

‘Staying within the law when prospecting by phone’

Making prospecting calls legally may be more complicated than you might think.

It can be an expensive business if you don't stay within the law too, not to mention the potential damage it can cause to your own or your client's reputation and brand.

Companies not meeting their legal obligations can be fined up to £500,000 by the Information Commissioner's Office (ICO). Monetary penalty notices have been issued for making repeated marketing calls to numbers listed on the Telephone Preference Service (TPS) and ignoring people's objections to those calls including:

- Home Energy and Lifestyle Management Ltd - £200,000
- Nationwide Energy Services Ltd - £125,000
- We Claim U Gain Ltd - £100,000
- MyIML - £80,000
- Cold Call Elimination Ltd - £75,000
- EMC Advisory Services Limited - £70,000
- Omega Marketing Services Ltd - £60,000
- Assist Law - £30,000
- IT Project Ltd - £40,000

The Law

To understand your obligations fully, it's a good idea to be aware of the two main pieces of legislation relating to making phone calls and using data.

The **Data Protection Act 1998 (DPA)** is based around eight principles of good information handling. See <http://bit.ly/VmEjwv> for more details.

The **Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR)** provide rules about sending marketing and advertising by electronic means, such as by telephone, fax, email, text and picture or video message, or by using an automated calling system. See <http://bit.ly/PMcQkA> for more details.

Making Prospecting Phone Calls Legally

1. Screen telephone numbers against the Telephone Preference Service register(s) before calling and every 28 days:
 - **Telephone Preference Service (TPS)** - if you're calling individuals, sole traders and/or partnerships
 - **Corporate Telephone Preference Service (CTPS)** - if you're calling limited companies and corporate bodies
 - Screen against *both* registers if you are not 100% certain
 - To find a company to help you screen your numbers - see <http://corporate.tpsonline.org.uk/index.php/tps/cleaners>
2. Keep your own **do-not-call list** of anyone who says they don't want your calls. Screen lists that you call against your own do-not-call list - and do not call them.
3. Make sure that you do not disguise a marketing call as a market research call. This is known as 'sugging' (selling under the guise of research). If the call includes promotional material or collects data to use in future marketing, the call or message will be for direct marketing; you must say so and comply with the DPA and PECR direct marketing rules.

4. Only make recorded (as opposed to live) calls with opt-in consent. See 'More Information' below for more details.

Purchased Lists

If you are calling purchased or rented lists of prospect data you cannot simply rely on the data seller to have complied with the law. It is your responsibility to make sure that the data is legally compliant. You will need to:

- check the origin and accuracy of the list
- check when and how consent was obtained, and what it covers
- NOT use bought-in lists for texts, emails or recorded calls (unless you have proof of opt-in consent within last 6 months which specifically names or describes you)
- screen against the TPS / CTPS
- tell people where you got their details, if requested.

One way to ensure that the data that you're calling complies with the legislation is to use data providers that are Direct Marketing Association (DMA) members. See www.dma.org.uk

Exploding a Myth

Many people think that it is not necessary to screen against TPS or CTPS if the number being called is an existing customer. This will depend on the level of consent:

"An organisation might want to continue calling an existing customer who has registered with the TPS even though they have not specifically consented, because it is confident in light of the past relationship that they would not object. However, calls in these circumstances are in breach of PECR and could result in enforcement action". *Direct Marketing, ICO*

If you regard an individual or company as a customer and have an ongoing relationship (e.g. they have made purchases within the last 6 months) and you have consent, you are entitled to call them even if they are TPS-registered, unless they have told you specifically that they object to receiving marketing calls.

More information

If you'd like to read more about consent and to make sure that your calls are legally-compliant - here's a comprehensive guide put together by the ICO - <http://bit.ly/1nCrKoi>

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TPS screening ● Data, direct & digital marketing advice & outsourcing

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