

Case Closure Statement

“Silent calls” - Complaints regarding the making of silent calls

Complainants: Direct Marketing Association and a member of the public

Complaints against: MKD Holdings Ltd (CW/00742/01/04) and Intelligent Marketing Solutions Ltd (CW/00735/12/03)

Cases opened: 5 January 2004

Cases closed: 30 April 2004

Issue: Annoyance caused to consumers by silent calls

Relevant instrument: Sections 128-131 of the Communications Act 2003

Background

1. In late 2003, Oftel received two separate complaints regarding annoyance caused to consumers by the making of 'silent calls'. The first complaint was submitted to Oftel by the Direct Marketing Association ("DMA"). A second complaint was submitted to Oftel by a member of the public.
2. From 29 December 2003, Ofcom assumed the powers of the Director General of Telecommunications. All subsequent references to Ofcom in this document include the Director General of Telecommunications and Oftel where reference is made to the period prior to 29 December 2003.
3. The most common form of silent (or abandoned) call is not malicious. It arises where calls are initiated by automatic calling systems ("ACS") at call centres and are then terminated by the ACS immediately after the called individual answers the phone. That happens because no live operator is available at the call centre to take the set up call. Properly run call centres will strive to ensure that they do not generate more calls than their operators can handle.
4. Ofcom does not necessarily open investigations into every complaint it receives regarding silent calls. Its policy is to consider the volume and context of the calls, and whether this may constitute persistent misuse as defined in the Communications Act 2003 ("the Act"). Please see the paragraphs below for further details about Ofcom's legal remit regarding silent calls.

Persistent misuse and silent calls

5. Sections 128 to 131 of the Act give Ofcom powers to take action against persons or companies who persistently misuse electronic communications networks or services in any way that causes or is likely to cause unnecessary annoyance, inconvenience, or anxiety.
6. Where Ofcom finds that a company is in breach of the above provisions it may issue a notification to the misuser giving the notified misuser the opportunity to make representations and take all such steps as Ofcom consider appropriate for (i) securing that the misuse is brought to an end and is not repeated; and (ii) remedying the consequences of the notified misuse. Should the misuser fail to take all appropriate steps, Ofcom can issue an enforcement notice requiring the misuser to do so. The requirement to remedy the consequences of a misuse may include the requirement to make compensation payments to people who suffered as a result of the misuse. In addition, Ofcom may also impose a financial penalty on the misuser.
7. Ofcom considers that silent calls can represent persistent misuse as defined in the Act. The very nature of a silent call, whereby the called party is unable to speak to the caller, is likely to cause inconvenience, annoyance, and anxiety. If the pattern is repeated this is only likely to exacerbate the called party's reactions. Following a previous policy statement in 2003, Ofcom will shortly be publishing a statement of policy on the persistent misuse of electronic networks and services.
8. The DMA has issued a Direct Marketing Code of Practice for its membership. This Code specifies, amongst other matters, a 5% threshold for silent calls as a proportion of live calls made over a 24-hour period. Whilst Ofcom has not formally endorsed the DMA Code, it is appropriate for Ofcom to have regard to this code issued by the relevant industry association.

The investigations

9. In late 2003, Ofcom made some initial enquiries and established that the companies which generated the silent calls resulting in the two complaints received were MKD Holdings Limited (“MKD”) and Intelligent Marketing Solutions (“IMS”). MKD operates, among other businesses, Kitchens Direct. Kitchens Direct is a supplier of domestic kitchens and principally promotes its products and services through telemarketing activities from six in-house call centre sites in the UK. MKD Holdings is not engaged in any other telemarketing activities for other group businesses or third parties.
10. IMS is a small call centre business with eight operators working out of one call centre site in Crawley, Sussex.
11. The results of Ofcom's enquiries indicated that the number of silent calls generated by MKD Holdings in connection with the promotion of the products and services of Kitchens Direct was very high, both in absolute terms and as a percentage of total calls made. Ofcom also found that IMS was making an unacceptably high percentage level of silent calls, although in absolute volume terms represented a less serious issue than MKD's performance, given the relative size of the two companies' operations.
12. Ofcom opened formal investigations in January 2004 to determine whether MKD Holdings' Kitchens Direct and IMS' telemarketing activities amounted to 'persistent misuse' of an electronic communications network or service under sections 128 to 131 of the Communications Act 2003.
13. In the course of its investigation, Ofcom required MKD Holdings' telecommunications service providers (BT and Your Communications) and MKD Holdings itself to provide Ofcom with a significant amount of detailed call data. On the basis of the information received, Ofcom concluded that the level of silent calls generated by MKD Holdings had indeed in the past been unreasonably high. Ofcom obtained similar information from IMS.
14. Information provided by MKD to Ofcom showed that MKD made over 26 million calls from its call centres between November 2003 and February 2004, of which approximately 11 million were live calls. Of the total number of calls, over 1.5 million were silent calls. At one point, one of the call centres reached silent call levels of approximately 25%. The rate of silent calls was therefore above the DMA guidelines of 5% of total live calls referred to above. In addition, Ofcom took the view that the sheer volume of silent calls represented a serious problem.

Conclusion

15. Given the unacceptably high level of silent calls, Ofcom has obtained written commitments from MKD to take wide-ranging measures to address the problem. Ofcom has obtained similar commitments from IMS.

16. MKD Holdings agreed to:

- 1) ensure that the drop rate of abandoned calls¹ of all live calls² made over any 24 hour period (the “Drop Rate”) is below 5% for each outgoing number operated by MKD Holdings for telemarketing purposes.
- 2) ensure that when a number has received an abandoned call that number is not called again by MKD Holdings’ automatic calling system (“ACS”) for a period of 72 hours following the abandoned call.
- 3) retain records of all calls made by MKD Holdings on a rolling basis for a period of at least 12 months, broken down on a daily basis for each of MKD Holdings’ outgoing numbers used for ACS-based telemarketing activities, specifying for each day and number:
 - a) the total number of calls attempted;
 - b) the total number of calls to an answering machine (incl. BT’s 1571 service);
 - c) the total number of calls connected to a live individual (i.e. live calls);
 - d) the total number of abandoned calls; and
 - e) the Drop Rate.
- 4) continue to display for each outgoing telemarketing call a calling line identification (“CLI”) number which should not be charged at a higher rate than the national call rate.
- 5) put in place a recorded message at the CLI under 4) above informing callers of MKD Holdings’ identity, the intended purpose of the abandoned call and that their number will be deleted from MKD Holdings’ data base if they call back:
 - a) stating that this is their wish; and
 - b) leaving their name and telephone number.

1 For the purpose of this undertaking “abandoned calls” shall be defined as in section 21.21 of the Direct Marketing Association’s “Direct Marketing Code of Practice”, 3rd edition (the “Code”); for an electronic online copy see: http://www.dma.org.uk/shared/lgl_code.asp.

2 For the purpose of this undertaking “live calls” shall be defined as in section 21.20 of the Code.

- 6) monitor callers' messages specified under 5) above on a regular basis and implement the requested data removal without undue delay.
17. MKD Holdings undertook that it would use its best endeavours to ensure that the above measures (to the extent that they are not yet taken) are fully implemented by at the latest 1 May 2004.
18. Ofcom considers that this should result in a significant reduction of silent calls generated by MKD Holdings generally and should ensure that repeated silent calls over a short period of time to a particular individual should not occur. They should further ensure that the identity of the caller can readily be established by the recipient of a silent call thereby minimising the potential of the silent call causing unnecessary anxiety.
19. Ofcom has closed the investigation against IMS, although will investigate any further complaints received against IMS.
20. Ofcom has moved the MKD investigation into compliance, which means that Ofcom will closely monitor MKD Holdings' adherence to its commitments. Ofcom has required the company to provide it with periodic data reports on its call performance.
21. On a wider level, Ofcom is also currently in discussion with communication providers, the DMA and other interested parties to examine the operation of ACS.

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