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department for
**culture, media
and sport**

Dear Mr Smith

Thank you for your letter of 20 September 2011 to the Deputy Prime Minister. Your letter has been transferred to this Department as it is an issue that falls under our responsibility. I have been asked to reply.

The UK's telecommunications market is regulated by the Office of Communications (Ofcom), which is independent of Government and accountable to Parliament. Therefore, I am afraid I am unable to intervene in individual matters. However, please find enclosed a fact-sheet which gives further detail on dealing with unwanted telephone calls.

Enc. Fact-sheet

Yours sincerely

Natoya Raymond
Ministerial Support Team



improving
the quality
of life for all

Factsheet: Complaints about telephone calls

October 2011



department for
culture, media
and sport

The UK's telecommunications market is regulated by the independent Office of Communications (Ofcom). A good deal of advice about dealing with problem phone calls is available on their website:

<http://consumers.ofcom.org.uk/tell-us/telecoms/privacy/>

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1. What can be done to stop unwanted direct marketing calls being made to my phone?

Under the Privacy and Electronic Communications Regulations 2003 (PECR), unsolicited marketing telephone calls are illegal where made to a consumer who has either:

- previously notified the caller that they do not wish to receive such calls, or
- registered with **the Telephone Preference Service (TPS) scheme** for at least 28 days. This is a free service for consumers.

Companies making direct marketing calls from within the UK - or from outside the UK on behalf of UK companies - are legally required not to call a number that has registered on the TPS list. They are required to comply with UK regulations by screening their call lists against the TPS before making such calls to a UK telephone number. The list is made available to overseas based companies by the TPS in order to ensure calls are not made to TPS registered consumers.

To stop receiving unsolicited marketing calls, you should register with the TPS. They can be contacted at:

Telephone Preference Service, DMA House, 70 Margaret Street,
London, W1M 8SS

Tel: (for registration) 0845 070 0707

Fax: 020 7323 4226

E-mail: tps@dma.org.uk

Or online at www.tpsonline.org.uk

2. If my phone number is registered with the TPS, and I receive an unsolicited marketing call, who do I complain to?

First, if you are able to identify the organisation, then you can write to them asking them to stop using your details for marketing purposes. Tell them about the problem and allow them time to put things right. In many cases, things can be resolved quickly without the Information Commissioner's Office (ICO) getting involved. You can call the ICO's helpline on 0303 123 1113 for advice.

If you have received a live telesales call, and you are registered on the TPS, you can complain directly to the TPS in the first instance. Contact:

Telephone Preference Service, DMA House, 70 Margaret Street,
London, W1M 8SS

Tel: (for complaints) 020 7291 3320

Fax: 020 7323 4226

E-mail: tps@dma.org.uk

If you continue to receive live telesales calls from an organisation despite complaining to the TPS, you can make a complaint under the Data Protection Act, and the ICO may be able to help if you can identify the caller and have a record showing you had previously informed the caller that you did not wish to receive its marketing calls. If necessary, the ICO will investigate the problem further. If they think the law has been broken, they can give the organisation advice and ask them to solve the problem. In the most serious cases, they can order them to do so and can impose a monetary penalty in specific situations.

You can complain to the ICO using their 'Privacy and Electronic Communications complaint form' and send it to casework@ico.gsi.gov.uk or by post to:

First Contact Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Further information is available on the ICO's website :

http://www.ico.gov.uk/complaints/privacy_and_electronic_communications.aspx

3. Who enforces the system?

Redress is available if a consumer's registration with the TPS has been ignored. The Information Commissioner's Office (ICO) is responsible for enforcing the TPS and the Privacy and Electronic Communications Regulations 2003 (PECR). It considers complaints about breaches. The ICO is able to issue a fine of up to £500,000 for the most serious breaches of the PECR.

The TPS and the ICO both operate independently from Government. The TPS is operated by the Direct Marketing Agency under a contract to the independent telecommunications regulator Ofcom, while the ICO is also an independent regulator.

The powers of the ICO in PECR are drawn from the Data Protection Act 1998. The Ministry of Justice is responsible for the Data Protection Act. Further information is available at:
<http://www.justice.gov.uk/guidance/freedom-and-rights/data-sharing.htm>

Ofcom is required, under section 131 of the Communications Act 2003 (the "Act"), to prepare and publish a statement of its general policy with respect to its powers to deal with the persistent misuse of an electronic communications network or electronic communications services. This can be found on their website:

<http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

4. What kinds of calls can the TPS eliminate?

Marketing calls are the only calls which are eliminated by registering with the TPS. The TPS scheme is not designed to provide a solution to recorded calls or silent calls; but, in general, consumers who register with the scheme do receive fewer marketing calls including recorded calls or silent calls.

5. What is being done about silent calls?

For this kind of call, Ofcom requires that:

- 1) Calls which you do not answer must ring for a minimum of 15 seconds before being terminated.
- 2) When you answer such calls:
 - a very brief recorded information message must start playing no later than two seconds after the telephone has been picked up, or within two seconds of the call being answered; and the message must contain at least the following information:
 - the identity of the company on whose behalf the call was made;
 - details of a number you can call back on if you wish to decline to receive further marketing calls from them. (This number would be a 'Special Services' (080 – no charge) or a 'Special Services basic rate' (0845 only) or a 'Geographic Number' (01/02) or a 'UK wide Number at a geographic rate' (03).)

And the recorded message should not include any marketing content, nor be used as an opportunity for marketing to you.

Complaints should be made to Ofcom and details of how to do so are on their website:

<https://stakeholders.ofcom.org.uk/tell-us/webflow/silent-calls/>

Ofcom can issue fines up to £2million for breaches of the Regulations. Further information is on their website:

<http://media.ofcom.org.uk/2011/01/31/ofcom-warns-industry-as-new-silent-calls-rules-come-into-force/>

The ICO has published that marketing by automated recorded calls requires the prior consent of any subscriber; and all such messages must include the identity of the caller and a contact address or Freephone number. Further details are available from the ICO website:

http://www.ico.gov.uk/upload/documents/library/privacy_and_electronic/detailed_specialist_guides/guidance_part_1_for_marketers_v3.1_081007.pdf

Where a consumer receives an automated call that they have not agreed to - or the consumer has registered their number with the TPS - there may have been a breach of the Regulations. Further advice is available from the ICO:

http://www.ico.gov.uk/complaints/privacy_and_electronic_communications.aspx

6. What about calls from non-UK companies?

Most unsolicited marketing calls received in the UK are made on behalf of UK-registered companies. However, calls received from a non-UK company marketing services or products are not covered by the TPS, as they have no link with the UK.

There is a problem in dealing with callers from overseas, as they are usually routed through different countries' telecommunications networks and systems. The call line identification data associated with these calls, used to recognise that a number has been withheld, is often lost by the time the call arrives at the international incoming gateway. Therefore, it is not always possible for such calls to be prevented.

There are other steps that consumers can take to block unsolicited calls from getting through. Most telecom service providers offer a range of services that can help to reduce the need to answer an unsolicited marketing call from abroad. These include:

- 'Calling Line Identification Display' (if your phone has a caller display function), which enables you to choose to ignore calls that withhold their number.
- 'Choose to Refuse', which enables you to block numbers by specifying numbers that you do not want to receive calls from.
- 'Automatic Call Rejection', which blocks incoming calls that withhold their number (although clearly that might include some calls that you would want to receive).

A range of other devices are also commercially available that can help to block unwanted calls. Alternatively, customers can ask callers to remove their details from the caller's list; although this could prove difficult because of the number of companies you might have to approach individually.

7. Is there a difference for marketing calls and market research calls?

A market research call takes place when an organisation calls an individual and asks for their participation in a survey, but will not try to influence them to buy a specific product or service. The Privacy and Electronic Communications Regulations 2003 (PECR) do not cover market research calls, and this means companies conducting these types of calls are allowed to call numbers regardless of whether or not they are TPS-registered.

Market research calls are exempted from PECR because they are regarded as a legitimate research tool that many businesses rely on to improve their services and provide greater choice to consumers. However, the Market Research Society, of which most market research agents are members, has put in place guidelines as well as a binding code of conduct that all agents carrying out market research calls should adhere to. The *Code* is designed to support all those engaged in market, social or opinion research to conduct their research in a professional and ethical manner at all times and to reassure the general public and other interested parties of this.

Those making genuine market research calls are obliged to start their call by saying their name, contracted company, purpose of the survey and the approximate length of the survey. All personal data collected during this period should be handled in line with the Data Protection Act 1998. This will involve, in particular, obtaining and processing data fairly.

Customers who are unhappy about the way an agent has conducted themselves during research can complain to the Market Research Society which looks into all breaches and takes any necessary actions. Details of how to make a complaint to the Market Research Society can be found at the following website: <http://www.mrs.org.uk/standards/complain.htm>.

If the call is not for direct marketing purposes but is causing you concern, then you may also wish to contact Consumer Direct.

8. What if a market research call turns into a direct marketing call, but my number is not registered with the TPS?

In such circumstances anyone not registered with the TPS may wish to consider registering with the TPS. If a market research telephone call at any time turns into a marketing call promoting a sale of goods or services, then it would be considered to be of a marketing nature and covered by the TPS scheme.

9. What if a market research call turns into a direct marketing call, and my number is registered with the TPS?

If an unsolicited telephone call at any time turns into one promoting a sale of goods or services, then it would be considered to be of a marketing nature and covered by the TPS scheme. In such circumstances, anyone registered with the TPS would have means of redress, which would be taken forward by the Information Commissioner's Office. Their contact details for further information are as follows:

The Information Commissioner's Office, Wycliffe House, Water Lane
Wilmslow, Cheshire SK9 5AF

tel: 0303 123 1113

fax: 01625 524 510

email: mail@ico.gsi.gov.uk

10. Why is my ex-directory number receiving unsolicited calls?

Such calls are usually made by companies using a computerised calling device known as a predictive dialler or Automatic Calling Equipment (ACE). This involves a machine that dials a telephone number, including sometimes at random, and automatically connects to a sales agent, which gives efficiency savings to the company. Therefore, having an ex-directory telephone number does not prevent the number from being dialled at random. Ex-directory simply means that the customer's details are not passed to a third party by the telecoms operator.