

Corporate Registration on TPS

What is TPS?

The Telephone Preference Service (TPS) maintains a statutory register of telephone numbers of subscribers who object to receiving unsolicited telemarketing calls. The TPS register is run by the Direct Marketing Association under contract to OFCOM. Registration is free of charge and takes 28 days to take effect.

What constitutes a telemarketing call?

A telemarketing call is one where the caller is promoting their goods and/or 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.

What does it mean for business?

Until now, only residential numbers or the numbers of sole traders and some partnerships could be entered on the TPS register. However, from 25 June 2004, limited companies and all partnerships can also register their telephone number(s) on the TPS list. This will also be free of charge.

This means that from 25 June 2004, anyone making promotional and/or fundraising calls to any business must ensure that they are not calling a business number registered on TPS. If a business wants to register its number(s) on the TPS list, it must do so in writing. Registration is renewable annually.

Will it stop calls to our business?

The important point to note is that TPS registration only applies to unsolicited, that is, uninvited telemarketing calls, including fund raising 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.

This is a significant change in the rules for telemarketing. How will it work in practice?

We've outlined below a few points for you to consider whether you make or receive such calls. We have updated our Guidance on the Regulations that apply to marketing by electronic means (Part 1).

If you want to register your number(s) on TPS

- The TPS Register is a list of numbers, not subscribers. If you only register your switchboard number and/or your non-geographical number (e.g. 0800, 0845), you will only protect that number. Registering that number on the 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.
- You may 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.
- We predict 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.
- Since 11 December 2003, you have had an enforceable right to require an individual company to stop making telemarketing calls to your number(s). You might choose to exercise this right on a company by company basis in addition to or as an alternative to TPS registration. Although the Regulations don't specify that such requests must be made in writing, we recommend that you do so including a list of all your direct dial numbers for the avoidance of doubt.

- Let your staff, in particular your front-line staff, know your policy on preventing telemarketing calls. Any temporary front-line staff should also be made aware of your policy.
- You might want to maintain a controlled list (accessible to all staff) of those companies that you are happy to hear from and those who you have told to stop calling you. Although this would require additional administrative effort on your part, it should make life easier for busy front-line staff trying to determine which sales calls are welcome and which are not. However, this is a recommendation not a legal requirement. If you find another, more efficient, method of managing incoming telesales calls when TPS registered, you should use it. You may even want to let us know about it so we can pass on your practical tips to other businesses who write to us.

If you want to make telemarketing calls to businesses

- 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.
- TPS registration takes 28 days to take effect therefore registrations made on, for example, 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 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. 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. We accept 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 we would take formal action against you should we receive a complaint about the incident. We would, in any event, insist that you add the called number to your

'do not call' list. If you do not and we receive a further complaint, we 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 free phone number or a valid postal or email address for opt-out requests. For the avoidance of doubt, you should provide the name and free phone 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.

What is the Information Commissioners role?

The Information Commissioner's role is to enforce compliance with the Regulations which apply to telemarketing and other methods of electronic direct marketing. The TPS register is a statutory list whose legal status is recognised by those Regulations (The Privacy and Electronic Communications (EC Directive) Regulations 2003). However, the Register itself is managed by the Direct Marketing Association under contract to OFCOM.

Consideration was given to the TPS register being maintained by the Information Commissioner's Office. It was decided that this was not appropriate because of the possibility that some marketers would attempt to engage us in protracted debates about the administration of the register rather than their non-compliance with the law.

The DMA sends us 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 us, nor do we request, individual case records.

Can I complain directly to the Information Commissioner about telemarketing calls?

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