Proposal to lower the legal threshold for enforcement of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”), for regulations 19-24 to tackle unsolicited direct marketing calls and SMS text messages.

Consultation Response

1. Introduction

1.1. The Children's Society is a leading national charity, driven by the belief that every child deserves a good childhood. We provide vital help to the most vulnerable children, young people and families in our society through a range of services. We support at least 23,000 children and young people every year nationally.

1.2. Through our policy and research, we seek to influence public policy and practice as well as changing attitudes and perceptions of young people at all levels to enable all children and young people to have a better chance in life.

1.3. We believe in achieving a better childhood for every child but have a particular focus on children who have nowhere else to turn, such as children living in poverty, young refugees, children at risk on the streets, disabled children and children in trouble with the law. We seek to give a voice to children and young people and influence policy and practice so they have a better chance in life.

1.4. The Children’s Society welcome this consultation from the Department for Culture, Media and Sport as an opportunity to review the rules protecting vulnerable parents and young people from the damage done by nuisance calls.

Questions

1. Do you agree that lowering the threshold to remove the need to 'prove substantial damage' or 'substantial distress', will help improve compliance with PECR?
2. Do you agree with the Government's preferred option (option 3) of removing the need to prove substantial damage or substantial distress and allowing ICO the greatest scope to consider which companies can be issued with a CMP? Please provide your reasoning.
3. Are there any other costs or benefits associated with any of these options that you feel need to be considered before any final decision is taken?

2. Children and Problem Debt

2.1. In May 2014, The Children's Society launched The Debt Trap[1] which exposed the impact of problem debt on children and families. We found that there are over 2.4 million children living in families with problem debt.

2.2. Often, children are excluded from the debate on problem debt however, we know that children in these families are twice as likely to experience bullying, two thirds of them are worried about their family's financial situation; and half say that money struggles are causing arguments in the family.

2.3. We found that children were being exposed to an increasing amount of inappropriate marketing for credit, particularly high-cost short term credit – for example, payday loans. One third of children aged 10-17 said they were seeing adverts for payday loans 'all the time'.

2.4. This led us to investigate some of the marketing techniques used by payday lenders and the possible effects they might be having on vulnerable families and children.

3. Unsolicited Telemarketing of Payday Loans

3.1. In September this year, The Children's Society "Playday not Payday"[2] report called on the government to amend the rules around the advertising and telemarketing of payday loans.

3.2. The particularly high prevalence of telemarketing by payday lenders is of great concern to us. The Children's Society found that those who had already taken out a payday loan were particularly likely to be targeted, with 42% of parents who had taken out a loan in the past saying they were contacted by payday loan companies more than once a day in contrast to only 11% of all parents.

[1] http://www.childrenssociety.org.uk/what-we-do/resources-and-publications/publications-library/debt-trap-exposing-impact-problem-debt-ch
[2] https://www.childrenssociety.org.uk/sites/default/files/advagg_js/Playday%20not%20payday%20-%20Debt%20Trap%20Report.pdf

3.3. StepChange Debt Charity found that a third of their clients (individuals in severe financial difficulty) have received an unsolicited marketing call offering them a payday loan. Those receiving calls received an average of 10 calls per week.

3.4. Almost 15% of clients offered a loan had taken out high-cost credit as a result of one of these calls. The additional high-cost credit taken out by these clients because of these calls averaged £980, further exacerbating their financial difficulties.

3.5. Even when parents are asking to be taken off the list, they are still being hounded by calls. One client of StepChange debt charity said: "No matter how many times I say 'no I'm not interested' they'll just keep on ringing."[3] We are concerned that these companies are often not adhering to current regulations.

3.6. Given that young parents aged 18-24 are much more likely to have taken out a payday loan than any other age group of parent; we are concerned that this already financial vulnerable group will be receiving the brunt of these calls.

3.7. ***Therefore, we fully welcome the proposals outlined in the consultation to remove the existing legal threshold of "substantial damage and distress". Currently payday lenders have had free rein to target vulnerable families through unsolicited marketing calls. We agree that the Information Commissioner's Office should have more power to hold this firms to account and, in the long term, protect vulnerable consumers. However, we believe this should go further for payday lenders and have an all-out ban on unsolicited telemarketing of payday loans.***

4. Aligning payday loans with other forms of credit

4.1. There is currently a gap in the law that means vulnerable consumers are protected from any unsolicited marketing calls by other providers of credit such as mortgage brokers. The rules applying to the telemarketing of mortgages are very clear: *"A firm must not make an unsolicited real time financial promotion of qualifying credit"*[4].

4.2. We believe the loophole that means the same rules do not apply to the telemarketing of payday loans should be closed. The same clarity and protection should be extended to this more vulnerable group of consumers.

4.3. We welcome the announcement from Parliamentary Under-Secretary of State for the Department for Business, Innovation and Skills, Baroness Neville-Rolfe, that the Financial Conduct Authority will consider additional measures to tackle unsolicited marketing calls by payday lenders. She said, "As part of the FCA's clear and ongoing plan to tackle sources of consumer detriment in the payday loan market, next year it will

[3] http://www.stepchange.org/Portals/0/documents/media/reports/StepChange_Debt_Charity_briefing_on_unsolicted_marketing_of_payday_loans.pdf

[4] Mortgage Conduct of Business rules 3.7.3R

consult on payday loan firms' unsolicited marketing calls."[5] The FCA have since written to the Minister outlining this in more detail. [6]

4.4. The Department for Culture, Media and Sport should recognise that in order to align the rules between telemarketing of payday loans and other forms of credit, additional restrictions need to be put in place beyond the scope of this consultation.

4.5. ***The Department should welcome the FCA's review next year and ensure any evidence on the telemarketing of payday loans is available to the FCA for their review.***

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[5] Consumer Rights Bill, Report Stage, House of Lords, 26 December 2014: http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141126-0001.htm#14112649000696
[6] 1.1. http://data.parliament.uk/DepositedPapers/Files/DEP2014-1536/unsolicited_marketing_letter.pdf