

CM Insight and Companies*

Response to Ofcom Consultation on: Statement of Policy on the Persistent Misuse of an Electronic Communications Network or Electronic Communications Service

***Response representing views of CM Insight and an
Outbound Forum Group of Private and Public UK
Companies covering 2200 Outbound Call Centre
Seats.**

Consultation questions

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?

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

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?

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

Response

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?

A1: We absolutely appreciate the concern of consumers, and further believe that negative consumer reaction will in itself result in resistance to attempts by outbound practitioners to contact consumers. We absolutely endorse Ofcom taking appropriate action to minimise silent calls and mitigate their effects on consumers.

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

A2: We agree with Ofcom's proposed approach, and believe that the fines for rogue operators (those intentionally acting outside of the law or indeed good practice) should be punitive in their scale so as to deter rogue practice. Feedback to CM Insight illustrates that those companies wishing to act responsibly are grateful for the prospect of a level playing field.

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?

A3: We agree in theory with the sentiment and range of procedures proposed in the statement. However, feedback and discussion has raised a number of details, subtleties and complications specific to various examples of outbound activity that we feel Ofcom should consider before imposing blanket legislation (ie legislation which does not consider the following special examples of activity):

1. CM Insight and our Outbound Forum participants are concerned with the directive on “CLI information on outbound calls enabling the consumer to call back and request not to be called again”. Participants are concerned that in a non-telemarketing environment in which legitimacy of continued calling is present (for example, where the call pertains to a debt recovery, or to genuine servicing of the account), that the ability to opt-out does not over-ride common sense or the company’s entitlement to contact its debtors.

Furthermore, the section pertaining to “in the event of an abandoned call the playing of a brief information message ... offers the called person the possibility of declining to receive further calls from that company...” again assumes the consumer’s right to refuse further contact, when the context of the call suggests this might not be sensible (for example, where the call pertains to a debt recovery, or to genuine servicing of the account).

CM Insight suggest that mention is made in the detail of the policy that the right to “request not to be called again” applies to appropriate functions such as telemarketing and market research (covered by consumers’ rights under the Data Protection Act and the Privacy and Electronic Communications Regulations), and not to reasonable business functions such as debt recovery and account management requiring direct contact with the consumer.

2. The requirement that when CLI is left, “any call made by the called person to the contact number provided shall not be used as an opportunity to market to that person”. The group discussed whether this was worded in such a way as to support the rights of the consumer whilst maintaining ‘common sense’. For example, if a caller returns the call, then the group questioned whether it might appear frustrating to the consumer to be told “We called with regard to a marketing message” and not to be able to explain the content of the marketing offer if approached. The group felt it might be appropriate to respectfully continue if the consumer expressed an interest (for example “We called with regard to a marketing message. If you are happy to take such a call, then we could explain the offer with you now?”).

The forum considered that the aims of the policy – to reduce annoyance and anxiety caused by silent calls – would adequately be covered by knowing who called and being able to find out why if they wished to return the call. However, it felt that some of the wording of the policy statement would inhibit reasonable attempts to communicate with the consumer if given permission to do so.

CM Insight suggests that, if the consumer calls back to inquire as to the nature of the call, and gives permission to receive details of the marketing offer, that this may sensibly be done at the time of call back. We would also urge companies that wanted to pursue this route to adopt the 0800 call-back approach, so that consumers are not paying for the call. If a company is operating on an 0845 number, then perhaps the CLI agent may propose that a further outbound call is made shortly by an appropriate agent.

3. The Forum participants are concerned with possible data protection contravention expressed in the directive “in the event of an abandoned call the playing of a brief information message giving details about the call”.

Participants are concerned that in specific examples (eg servicing of a financial services product, debt recovery, subscription to products and services specific to an individual) that leaving a message giving the name of the company and the purpose of the call (eg “your account”, “your product”) may disclose information to other members of the household who may retrieve the message. For example, a spouse might be unaware that their partner has an account with the provider, or a product with a provider, and the forum are concerned that in specific cases this could give rise to a Data Protection contravention under the section pertaining to disclosure of personal information.

The group recognises that where the message relates to telemarketing, a message such as “we were calling with a generic marketing message” may appropriately define this activity. However, the very absence of such a message (eg “Company X called you”) may identify, by omission, that the recipient has a relationship with the company.

The group also feel that there may be opportunity for confusion and/or frustration when a party calls back, if they are not the account holder. Questions arose over how the company might identify the caller or explain the purpose of the call without revealing that there is a specific relationship with the intended recipient of the call.

CM Insight suggest that the message may be allowed to be sufficiently generic as to identify the organisation or brand that called, without specifying the purpose of the call (eg “Company X called and were unable to connect you. The call is not urgent and we apologise for any inconvenience. You may contact Company X on TEL NUMBER”). We

believe Ofcom should withdraw the requirement to identify the intended purpose of the call.

4. The forum participants are concerned with how the requirement to deliver "[CLI information on outbound calls enabling the consumer to call back and request not to be called again](#)" may work in practice in two environments:

1. Calls originating from an Outsourced Service Provider (OSP)
2. Calls originating from an Offshore Call Centre (in-house or outsourced).

When calls originate from a UK OSP, are Ofcom concerned with which brand is presented in the CLI? There may be technical difficulties involved in setting up a number which represents the brand from an OSP's call centre.

When calls originate from offshore (even when the brand is UK-based), and although the Offshore call centre may have enabled CLI, there are circumstances under which the network has technical difficulty in forwarding the overseas number.

Participants also gave several other examples where a CLI may be inappropriate (eg a call from a sensitive organisation which raises the Data Protection issue). The forum felt that Ofcom's directives made an assumption that activity is generated in a telemarketing context, and had not given due consideration to the other main types of dialler usage, or also to the less frequent but very specific niche contexts. In fact, CM Insight research shows that Debt Collection and Financial Services are highly represented in predictive dialler deployment, and would urge Ofcom to consider the specifics of such activity in consumers' rights to opt-out and the requirement of companies to leave information. Even when telemarketing is the purpose of the call, where the consumer has a relationship with the provider, then the presence of a CLI may imply a relationship with the consumer which could contravene their data protection rights (in the event of the CLI being picked up by another member of the household).

CM Insight suggest that in certain vertical or horizontal sectors of, it may be sufficient for callers to leave EITHER a CLI, or a recorded message (although companies may choose to do both). Companies could then consider in good faith which procedure is appropriate in identifying the type of call whilst maintaining the data subject's privacy. We believe this choice would mitigate the anxiety and annoyance of the silent call, whilst giving the consumer the opportunity to contact the organisation from which the call originated. It would also prevent offshore-sourced calls from being able to operate on a less stringent requirement because of technical difficulties, which is fairer to onshore practitioners.

5. There is no mention in the consultation document of when the rules will be implemented. Participants were keen to understand whether there would be any kind of 'bedding-in period' during which companies are able to make arrangements to comply. It may not be practical to implement the procedures imminently. Specifically:
 1. Companies will need to ensure that their predictive dialling technology supports programming the % of abandoned calls (ie that it is output-based), leaving an automated message, scheduling a repeat call for min 72 hours and 15-second ring time. Although most diallers will almost certainly have this capacity, due to the proliferation of American vendors in the UK market (which have already had to comply with similar legislation), some companies may be forced to make some initial investment into dialling technology.
 2. Companies will need to ensure that they are able to present an appropriate CLI when originating a call via their OSP or from an Offshore call centre. This may involve purchasing extra lines, and companies and OSPs may need a period of time to consult and implement this directive.
 3. Some companies may not be used to recording and analysing their abandoned call percentages. These companies may need time to educate themselves on their dialler configurations and how different variables impact the dialler performance.

CM Insight suggests that, following the consultation period and the publishing of final policy requirements, that Ofcom make clear whether there is a grace period and what that period should be. CM Insight suggests that 6 months may be an appropriate bedding-in period.

6. The consultation document currently requires that "in the event of an abandoned call, a very brief recorded information message is played within one second of the call being answered...". The forum interpret the definition of an abandoned call as therefore being any call not connected to a live agent within one second. The group were concerned that the technology used to identify whether the call has been picked up by a human or an answer machine, and then to forward the call to a waiting agent, may not be technically possible within one second. The US legislation on silent calls requires that the call is connected within 2 seconds of the end of the answer greeting (eg within 2 seconds of the end of "Hello?"), and therefore most predictive dialling technology is configured to attempt to comply with this time period.

CM Insight suggests that the definition of an abandoned call is altered to allow the technology 2 seconds (from the end of the answer greeting) to connect to a live agent.

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

A4: We consider that two additional procedures could reduce the degree of anxiety, annoyance and inconvenience caused by silent calls:

1. Present CLI on Number Scanning Activity.

CM Insight consider that number scanning may represent a significant absolute number of silent calls received by consumers. At present, there is no scope within the policy for consumers to identify such a call. In fact, the presence of CLI in all predictive-dialled calls may exacerbate the concern of the consumer when receiving a number-scanned call, as education will have led to an expectation of a CLI being presented. If CLI is not presented, then the consumer may conclude that this particular call could only have a malicious or concerning origin.

CM Insight suggests that companies adopting number scanning present their CLI in the same way as companies deploying predictive diallers.

2. Media Education to the Public of Silent Calls

The forum suggested that consumer education and expectation management might help to mitigate some of the anxiety from silent calls. Many consumers are unaware that silent calls exist, despite some media coverage. This lack of being able to identify that a silent call is generated by a machine with no malicious intent would surely address some of the concern felt by a recipient.

CM Insight would suggest that Ofcom considers a media campaign to educate consumers on silent calls.