

Unsolicited Telemarketing

Expert knowledge means success

Contents

1. Introduction
1. The Telephone Preference Service
1. The Information Commissioner
2. What constitutes a telemarketing call?
2. Ensuring compliance with marketing regulations
3. Registering with the corporate TPS
3. Receiving valuable calls from other businesses
3. What to do if you continue to receive unwanted marketing calls
4. Consequences of non-compliance
4. Further Information

Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

The Privacy and Electronic Communications Regulations came into force on 11 December 2003. The Regulations restate the 1999 Regulations with respect to marketing by telephone with two significant changes. First, from 11 December 2003, corporate subscribers have an enforceable right to opt-out of receiving unsolicited marketing calls - "cold calls" - which they can exercise by asking the caller to cease making further marketing calls to a particular number or numbers. Secondly, and with effect from 25 June 2004, businesses are extended the right to prevent unwanted marketing calls by registering with the corporate Telephone Preference Service (TPS). This right has been available to individuals for a number of years. Once a number has been registered with the TPS it will be an offence to make an unsolicited call to that number from 28 days after registration. All businesses- including charities and voluntary organisations) - will be affected.

If your business makes unsolicited calls as part of its marketing strategy, you will need to check your calling lists with the TPS. If you fail to do so and make an unsolicited call to a business registered with the TPS your company could be liable to a fine.

However, if your company receives unsolicited marketing calls, the new regulations will enable you to opt-out of this unwanted attention.

Will it stop all calls to our business?

The important point to note is that TPS registration only applies to unsolicited, that is, uninvited telemarketing calls, including fundraising calls. It will not prevent a company from calling you back with a quotation if you ring up and ask for one. That would be a solicited, that is, invited call. Nor does it prevent people from phoning your business to ask for a quotation from you or information about your products and services.

Exceptions

If the subscriber has previously indicated to the calling business or organisation that they do not object to sales and marketing telephone calls, their consent to receive calls will over-ride the TPS registration.

The Telephone Preference Service

The TPS register is a statutory list whose legal status is recognised by the Privacy and Electronic Communications Regulations. Entry on the TPS Register has previously only been available to residential subscribers, sole traders and unincorporated partnerships. The TPS register is managed by the Direct Marketing Association under contract to OFCOM.

The Information Commissioner

The Information Commissioner's role is to enforce compliance with the Privacy and Electronic Communications Regulations.

To help businesses use the service and also understand what rules they must adhere to when marketing themselves, the Information Commissioner has issued a guidance document. The guidance contains:

- clarification on what constitutes a telemarketing call;
- explanation of responsibilities to ensure compliance with marketing regulations;
- how to register with the corporate TPS;
- advice on how registered businesses can continue to receive valuable calls from other businesses;
- what to do if you continue to receive unwanted marketing calls;

A brief description of the guidance provided by the ICO is included in the following sections of this publication. It has been sourced from the Information Commissioner, and Crown copyright therein is acknowledged.

For more detailed information visit:

<http://www.informationcommissioner.gov.uk/eventual.aspx?id=96>

What constitutes a telemarketing call?

A telemarketing call is one where the caller is promoting their goods and services or their aims and ideals and includes fundraising calls. In other words, it could be a promotional call from a commercial enterprise, a charity or even a political party. A call made by a market researcher or opinion pollster is unlikely to be a telemarketing call unless part of the call also includes the promotion of a particular product or service or a particular cause. A call to check contact details is unlikely to constitute a marketing call but telemarketers should guard against trying to circumvent TPS registration by using such a call as a lead into a marketing call. Recipients of such calls can, of course, refuse to confirm contact details if they wish.

Ensuring compliance with marketing regulations

Unless you are convinced that the numbers on your list are those of businesses which are happy to hear from you, you must ensure that your list is cleansed of TPS registered numbers from 25 June 2004.

Sole traders and unincorporated partnerships have always been allowed to register their numbers on the TPS register. If you were making telemarketing calls to those sorts of businesses before 25 June 2004, you should have been checking that you didn't call TPS registered numbers.

It is up to you how you comply with your obligation not to call numbers listed on the TPS register. Details of all the options available to you (including rates for screening smaller batches of numbers and contact details of list cleansers who will do the job for you as a subcontractor, if you prefer) can be found on the Corporate Site page of the TPS website www.tps-online.org.uk.

TPS registration takes 28 days to take effect therefore registrations made on, for example, on 25 June 2004 will not apply until 23 July 2004. However, you should bear in mind that since 11 December 2003, all businesses have had a separate, enforceable right to require you to stop making telemarketing calls to them. They can exercise that right, even if they used to be happy to hear from you. You should therefore already have in place your own list of suppressed numbers (or "do-not-call" list) to ensure you comply with such requests. If you have not set one up, you must do so immediately. You should also remember that businesses can exercise that separate right before, during or after the TPS registration period of 28 days and you are legally obliged to comply with such a request.

You should have systems in place to allow your telesales/customer service staff to add numbers to your "do-not-call" list. These requests might come in over the phone or in writing, perhaps to offices in different locations, so you should make sure you integrate any separate "do-not-call" lists. The ICO accepts that immediately post-25 June 2004, you might mistakenly call someone you shouldn't, believing, in good faith, that they are still happy to hear from you. Your telesales staff should add all numbers called in such circumstances to your "do-not-call" list. If you can demonstrate that such calls were made in good faith, it is unlikely that the ICO would take formal action against you should they receive a complaint about the incident. They would, in any event, insist that you add the called number to your "do-not-call" list. If you do not and they receive a further complaint, they may consider taking formal action against you.

When making any telemarketing calls, you are legally obliged, if asked, to provide your company name and either a freephone number or a valid postal or e-mail address for opt-out requests. For the avoidance of doubt, you should provide the name and freephone number/valid address of the organisation whose products and services or whose aims and ideals are being promoted.

Telemarketing staff are not legally obliged to provide their names although you might prefer them to do so as part of your customer service policy.

Registering with the corporate TPS

If you want to register your businesses' number(s) on the TPS list, you must do so in writing. Registration is free of charge and renewable annually. Initial registration takes 28 days to take effect. For more information about how to use the TPS register, visit their website www.tps-online.org.uk.

The TPS Register is a list of numbers, not subscribers. If you only register your switchboard number and/or your non-geographic number (e.g. 0800, 0845), you will only protect that number. Registering that number on TPS will not protect your other direct dial numbers even if those numbers are not published in any directory. This is because many marketers randomly generate numbers to call within known ranges. As long as they do not call TPS registered numbers and numbers on their own "do-not-call" list, they are free to call any remaining number on that generated list.

If you have more than one contact number (including unpublished direct dial extension numbers), you should decide whether you want to put all or just some of those numbers on the TPS register. For example, you may want to keep your Buying Department or Sales Department numbers off the TPS register so they don't miss out on any good offers.

Receiving valuable calls from other businesses

You might have a list of preferred suppliers that you remain happy to hear from. They have made unsolicited calls to you about their latest offers in the past and you've sometimes taken them up on their offer. You are advised to let those suppliers know that although you are putting all your numbers on the TPS Register, you still welcome calls from them. You have a right to change your mind and let them know that you no longer wish to hear from them if you so decide. They would be legally obliged to comply with that request.

What to do if you continue to receive unwanted marketing calls

The ICO predicts that as everyone gets used to the new rules, you may continue to get unsolicited telemarketing calls from companies who used to call you before you were allowed to register on TPS. They may call you in good faith assuming that you were still happy to continue receiving their calls. You are advised, in the first instance, to tell the caller that your numbers are now TPS registered and that you don't want to hear from them anymore. You should make a note of the date and time of that conversation in case they call you again. You are advised to reinforce that verbal request with a letter, including a list of all your direct dial numbers for the avoidance of doubt.

The DMA sends the ICO detailed statistical reports every two months which indicate which companies have been the subject of the most complaints to them. They do not pass to them, nor do they request, individual case records.

You have a right to complain directly to the ICO about telemarketing calls you might have received despite your TPS registration and/or despite an opt-out request you may have made. The ICO requires you to fill in a specific form before processing your complaint which has been designed to elicit the information they need in order to establish whether or not the rules have been broken. The ICO would normally expect you to contact the company yourself first before complaining to them (unless the only way of contacting them was via a premium rate line). They would take into account the fact that you continue to receive calls from that organisation despite attempts by you to resolve the matter first.

What is Corporate TPS?

The Corporate Telephone Preference Service (CTPS) is the central opt out register whereby corporate subscribers (see definition below) can register their wish not to receive unsolicited sales and marketing telephone calls to either all their organisation's telephone numbers, or to certain numbers. It is a legal requirement that companies do not make such calls to numbers registered on the CTPS. It takes 28 days for the registration to become fully effective.

If you register any of your telephone numbers you need to be aware that you may not receive unsolicited telephone calls from other organisations which you and your colleagues may find useful and would be interested in receiving. For information on the Regulations which dictate this new legal requirement please visit Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004 at www.hmso.gov.uk/si/si2004/20041039.htm

We suggest you visit the Information Commissioner's Office website for their guidance on the Regulations: www.informationcommissioner.gov.uk/eventual.aspx?id=95

Consequences of non-compliance

If you are a Marketing agency registered with the Direct Marketing Association a breach of the regulations could render you liable for an immediate £5,000 fine. OFCOM can take enforcement procedures against other businesses: failure to comply with an enforcement notice can also lead to a maximum fine of £5,000.

Further Information

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

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