



APACS

Mercury House, Triton Court
14 Finsbury Square
London
EC2A 1LQ

Telephone 020 7711 6200
Facsimile 020 7256 5527
www.apacs.org.uk

Direct line 020 7711 6348

Our Reference JT/policy

5 January 2006

Mr Frank Phillips
Competition and Markets
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Dear Mr Phillips

STATEMENT OF POLICY ON PERSISTENT MISUSE OF AN ELECTRONIC COMMUNICATIONS NETWORK OR ELECTRONIC COMMUNICATIONS SERVICE – CONSULTATION PAPER

APACS, the UK payments association, is a trade association for those institutions delivering payment services to end customers. It provides the forum for the UK's financial institutions to come together on non-competitive issues, to develop banking systems for the future and to provide innovation and developments in payments. It is also the banking industry voice on payments issues such as plastic cards, card fraud, cheques, electronic payments and cash. APACS supplies scheme and project management, business consultancy and secretariat services to the UK payments industry. It is in relation to payment cards that this submission is made.

In responding to this consultation we have sought the views of APACS card issuing Members, some of who may also have submitted individual responses. A number of our members use dialler facilities in various areas within their business. APACS is responding in respect of those elements of the cards environment that may be impacted by the Ofcom proposals; other aspects of the retail banking business should be covered off in responses received from other trade associations such as the British Bankers' Association (BBA).

Should you have any questions on the views expressed, I shall be happy to meet with you to discuss them with you at your request.

Yours sincerely

Jacqui Tribe
Manager, Legal, Regulatory and Schemes

General Comments

APACS and its members fully support initiatives intended to enhance consumer protection and avoid consumers being placed in any situation that is likely to cause anxiety, annoyance or inconvenience.

Our members will be aware of the Direct Marketing Association (DMA) guidelines and will reflect these, and in particular section 21 (telemarketing) of the DMA Direct Marketing Code of Practice, in their operations. Members have not indicated that they see this area as one that gives rise to a large number of complaints and remain to be convinced that wide-scale problems exist.

In addition to your specific questions, which are addressed separately, we thought it useful to share some more general comments and concern:

Use of Predictive Diallers

As a general observation, the recommendations set out in the consultation appear to be focussed on large-scale marketing and cold calling operations.

Our members use predictive diallers for several different purposes, e.g. customer assistance, collections and debt recovery, together with product marketing. In practice, to regulate the use of predictive diallers in the same way regardless of the purpose may not be appropriate to the effectiveness of operations and the primary objective of attempting to make contact with the customer.

Ofcom may consider it advisable to liaise with the Banking Code Standards Board (BCSB) and similar bodies, as the proposals within the Ofcom paper may in some instances conflict with the commitments given by subscribers to such codes, e.g. the commitment of subscribers to the Banking Code to attempt to contact those customers who are in financial difficulties.

Call Line Identification (CLI)

Whilst we understand this can technically be achieved for UK originated calls, some of our members use operations located outside of the UK to place calls on their behalf. In such cases, the infrastructure of the telephone system in specific geographical locations may be such that CLI is not practical or feasible.

In an arrears context, it would not be appropriate to offer the customer the option of not receiving subsequent calls.

A general information message and telephone number would seem reasonable but the content would need to be varied to reflect the nature of the call. Some of our members have, however, expressed reservations regarding the nature of the message as this may breach confidentiality requirements, i.e. the risk of revealing facts or clues about an individual's financial position to a third party. Additionally, for some customers if a message is left on a customer's voicemail, this in itself may cause annoyance.

We would draw attention to the fact that some of the recommendations may result in technological changes to systems. This will undoubtedly have an impact on operational costs and where call centre operations are outsourced may also require contractual changes. If the recommendations are adopted, sufficient time for implementation should be allowed to accommodate systems enhancements and procedural changes.

Abandoned Calls

The paper suggests that telephone numbers dialled, then abandoned, should not be called again by the automated system for at least 72 hours unless a dedicated operator is available to take the call.

In the 'selling' context this requirement may seem reasonable however as already indicated, predictive diallers are not limited to this environment. As already indicated, a number of our members will use predictive dialling in the arrears and collections environment, where the time taken to contact the customer is a key consideration. A balance needs to be struck between the need to avoid unnecessary inconvenience for the consumer, contacting customers who are genuinely unaware that there is a problem with their account and minimising issues such as the risk of potential credit losses.

A further consideration is that for some organisations, predictive diallers may be used to respond to queries generated by the customers themselves. To restrict the ability of an organisation to call within a 72 hour period will have an adverse impact on customer service.

Abandoned Call Rates

The proposed abandoned call rate of less than 3% of total calls for any 24-hour period is lower than the existing threshold published within industry codes (which require a 5% limit). We appreciate that the intention is to require operators to manage their systems more efficiently however the proposal could have an impact on the efficiency of call centres which will need to have more agents 'idle' to ensure abandon rates are within prescribed limits. As a consequence there is likely to be a disproportionate cost incurred to the organisation as compared to the increased benefits to customer service and minimising inconvenience.

We would welcome your comments on the concerns or perceived mischief that have been identified such that Ofcom consider it necessary to revise the threshold of abandoned calls from the previously acceptable 5% down to the proposed 3%.

Compliance

In several sections of the consultation paper, reference is made to demonstrating compliance. Where requirements are mandated on predictive dialler users, clarification on what is deemed 'acceptable records' would be welcomed.

In light of our above comments, we would suggest that provisions need to be made to accommodate those legitimate practices that might otherwise be precluded by the proposals and we would be happy to work with Ofcom on identifying those practices and considering how best they might be covered.

Consultation Questions

1. *Do you agree that consumers are concerned by silent calls and that Ofcom is right to take enforcement action against the companies that make them?*

It would seem reasonable to suggest that enforcement action should be taken by Ofcom in circumstances where an excessive level of silent calls result and/or abuse is evident so as to protect the consumer and those organisations that use predictive diallers in a responsible and considerate manner. However, we would refer back to our earlier comments regarding the appropriateness of the threshold being set at 3% rather than the current 5%.

2. *Do you agree with Ofcom's proposed approach to taking enforcement action, guided by a sense of administrative priority?*

We agree that enforcement action should be taken determined by the level of consumer detriment and the steps being taken to reduce the concern caused by abandoned calls.

We also encourage the need for guidelines to enable a common standard of compliance to be achieved. However, we believe that guidelines should be sufficiently flexible to recognise the differing uses of predictive diallers and the regulatory framework within which UK organisations operate, e.g. Data Protection requirements.

3. *Do you agree that the range of procedures proposed in the statement will be effective in reducing the degree of anxiety, annoyance and inconvenience caused by silent calls?*

We would refer back to our earlier comments, as we believe that some of the recommendations are not practical or are not appropriate for all applications of predictive diallers.

Ultimately, the effectiveness of the procedures will depend on compliance and enforcement of the new requirements.

4. *Are there any additional procedures which call centres could adopt to reduce the degree of anxiety, annoyance and inconvenience caused by silent calls?*

We have no specific comments on this particular question.