

## Data Protection and Digital Information Bill – House of Lords committee stage – briefing from Association of Personal Injury Lawyers (APIL) - March 2024

### After Clause 112

insert the following new Clause—

#### **“Prohibition on unsolicited calls regarding personal injury claims**

- (1) The PEC Regulations are amended as follows.
- (2) In regulation 21 (calls for direct marketing purposes), in paragraph (6), leave out “or 21B” and insert “21B or 22A”.
- (3) In regulation 22 (use of electronic mail for direct marketing purposes), after paragraph (4) insert—
  - “(5) Paragraph (1) does not apply to a case falling within regulation 22A.”
- (4) After regulation 22 insert—

#### **“22A Unsolicited calls and use of electronic mail by claims management companies for personal injury claims**

- (1) A person must not—
  - (a) use, nor instigate the use of, a public electronic communications service for the purpose of making unsolicited telephone calls for direct marketing, and
  - (b) transmit, nor instigate the transmission of, unsolicited communications for the purpose of direct marketing by means of electronic mail or otherwise,if the conditions in subsection (2) are met.
- (2) The conditions are that—
  - (a) the person making or instigating the call or transmitting or instigating the use of electronic mail—
    - (i) is acting on behalf of a claims management service, or
    - (ii) does so with a view to providing information to a claims management service, and
  - (c) the purpose of the call or the electronic mail is to engage a consumer in commencing a claim for a personal injury.
- (3) In this regulation—

“claims management service” has the meaning given by section 419A of the Financial Services and Markets Act 2000;

“unsolicited” means an approach which has not been specifically requested, even if a person has consented to receive marketing information;

“claim for a personal injury” means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death, and

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition.””

### Member’s explanatory statement

This new Clause seeks to implement an outright ban on cold calling and spam texts from claims management companies for personal injury claims. Claims management companies would only be allowed to contact people about personal injury claims if they have specifically requested to be contacted about a potential claim.

**Briefing:** APIL supports amendment 208A tabled by Baroness Jones of Whitchurch, which would introduce an outright ban on cold calling and spam texts for personal injury claims by claims management companies (CMC).

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 claim<sup>1</sup>. 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.

### **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'<sup>2</sup>. 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.

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<sup>1</sup> 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+)

<sup>2</sup> <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, the then Economic Secretary to the Treasury, acknowledged there is no fixed time limit after which consent automatically expires<sup>3</sup>. 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 adhere<sup>4</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.

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.

### **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 managements companies (CMCs) for personal injury claims. At House of Lords report stage in June 2017, the then 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 House<sup>5</sup>."

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

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

<sup>5</sup> <https://goo.gl/PGa9LN>

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. The Government must now fulfil the commitment it made to the House of Lords in 2017, and implement an outright ban.

### **Popularity of a ban**

It is not just the public who support a ban. 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 ban<sup>6</sup>. 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"<sup>7</sup>. 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"<sup>8</sup>.

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.

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<sup>6</sup> [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)

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

<sup>8</sup> 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>

**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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