

# FINANCIAL GUIDANCE AND CLAIMS BILL



**A parliamentary briefing from the Association of Personal Injury Lawyers (APIL) for House of Commons report stage**

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## **About APIL**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for almost 30 years to help injured people gain the access to justice they need and to which they are entitled. We have more than 3,400 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

## **The need for a ban on cold calling for personal injury claims**

Around 51 million personal injury related calls and texts are made and sent by regulated claims management companies (CMCs) each year<sup>1</sup>, and most people are likely to have received one. Cold calling for personal injury claims exploits vulnerable people. It is tasteless and intrusive. It generates the false perception that obtaining compensation is easy, even when there is no injury. It brings the whole sector into disrepute. Solicitors are banned from cold calling for personal injury claims, and we fully support this. Unfortunately, CMCs are still free to contact people provided they adhere to certain rules.

We have long called for a ban on cold calling by CMCs, and have been supported in this by others. James Dalton of the Association of British Insurers and Rob Townend of Aviva both agreed on the need for a ban when appearing alongside APIL's president in front of the Prisons and Courts Bill Public Bill Committee in the House of Commons in March 2017. A ban would also prove popular with the public, with a recent YouGov survey revealing that 67 per cent of people were in favour of a ban<sup>2</sup>.

The apparent lack of urgency from the Government to ban these cold calls and spam texts is astonishing. The Ministry of Justice is determined to cut down on the number of whiplash claims to the point that it is proposing legislation which will restrict the rights of injured people to claim compensation. It is therefore extraordinary that the Government is dithering about banning a practice which actively encourages whiplash claims, in particular.

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<sup>1</sup> The economist Oxera has suggested that the public receives 718 million personal injury related calls and texts every year (<https://www.aviva.com/media/news/item/aviva-injury-compensation-culture-blitzes-consumers-with-nearly-720-million-nuisance-calls-and-texts-17642/>) while a response from the Information Commissioner's Office to a freedom of information request has shown that regulated CMCs are likely to be responsible for seven per cent of those calls and texts. Based on this, APIL has estimated that around 51 million personal injury related calls and text are made and sent by regulated CMCs each year

<sup>2</sup> YouGov Reports: *Personal Injury 2017*

### **Clause 34 – cold calling**

Clause 34 was added to the Bill by the Government at House of Commons committee stage. The clause does not ban claims management companies from making cold calls or sending spam texts. The purpose of the clause is to prevent CMCs from cold calling someone unless the person has given consent ‘to such calls being made by, or at the instigation of, the caller on that line’. The rules on consent, however, are incredibly opaque and almost impossible to navigate.

Changing the rules on consent is not the solution, and will do nothing but add more confusion to the rules on cold calling. In a letter to MPs following committee stage, John Glen, Economic Secretary to the Treasury, acknowledged there is no fixed time limit after which consent automatically expires. The Information Commissioner’s Office’s (ICO) direct marketing guidance includes eight paragraphs dedicated to the issue of time limits for consent, but not one of these paragraphs provide clear rules to which organisations must adhere<sup>3</sup>. Instead, the paragraphs are littered with caveats such as, “likely”, “might”, “unlikely”, “general rule of thumb”, and “recommends”. This only adds to the confusion for consumers, and can allow the most determined CMC to find a way to work around the guidance.

By putting the onus on someone to consent to being cold called, the Government is also putting the onus on someone to decide when that consent should have expired. It is not unrealistic to believe that most people will be unaware of the ICO’s guidance on direct marketing. The Government cannot, and should not, expect someone to search for this guidance, read it, and then conclude that consent should be no longer valid, even if he is aware that he has consented to being cold called in the first place.

Merely changing the rules to put the onus on someone to consent to being cold called will not solve the problem of cold calling. People, especially the most vulnerable, will struggle to understand whether they have consented to being cold called, and may not appreciate to what they are consenting. Considering the public’s attitude to cold calling, with 67 per cent of people in favour of a ban on personal injury cold calling, it is hard to believe that someone would knowingly consent to being bombarded by nuisance calls and text messages. Consent may be appropriate for other types of marketing, but it has no place in the field of personal injury.

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<sup>3</sup> Direct Marketing, page 28-29 <https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>

### **Amendments 8, 9 and 11 – Clause 4**

APIL welcomes amendments 8 and 9 which have been tabled by Labour MPs Jack Dromey, Debbie Abrahams, Mike Amesbury, and Vicky Foxcroft.

We have previously argued that clause 4 is a watered-down attempt to introduce a ban on cold calling. As drafted, clause 4 relies on the new single financial guidance body (SFGB) to make a recommendation which may result in a ban on cold calling. Even if the SFGB were to recommend a ban, the Secretary of State is not under an obligation to introduce a ban. Amendments 8 and 9 will, however, ensure the clause goes much further. Amendment 8 would require the SFGB to “advise the Secretary of State on how to most effectively implement bans” on cold calling. This advice must be given within 12 months of the Act being passed. Amendment 9 compels the Secretary of State to introduce a ban on cold calling after receiving the advice from the SFGB. Under the current drafting of the clause, the Secretary of State does not have to introduce a ban, even if such a ban is recommended by the SFGB. These amendments strengthen the provisions in clause 4, and make a ban on cold calling for personal injury claims a much more realistic possibility.

In light of amendments 8 and 9, we are disappointed by the Government’s decision to table amendment 11, which would remove clause 4 from the Bill. We urge MPs to vote in favour of amendments 8 and 9, and vote against the Government’s amendment 11. This is the only way to ensure that a complete ban on cold calling for personal injury claims by claims management companies can move a step closer.

### **Provisions on cold calling for other areas**

The Government has tabled two new clauses (NC) and amendment 10 to address the issue of cold calling for other areas. NC3 will prohibit cold calling for pensions, while NC4 gives the Secretary of State the power to make regulations to prohibit direct marketing in relation to ‘consumer financial products and services’. The Secretary of State must keep under review whether a ban would be appropriate.

In addition, the Government has tabled amendment 10 which gives a duty to the SFGB to notify the Financial Conduct Authority if it becomes aware of practices carried out by “FCA-regulated persons” which it “considers to be detrimental to consumers”. The SFGB must also “consider the effect of unsolicited direct marketing on consumers of financial products and service”.

Even if it is the intention of the Government to include CMCs cold calling for personal injury claims as part of the definition of “consumer financial products and services” (and this is not clear) NC4 still allows the Secretary of State to avoid introducing a ban. The only guaranteed way to ban cold calling for personal injury claims is to introduce a clear outright ban in the Bill.

## **Association of Personal Injury Lawyers**

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