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Business concerns about Ofcom's revised policy statement on silent and abandoned calls

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Introduction

The CBI has been discussing business concerns about the impact of the 2008 *“Revised statement of policy on the persistent misuse of an electronic communications network or service”* (hereafter referred to as the Revised Statement) with Ofcom since August 2009 and a very productive meeting took place on 30th September 2009.

We would like to take this opportunity to acknowledge and thank Ofcom for engaging constructively with us on this issue and particularly for issuing an update relating to the “two second rule” in October. We look forward to a productive and effective consultation on our remaining concerns.

The CBI would like to emphasise from the outset that both it, and its members, fully support the aim of the regulations i.e. to minimise the negative impact of abandoned (including silent) calls on individuals in terms of annoyance, inconvenience or anxiety caused. Our members remain committed to minimising the occurrence of abandoned calls.

The CBI is however concerned about some of practical and operational difficulties caused by aspects of the changes brought in by the 2008 Revised Statement.

Summary of the impacts of the Revised Statement

The business concerns result primarily from the changes to the application and calculation of the 3% abandoned calls limit as outlined in 2008, in particular the inclusion of false positives.

The key concerns of members are:

- A lack of understanding of the significance of the changes introduced in 2008
- The method of calculating the abandoned call rate
- The lack of differentiation between service and marketing calls
- The lack of analysis of business impacts in relation to consumer benefit/detriment

We address each of these issues in further detail below.

The steps that businesses have had to take to ensure full compliance with the Revised Statement have resulted in significant negative impact including:

- increases in costs as a result of turning off answering machine detection (AMD) software for the majority of the time - some members have had to increase staffing levels by up to 30% to maintain customer service levels
- When it has not been possible to employ more staff customer service and contact levels have been impacted (with respect to non-marketing calls)
- Wasted investments in new dialler technology (made on the basis of the 2006 statement). In many cases the equipment purchased has had to be written off
- productivity decreases due to an inability to utilise purchased technology
- staff demotivation when AMD is turned off due to the repetitious nature of the task

These issues have been compounded by the immediate application of the Revised Statement and the lack of a transition period for businesses to assess the impact of the requirements and take the appropriate steps. They were not

even permitted time to undertake the necessary calculations to test compliance with the new requirements.

In order to overcome these issues we have outlined some potential actions that Ofcom could take to mitigate these impacts (in order of preference):

- a) Provide a balanced equation for calculating abandoned calls;
- b) Introduce a different approach for service versus marketing calls
- c) A review of the appropriateness of the 3% limit.

Why are businesses concerned about the 2008 Revised Statement?

As stated above, the business concerns result primarily from the changes to the application and calculation of the 3% abandoned calls limit as outlined in 2008, in particular the inclusion of false positives.

AMD software has been used for many years by businesses to prevent calls picked up by answering machines being passed through to agents. It is not unusual for 50% of dialled attempts to be picked up by an answering machine. Being able to screen out these calls delivers significant financial and operational benefits to business and helps to deliver products at lower costs to the consumer.

AMD software does make errors, however, which are known as false positives. These are where a person is incorrectly identified as an answering machine and the call is disconnected.

It is not possible to identify which calls are false positives, indeed if it were possible the software would not have made the error in the first place. The Revised 2008 Statement required businesses utilising AMD technology to calculate a reasoned estimate of their average false positive rates and include this in their calculation of abandoned calls to assess their compliance with the 3% rule.

Prior to 2008 our members did not believe that AMD false positives were to be included in the 3% limit. Including an estimation of these calls from 2008 put many companies in immediate breach of the rules, whereas they were previously compliant. The only options available were to either breach the rules, which no legitimate business wants to do, or to turn off AMD technology which has had significant productivity impacts.

It is important to emphasise that the obligations with regard to other types of abandoned calls are not being questioned and businesses can often achieve significantly below the 3% limit. The business concerns relate only to the new requirement for the inclusion of false positives.

Business supports the aims of the Statement

Business takes the issue of silent and abandoned calls seriously. In recent years business have succeeded in reducing the silent and abandoned call rate.

A recent report published by the Telephone Preference Service indicates that the number of silent calls has been consistently falling. The average number received by consumers has reduced by around 70% since 2005. This demonstrates that Ofcom's policy statements since 2006 have been achieving the desired effect.¹

We are concerned that some of the policy drivers for the Revised Statement are driven by consumer irritation at receiving "cold calls" for marketing purposes rather than the specific issue of silent calls. As such we believe that the approach to regulation does not sufficiently account for the wide variety of other calls that businesses make including fraud prevention and product recall which are made for the benefit of customers. Research indicates clearly that complaints to TPS are mainly driven by cold calls (58%), not silent or abandoned calls (10%) or fraud calls (2%).² Other countries, such as the US, have recognised this distinction in their legislation.

We are also concerned that the regulations do not distinguish between silent and abandoned calls in terms of their impact on consumers. Whilst an abandoned call will cause some level of consumer annoyance, an *abandoned call* where an automated message is played will cause significantly less anxiety than a silent call.

In addition whilst UK plc is doing all it can to ensure ongoing compliance, there is little or no impact that Ofcom can have on calls originating from outside the UK from non-UK organisations. Business is concerned that the data gathered on abandoned call levels does not differentiate between calls made by UK and non-UK business. In order to achieve the ultimate aim of the regulation it is important to ensure that the origin and cause of silent calls is fully understood so that UK-based businesses are not judged on the behaviour and practices of unregulated overseas call centres.

We are concerned that the regulations apply blanket approach that does not recognise important distinctions in the type, origin and end impact on the consumer of the calls made by businesses.

¹TPS report on unwelcome calls 2008
http://www.dma.org.uk/_attachments/resources/4957_S4.pdf
² Ibid

We believe that the 2008 Revised Statement was a change of policy

There is a difference of opinion between business and the regulator as to whether 2008 represented a new policy. This is important because it has influenced the decision to not allow a transition period or to mitigate the impacts of the changes on business.

Ofcom has suggested that the 3% limit introduced in 2006 applied immediately to all types of abandoned calls including those generated by AMD. In the view of the regulator therefore the 2008 statement was a clarification rather than a change of policy.

Business however challenges this on the basis that paragraph 1.9.1 in the 2008 statement contains a reference to a “fresh proposal to include AMD in the 3% limit”.

Furthermore, to the best of our knowledge, no business believed that AMD was included in the 3% limit, nor was its inclusion mentioned in the 2006 statement. This belief was compounded by the fact that between 2006 and 2008 no enforcement action was taken or clarification provided in relation to false positives. Indeed many businesses invested significantly in new dialler technology which provided it on the understanding that AMD was an acceptable technological tool to use in the context of Ofcom’s regulations. This seems to support the business position that 2008 did represent a change.

On this basis we believe it is appropriate to consider the significant impacts that have resulted and what steps can be taken to mitigate them whilst pursuing the ultimate policy aim to reduce the impact of silent and abandoned calls on consumers.

Impact of the Revised Statement

Our members are concerned that the negative impact on UK plc arising from the introduction of the Revised Statement is not balanced by any incremental benefit on individuals. The inclusion of false positives within the 3% abandoned call rate effectively prohibits the use of AMD for the majority of the time. Ultimately any increase in costs incurred by UK plc (as a result of not being able to use AMD) will inevitably and ultimately impact the end consumer. Given that the policy intention is to benefit customers, this would appear to be a potentially serious, counter-productive consequence.

As outlined above there are some situations in which individuals are keen for firms to do all they can to get in touch with them as quickly as possible, e.g. recalling a defective product or contacting them about a potentially fraudulent activity on their bank account. In the US the laws

relating to silent/abandoned calls (the Federal Trade Commission’s -Telemarketing Sales Rules) have been drafted to exclude these and other core business service calls.

In the current economic climate, it is especially important that firms are able to contact customers with regard to debt repayments. Extended periods without contact can result in increased financial detriment for individuals. By remaining in regular contact with individuals firms, can often offer assistance and prevent further enforcement action. Under the current regulations, unless businesses invest many millions in employing additional staff to compensate for the productivity loss of turning off AMD, customers will travel further through the process before contact is made.

It is also worth highlighting the impact that these regulations have on individuals within the call centres. The greater use of call screening and increased usage of mobile phones means that the number of answer machines detected either by AMD technology or by contact centre staff is on the increase. With AMD switched off the repetitive nature of listening to answering machines is damaging to the morale of the staff. Businesses that have switched off AMD are reporting a significant decrease in staff moral and feedback suggests that this is actually getting worse over time.

This impact on morale and the repetitive nature of the task could also lead to accidental call terminations. This could happen as a result of human error as agents increasingly “expect” to hear an answer machine and accidentally terminate a call when in fact an individual has answered. Although there is no evidence yet that this is a widespread phenomenon, it could undoubtedly lead to what will be perceived as more “silent” calls from the customers’ point of view.

CBI proposals

On the basis that we believe there has been a significant change to the policy we urge Ofcom to act to reduce the substantial burden on the business community particularly given the ultimate impact this has on the end consumer. As a first step the CBI calls on **Ofcom to recognise the change in the 2008 statement and the impact this has had**. It must be acknowledged that the 2008 Revised Statement represented a change in the requirements imposed on businesses and therefore action is necessary to enable previously compliant businesses to remain compliant without rendering significant capital investments stranded.

We suggest a range of options that Ofcom should consider in order to resolve these issues:

1) Review how the abandoned call limit is calculated.

One interpretation of the Statement is that the 3% calculation only takes account of 'live' calls; that is, customers put through to agents (although this is ambiguous in the document). We would urge Ofcom to clarify that businesses are able to take account of all calls passed to agents because including only "live calls" does not provide a balanced equation.

Calls put through to agents do not always have live customers on the end. Sometimes answer-phones are incorrectly identified as live individuals and put through to an operator – this is the false positive issue in reverse; so called false negatives. In fact the number of false negatives is likely to be higher than the number of false positives as AMD technology is designed to transfer a call to an agent if it is unsure whether the call has been picked up by a person or an answering machine.

Just like normal customer calls, sometimes there are not enough agents to handle these calls and so they are abandoned and are recorded by the dialler as an 'abandoned call'. Therefore 'abandoned calls' as recorded by the formula do not just include live customers they also include answer-phones.

We therefore call for Ofcom to clarify that the calculation is intended to take account of 'all calls'; in other words, both customers and answering-machines put through to agents. This is important to provide a balanced equation, particularly as answer-phones are counted as abandoned if an agent is not available.

We believe that this is necessary and would, in our view, be consistent with maintaining the broad principles and parameters of the 2008 Revised Statement. In addition there are some more fundamental reforms which could be undertaken to further mitigate business concerns.

2) Differentiation between different types of calls within the regulations. In certain circumstances businesses are required by law to make contact with customers including where fraud is suspected on a customer's account or to give notification of a health and safety issue with a product. Given the need to make contact quickly in these circumstances, calling customers is the only feasible option.

There are other calls which are not legally required but also operate in the consumer interest, for example debt advice where early resolution is in the interest of both the consumer and the lender. Failure to contact

customers in a timely manner can lead to deterioration of the customers' credit rating.

As previously mentioned research indicates that 58% of complaints to TPS are related to cold calls, 10% relate to silent or abandoned calls whereas debt collection makes up only 2% of complaints.

One option could therefore be to separate calls out into two categories, marketing calls and service/operational calls. This split has precedents in other legislation such as data protection rules under which individuals have a specific right to opt out of receiving direct marketing from any organisation but there is no equivalent right in relation to other contact (e.g. operational and service communications). This is in recognition of the perceived difference in status of these two types of communication – one being something that is optional and one being a prerequisite for a business relationship. This approach is also pursued in the United States under the [Federal Trade Commission's - Telemarketing Sales Rule](#) which, as its name suggests, applies only to marketing calls.

Service/operational calls would be intended to cover those calls where:

- there is a contractual arrangement between the firm and the individual being contacted, which sets an expectation of regular and ongoing communication; or
- the firm is operating in an environment where the regulatory requirements governing communication with consumers would anticipate firms acting in a fair and reasonable manner, or where the firm has committed to appropriate high industry standards.

This is not to say that service/operation calls should be unregulated. We appreciate that even if the customer has an existing relationship with a company a silent or abandoned call could cause anxiety or annoyance and business must be responsible in its approach to contacting customers. However, legal and good practice requirements to contact what can be a large number of customers in a short timescale must be reflected within the regulations.

3) Conduct a fundamental review of the appropriateness of the 3% limit. In light of the new requirements to measure and include false positives in the 2008 Revisited Statement, it may be appropriate for Ofcom to consider whether the 3% continues to be the right ceiling for abandoned calls.

We note that in the 2006 statement Ofcom acknowledged that there was no evidence gathered to quantify the detriment caused to consumers by abandoned calls due to “difficulties in measuring this and limited time available” (A1.7 page 29). Given the lack of empirical evidence to support the 3% limit and the material detriment that aspects of the Revised Statement are imposing on business, in the absence of any of the modifications outlined above we would seek an evidenced based review of an alternative limit from both a consumer and business perspective.

