



Department
for Culture
Media & Sport

Government response to the consultation on ‘Requiring direct marketing callers to provide Calling Line Identification.’

April 2016

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Ministerial Foreword

Baroness Neville-Rolfe DBE CMG

Parliamentary Under Secretary of State at DCMS and BIS and Minister for Intellectual Property. Responsible for nuisance calls policy.

As the Minister responsible for nuisance calls policy, I am fully aware of the significant harm that can be caused by unsolicited direct marketing calls. The Government is committed to tackling this problem and that is why we are working closely with regulators, industry, consumer groups and parliamentarians to take coordinated and effective action.

Our strategic approach involves three key areas: *effective regulation and enforcement; technical innovation and solutions and better communication and awareness*. We have already achieved some good results in these areas with the help of the ICO, Ofcom and the National Trading Standards Scams team. We will continue to work with them and other stakeholders here and overseas to explore all options for tackling nuisance calls.

The Government launched a consultation in January 2016 on a proposal to require direct marketing callers to provide Calling Line Identification. The proposal aims to improve consumer choice, by making it easier for people to refuse and report unwanted marketing calls; and improve consumer protection, by making it easier for the Information Commissioner's Office to investigate and take enforcement action against callers who persistently and deliberately break the rules.

We received 170 responses to the consultation, which we have carefully considered. The overwhelming majority of respondents were in favour of the proposed measure, and as a result we are proceeding with the proposal.

The changes we propose will make a difference to many who are affected by unsolicited marketing calls, particularly the elderly and vulnerable.

Introduction

- 1.1 This document is the Government's response to the outcome of the consultation on 'Requiring direct marketing callers to provide Calling Line Identification.'

It covers:

- the background to the consultation
- a summary of the responses to the consultation
- a detailed response to the specific questions posed by the consultation
- next steps following this consultation.

- 1.2 Further copies of this report and the consultation paper can be obtained by contacting Bilal Toure at the address below:

bilal.toure@culture.gov.uk

- 1.3 This report is also available at:

www.gov.uk/government/consultations/requiring-direct-marketing-callers-to-provide-calling-line-identification

Complaints or comments

- 1.4 If you have any complaints or comments about the consultation process you should contact the Department for Culture, Media and Sport at the above address.

Background and policy rationale

- 2.1 There has been a substantial rise in the number of concerns reported to the Information Commissioner's Office (ICO) about nuisance marketing calls and texts over the past few years, with an increase of over 11 per cent in 2014/15 alone.
- 2.2 Unsolicited direct marketing calls can cause significant distress, particularly to elderly and vulnerable people. When callers withhold their Calling Line Identification (CLI), it makes it harder for recipients to refuse and report such calls and for the regulators to take the appropriate enforcement action.
- 2.3 Significant progress has been made. Since January 2012, the ICO has issued civil monetary penalties (CMP) totalling £2,412,000 for serious contraventions of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). In April 2015, the Government lowered the legal threshold at which the Information Commissioner may impose a monetary penalty on organisations breaching PECR. Since the changes to the threshold in PECR, the ICO has issued a number of substantial fines amounting to £895,000; and there are a number of others in the pipeline. Industry and regulators continue to work together to develop technical solutions to help reduce nuisance calls; and regulators are working collaboratively to share intelligence to support effective enforcement action and to raise consumer awareness.
- 2.4 However, despite an increase in enforcement action, some organisations continue to breach the law; and in a significant proportion of cases the failure to provide Calling Line Identification (CLI) is making it more difficult for the ICO and Ofcom to pursue enforcement action against them.
- 2.5 The reports of the All Party Parliamentary Group on nuisance calls (published on 31 October 2013) and of the Culture, Media and Sport Committee (published on 5 December 2013) both recommended that direct marketing calls should be required to carry CLI. During the passage of the Consumer Rights Act 2015, the Government committed at Report Stage in the House of Lords to consult on changing the law in this way.
- 2.6 The consultation paper which was published on 12 January 2016 entitled: 'Requiring direct marketing callers to provide Calling Line Identification' took forward that commitment. The consultation invited comments on a proposed legislative amendment to PECR so as to require that a person does not withhold CLI when making or (instigating) direct marketing calls.
- 2.7 The main benefits of the Government's proposal are that it will:

(i) increase consumer choice, by making it easier for people to identify direct marketing calls, and choose whether to accept them; and
(ii) enhance consumer protection, by making it easier for the ICO and Ofcom to investigate such calls, by enabling consumers to provide better information with complaints and by making it easier for the ICO and Ofcom to take action against organisations that breach PECR and the Communications Act 2003 respectively.

- 2.8 The right under PECR for callers to withhold their number and retain privacy will continue to apply to all other types of non-marketing calls. Telephone calls made from a doctor's surgery, local health clinic or hospital, for example, will continue to have the right to call from a private withheld number (unless making direct marketing calls).
- 2.9 The consultation period closed on 16 February 2016 and this report summarises the responses and outlines next steps.

Summary of responses

- 3.1 A total of 170 responses to the consultation were received from a range of sectors and individuals, including consumer groups and members of the public, as follows:

Category	Number of Respondents
Members of the public	135
Businesses	11
Trading Standards	5
Consumer Groups	4
Regulators	2
Charities	1
Others	12

- 3.2 We have analysed responses for the level of support for the specific proposal and also for wider views on the government's approach to tackling nuisance calls.
- 3.3 Two questions were posed in the consultation and the majority of respondents provided an affirmative answer to question 1. Fewer respondents answered question 2 directly but instead provided their general views on how best Government could tackle nuisance calls. Wherever possible we have captured these views in our analysis.

Responses to specific questions

3.4 Questions on the proposal:

1. Do you agree that the Government should amend PECR to make it a requirement for direct marketing callers to provide CLI?

- 3.5 Out of 170 respondents, 159 respondents (93%) agreed with the proposal to amend PECR to make it a requirement for direct marketing callers to provide CLI.
- 3.6 Three respondents (2%) disagreed with the proposal. The main reasons given were that the proposals did not go far enough to tackling the overall issue of nuisance calls; and that the proposals might prevent genuine callers with valid reasons for withholding CLI from being able to make such calls and a belief that the legislative changes are unnecessary and could even lead to an increase in unsolicited calls.
- 3.7 8 respondents (5%) were neutral to the proposal. However, most of these provided general comments that showed that they had been adversely affected by unsolicited marketing calls. A proportion of these respondents thought the proposals did not go far enough in addressing the problem of nuisance calls. Some also thought there was no effective remedy that the Government could put in place to tackle unsolicited marketing calls, whilst some wanted CLI to be provided free of charge by telecommunication providers.
- 3.8 Therefore of the 162 direct responses to question 1, (98%) agreed with the proposal and (2%) disagreed with it.
- 3.9 Those who agreed with the proposal gave a range of positive reasons for doing so. A number of respondents agreed that it would allow the ICO to take action more easily against those who breach the regulations. Others recognised that it would be a helpful addition to a wider strategy by Government to address the issue.
- 3.10 Many cited their own negative experiences of unsolicited calls and welcomed any initiatives by Government to combat this issue. A number of respondents also highlighted the impact of unsolicited calls on the elderly and vulnerable. Some thought a change in legislation may actually result in costs savings to the NHS. As an example, it was noted that the proposals could lead to reduced stress levels for the elderly and vulnerable and thereby reduce pressure on the NHS.
- 3.11 A number of respondents welcomed the proposals but thought that a broader strategy to take nuisance calls was needed to complement this proposal, for example more effective enforcement action by the ICO and more coordinated action by parties such as network operators and Ofcom. Wider comments on the Government's proposal and the impact of nuisance calls are captured under the section on 'general comments'.

Selection of responses to Government consultation: Requiring direct marketing callers to provide Calling Line Identification 12 January 2016.

Yes

"I wholeheartedly agree with the proposal to require direct marketing businesses to disclose their phone number. in fact I'd go further and require all businesses to disclose their numbers"

"I just wished to write and say that I am strongly in support of this. I get telemarketing calls on average about once a week, usually about PPI or insurance claims, neither of which are relevant to me. They are extremely disruptive to my work and life and they are very annoying. Furthermore, I am registered on the do not call list and (when I can speak to a human) I ask them to remove me from their list but I continue to get these calls regardless. Most are automated messages. I report these calls whenever they come through, but quite often the number is blocked and I am unable to"

No

"The key reason for answering "NO – I DO NOT AGREE" to this question is the danger of citizens being further misled into refusing genuine and often life-saving calls from emergency services, doctors, hospitals as well as other callers (e.g. collections agencies, employment bureaux and the BBC) who have perfectly good and valid reasons for withholding CLI."

Neutral

"The proposal in its purest form is wholly dependent upon the consumer having enough money to pay for caller I.D. on their household landline."

"My parents both in their 80s receive numerous calls each week, despite undertaking all the advised actions, registering their number on advised websites, and asking callers to remove their number from their call list..... I feel your proposals do not go far enough. Your phone number is a 'private number' ...If you register to receive no calls then it should be no calls. Please be far firmer in legislation changes and make this cold-calling stupidity / harassment an illegal act."

"Whilst I applaud any attempt by the U.K. Government to reduce my burden of having to deal with unsolicited frequent nuisance telephone calls; the proposed measures for caller display do not go far enough."

- 3.12 **2. Are there any other costs or benefits that may be associated with this proposal that you think the Government should consider before taking a final decision?**
- 3.13 Out of 170 respondents, 43 respondents (25%) thought there were other costs or benefits that may be associated with the Government's proposals. 60 respondents (35%) said there were no other costs or benefits associated with this proposal. 67 respondents (39%) had no comment on this question. However a large number of respondents also provided more general comments and cited their own personal experiences of unsolicited calls. They also expressed views on how the Government and regulators might tackle the problem. Responses to question 2 and general views on the proposal are captured under the headings below.

General comments

Costs

- 3.14 Some respondents raised the impact of direct and indirect costs to individuals and businesses from the CLI proposal. One respondent thought OFCOM should have a role in reviewing the costs of CLI facilities to business pre and post implementation, in case there was an increase in costs to SME's.
- 3.15 Some respondents wanted telecommunication providers to take greater responsibility for scam calls and also bear the costs of new technology. Some also thought telecommunication providers should be providing CLI facilities as part of the standard service to customers, as such companies already have the technology in place to identify scam callers. It was felt that companies should not be able to abuse the system by claiming excessive costs for implementation. One respondent thought mandatory CLI would lead to a reduction in the the costs of hardware and caller display charges that individuals currently incur. Many respondents who already had call blocking technology endorsed their particular products and cited the benefits of these devices.

Benefits

- 3.16 A few respondents thought the proposals would result in health benefits to elderly and vulnerable persons, especially to those who had been victims of nuisance calls and may be experiencing on going problems from rogue callers. It was also noted that a reduction in unsolicited marketing calls may indirectly benefit the NHS, as a number of elderly and vulnerable adults suffer falls when trying to answer the phone. It was also noted that CLI could reduce many spurious marketing calls that are made to Health Trusts and save them time and money.
- 3.17 One respondent also thought that the proposal might lead to long term cost benefits to local authorities, as there might be a reduction in the resources spent in the provision of safeguarding and care services, which result from the more serious types of nuisance calls.
- 3.18 One respondent thought that the proposals would also benefit reputable direct marketing companies and lead to an improved image of the industry more generally.

“This might deter callers from call centres to hospitals throughout the country, posing as staff members on spurious business obtaining clinicians’ mobile phone numbers to facilitate marketing of services by locum doctor agencies. Incidents waste the collective time (multiple clinicians and investigators time) amounting to 5 hours per event at £20 per hour. If each of the 155 acute trusts experiences just three events per week (there are often multiple events per trust per day) there will be a cost benefit of £46 500”

“With regards to the costs incurred by direct marketing firms, I would be highly suspicious of any firms claiming large costs to implement the change to present valid CLI; this should be a very quick, simple and straight-forward task with almost no cost associated in the majority of cases.

“..... there would be a reduction in the cost to ordinary citizens who currently have to pay the cost of screening calls (Hardware and Caller Display charges etc.).....genuine direct marketers would be honest and transparent. Call recipients would gain peace of mind.”

Selection of responses to Government consultation: Requiring direct marketing callers to provide Calling Line Identification 12 January 2016.

International and spoof calls

- 3.19 There were concerns about international calls and withheld numbers and some respondents thought that more could be done to tackle this issue. There was general agreement amongst respondents that the law on CLI should apply to international scam calls. Some thought that Ofcom should make it harder for international callers to abuse the system by withholding their CLI or by providing a fraudulent CLI which made it seem as though the call was from the UK. The Government should also do more to enforce this. It was felt that blocking such calls may be problematic but at the very least, call blocking technology should be able to show which calls were made from outside the UK. Some respondents thought the proposals should include a requirement for companies to produce CLI and their business details, such as a Company name.
- 3.20 There were many concerns about the need to identify spoof or randomly generated calls. Some respondents wanted a requirement for CLI to be able to identify the real calling number, and it was also felt that CLI should also apply to mobile telephone calls.
- 3.21 Some respondents wanted the government to take additional action to monitor and if necessary reduce the number of marketing calls generally as the frequency of these calls might be problematic. Others thought it would be far simpler to criminalise *all*

cold calling. There was also general concern that a requirement to provide CLI would only affect legitimate industries, while rogue organisations would continue to operate outside the boundaries of the law.

What regulators are doing to tackle international nuisance and spoof calls.

The Government recognises that a number of respondents are concerned about how mandatory CLI for direct marketing calls will impact on international calls.

The requirement to provide CLI will not apply to non-UK companies operating overseas. However the requirements will apply to established companies based outside of the UK making calls on behalf of UK companies.

International advances in technology means 'spoofed' calls are a growing problem. That is why Ofcom is working with international regulators - as well as the telecoms industry to find solutions to the problem. The Internet Engineering Taskforce, which helps to develop internet standards, has created a group specifically to tackle this issue. The Government is working closely with regulators to put a stop to this practice and would encourage the reporting of any spoofed calls to Ofcom for further investigation.

The Government will support the ICO and Ofcom as they continue to work closely with other regulators at EU and international level to share intelligence and cooperate on enforcing the laws relating to unsolicited calls and messages. As an example of the work being done in this area, both Ofcom and the ICO continue to work closely with the London Action Plan (LAP), an international group concerned with combatting spam. Ofcom is also exploring ways to work with the relevant regulatory authorities in India to address telemarketing abuses stemming from these centres.

On going work also continues between UK regulators and the Do Not Call Forum, which focuses on tackling nuisance calls. Members of the forum hold regular meetings and share intelligence to assist regulators to identify appropriate enforcement targets and take action against them.

Withheld telephone numbers

There is some concern about how the Government's CLI proposal will impact on callers who are not making direct marketing callers and withhold their numbers for privacy reasons e.g. doctors, hospitals, government departments and other public authorities.

It would be difficult for regulators to impose any rules on this point, as each public organisation is best placed to make their own privacy decisions about when to withhold CLI. The Government also recognises that there is a tension which must be balanced, between a recipient of a call wanting to

see that it is their GP calling for example, and the right of a person in a multi occupied house/ dwelling to not have other members of the household know that their GP is contacting them.

The Government will consider how greater clarity on this issue can be provided for members of the public and public organisations. It is important that the new CLI proposals should not impact adversely on callers who are not making direct marketing calls, or lead to confusion amongst recipients of such calls.

Implementation and Enforcement

- 3.22 There were many comments about adequately publicising the proposals and setting a reasonable time frame for implementation which was clear to businesses and members of the public.
- 3.23 Some respondents raised concerns that the proposal would have no real benefit and comparisons were made to the Telephone Preference Service (TPS) which was cited as an ineffectual service. Some respondents also felt the Government should enforce CLI breaches with strong monetary penalties and recoup costs from companies that flouted the law, but there was also concern that the new legislation would have no effect on overseas companies and breaches in this area would continue to be unenforceable.
- 3.24 The ICO noted that an unintended consequence of the proposal might be fewer complaints to the ICO as individuals exercised genuine choice over which calls to answer. However there was also the possibility that the proposal could result in more complaints to the ICO with the expectation of increased enforcement action. Improvements to the ICO's online reporting systems are currently being made in preparation for the changes.
- 3.25 Some respondents commented on the lack of action by the TPS and the ICO in dealing with nuisance calls more generally and there were concerns that the data collected by these organisations did not reflect the true scale of the problem. In the absence of strong reporting and enforcement measures, many respondents commented on the success of their own call blocking products and some thought the introduction of a requirement to provide CLI would increase the effectiveness of such devices.

Government views on enforcement

In response to concerns raised by some respondents about the need for stronger sanctions and effective enforcement of nuisance calls, the Government will continue to work with regulators to ensure they have a range of measures and enforcement powers to tackle nuisance calls.

The ICO and Ofcom will use their existing powers under the Privacy and Electronics Communications Regulations 2003 and the Communications Act

2003 respectively to enforce the requirement for direct marketing callers to provide CLI.

The ICO has a range of tools to take action against those organisations that breach PECR, including the power to issue civil monetary penalties of up to £500,000. Ofcom have the power to issue civil monetary penalties of up to £2m under the persistent misuse provisions in the Communications Act 2003.

As an example of the ICO's use of civil monetary penalties, in a recent case in which over 1,000 people complained to the ICO about automated calls which played recorded messages relating to PPI claims, the ICO issued a fine of £350,000 to the relevant company for breaching PECR.

The ICO also works with overseas partners to share intelligence and cooperate on enforcement of breaches to the law concerning nuisance calls.

Conclusion and next steps

1. We are grateful for the range of responses we have received to this consultation which will help us to implement our proposals.
2. The Government has decided to take forward the proposal and now intends to amend the Privacy and Electronic Communications Regulations 2003 (PECR) to implement it. The amendment will require that callers making or instigating direct marketing calls do not prevent presentation of their Calling Line Identification (CLI).
3. The requirement will apply to all individuals and organisations making calls for direct marketing purposes, and will apply to both live and automated calls.
4. The Government believes that these changes to the law will benefit consumers and make it easier for the Information Commissioner's Office to take enforcement action against those who breach the rules.
5. We intend to lay the Explanatory Memorandum and Statutory Instrument before Parliament in April 2016. The new legislation will come into force by June 2016.
6. We will work with the Information Commissioner's Office to ensure that guidance on PECR for organisations wishing to send electronic marketing messages is updated to reflect the legislative amendments.
7. The Department for Culture, Media and Sport will continue to work with industry and organisations to tackle nuisance calls. In particular we will work closely with the Information Commissioner and Ofcom to monitor the level of nuisance calls and we will continue to take coordinated action to reduce such calls.
8. The Department for Culture Media and Sport will also work with Regulators and stakeholders from the UK and overseas to explore the options for tackling international nuisance calls.

Annex

Annex A - List of respondents

Accommodation Harrogate

AQK Change Management Consultants Ltd

Barclays

British Telecom

Charity

Chartered Trading Standards Institute

Communications Consumer Panel and ACOD

Consumer Council for Northern Ireland

Copy Right Image

Direct Marketing Association

Fair Telecoms

Glass and Glazing Federation

Harrogate Chamber of Trade and Commerce

Information Commissioner's Office

Kesher Communications Ltd

LI Components Ltd

Members of public

National Accident helpline

NHS Foundation Trust

Ofcom

Parish Councillor

Scottish Government

Sussex local magazine

Sussex Police & Crime Commissioner

Telecoms Cloud

The Paper Industry Technical Association

Trading Standards

TrueCall

Welsh Government

Which?

