



Data Protection and Digital Information Bill – an opportunity to ban cold calling for personal injury claims - a briefing from the Association of Personal Injury Lawyers (APIL) for House of Lords second reading – December 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 2022 and June 2023, 38 per cent of UK adults received a cold call or text about making a personal injury claim¹. This equates to 20.4 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 2022 and June 2023.

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 38 per cent of UK adults who have received a cold call or text, 86 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 (95 per cent) support a total ban on personal injury cold calls and text messages. The Data Protection and Digital Information 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 2,066 adults. Fieldwork was undertaken between 19 June – 20 June 2023. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+)

Previous work of the House of Lords

Following pressure from peers in the House of Lords during debates on the Financial Guidance and Claims Bill in 2017, the Government committed to introduce a ban on cold calling by claims management companies (CMCs) for personal injury claims. At House of Lords report stage in June 2017, work and pensions minister Baroness Buscombe told peers:

“We know that cold calls continue and understand that more needs to be done truly to eradicate this problem. We have already committed to ban cold calls relating to pensions, and are minded to bring forward similar action in relation to the claims management industry. I have asked officials to consider the evidence for implementing a cold-calling ban in relation to claims management activities, and I am pleased to say that the Government are working through the detail of a ban on cold calling by claims management companies. There are complex issues to work through, including those relating, for example, to EU directives. We would therefore like time to consider this important issue properly, and propose bringing forward a government amendment in the other place to meet the concerns of this House².”

The Government published an amendment for the Bill in the House of Commons, but that amendment did not go as far as to introduce an outright ban on cold calls and spam texts by CMCs for personal injury claims. We hope that peers will now ask the Government to fulfil the commitment it made to the House of Lords in 2017, and implement an outright ban.

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 calls being made by, or at the instigation of, the caller on that line’³. 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.

² <https://goo.gl/PGa9LN>

³ <https://www.legislation.gov.uk/ukpga/2018/10/section/35/enacted>

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 expires⁴. 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 adhere⁵. 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 unlikely that most of the public are even aware of this guidance. YouGov's research found that less than half of people (42 per cent) had heard of the Information Commissioner's Office. The Government cannot, and should not, expect someone to search for the marketing 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.

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 ban⁶. 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"⁷.

⁴ <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0160/Letter%20from%20the%20Economic%20Secretary.pdf>

⁵ Direct Marketing, page 28-29 <https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>

⁶ [https://hansard.parliament.uk/commons/2017-03-28/debates/50f7687a-a6da-44cd-884b-7a0bdee1cdc9/PrisonsAndCourtsBill\(SecondSitting\)#contribution-3D2330D2-1203-452B-BB5A-A03D463ECE6A](https://hansard.parliament.uk/commons/2017-03-28/debates/50f7687a-a6da-44cd-884b-7a0bdee1cdc9/PrisonsAndCourtsBill(SecondSitting)#contribution-3D2330D2-1203-452B-BB5A-A03D463ECE6A)

⁷ <https://www.judiciary.uk/wp-content/uploads/2020/12/20201218-FINAL-CJC-Low-Value-PI-Working-Group-Report.pdf> page 47

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”⁸.

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 found these calls and texts are so unpopular. An outright ban in the Data Protection and Digital Information 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.

For more information please contact:

Sam Ellis

Public Affairs Manager, APIL

Email: sam.ellis@apil.org.uk

Tel: 0115 943 5426

⁸ 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>