

21 May 2012

Lynn Parker
Director of Consumer Protection

lynn.parker@ofcom.org.uk

Dear Sir/Madam

RE: Tackling abandoned and silent calls

I am writing to remind you of the importance of Ofcom's monitoring and enforcement programme which seeks to prevent and reduce harm caused by both abandoned and silent calls. Through this programme we rigorously monitor complaints, engage with stakeholders and investigate companies.

We can impose penalties of up to £2 million if a party has persistently misused an electronic communications network or service. As you may be aware, we recently imposed a penalty of £750,000 on HomeServe¹ for persistent misuse.

To assist you to ensure that you and any parties acting for or on your behalf are compliant with the persistent misuse provisions in the Communications Act 2003 (the 'Act')² and our policy regarding abandoned and silent calls, I would like to draw your attention to Ofcom's current statement of policy, the *revised statement of policy on the persistent misuse of an electronic communications network or service 2010*³, published on 1 October 2010 and annexed to the document entitled *Tackling abandoned and silent calls: Statement*⁴. For ease of reference, I refer to these here collectively as the 'Guidelines'. The Guidelines and further background information regarding abandoned and silent calls can be accessed here: <http://stakeholders.ofcom.org.uk/consultations/silent-calls/>.

Ofcom strongly recommends that you, as a minimum, carefully read the Guidelines to re-familiarise yourself with our policy and ensure your company and/or parties acting on behalf of your company are compliant.

¹ <http://media.ofcom.org.uk/2012/04/19/homeserve-fined-750000-for-silent-and-abandoned-calls/>

² See section 128 to 131 of the Act.

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

Policy on Persistent Misuse

The Guidelines, amongst other things, sets out the requirements for the compliant use of automatic calling systems ('ACS') and answer machine detection ('AMD') technology (used by ACS users to filter out calls picked up by answer machines). Specifically, the Guidelines set out Ofcom's current approach when assessing whether to take enforcement action for persistent misuse caused by abandoned and silent calls. They describe the steps we expect ACS users to take to avoid making these calls and, if such calls are made, to limit consumer harm, including:

- ensuring an abandoned call rate (including a reasoned estimate of AMD false positives⁵) of no more than 3 per cent of live calls per campaign;
- not contacting people within 72 hours of their receiving an abandoned call without the guaranteed presence of a live operator;
- playing an automated message in the event of an abandoned call telling the person called who rang and providing a number to dial to end future marketing calls;
- making valid and accurate calling-line identification ('CLI') information available to people so they can trace who rang them by dialling 1471 in the event of a silent call; and
- ensuring that where a call has been identified by AMD equipment as being picked up by an answer machine, any repeat calls to that specific number within the same 24 hour period⁶ are only made with the guaranteed presence of a live operator (the '24 hour policy').

Industry practice since the introduction of the Guidelines

As a result of the new 24 hour policy requirement (see A1.55 of the Guidelines), we have seen a heightened awareness on the part of ACS users about the necessity of consistently careful use of AMD technology and the potential compliance failures if not properly managed. In some cases, parties have elected to cease using the technology.

We have also seen companies adopt increased monitoring and more robust testing methods critical to avoiding unnecessary harm and ensuring compliance with the persistent misuse provisions in the Act and with the Guidelines.

One area that we consider requires increased vigilance is where third parties are engaged to make calls for or on behalf of companies. Where one or more third parties is engaged, we expect the party engaging them to have and maintain an effective compliance strategy, taking reasonable steps to monitor and assess ongoing compliance by that third party with the persistent misuse provisions and the Guidelines.

⁵ An AMD false positive is where an AMD device mistakenly identifies a call as being answered by an answer machine, whereas, in reality, it has been answered by a live individual.

⁶ Between midnight and midnight on a calendar day.

The threat of enforcement action since 1 February 2011

Ofcom takes the issue of abandoned and silent calls very seriously. These calls are annoying, inconvenient and cause anxiety, particularly for older people or people who live alone.

As mentioned, in April 2012 we announced that we had issued a £750,000 penalty to HomeServe for making an excessive number of abandoned calls and non-compliance with the 24 hour policy between 1 February and 21 March 2011.

In 2011, we also issued notifications under the Act to RWE npower PLC and TalkTalk Telecom Limited as we had reasonable grounds to believe that these companies had, during a specified period, persistently misused an electronic communications network or service. We are currently considering both companies' representations following which we will determine the appropriate next steps in these matters, which may include further enforcement action⁷.

You should note that we continue to review the complaints we receive in order to identify future investigation and enforcement targets. I therefore strongly advise that you take note and act on the advice in this letter.

If you have any questions about the contents of this letter, please email alistair.bridge@ofcom.org.uk and matthew.chapman@ofcom.org.uk.

Yours sincerely



Lynn Parker

⁷ See Ofcom's Competition and Consumer Enforcement Bulletin at http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/.