



Association of Mortgage Intermediaries' response to HMT consultation – Ban on cold calling for consumer financial services and products

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage, insurance mediation and consumer credit activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Summary

AMI welcomes the proposed ban on the cold calling of financial products and services. A recent FCA Financial Lives Survey showed that consumer trust in the UK financial services industry is low, with only 41% of adults having confidence. This has remained largely unchanged over time¹. Cold calling practices cause harm to consumers and the reputation of firms and the wider industry and we feel it is therefore right for government to introduce a wider ban.

We believe cold calling is a serious issue in the insurance sector in particular and have highlighted examples of poor practices and the impact on consumers as part of this response. We know from AMI consumer research² that take-up of protection products (such as life, critical illness and income protection) is low and therefore a ban on cold calling has the potential to increase consumer trust in the sector, which in turn may lead to an increase in the number of consumers holding these types of products.

It is important that government includes the exception for FCA or PRA authorised firms to contact customers, where there is an existing relationship and the relationship is such that the recipient envisages receiving cold calls. Mortgage intermediaries as FCA regulated firms typically provide advice to consumers on different types of products, ranging from mortgages to insurance. Therefore it is

¹ <https://www.fca.org.uk/publication/financial-lives/financial-lives-survey-2022-key-findings.pdf>

² <https://www.a-m-i.org.uk/wp-content/uploads/2022/11/AMI-Viewpoint-2022-report-1.pdf>

important for mortgage intermediary firms to retain their ability to contact existing customers, in line with existing Data Protection and regulatory requirements. For example, mortgage intermediary firms may contact a customer to remind them their fixed rate mortgage is coming to an end or to review their insurance needs.

It is unclear from the consultation whether this type of activity constitutes a 'cold call'. We would argue that where there is an existing relationship between a business and a consumer, any calls made in the course of servicing, extending or reaffirming that relationship shouldn't be considered 'cold calls'. Government should consider how it can ensure clarity in its messaging when drafting the legislation and promoting the ban.

The 2022 FCA Financial Lives Survey³ showed there were high levels of consumer satisfaction with mortgage brokers, on a range of measures. Of those adults that had used a mortgage broker in the last three years, 79% agreed the broker helped them consider options they had not thought of and 78% agreed the broker helped them get a better deal than they would have been able to on their own⁴. If the legislation did not include an exception as proposed, this would impact mortgage broker firms' ability to service their customers effectively and would likely result in worse consumer outcomes.

We encourage government to use a similar exemption wording as per the legislative amendments made following the pension cold calling ban. If not done so already, we would also encourage government to review the impact of the pensions cold calling ban as there may be valuable feedback to consider as part of this consultation process.

The success of the proposals will depend on how the ban is enforced. This should be led by the ICO but also involve the likes of financial regulators such as the FCA. Consumers and firms should also be encouraged to proactively share insights and concerns with the relevant organisation(s). Consumers should be equipped with sufficient knowledge to understand cold calling 'red flags' and therefore we feel there is an opportunity for government to run a public awareness campaign using relatable examples, once the ban comes into force.

Questions

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

We feel the majority of harms being caused by cold calling are calls instigated by unregulated firms.

This is because there are already controls in place within certain parts of the regulated financial services sector. Under FCA regulation, the Mortgage Conduct of Business (MCOB) sourcebook prohibits regulated firms from cold calling unless the customer has an established

³ <https://www.fca.org.uk/publication/financial-lives/fls-2022-mortgages.pdf>

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existing customer relationship with the firm and the relationship is such that the customer envisages receiving such financial promotions. ([MCOB 3A.3.5 R](#)).

Whilst there is no such prohibition in the Insurance Conduct of Business (ICOB) sourcebook, all regulated firms, regardless of their regulatory permissions, are required to adhere to Data Protection Act (2018) requirements and many will also follow ICO guidance relating to unsolicited calls.

We feel unregulated firms are more likely to partake in unscrupulous cold calling tactics as they may be more prepared to take risks, given they are not under the spotlight of a regulator. The current economic environment may drive some cold callers to engage in poor behaviours, targeting vulnerable customers in particular.

Based on our insight, we believe the main harms to consumers caused by cold calling within the mortgage and protection sector are:

- **Firms imitating other firms.** For example, we have heard anecdotally of a firm calling up a company stating they are from 'x insurance company' which is a misrepresentation. The cold caller will often try to attempt to sell the consumer a policy from a different insurer. We have heard of one example where a consumer with a multitude of pre-existing medical conditions disclosed their medical history to the caller but were asked no further questions nor were there any specific terms on the policy, which would be expected given the individual's medical history. We are concerned that should the consumer need to make a claim, it is likely to be repudiated for non-disclosure. Not only could this cause harm to the consumer it could fuel further consumer mistrust in the insurance sector, impacting reputable firms in the process.
- **Sensitive customer details.** For example, a firm calling a consumer is aware of sensitive details about their insurance policy, such as the name of the trustees. This raises the question of whether the data has been acquired through the sale of a back book and if the caller has been transparent with the consumer around how the data has been gathered.
- **Fraudulent tactics.** For example, a cold caller is vague and uses language such as 'we are calling from your insurance company'. The caller may then use behavioural tactics such as 'our computer system has frozen, remind me of who you are insured with?' to obtain more detailed information without raising suspicion from the consumer. Often, when probed, the caller cannot provide any specific details about the policy in force nor can they provide their FCA firm reference number ("FRN"). The FRN allows consumers to check on the FCA Financial Services Register whether a firm is regulated by the FCA and, amongst other information, what regulatory permissions they have.

As a result of these types of call, a consumer may cancel or make changes to their insurance policy without realising the firm is not who they say they are. This is clearly fraudulent activity.

- Unsolicited calls from third parties offering an insurance review are often led by price based conversations such as 'we can save you money', which overlook the benefits of a particular product or policy. We are concerned that with the rising cost in living, consumers - particularly those with vulnerable characteristics - are more susceptible to harm and could make decisions without considering the long term consequences.
- For example, a consumer receives an unsolicited cold call and is led to believe the firm is their life insurer, yet this is incorrect. As a result of the call, the consumer switches to another insurer, however they are unaware the cover is insufficient to cover their mortgage which is the main driver for the consumer arranging the insurance. The consumer has not suffered

immediate harm as from their perspective they have managed to reduce their monthly premiums, however harm may surface at a later date for example when the policyholder has passed away, at which point it will be too late to rectify.

- In addition, if the consumer originally purchased the product through a financial adviser and subsequently switched to a different product through a non-advised route, they will lose their right to complain to the Financial Ombudsman Service (FOS) about the suitability of the product recommendation. This is unlikely to be pointed out to the customer as part of a non-advised and sales focused unsolicited call. Therefore, in the example given, the consumer would have no recourse to complain should they realise the policy is insufficient for their needs. This realisation may come too late, for example when a need to make a claim under the policy arises.
- See this [2020 article](#) for further evidence.

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

Yes, as long as there is the exception as suggested (please refer to our response to question 11 of the consultation).

We are concerned that many cold calls will be made from outside the UK and whilst the consultation highlights limitations, we urge the government to consider how it will tackle this area. For example, can government work more effectively with other jurisdictions around the world? Is there opportunity to tighten legislation where a call is made to a consumer physically based in the UK? If this area is not tackled sufficiently, it could undermine the impact and success of the proposed ban.

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?

We are aware that forms, quizzes or surveys are used by some firms, particularly lead generation firms, to capture customer data. We view poor practices as situations where a customer is unaware that information submitted via this format will be used or passed onto a third party, where a cold call may follow.

In our view the use of forms, quizzes and surveys as a lead generation tool should not be banned, as the interactive nature may help consumers engage in financial services. However, there should be a requirement to explain clearly in consumer friendly language who the data will be used by and for which purposes. This will help improve trust and transparency, particularly in the insurance sector where the use of forms, quizzes and surveys as a lead generation tool is more prevalent.

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?

We do not have enough expertise in this area to comment.

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

No comment.

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

No comment.

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

No comment.

8) Should sole traders and other types of partnerships (outside of limited liability partnerships and Scottish Partnerships) be captured in this ban on consumer financial services and products?

From a consumer perspective, the ban on cold calling should apply equally to all types of firms to ensure there is a level playing field.

From a B2B perspective, which we understand is the angle of question eight, we do not believe sole traders and other types of partnerships should be captured by the ban. This could have the unintended consequence of companies becoming less willing to engage with smaller firms, such as to share information on products and services, in case they are deemed to be in breach of a cold calling ban. This could stifle growth of UK SMEs during a time of economic uncertainty.

9) Do you agree that 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?

We agree that the proposed ban should cover mortgages and insurance.

As highlighted in sections 4.5 and 4.6 of the consultation, it is important that:

- The proposed ban does not apply to cold calls made by an FCA or PRA authorised firms, where there is an existing client relationship.
- It does not apply where a customer has given clear and specific consent to be contacted for marketing purposes.
- It does not prevent firms from sending routine customer service or administrative messages. It is important that this extends to situations such as an authorised mortgage intermediary firm contacting an existing customer to advise their fixed rate mortgage is coming to an end and/or offer related services such as advising an existing customer about the role of insurance in connection with a mortgage.

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

No comment.

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?

We would argue that where there is an existing relationship between a business and a consumer, any calls made in the course of servicing, extending or reaffirming that relationship shouldn't be considered 'cold calls'.

It is important this exception for FCA or PRA authorised businesses is included within legislation. However, the consultation includes the word 'established' when referring to existing client relationships. We feel the word 'established' is ambiguous and should not be included in the legislation.

FCA or PRA regulated firms should be able to continue contacting existing customers where there is a legitimate interest, in line with UK GDPR. For example, a mortgage broker firm may wish to contact a customer ahead of their fixed rate mortgage coming to an end or may wish to contact a customer about other services that may be of interest, such as advice on insurance products.

We would be grateful for clarification in situations where:

- A non-FCA regulated firm, such as an estate agency, contacts an existing customer to ask if they would be interested in mortgage services and passes a lead to a regulated firm, such as a mortgage broker. Where an FCA authorised mortgage broker contacts the customer via this lead, we believe this should be within scope of the proposed exception as long as the existing marketing consent had been obtained from the estate agency firm.
- There is a transfer of ownership e.g. merger or acquisition. We believe this should still be considered a legitimate interest and an 'existing relationship'; however industry may benefit from best practice guidance on how to manage handovers successfully to ensure this does not open up a loophole for scammers. By creating guidance, activity such as a cold call which states 'your insurer has been acquired by xyz' is more likely to be viewed as a 'red flag'.

It will be important for government to ensure there is clarity over how FCA or PRA regulated firms will be able to demonstrate to the ICO, when asked, that there is an existing client relationship. For example, we feel a Terms of Business Agreement, Initial Disclosure/Scope of Services Document or similar sent to a client would provide sufficient evidence that this relationship exists and this type of contact is expected by the customer.

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?

Yes, however we would like to understand what government views as 'legitimate non-marketing' calls as this wording suggests a marketing call could never be legitimate. For example, a mortgage adviser may contact a customer that they arranged a mortgage for 12 months prior to re-visit a discussion about protection insurance. In our view this is a 'non-marketing' call as there is a legitimate interest but we are concerned this could be viewed as a marketing call under the ban. It is therefore important that the ban and subsequent legislation does not inadvertently prevent these types of calls from FCA or PRA authorised firms.

13) Do you have any views on the enforcement mechanism set out in paragraphs 4.11 and 4.12 above?

We agree the ICO should act as the enforcement agency, given the ban will sit within legislation.

The ICO should ensure relevant intelligence is shared promptly with financial regulators such as the FCA and PRA where there is evidence the cold caller has imitated a regulated firm and/or the firm is unauthorised and is engaging in regulated activities. The FCA should be required to reflect any concerns on its consumer [Warning List](#).

It is important for the ICO to publish - and publicise - relevant cases when the ban comes into force as these may act as a deterrent to firms and individuals.

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

- We believe the government should run a public information awareness campaign. As part of this campaign the government and the ICO could also consider using social media to help make consumers aware of the ban and provide examples of the circumstances it does and does not apply to.
- In addition to a public information campaign to raise awareness of the ban, we would also encourage government to engage with telecoms providers to ensure they are doing enough to educate their customers on this issue – especially those with vulnerable characteristics. This information should not only centre on how to identify an illegal cold call, but provide practical guidance and support for consumers around how to set up and configure call screening services. Such information could also be built into the information campaign surrounding [the planned upgrade of the UK's telephone](#) network due to conclude in 2025.
- The FCA could consider creating 'ScamSmart' videos, as it has done for investments. It is important consumers are equipped with knowledge to enable them to recognise where cold calls are not legitimate and the types of tactics to look out for. It is important for the tone of such videos to be balanced, to avoid the unintended consequence of consumers becoming too cautious to even speak to a FCA authorised firm that they have an existing relationship with.
- The success of the proposed cold calling ban will be heavily dependent on market intelligence, particularly from consumers and firms. We believe there should be an ICO campaign, perhaps in conjunction with the government, to ensure consumers are aware of the [ICO reporting tool](#). A separate reporting tool should be developed for cold calls that are believed to be in breach of the proposed ban and this should be clearly labelled so consumers can easily access and submit their experiences and/or evidence.
- It will be important for consumers to be made aware of the exception where the caller is an FCA or PRA regulated business. We are concerned that the media (such as consumer press) will focus on the overall headline of 'government bans cold calling on financial products and services' and could omit the finer details. Therefore, it will be important for this to be clearly included in government messaging, such as press releases, so that the general public understand the types of circumstances in breach and those that are permitted. Otherwise customers may think FCA or PRA regulated businesses acting within scope of the exception are acting illegally which could lead to mistrust of authorised financial advice firms.
- The FCA's Financial Services Register ("FS Register") could be a useful tool for consumers to check if the firm they are dealing with is FCA authorised and to view the types of products the firm has permission(s) for. However, in our view the FS Register needs to first be made

more consumer friendly, as in its current guise it is not fit for this type of role. For example, it lists permitted activities based on how these are described in the Financial Services and Markets Act 2000 (FSMA) which are not relatable to the average consumer.

- It would be useful if government or the ICO could create materials for the financial services industry to use on a voluntary basis. Such as an infographic designed for consumers that explains the ban, the exceptions and what to do if they have received a cold call that they believe to be in breach. A firm could place this on their website, for example.

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

It is important for the legislation to clearly define cold calling. The word 'unsolicited' is key.

We believe the legislation to capture the exemption for FCA or PRA authorised firms where there is an existing relationship between the caller and the recipient, should effectively mirror the equivalent legislative wording in the Privacy and Electronic Communications Regulations (PECR) 2018.

Consumers and firms need reassurance that when they raise concerns about persons engaging in practices that are in breach of the legislation, these are investigated appropriately.

The legislation therefore needs to equip the ICO with adequate resources and tools to be able to effectively enforce. This should be funded by government grant-in-aid, which we understand is one of the ways the ICO is funded, and not by increasing the data protection fee, as this disproportionately affects firms that are already acting in a compliant manner or are exempt.

The consultation paper does not reference the financial promotions regulatory gateway. We encourage HMT to read [AMI's response to the FCA's consultation on introducing a gateway for firms who approve financial promotions](#) and to refer to [AMI's 2020 response to the HMT consultation](#). The FCA issued a [Policy Statement in September 2023](#) and we feel the financial promotions regulatory gateway and cold calling ban needs to work in tandem, as financial promotions may be the first tool used by a cold caller to generate leads. For example, an advert to entice a consumer to enter their personal details which are then subsequently used by the firm, or another third party, to make a cold call. We believe the financial promotions regulatory gateway should come in first, as it may provide intelligence that helps inform the drafting of the cold calling ban legislation.

16) In your experience, how could firms' business models be affected as a result of the ban?

It is important there is an exception for callers from FCA or PRA authorised business and there is an existing client relationship between the caller and the recipient. If no exception was applied, it will have a significant impact on our members' business models given they are advice firms and typically advise on more than one type of product. This would be detrimental to consumers, at a time when a cost of living crisis is driving more consumers to advice.

The ban could affect new business pipelines, dependent on how the leads are acquired by the lead generation companies. Lead generation is used by some of our member firms, predominantly operating in the lifetime, protection and second charge spaces. Firms that are using leads acquired through 'second hand' data, such as the sale of back books, are more likely to be impacted by the ban than those firms buying qualified/certified leads. Therefore firms

that are wholly reliant on the types of lead generation that are proposed under this ban are likely to be significantly impacted.

This is another reason why we have asked for clarification on transfer of ownership within our answer to question 11, as there should be a differentiation between the sale of customer data vs transfer of ownership via mergers or acquisitions. Without clarity, there is a risk of 'orphaned' customers as firms may take an over-cautious approach.

We believe both the FCA's Consumer Duty and the proposed cold calling ban is likely to result in regulated firms placing pressure on lead generation firms to identify the source of a lead and how it has been acquired. This is because 'good' FCA regulated firms will want to ensure they have oversight of the customer journey, to demonstrate they are acting to deliver good consumer outcomes. As a result, some lead generator firms may change the way they generate leads to reflect the demands of their customers, the lead buyers.

We therefore feel a cold calling ban, with the exception as proposed, should have a positive impact on behaviours within the market.

17) Are you aware of any groups of businesses, organisations and/ or individuals that will be particularly affected by these proposals?

No comment.

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?

No comment.

19) Do you have any other views or information the government should consider in relation to the proposed ban on cold calling in relation to financial services or products?

We have heard anecdotally that poor cold calling practices can take place via a firm operating as a 'trading name' of a principal firm. However some of these firms may be undertaking activities are such that it should instead become an Appointed Representative (AR) of the principal. It is important the FCA continues to monitor the use of trading names and for the message that registering a trading name is not an alternative to becoming authorised or appointed as an AR to form part of relevant communications on the cold calling ban.

When the cold calling ban on pensions came into force in 2019 the then Economic Secretary John Glen commented in a government press release that he would 'urge all savers to seek independent advice if you're thinking about making an important financial decision⁵'. Decisions made by consumers on financial products such as mortgages and insurance could potentially have long term consequences and therefore should too be regarded as important financial

⁵ <https://www.gov.uk/government/news/pensions-cold-calling-banned>

decisions. We would therefore encourage the government to consider a similar message in any press releases that announce the proposed cold calling ban on financial products and services coming into force.

Call for evidence for Impact Assessment

Legitimate Uses

Please refer to our comments and evidence within our consultation response.

Fraudulent Uses

Please refer to our comments and evidence within our consultation response.