



Data Protection and Digital Information (No.2) Bill – an opportunity to ban cold calling for personal injury claims - a briefing from the Association of Personal Injury Lawyers (APIL) for House of Commons second reading – March 2023

The problem of cold calling

Cold calls and spam text messages which try to persuade people to claim compensation for an injury have long been a source of anger and frustration for the public. Research from YouGov commissioned by APIL reveals that between June 2021 and June 2022, 42 per cent of UK adults received a cold call or text about making a personal injury claim¹. This equates to 22 million adults. Each person who received a cold call or text about making a personal injury claim received, on average, seven of these calls/texts between June 2021 and June 2022.

Cold calling for personal injury claims exploits vulnerable people. It is tasteless and intrusive. It generates the false perception that obtaining compensation for injuries is easy, even when there is no injury. It brings the whole sector into disrepute. Calls and texts about personal injury claims remain a scourge on society which continue to have a detrimental effect on the public. Of the 42 per cent of UK adults who have received a cold call or text, 88 per cent had a strong emotional response, and were left feeling annoyed, angry, anxious, disgusted or upset.

It should hardly come as a surprise, therefore, that YouGov's research reveals that almost all of those who have received a call (96 per cent) support a total ban on personal injury cold calls and text messages. The Data Protection and Digital Information (No.2) Bill is the perfect opportunity to tackle the problem of cold calling and spam texts for personal injury, and must be amended to put an end to these calls and texts.

¹ Total sample was 2,068 adults. Fieldwork was undertaken between 17 June – 20 June 2022. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+)

The current rules

Solicitors are banned from cold calling for personal injury claims, and we fully support this. Claims management companies (CMCs) however, are still allowed to contact people provided they follow the rules as set out in the Financial Guidance and Claims Act 2018. Contrary to some reports, this Act did not ban cold calling for personal injury claims. Section 35 of the Act states that an unsolicited call can be made only to someone 'who has previously notified the caller that for the time being the subscriber consents to such claims being made by, or at the instigation of, the caller on that line'². By putting the onus on someone to consent to being cold called, the Government has also put the onus on someone decide when that consent should have expired.

In a letter to MPs following committee stage of the Financial Guidance and Claims Bill, John Glen, Economic Secretary to the Treasury, acknowledged there is no fixed time limit after which consent automatically expires³. The Information Commissioner's Office (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 adhere⁴. 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.

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 that person is aware that consent has been given in the first place.

Popularity of a ban

It is not just the public who support a ban, but insurers and other bodies such as the Civil Justice Council Low Value PI Working Group and the House of Commons Justice Select Committee have also previously supported a ban.

² <https://www.legislation.gov.uk/ukpga/2018/10/section/35/enacted>

³ <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0160/Letter%20from%20the%20Economic%20Secretary.pdf>

⁴ Direct Marketing, page 28-29 <https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>

Appearing alongside APIL's president in front of the Prisons and Courts Bill Public Bill Committee in March 2017, James Dalton of the Association of British Insurers and Rob Townend of Aviva both agreed on the need for a ban. In October 2020, a report from the Civil Justice Council Low Value PI Working Group expressed its disappointment that the Financial Guidance and Claims Act did not introduce a complete ban on cold calling for personal injury claims. It acknowledged that while calls can now be made only with consent, "in reality, it is too easy for permission to be given in error or without the implications being understood fully"⁵. In 2018, the House of Commons Justice Select Committee concluded that the restrictions on cold calling by CMCs "do not go far enough and an outright ban should be introduced"⁶.

Merely changing the rules to put the onus on someone to consent to being cold called has not solved the problem of cold calling. It is hard to believe that someone would knowingly consent to being bombarded by nuisance calls and text messages about personal injury claims, especially since the YouGov survey has found these calls and texts are so unpopular. An outright ban in the Data Protection and Digital Information (No.2) Bill is needed to rid the public of cold calls and text messages about personal injury claims.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has campaigned for the rights of people injured through no fault of their own for more than 30 years. Our vision is of a society without needless injury but, when people are injured, a society which offers the justice they need to rebuild their lives.

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⁵ <https://www.judiciary.uk/wp-content/uploads/2020/12/20201218-FINAL-CJC-Low-Value-PI-Working-Group-Report.pdf> page 47

⁶ House of Commons Justice Committee, Pre-legislative scrutiny: draft personal injury discount rate clause, Third Report of Session 2017-19, page 3, <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/374/374.pdf>