

## **Ofcom Statement of policy on the persistent misuse of an electronic communications network or electronic communications service. Consultation**

### **Introduction**

MBNA Europe Bank Ltd is a wholly owned subsidiary of Bank of America following the merger of MBNA Corporation and Bank of America Corporation on 1 January 2006.

MBNA first opened its doors for business in 1982, and since then has grown from a 155-person company housed in a renovated supermarket to a FORTUNE 500 corporation employing more than 26,000 people in six countries. Spurred by record growth, product innovation, and a commitment to superior Customer satisfaction, MBNA's pioneering efforts helped earn the endorsement of more than 5,000 partnership-marketing relationships and garner a top spot in the credit card market. As a result of its recently-completed merger with Bank of America, it has become part of one of the world's largest banks.

Since opening our European operations in 1993, MBNA Europe has grown from a Chester-based green-field start-up to become a major provider of consumer credit in the UK, Ireland and Spain, with more than 7,000 people in seven offices serving 8 million Customers in those three countries.

### **Executive Summary.**

MBNA acknowledges and supports Ofcom's endeavours to prevent unwarranted consumer anxiety or annoyance from excessive unidentified abandoned or silent calls. Like the vast majority of companies responsibly utilising modern auto dialers to cost effectively contact existing and prospective Customers for legitimate and important purposes, MBNA's intention is to speak to and service each called person. On those occasions where an MBNA representative is not immediately available to speak to the called person, with whom we have a relationship or wish to have one, we strive to avoid confusion or distress, which could jeopardise that relationship.

While we endorse the purpose and principles of Ofcom's initiative, we believe that the specific recommendations require refinement and modification to achieve their objective and properly balance the rights and needs of both those receiving and making these legitimate calls.

Our concerns and suggested amendments are set out below.

#### **1) Differentiated And Appropriate Criteria Based on The Purpose of The Call**

The amended statement of policy does not account for the many different uses of predictive auto dialers. All calls are assumed to be made for marketing or sales purposes, when in fact a large proportion of calls are made for servicing purposes, at the Customer's request or for their benefit. Auto dialers are routinely used to contact Customers to respond to a request for credit, investigate or prevent fraud, provide important account information, and rectify breaches of account terms and conditions where both the Customer and the bank stand to lose unless the situation can be quickly remedied. The use of auto dialers enables MBNA to provide these services efficiently and effectively to more Customers. The new rules

place the same compliance requirements on operators without considering for what purpose they are using auto dialers and the control environment that the operator has put in place. We recommend that Ofcom's rules reflect the purpose of the call, with less prescriptive and more balanced guidelines for genuine customer servicing or collection calling, and a different regime for sales and marketing calls

## **2) Technical and Regulatory Restrictions**

The proposals do not account for technological and systems constraints outside of the control of call centre operators. Call centre operators may be unable to comply with some of the proposals because of the limitations of the external telecommunications network or because the proposals directly contradict existing UK regulations. We recommend that Ofcom's new rules separately prescribe appropriate changes required of the companies using auto dialers and the telecommunications network providers; neither party should be held responsible for making the other's changes. We also recommend that Ofcom further assess and harmonise the impact of these new rules with other call centre regulatory requirements, including those pertaining to data protection. We also recommend that the requirements for enhanced call line identification be re-assessed to ensure the feasibility for calls originating offshore, making it possible to require compliance for all operators regardless of location, and preventing unscrupulous operators from circumventing this requirement by simply moving operations offshore.

## **3) Meaningful, Consistent and Fair Measures of Consumer Impact**

MBNA Europe's measurement and assessment of its Customers' concerns regarding silent or abandoned calls differs significantly from the research considered by Ofcom in developing its consultation proposal. Ofcom's research indicates a universally high level of consumer dissatisfaction due to unreasonably high levels of abandoned or silent calling; MBNA Europe's data and tracking evidences a much lower level of concern. By carefully managing our own abandon rates and seeking to be transparent about the purpose of our calling, MBNA Europe has experienced considerably lower levels of Customer annoyance or inconvenience. We recommend that Ofcom's new rules introduce a consistent, meaningful and practical measure of consumer dissatisfaction, such as the level of complaints received from Customers as a percentage of the total number of automated calls made by an operator.

## **4) Compliance and Enforcement Effectiveness**

Since it is in the interest of all reputable companies responsibly using auto dialers for legitimate purposes to speak to the person called and avoid causing them inconvenience or distress, we believe the primary cause of the problem, and thus the target of any enforcement, should be the small minority of companies which abuse or flaunt accepted best practices. We recommend that Ofcom's new rules focus on eradicating amongst a small minority of irresponsible operators their illegitimate uses of auto dialers and attempts to circumvent accepted best practices.

## **5) Operational Implications and the Ultimate Impact on the Customer**

The amended policy overlooks operational and technical implications of using auto dialers in the prescribed manner, and would require changes undermining the benefits of auto dialers' proper use and adding significant costs, to the detriment of all constituents: the manufacturers of the equipment whose market for such technology would shrink; the users of auto dialers whose costs would increase due to these new restrictions; and, consumers who would be likely to experience diminished service levels and higher product/service costs.

## **6) The Consumer Experience**

The proposal includes amendments to the existing regulations that will negatively impact the consumer experience. Predictive auto dialers are widely employed for collections and service calling because they provide significant operating efficiencies. Auto dialers enable operators to contact more customers more quickly for important and mutually-beneficial purposes. Speaking to the right customers at the right time can be very important, particularly in a collections, credit underwriting, or fraud alert environment. It is vital that call centre operators continue to be able to use auto dialers in a flexible manner for such purposes.