



## FLA RESPONSE TO OFCOM'S CONSULTATION ON ITS STATEMENT OF POLICY ON THE PERSISTENT MISUSE OF AN ELECTRONIC COMMUNICATIONS NETWORK OR ELECTRONIC COMMUNICATIONS SERVICE

FLA (Finance & Leasing Association) welcomes the opportunity to comment on Ofcom's consultation paper on its "Statement of Policy on The Persistent Misuse of an Electronic Communications Network or Electronic Communications Service".

### **Introduction**

FLA is the biggest UK representative organisation for the UK consumer credit and asset finance sectors, and the largest organisation of its type in Europe. Our members comprise banks, subsidiaries of banks and building societies, the finance sections of leading retailers and manufacturing companies, and a range of independent firms. They provide a wide range of facilities, including finance leasing, operating leasing, hire purchase, conditional sale, personal contract purchase plans, personal lease plans, secured and unsecured personal loans, credit cards and store card facilities.

FLA members achieved £93.4 billion of new business in 2004. Of this £25.0 billion was provided to the business sector and UK public services, representing over a quarter of all fixed capital investment in the UK in 2004 (excluding real property). The remaining £68.4 billion was provided to the consumer sector and FLA members represented 29.6% of all unsecured lending in the UK.

FLA's mission is to advance the interests of its members and their customers by promoting an open, competitive and fairly regulated market place.



INVESTOR IN PEOPLE

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In aiming to fulfil our mission, we campaign for best practice in lending and leasing. Our Lending Code 2004 sets out standards of good practice for the consumer finance industry and is intended to reassure any consumer who applies for finance from full members that they are doing business with reputable organisations.

When collecting debts owed to them, many of our members have in place sophisticated collection procedures, some of which use predictive diallers in their call centres. This response focuses on such concerns.

*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?*

We agree that silent calls can cause concern for some consumers. We remain to be convinced that there is a systemic problem however, which needs to be addressed by an amendment to the statement published on 13 May 2004. Nor, more particularly, do we agree that the amendment proposed is appropriate and proportionate.

We see from Annex 5 to your paper that research carried out on your behalf indicates that “households with a landline receive 9.6 abandoned calls per month on average..” This, presumably, is used to support your view that there is a “growing public concern about the distress cause to consumers by silent calls”: see paragraph 1.4.

Evidence of debt collection practices available to us paints a different picture (see below).

We also note that the research itself shows that the distribution of abandoned calls is “highly skewed” and that you have been unable to quantify the detriment caused to consumers by abandoned calls: see paragraphs A5.9 and A5.7. Surely this presents a fairly flimsy evidence base upon which to propose regulatory change, particularly when the level of consumer detriment in any case is a key determinant in whether to take enforcement action: see paragraph 5.15, for example.

## *Evidence of Debt Collection Practices*

The FLA runs a free conciliation and arbitration scheme for our member's customers. We make it a requirement on our members that they make their customers aware of this scheme and we also promote our complaint schemes to any money adviser who has a difficulty with a member. We attend many events, conferences and meetings with money advisers and other and have received extremely positive feedback from advisers who have used our scheme.

In the period we from July 2003 to July 2004 we resolved 516 complaints. In the same period the following year we handled 729 complaints. Since July 2003 we have had only 18 complaints which related to the debt collection activity of our members. None of these complaints relate to the activities mentioned in your consultation paper.

It is important, therefore, that the issues covered in your paper are kept in their proper perspective of an industry where the majority manage and run their debt collection activities responsibly and fairly.

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

We do not agree that the proposed approach is appropriately targeted and proportionate. The danger is that the approach is too wide in its scope and fails to recognise the qualitative difference between marketing activity on the one hand and collection activity on the other. In the former, there is no existing relationship between the marketer and the prospective customer who is the passive and involuntary recipient of the abandoned call. However, in the latter there is an existing relationship, freely entered into by the customer, under which both sides have rights, obligations and expectations. The creditor has a legitimate right to expect the customer to honour an existing payment obligation and in our view Ofcom's approach, and in particular the draft policy statement, ought to recognise this.

For example, we see from your paper that “there are a number of procedures that call centres can adopt which, taken as a package, will act as mitigating factors in establishing the gravity of a particular act of misuse”. These procedures are outlined at paragraph 1.7 of the paper and then set out in greater detail at paragraph 5.16. We believe that, to the extent they apply to debt collection, these procedures ought to be modified in the following respects so as to produce an equitable balance between the interests of the creditor and the customer.

First, the recorded message required on an abandoned call should not include a right to opt out of receiving further calls - it appears perverse that defaulting customers have the right unilaterally to prevent a creditor contacting them by telephone, whether via automated dialler or dedicated operator, simply because they have received an abandoned call. This is particularly so when telephone contact is vital to legitimate collection activity and a similar right to opt out is not available where ‘live contact’ is made.

Secondly, we believe the 72 hour moratorium on automated calls is not warranted in relation to debt collection activities. Once the proposed 3% daily cap is introduced, the chances of a repeat abandoned call within 72 hours are, in our calculation, 0.18%. Given the value of the automated calling facility to our members and the remote likelihood of a repeat abandoned call, we believe the moratorium is unnecessary.

Thirdly, we are particularly concerned that your proposals would require businesses to put in place procedures which would include, in the event of an ‘abandoned call’, playing a “very brief recorded information message” which “identifies the company on whose behalf the call was made” and “identifies the intended purpose of the call (i.e. ... “a call as part of debt recovery” etc)”. In respect of calls which are made as part of debt recovery activity, there is the very real danger that putting in place procedures which play such messages – which in effect say, “this person is in debt” - would contravene data protection legislation. Giving out personal information of this sort, which may very well be heard by third parties (such as relatives, fellow tenants or fellow housemates, for example) would cause serious issues conflicting with the duty to protect personal data.

In addition, implementation of these procedures would require systems changes which, for some, would be significant and incur significant cost. At the very least, a sensible and workable implementation timetable would be required.

*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?*

As you will have seen from the above, we believe that the proposed measures are disproportionately burdensome.

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

Many creditors already have existing individual or industry codes of practice or protocols, to which they adhere, thereby acting responsibly. Any new guidance should work in parallel with these, not supersede them

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