

Nuisance Calls and Texts Task Force Recommendations

The Nuisance Calls and Texts Task Force on Consent and Lead Generation was convened by Which? at the request of the Department of Culture, Media and Sport (DCMS), following the publication of the DCMS Nuisance Calls Action Plan in March 2014.

The work of the Task Force is not intended on its own to solve the problem of nuisance calls; our proposals are designed to be complementary to, and should be read in conjunction with, the other initiatives underway as a result of the DCMS Action Plan.

The Task Force has focused its attention on how organisations use consumer consent to carry out direct marketing activity and to buy and sell potential customer leads. We strongly believe that consumers should not be confused or misled by requests for their consent, and businesses should make sure that they only purchase personal data which has been legitimately obtained.

Our recommendations are designed to help reduce the incidence of unwanted calls and texts received by consumers by improving the ways in which marketing organisations, regulators and government treat consumer consent to receive direct marketing by telephone and text.

We want more organisations to raise their standards of practice in these areas. This will require businesses, and the individuals who lead them, to demonstrate a commitment to putting consumers back in control of their personal data and protecting them from nuisance calls and texts. It also requires regulators to work together, to enforce the rules and to provide more practical guidance, and for the Government to provide leadership.

Action for businesses:

Improving direct marketing practices

- 1** Businesses should treat compliance with the law on consumer consent to direct marketing as a board-level issue in the context of corporate risk and consumer trust, and should consider actively joining and promoting accreditation schemes aimed at preventing nuisance calls and texts.
- 2** Organisations that engage in marketing activities should, as a minimum, commit to implementing the Information Commissioner's Office (ICO) guidance in relation to collecting and buying in data. They should specifically make the following clear in their policies and procedures:
 - a.** ICO guidance about informing other companies in the data chain when a consumer wants to opt out of all marketing calls or texts must be followed. This should include providing a way for consumers to easily revoke their consent.
 - b.** Businesses carrying out marketing activity should view the ICO guidance on a six-month time limit for third party consent as a minimum standard and take further steps to ensure its implementation. Businesses that rely on third party consent should satisfy themselves that the consent was not obtained from the consumer more than six months before it is first used by doing the appropriate due diligence checks.

- c.** Third party consent will not be sufficient to override Telephone Preference Service (TPS) registration, and businesses that purchase leads must screen all telephone numbers obtained from third parties against the TPS unless the company making the calls has been specifically named.
- d.** Businesses should record standard information as proof of consent (as recommended by the ICO) in a format that can be used by future recipients of the data.

Action for industry bodies

- 3** Codes of conduct produced by industry bodies should require members to follow good practice guidance on obtaining, recording and sharing consent for marketing, with reference to ICO guidance where appropriate. Member organisations that breach these requirements should be held to account.

Actions for regulators

- 4** The Competition and Markets Authority (CMA) should take account of the findings of the Task Force and our recommended actions in any work it undertakes on the commercial use of personal data. This should include identifying systemic consumer harm or protection issues. We recommend that the CMA should work closely with the ICO and other regulators where appropriate to understand the issues and to identify action that could remedy problems.

- 5** The ICO should build on its existing direct marketing guidance to offer further good practice solutions to the causes of nuisance calls, including:
- a.** A model approach, tested on consumers, to privacy notices and consumer communications which exemplifies best practice for providing information to consumers. This should include wording for opt-in, opt-out, third party consent, and information on controlling and revoking consent in the future. The aim should be that this becomes the industry standard for compliance with the law, and easily recognised by consumers.
 - b.** Clear guidance that consent for marketing practices should always be separate from consent for other business practices. If consent for marketing is a precondition for a consumer offer, for example when entering a competition, it must be made clear how this transaction can be completed without providing consent for marketing.
 - c.** A practical guide, produced in conjunction with representative groups such as the Federation of Small Businesses, the British Chambers of Commerce and the National Council for Voluntary Organisations, to enable organisations of all sizes to comply with the law but with a particular focus on helping SMEs and small charities, including a checklist of requirements for marketing organisations to help them purchase 'safe' leads.
 - d.** Further work with industry bodies to develop an interoperable standard format for recording consent.
- 6** The ICO should work with industry bodies to develop technical solutions to enable and standardise the process of consumers revoking their consent.
- 7** The ICO should undertake regular reviews of marketing organisations' practices, including by undertaking mystery shopping, and conduct further analysis of complaints data to ensure compliance with their rules and guidance. Analysis and intelligence should continue to be shared with other relevant bodies to prioritise enforcement action.
- 8** Ofcom should assess the current level of consumer awareness and understanding of the TPS, for both fixed and mobile phone users. In light of this evidence it should consider whether more should be done to increase consumer awareness by, for example, renaming the TPS, launching a consumer awareness campaign, or finding other channels to further promote the service, such as how to engage consumers with TPS when they sign a new mobile phone contract.
- 9** Sector regulators and the ICO should work closely together to ensure that their conduct rules and requirements take full account of ICO guidance on direct marketing, and should hold to account businesses that do not comply.
- Actions for government**
- 10** The Department of Culture, Media and Sport, and the Ministry of Justice, should review the ability of the ICO to hold to account board-level executives who fail to comply with rules and guidance on the use of consumers' personal data for marketing purposes, and amend legislation to give the ICO further powers as necessary.
- 11** A cross-sector business awareness campaign should be led by DCMS and BIS, bringing together businesses demonstrating best practice in this area, regulators such as ICO and Ofcom, and consumer groups.
- 12** DCMS should undertake a review of the Nuisance Calls Action Plan in Spring 2016, including an assessment of the impact of these recommendations, and consider whether further steps are necessary.
- 13** In conjunction with evidence and recommendations from the CMA and other regulators, the Government should consider how future legislation, particularly at a European level, might be used to tackle nuisance marketing.
- 14** The Government should consider the potential impact on consumers of nuisance calls and texts by undertaking privacy impact assessments during the development of policy.
- 15** Public authorities should support the take-up of accreditation schemes such as TPS Assured by taking them into account during the procurement process for call centres.

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