



**Comments on OFCOM's Consultation on its
Statement of policy on the persistent
misuse of an electronic communications
network or electronic communications
service**

OFCCOM regulations

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General Comments

Avaya welcomes the opportunity to comment on the proposed OFCOM legislation outlined in the 'Statement of policy on the persistent misuse of an electronic communications network or electronic communication service Consultation' published 31st October 2005.

We support these regulations which define more precisely how outbound dialling technology should perform in UK, and how it will reduce customer anxiety and annoyance.

Avaya is a global telecommunications supplier providing a wide range of solutions to corporate customers. We have over 100 years experience in the telecommunications industry, being previously part of AT&T, and Lucent Technologies. Our primary involvement with predictive dialling began in July 1999 when we purchased Mosaix Inc, and the Mosaix Predictive Dialler System (PDS), now known as the Avaya Proactive Contact Solution. This dialler was initially launched in the UK in 1990, and has a substantial UK market share particularly in the Financial Services sector.

Specific Comments

We have a number of comments related to section 5.16 of the proposed legislation which are outlined below:

Section 5.16

The 2nd bullet in this section (Recorded Message in the event of an abandoned call) states that:

o In the event of an 'abandoned call', a very brief recorded information message is played within one second of the call being answered, which:

o identifies the company on whose behalf the call was made;

o identifies the intended purpose of the call (i.e. "an unsolicited sales call", "a call as part of debt recovery", etc)

o offers the called person the possibility of declining to receive further calls from that company by contacting a no charge (0800) or Special Services basic rate (0845) number;

o includes no marketing content and is not used as an opportunity to market to the called person;

Avaya Comments:

This regulation could work well to control 'cold calling' but would result in a number of problems where the calling company has an existing relationship with the customer.

A) Possible Infringement of existing UK law - Avaya is concerned that the playing of a message disclosing the company name, or the company name and the purpose of the call e.g. 'a call as part of debt recovery' could infringe one of the following existing UK laws and regulations:

- Where companies have an existing relationship with a customer, it may infringe the Data Protection Act, or the Bankers Duty of Confidentiality to disclose the calling company's name (during an information message) to any member of the household that may answer the phone.

- This provision could contravene the Data Protection Act, or the Bankers Duty of Confidentiality, by potentially informing any member of a household of a debt recovery problem involving another member of the household. Companies need to be cautious about releasing personal details to third parties.
- Similarly messages related to the purpose of the call e.g. delivery of goods, appointment setting etc. could infringe the terms and conditions of contracts between companies and customers.

These situations would result in complaints from customers, and could result in prosecution or other action by the Information Commissioner's Office, the customer, or the customer in conjunction with the Financial Ombudsman Service.

B) Debt Collection – These proposals would allow debtors to remove themselves from future calling lists and would restrict UK companies' ability to collect debt. Companies would then need to use other techniques to collect the debt which would typically be more costly to administer and they may pass these increased costs on to the debtors.

C) Option to decline receiving further calls – In situations where a company has an existing relationship with a customer it may infringe contract law or The Data Protection Act to allow other members of a household to stop future calls to the account holder. Similarly, in situations where more than one member of a household has a relationship with a company it would be important to remove the specified account number from the calling list and not the phone number.

D) Caller Line Identification (CLI) – Some service providers e.g. British Telecom, do not support and have no plans to support more than one CLI per dialler system, and therefore cannot present a range of CLIs related to different call types. This regulation would therefore require considerable cost for dialler customers currently using BT in order to comply with these new regulations.

F) Call Rates – Avaya believes that it is reasonable and justifiable that the CLI number presented should be at a rate no higher than a national call rate, but not a free number such as 0800.

Section 5.16

The 6th bullet in this section (on CLI) states the following:

Either a recorded message or a live operator is available at the CLI number presented to inform called persons of the identity of the organisation that called them, the intended purpose of the 'abandoned call' and that the called person's number will be deleted from the organisation's database and added to its in-house suppression list at the called person's request if they leave their name and telephone number;

Avaya Comments:

This regulation could work well to control 'cold calling' but would work less well where the calling company has an existing relationship with the customer. Please refer to the concerns expressed in points A), B), C) and D) above.

Section 5.16

The 8th (last) bullet in this section (Record keeping) states the following:

Records are kept that demonstrate compliance with the above procedures.

Avaya Comments:

It is standard industry practice to retain records of calls. However, we feel that this provision is poorly defined since it does not stipulate what type of records are required to demonstrate compliance with the procedures. Nor does it indicate the length of time such information needs to be kept.