

OFFICE OF FAIR TRADING

To: Local Authority Trading Standards Service

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Cold Calling Control Zones / No Cold Calling Zones

1. The Office of Fair Trading (OFT) has sought advice from leading Counsel on certain issues surrounding the establishment and support of 'No Cold Calling Zones' by local authorities. No Cold Calling Zones are initiatives which purport to prohibit all (or certain categories of) uninvited callers from an area. The advice is subject to Legal Professional Privilege, and the OFT does not intend to share this further than it has already done so.
2. Although ultimately it is for local authorities (or indeed, other bodies involved with No Cold Calling Zones) to determine whether they are acting lawfully in establishing or supporting the establishment of No Cold Calling Zones, the OFT recognises that a number of stakeholders may still have questions about No Cold Calling Zones and therefore we consider it appropriate to set out our view of certain legal issues.
3. This letter sets out the OFT's view on the *legality* of certain aspects of No Cold Calling Zones in England and Wales¹. It also sets out a statement of the OFT's *policy* position in relation to Cold Calling Control Zones and No Cold Calling Zones.

OFT's view of the legal position

4. Paragraphs 5 to 14 below set out our view of certain legal issues. It should be noted that this is not a definitive view of the law. It is for local authorities to consider whether they are acting within their powers and they need to take their own advice in relation to the exercise of their own powers. Only the courts can ultimately decide whether the acts of a local authority are legal.

Vires to establish or support the establishment of No Cold Calling Zones

5. Under Section 2 of the Local Government Act 2000 (LGA 2000), local authorities have the power (the 'promotion of well-being' power) to do anything which they consider is likely to achieve anyone or more of the following objectives:
 - (a) the promotion or improvement of the economic well-being of their area;
 - (b) the promotion or improvement of the social well-being of their area, and;
 - (c) the promotion or improvement of the environmental well-being of their area.
6. The OFT considers that acting to establish or support No Cold Calling Zones is likely to fall within these powers, where the local authority considers that its actions will achieve the promotion of the well-being objectives.
7. The promotion of well being power is limited by section 3(1) LGA 2000, which provides that the power in section 2 does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment.
8. There would appear to be no prohibition, restriction or limitation relevant to the establishment of No Cold Calling Zones. In particular, we consider that section 3(1) is not engaged by the licensing provisions of the House to House Collections Act 1939 (and in future, Charities Act

¹ We are currently considering the position in relation to Scotland

2006), the Gas Act 1986 and Electricity Act 1986 and the certification provisions of the Pedlars Act 1871. These Acts do not create a right for those in possession of a licence or certificate to conduct door to door activities - in other words, the holding of such a certificate or licence is a necessary but not sufficient condition for those activities.

Human Rights Act 1998

9. The Human Rights Act 1998 is potentially engaged by the establishment of No Cold Calling Zones. A public authority is entitled to interfere with certain rights where its actions are prescribed by or in accordance with the law, necessary in a democratic society and pursue a legitimate aim as set out in relation to those Articles of the European Convention on Human Rights engaged by the establishment of No Cold Calling Zones. Any interference must therefore be proportionate.

Proportionality

10. The OFT considers that the issue of proportionality is key to determining whether the acts of local authorities in relation to No Cold Calling Zones are lawful.
11. The following matters will, in our view, go to establishing that a No Cold Calling Zone is a proportionate measure within the meaning of Human Rights law: The core objective of the No Cold Calling Zone is crime prevention or reduction (including reducing the fear of crime).
 - There is a real prospect that establishment of the No Cold Calling Zone will assist in achieving the crime reduction objective
 - An identified problem in relation to crime exists - in particular, there is specific intelligence / evidence of high levels doorstep crime in relation to the specific geographic area in question
 - The size of the No Cold Calling Zone is limited and directly corresponds to the geographic scope of the identified problem. No Cold Calling Zones that are very large and are not tailored to the specific problem which has been identified, are unlikely to be defensible as proportionate.
 - Consideration is given to what cold calling activities should be caught by the No Cold Calling Zone, and whether it is possible to target only those activities causing the identified problems.
 - There is a high concentration of consumers who are particularly vulnerable to exploitation (including consumers who have a higher propensity to be misled) within the area.
 - There is consultation with householders within the area of the proposed No Cold Calling Zone
12. The need to maintain specific No Cold Calling Zones should be reviewed on a regular basis to ensure it remains a proportionate measure.

Unfair Commercial Practices Directive (2005/29/EC)

13. Where the primary purpose of a No Cold Calling Zone is crime prevention or crime reduction in a general sense, including crimes such as theft and burglary, it is unlikely to be a measure falling within the field approximated by the Unfair Commercial Practices Directive (2005/29 EC). On that basis, the zones are unlikely to offend the Directive's maximum harmonisation principle.

'Enforcement' of zones

14. The establishment of a No Cold Calling Zone does not of itself create any new criminal offence or civil obligations; however, other regulatory provisions may be used in tandem with No Cold Calling Zones to support their aims. In these cases the enforceability of any 'restriction' that is being imposed, and whether these provisions are being used appropriately will depend on the legislation in question, the factual context in which it is applied, and whether the legal test relating to its application is satisfied. In other words, the use of such powers will be subject to the same conditions and to the same checks and balances as they would be absent the establishment of a No Cold Calling Zone.

15. It should be noted that, even though a No Cold Calling Zone may be established lawfully, the OFT does not necessarily recognise such lawful No Cold Calling Zones as being an appropriate response to doorstep crime. Our policy position in this regard is set out below.

OFT policy

16. The OFT supports initiatives that improve consumer protection, in particular for disadvantaged consumers who may be particularly vulnerable to exploitation, where those initiatives allow legitimate business to operate without hindrance. Examples include Cold Calling Control Zones which focus on consumers being more informed and empowered to deal with doorstep crime, but which do not purport to restrict business activity. We also encourage signposting of consumers to reputable traders through initiatives such as local authority approved trader schemes, and the OFT's Consumer Codes Approval Scheme.
17. We recognise that there may be circumstances in which No Cold Calling Zones, set up in accordance with the legal advice, may be an appropriate response to doorstep crime.
18. Ultimately we seek to encourage TSS to take a risk-based and proportionate approach to implementing measures to benefit consumers - an approach that results in intervention only where there is a clear case for protection. The cost to business through intervention by local authorities should be a factor taken into consideration before intervention. Essentially, the benefits to consumers arising from measures aimed at crime reduction should outweigh the costs to business of having restrictions imposed. This is in line with the Hampton² principles. It is not possible to say definitely at this stage how the Legislative and Regulatory Reform Act 2006 will apply to No Cold Calling Zones but local authorities will be required to have regard to the Hampton principles set out in section 21 and the Regulatory Compliance Code when they come into force (expected to be Spring 2008). It should be noted however, that OFT has no power to enforce compliance with the Hampton principles.

Yours faithfully



Nicola Brown

² Set out in *The Hampton Review - Reducing administrative burdens: effective inspection and enforcement*