

## **DCMS response to Which? led Taskforce recommendations for Government of 8 December 2014**

**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.**

It appears to be a good idea in principle to hold directors to account for the actions of their organisation, however, there would be legal implications in progressing this recommendation, which will need to be carefully considered. Currently, there is no explicit responsibility for board-level executives contained in the PECR so holding those individuals to account would not be straightforward, whether under existing legislation, or new and there would be a number of considerations for both.

It will also be important to consider this recommendation in light of ongoing work. Since January 2012, the ICO has taken enforcement action against nine companies with monetary penalties totalling £815,000 being issued for calls and text messages. On 25 October 2014, we launched our consultation, which closed on 6 December, proposing to make it easier for the ICO to take enforcement action by lowering or removing the legal threshold. The Government's Response to that consultation was published today (25 February) and the ICO already have in mind further monetary penalties that could be issued following the threshold being removed. Also, in July 2014, we legislated to amend Section 393 of the Communications Act 2003, which enabled Ofcom to more easily disclose information to the ICO that is ultimately helping in their efforts to take more action and we made this measure effective on 15 July 2014.

The Taskforce indicated in its report that it generally considered the existing range of legislation can provide adequate consumer protection and allow legitimate marketing and adequate time should now be permitted to determine whether the additional range of measures proves to be sufficient to deal with the problem of nuisance calls. However, in view of continued concern about nuisance calls, we will review the ability of the ICO to hold to account board level executives for such calls, including whether this would require, if possible, the ICO to be granted any further powers.

**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.**

The two regulators, ICO and Ofcom, provide best practice advice and information promoting their work for the benefit of both consumers and business and are expertly placed to effectively continue fulfilling this kind of role. However, if there is a specific area where we could add enhanced value to their efforts such as for example driving forward a particular campaign or issue, we remain supportive and will continue to offer our strong support and encouragement.

The ICO holds an annual data protection conference that is aimed at private and public sector organisations, during which they hold seminars on direct marketing rules and guidance. The ICO regularly promotes its guide to direct marketing, which is available on their website and also undertakes regular engagement with industry representatives such as the Direct Marketing Association (DMA). As part of the Taskforce, the ICO has been keen to highlight the importance of organisations following good practice when collecting and using personal information for marketing purposes. It has also published detailed guidance to help legitimate marketing companies stay on the right side of the law and will continue to work with industry and other regulators to improve compliance.

In May 2014, Ofcom launched two consumer guides to help promote wider access on preventing and dealing with nuisance calls and messages. This included a short online educational video that is available with subtitles to help people with hearing impairments and the second guide provides advice on preventing nuisance calls in an easy to read format: <http://consumers.ofcom.org.uk/phone/tackling-nuisance-calls-and-messages> that is designed to be easily understood by people with learning disabilities. They have worked with consumer stakeholders and advice agencies to help promote awareness and access to these and other nuisance calls guides and also to promote them through press releases and social media activities. At the end of last year, Ofcom updated their published consumer information on the charges communication providers apply to consumer services that can help tackle nuisance calls, such as caller display and anonymous call reject. Also, following research in which consumers cited their communications provider as the most popular place to go when seeking advice about nuisance calls, they reviewed the consumer advice provided by key communications providers on their websites and by their call centres and have written to them setting out the essential information that should be provided.

Additionally, Ofcom is currently reviewing its statement of policy on persistent misuse to determine whether there is scope for developing their enforcement policy to help tackle silent and abandoned calls more effectively. This includes any other changes that could be made to help make their approach clearer, making compliance easier for organisations and enabling more effective enforcement. In the call for inputs issued at the end of last year, Ofcom asked for views on steps that might help to improve awareness and understanding of the kinds of measures companies could take to help avoid causing persistent misuse, including a checklist or a short summary to accompany the full policy statement and/or a best practice guide. Ofcom is currently reviewing responses and is carrying out further evidence gathering to inform the review and plans to issue a consultation paper in the second quarter of this year. Last year, BIS and the Trading Standards Institute (TSI) launched [www.businesscompanion.info](http://www.businesscompanion.info) to provide a one-stop shop for free and impartial legal guidance for businesses that sell goods and/or supply services to consumers. Whilst, this is primarily intended to focus on requirements set out in general consumer law, Ofcom believes this could be a useful website to either host or link through to nuisance calls related guidance for businesses hosted on other sites and we agree this could be a good idea. They have had an initial discussion with the TSI about this and intend to discuss further with them and the ICO, as they progress their persistent misuse review.

**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.**

We monitor and review progress of the Action Plan measures on an on-going basis. Also, updated progress is provided through the Nuisance Calls Roundtable meetings, which I chair and which includes representatives from industry, regulators, consumer groups and parliamentarians. Whilst a formal review appears to be a good idea in principle, the parameters of that review and timing would depend on a number of variable factors including, for example, the timetables for any action arising from these recommendations, the parallel work by Ofcom in reviewing their statement of policy on persistent misuse and having sufficient data available to assess the impact of the recent legislative changes.

**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.**

We agree that protecting consumers from nuisance calls is a continuing priority for the Government and would be open to the idea of considering whether future legislation could be used to tackle nuisance marketing. However, it is important to note that substantive legislation is already in place through the Privacy and Electronic Communications Regulations (PECR). The current protections, which are provided to consumers in respect of unsolicited marketing derives from an EU Privacy Directive 2002/58.

The proposed EU data protection regulation, which is currently being negotiated in Brussels, includes provisions dealing with consent requirements and the specific conditions for when profiling is permitted. The UK wants to see EU data protection legislation that strikes the right balance between the protection of personal data and creating the right conditions for innovation and growth.

**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.**

As the Taskforce acknowledges, Privacy Impact Assessments (PIAs) are already in use across Government that can be used to take account of nuisance calls and texts. The ICO Code of Practice provides guidance as to when a PIA should be undertaken, whilst making it clear that carrying out a PIA is not a requirement of the Data Protection Act (DPA).

Officials at the Ministry of Justice (MoJ) have recently met with the ICO to discuss raising the profile of PIA's across Whitehall. Discussions are still on-going with regards to the next steps.

**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.**

We agree that public authorities should, when possible, support and consider the take up of TPS Assured during the procurement process. In December 2014, I wrote to the chief executives of two leading companies (Capita plc and HGS UK), who make calls on behalf of several Government Departments and the public sector. I invited them to become TPS Assured. TPS accreditation helps to reassure consumers that calling companies have passed checks and tests required by the scheme at the time of being undertaken, because it helps to ensure, as far as possible, that those companies are compliant with all the required rules and regulations. Also, we support the promotion of the TPS to increase take up of the accreditation service by calling companies, as it brings all the rules governing telemarketing together in one place, the scheme makes it easier for companies to ensure compliance and to follow best practice, helping those companies stay on the right side of the law. As agreed at the previous Nuisance Calls Roundtable meeting on 15 September 2014, as part of my efforts to raise awareness of this scheme and to encourage take up, on the recommendation of the TPS, I have also started calling the chief executives of five leading companies that either run call centres or make outbound calls using call centres (Barclays, Scottish Power, Liverpool Victoria, Direct Line and Admiral Group).” Reaction to my first two calls has been positive, with a commitment from the companies concerned to consider taking up TPS Assured.

**Ed Vaizey**

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