September 2023

MoneySavingExpert

Response to HM Treasury consultation and call for evidence: Ban on cold calling for consumer financial services and products

MoneySavingExpert (MSE) welcomes the opportunity to respond to HM Treasury's (HMT) consultation on banning cold calling for financial products and services. We are in support of the proposed approach – and in our response we will share some additional considerations to best protect consumers.

A ban on cold calling for the marketing and sale of financial services and products would serve two key purposes which would benefit consumers. First, it would go some way to ensuring that financial products are not sold to consumers when they are of little or no benefit to them, or when they are unsuitable for their needs – clearly resulting in better outcomes for their financial stability and meeting objectives under the regulator's Consumer Duty. Second, an outright ban, if communicated widely and properly, would in time mean consumers can assume that *any* cold calls they receive for these kinds of services are either illegally conducted or fraudulent – reducing the potential for successful scams to occur.

This approach has seemingly worked well for the existing ban in pensions cold calling[1] – though it does mean that advice now needs to be proactively sought by consumers (and engaging people in this is a persistent challenge for government, regulators, consumer organisations and firms). However, there are some further considerations around consumers' experiences of cold calling and fraud perpetrated by telephone, that will need to be carefully taken into account in the course of HMT policymaking in this area.

Question 1: In your experience, what are the main harms caused by cold calling to market financial services and products?

Cold calling of this type can be broadly split into two key categories – calls from legitimate financial services firms, and calls from illegitimate firms (ie, fraudsters).

Harms caused by cold calling from legitimate firms

With regards to unsolicited tele-marketing by legitimate firms, we agree with HMT's assessment that – by their nature – these calls do not always result in good consumer outcomes or allow for robust and considered financial decision making.

[1] The percentage of adults who have experienced pensions-related cold calling and scams dropped from 20% in 2017 to 9% in 2022, according to research by consultancy Broadstone, based on the FCA's 2022 Financial Lives study. *Source*: The Actuary, "Dramatic falls in pension cold calling and scams", 20 September 2023. https://www.theactuary.com/2023/09/20/dramatic-falls-pension-cold-calling-and-scams (This and all other links last accessed 3 October 2023).

A good outcome happens when consumers are presented with full and unambiguous information about the pros and cons of the product being offered; have opportunity to make a comparison with other products across the market; are not subject to pressure-selling (such as time pressure, or availability of an offer for a limited time, and only on the phone); and have opportunity to take time to consider their options. While this can happen – and when it does it supports the financial needs of the those who are digitally excluded – often it does not.

N.B. Unfortunately, it is difficult for us to easily distinguish our available evidence between financial services and products, and other services, such as utilities. As such, we will share general themes and complaints across all services and consider the scope of the ban later in our response.

> "[Firm] are using a strange strategy for offering their new fixed deals at the mo, cold calling customers and asking them to make a decision on the spot. I asked one guy I talked to if he could mail me details, he said he would if I signed up, nice! It's not a great deal by the way, comes out as 'borderline' for me on Martin's checker tool…"
>
> MSE Forum user, of an apparently legitimate utility firm, 2023

Further, consumers can be negatively affected by incentives of which they may not be aware – such as commission or other renumeration, and incentives for call handlers to make a certain amount of calls or drive a certain amount of custom in a given time period. While financial services regulation does go some way to moderating sales practices[2], incentives like this will always create risk that steps are missed or rules are bent. This is particularly important when it comes to consumers with any form of financial vulnerability – including those with low financial literacy, mental health challenges, those digitally excluded and those living with a disability.

MSE has also seen evidence that good practice is not always followed. Anecdotally, we have seen reports of certain firms calling people who are registered with the Telephone Preference Service (TPS) and/or are ex-directory, resulting in sales of products that are not necessary or needed. In one instance reported to us, a cold call resulted in a direct debit being set up for someone directly, despite their financial affairs being managed by a donor via Lasting Power of Attorney (LPA). In other instances, people have continued to be cold called despite asking to be removed from marketing lists.

> "I have financial lasting power of attorney for my 90 year old uncle. He is able to make decisions but he struggles with computers and gathering information to make decisions. He is also disabled and struggles to get out. He is regularly sold things that he can't use as for example he doesn't have and feels unable to use a smartphone or a computer but [bank] sold him an [investment ISA account] that can only be managed by smartphone. He is TPS registered and ex-directory."
>
> MSE Forum user, of an apparently legitimate bank, 2023

MSE has also seen reports of mis-selling over the phone – users have shared a range of complaints including terms and conditions that differ from information given on the phone; claims that there is no cooling off period when calling back to cancel a contract (which is already illegal)[3]; selling contracts for business services to consumers, and hidden charges. On top of this, some of our users

[2] FCA, FG18/2 Staff incentives, remuneration and performance management in consumer credit, March 2018, https://www.fca.org.uk/publication/finalised-guidance/fg18-02.pdf

[3] Distance Selling Regulations - Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013

have complained about the difficulty in contacting firms to follow up after a sale has taken place – suggesting sales can be prioritised over customer care.

Harms caused by fraudulent cold calling

MSE agrees with HMT's assessment that cold calling offers scammers countless benefits in comparison to other communications with victims. It allows for dangerous tactical behaviours, such as social engineering, relative unanimity, and the ability to coach victims through security measures during payment journeys.

We were pleased to see HMT specifically call out investment fraud, as we have spoken to dozens of victims of this. Usually, these people have been targeted by a fraudster after seeing an online advert featuring MSE's founder, Martin Lewis. The typical journey from the advert sees a victim taken to a site that poses as a legitimate news website, giving details of a unique and time-limited opportunity backed by Martin, who is one of the most trusted sources of financial help in the UK.[4] A victim will be encouraged to enter their contact details, and from there an extensive and long-running scam ensues over the telephone and online – where a person is encouraged to make ongoing 'investments' which appear to be growing, but of course, are never returned to them.

Victims often tell us that the fraudster becomes something like a 'friend' over this period, and once they start to share concerns, they experience more harassing and intimidating behaviours. Not all victims we speak to appear to be, or identify themselves as, showing characteristics of vulnerability – demonstrating just how sophisticated and dangerous these scams can be.

Victims often report the extreme mental health toll this causes, along with the decimation of their financial situations. Research by the Social Market Foundation found that, among those that were victims of fraud between 2020 and 2023, 70% suffered from at least one second round impact stemming from what they experienced. This included impacts on self-confidence, mental health and the ability to afford goods and services.[5]

In this context an outright ban could help victims to more easily identify that a call is fraudulent. However, in this example of a typical scam featuring Martin Lewis, a victim could assume that they have given consent to be contacted online first – and we ask HMT to consider this possibility in its policymaking.

Further, we frequently hear of fraudulent phone calls where the scammer masquerades as a bank trying to contact the consumer as their account has been 'compromised'. This leads to a so-called 'safe account scam', whereby the victim is encouraged to empty their bank account to a supposed new account – and the funds actually fall into the hands of a criminal. This is another example where an outright ban on cold calling may not be received by consumers as relevant to this situation and this is something HMT should consider in its messaging plans.

---

[4] The Times, "'Money saving expert' Martin Lewis is more trusted for advice than banks", 8 November 2022. Based on research by Deloitte. https://www.thetimes.co.uk/article/money-saving-expert-martin-lewis-is-more-trusted-for-advice-than-banks-p6hgsbznw.

[5] Social Market Foundation, "The view from the ground: Building a greater understanding of the impact of fraud and how the public view what policymakers should do about it", September 2023, p.29. https://www.smf.co.uk/wp-content/uploads/2023/09/The-view-from-the-ground-September-2023.pdf

Question 2: Do you agree that the cold calling ban should capture live telephone calls to an individual?

As detailed in question one, there are many reasons why telephone cold calling may not achieve good outcomes for consumers, and indeed cause harm. A 'strong message' that cold calls should be avoided – particularly where the contact is unsolicited – should be an effective measure to reduce the instances of poor outcomes and fraud. However, MSE would like to remind HMT that this would need to come with a considered, widespread communication campaign across a range of channels, in order for the message to become embedded across society – being particularly cognisant of reaching the most vulnerable and the digitally excluded.

Question 3: To what extent does direct unsolicited marketing of financial services or products take place through live, electronic communications, other than telephone calls? What is the impact if these communications are not captured by the cold calling ban?

Question 4: Are there existing safeguards in place via social media organisations which already offer protection against fraudsters using social media voice and video calls for the purposes of cold calling?

Unfortunately, evidence collected by MSE doesn't include instances of this kind of cold calling. However, we would caution HMT against relying on existing 'safeguards', such as preventative technologies and scam reporting tools provided by the likes of social media firms, which are woefully ineffective and inadequate in tackling fraud.

Currently, platforms are self-regulating – at least until the powers given to Ofcom via the Online Safety Bill take effect, and duties are applied, consulted on and then finally, enacted by the regulator. Even then, the effectiveness of the regulations are yet to be proven. The sheer scale of continuing fraud and harm perpetrated on these platforms is evidence enough that an industry-led approach, and technology-assisted monitoring used presently, is not working.

Too often harmful actors are allowed to slip through the net and make use of the platforms, and while many have set down their own policies to tackle misuse, these are often applied retrospectively, after a harm has already occurred and been reported. We know that scammers evolve their tactics to circumnavigate each barrier put up to prevent them reaching consumers, so we would encourage a proactive approach to considering these kinds of communications.

Question 5: To what extent does marketing of financial services or products take place through door-to-door selling?

Question 6: How could a cold calling ban be made to be effective in preventing door-to-door selling for financial services and products?

Question 7: Are there other forms of cold calling aside from electronic communications and in person selling that cause harm to consumers?

MSE has raised the issue of both fraudulent door-to-door sellers and poor practice by legitimate door-to-door sales teams with the government and on our own website.

However, consumers have particularly been affected by poor practice and 'cowboy' behaviour by legitimate firms and have shared experiences of this with us frequently. As before, we are unable to neatly distinguish between those selling financial services and products vs other offerings.

In particular, we have received repeated reports of one door-to-door sales company acting on behalf of utilities and telecoms firms, which reportedly causes confusion among consumers who (wrongly) believe it is affiliated with MoneySavingExpert and/or Martin Lewis.[6]

We have also heard about other door-to-door salespeople ignoring 'no cold callers' signs. Guidance we've received from Trading Standards in the past says ignoring a sticker may be a criminal offence under the Consumer Protection From Unfair Trading Regulations 2008. Despite this, sellers do knock.

> "I don't like this sudden resurgence of cold callers from large organisations… I never answer the door anyway unless I'm expecting a parcel and I don't want people coming into my home…
>
> "I don't want cold callers, like many others I work from home and there's a note the cops gave us on the door telling them not to bother knocking. Some people do seem to think they're exempt, it's true. They soon stop knocking and leave."
>
> MSE Forum user, 2023

Finally, there are also both legitimate and scam financial services that are serviced door-to-door, such as doorstep lending (home credit) and illegal loan sharks. Doorstep lenders can have very high APRs – even when legitimate. Further, while these lenders are regulated by the FCA, agents of doorstep lenders are often not themselves regulated, meaning that, among other poor practice, they may not inform the consumer of other options such as credit union loans, cheaper credit cards and debt help.

We would like to strongly echo earlier comments that, given the additional pressures and vulnerabilities of selling at the door, there is a very strong case to say that this type of cold calling rarely, if ever, results in good outcomes for consumers and should be considered in this ban.

Question 9: Do you agree the scope of the ban should include the services and products set out in the section above? Are there any other products that should fall within the scope of the proposed ban on consumer financial services and products cold calling?

Question 10: Are there any consumer financial services and products which should not be captured by this ban?

MSE would be pleased to see a wide-ranging ban on cold calling for financial services and products, in order to remain consistent with the key message that unexpected calls should be treated as illegal and/or fraudulent. The proposed inclusions are positive, and MSE will be happy to analyse the government's developed policy proposals when they arrive, to ensure that all concerns have been captured.

[6] MoneySavingExpert.com, "Had a cold caller at your door? They're NOT from MoneySavingExpert.com", created 23 July 2019 and updated 25 July 2023. https://www.moneysavingexpert.com/news/2019/07/had-a-cold-caller-at-your-door--they-re-not-from-moneysavingexpe/

With appreciation for the fact that this consultation identifies services beyond the scope of FCA regulation, we are particularly concerned to see that some currently unregulated services have not been included. For example, we are concerned about the omission of claims management firms (CMCs), which often require advance fees or a cut of successful funds, for claims that can often be easily filed by the consumer themselves – eg, CMCs servicing PPI tax rebates, or those applying for marriage tax allowance on a consumer's behalf. This is a recent example from the MSE Forum:

> "Just had a cold call from a PPI company saying I'm owed £500ish and they're wanting to send me a cheque. They've taken some very basic details (none banking) and I've signed a contract. They already had my address and income info…
>
> "I'm currently in financial dire straits though, so jumped at the chance before really giving it any thought (they also caught me in work, so I had to get the conversation done and dusted as quick as possible).
>
> "I asked them for the catch and they said they've already deducted a £50 admin fee but the amount they gave me is correct for what I'll receive via cheque in the mail within a few weeks.
>
> "Am I being overly skeptical, or does this sound legit?"
>
> MSE Forum user, 2023

We are also worried about the omission of buy now, pay later services, and other services that employ spread payments such as gym memberships, car financing and energy efficiency home improvements. While there is little evidence to suggest that these services regularly use telephone as a marketing or customer service channel, we would like to see the government get ahead of evolving strategies and emerging financial services. In the past we have seen examples of regulation being designed after a harm has occurred and would urge the government to use this opportunity to be thorough and cognisant of future technologies.

With this in mind, it's important to recognise the risk that if a ban is not comprehensive, fraudsters could move to unregulated areas in order to circumnavigate consumer concerns – as this consultation acknowledges.

On review of MSE's evidence base and contact with consumers, the majority of unwanted cold calls are related to utilities – such as telecoms, energy, water etc. In this area, we have seen both fraud and examples of poor practice from legitimate firms – both B2C and B2B. As such, MSE asks the government to consider how this regulation may be replicated across to these services, within HMT's powers or otherwise.

Question 11: Do you have any views on whether to include an exception in this cold calling ban, for situations where the caller is an FCA or PRA authorised business and there is an existing client relationship between the caller and the recipient, such that the recipient envisages receiving cold calls?

Question 12: Do you agree that the proposed approach achieves the aim of restricting unsolicited direct marketing calls in relation to financial services and products, bar the exceptions outlined, without restricting legitimate non-marketing calls?

Broadly, we agree that the design of the ban should reduce the potential for fraud, as well as poor marketing practice from legitimate firms – and will likely result in stronger consumer outcomes. If this exemption is to be included, there must also be consideration for the methods through which a consumer may have given consent to be contacted for marketing purposes – a consumer must be given the option to opt in (rather than opt out) and this opt in must be clear, understandable, prominent and unambiguous.

The government may also like to consider ways to mitigate any unintended consequences of this ban, such as consumers overexercising caution and ignoring genuine customer service calls – particularly where this involves a firm attempting to proactively contact someone in arrears, debt or financial difficulty.

However, scammers can still exploit this exemption. With a typical investment scam featuring Martin Lewis, we often note that the victim sees an online advert, responds to a request for their details on a fraudulent webpage, and is then telephoned by the scammer. From this, a consumer who believes they are dealing with a legitimate company could reasonably expect that this would fall within the exemptions. We ask that the government considers this risk thoroughly to determine how it can be minimised.

Question 14: How else can the government best ensure consumers are aware of the ban?

It is vital that a ban that has the intention of preventing people from falling victim to fraud also comes with the investment of a national, government-led campaign, as well as comms through additional channels like the ones specified in this consultation.

However, measures should also be taken to make sure that these messages are not misused by financial institutions as a way to avoid paying out under reimbursement schemes, such as those designed for Authorised Push Payment (APP) fraud. The simple act of showing someone this message before making transactions should not exclude them from having access to reimbursement they would otherwise qualify for. This is particularly important given insights that consumers are likely to face messaging fatigue in banking apps and similar contexts (eg, contract wording) and tend to simply click through – particularly if they are being socially engineered by a fraudster and told how to respond to warnings.

Question 15: What are the key considerations when designing the legislation to ensure that it is clear and impactful for the public?

This response has referenced several considerations so far, which are summarised briefly below.

- The ban should be wide-ranging, clear and unambiguous in order to avoid consumer confusion.
- There should be proper resourcing and investment in the communications strategy for this ban.
- There must be an understanding that while communications should be targeted towards those who are at most risk of falling victim to a cold calling scam, this can happen to anyone. Therefore, the wider public as a whole should feel equally empowered to know the rules about who is able to call them and for what reason.

- Any exclusions to the ban must be made clear. Our earlier comments around utilities cold calling being out of scope make this issue particularly problematic.
- The public should be told how to report fraud, and what may happen once they have reported it.
- The public must also be told how to complain about legitimate firms bending or breaking the rules.

Question 18: What impacts would you expect to see on persons with the protected characteristics mentioned above as a result of a ban on cold calling for consumer financial services and products? How can the government design the ban to promote positive impacts and mitigate any disproportionate impacts on persons sharing protected characteristics?

Our data at MSE does not reveal clear trends related to protected characteristics, however we would caution government that cold calling fraud is not a problem limited to those who are financially vulnerable. MSE has spoken to several victims who identified themselves as educated, with robust savings and no other vulnerabilities, who have been scammed out of their life savings as a result of initially seeing a fake advert featuring our founder, Martin Lewis, which then continued by phone. In some cases, the total stolen has run to over £100,000[7].

Martin Lewis is also the founder of the Money and Mental Health Policy Institute – so we would like to point the government to its response[8], which considers the impact of cold calling on those with lived experience of mental health challenges.

About MoneySavingExpert.com (MSE)

MoneySavingExpert (MSE) MoneySavingExpert.com, founded and Chaired by Martin Lewis, is dedicated to cutting consumers' bills and fighting their corner. It is the UK's biggest and most trusted consumer website. For 20 years, campaigning journalism has been at the heart of MSE's mission. The site is behind many notable campaigns, including student finance reform, reducing energy bills, mortgage help, scam ads regulation and helping consumers reclaim an estimated £1bn in bank charges and £12bn in PPI payouts.

With millions subscribing to receive the weekly MSE's Money Tips email and visiting the site monthly, MSE ranks as YouGov's most recommended brand (all sectors) in the UK. It is also, according to Press Gazette, the UK's largest specialist online news publication, with more traffic than many national newspaper sites. In September 2012, the site joined the MoneySupermarket.com Group PLC

[7] STV, "Woman faces selling home after cryptocurrency scam led to £150k debt", 19 April 2023 https://news.stv.tv/west-central/woman-faced-with-selling-home-after-cryptocurrency-scam-using-martin-lewis-led-to-150k-debt

[8] Money and Mental Health submission, 26 September 2023, https://www.moneyandmentalhealth.org/policybriefing/submission-consultation-ban-cold-calling/