers” under the PECR if they are a corporate body with separate legal status. This includes companies, limited liability partnerships, Scottish partnerships, and some government bodies. However, sole traders and other types of partnerships are individual subscribers under PECR.

3.24 Although sole traders and other types of partnerships are individual subscribers under PECR, the government recognises that sole traders may receive unsolicited marketing contact for business purposes that is not relevant to their personal finances.

3.25 As this ban is not aiming to restrict business-to-business marketing, the government is interested in views on whether sole traders and other types of partnerships should be treated as consumers or businesses in relation to this ban.

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?*

Case study: White goods warranty

Nadia's* elderly mother has been receiving cold calls offering insurance services for home appliances such as an extended boiler warranty. Nadia is unsure how much money her mother has sent but is aware that the organisation has used various numbers to contact her mother. Nadia is worried and believes her mother is being taken advantage of as she is vulnerable.

*Name has been changed

Box 5

Which financial services and products are in scope

3.26 The ban is intended to be drawn broadly across the range of financial services and products, to ensure that the public will be able to identify that any cold calls about financial products are a scam. This means that the scope of this ban will likely extend beyond the financial services and products regulated by the FCA.

3.27 The government recognises that it can sometimes be ambiguous whether a particular activity is a financial service or product, which creates definitional challenges. The government will explore how to capture a wide range of products and services in this ban, with attention to the products and services where high volumes of cold calls are reported.

3.28 By capturing a wide range of financial products in this ban, scammers should have no opportunity to claim they are acting outside the prohibition by changing the financial product they focus on.

3.29 The following list outlines some of the products and services that the government intends to fall in scope;

- Any product or service of a banking or payment nature, including electronic money and cryptoassets
- Mortgages and insurance, as well as white goods warranties and protection plans
- Investments, including tangible items where these are marketed in the manner of an investment, for example, whiskey and wine
- Credit and debt, including individual voluntary arrangements

3.30 There may be circumstances where unsolicited direct marketing calls relating to specific financial services and products provide particular benefits to consumers, where permitted under the existing restrictions in place under financial services legislation. The government welcomes responses about whether there are any consumer financial services and products which should not be in the scope of the ban.

3.31 Currently, the government does not plan to exclude any financial services or products from this ban and would only make exceptions where there is a strong case that the consumer benefits outweigh the risks of consumer harm that could arise from an exclusion. This will include taking into account the harm that exclusions might drive by undermining the ability to give a clear consumer message.

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?*

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

Case study: Investment in tangible goods

Adam* received several cold calls about an investment opportunity to buy wine with good investment returns. In total, Adam made 11 payments into the investment amounting to £18,680. Adam has no internet or mobile phone and made the payments by card over the phone. His family became worried about these investments after they contacted the company where the wine was marketed as being stored. The company informed them that no wine was held in Adam's name. Adam's family have now intervened and stopped him from investing more. Adam is trying to recover his money but is at a loss.

*Name has been changed

Box 6

Chapter 4
Legislative mechanism and exceptions

4.1 The ban on cold calling for consumer financial services and products has been envisioned as an extension of the existing ban on cold calling for pensions. This chapter details how the government intends to achieve this, to ensure any approach is as consistent with the existing bans as possible, while also taking account of the diversity of products, customer relationships, and distribution channels across the financial services sector. This chapter goes on to outline how the ban could be enforced, although the details of the enforcement framework will be dependent on the legislative approach taken.

4.2 The ban on cold calling for pensions was implemented through amending PECR using powers under the Financial Guidance and Claims Act 2018. PECR is a set of regulations which sits alongside the Data Protection Act 2018 and the UK GDPR. The legislation gives people specific privacy rights in relation to electronic communications. The government intends to use this existing framework as the basis for the ban.

4.3 The government intends to amend the relevant regulations of PECR to prohibit unsolicited telephone calls to an individual for the purpose of direct marketing in relation to financial services and products, with note to any appropriate exceptions.

4.4 However, a different approach to the pensions cold calling ban may be required if the ban were to be extended to cover live electronic communications and/or face-to-face marketing, as considered in Chapter 3. The deliverability of a broader scope and the existing legislative mechanisms available to do so will therefore be a key consideration for the government as it develops the detail of this ban, particularly if such issues were to significantly impact on the timings for which the ban could otherwise come into force.

Non-marketing contact and consensual marketing

4.5 This cold calling ban will not affect the ability of firms to continue to engage in non-marketing activities involving unsolicited contact, such as in tracing and reunification activities to reconnect customers with previous financial products and services. It will also not affect the ability of firms to send routine customer service or administrative messages, for example, informing customers when a product contract is coming to an end. On that basis, the government does not anticipate that there would be any conflict between the cold calling ban and a firm's potential obligation under the FCA's new Consumer Duty to (for example) help the customer achieve their objectives.

4.6 The proposal will not apply to interactions where the customer has knowingly and freely given, clear and specific consent to be contacted for marketing purposes.

4.7 The UK GDPR standard of consent requires that consent from a consumer must involve some form of clear agreement to be contacted by the organisation. Consent may be given on behalf of a named third party/parties, but generic consent covering any third party is not enough.

Case study: Cryptoassets

Stephen* received a cold call to invest in cryptoassets and decided to invest £250. As this was Stephen's first-time trading, he was anxious if he would ever get his money back, so the suspect provided money back initially for the first few investments. This built up Stephen's trust and in total he invested £65,000. Over time, Stephen wanted to withdraw some of his funds but was unable to do so. He has tried contacting the suspect but has been unable to get a hold of him and is now at a loss of £65,000.

*Name has been changed

Box 7

Existing client relationships

4.8 In this consultation, the government is seeking views on whether to allow an exception for FCA and PRA authorised businesses, when the business and the receiver of the call have an 'established existing client relationship' and the relationship is such that the recipient envisages receiving cold calls.

4.9 The inclusion of this exception would be to enable legitimate financial services firms to market to their existing customers. A similar exception was included in the pensions cold calling ban. However, the cold calling ban for claims management services contains no such exemption.

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?*

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?*

Enforcement

4.10 The ICO are responsible for regulating live direct marketing telephone calls which originate from the UK or are made from abroad on behalf of UK companies, as part of their enforcement of the PECR regulations. The ICO can take enforcement action against companies that make unsolicited direct marketing phone calls to people about their pensions and about claims management, unless specific circumstances apply.

4.11 The government plans for the ICO to act as the enforcement agency in a similar manner to their enforcement of the bans on pensions and claims management cold calling. The ICO already enforces restrictions on unsolicited electronic direct marketing and the current restrictions on direct marketing calls. The ICO has powers to enforce PECR under the Data Protection Act 2018, including the power to fine offenders up to half a million pounds. In addition, the ICO will be able to enforce bans on lead generators who are the main instigators of financial product cold calls. It is appropriate that this planned extension to the ban on cold calling is enforced through this existing framework.

4.12 In their enforcement of PECR, including the pensions cold calling ban, the ICO considers each enforcement case on its own terms, including whether previous consent to receiving a cold call remains valid. There are no specific time limits for how long consent lasts, and this will depend on the context, although the ICO guidance states that organisations should build regular consent reviews into their business processes.

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

Chapter 5
Raising awareness

5.1 To maximise the impact of this ban in stopping fraudsters, it is essential that the public are aware that cold calls they receive in relation to financial services and products are illegitimate, and likely to be a scam. This awareness will stop a scam immediately, before the fraudsters can manipulate or harm the recipient. The government therefore recognises the importance of publicising this ban.

5.2 The government intends to work with consumer groups and other partners on how to ensure the public best understands the ban, as well as using a number of channels to publicise the ban.

5.3 These include:

- financial services and product providers
- government-backed guidance providers
- the FCA's 'ScamSmart' campaign
- non-government bodies such as charities
- ICO campaigns

5.4 The government welcomes input on other ways to publicise the ban and ensure this ban is best understood by the UK public.

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

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

Chapter 6
Impacts

Impacts on business

6.1 Based on some initial engagement with financial services firms, the government believes that the majority of legitimate firms' business models should not be affected, provided that consensual marketing and existing relationships are excluded from the ban.

6.2 However, it is important to understand what the impact on the small number of firms undertaking cold calls for financial products and services may be. This consultation invites views on how firms' business models would be affected by the ban.

> ***Question 16:*** *In your experience, how could firms' business models be affected as a result of the ban?*
>
> ***Question 17:*** *Are you aware of any groups of businesses, organisations and/ or individuals that will be particularly affected by these proposals?*

Impacts on persons with protected characteristics

6.3 When formulating a policy proposal, the government is required to comply with the Public Sector Equality Duty (PSED) in the Equality Act 2010.

6.4 In particular, when assessing the impact of a proposed measure on persons likely to be affected by that measure, the government will need to have due regard to the following three aims of the PSED, in respect of the protected characteristics outlined below:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; s 149(1)(a) Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it: s 149(1)(b) Equality Act 2010;
- (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it: s 149(1)(c) Equality Act 2010.

6.5 The protected characteristics are: age; disability; race; religion/belief; sex; sexual orientation; pregnancy and maternity; and gender reassignment and, in respect of the duty not to discriminate, marriage and civil partnership.

6.6 The government has considered the PSED in formulating the proposals outlined in this consultation and has so far concluded that these proposals will not (in and of themselves) lead to the breach of that duty. The government does not currently consider that the proposals would have a disproportionate impact on those with protected characteristics, and considers that the proposals could have positive impacts on certain groups sharing protected characteristics, such as older people. As the proposals are developed following this consultation the government will continue to have due regard to the PSED.

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?*

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?*

Chapter 7

Call for evidence for Impact Assessment

7.1 Given that the ban is at an early stage of development, the government does not have a full picture of the impact on businesses of the proposals, or the costs associated with introducing and implementing the ban. Therefore, alongside the consultation, the government is issuing a call for evidence to collect information and data that will allow a more rigorous assessment of the impacts on businesses.

7.2 The government invites all interested parties to provide feedback and empirical evidence on the potential benefits and unintended effects associated with the proposed ban.

7.3 The following questions explore the extent to which the ban on cold calling may impact legitimate firms' revenue and their ability to promote financial products, as well as the extent to which the ban on cold calling will reduce the incidence of fraud.

Legitimate Uses

- Do you, or your organisation, use cold calling for either new or existing customers?
- Do you have any data to demonstrate the volume of cold calling used for the sale and/or promotion of legitimate financial products?
- How would a ban on the use of cold calls to promote and/or sell financial products impact your business?
- How would a ban on the use of cold calls to promote and/or sell financial products impact your customers?
- In the absence of cold calling, what alternative methods of contact do you have available to you to contact new or existing customers?
- Can you provide an indication of how much revenue can be attributed to the uses of cold calling to sell or promote financial products?

Fraudulent Uses

- Are cold calls used to facilitate the fraudulent sale of financial products such as investments or insurance? If so, how, and which products?

- Do you have any data or evidence to demonstrate the scale of the fraudulent use of cold calling for the sale and/or promotion of financial products?
- Do you believe this policy to ban cold calling will reduce the incidence of investment fraud?
- Are you aware of any alternative methods of contact which are not within the scope of this ban that could be used to similarly defraud people?
- Do you foresee any other loopholes or gaps in the proposed ban that could be exploited by fraudsters?

7.4 The government will use the information returned to this call for evidence in producing a final Impact Assessment.

Chapter 8

Responding to this consultation

How to submit responses

8.1 This consultation will close on 27 September 2023. The government is inviting stakeholders to provide responses to the questions set out above and to share any other views on the proposed approach to banning cold calls for consumer financial products and services.

8.2 Please send responses to financial.coldcallingban@hmtreasury.gov.uk or post to:

Cold calling consultation,
Financial Services,
HM Treasury,
1 Horse Guards Road
SW1A 2HQ

Processing of personal data

8.3 This section sets out how we will use your personal data when you respond to this consultation and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this consultation.

Data subjects

8.4 The personal data we will collect relates to individuals responding to this consultation. These responses will come from a wide group of stakeholders with knowledge of a particular issue.

The personal data we collect

8.5 The personal data will be collected through email submissions and are likely to include respondents' names, email addresses, their job titles, and employers as well as their opinions.

How we will use the personal data

8.6 This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or an issue of public interest.

8.7 Processing of this personal data is necessary to help us understand who has responded to this consultation and, in some cases, contact respondents to discuss their response.

Lawful basis for processing the personal data

8.8 The lawful basis we are relying on to process the personal data is Article 6(1)(e) of the UK GDPR; the processing is necessary for the performance of a task we are carrying out in the public interest. This task is consulting on the development of departmental policies or proposals to help us to develop good effective policies.

Who will have access to the personal data

8.9 The personal data will only be made available to those with a legitimate need to see it as part of consultation process.

8.10 We sometimes conduct consultations and associated impact assessments in partnership with other agencies and government departments and, when we do this, we share our consultation responses with them. We will be sharing responses to this consultation with the Home Office as it is contributing to the development of this proposal.

8.11 As the personal data is stored on our IT infrastructure, it will be accessible to our IT service providers. They will only process this personal data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we hold the personal data for

8.12 We will retain the personal data until work on the consultation is complete.

Your data protection rights

8.13 You have the right to:

- request information about how we process your personal data and request a copy of it
- object to the processing of your personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- complain to the Information Commissioner’s Office if you are unhappy with the way in which we have processed your personal data

How to submit a data subject access request (DSAR)

8.14 To request access to your personal data that HM Treasury holds, contact:

The Information Rights Unit
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

8.15 If you have concerns about our use of your personal data, please contact the Treasury's Data Protection Officer (DPO) in the first instance at privacy@hmtreasury.gov.uk

8.16 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via this website: https://ico.org.uk/make-acomplaint.

Annex A

Summary of consultation questions

Please see below for a summary of the questions from throughout the consultation document. There is also a call for evidence for the Impact Assessment call in Chapter 7.

1. In your experience, what are the main harms caused by cold calling to market financial services and products?
2. Do you agree that the cold calling ban should capture live telephone calls to an individual?
3. To what extent does direct unsolicited marketing of financial services or products take place through live, electronic communications, other than telephone calls? Are there impacts if these communications are not captured by the cold calling ban?
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?
5. To what extent does marketing of financial services or products take place through door-to-door selling?
6. How could a cold calling ban be made to be effective in preventing door-to-door selling for financial services and products?
7. Are there other forms of cold calling aside from electronic communications and in person selling that cause harm to consumers?
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?
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?
10. Are there any consumer financial services and products which should not be captured by this ban?

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?
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?
13. Do you have any views on the enforcement mechanism set out in paragraphs 4.11 and 4.12 above?
14. How else can the government best ensure consumers are aware of the ban?
15. What are the key considerations when designing the legislation to ensure that it is clear and impactful for the public?
16. In your experience, how could firms' business models be affected as a result of the ban?
17. Are you aware of any groups of businesses, organisations and/ or individuals that will be particularly affected by these proposals?
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?
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?

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk