Annex 7

Estimating consumer harm

Background

A7.1 Silent and abandoned calls made to consumers will almost always be unwanted. Consumers who receive these calls can therefore be considered to be harmed. This harm can arise in various ways including wasted time, intrusion, annoyance and distress, amongst others.

A7.2 These calls are in breach of the statutory prohibition on persistent misuse. For this consultation we have sought to provide an initial view on the nature and likely magnitude of the consumer harm caused by these calls. Our policy seeks to give appropriate effect to the statutory prohibition and the consumer harm assessment will inform our view as to whether the policy takes the right approach to enforcement action against those calls or whether alternative measures are needed to tackle the harm. The assessment also provides a range of harm estimates against which we may consider the impact on industry of the proposed measures.

A7.3 The process of estimation used in this section relies primarily on consumer research we have undertaken. Our analysis is likely to understate the overall harm caused by silent and abandoned calls to consumers in the UK, as it does not include calls to mobiles and may not capture the additional sources of harm noted below. Therefore, the quantification that follows from this is intended to be indicative of the magnitude of the harm only given inherent challenges of monetising non-financial harm.

A7.4 We review the evidence on harm from nuisance calls in three steps:

i) First, we have estimated the total volume of silent and abandoned calls made to UK recipients.

ii) Second, we have described evidence of harm from consumers reported attitudes to these calls.

iii) Third, we have estimated the absolute harm caused by these calls using a range of different approaches.

A7.5 Each of the above steps is now addressed in turn.

Call volumes

A7.6 The starting point for quantifying harm is to assess the volume of relevant calls received. Ofcom has an ongoing programme of consumer research that monitors consumers' experience of nuisance calls. Part of this is an annual diary based survey of consumers in which they record their experience of nuisance calls immediately after receiving one.[1] The latest wave of this survey was completed in March 2015 with the fieldwork undertaken during Jan-Feb 2015.

[1] Source: Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)', Figure 3.1. Data Tables:

A7.7 The study asked respondents to record details of the nuisance calls that they personally received over a four week period. Respondents to the study were pre-screened to ensure they were representative of the UK landline owning population as a whole. We have therefore estimated the total number of each type of nuisance call made to UK consumers, by scaling up the results, as shown in Table A7.1. On this calculation we note two points:

- Because respondents were asked to record the number of unwanted calls they received, these figures may somewhat under-estimate the number of nuisance calls that were actually received if respondents considered some of the calls to be wanted (or at least not unwanted), however we expect the difference in the number of nuisance and unwanted calls to be small;

- In estimating these figures we have assumed that survey respondents answered only their normal "fair share" of household calls (that is to say, if a household consists of two individuals; the calls the survey respondent records represent 50 per cent of the calls the household actually receives). This assumption is grounded in the fact that the survey was designed to be representative at the level of the individual respondent (each respondent was asked to only record calls that they personally received). Further, this assumes that respondents did not change their behaviour during their participation in the survey.

A7.8 We have scaled up the reported calls received by panel respondents to a national level by adjusting for the proportion of the UK adult population with landlines and scaling up to the total size of the UK population. Our estimates of the number of calls are shown Table A7.1 below.

Table A7.1 Total volume of silent and abandoned calls

	All	Silent	Abandoned	Recorded	Live	Other
Average calls per week per adult with a landline	2.1	0.7	0.1	0.4	0.7	0.2
Total calls per annum in UK (million)[1]	4,846	1,530	200	943	1,715	380

Note: 'All' is not equal to sum of specific types, because each category (including all) is calculated directly from research data, which are weighted separately.

[1] Calculated based on an ONS mid-year 2014 population estimate of 52m UK adults aged 16+[2] and an Ofcom research estimate of 84% of adults having a landline.[3]

Source: Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)'.

A7.9 Table A7.1 shows that the overall number of nuisance calls made to UK consumers is around 5 billion per year. Silent calls comprise about 1.5 billion calls (32% of the

http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015May/consumer_concerns_March_2015.pdf.

[2] ONS, annual mid-year population estimates for 2014, extracted from ONS Analysis Toolkit, http://www.ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/mid-2014/rft---mid-2014-population-estimates-analysis-tool.zip

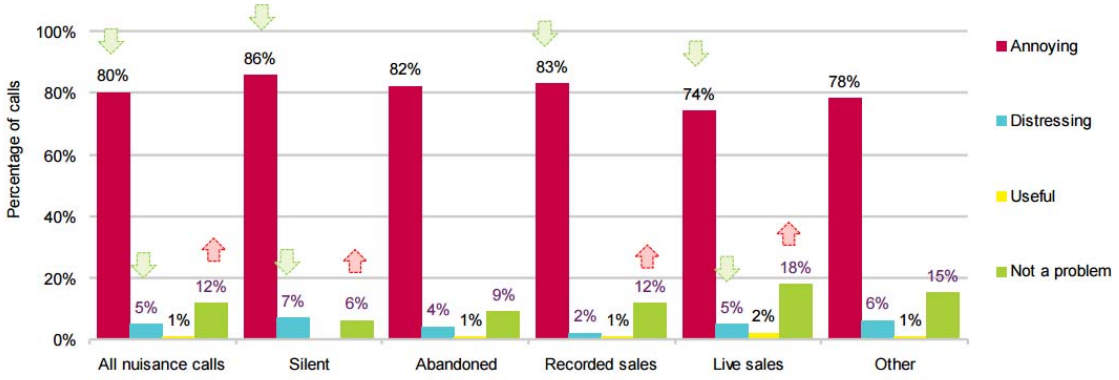
[3] Figure 1.6, http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf

total) and abandoned calls around 200 million (4% of the total). The higher volume of silent calls is made up of both more recipients of these types of calls as well as more calls per recipient.[4]

Attitudes to nuisance calls

A7.10 One direct way in which we can understand the prospect of harm from nuisance calls is to examine recipients' self-reported attitudes to these calls. Figure A7.1 below taken from our landline panel research clearly indicates that consumers typically dislike nuisance calls, with 80% of all calls deemed as being annoying and 5% of all calls deemed distressing. There is some variation across call types, a higher proportion of silent calls (86%) were considered annoying than any other type of call. More consumers considered silent calls and live sales distressing (7% and 5% respectively) than recorded sales calls (2%). Abandoned calls are more likely to be seen as 'not a problem' (9%) compared to silent calls (6%).[5] Our nuisance calls consumer behaviour research has shown that 35% of people with a landline and mobile phone would prefer to hear an abandoned call message compared to 5% of people who would prefer to get a silent call (although 55% had no preference).[6]

Figure A7.1 Total volume of silent and abandoned calls



Base: All nuisance calls received by UK panel participants with landlines, Jan-Feb 2015 (n=7325, 2346, 261, 1384, 2652, 594)

indicates significant change since 2014 at the 99% level
indicates significant change since 2013 at the 99% level

NB: 2% of nuisance calls were not categorised by participants

[4] Landline panel research: 60% of adults with a landline received at least one silent call compared with 17% of adults with a landline who received at least one abandoned call. The average number of silent calls received was 0.7 per week compared with 0.1 per week for abandoned calls. We recognise that there is a possibility that some nuisance calls may have been classified by the recipient as silent, if they had hung up before an information message was played or being connected to a live agent. However, we think the risk of this happening is fairly low because those taking part in the research were specifically asked to pick up their phone and wait for five seconds before hanging up.

[5] Data Tables: http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015May/consumer_concerns_March_2015.pdf

[6] Nuisance calls consumer behaviour research, March and May 2015, Data tables: http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-consumer-behaviour-research/

Source: Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)', Figure 3.1.

A7.11 Further to this Ofcom received approximately 41,700 complaints about silent and abandoned calls in the 12 months up to July 2015. Some consumers may also have complained to their Communications Provider[7], ICO, TPS[8], Which? or another party.

A7.12 In the round this evidence on attitudes and complaints is strong evidence that consumers are harmed by these calls, albeit there is some evidence that silent calls (along with recorded and live sales calls) are considered to be less distressing than in 2013 (as per Figure A7.2).

Estimating harm

A7.13 Quantifying the harm underlying these attitudes is challenging given the difficulties associated with putting a financial value on the harm that is associated with a nuisance call. Any such harm is likely to be complex and to differ across individuals. It may comprise of, amongst others:

a) harm from the calls themselves, including;

- o wasted time from answering nuisance calls;
- o perceived hassle of answering nuisance calls (that goes beyond simply the value of lost time) which can result in psychological worry or distress

b) costs of mitigation (whether successful or not) including, CLI screening, call blocking and disconnection;

Estimates of harm from received calls

A7.14 We have therefore sought to estimate harm using two different approaches.

i) First, we quantity harm using a simple "**time cost approach**". This approach quantifies harm based solely on recipients' value of wasted time in dealing with these calls. The approach does not account for any hassle/psychological distress resulting from the receipt of these calls.

ii) Second, we use a **"willingness to pay"** approach. This approach, estimates harm by considered the amount consumers state they would be willing to pay to avoid these calls. This should capture the time cost and distress in a single metric.

iii) Third we consider possible additional sources of harm and **harm from mitigation** activities such as purchasing call blocking technology.

Time cost approach

A7.15 Answering a silent or abandoned call takes time; time that consumers would otherwise spend on an alternative activity. Recipients of nuisance calls incur a time

[7] For example in response to our October 2014 call for inputs BT stated that its nuisance calls advice line receives an average of 22,000 calls per month and 25,000 hits on its nuisance calls webpage.
[8] The TPS received 61,032 complaints about unwanted marketing calls from those registered with the service in the 12 months to July 2015.

cost associated with the time it takes to answer the call (including time spent moving to and from the handset and the duration of the call itself). While this time itself does not have a direct financial cost there is still a cost involved. When appraising policies and projects it is normal to monetise time costs by using a value of time to reflect the trade-off between time and money.

Value of time

A7.16 Valuing time is complicated and we have not considered it proportionate to estimate the value ourselves for this specific context. We have instead used three different estimates for the value of time since the results are sensitive to this parameter and there is a high degree of uncertainty as to the appropriate level.

A7.17 The value of time will change along with the value of other goods and services in the economy, across individuals and across their activities. Although individuals may have different values of time it is reasonable to apply an average value of time as well as an average length of call.

A7.18 The lowest value of time we have used is taken from Department for Transport (DfT) appraisal guidance which recommends using a time value of £7 per hour for non-working time (£0.1 per minute).[9] The DfT approach/estimate is referred to in HM Treasury's appraisal guidance for central government. It therefore seems to us that this is a reasonable starting estimate. It is also in line with the value Ofcom used in its December 2013 Non-Geographic Numbering Statement,[10] based on a previous DfT value of non-working time of £5.97 per hour.

A7.19 We have tested an intermediate value of £12 per hour based on an academic paper evaluating the value of patient's time. We accept that the context is very different in the case of patient waiting time so consider the use of £12 per hour as an independent scenario with the academic paper simply as a potential corroborating source.[11]

A7.20 Our highest value of time estimate by considering a value of £16 per hour taken from an HMRC research paper.[12] HMRC made this estimate in the context of assessing the time taken by consumers and businesses in gathering and providing information to HMRC so that it can fulfil its role of administering the UK's tax and benefit system.

Length of time dealing with a nuisance call

A7.21 Our starting point for estimating the length of time taken to deal with these calls was to use our landline panel research data on the number of rings before a consumer answers the phone. This research showed that 22% of calls were answered within one to two rings, 58% within three to five rings and 17% within six or more rings.[13]

[9] Uprated to 2015 prices by Ofcom. Department for Transport (2014), 'Values of Time and Vehicle Operating Costs, TAG Unit 3.5.6', January.
[10] See, Ofcom (2013), 'Simplifying Non-Geographic Numbering, Final Statement', para A1.71.
[11] Uprated to 2015 prices by Ofcom. Centre for Health Economics, University of York (2013), 'Attributing a Monetary Value to Patients' Time: A Contingent Valuation Approach'.
[12] Uprated to 2015 prices by Ofcom. HMRC (2010), 'Costing Customer Time: Research Paper', January.
[13] Source: Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)', Figure 3.1. Data Tables: http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015May/consumer_concerns_March_2015.pdf.

We used this along with an assumption around ring length (three seconds) to estimate the length of time it takes to answer a landline phone on average (12 seconds) and also apply this to returning from the call.[14] We note that this is consistent with the minimum length of time under the 2010 policy that callers must let a phone ring for (15 seconds). If we assume that most callers let the phone ring for exactly 15 seconds, this implies that by definition, if a recipient has managed to pick up a silent/abandoned call, it must have taken them no longer than 15 seconds to reach the hand-set. We estimate the length of time taken on the call based on our nuisance calls consumer behaviour research (for example, for silent calls that 44% hang-up immediately, 45% wait for a few seconds before hanging up and 9% wait for more than a few seconds).[15] Overall our estimates are average call durations of 27 and 28 seconds for silent and abandoned calls respectively. Note the time taken to deal with a silent call is longer than that for an abandoned call because the consumer research data shows that individuals are less likely to hang up immediately when there is a silent call than when there is a call with a message being played.

A7.22 The table below summarises the calculation used to estimate the value of harm associated with first silent, then abandoned calls using the "time-cost" methodology. This approach indicates that the harm from silent calls equals £82–192m per annum and the harm from abandoned calls equals £10-24m per annum.

Table A7.2 Time cost approach calculation

	Value of time (£ph)	Time per call (secs)	Cost per call (£)	Volume of potentially harmful calls (p.a.)	Harm estimates (£m p.a)
Silent calls	7	27	0.05	1,423	76
	12		0.09		126
	16		0.12		177
Abandoned calls	7	28	0.05	172	9
	12		0.09		16
	16		0.13		22

Note: The volumes of calls recorded here removes those marked as 'not a problem' or 'useful' and hence do not match those in Table A7.1.

Source: Ofcom calculations based on Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)'.

Willingness to pay approach

A7.23 We have also estimated harm from silent and abandoned calls by using a willingness to pay approach. Typically willingness to pay is asked to individuals on

[14] Data Tables: http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015May/consumer_concerns_March_2015.pdf

[15] Nuisance calls consumer behaviour research, March and May 2015, Data tables: http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-consumer-behaviour-research/

the basis of the assumption that they would actually pay the amount quoted. It therefore asks them to trade off the value they place on this good against all other goods subject to their budget constraint.

A7.24 We asked individuals, as part of our nuisance calls consumer behaviour research, how much they would be willing to pay to avoid all future nuisance calls on their landline. Table A7.3 below shows the reported responses of those saying they would be willing to pay to avoid such calls. The first column shows that 69% of people were not prepared to pay 50p per month to avoid these calls, the second column shows that 17% of people were willing to pay 50p per month, but not £2 per month, and so on.[16]

Table A7.3 Willingness to pay to avoid nuisance calls on landline

	Cost per month				
	<50p	50p	£2	£5	£10
Percentage of respondents	69%	17%	8%	4%	2%
Cumulative percentage	100%	31%	14%	6%	2%

Note: For the cumulative percentage the lower values are inclusive of the upper values (i.e. the 14% willing to pay £2 are included within the 31% willing to pay 50p.
Source: Ofcom Consumer behaviour research March and May 2015 combined, Table 66. Q40. If you could stop all unwanted calls to your home landline phone by paying [x] per month, how likely would you be to do so?

A7.25 Next we scaled the survey respondents estimates to a national aggregate annual estimate of harm. This is shown in Table A7.4 below. We take a conservative approach when we convert the willingness to pay estimates into estimates of harm. We assume that respondents would be willing to pay exactly the amount asked and no more. In reality there are likely to be at least some respondents willing to pay more than the amount put to them (but less than the next price point).

[16] Nuisance calls consumer behaviour research, March and May 2015, Data tables: http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-consumer-behaviour-research/

Table A7.4 Proportion of call types received on landline

Willingness to pay per month	Proportion	Affected population (m)	Harm per month (m)	Harm per year (m)
£0.00	69%	36	0	0
£0.50	17%	9	4	53
£2.00	8%	4	8	101
£5.00	4%	2	10	126
£10.00	2%	1	10	126
Total	100%	52	34	406

ONS mid-year 2014 population estimate of 57m UK adults aged 16+ and an Ofcom market monitoring estimate of 84% of adults having a landline.
Source: Ofcom calculations.

Allocating the willingness to pay to silent and abandoned calls

A7.26 Our nuisance calls consumer behaviour research asked individuals about their willingness to pay to avoid all nuisance calls, since we felt consumers were more likely to be able to engage with this question than separate questions about specific call types. A consequence of this is that we subsequently need to allocate the harm to different call types. We have tested two forms of allocation:

- Allocation by proportion of distressing calls of this type out of all distressing calls.
- Allocation by proportion of distressing and annoying calls of this type out of all distressing and annoying calls.

A7.27 The first approach attempts to address the fact that distressing calls are likely to be the cause of more harm (and consequently willingness to pay) than non-distressing calls. However, the second approach captures the fact that annoying calls also cause harm. Effectively under the first approach we give no weight to annoying calls, while in the second approach we give equal weight to distressing and annoying calls. We therefore believe that the true value will lie somewhere between these two approaches, since we do think both annoying and distressing calls are harmful, but we expect distressing calls to be more harmful than annoying calls.

A7.28 Allocations of our aggregate harm estimates to individual call types are shown in Table A7.5 below.

Table A7.5 Proportion of call types received on landline

Call type		All	Silent	Abandoned	Recorded	Live	Other
Distressing	% nuisance Calls	100%	42%	3%	8%	37%	9%
	Allocated harm (£m)	406	169	12	32	151	36
Distressing and annoying	% nuisance calls	100%	34%	4%	19%	33%	8%
	Allocated harm (£m)	406	139	17	79	134	31

Source: Ofcom calculations based on Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)'.

Summary of results and sensitivity analysis

A7.29 In order to enable easy comparison of the results obtained under the various approaches described above we have summarised the estimates in Table A7.6 below.

A7.30 Under our pure time cost approach we estimate harm of £76–£177m for silent calls and £9-£22m for abandoned calls.

A7.31 Under our willingness to pay approach, we estimate the harm relating to silent calls is around £139-169m p.a, while the harm relating to abandoned calls is much lower, around £12-17m p.a.

Table A7.6 Consumer harm from received calls on landlines

		Harm per call (£)	Total annual calls (m) [1]	Total annual harm from call type (£m)
Abandoned calls				
Time cost approach	£7ph	0.05	172	9
	£12ph	0.09		16
	£16ph	0.13		22
Willingness to pay approach	Allocated by distressing calls	0.07		12
	Allocated by distressing and annoying calls	0.10		17
Silent calls				
Time cost approach	£7ph	0.05	1,423	76
	£12ph	0.09		126
	£16ph	0.12		177
Willingness to pay approach	Allocated by distressing calls	0.12		169
	Allocated by distressing and annoying calls	0.10		139

[1] *Excludes calls classified as useful or not a problem since these are deemed to be non-harmful.*
Source: Ofcom calculations based on Ofcom and GfK (2015), 'Landline nuisance calls panel research Wave 3 (January – February 2015)'.

Calls to mobiles and businesses

A7.32 One significant omission from the above estimates is the treatment of calls to mobiles and businesses. These have been omitted because we do not have robust data on the volumes of the calls to mobiles or businesses. Regarding mobiles, our landline panel research only covers landlines and our consumer issues omnibus survey has only asked whether respondents have received these calls but not their frequency.[17] We do have reason to believe these calls may be substantial since our industry research has suggested that 58% of calls are made to mobiles.

A7.33 We do, however have some evidence on the level of harm from calls to mobiles. First, we have reason to believe that the harm per call may be lower, due to ease of answering, presence of CLI display, ease of call blocking (for example, via phone settings or downloadable applications) and shorter time to answer. Second, we

[17] Consumer issues survey – experience of nuisance calls, Data tables: http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015September/Consumer_issues_survey_Sept_2015.pdf

have evidence on the total aggregate harm from all calls to mobiles (£307m) from an additional willingness to pay question in the nuisance calls consumer behaviour research. We cannot robustly split this by call type due to a lack of volume data, as noted above. If we applied the same weights that we used to allocate total harm in our landline calculation to this figure then the harm associated with silent calls to mobile would be between £105m and £128m and the harm associated with abandoned calls would be £9m and £13m.

Additional harm from mitigation

A7.34 As noted above, some individuals will also have engaged in mitigation activity. We consider it appropriate to include this as a form of harm in itself. For households that have engaged in mitigation which reduces the number of calls, or harm from calls, they experience, we would like to somehow include an element of the cost of mitigation in our estimate if possible, at least insofar as the cost of mitigation is ongoing.

A7.35 Under the willingness-to-pay approach some of this harm could be captured within the willingness to pay estimate. The nuisance calls consumer behaviour research willingness-to-pay question asked:

'Now I would like you to consider how much you would be prepared to pay to GUARANTEE TO NEVER receive an unwanted call from a company or organisation on your landline phone and with no need for you to take any other action in the future….. If you could stop all unwanted calls to your home landline phone by paying [x] per month, how likely would you be to do so?'

A7.36 Therefore in theory some forms of harm from mitigation could be included within the willingness to pay estimate, although it is unclear the extent to which consumers will have taken these into account when answering the question. We have chosen to by default present figures based on the willingness-to-pay approach without including these additional mitigation impacts, but have presented them as sensitivities throughout the Consultation as appropriate. However, we do consider it appropriate to include them as additional to the time cost approach.

A7.37 The potential types of mitigation that we believe should be added to our harm estimate include:

- **Partial mitigation—**Individuals that engage in some form of partial mitigation (for example, 9% do not answer at certain times of day, 13% rely on their answerphone to take a message)[18] may be harmed in the sense that they no longer get full value from their landline. Equally they may receive harm even when not answering the phone i.e. moving to the handset checking the CLI and then choosing not to answer still represents an incurred harm. These forms of mitigation are difficult to quantify in terms of harm.

- **Call-blocking technology—**Around nine per cent of individuals have purchased call-blocking technology of some form and therefore are harmed by this incurred cost.[19] For those who have bought call-blocking technology we can estimate the harm on the basis of the incurred cost of the technology spread across its

[18] Nuisance calls landline panel March and May 2015 combined, Table 64.
[19] Nuisance calls landline panel March and May 2015 combined, Table 62.

lifetime. At an estimated annual cost of £34 per year[20] we estimate the harm to be £187m in total. If we allocate this to call types by proportion of distressing calls, it is £78m for silent calls and £6m for abandoned calls.[21] If we allocate to call types by proportion of distressing and abandoned calls, it is £64m for silent calls and £8m for abandoned calls.

A7.38 A further type of mitigation that will not have been included within any of our estimates of the level of harm is:

- **Disconnection-** Our volume estimates above are based on the number of calls received by those with a fixed line. This estimate fails to capture the harm felt by any consumers who have already disconnected/cancelled their telephone service altogether. We have evidence from the nuisance calls consumer behaviour research that three per cent of people regularly unplug their landline to avoid nuisance calls.[22] While these consumers avoid the time and hassle costs associated with nuisance calls they experience the adverse impact of not having their phone line and missing out on legitimate calls.

A7.39 As noted above, we have been able to estimate the cost of call-blocking but have not sought to quantify the harm arising from the other mitigation activities, nor included these in our estimate of consumer harm.

A7.40 A summary of our quantified estimates for silent and abandoned calls including call blocking is shown in Table A7.7 and Figure A7.2.[23]

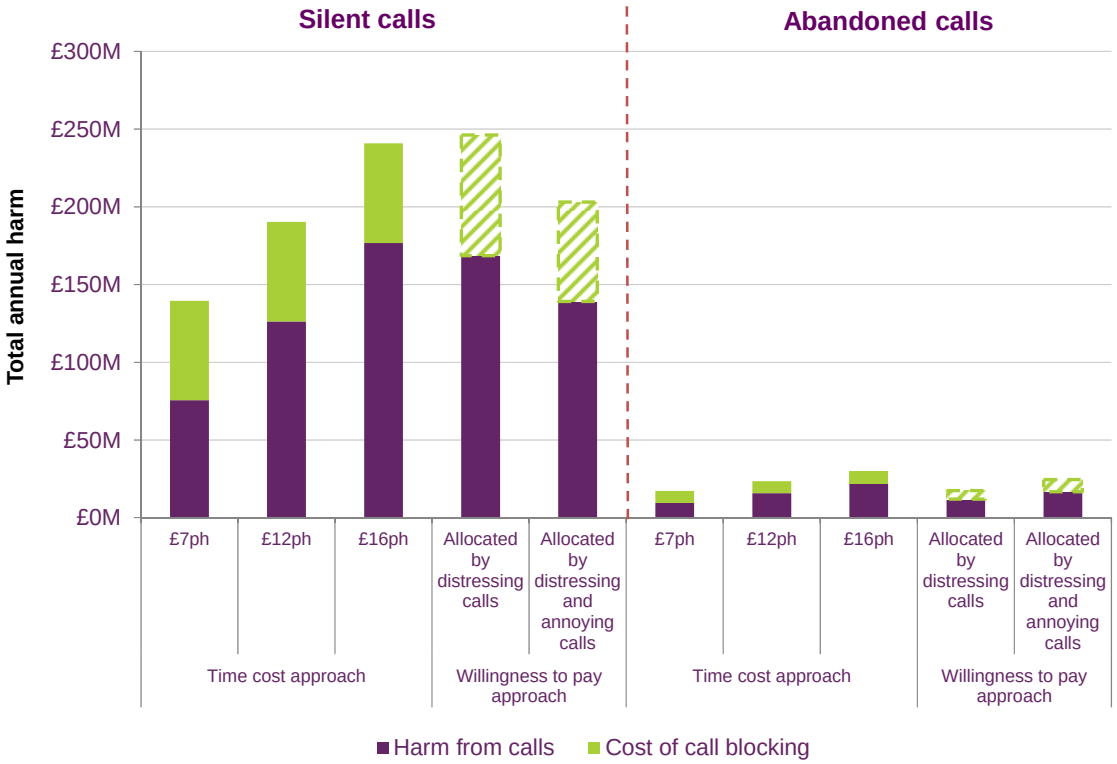
[20] Based on the lowest cost call blocking technology handset of £45, an assumed search cost of £50, as assumed lifetime of three years and the social discount rate of 3.5%.
[21] We have not included any costs associated with the time and hassle of making complaints about calls (which arguably could be seen as a form of call blocking) but if we did so the overall additional values would be small.
[22] Nuisance calls consumer behaviour research, March and May 2015, Data tables: http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-consumer-behaviour-research/
[23] Although we note further up that there is a risk that the volumes of silent calls may have been overstated. Although this may have the effect of reducing the harm caused by silent harms, it would increase the harm caused by other types of call, such as abandoned calls.

Table A7.7 Consumer harm from received calls on landlines

		Annual harm from received calls (£m)	Annual harm from call blocking (£m)	Total annual harm from call type (£m)
Abandoned calls				
Time cost approach	£7ph	9	8	17
	£12ph	16	8	24
	£16ph	22	8	30
Willingness to pay approach	Allocated by distressing calls	12	6	17
	Allocated by distressing and annoying calls	17	8	25
Silent calls				
Time cost approach	£7ph	76	64	140
	£12ph	126	64	190
	£16ph	177	64	241
Willingness to pay approach	Allocated by distressing calls	169	78	246
	Allocated by distressing and annoying calls	139	64	203

Note: The cost of call blocking varies depending on its allocation to call types, as per the allocation of willingness to pay estimates, as shown in Table A7.5.
Source: Ofcom calculations.

Figure A7.2 Estimates of aggregate harm from silent and abandoned calls



Note: Total harm is estimated as the addition of the cost of call blocking (constant across approaches) and the cost of harm from the calls themselves.

Additional comments on our harm estimates

A7.41 The above quantification is based on best endeavours but we accept it has some imperfections. In fact there are a number of reasons why it is possible it is an under-estimate.

- **Willingness to pay could be an underestimate**–We expect all consumers to be represented within the willingness to pay estimates and therefore broadly for all the harm to be captured. There are two caveats to this. First, since the nuisance calls consumer behaviour research contained only four price points with a maximum willingness to pay of £10 per month (of which two per cent were willing to pay this value) it is possible that these individuals were willing to pay substantially more than this amount and this is not captured within the estimate.[24] We also know that, while willingness to pay is a standard and widely used research technique, it may not be appropriate where individuals are budget constrained (i.e. the amounts they would be required to pay are large proportions of their total budget).

- **High levels of harm for small numbers of consumers**—Additionally we have anecdotal evidence that vulnerable consumers may be those who are receiving these high levels of calls and other sources that might suggest our volume

[24] Had the two per cent all been willing to pay £50 per month, the harm estimates for silent calls themselves would increase from £325m p.a. to £567m p.a. and for abandoned calls from £24m p.a. to £43m p.a.

estimates are an underestimate. These include TSI/TrueCall information of 240 elderly TrueCall users in Scotland suggesting vulnerable consumers get 60% more calls than the average,[25] YouGov poll (1,941 adults) showed 92% of over 60s received a nuisance call in the past month with 23% receiving at least two a day compared to 6% of those 25 years[26] and under and a report by Stepchange showing 3.2 million consumers felt afraid to answer their phones.[27] These are alternative sources of data showing levels of calls that are not represented in our landline panel research, but these samples have been deliberately targeted to look at these individuals and hence their averages may not be representative of the whole population.

- **Each call may harm more than one individual**—Other individuals present in the household may have been harmed in addition to the individual who actually answered the phone. This may be particularly harmful when children are involved and any calls answered by children are not captured within our consumer research since they were not eligible to complete the landline panel research.

- **Unanswered calls are not included**—Some respondents may not have reached the phone before it stopped ringing but attempted to. This would have resulted in a cost to them in terms of lost-time however these attempts would not have shown up in the call estimates (because the calls would not have been answered) hence would be excluded from our estimate for harm.

[25] http://projects/sites/ca/misuse/st/Vulnerable%20consumers%20in%20scotland%20coverage%20Dec%202014.msg_
[26] 14 December 2014, Sunday Times article which commissioned a YouGov poll.
[27] http://www.stepchange.org/got_their_number.aspx

Annex 8

Summary of responses to our call for inputs

A8.1 In October 2014 we issued a call for inputs as part of our review of our persistent misuse policy. It sought views and evidence from stakeholders on:

- The potential drivers of silent and abandoned calls, the nature and magnitude of the harm these calls cause and how this has changed since we last reviewed our policy.
- Whether there are changes or clarifications we could make to the policy to make it easier to understand and follow, and to enable more efficient and effective enforcement.
- Whether there have been technological developments or changes in the call centre industry that it would be appropriate for us to take account of.
- Whether there are new developments which may be relevant to the areas which Ofcom considers to be persistent misuse.

A8.2 We received 46 responses to the call for inputs and this annex summarises the responses received. The non-confidential responses can be found on our website here: http://stakeholders.ofcom.org.uk/consultations/review-persistent-misuse-powers/?showResponses=true

A8.3 This consultation document does not seek to provide our definitive position on all the responses received. Nevertheless, where appropriate to the scope of issues covered in this document, we refer to some responses in sections 3 and 4. Issues raised by respondents which relate to live calls and PECR issues have been passed to the Information Commissioner's Office (ICO) and DCMS respectively for their consideration.

Question 1: Consumer harm

A8.4 The call for inputs set out that nuisance calls cause annoyance and in some cases distress and explained that our particular focus on silent and abandoned calls is because over a number of years research and complaints data has shown that silent and abandoned calls cause annoyance and, in some cases, distress and they remain a cause for concern for consumers. The call for inputs set out the evidence in relation to the existence and form of the harm and how to measure it.

A8.5 The call for inputs then asked stakeholders for views on the main types of harm that consumers experience from nuisance calls in general and specifically in relation to silent and abandoned calls. We also asked how the harm could be measured. We asked stakeholders to consider:

- Evidence of changes in the nature and magnitude of the harm since we last reviewed the policy in 2010.

- Whether the harm differs across landlines and mobiles, consumers or the different types of calls (for example, the time of day the call is received, whether it is a silent call or a live call).

- Types of harm other than wasted time and distress.

- Whether the distress caused by nuisance calls can be quantified and if so how.

- Evidence of how long it takes consumers to deal with silent and abandoned calls (for example number of seconds or minutes to answer the phone, deal with the call, take steps to prevent further calls) and how that time should be valued.

- Views on the relationship between silent and abandoned calls and other call types.

Summary of responses

A8.6 In response to our call for inputs, 19 stakeholders broadly agreed that consumers experience harm from nuisance calls generally and 20 broadly agreeing that consumers experience harm from silent and abandoned calls.

Evidence of harm:

A8.7 Some respondents provided additional evidence in relation to the harm nuisance calls cause, for example:

- BT stated that its nuisance calls advice line receives an average of 22,000 calls per month and indicates that customers can receive an average of between 6 – 10 nuisance calls a day with some called several times an hour. BT states they also receive 25,000 hits on its nuisance calls webpage.

- Trading Standards Institute (TSI) noted that its own research over the past two and half years indicates that for vulnerable adults, the overall number of nuisance calls has increased. It stated that its research also shows that the average number of calls to these users is at least a factor of four greater than the average user.

- ICO referred to nuisance call complaints increasing such as the 323,00 complaints about unsolicited calls and text it received between March 2012 – April 2014 (see their annual report 2013/14) and TPS complaints rising peaking at 10,000 a month in 2013.

Type of call causing harm:

A8.8 In relation to which types of calls caused most harm, the majority broadly agreed with Ofcom that consumers experience harm from nuisance calls generally; and many agreed that consumers experience harm from silent and abandoned calls. However, some respondents considered other types of call caused more nuisance than silent and abandoned calls (two respondents considered unsolicited calls cause a nuisance and harm while three respondents considered unsolicited recorded message calls to be the biggest nuisance).

A8.9 In relation to there being any difference in harm between receiving nuisance calls on your landline or mobile phone, two respondents did not consider there was any difference. However, one respondent (TrueCall) considered that calls to mobiles

could be more harmful as they could be answered by children who have mobile phones or those who are abroad and have to pay roaming charges for incoming calls.

Change in harm over time:

A8.10 Several respondents (Noble Systems, DJN Solutions and Genysys) considered that the level of harm has changed since we last reviewed our policy in 2010 as consumers now have a better understanding of why silent and abandoned calls occur and may therefore suffer less distress. However, DJN Solutions recognised that such calls may still be perceived as a nuisance.

Type of harm caused:

A8.11 Several respondents commented on the types of harm we identified in the call for inputs with seven agreeing with Ofcom's initial view that wasted time and emotional harm (such as annoyance, inconvenience or distress) were the primary types of harm. For example:

- BT stated that many consumers calling their nuisance call advice team say that nuisance calls are stressful, worrying and distressing. Others find them annoying, inconvenient and irritating.

- Similarly, ICO stated that 90% of concerns raised to ICO about unsolicited calls and texts indicated that consumers consider calls to be inconvenient, annoying, a cause for concerns, a cause of anxiety or a disruptive irritation.

A8.12 Two respondents (TrueCall and TSI) considered that nuisance calls can cause financial harm if such calls are used to scam consumers with TrueCall estimating that 15% of calls are scams or mis-selling and the average amount lost to scams is between £1-4k.

A8.13 Three respondents (TrueCall, TSI and a confidential response) considered that nuisance calls could also cause physical harm through people tripping or falling whilst trying to answer the phone or being distracted for example, if someone with dementia is distracted from cooking.

A8.14 Other types of harm raised by respondents included:

- BT and Genesys considered that consumers may also be harmed if they stop answering the phone (for example, missing calls from doctors or family) and may also miss out on beneficial marketing/service calls (for example, fibre roll out, service messages).

- The ICO referred to the LSE report (2013 by Claire Milne) about the wider costs to society such as costs of communication providers (CPs) and regulators of dealing with the complaints and how trust in the phone is being undermined. BT also considered that nuisance calls impacts negatively on the use of fixed lines as consumers may stop answering the phone.

- The Direct Marketing Association (DMA), BT and Genesys considered that nuisance calls also damage the reputation of the telemarketing industry.

Factors affecting harm:

A8.15 Several respondents made specific comments about the factors affecting the harm caused to consumers:

- Varying factors: Eight respondents (including the Credit Services Association (CSA), Noble Systems, ICO and TSI) agreed that there are many factors affecting the level of harm (including vulnerability) as one person may find a call inconvenient but another may find the same call confusing or to be feared. For example, shift workers having sleep disrupted or someone who finds it difficult to reach the phone.

- Vulnerability: Four respondents (Mr Butler, TrueCall, TSI and ICO) considered that vulnerable groups will face more distress and harm from nuisance calls.

- A lack of CLI: Seventeen respondents (including Reactiv Media, CSA, Daviker, FICO) stated or suggested that not providing a CLI to be a factor affecting the level of harm. For example, consumers cannot contact a company that has called them or opt out of calls.

- Repeat calls: Five respondents (including FICO and Daviker) considered that repeat calls cause harm. For example, if this is over a short period of time such as in one day or no CLI is provided.

- Purpose of call: Several respondents (including CSA, FICO, Revive Management Solutions Ltd) considered that harm was caused by unsolicited calls or calls made by those not following Ofcom's policy or PECR.

Quantifying harm:

A8.16 One respondent (Noble Systems) did not think harm could be quantified as it would vary from individual to individual and five respondents considered that harm was difficult to quantify. CSA considered that any measurement should relate to the purpose of the call. DJN Solutions suggested the harm calls cause should be put into wider context for example, we get stuck in traffic, spend time queueing all of which is wasted time but traded off against lower taxes, food prices and the fact the call centre industry contributes a lot to the UK economy and many people derive value from calls received. TSI considered that further research is needed.

A8.17 Three respondents provided estimates of time taken to deal with nuisance calls:

- Daviker stated that tests indicated that the average time to answer a landline phone is 20 seconds and a mobile phone 12 seconds. If an abandoned message is played and allows a consumer to press 1 to remove themselves from the call list: this takes around 30 – 40 seconds. Without this option, a consumer would have to call the company back/remove themselves from a call list.

- BT states that most consumers calling its nuisance call advice line say it takes them a few seconds to deal with nuisance calls with several consumers saying it takes about a minute.

- A confidential respondent estimated it takes between 30 seconds – 5 minutes to deal with a nuisance call.

A8.18 Two respondents (TSI and TrueCall) provided estimates of other costs such as TSI estimates that to treat a vulnerable who has fallen while attempting to answer a call could cost up to £40,000 and TrueCall estimates that around 15% of nuisance calls are scams or mis-selling with the average amount lost between £1k - £4k.

Questions 2 and 3: Causes of silent and abandoned calls

A8.19 The call for inputs set out that silent and abandoned calls are largely a by-product of organisations trying to contact their existing consumers or trying to sell products or services to potential new customer by telephone. We noted that there will be legitimate reasons for contacting consumers (in many cases) but some calls may not be legitimate.

A8.20 Based on evidence from formal and informal enforcement work, existing research and some informal discussions with stakeholders, we noted that the main cause of abandoned calls appeared to be the use of automated calling systems (ACS) and set out a range of reasons why consumers may receive silent calls:

- Action by organisations – use of answer machine detection (AMD), intentional non-compliance, lack of awareness, management and process failures, number scanning, intentional behaviour (agents).
- Timing issues – delays in connection, simultaneous pick up/disconnection, handsets and ringtones.
- Other causes – errors by call centre agents or individuals, intentional behaviour (individuals), mobile coverage.

A8.21 We noted that some causes were unlikely to be affected by any changes we could make to the policy and for such drivers (handsets and ringtones and mobile coverage) we proposed to take no further action as part of this review. We also noted that where a cause is unlikely to be a key driver of overall volumes of silent calls (errors by call centre agents as individuals or malicious calls made by individuals) we proposed to take no further action as part of this review.

A8.22 The call for inputs then asked for:

"views and evidence from stakeholders on what are the key drivers of (a) silent calls and (b) abandoned calls. You may wish to consider the following points in your response:

- Whether the main driver for abandoned calls is the use of ACS or if there are other key drivers.
- Whether you agree with the possible reasons why consumers may receive silent calls and the extent to which they are likely to be a key driver of the overall volume of silent calls as set out in figure 1.
- Evidence of the key drivers of silent or abandoned calls.
- Aside from mobile coverage, whether there are other issues specific to mobiles that could be causing silent or abandoned calls.

A8.23 It also asked for views and evidence on the use of AMD including (a) if call centres have changed their use of AMD in recent years and if so why (b) the volume of calls

made by call centres with and without the use of AMD (c) false positive rates when using AMD and any data to suggest that the accuracy of AMD has improved in recent years.

Summary of responses

A8.24 Nearly half of the 46 respondents to our call for inputs provided thoughts on the reasons why consumers may receive silent and abandoned calls. Figure A8.1 summarises the responses we received to the various reasons we identified as to why consumers may receive abandoned or silent calls and whether it is likely to be a key driver of overall volumes. In brief, the responses suggested we had largely captured the range of reasons consumer may receive silent or abandoned calls. Responses suggested that the key drivers were those in the 'actions taken by organisations' group (i.e. misuse of ACS or use of AMD) compared to causes in the 'timing issues' and 'other causes' groups.

Figure A8.1: Summary of responses to reasons why consumers may receive silent and abandoned calls

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Action taken by organisations	
Use of ACS: **Key/main driver**	Background: The call for inputs suggested this was the main driver of abandoned calls. Responses • Thirteen responses agreed that use of ACS was a key or main driver for silent and abandoned calls (including BT, Noble Systems, Revive Management Solutions, Reactiv Media, Mr Butler and several confidential responses). • Eleven respondents (including Genesys, Revive Management, FICO, SSE, BT, Noble Systems and several confidential responses) considered it is not simply the use of the technology but the management or '*misuse*' or '*inappropriate use*' of ACS (sometimes deliberately) that leads to silent and abandoned calls. For example, where the pace of dialling is set at a level that bears no correlation to the amount of agents available to receive calls. • This may be linked to intentional non-compliance (see row three below).
Use of AMD – as set out in section 2, AMD is used by call centres to establish when a call has been answered by an answer machine rather than a live individual. This helps	Background The call for inputs set out that: • AMD has tended to use speech pattern recognition and this can be unreliable. It referenced two reports which found broad ranges of false positives depending on how dialler and AMD equipment was uses in practice i.e. how it was set to classify answer machine pick-ups and variations and discrepancies between tests in controlled and operational environments (Verint Consulting, 2009[28] and Mott MacDonald 2013[29]).

[28] http://stakeholders.ofcom.org.uk/binaries/consultations/persistent_misuse/summary/verint.pdf.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
prevent answer machines being put through to a live call centre agent and subsequently terminated by the agent. Unfortunately, current AMD technology can mistake a live consumer for an answering machine (a 'false positive') and lead to the ACS terminating the call without playing an information message. **Key/main driver**	• Use of AMD has been considered a key driver of overall volumes of silent calls and some stakeholders have advised that some organisations have stopped using AMD or significantly restricted its use in recent years. <u>Responses</u> **Driver of silent calls/ use of AMD**: • Eleven (including the CSA, Communications Consumer Panel (CCP), Fair Telecoms Campaign, Noetica, Sytel, and several confidential responses) identified this as the main or key driver. • Thirteen respondents stated that call centres (or call centres they service) do not use AMD (including Daviker, Noble Systems, CSA (and the majority of its 400+ members) and several confidential responses). • Nineteen respondents thought that AMD use had stopped or reduced. Of these ten (including Fair Telecoms Campaign, Daviker, Noble Systems, DMA, BT, DJN Solutions and some confidential responses) thought this was due to the 2010 policy) and three (DJN Solutions, SSE and Noble Systems) did not think AMD could be a key driver if use of AMD had dropped. • Several said they no longer use AMD due to compliance concerns or hassle/cost of complying with the policy (including DJN Solutions, CSA, Noble systems, DMA, Daviker, BT and two confidential responses) for example, complexity/lack of clarity over false positive calculation rate. Several responses (confidential responses) had tested their AMD and found it can't be used in compliance with Ofcom's policy and that the 2 second connection time made it hard to use AMD. TrueCall agreed that it is hard for a call centre to prove their AMD is operating compliantly due to the complexity of the formulae and the difficulty in determining a reasoned estimate. Several (including Reactiv Media, BT) considered that AMD could be beneficial if accuracy or compliance could be assured. • However, four responses stated that AMD is still used by certain types of business such as debt recovery firms or for only limited periods for example, when contact rates are low (confidential responses, DJN solutions and Sigma Financial group). **Accuracy** • Geneysys, a dialler provider, and Revive Management Ltd stated that customers that choose to use AMD carry out testing and are satisfied with the detection rates and accuracy levels. • Noble Systems did not think it was possible to achieve a zero per cent false positive rate • Four considered that there had been no significant change in technology

[29] Mott MacDonald, October 2013, Developments in call centre and network answer phone detection, page 47: http://stakeholders.ofcom.org.uk/binaries/research/technology-research/2013/call-centre-report.pdf.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
	or improvement in accuracy rates (Daviker, two confidential responses, Reactiv Media) and two (DMA and a confidential response) considered there was little evidence that accuracy of AMD had improved. For example, results of testing on behalf of clients indicate a range of accuracy levels (some low enough to use AMD and others, particularly international environments, where the false positive rate was very high. (DJN Solutions, a provider of compliance services to call centres) • However, Sigma Financial Group considered that there had been significant improvements in dialler technologies and tools in the last 12 months which means compliance has become easier to monitor. • A confidential response and the DMA considered that there are more false positives with calls to mobiles as they are more likely to be answered in noisy environments which can confuse AMD technology. **Network AMD:** • Several respondents mentioned the work of the Network AMD working group (Sytel, Daviker and two confidential responses). Two respondents (Sytel and one confidential response) considered that network based AMD may improve accuracy and reduce the incidence of false positives and represents a useful if not fool proof way forward (Noble, CSA and two confidential responses) with a desire to see CPs offer a digital standard for network AMD (Sytel) at a commercially viable rate (CSA). However Genesys does not consider network based answer machine detection to be a viable solution in the UK at present due to the high costs charged by network operators for network based answer machine detection and the lack of consistent availability across all providers. • The Fair Telecoms Campaign considered that telecoms operators should implement agreed signalling to allow for accurate Answering Service Detection; and for traditional AMD to be banned.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Intentional non-compliance – some companies will have no intention of complying with the law on persistent misuse and will not take account of our statement of policy on persistent misuse or have any systems or processes in place to prevent silent calls. Organisations that have no intention of complying may also try to hide their identity to help avoid detection. **Key/main driver**	<u>Background</u> The call for inputs set out that: • It is difficult to identify the proportion of silent calls that may be being generated by 'rogue' organisations. • If we were to use the proportion of complaints to Ofcom where the organisation did not provide CLI information as a very rough indication for these organisations (as the current policy suggests ACS users can reduce the harm of abandoned and silent calls by providing a CLI), there are indications that rogue organisations might account for a significant proportion of silent and abandoned call complaints to Ofcom.[30] On this basis, we might estimate the proportion to be 67% but we note that the actual proportion may be different to this. • Rogue organisations may also be less likely to play an information message in the event of an abandoned call, thereby increasing the likelihood that they may be a key driver of overall volumes of silent calls. <u>Responses</u>: • Twenty-two thought this was the main or a key driver of these calls (including Sytel, Noble Systems, Genesys, Daviker, CSA, several confidential responses). • Fourteen respondents felt that overseas call centres who did not follow the policy were the main or at least part of the issue (including Sytel, Genesys, CSA, Clear Answer Call Centres and two confidential responses). • Eleven felt that those making unsolicited sales calls were also more likely to intentionally not comply (including Genesys and some individual responses). • Twenty-six argued that the focus should be on tackling the behaviour of the non-compliant rogue companies before looking at tightening the policy and many raised concerns that tightening the policy would only have an impact on compliant business and therefore questioned how appropriate this would be. (Noble Systems, ITSPA, Advantis Credit Limited and a confidential response). • BT considered this driver requires particular focus and suggests we trace companies that have no intention of following the rules.

[30] PECR includes provisions on the withholding of CLI information so this is an indicative estimate only based on detailed analysis of two weeks of Ofcom complaints data in January 2014. Similar analysis carried out in 2012 suggested 70% of callers could not be identified from the CLI information.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Lack of awareness – some organisations may not take measures to prevent silent and abandoned calls as they are not aware of the persistent misuse provisions in the Act or our policy. **Key driver**	Background: The call for inputs set out that: • It is an organisation's responsibility to ensure they are aware of the relevant rules relating to the activities they carry out. • We are aware, through our enforcement and engagement with industry, of organisations that are not aware of the provisions in the Act or our policy. A lack of awareness can sometimes be more of an issue with organisations operating overseas and are less familiar with the UK legal framework. • It is difficult to quantify the level of awareness in organisations operating call centres, but we consider this could be a key driver of silent calls. Responses: • BT and the CCP considered this driver requires particular focus to increase understanding and work with other regulators (such as ICO) and trade associations to promote awareness. • Noble Systems did not consider this to be a key driver of silent calls. • One confidential response considered that irresponsible use of ACS can be driven by lack of awareness.
Management and process failures – Poor management or a failure to have appropriate processes in place can result in issues at an organisational or call centre agent level. For example, not carrying out tests when setting up or making changes to ACS systems and processes to make sure they work properly, poor procedures for when members of staff that are responsible for key functions (such as management of the dialler or compliance) are unexpectedly out of the office, poor management of call centre agents. **Key driver**	Background The call for inputs set out that: • We have seen evidence of poor management or a lack of appropriate processes in place to quickly identify and fix issues that may be causing silent and abandoned calls in our enforcement work. • Issues caused by poor management or lack of appropriate processes may be a key driver of overall volumes of silent calls. Responses: • Reactiv Media and one confidential respondent considered that poor management and processes can lead to misuse of ACS. • Revive Management Solutions recommended dedicated roles within the organisation who continually monitor that they are working within the Ofcom guidelines and industry best practice. • BT felt this driver requires particular focus and suggested Ofcom creates best practice guide/checklist as part of the policy

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Number scanning (or 'pinging'): automated dialling to sequentially check through lists of phone numbers to see which are 'live' and which are disconnected. The equipment is supposed to make a call and as soon as the network sends back the message that the line is ringing it should terminate the call. However, sometimes the consumer's phone may ring and the consumer picks up but there is no person on the other end. **Driver (low level)**	Background: The call for inputs set out that: • Organisations using the equipment suggest that the called party's phone does not ring or at most just get a partial ring (sometimes referred to as a 'bell tinkle'). The DMA silent calls report 2005[31] referenced data from BT which suggested that one of these campaigns launched 3,000 calls in an hour and 18% were answered each generating a silent call. However, we note that this analysis was carried out some years ago and may be out of date. • Number scanning may be a key driver of overall volumes of silent calls. Responses: There were no direct responses to this driver however, it is likely that CPs would pick this up where it blocks an exchange and customers are unable to make outbound calls.

[31] https://www.truecall.co.uk/media/1933/Brookmead%20report%202005.pdf

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Intentional behaviour (agents) - deliberate action by live agents, such as terminating live calls after they have been put through to them but before the conversation starts. **Driver**	Background The call for inputs set out that: • We have seen only limited evidence of this in our enforcement work to date. • We think this is less likely to be a key driver of overall volumes of silent calls. • Good management processes could help minimise deliberate action by agents. Responses: • Seven respondents agreed it could be a driver with one (SSE) considering it to be a likely driver over and above use of ACS and AMD systems as forums show large volumes of entries from consumers relating to rudeness, being able to hear background noise etc. • Two respondents (Noetica and a confidential respondent) did not consider it a key driver and only likely to be responsible for negligible amounts. • considered this driver resulted in negligible amounts of silent and abandoned calls. • Five respondents (including Reactiv Media, DJN Solutions, Daviker, Noble Systems and a confidential response) provided examples of how this might manifest itself. For example, badly trained agents waiting for consumer to speak first, agents being slow at unmuting their headsets or leaving headsets on mute even when they're not at their desks or agents not connecting to a consumer if a call is delivered immediately before rest periods or finish times. • One confidential respondent agreed that internal quality processes can be used to address poor agent behaviour for example, by using integrated call recording to identify agent misuse. But Daviker considered agent led silent calls are very hard to identify and to continuously monitor on an ongoing basis.
Timing issues	

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Delays in connection - organisations may not start to play an abandoned call message or connect the call to a live agent until *after* the consumer hangs up **Driver of silent calls and calls to be reported as silent by consumers**	Background The call for inputs set out that: • Consumers will react to silence on a call in different ways. If there is a 'delay' before an abandoned call message is played or a live agent is connected and starts to speak, some consumers may not stay on the phone long enough to hear either of these happening. Consumers would likely regard these as silent calls, whereas organisations would likely classify them differently. • Such calls are more likely to feature in CCT complaints data and our omnibus survey. However, they may be less likely to feature in the reported incidence levels in our landline panel research as we ask consumers to say 'hello' and wait at least five seconds before they put the phone down (in line with A1.51 of the current policy which says that an abandoned call message should be played within two seconds). • This may be a significant cause of consumers reporting calls as silent where in fact the organisation was going to play an abandoned call message or connect them to a live agent. Responses: Few responses commented on this driver. BT considered it was a potential driver but a confidential response did not consider this to be a major driver. Those that did consider it was a driver provided examples of why there may be a delay in connection (including DJN Solutions, FICO and a confidential response). Examples included call data doesn't arrive at the same time as the call so the agent does not know who to address, badly trained agents wait for the consumer to speak before introducing themselves, agents take too long to unmute their headsets before speaking. TrueCall suggested that the term silent calls is not fully understood by consumers and on the TrueCall systems consumers mark calls as silent where they pick up their phone and hear a dial tone or NU tone, hear a few seconds silence before the caller speaks, hear background noise of a call centre but nobody speaks to them, answering machine/voicemail messages that are silent. On that basis, TrueCall think Ofcom's figures overstate the number of silent and abandoned calls.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Simultaneous pick up / disconnection - the consumer may pick up the call *at the same time* as the call is being disconnected by the ACS. **Driver (low level)**	Background: The call for inputs stated that: • Consumers may pick up the phone just as the ACS disconnects the call. Consumers may consider and report such calls as silent calls. However, the ACS will record these correctly as unconnected calls. • Some organisations stop ringing at 15 seconds in order to meet the minimum ring time in the policy but to avoid network based answer machines which are often pre-programmed to answer a call between 18 – 20 seconds. • Preliminary testing by an industry stakeholder that was reported in our 2010 review of the policy indicated that this may occur in 0.8% of all live calls encountered which, for organisations making large volumes of calls, could represent a significant number of silent calls for consumers.[32] Responses • Few responses commented on this driver. • One confidential response did not consider this to be a major driver and Noetica: considered this driver resulted in negligible amounts of silent and abandoned calls. • One confidential response considered that the set ringer ring time can help address silent calls generated by simultaneous pick up/disconnection but another respondent (BT) said it did not have any evidence from customers that the length of ring in itself is a driver for nuisance complaints. • Sigma considers that regardless of the minimum ring time chosen there will always be the risk of simultaneous pick up/disconnection.

[32] See paragraph 3.55 of http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Handsets and ringtones - the organisation terminates the call just *before* the consumer picks up. The call has been terminated but the ring cycle on the phone is still playing. **Driver (low level)**	Background: The call for inputs stated that: • This can happen with Digital Enhanced Cordless Telecommunications (DECT) phones if a particular ring tone has been chosen by the consumer.[33] This may be a significant cause of consumers reporting calls as silent but will likely depend on whether the consumer hears a dial-tone or not when they pick up the phone and how they interpret that. • This cause is unlikely to be affected by any changes that we could make to the policy and we propose to take no further action as part of this review. Responses Two responses commented on this driver, one (BT) considered it could be a potential driver and a confidential response considered this will not be a major driver of silent and abandoned calls.
Other causes	
Errors (by call centre agents) – errors can happen which can be a result of a genuine one-off mistake for example, call centre agents leaving their headsets on mute so they are not aware that a live call has been put through. **Driver**	Background The call for inputs stated that we do not have data on how often one-off individual errors by call centre agents are likely to occur. However, we do not think this is likely to be a key driver of overall volumes of silent calls. As it is unlikely to be a key driver of overall volumes of silent calls we propose to take no further action as part of this review. Responses Few comments were made about the 'other' reasons why consumers may receive silent calls. One (BT) considered it could be a potential driver and a confidential response considered this will not be a major driver of silent and abandoned calls.

[33] http://youtu.be/CvYVyZkemOA.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Errors (individuals) – individual consumers may accidentally dial the wrong number and hang up when they realise. **Driver (low level)**	Background The call for inputs stated that we do not have data on how often consumers are likely to misdial but do not think this is likely to be a key driver of overall volumes of silent calls. As it is unlikely to be a key driver of overall volumes of silent calls we propose to take no further action as part of this review. Responses Few comments were made about the 'other' reasons why consumers may receive silent calls. One (BT) noted from personal experience that customers with touch screen phones can inadvertently drop calls instead of answering them and mistakenly believe it is the calling party hanging up and a confidential response considered this will not be a major driver of silent and abandoned calls.
Intentional behaviour (individuals) – individual consumers may make calls to other consumers for mischievous or malicious reasons. **Driver (low level)**	Background The call for inputs stated that we do not have data on how often individual consumers make malicious calls. Whilst this can be particularly distressing for the individual receiving the call, we do not think this is a key driver of overall volumes of silent calls. As it is unlikely to be a key driver of overall volumes of silent calls we propose to take no further action as part of this review. Responses Few comments were made about the 'other' reasons why consumers may receive silent calls with BT agreeing it could be a potential driver.

Reason for silent or abandoned calls (and estimated magnitude)	Summary of responses and proposed next steps
Mobile coverage – calls made to or from mobile phones may be 'dropped' due to mobile network coverage/performance issues and generate what appears to be a silent call. **Driver**	Background • The call for inputs stated that Ofcom published research in August 2014 which suggested that a significant proportion of consumers have experienced problems with 'dropped calls'.[34] We have also been advised that call centres are making more calls to mobiles as contact preferences change and mobile use increases. • Mobile coverage may be a key driver of overall volumes of silent calls. • This cause is unlikely to be affected by any changes that we could make to the policy and we propose to take no further action as part of this review. Responses Few responses were received on this. • BT considered it could be a potential driver but other than poor coverage they were not aware of any other issues specific to mobiles that could be causing silent/abandoned calls. • Noetica considered this would results in negligible amounts of silent calls. • One confidential response noted that many consumers now opt to use mobiles instead of a landline and more calls may be disconnected or perceived as silent due to signal issues rather than being a silent call. Also calls to mobiles can experience varied and longer setup times, often even with mobile to mobile calls, leading to users experiencing a delay or having to say hello for a second time. • CSA did not consider that changes to dialler technology will help on mobiles as the issues affecting mobiles could happen on manually started calls for example, network congestion, signalling, powers, subscriber behaviour. Reactiv things the main driver for abandoned calls is the consumer not being available (and questions if this is more prevalent on mobiles than landlines). • Reactiv Media considered that the main driver for abandoned calls is the consumer not being available and questions if this is more prevalent on mobiles than landlines.

Question 3: Persistent misuse by causing silent and abandoned calls: possible ideas for change

A8.25 The call for inputs, having identified and discussed potential causes of silent and abandoned calls, set out some potential changes we could make to the policy. This section summarises the responses to those ideas, broken down into three sections: ideas affecting the abandoned call rate, ideas relating to timing issues and ideas relating to management.

[34] See Figure 4 at http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/consumer-experiences-mobile-phone-calls/report.pdf.

Ideas affecting the abandoned call rate

A8.26 The call for inputs set out some provisional ideas for change to the abandoned call rate and some views on the potential impacts of each change. The changes put forward were:

- Reducing the current three per cent abandoned call rate to a lower level for example, one per cent, noting that:
  - This could help reduce the number of abandoned or silent calls consumers receive from certain organisations but would still not control the actual volume of silent and abandoned calls made as this will depend on the number of live calls made by an organisation. Also it would depend on how many organisations are already operating below one per cent or not using AMD as to the impact on the number of silent and abandoned calls consumers receive.
  - There may be no cost impact for those organisations already operating at lower levels or those that do not use AMD and noting that some organisations have significantly restricted or stopped using AMD with an indication that the time an agent spends dealing with answer machines is low (under five seconds) with agent productivity considered to remain high. However, there would be a cost impact for some organisations, which may only be a one off cost while agents transition to dealing with answer machines or switch to a different AMD technology.
  - New types of AMD could potentially reduce the number of false positives, and therefore the number of silent calls consumers receive, including:[35]
- Remove the current three per cent abandoned call rate for example, move to zero per cent noting that:
  - this option could help reduce the number of abandoned or silent calls consumers received from certain organisations, would require very or 100% accurate AMD where it is used and may restrict the use of ACS to ensure agents are always available to take calls. This may have a cost to organisations.
- Differentiate between silent and abandoned calls and apply a lower or zero threshold for silent calls noting that:
  - Reducing the rate could help reduce the number of silent calls consumers receive from certain organisations, may have no cost impact for those organisations that do not use AMD but a cost impact for those who do and would require AMD to be very or 100% accurate where it is used.
- Specify we may take enforcement action once a certain number of abandoned and/or silent calls over a set period have been exceeded noting that:
  - This could reduce the number of abandoned or silent calls consumers receive from certain organisations, would provide an absolute number and provide clarity to organisations on when we are likely to take enforcement action but

[35] http://stakeholders.ofcom.org.uk/binaries/research/technology-research/2013/call-centre-report.pdf.

could impact on use of AMD and ACS which may have cost impacts on industry.

- We would need to consider an appropriate level to set the threshold, the relevant time period and any limitations for repeat calls during that time period and whether to apply it in addition to or instead of a percentage based abandoned call rate.

A8.27 The call for inputs asked for views and evidence on these potential changes including whether it would be worth pursuing any of the potential changes identified, if there are other potential changes that should be considered, for example, to make it clearer and easier for stakeholders to understand and follow or to specifically address calls made to mobile phones and any data indicating the likely impact of the potential changes in terms of reducing the harm caused by silent and/or abandoned calls and the potential cost of the change (both one-off and ongoing costs).

Summary of responses

Lowering the abandoned call rate including reducing the current three per cent abandoned call rate to a lower level for example, to one per cent and removing the current three per cent abandoned call rate set out in the policy i.e. move to zero

A8.28 Four respondents considered the current percentage approach could be improved on as:

- It is the actual volumes of abandoned calls made and this rate over time that causes most harm as an organisation running at 2.99% every day may represent greater harm than an organisation who runs at 3.1% on one or two occasions but at a much lower rate the rest of the time (confidential response) and Fair Telecoms campaign questions the difference between the consumer harm caused by abandoned calls on days when the limit was under three per cent and days when the calls were in excess of the three per cent. Fair Telecoms Campaign considers that Ofcom persistently misuses its persistent misuse powers by applying a three per cent abandoned call rate which can include silent as well as abandoned calls.

- Some call centres use a dialler with 10 seats and some with 10,000 (Sigma Financial Group),

- Using a percentage threshold may cause organisations to make more calls in order to level out the number of abandoned calls which could result in more nuisance calls being received (ICO).

and some suggested potential alternative measures:

- Sigma Financial Group suggested that a percentage target is not appropriate given that and recommended an approach where each organisation works towards three per cent or 1,000 abandoned calls in any 24 hour period, whichever is lower.

- DJN solutions suggested a sliding percentage scale, where larger campaigns are expected to run at a lower percentage, may be a workable solution but the lower end of the scale to be increased above three per cent for smaller campaigns. This would allow more flexibility for smaller organisations, which are

disproportionately affected by low abandonment rates. Care would need to be taken to ensure that campaigns could not be manipulated to gain advantage, such as breaking a large campaign into several smaller ones in order to use the higher abandonment rate.

- Fair Telecoms Campaign considered we should revert to our original policy stance where we said a percentage threshold was not appropriate.

- DMA suggested prohibiting silent calls completely by banning AMD in conjunction with raising the abandoned call rate to four per cent and have a requirement to provide an information message which includes a free to call number to contact the caller.

- Reactiv Media and a confidential response suggested specific guidelines or a set limit on re-contact attempts following failed consumer contact/when a call is unanswered would be preferable to reducing the abandoned call rate.

A8.29 However, 27 respondents disagreed to any change to the abandoned call rate. Some opposed any major change to the policy which will impact on those trying to comply and have no effect on those that ignore the policy and some questioned our evidence base for making any changes (including Noble Systems). For example:

- Reducing the abandoned call rate would not have a significant impact on silent and abandoned calls as the major contributors to nuisance calls are false positives and calls made by call centres, both domestic and overseas-based, who simply disregard compliance (Sytel, CSA, Noble Systems). Therefore our focus should be on enforcing current rules (DJN solutions, Noble Systems).

- More robust data on the harm caused by silent and abandoned calls or other unsolicited calls is required before the thresholds can be reviewed and lowered (TSI) and one confidential respondent questioned whether the consumer research supported such a move given only six per cent of customers reported receiving an abandoned call and a change in abandoned call rate is unlikely to result in less silent calls.

and some considered that three per cent remained appropriate (Revive Marketing, Genesys, BT and a confidential response) because:

- Some already aim for less than three per cent abandoned call rate.

- It allows effective and efficient dialler and resource management (BT) and balances consumer protection and effective use of ACS (Genesys) to allow legitimate contact centres to call customers cost effectively and in line with similar international guidelines, for example, USA and Canada (CSA).

A8.30 Several respondents disagreed with a move to one per cent as reducing the abandoned call rate will mean:

- ACS will be difficult to use and may prevent the use of predictive dialling (SSE, Daviker, CSA and four confidential responses) or make it impossible (confidential responses).

- This would make diallers less productive removing ACS efficiencies, productivity gains, reduce agent productivity and make use of dialler not cost effective

(including BT, Reactiv Media, Genesys, CSA, DMA, Sigma Financial Group, Daviker and confidential responses).

- Agent productivity could be halved and require call centres to employ twice as many agents to carry out the same work (Noble Systems) or reduce headcount (confidential response). DJN solutions estimated that (despite dialler efficiencies varying according to technology) the uplift would be 50%. That is, if you were using a predictive dialler with 100 agents you would need at least 150 agents if dialling manually.

- Productivity gains through operational efficiencies are eliminated and may restrict the ability to blend agents across outbound and inbound calls. This imposes significant costs to industry (including SSE, CSA, Genesys, DMA, Sigma and three confidential responses). Genesys considered that a move to one per cent is equal to zero per cent and would make use of ACS prohibitively costly and Sytel did not think many call centres can operate efficiently at one per cent abandoned call rate.

- Inefficiencies in customer contact could lead to increased prices of goods and services, and have an impact on call-centre costs or call-centre prices (to their clients or customers) (Revive Management Solutions, Sigma Financial Group, Daviker, Genesys, Aspect, CSA, BT, Noble Systems). CSA and Noble Systems considered that in debt recovery, lowering the abandoned call rate would significantly increase costs which could affect when a consumer is contacted and may be contacted later in the debt recovery process.

- Organisations may deliberately not comply/go out of business increasing costs and harm to consumers.

    - it could increase rogue businesses or push those complying into non-compliance (Genesys, Daviker, Reactiv Media, Noble Systems, CSA and several confidential responses), could push more companies to use overseas providers (BT, Noble Systems, CSA); and

    - may put businesses/jobs at risk (CSA, Reactiv Media, Sigma Financial Group and some confidential responses) particularly small to medium size companies (including CSA, Reactiv Media).

A8.31 Four respondents (Sytel and three confidential) did not consider it possible to operate at zero per cent as:

- AMD is not accurate enough to manage at three per cent abandoned call rate so reducing the target would be even harder to achieve, if not impossible.

- It will always suffer technical issues or there will always be some risk in using automated calling systems for example, agent action/error.

- Ofcom's suggestion that many call centres operate efficiently at lower abandoned call rate is not true as the majority of campaigns are smaller than 50 agents meaning there is no productivity benefit at a one per cent level.

A8.32 Only one respondent supported the move to zero per cent abandoned call rate so one source of nuisance calls would be eliminated. (CCP). The majority of respondents did not agree with the proposal – mainly for the same reasons as moving to one per cent (including Daviker, SSE, Genesys, DJN Solution, CSA, and

several confidential responses). In addition some felt moving to zero per cent would:

- Ban predictive dialling or the use of ACS (including Vodafone, DJN solutions, SSE, Advantis Credit, CSA, and several confidential responses).
- Remove the ability to work in a blended environment using AMD and predictive diallers which are not the only reason for abandoned calls (for example, inbound calls taking priority over outbound calls) (Sigma Financial Group).
- Be inappropriate as even the most well managed operations can experience problems so some margin of error should be retained.
- Lead to substantially increased costs to call centres (SSE, Sigma Financial Group Advantis Credit, Vodafone, and a confidential response) and would increase agent idle time, cause a 60% to 80% decrease in outbound dialling volumes; require restructuring of all contact strategies and cost models. It was estimated by one respondent that reducing the abandoned call rate to zero per cent would increase annual operating costs for those using ACS by up to £3.5m in the form of reduced contact centre efficiency, reduced sales opportunities, increased costs of sale and reduced debt collection rates.
- Affect jobs/businesses and may push organisations to deliberately ignore the policy. Several thought it may push companies out of business (Advantis Credit, CSA (who estimated it would put up to 290 thousand jobs[36] at risk), others felt it may force outbound call-centres overseas (confidential response, Vodafone, CSA) as would not deter the off-shore companies who already ignore the guidelines.
- Have little impact on silent or abandoned calls volumes as non-compliant organisations are the main source of nuisance calls (Vodafone and a confidential response).

<u>Differentiate between abandoned calls with message and silent calls, and apply a lower or zero threshold for enforcing against silent calls</u>

A8.33 Thirteen respondents agreed that silent calls should be lower as they create more harm and should have a lower tolerance rate (including BT, Fair Telecoms Campaign, Daviker, Noetica, CSA, confidential responses) with some views on whether this should be zero or a bit higher.

A8.34 Five did not think any change was required to the current policy as they thought the policy already required this (including Daviker and one confidential response) or our approach to monitoring and enforcing the policy would minimise silent calls (one confidential response).

A8.35 Four felt a zero threshold was unrealistic and some margin of error was needed in cases of technical issues, agent behaviour or consumers behaviour leading to perceptions of silent calls (for example, if a consumer hangs up before an information message is played) (including CSA, Noetica, confidential response, SSE). Noetica suggested we allow a silent call rate of 0.1% or similar but allow 2.9% for ACS (dialler) abandoned calls to maintain the current three per cent abandoned call rate which would in effect remove the need for “reasoned

[36] Contact Babel report

estimates". BT agreed the three per cent abandoned call rate should be retained but a lower threshold for enforcing against silent calls applied. DMA suggested we prohibit silent calls by banning AMD but also raising the abandoned call rate to four per cent.

A8.36 Fair Telecoms Campaign considered that Ofcom should make it clear that silent calls are unacceptable and will not be tolerated.

A8.37 A few respondents disagreed with a zero tolerance for silent calls. One did not think it was possible to monitor silent calls separately. Two others queried whether such a move would actually impact on the number of silent calls consumers state are received. One confidential response considered that in order to justify an explicitly lower or zero threshold for silent calls, Ofcom would need to show that a significant number of these calls are generated by AMDs not working properly.

A8.38 Sigma Financial group and two confidential responses) were concerned as this meant AMD could not be used as it is not accurate enough which could lead to substantial increased costs through increased staffing levels which may force some companies out of business with increased costs for credit for consumers as costs are passed on to end users. One of the confidential respondents estimated that 65 – 75% of calls go through to automated answering devices.

A8.39 In contrast, 14 respondents said they no longer use AMD:

- CSA said the majority of its 400+ members no longer use AMD, despite increased operating costs, and members configure ring-times between 15 and 21 seconds to avoid network based answer machines.

- A confidential response said it did not use AMD if using ACS despite cost impact to their business (mitigated through other efficiencies in call centre operations).

- No longer use AMD due to the frequency of having to re-test the accuracy, especially with more calls to mobiles which impacts AMD accuracy further. This has not had a bad impact on dialler or productivity efficiency (confidential response).

- Many call centres have stopped using AMD as the loss of productivity of agents hitting answer machines is not great, the delay in an agent being connected to the caller impedes effectiveness of conversation and AMD causes silent calls. (Fair Telecoms Campaign).

A8.40 Four responses (including a confidential response, Fair Telecoms campaign and CCP) recommend prohibition of AMD. The CCP considers banning AMD would remove a potential source of nuisance calls but suggests the current 24 hour delay in redialling should be increased to 72 hours while it is being phased out. The DMA consider that if AMD is banned then two second rule can be shortened to one second. Sytel: does not consider that AMD is compatible with predictive dialling due to the issue with false positives.

A8.41 Ten respondents considered AMD should be allowed, was an efficient way of classifying answer machines (SSE) or would be of benefit of consumers and businesses (CSA – accurate AMD) and that not using AMD can cause bad agent behaviour for example, leaving headsets on mute as don't like hitting answer machines (confidential response and Daviker).

A8.42 A confidential response considered that it would be helpful for Ofcom to recognise the use of AMD with an IVM solution could benefit both companies and consumers if operated within certain guidelines. It considers that this would enable false positives to be routed to a live agent and could be used with abandoned calls as well to allow consumers to route into a call centre if they wish. However dialling should not be sped up and the three per cent abandoned call rate should remain.

A8.43 TrueCall suggested that the term silent call is not fully understood by consumers and on the TrueCall systems consumers mark calls as silent where they:

- pick up their phone and hear a dial tone or NU tone;
- hear a few seconds silence before the caller speaks;
- hear background noise of a call centre but nobody speaks to them; or
- play back answering machine/voicemail messages they get some messages that are silent.

A8.44 TrueCall suggests that none of these fall into Ofcom's definition of a silent call and Ofcom's figures likely overstate the number of silent and abandoned calls consumers receive.

Specify that we are more likely to take enforcement action once a certain number of abandoned and/or silent calls over a set period (for example, 24 hours) have been exceeded (though we may nonetheless take action below that level if appropriate). Replace abandoned call rate with fixed number of calls

A8.45 Two respondents thought this idea could be considered further. Sigma Financial considered that such an approach would limit the sheer volume of dropped calls and hamper the larger call centres from causing harm to consumers. They suggested a pro-rata calculation could be applied such as 0-25 agents – volume of drops should be < 100, 26-100 agents – volume of drops should be < 250. Sigma also considered that a percentage target is not appropriate given that some call centres use a dialler with 10 seats and some with 10,000. It suggested that Ofcom could consider an approach where each organisation worked towards three per cent or 1000 dropped calls in any 24 hr period, whichever is the lower. SSE considered it could be helpful to smaller call centres and smaller campaigns, where flexibility to react to any issues that may jeopardise the current three per cent threshold is more limited. It could also reduce the total number of silent or abandoned calls from organisations making heavy use of diallers, as they would seek to keep the number of such calls below that number.

A8.46 However, five did not think this was a good idea as it was unfair to larger businesses and may encourage more dropped calls from the smaller ones (BT, confidential response, CSA), could lead to larger call centres breaking up campaigns or into smaller call centres (Daviker, CSA and a confidential response) and difficult to set a workable level and monitor or enforce (BT, DJN Solutions).

Ideas affecting timing

A8.47 The call for input identified connection times and timings issues as a potential driver of silent calls and outlined potential changes in relation:

- Specifying a time limit for calls being connected to a live agent and then starting to speak to the consumer for example, two seconds to align with how quickly an abandoned call message should be played.

- Extending the minimum ring time to longer than 15 seconds.

A8.48 In relation to the connection time, we recognised that many organisations do manage their calls this way but this change should reduce the number of silent calls consumers receive from organisations that do not manage their calls in this way at the moment and could have cost implications for those organisations.

A8.49 For the minimum ring time we considered that extending the ring time could reduce the number of silent calls consumers receive (where the consumer picks up just as the ACS is disconnecting the call), could have cost implications for organisations which do not currently deal with answer machines and could increase annoyance for those consumers who screen their calls and may still not be long enough to allow all consumers to reach the phone before the ACS cuts the call off.

A8.50 We asked stakeholders for views and evidence on the potential changes to the policy, whether it was worth making the change and any data indicating the likely impact of making the change in terms of reducing the harm and potential cost of the change (one-off and ongoing).

Summary of responses

Minimum ring time

A8.51 We received 13 responses on the minimum ring time, two of which had no objection to a change and eight not feeling a change was required.

A8.52 Several responses stated that they rang for over 15 seconds (including Sigma Financial, SSE and several confidential responses) with two ringing for up to 30 seconds (including Genesys). Most rang for between 18 – 20 seconds in order to avoid network answer machines which tend to connect around 18 seconds for mobile and 21 seconds for landline (including Daviker and two confidential responses) and length of time also varied depending on the demographic being called and time of day of the call (including Daviker and Sigma). Genesys stated that very few calls were answered after 30 seconds.

A8.53 The main concerns about extending the minimum ring time were the potential for:

- Additional frustration the ringing could cause consumers that don't want to answer the call (BT and Advantis Credit).

    - BT considered that a minimum of 15 seconds achieves an appropriate balance between allowing customers to get to the phone versus ringing for too long causing annoyance.

    - SSE agreed that there needs to be a balance between ringing for a sufficient time to allow a reasonable opportunity for the called person to answer but avoiding annoying those who have made a deliberate decision not to answer for example, shift workers who may be asleep during the day.

  - Sigma Financial considered the policy could require longer ring times for certain demographics however BT considered that the policy should continue to allow organisations to call for longer than 15 seconds if they wanted to.

- Significant additional costs to companies due to the need to have additional lines to account for the longer dialling time and the impact on productivity of connecting more answer machines to agents (as network based answering machines tend to kick in at 20+ seconds) (Advantis Credit and two confidential responses).

- The risk of simultaneous pick up/disconnection remaining regardless of the minimum ring time set (Sigma Financial).

A8.54 Genesys, CSA and two confidential responses said they already rang for longer than 15 seconds (between 21 – 30 seconds) but several suggested it would be best that the ring time was lower than the UK average network level answer machine/voicemail interception time. CSA said that feedback from its members indicates that ring times are typically configured between 15 and 21 seconds to avoid network based answer machines. Genesys stated that they find that only a very small proportion of calls are answered after 30 seconds.

A8.55 One respondent asked for clarification over who the 15 second ring time applies to (for example, when a live agent is guaranteed or only those made in predictive mode) as consider the policy implies it only covers the latter (for example, no agent guaranteed) (Daviker).

Connection to agent time

A8.56 We received sixteen responses on this option with seven (including CSA, BT, Genesys, and CCP) considering specification of a connection time would be reasonable or sensible (with one response only supporting change to when an automated message was played, not connection to a live agent and one response only supporting a change applying only to telemarketers). FICO did not comment explicitly on the option but did note that consumers are sometimes left holding for an agent (or unable to resolve the issue they were contacted about).

A8.57 Eight responses (including DJN Solutions, Noble Systems, Sigma Financial Group Ltd and confidential responses) thought the current guidance was sufficient or explicitly did not support the change (with two responses generally not supportive of any change to the 2010 policy and one not supporting this option applying to debt collection) because:

- The two second time limit is appropriate for automated messages but not for connection to a live agent as it could limit practices which do not cause harm such as where organisations are using automated options for consumers (for example, press 1) (one respondent).

- There is a commercial interest to minimise connection times to agents as the productivity of outbound calling operations is linked to the number of live calls achieved and that such a change could discriminate against overseas call centres that may face latency issues in connecting calls (one respondent).

- The current guidance is sufficient to ensure consumer detriment is minimal and current dialler technology transfers calls to agents almost instantaneously.

however they are aware that some dialler technologies allow this time to be altered (Sigma Financial Group).

- Assuming agent issues (e.g. agents not speaking immediately, delays in call data arriving with agent) are controlled by good management the existing two second rule should be sufficient (DJN Solutions).

- This or any of the 'timing' or 'other' issues are not likely to be major drivers of silent and abandoned calls (one response).

- The current drafting makes it makes impossible to run predictive campaigns therefore affecting efficiencies (one response).

A8.58 Two responses (including SSE) stated that they were already monitoring time intervals before an agent speaks and/or connecting to an agent or playing an information message within two seconds.

A8.59 BT commented that the change may impact on call centre efficiency and operating costs to ensure sufficient resource is available to take calls within the allocated time.

A8.60 Aspect suggested that to avoid a situation where an ACS connects a call to an agent but the agent does not speak immediately leading to silence, a personal greeting recorded in the agent's own voice is played immediately on connection.

Ideas affecting management

A8.61 The call for inputs identified management and process failures as a potential key driver of overall volumes of silent and abandoned calls for example, where systems and processes are not set up correctly. These failures could occur whether ACS is used or not but consider they are more likely to occur when ACS is used.

A8.62 The call for inputs outlined a potential change by specifying explicitly in the policy that we will take into account whether an organisation has processes in place to help prevent, identify and rectify any (unintentional or deliberate) issues causing silent (and abandoned) calls. For example, carrying out test calls when first setting up or making changes to systems and processes, having agent monitoring in place, ensuring that management of dialler is carried out by competent persons. We acknowledged that some organisations already have effective processes in place to help prevent, identify and rectify problems but those that don't may face some costs to put these in place.

A8.63 We asked stakeholders for views and evidence on the potential changes to the policy, whether it was worth making the change and any data indicating the likely impact of making the change in terms of reducing the harm and potential cost of the change (one-off and ongoing).

Summary of responses

A8.64 Nine responses (including BT, Genesys, SSE, Noble Systems and confidential responses) considering it was worth making a change to the policy.

A8.65 DMA raised a concern that this could become a box ticking exercise used as a defence against bad behaviour and not necessarily resulting in ongoing checking and adjusting.

A8.66 Those who felt the change would be useful commented that this was something that organisations already were or should be doing (including BT, Genesys) and would be useful in conjunction with a clearer policy and 'best practice' (SSE and BT). The CCP recommended that enforcement decisions be explicit about whether companies had processes in place to help prevent, identify or rectify any issues to encourage good management and processes.

Question 5: Other examples of persistent misuse

A8.67 The call for inputs outlined that in addition to silent and abandoned call, the policy identifies five further general areas where persistent misuse may occur:

- misuse of ACS;
- number scanning;
- misuse of a CLI facility;
- misuse for dishonest gains (scams); and
- misuse of allocated telephone numbers.

A8.68 The call for inputs asked stakeholders for views and evidence on:

- Whether the five general examples of persistent misuse remain relevant or if there are any changes or other types of persistent misuse that we should consider.
- Whether there are changes we should consider making to the policy relating to the provision of CLI information (noting the issues we set out in paragraphs 4.8 to 4.15 of the call for inputs).
- Whether it would be useful to clarify how we might use our persistent misuse powers in relation to calls made during unsociable hours and if so how and why.
- The use of and harm caused by (a) localised CLI or multiple CLIs (b) IVM systems being used for outbound dialling where a consumer is kept on hold rather than immediately connected to a live agent.
- Whether a checklist and/or best practice guide would be useful and, if so, how such documents could be best developed and communicated.

Summary of responses

<u>The current five examples of misuse</u>

A8.69 BT, DJN Solutions, CSA, TSI and Noble Systems considered that the five examples of misuse remain relevant but how these are prioritised may need changing. For example, scams (potentially in conjunction with number spoofing) are a big issue and harmful whereas number scanning is less of an issue now (DJN Solutions, BT, TSI, Vodafone, confidential response). BT, Vodafone and a confidential response considered that Ofcom should enforce against all the examples (for example, spoofing) not just silent and abandoned calls BT recommended we set out which enforcement body will take action in certain cases (for example, police, ICO).

A8.70 TrueCall suggested rotating caller IDs, localised Caller IDs, call centres failing to identify themselves (or hanging up when asked to identify themselves), failure to present a returnable caller ID or failure to register their calling number on a public register to all be examples of misuse.

CLI information

A8.71 Seventeen respondents considered that withholding a CLI causes consumer harm as a consumer cannot return a call, find out who called, complain about the call or opt out of future calls (Daviker, Reactiv Media, CCP, Noble Systems and two confidential responses). Use of a CLI is also critical for the effective use of call blockers or services that rely on caller display to block and filter certain calls (the CCP, TSI). Several respondents also commented that 'rogue' companies deliberately withhold or spoof CLIs to avoid detection (Noble Systems, Clearanswer call centres, and a confidential response).

A8.72 Nineteen respondents considered that CLIs should be provided, be valid and returnable (Genesys, ICO, DJN Solutions, SSE, TrueCall, Revive Management Solutions, CCP and two confidential responses) with several respondents stating this should be a formal requirement (including Mr Butler, CSA, Reactive Media, four confidential responses). However, five recognised the limitations of PECR and the need for government action for this to happen (SSE, DJN Solutions, ICO, DMA, CCP) and the ICO suggested the constraints relating to action around withholding of CLIs could usefully be considered when the e-Privacy Directive is reviewed. The CCP felt that CLI display should be offered free of charge by default (which is not the case currently among all providers) to consumers as it is main available defence mechanisms against nuisance calls. One respondent (Genesys) did not consider it was possible to guarantee a CLI is effectively conveyed through the public switched telephone network to the recipient of the call and is outside the control of the originator of the call.

A8.73 Some respondents suggested for CLIs used by organisations to be on a public register (TSI, TrueCall, DMA, BT and a confidential response). TrueCall and DMA considered that companies should register their CLI with a central publicly accessible register, potentially run by Ofcom and BT considered that this idea should be explored further. TrueCall set out that the provisions are already part of the Direct Marketing Association's self-regulatory code of conduct (21.40) and mirror provisions already in Ofcom's Persistent Misuse Statement for calls made with Automatic Calling Equipment, and the key provision has been a legal requirement in the USA since 2004.

A8.74 Where a consumer makes a return call to the given CLI, several respondents felt this should go to message and/or a live agent (DJN Solutions, SSE, TrueCall, Mr Butler, BT and two confidential responses) and identify the organisation (CSA, Mr Butler and two confidential responses). TrueCall stated that this is already part of the Direct Marketing Association's self-regulatory code of conduct (21.41). BT considered a recorded message was better than live agent as the consumer may not wish to speak to a live agent. Others considered calls could go to a live agent during business hours or answer machine outside of business hours. However, TrueCall raised the concerned this requirement could lead to more call centres not providing CLIs.

A8.75 Nexbridge Communications recommended dialling organisations be required to ensure data is TPS checked prior to calling for example, using live "per call" TPS checking to reduce complaint levels.

Using localised or multiple (rotating) CLIs

A8.76 Four respondents (ICO, TrueCall and Ltwo confidential responses) considered the use of localised and/or rotating CLIs was or could be misuse and causes consumer harm as they are used to disguise the calling party making it more difficult for consumers to make decisions about which calls to accept on the basis of CLI display and make call blocking lists more complicated and lengthy. TrueCall considered that inauthentic CLIs is a growing problem so any form of deceptive manipulation of CLIs should not be tolerated. ICO considered that whilst leaving a genuine, localised CLI that a consumer can use to return an organisations calls could be beneficial from a cost perspective, there is a need to consider whether leaving such a number could mislead individuals into thinking the call was from local friends or family or otherwise deceptive.

A8.77 Fifteen respondents did not think the use of localised and/or multiple rotating CLIs was an issue as long as the CLIs used were valid and returnable (Genesys, DJN Solutions, CSA, Reactiv Media, Revive Management, Daviker, Nexbridge Communications, and two confidential responses). Especially if there is an existing relationship and it is important to reach the consumer (for example, debt recovery). One respondent commented that it was the use of ACS in general and the volume and frequency of calls made to customers which result in harm rather than the use of rotating multiple CLIs.

A8.78 Seven responses stated that the use of localised CLIs provide consumers with a quick and straightforward means of returning a call with the cost of a local call (Genesys, Revive Management, Reactiv Media, CSA and Nexbridge Communications) and allows customers to return the call and reach the relevant call centre location/local branch (Nexbridge Communications) where geographic local area codes can be set on occasions when the network has failed (SSE).

A8.79 Three respondents considered that preventing the use of multiple rotating or localised CLIs may cause consumer harm. For example, these were often used for debt recovery where it is important to reach the consumer and maximise chances of a successful contact (DJN Solutions, Sigma Financial , three confidential responses). Removing this option could make it take longer to reach consumers (SSE and a confidential response) and increase consumer contact rates. Nexbridge Communications considered inability to use localised CLIs may result in call centres not presenting a CLI at all or force operations off shore.

A8.80 Nexbridge Communications and Noble Systems considered that any changes to policy in respect of using localised or multiple and rotating CLIs should only be made if there is evidence of the harm being caused to consumers. BT commented that any change to relating to the use of localised CLIs should be aligned with the CLI guidelines NICC is currently reviewing.

Calls made during unsociable hours

A8.81 Five respondents considered no extra guidance was needed as calls made during unsociable hours are not common (Genesys, CSA) and most organisations with a reputable automated dialling system do not make such calls (Revive Management, Daviker) or follow set guidelines (CSA say its member follow rules outlined by the FCA).

A8.82 Four respondents stated that they have controls and measures in place (by configuring calling windows within the dialler platform) to ensure their ACS cannot

make calls in unsociable hours (Genesys, Revive Management and a confidential response). Four provided information on their current calling hours for example, Sigma Financial (8am – 9pm Mon – Thurs, 8 – 6 Friday) and Daviker (none of its clients operate before 8am or past 8 pm).

A8.83 Calls made during unsociable hours were felt to be made by those deliberately ignoring the policy (Genesys, Revive Management, Daviker) or by those based outside the UK. (including Genesys, Daviker and a confidential response).

A8.84 Six respondents thought more guidance would be useful for example, defining what unsociable hours are (Sigma Financial, the CCP and three confidential responses) and BT thought it would be needed if we did wish to take action against calls made during unsociable hours. The CCP suggested Ofcom consider imposing a curfew on when calls can be made (for example, before 9am or after 7pm) or specifying which hours might be considered unsociable.

Live caller identifying themselves

A8.85 Several respondents considered that businesses should identify themselves when calling a consumer (TrueCall, TSI and two confidential responses) and be monitored against this (TrueCall and a confidential response). TrueCall commented that call centres hanging up when ask to identify themselves is an example of misuse and the policy should be changed to reflect this. TSI said it was concerning for vulnerable consumers when companies do not identify themselves as it breaches current legislation and prevents complaints being made.

A8.86 We have passed stakeholders views on this to the ICO and Government for their consideration. However, we note that PECR requires an organisation carrying out marketing activity such as live calls to give the identity of the caller and if requested either a contact address or Freephone number they can be reached on (regulation 24(1)(b)).

Use of automated voice messaging systems

A8.87 Several respondents said they used IVM where there is a pre-existing relationship with a consumer for example, fraud prevention, appointment confirmation/reminder, outage notifications, payment reminders, warnings when you are about to go over usage limits and incur charges, notification of missed payments and debt collection (Daviker, Revive Management, Genesys, FICO, Aspect, Sigma Financial, Revive Management, four confidential responses).

A8.88 Eleven considered its use to be beneficial to consumers (if well managed and used responsibly BT, Noble Systems, confidential response). Aspect and a confidential response stated IVM use prevented silent and abandoned calls. It can also prevent the need for AMD to be used or prevent false positives as if an answer machine is detected, IVM is used to see if a human responds to the message with the 24/72 hour rules preventing inadvertent bombardment if a consumer has issues responding to the IVR. It also allows consumers to (if they choose) self-serve with no agent interaction which is quicker and avoids embarrassment if the call is about payment collection (FICO, Revive Management, Genesys). Reactiv Media considered it best practice to give consumers the ability to “opt-out” of the IVM and speak with an agent. However, Daviker and Noble Systems considered that if the message has an option to speak to an agent, it is not unreasonable to be put on hold for a finite period.

A8.89 Some respondents did acknowledged that the 'misuse' of IVM/IVR could result in an example of persistent 'misuse' or consumer harm for example, where it is used to speed up dialling and where consumers are placed on hold immediately or for a long time after for example, pressing '1' to connect to an agent (BT, Genesys and a confidential response). FICO stated that the poor and inappropriate use of IVR technology damages the effectiveness of genuine and appropriate use and damages the trust between the consumer and a calling party in the industry generally.

A8.90 Noble Systems and Daviker considers we should enforce the existing guidelines, rather than change them, targeting those using IVM for broadcast messages such as PPI claims, injury claims and other illegal marketing calls not those compliant users of the technology.

A8.91 However, 12 thought further guidance would be useful. Two confidential respondents recommended we differentiate between bad and legitimate use for example, it should not be used as a way to speed up dialling or put immediately on hold and details as to who is calling must be provided at the start of the call so consumers can choose whether to speak to an organisation or allowing a consumer an opt out (Revive Management and a confidential response). Several respondents agreed guidance would be useful in the policy on measures to be taken to reduce harm caused by IVM use (BT, DMA, FICO and two confidential responses). Genesys suggested the policy strike a balance between preventing serious persistent misuse but not eliminating the benefits of ACS and IVM to contact consumers where such contact forms part of a business relationship. Sigma Financial, two confidential responses and DMA suggested the policy make clear that IVM systems should only be used where a customer is not placed on hold, set a maximum number of seconds or require consumers to be connected in a timely manner. The DMA and a confidential response considered lack of guidance was in direct conflict with the rules on abandoned calls and time limits similar to abandoned calls should be imposed. A confidential response also considered IVM calls should be included in the three per cent abandoned call rate.

Check list/best practice

A8.92 We are concerned that some organisations, particularly those operating from overseas or contracting out services to call centres, may not fully understand the steps which we think should be taken to help avoid causing persistent misuse and to reduce the consumer harm this can cause.

A8.93 The call for inputs set out one option to try to raise awareness of the persistent misuse rules in the Act and the associated policy and in turn increase compliance and reduce consumer harm: a checklist or short summary to accompany the full policy. This could be used to help engage with overseas call centres and regulators and also be a useful reference for those contracting out call centre services (for example, it could help inform thinking about what it may be useful to consider when setting up service level agreements and in on-going performance monitoring). We considered this could potentially be a useful tool to aid and encourage compliance which could be produced once any revised policy was finalised.

A8.94 The call for inputs also asked whether it would be useful to set out examples of best practice to allow lessons to be learned and shared across call centres. We set out that we already make suggestions to organisations on how to avoid future, more serious and potentially damaging, enforcement action as part of any investigation we carry out. We considered it could be useful to draw on these and other industry

good practice into one place for ease of reference. For example, the best practice could consider processes organisations have in place to avoid problems, how consumer data (including opt outs) is handled and management of ACS/ predictive diallers. Trade associations are likely to already offer some guidance to their members so this may be something they would be interested in taking forward. Regardless of whether a best practice guide is produced, organisations would need to ensure that they abide by the law on persistent misuse, taking into account our policy.

Summary of responses

A8.95 There was some support from respondents (11 responses) in relation to a best practice guide or checklist (BT, Genesys, SSE, CSA, Noble Systems, Revive Marketing, three confidential responses) to inform the currently uninformed and remove uncertainty for those trying to comply as some of the guidelines are open to interpretation for example, use of IVM and AMD. However, Noble Systems did not think it would have much effect on those deliberately not following the policy.

A8.96 BT considered awareness of the policy could be raised through workshops to promote understanding and reduce any unintentional non-compliance. SSE felt Ofcom would be best placed to develop and set out best practice guidelines as not all dialler users belong to relevant 'dialler' trade bodies and CSA were happy to work with Ofcom to develop best practice guidance or a checklist.

Question 6: Issuing notifications

A8.97 The call for inputs outlined that the policy sets out our powers under the Act and Ofcom's approach to issuing s128 notifications, section 129 notifications and section 130 penalty notices.

A8.98 The policy also includes information on our priorities on issuing notifications under section 128 for example, administrative priority based on form of persistent misuse and consumer harm. The policy prioritises persistent misuse and harm in three ways: qualitative (the degree of harm caused), quantitative (the amount of persistent misuse and how many people affected) and deterrence (to stop and deter new forms of persistent misuse).

A8.99 The policy also sets out the steps taken by organisations to reduce the harm caused by silent and abandoned calls (if such calls made).

A8.100 We stated that we had not identified any significant changes to this section of the policy. We asked stakeholders for views and evidence on any changes they considered may improve understanding or clarity in this area of the policy.

Summary of responses

A8.101 Only nine respondents provided a direct response to this question, three of which agreed that no significant change was needed to the policy (Noble Systems, Sigma Financial and CSA). DJN Solutions agreed that the processes are largely controlled by legal requirements and work reasonably well.

A8.102 A number of respondents considered that Ofcom should prioritise enforcement action differently (for example, by targeting those intentionally ignoring the policy rather than those trying to comply). The DMA recommended greater clarity and transparency over what will trigger enforcement action and how sanctions are

decided. The detail of these responses are covered in the summary of responses too question 9 below (what factors may influence a call centre's likelihood of adhering to the policy). Below we summarise the comments made by the nine respondents in respect of this question.

A8.103 Several felt that distinction should be made between those who have an existing relationship with a customer/ legitimate reasons for making contact with consumers for example, customer care, reminder for payments, debt resolution, appointment reminders and those who do not (for example, sales and marketing) (Aspect, Sigma Financial,. Genesys, CSA, four confidential responses).

A8.104 Several felt we should focus on deliberate non-compliance not just pick on the easy targets (BT, DMA, TrueCall, Daviker and a confidential response). For example,

- BT considered that the prioritisation section should make clear that those trying to comply but fail on occasion will be treated significantly differently to those deliberately not complying as they may only need advice or clarification of the rules leaving Ofcom resource to focus on those harder to trace and potentially causing more harm. Vodafone suggested that where a call centre has tried to comply but has technically breached part of the policy Ofcom should work with call centres to remedy and avoid repetition of harm rather than issue penalties.

- TrueCall considered it a poor use of resources to target call centres that are generally compliant, but whose standards have slipped for a period of time.

A8.105 Several suggested alternative approaches to penalties and enforcement which are discussed in more detail in the summary of question 9 below.

A8.106 One respondent (Fair Telecoms Campaign) does not does not think we use our powers correctly as they enable it to intervene in specific cases not extend the scope of Ofcom's regulatory responsibilities to cover all call centres and other users of telecoms networks. They should be used for prompt and exceptional interventions in specific cases not covered by other regulatory regimes. They consider that the section 128 Notification is a Notification of Ofcom's determination that it has "reasonable grounds for believing" that a person has engaged in activity "… the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety". The power must be used whenever this occurs and should make the misuse stop as soon as it is identified. It cannot represent a firm determination that a specific regulatory condition has been breached and that a penalty will follow. They consider that we should use section 129 powers more as this the only means that Ofcom has to apply any specific enforceable requirements to cease "persistent misuse". This can only be applied in a specific case and only following a section128 Notification where the trader hasn't taken all the steps we think are appropriate to stop the persistent misuse. They consider that the section 130 Penalty should follow a breach of the terms of a section 129 Enforcement Notification.

A8.107 Several respondents commented on the information Ofcom provides in relation to notifications, including our informal work. Sigma Financial and BT found the update bulletins and notifications useful both in terms of learning from the outcomes of cases and seeing action is being taken. However, DJN Solutions and a confidential response recommended more visibility of informal enforcement work for example, information requests issued but no further action taken and statistics relating to investigations where no further action was taken to improve confidence in the process. DMA recommended greater clarity over enforcement notices as the

redactions leave important details about the breaches unknown making it hard for companies to learn from the errors of others.

A8.108 ITSPA sought clarification over whether any fines levied by Ofcom or the ICO would be used to cover the increased costs of enforcement.

Questions 7, 8 and 9: How we plan to assess potential changes

A8.109 The call for inputs set out (section 6) that should we consider it appropriate to take any changes to the policy forward, we would assess them in more detail following a typical impact assessment (where we assess benefits (for example, possible reductions in the overall number of silent and abandoned calls and the harm these calls cause) and costs (which ae likely to mainly fall on those making outbound calls which may be passed on in whole or in part to call centre clients and in turn consumers)).

A8.110 Question 7 asked for views on the current operation of outbound call centre market, in particular:

- The size of the current outbound calling market for example, the annual number of calls made as well as the value.
- The size of total annual costs in the outbound market (where possible split by operating costs and capital costs (or depreciation)).
- The average costs per call/per agent (or per agent hour).
- The split of call centre locations (domestic or overseas) that make calls to UK numbers.

A8.111 Question 8 asked for views on the potential costs and benefits of any potential changes to the policy. In particular, whether any of the potential changes would:

- require investment in new technology or other capital costs;
- have an impact on efficiency and operating costs;
- have an impact on call-centre costs or call-centre prices (to their clients);
- affect competition in the call-centre market; and
- have a different impact on different types of call centre, and if so, what factors affect the level of impact.

A8.112 The call for inputs set out (paragraph 6.10) that we are aware that there are some organisations that do not comply with our policy and that these organisations could be the cause of a large number of silent and abandoned calls. We noted that adjusting the policy will not address all silent and abandoned calls and that enforcement against firms that breach the law on persistent misuse will still be required. We stated that in assessing any change to the policy we will consider the extent of compliance with the policy and how compliance levels may change. We then asked (Question 9) for views on what factors may influence a call centre's likelihood of adhering to the current or a stricter policy.

Summary of responses

Question 7

A8.113 Only eight responses provided a specific response to this question or more general comments throughout their responses which could be attributed to this question.

A8.114 One confidential response stated there were many factors to consider within some of these answers and calculations and one respondent suggested collecting general data rather than information specific to individual businesses (Reactiv Media).

A8.115 Of those that did provide data on the overall outbound calling market in their responses:

- The CSA referred to the Contact Babel report "UK Contact Centres 2012: the state of the industry" stating that the report estimates:
  - the number of people employed in the UK outbound industry as 290k;
  - a total of 1,071,125 jobs in the sector in 2011 forecast to rise to 1,178,600 jobs in 2015; and
  - estimates have put the outbound industry representing 29% of the total numbers employed.
- A confidential response estimated (no source provided) that around 1 million people are employed by contact centre industry in the UK with around 10 – 20% of contact centre traffic being outbound, the average cost per call to be between £4 – 10 and anecdotally 50% of nuisance calls seem to be from overseas.
- FICO provided information on its own business and stated that it issued over 5 million consumer alerts monthly in their fraud work and on the payment reminder side they handle over 10 million customer accounts per month.
- Noble Systems estimated the 'damage to British business would run to billions of pounds' if the abandoned call rate was amended.

Question 8

A8.116 Over half (27) of respondents provided specific responses to this question or more general comments throughout their responses which could be attributed to this question. The majority agreed that many of the proposed changes could potentially impose costs on their business, impact on their efficiency, potentially impact consumers (through increased costs of providing call centre services) and affect competition (as businesses exit the market). The majority considered that amending the abandoned call rate level would have the most significant impact. The impacts of specific changes for example, changing the abandoned call rate raised by respondents are summarised in relation to the specific change. Some raised concerns that call centres could be forced overseas or to not comply in order to avoid the increased costs/decreased efficiencies. However not many respondents provided specific data on the extent of the cost increases.

A8.117 In relation to whether potential changes would require investment in new technology or other capital costs, there were BT and three confidential responses). BT commented that some changes may require an upgrade or replacement dialler

depending on the age and type of dialler. One confidential response considered that the proposed changes would not require any capital investment but would require increased staff numbers. A different confidential response considered that changes to the policy reduce investment in new technology.

A8.118 Several responses considered that potential changes would have an impact on efficiency and operating costs. For example, a loss of profitability (Reactiv Media and a confidential response), increase costs (DMA, Sigma Financial and two confidential responses) and reduce productivity/operating efficiency (Noble Systems, Reactiv Media, Sigma Financial, DJN Solutions and three confidential responses). BT and SSE also stated that additional costs could occur when making changes to the dialler and ensuring all systems and processes linking to the dialler are reconfigured as well as documentation, audit exercises etc which take time and costs money.

A8.119 The DMA, BT and a confidential response considered potential changes could have an impact on call-centre costs or call-centre prices (to their clients) as any changes that increased the cost of contacting a consumer for example, by slowing diallers down or requiring more staff to meet same productivity levels would increase prices for consumers and affect the company's profitability. However, one confidential response considered costs to call centres that disturb people with nuisance calls should not be a factor in any considerations.

A8.120 Several responses considered potential changes could affect competition in the call-centre market mainly due to businesses closing or through job losses (Reactiv Media, DMA, Sigma Financial Noble Systems, DJN Solutions and three confidential responses). Sigma Financial considered that any changes which disproportionately affect smaller centres would reduce competition.

A8.121 Several considered that potential changes could impact different types of call centre differently (BT, Sigma Financial, confidential response) due to factors such as size, quality, age and type of dialler. SSE considered that factors affecting call centres would be type of campaigns run, demographic of people contacting and volume of calls made using ACS. Sigma Financial also considered that reducing the use of AMD would impact small contact centres as they would need to increase staff to deal with additional call volumes.

Question 9

A8.122 Just over half (26) of respondents provided specific responses to this question or more general comments throughout their responses which could be attributed to this question. The majority considered there is a problem with less reputable companies not adhering to the current policy with some of stating that many of these calls come from overseas. Many of the respondents considered that while there are 'rogues' who deliberately do not adhere to the policy, there will continue to be silent and abandoned calls.

A8.123 The majority of respondents suggested Ofcom should target enforcement at those not adhering to the policy (including ten confidential responses, Advantis Credit, Genesys, BT, ITSPA, DJN Solutions, Daviker, SSE, Clearanswer call centre, Noble Systems), for example, by

- focusing on overseas call centres (including Genesys, ITSPA and two confidential responses);

- heavily fining those who disregard the policy (including Noble Systems and Genesys); or

- focusing on call tracing (BT).

A8.124 One respondent (Daviker) considered that the rise of the open source dialler may have caused an increase in complaints, as the cost to market to open a call centre is reduced and open source diallers are not fully complaint and often don't offer the features available on the more commercial products.

A8.125 This was in place of introducing further measures in the policy which will only impact on and punish those trying to meet the policy as it will increase the burden (by increasing costs and reducing efficiencies) on those adhering to the policy) (including BT, Advantis Credit, five confidential responses, Vodafone, Clearanswer call centres, DJN Solutions, ITSPA, Daviker, Genesys, and Noble Systems). For example, DJN Solutions considered that those not meeting the policy are unlikely to change their behaviour just because the rules have changed for example, if working for short term gains on time limited opportunities such as PPI. Some respondents thought tightening the policy could also encourage organisations to

- not use or spoof CLIs (ITSPA, BT) to avoid detection;

- not comply (BT, Noble Systems, two confidential responses);

- go 'underground' or 'rogue' to stay in business (Daviker, Noble Systems, confidential response); or

- go out of business or overseas (Noble Systems, confidential response)

as it will make it harder for those trying to comply to run a business.

A8.126 Not many respondents provided specific ideas as to how to influence adherence to the policy. However, some suggestions included:

- Naming and shaming and high financial penalties as these can influence a business' ability to win business. (including confidential response and Sigma Financial).

- Taking enforcement on a more widespread basis in cooperation with ICO and other regulators (DMA). Vodafone suggested we consider fining offenders for all breaches for example, persistent misuse, PECR rather than treat it as a single offence. Alternatively, one confidential response suggested issuing more notifications and more frequent, smaller fines for example, like points on a driving licence while another suggested imposing an outbound dialling ban for a set time for the worst offenders.

- Distinguish our enforcement action between those trying to comply (who may just need advice) and those deliberately not complying (where penalties should be imposed) (including BT, Vodafone and a confidential response). Vodafone suggested that accreditation by TPS Assured should be taken as evidence of seeking to comply.

- Providing simple clear rules (TrueCall) or clear guidance or a check list to help minimise any non-intentional behaviours (BT).

- Ofcom reviewing individual organisation's processes and providing feedback to help clear up ambiguities and provide comfort that they are operating within the guidelines without the worry of potential fines (confidential response).

- Consider splitting the policy between marketing and those carrying out non marketing activities (including CSA and Sigma Financial and confidential responses).

- Remove an organisation's licence to connect to the network removed. (Mr Butler).

Other suggestions made by responses

A8.127 Several respondents made comments outside of the consultation questions.

Change definition of 'Abandoned Call'

A8.128 DJN Solutions considered that the current definition is too broad and allows for calls which aren't abandoned to be defined as abandoned for example, a call takes place with a conversation but if the caller hangs up first it would still technically fall within the current definition of an abandoned call. We may want to consider including reference to 'no agent available' or have two narrower definitions, one to cover off "no agent available" and one to cover cases where the call is terminated inappropriately for other reasons for example, deliberate action by an agent.

Change definition of Campaign

A8.129 Daviker thinks we should clarify this definition to prevent abandoned call rate being incorrectly reduced by organisations including live calls made when dialling in preview mode as it is virtually impossible to have an abandoned call when dialling in preview mode.

A8.130 DJN Solutions considers that the definition of campaign should be changed as it is very telemarketing centric in its reference to 'scripts' and 'propositions' making it hard for some organisations to decide what they should consider to be a campaign. They recommend changing 'proposition' to 'purpose', and to remove the reference to a 'call script' so the definition of campaign would be "A campaign is identified as making calls for a single purpose to a single target audience."

24 hour and 72 hour call back

A8.131 The CCP supported the move to zero per cent abandoned calls and phasing out of AMD use but recommended that whilst the use of AMD is phased out that as AMD false positives can result in silent calls a live agent should be present for any repeat calls for 72 hours rather than the current 24 hours.

A8.132 DJN Solutions considered that the definition preventing repeat calls to a number within 72 hours (unless a live operator is present) if they have had an abandoned call should be changed so that 'number' is replaced with 'individual' or 'account' or 'calling list record'. The current definition potentially allows an individual to receive an abandoned call on each of their contact numbers and it is increasingly common for people to have more than one contact number. The current definition also prevents a company contacting (unless a live agent is available) a different person who may share the same number (for example, a husband and wife who share a landline). The latter issue causes data protection issues and difficulties for call

centres which may outsource to multiple companies. DJN Solutions acknowledges that the amendments would still leave the possibility of multiple abandoned calls for people who share numbers, but would have the advantage of removing any possible data protection complications.

Limit the number of repeat calls to individuals

A8.133 Six responses considered that repeat calls cause harm especially if over a short period of time and consider repeat silent calls could be annoying especially if no CLI is provided. They considered that limiting redial attempts in some way should be considered. For example, limiting the number of redial attempts made to individuals to between four and eight attempts, something similar to the current 24 hour call back guidance. Reactiv Media suggested specific guidelines about re-contact following failed consumer contact/unanswered calls rather than reducing the abandoned call rate.

Consent

A8.134 The CCP believes the issue of consent to contact a consumer needs to be addressed and PECR should change from an opt-out system to an opt- in (for example, companies can only make calls to consumers they have actively received consent from). Following research in 2011 (Online Personal Data: the consumer perspective) the CCP stated that consumers can only take responsibility if they know how their data is being collected and processed online. In general, the CCP considers that companies should improve consumers' awareness of how their data is collected and used. The CP acknowledged this would need to be considered by ICO, Government and ultimately a matter for Parliament as would require changes to PECR.

Causes of nuisance calls

A8.135 Two respondents (Vodafone and DJN Solutions) suggested that Government activities, such as energy saving and PPI compensation may have helped to create a situation which leads to nuisance calls. They considered that government and regulators could go some way to reducing nuisance calls if thought was given as to the likely markets that will develop from their regulatory initiatives and minimise the opportunities for less scrupulous companies to set themselves up as middlemen in order to make money.

Call blocking technology

A8.136 TrueCall considered that the market for blockers and nuisance call related services is dysfunctional and therefore Ofcom should take the lead in giving guidance to consumers about the effectiveness of call blocking technology and call registry services to allow consumers to make an informed decision when it comes to choosing a provider. A confidential response considered that Ofcom should be doing more to work with companies to block nuisance calls at the network level as call blocker handsets available are too expensive for many vulnerable consumers.