

Proposal to lower the legal threshold for enforcement of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”), for regulations 19-24, to tackle unsolicited direct marketing calls and SMS text messages

StepChange Debt Charity response to the Department of Culture, Media and Sport

December 2014

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We are an independent charity dedicated to overcoming problem debt. Our advice and solutions are effective, tailored and importantly, free. Foundation for Credit Counselling. 123 Albion Street, Leeds, LS2 8ER. Company No 2757055. Charity No 1016630. www.stepchange.org

Introduction

StepChange Debt Charity is the largest specialist provider of free, independent debt advice operating across the UK. In 2013 over 500,000 people contacted our free helpline or online debt remedy tool for advice, support and solutions to serious debt problems.

Since October 2013 StepChange Debt Charity has been campaigning to end the harm caused by nuisance calls and texts. Our #GotTheirNumber campaign highlighted the stress and anxiety experienced by millions receiving unsolicited direct marketing calls and texts, as well as the terrible impact such communication can have on family finances.

Our nationally representative poll of 2,017 GB adults (aged 18 and over) commissioned from YouGov on nuisance calls found¹:

- Just over 45 million British adults have received unsolicited marketing calls or text messages
- Just over 26.3 million British adults have been offered high-interest credit such as payday loans via unsolicited marketing calls or messages
- 8.8 million people say that unsolicited marketing calls and texts make them feel anxious or stressed
- Just over 3.2 million British adults who have received an unsolicited marketing call or text message have been left afraid to answer the phone as a result of these communications
- 1.2 million British adults have been tempted to take out high-cost credit (e.g. payday loans) as a result of unsolicited marketing calls or text messages

A subsequent survey of StepChange Debt Charity clients found²:

- A third (32.4 percent) of StepChange Debt Charity clients (individuals in severe financial difficulty) have received an unsolicited marketing call (also known as an 'unsolicited real-time promotion') offering them a payday loan. Those receiving calls received an average of 10 calls per week
- Almost 15 percent of clients offered a loan (five percent of all those surveyed) had taken out high cost credit as a result of one of these unsolicited telephone calls. The additional high-cost credit taken out by these clients averaged £980, further exacerbating their financial difficulties

As the DCMS's consultation recognises, the current protections against nuisance calls are not effective. Our poll found 83 percent of British adults feel consumers need greater protection from telemarketers than the current Telephone Preference Service (TPS). The huge numbers of people receiving unsolicited text messages (as

¹ All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2,017 adults. Fieldwork was undertaken between 20th - 23rd September 2013. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+)

² The data in this briefing comes from a survey carried out with 1,000 individuals contacting the StepChange Debt Charity telephone helpline between April and June 2014

detailed above) also demonstrates how currently Privacy and Electronic Communications Regulations (PECR) rules are widely ignored.

1. StepChange Debt Charity therefore strongly supports the DCMS's proposal to lower the legal threshold the ICO must reach before issuing a Civil Monetary Penalty (CMP); removing the need to prove 'substantial damage' or substantial distress'. We believe this will help improve compliance with the PECR and protect a greater number of consumers from the harm of nuisance calls.
2. StepChange Debt Charity also supports the DCMS's preferred option (option 3) of removing the need to prove substantial damage or substantial distress completely, rather than replacing it with a threshold of "annoyance, inconvenience or anxiety". This would allow the ICO greatest scope to consider which companies can be issued with a CMP, and, crucially, a more powerful regulator would incentivise companies to adhere more closely to the rules in PECR. Regulators should always have the ability to enforce against any breach, otherwise their rules have no deterrent value against bad practice.

Question 3: Do you agree that lowering the legal threshold to remove the need to prove 'substantial damage' or substantial distress', will help improve compliance with PECR?

StepChange Debt Charity strongly supports this proposal, which we originally called for in October 2013 in our Got Their Number report.

Insufficient regulatory power has led to an epidemic of unsolicited calls in the UK. We are concerned that vulnerable consumers are now routinely subjected to intrusive, distressing and potentially harmful calls. Forty-five million adults in Britain say they have received these types of unsolicited marketing calls or texts, nearly half of those (49 percent) believe they are receiving more than last year. These calls can lead to serious stress and anxiety related problems – just over 3.2 million British adults say they have been left afraid to answer the phone as a result of unsolicited marketing calls and texts.

StepChange Debt Charity firmly believes that there is a clear need for better protection for consumers from such calls, a view shared by 83 percent of British adults who (after having been informed about the current TPS) said that people need greater protection from telemarketers. Increasing the powers of the ICO by reducing the enforcement threshold it must meet would be a key way to increase this protection

Question 2: Do you agree with the Government's preferred option (option 3) of removing the need to prove substantial

damage or substantial distress and allowing ICO the greatest scope to consider which companies can be issued with a CMP? Please provide your reasoning.

StepChange Debt Charity also supports the DCMS's preferred option (option 3) of removing the need to prove substantial damage or substantial distress completely, rather than replacing it with a threshold of "annoyance, inconvenience or anxiety".

This is for two key reasons:

1. The result of the Neibel case in the Information Rights Tribunal demonstrated the immense difficulty the ICO currently has enforcing the PECR provisions on nuisance calls and text messages. Having a threshold in place allows numerous opportunities for companies breaking the law to challenge the ICO, reducing the regulators ability to enforce effectively. We are therefore concerned that if the current threshold is only reduced, rather than removed, the ICO will continue to face difficulties in enforcing against those contravening the regulations. Companies will continue to take ostensibly clear-cut cases to the Tribunal, not only postponing ICO enforcement but also straining the regulators limited resource.

Conversely, having no threshold would allow the ICO greatest scope to consider which companies can be issued with a CMP and also reduce the threat that any case could prove to be disproportionately expensive. Removing the threshold entirely therefore would reduce significantly the number of British adults plagued by unsolicited calls and text messages; far more so than only reducing the threshold to "annoyance, inconvenience or anxiety".

2. For any regulator the ability to enforce has a deterrent effect, increasing its ability to control bad practice in a market before it starts. This is because companies considering engaging in bad practice have to consider much more seriously the possibility that they may be enforced against. For this reason, removing the current enforcement threshold would have a much greater effect on reducing nuisance calls (than merely reducing it) because all companies considering engaging in bad practice would have to consider the potential action that they could face from a much more powerful regulator. A more powerful regulator would incentivise companies to adhere more closely to the rules in PECR pre-emptively.

Question 3: Are there any other costs or benefits associated with any of these options that you feel need to be considered before any final decision is taken?

As we have mentioned above, there are two additional benefits to removing the enforcement threshold currently in place.

1. It would reduce the number of cases taken to the Information Rights Tribunal and therefore reduce the resource the ICO must use in order to pursue these cases over a significant period.
2. It will increase the effectiveness of the regulator more than merely reducing the threshold would, because firms will have to consider earlier the possibility of regulatory enforcement action. It would therefore serve as a pre-emptive benefit, reducing the number of cases the ICO would likely have to enter into in the first place.

Although this is not within the scope of this consultation we would like to take this opportunity to suggest to the DCMS that the effect of the proposed changes would be further increased if the maximum fine the ICO could impose is brought in line with that OFCOM can currently impose (£2 million, compared with the ICO's current maximum of £500,000).

In addition, the ICO Guidance on DPA and PECR should be made mandatory. So the regulator can take enforcement action against firms that do not follow best practice when handling data and contacting consumers.

Case studies

We have included the following case studies to illustrate the harm caused by unsolicited direct marketing calls and text messages. The below are genuine StepChange Debt Charity clients, although their names have been changed to preserve anonymity.

Case study 1

Graham (46) had outstanding debts following the breakdown of a previous relationship, but was managing to keep on top of things. His debt problems began after his wife unexpectedly became pregnant and could only work two days a week. Graham then lost his job as a contractor, but his new role only paid half his previous wage. To help meet the short fall Graham took out loans and credit cards, but still could not make ends meet. He didn't discuss his problems with anyone and sought to manage his situation using payday loans, before long he had five payday loans totalling £4,800. "It's too tempting. Nine o'clock at night with your laptop, no checks and fifteen minutes the money is in your bank". It was at this time that he began to be bombarded by calls, texts and emails from firms that he'd had no previous dealings with offering him services including payday loans and debt management. "I have no idea how they got my details, but they seemed to know my financial situation".

At its height Graham was receiving around 12 calls and texts per day and numerous emails, but the number of calls and texts he received further increased in the week before he was due to be paid. "It was as if they knew exactly when I might be needing money and when I was at my most vulnerable."

Graham took out a payday loan as a result of being cold called, a decision that he describes as “hugely detrimental”. “When you’re as desperate as I was, it’s strangely comforting to know that there was money available no questions asked. The reality of course is that you’re digging yourself deeper and deeper into a hole, and these companies know that”.

Case study 2

In 2006 Janie and her husband found themselves struggling to budget after a change in their monthly wage packet, they first turned to credit cards to help them get by but were still unable to manage. Their debts then spiralled out of control and soon their monthly card payments exceeded what they needed to live on.

They tried getting help from fee-charging debt management companies but ended up feeling ‘terrified’ after a two hour face-to-face consultation. Following the consultation, they began to be bombarded with nuisance calls and texts. “As soon as I made enquiries about sorting out our debts they were relentless. You put your information on a website and it’s almost instantaneous, calls and texts from various companies. And if you said you were thinking about it, they just swarmed”.

At the beginning, Janie’s mobile was going off every half an hour. There were two different numbers calling from the same company, about 17-20 calls per day. “You just felt like you were being constantly bullied. You just stayed and listened like a zombie because it was easier than putting up with the phone calls, at least they left you alone. That person left you alone for the rest of that night. But then obviously it made them worse, because then they’d phone you twice as much. You just had to not answer.”

“It was totally exhausting, very very stressful, my mobile was going off at work, I was getting into trouble at work for taking personal calls, and there was no respite at home. You’re trying to relax at the end of a working day and phone keeps going off, you’re just hounded and hounded until you give in. It was either give in or get rude. It was just awful.”

As a result of the debt, Janie was suffering from severe stress and anxiety. “I was down my doctor every week with stress related problems. It really got to my husband in the end, and he’s quite a strong person. It made us very, very ill.”

Case study 3

A StepChange Debt Charity client, Anne, initially applied for a payday loan with one of the major payday providers. She then began to be deluged with calls and text messages from firms offering loans, many of whom she’d never heard of. “It started off slowly at maybe three or four calls a day but by the end of the week we’re talking 40, 50 calls a day...even text messages, it was constant”.

“Even now, even though they know I’ve got a Debt Relief Order¹⁴, and I tell them so, they say they can still offer me a higher percentage [loan] and I say ‘I don’t want any

more debt' and they'll still try and they'll ring up and offer me all sorts. No matter how many times I say 'no I'm not interested' they'll just keep on ringing." Her debts and the constant harassment from companies offering her more loans had a devastating effect on her mental health "I started off on anti-depressants and I tried to take my own life because of my situation. I thought 'your debt dies with you' and I thought that was the only way out of it."

Case study 4

A StepChange Debt Charity client, Steve, was repaying his debts via a Debt Management Plan (DMP) with StepChange Debt Charity. He was then contacted out of the blue by a fee charging debt management company, which claimed that he would never be debt free if he stayed with StepChange Debt Charity. He was advised that an Individual Voluntary Arrangement (IVA) was a suitable option and was convinced to pay the firm £200 per month. After four months he was advised his IVA application had been unsuccessful and the firm could instead offer him a DMP which they would administer for a monthly fee. He was refused a refund for any of the money he had paid them, leaving him £800 worse off.

Case study 5

A StepChange Debt Charity client, Maisie, got into repayment difficulties and was then subjected to a barrage of calls from her bank. "They were calling me 30 times a day, seven days a week, from seven in the morning to ten at night. I just felt sick throughout the whole period". Despite repeated pleas to stop calling and assurances from collections staff, the deluge of calls continued. "I needed the phone to speak to my Dad who was ill, but the only way I could get any respite was to unplug the phone, but this ended up with my family worrying when they couldn't get hold of me".

She had suffered from depression as a result of her marriage breakup, but says that her treatment at the hands of her bank's collections team was "harassment" and made her condition worse. "I kept having to go to the doctor, as the whole process just left me exhausted and at the end of my tether".