

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Statement of policy on the persistent misuse of an electronic communications network or electronic communications service

To (Ofcom contact): Frank Philips

Name of respondent: Steve Smith, Dave Nicholls, John Price

Representing (self or organisation/s): Brookmead Consulting Ltd

Address (if not received by email):

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What do you want Ofcom to keep confidential?

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Whole response  Organisation

Part of the response  If there is no separate annex, which parts?

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Name Steve Smith

Signed (if hard copy)



**Response to Ofcom's consultation document:**

**Statement of policy on the persistent  
misuse of an electronic  
communications network or  
electronic communications service**

## Introduction

Brookmead consulting was formed in 2004 to give advice to the outbound industry on the management and control of their predictive diallers. The three founders have all been closely involved in the call centre industry for many years, and in particular have been instrumental in the development, introduction and promotion of the DMA dialler guidelines. Brookmead were commissioned in 2004 by the DMA and TPS to carry out a review of the silent calls problem, and in 2005 published the Brookmead Report. Later that year Brookmead wrote a paper justifying the 5% abandonment rate.

Over the last year the Directors of Brookmead have been busy educating dialler users and supporting the responsible use of diallers - presenting at industry conferences and seminars, on BBC news and business programmes, on various radio phone-in programmes and in the consumer and industry press.

## Response to consultation questions

In response to the specific question in the report:-

***Q1 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?***

The Brookmead Report supports Ofcom's view that consumers are concerned about silent calls, and we support enforcement action by Ofcom as the only effective way of controlling rogue elements within the call centre community.

***Q2 Do you agree with Ofcom's proposed approach to taking enforcement action, guided by a sense of administrative priority?***

Yes, so long as attempts are made to identify the most reckless dialler users.

***Q3 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 believe that the proposed measures will reduce the degree of anxiety caused by each silent call but will have very little impact on the absolute number of silent calls received by the public unless action is taken on overseas call centres and number scanners, and in the future IP telephony.

***Q4 Are there any additional procedures which call centres could adopt to reduce the degree of anxiety, annoyance and inconvenience caused by silent calls?***

- A dialler accreditation scheme should be set up by Ofcom to allow diallers to be regularly monitored for compliance.
- Number scanning should be outlawed unless the companies who carry it out can prove that their particular system does not cause a nuisance to the called party. These companies should pass on a returnable CLI.
- Offshore call centres should be monitored closely and if their actions are found to be non-compliant (eg no CLI presented) the UK companies which commission this work should be investigated.

## Detailed points

***Abuse of the informational message***

In paragraph 1.7 Ofcom have not specified what is legitimate and illegitimate use of an informational message. There is clearly the danger of informational messages being used for marketing, but there are other subtler issues. For example, what should the dialler do if an agent becomes free while an informational message is being played? If the dialler is allowed to connect the agent then:-

- Should the call centre count this as an abandoned call or not?
- There is the danger that less reputable operators will use long informational messages in order to increase their chances of making a live contact.

For the informational message we believe that better guidance is required on exactly what the message should contain. For example, the sample message for debt recovery states 'a call as part of debt recovery'; stating this would appear to be in breach of data protection rules because at the time of the information message it has not been established that the right party has answered the phone.

### **5% - 3% abandoned call rate**

We are disappointed that in paragraph 1.7 Ofcom have decided to specify an abandonment rate of 3% rather than 5%. This is a complex issue that we have addressed in detail in our own discussion document which has already been passed to Ofcom.

As far as the media is concerned 3% sounds a lot better than 5% but we have put forward strong arguments to show that this will penalise responsible companies without any discernable benefit for the consumer, a view that is supported by Ofcom's own research as reported in Annex 5.

### **Ofcom's priorities on issuing notifications**

We welcome Ofcom tightening up and calling to account companies which are using dialling equipment recklessly. A strategy of a small number of high profile investigations with large fines will get the message across to all sections of the industry, but in an environment where three quarters of all diallers are probably not technically compliant Ofcom will get a win whoever they investigate. It is important that it is the worse offenders that are initially targeted, and the identification of these companies requires good information.

1. We are concerned that Ofcom's method of prioritising companies to investigate will inevitably focus on large call centres because of the absolute number of silent calls that they make (paragraph 6.5 – the quantitative test). We believe that a small call centre that is recklessly dialling at 100% abandonment rate is much more worthy of investigation than a large call centre that may be dialling at 3.5%. Ofcom's statement suggests to a small call centre that it can over-dial with impunity.
2. Ofcom acknowledges that the withholding of CLI is a key factor that exacerbates distress for consumers. We believe that, whether they are made from a call centre or from someone's office phone, calls from all types of businesses, local authorities and the government should carry a CLI unless they can demonstrate that there are data protection issues. We understand that consumers have the right to hide their identity when making telephone calls but we believe that an organisation should not have this right unless it has a dispensation from Ofcom for a specific application.
3. Paragraph 6.7 says that representations by consumers will be the way in which misuse is brought to Ofcom's attention. When we carried out the research for the Brookmead report Ofcom was receiving around 500 calls per month from the public about silent calls. In many cases the perpetrators could not be identified because a lack of CLI. In contrast the networks are handling 160,000 – 200,000 calls per month about nuisance calls, 5,000 of which were escalated to the Nuisance Call Bureaux who were able to identify the perpetrators using network level CLI.

We believe that the information available from the NCBs is much richer than the information available to Ofcom from consumers and should be Ofcom's primary source of information. The only organisations that can identify those who dial without a CLI are the nuisance call bureaux.

Note that unless the NCBs are involved consumers cannot effectively complain to Ofcom about silent calls from call centres that withhold their CLI. Those that act responsibly and pass on their CLI are therefore, unreasonably, more likely to be the subject of a consumer complaint to Ofcom.

We would like to see Ofcom publicly saying that as a priority they will work with the NCBs to identify offenders, particularly in areas where CLI is not presented.

4. We believe that rogue elements in the industry feel that they can get away with operating as they do because the regulator will not act. They have seen the Telephone Preference Service generating 100,000 complaints over 6 years without any enforcement action. We believe that Ofcom could get the message out if they were to simply write warning letters to the top 100 companies on the NCB lists reminding them of their responsibilities and of the statistics they would need if an investigation were opened.

### ***Impact assessment***

We have spent a long time studying this section and do not understand the logic that is being applied in the Impact Assessment. Annex 5 paragraph 5.19.3 is particularly unclear.

## **General points**

### ***The 'silent call chasm'***

In Annex 5 paragraph 5.10 you acknowledge the 'silent call chasm' that we initially identified – the difference between the number of silent calls reported by the public (6 – 10 calls per month) and the number of calls that the UK call centre industry would generate at a 5% abandon rate (0.33 per month).

You agree with our view that much of this gap may be attributable to offshore call centres and number scanning. Given that these activities are potentially causing such a high proportion of the total silent call nuisance were very surprised not to see any specific measures in the consultation document to address these areas.

### ***Number scanning***

We believe that number scanning should be explicitly outlawed unless the companies who carry it out can prove that their particular systems do not cause a nuisance to the called party. The companies which are allowed to continue scanning should be required to pass on a returnable CLI. We understand that there are a very small number of companies who operate in this area so they should be very easy for Ofcom to identify and bring into compliance.

### ***Dialler accreditation***

Brookmead believes that it is necessary to regulate the dialling equipment itself. We would encourage Ofcom to introduce a dialler accreditation or even licensing framework that places the onus on the user to prove that they are operating it responsibly as a condition of use.

### ***Offshore call centres***

We believe that very few offshore call centres that dial into the UK present a CLI – ie a very large proportion of offshore calls into the UK are non-compliant. Ofcom need to make it clear that this is not acceptable and should investigate the UK companies which commission work from offshore call centres that do not present their CLI. There is certainly no reason why these call centres should not present an Information Message, whether or not CLI transmission is possible.

Whilst it is completely legitimate for UK companies to use offshore call centres they must follow the same rules as UK call centres otherwise the consumer will get more nuisance calls and the

compliant UK call centres will be forced out of business by offshore call centres that do not have to carry the costs of compliance.

### ***Type 3 CLI***

We would like Ofcom to look at the current issues around provision of Type 3 CLI (where a full geographic or non-geographic number can be given). At the moment some Telco's, notably BT, are unwilling to allow this type of CLI because of the possibilities of misuse and the fact that the Telco may be held liable for such misuse. This puts limits on the CLIs that can be delivered.

Essentially it seems that either a single non-geographic number may be sent as the presentation CLI, which is not ideal for outsourcers or for dialler users who run several different campaigns on their system. Alternatively a Type 2 CLI could be used, but this is limited to geographic numbers which would not work where the outbound call centre is not co-located with the inbound centre. Also a geographic number cannot be guaranteed to be local rate or lower.

### ***Return of Calls via CLI***

It is stated that where a called party returns a call via CLI or using a number from an Information message this should not be used as an opportunity to market to them. This gives rise to two questions:

- 1) The person calling back must be given the purpose of the original call. If when told the purpose they wish to proceed, even if it is a marketing call, would they be allowed to or must the callcentre terminate the call after asking them to call back? As a specific example, a call from a garage reminding the customer of an impending MOT deadline is likely to be considered marketing. If the customer called back and was told the purpose of the call they may wish to book an appointment there and then, would this be permitted?
- 2) If the purpose of the original call was not marketing e.g. debt recovery, market research or customer service, is it permissible to attempt to complete the transaction when the called party calls back?

### ***The 72 hour callback rule***

We would also like to see clarification of the 72 hour rule where calls are being made on behalf of multiple clients or for multiple products. There seem to be two issues, firstly the technology; if it is a requirement that the 72 hour rule applies to calls in different campaigns then users with more than one dialler (possibly located a different sites) would need to build a system to allow a nuisance call that occurred on one dialler to be passed to the other diallers in case that person is to be called on a different campaign. While it should be possible to build such a system it is not a standard feature of all diallers and, where different manufacturer's diallers are in use would require custom development.

Secondly there appears to be a data protection issue if nuisance call data is to be shared within campaigns. Agencies are not permitted to share list information between different clients, forcing the 72 hour rule to cut across campaigns in a call centre would appear to breach this confidentiality.

### ***Clarification of 'do not call' requests***

Where a customer requests that they be put on a 'do not call' list, it is unclear which list would be appropriate, for example:

- If the calling party is an outsourced bureau calling on behalf of a client should the person be put on the bureau's own list, meaning that they could not call them again on behalf of any client, or on the client's do not call list

- Where an in house call centre is used to call on behalf of several brands in a group should the do not call list be maintained on behalf of each brand, or on behalf of the group as a whole?

### ***Calling for Non-Marketing purposes***

We are aware that the focus on marketing calls has meant that some other dialler users (e.g. Debt Recovery and Market Research) have considered themselves exempt from the requirements of responsible dialling and the provision of CLI. We recognise that non-marketing calls are not subject to the privacy regulations and that the regulations regarding data protection have an impact on the delivery of CLI and Information Messages, however we do not believe that these are insurmountable problems and they should not detract from the need to remove anxiety from consumers and reduce nuisance to a minimum.

Historically organisations seem to have taken the position of "when in doubt, cut it out" with regard to CLI. We believe this attitude comes from fear of the unknown but that in fact, in the vast majority of cases, provision of CLI helps both consumers and companies by reducing the need for complaint escalation.

### ***Future plans***

We were disappointed not to see any plans for Ofcom to extend their own powers to allow international and IP calls to be regulated.