



Notification under section 128  
of the Communications Act 2003  
regarding persistent misuse of an  
electronic communications  
network or electronic  
communications services

Notice served on  
MYIML Limited by the  
Office of Communications ("Ofcom")

**This is the non-confidential version.**  
Confidential information has been  
redacted.  
Redactions are indicated by [X].

**Publication date: 18 August 2014**

# Contents

Section	Page
Notification under section 128(1) of the Communications Act 2003	2
1 Explanatory statement	5

Annex	Page
1 Information request sent to MYIML under section 135 of the Act dated 7 March 2014	20
2 MYIML response to Information request sent under section 135 of the Act	25
3 Information request sent to [X] under section 135 of the Act dated 16 April 2014	26
4 [X] response to Information request sent under section 135 of the Act	27
5 Email received from Gradwell Communications Limited on 4 February 2014 regarding administration of CLI number 08443760139	28
6 Information request sent to Gradwell Communications Limited under section 135 of the Act dated 7 February 2014	29
7 Gradwell Communications Limited response to Information request sent under section 135 of the Act	31

# Notification under section 128(1) of the Communications Act 2003

1. This notification is issued to MYIML Limited (“MYIML”), registered company number **08679439** and registered address 53 Fountain Street, Manchester, England, M2 2AN.
2. This notification:
  - a. sets out Ofcom’s determination pursuant to section 128(1) of the Communications Act 2003 (the “Act”);
  - b. specifies the use made of an electronic communications network or electronic communications services by MYIML that Ofcom considers constitutes persistent misuse; and
  - c. specifies the period during which MYIML has an opportunity to make representations about the matters notified.
3. Words or expressions used in this notification and the accompanying explanatory statement have the same meaning as in the Act, except as otherwise defined.

## Section 128 of the Act

4. Section 128(1) of the Act enables Ofcom to issue a notification to a person where Ofcom has determined that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services.
5. Section 128(5) states that “misuse” occurs if the effect or likely effect of use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety or if the network or service is used to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.
6. Section 128(6) defines persistent misuse as any case in which misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents a pattern of behaviour or practice, or recklessness as to whether persons suffer annoyance, inconvenience or anxiety.

## Ofcom’s determination

7. Ofcom hereby determines that there are reasonable grounds for believing that, between 16 December 2013 and 3 February 2014 (the “Relevant Period”), MYIML persistently misused an electronic communications network or electronic communications service on the following basis:
  - a. MYIML misused the network or service in accordance with section 128(5)(a) of the Act as the effect or likely effect of its use was to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; and

- b. the misuse was persistent as set out in section 128(6)(a) of the Act as it was repeated on a sufficient number of occasions for it to be clear that the misuse represented a pattern of behaviour or practice.
8. The reasons for Ofcom's determination are as set out below and further explained in the explanatory statement and annexes accompanying this notification.

## The use Ofcom considers to be persistent misuse

9. In making this determination and in accordance with section 131 of the Act, Ofcom has had regard to its *Revised statement of policy on the persistent misuse of an electronic communications network or service 2010* (the "Policy Statement"), published on 1 October 2010<sup>1</sup>.
10. Accordingly, Ofcom considers that there are reasonable grounds for believing that, during the Relevant Period, MYIML, by virtue of its use of an automated calling system ("ACS"), has persistently misused an electronic communications network or electronic communications services by:
  - i) Making multiple (and certainly more than three<sup>2</sup>) abandoned calls during each of 45 separate 24 hour periods. In total Ofcom estimates<sup>3</sup> on the basis of the evidence available that MYIML made approximately 30 296 abandoned calls in total on those days. Ofcom considers it appropriate to take enforcement action in respect of these periods, having regard in particular to paragraphs A1.12 – A1.50 the Policy Statement, because the abandoned call rate exceeded three per cent of live calls in each of the 45 separate 24 hour periods.
  - ii) In the event of an abandoned call, failing to include details of a *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a geographic rate* (03) number<sup>4</sup> in the information message to enable the called person to return the call and decline further marketing calls from the company. Ofcom considers it appropriate to take enforcement action in respect of this aspect of persistent misuse, having regard in particular to paragraphs A1.51 – A1.52 the Policy Statement.
11. Ofcom considers that the effect or likely effect of such use of the network or service has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety and that this use constitutes "misuse" under the Act.
12. Ofcom also considers that the misuse is persistent as the misuse has been repeated on a sufficient number of occasions for it to be clear that the misuse represents a pattern of behaviour or practice: MYIML provided information that showed it had made multiple

---

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>.

<sup>2</sup> Ofcom's Policy Statement states that although what constitutes persistent behaviour or practice will need to be determined on a case by case basis, it is likely to require a minimum of three instances of the conduct in question (see paragraph A1.10 of the Policy Statement).

<sup>3</sup> As explained in the Explanatory Statement accompanying this Notification, this figure is an estimate based on information provided by the company under investigation. The calculation of the number of abandoned calls involves subtracting from the total number of reported abandoned calls an estimate of the number of calls abandoned after being answered by an answering machine. As such the total number of abandoned calls referred to in this Notification is an estimated approximate figure.

<sup>4</sup> As these terms are defined in the National Telephone Numbering Plan as published from time to time by Ofcom under section 56 of the Act. The version referred to in the Policy Statement has been updated. The current version is at:

<http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numbering-plan201212.pdf>.

abandoned calls during each of the 45 separate 24 hour periods identified. The abandoned call rate during each of these periods exceeded three per cent<sup>5</sup> of live calls. We estimate on the basis of the evidence that MYIML made approximately 30 296 abandoned calls in total during these 45 periods. Furthermore, when the information was played in the event of an abandoned call during the Relevant Period, MYIML failed to include details of an appropriate phone number to enable the recipients to decline receiving further calls.

### **Representations concerning this notification**

13. MYIML has until **5pm on 26 August 2014 (BST)** (the “Deadline”) to make representations to Ofcom about the matters set out in this notification as explained in the accompanying explanatory statement and to take steps for securing that the misuse is brought to an end and is not repeated and remedying the consequences of the notified misuse.

### **Other matters**

14. Following expiry of the Deadline, if Ofcom is satisfied that MYIML has in one or more of the notified respects persistently misused an electronic communications network or electronic communications services, and has not taken all such steps as Ofcom considers appropriate for securing that the misuse is brought to an end and is not repeated, and for remedying the consequences of the notified misuse, then Ofcom may issue a further notification to MYIML under section 129 of the Act.
15. Additionally or alternatively, if MYIML has, in one or more of the ways set out in this notification, persistently misused a network or services, Ofcom may impose a penalty on MYIML under section 130 of the Act.

**Neil Buckley (Director of Investigations, Competition Group) and Chris Taylor (Director of Consumer Policy, Content, Consumer and External Affairs Group) as decision makers for Ofcom.**

---

<sup>5</sup> As explained in paragraph 1.17 of the Explanatory Statement accompanying this Notification, the extent to which ACS users have taken steps to ensure that the abandoned call rate does not exceed three per cent of live calls per campaign or per call centre over any 24 hour period is one of factors set out in the Policy Statement which Ofcom takes into account in deciding whether to take enforcement action.

## Section 1

# Explanatory statement

## Summary

- 1.1 This explanatory statement sets out Ofcom's reasons for its determination at paragraph 10 of the attached notification (the "Notification") that MYIML has persistently misused an electronic communications network ("ECN") or electronic communications services ("ECS").

## Abandoned and silent calls

- 1.2 The Notification concerns persistent misuse of an ECN or ECS by making abandoned calls. Most abandoned and silent calls are not generated with malicious or mischievous intent but by automated calling systems ("ACS"), used by call centres.
- 1.3 Use of ACS (also known as "power diallers" or "predictive diallers") means that calls can be initiated without the need for human intervention. If a telephone number is dialled by an ACS, but when the call is answered by the called person there is no call centre agent available to handle it or presented with the opportunity to handle it, then it becomes an abandoned call. In this instance, Ofcom considers that the recipient of an abandoned call should – as a minimum – hear a recorded information message identifying the caller.
- 1.4 A silent call is a type of abandoned call where the person called hears nothing on answering the phone and has no means of establishing whether anyone is at the other end. Silent calls may occur for a variety of reasons. They can occur for example when an ACS user does not include an information message in the scenario described above or as the result of a handling error by a call centre agent.
- 1.5 Ofcom – through its Consumer Complaints Team – received 35 119 complaints about abandoned and silent calls in 2013<sup>6</sup>. Ofcom-commissioned research published in 23 May 2014<sup>7</sup> showed that 84 per cent of participating UK adults with a landline phone reported experiencing a nuisance call<sup>8</sup> in the four week fieldwork period<sup>9</sup>. 61 per cent reported experiencing a silent call, and an estimated 14 per cent received an abandoned call (with an information message). The research reported that abandoned calls with an information message were considered to be annoying (71 per cent of calls) and distressing (6 per cent of calls).

## Legislative framework

- 1.6 Section 128(1) of the Act enables Ofcom to issue a notification to a person where it has reasonable grounds for believing that a person has persistently misused an ECN or ECS.

---

<sup>6</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/Telecoms\\_Complaints\\_Bulletin\\_February\\_14.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/Telecoms_Complaints_Bulletin_February_14.pdf)

<sup>7</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

<sup>8</sup> Defined as "unwanted" calls. This includes unsolicited sales calls, silent and abandoned calls.

<sup>9</sup> 13 January 2014 to 9 February 2014.

1.7 Section 128(5) of the Act defines “misuse” as follows:

“(5) For the purposes of this Chapter a person misuses an electronic communications network or electronic communications services if –

(a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or

(b) he uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.”

1.8 Section 128(6) defines what constitutes “persistent” misuse as follows:

“(6) For the purposes of this Chapter the cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents –

(a) a pattern of behaviour or practice; or

(b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.”

1.9 Section 128(7) provides further guidance on determining whether misuse occurring on a number of different occasions is persistent as follows:

“(7) For the purpose of determining whether misuse on a number of different occasions constitutes persistent misuse for the purposes of this Chapter, each of the following is immaterial –

(a) that the misuse was in relation to a network on some occasions and in relation to a service on others;

(b) that different networks or services were involved on different occasions; and

(c) that the persons who were or were likely to suffer annoyance inconvenience or anxiety were different on different occasions.”

1.10 Section 129 provides that Ofcom may issue a further notification (known as an “enforcement notification”) in specified circumstances, as follows:

“(1) This section applies where –

(a) a person (“the notified misuser”) has been given a notification under section 128;

(b) Ofcom have allowed the notified misuser an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) Ofcom may give the notified misuser an enforcement notification if they are satisfied –

(a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and

(b) that he has not, since the giving of the notification, taken all such steps as Ofcom consider appropriate for –

(i) securing that his misuse is brought to an end and is not repeated; and

(ii) remedying the consequences of the notified misuse.

(3) An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for –

(a) securing that his misuse is brought to an end and is not repeated, and

(b) remedying the consequences of the notified misuse,

as may be specified in the notification.”

1.11 If the notified misuser fails to comply with the section 129 enforcement notification, then under section 129(6) of the Act Ofcom can enforce compliance with the enforcement notification by way of civil proceedings.

1.12 Section 130 provides that Ofcom may also impose penalties for persistent misuse, as follows:

“(1) This section applies (in addition to section 129) where –

(a) a person (“the notified misuser”) has been given a notification under section 128;

(b) Ofcom have allowed the notified misuser an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) Ofcom may impose a penalty on the notified misuser if he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service.

(3) Ofcom may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuse.



(4) The amount of penalty imposed is to be such amount not exceeding £2,000,000<sup>10</sup> as Ofcom determine to be –

(a) appropriate; and

(b) proportionate to the misuse in respect of which it is imposed.

(5) In making that determination Ofcom must have regard to –

(a) any representations made to them by the notified misuser;

(b) any steps taken by him for securing that his misuse is brought to an end and is not repeated; and

(c) any steps taken by him for remedying the consequences of the notified misuse."

1.13 Under section 131 of the Act Ofcom has a duty to publish a statement of its general policy with respect to the exercise of its powers under sections 128 to 130 of the Act. Ofcom must have regard to the statement of general policy in exercising these powers<sup>11</sup>.

## Ofcom's policy

1.14 Ofcom's current statement of general policy (required by section 131 of the Act) was published on 1 October 2010 as the *Revised Statement of policy on the persistent misuse of an electronic communications network or service 2010* (the "Policy Statement")<sup>12</sup>.

1.15 The Policy Statement provides examples of the types of behaviour that Ofcom considers may be forms of persistent misuse. One such example is making abandoned calls as a result of the use of an ACS. In the document *Tackling abandoned and silent calls* (the regulatory statement in which the Policy Statement was published)<sup>13</sup>, Ofcom notes that, "*Abandoned and silent calls will almost invariably result in consumer harm, which may range from inconvenience and annoyance through to genuine anxiety*"<sup>14</sup>.

1.16 The Policy Statement sets out that, in deciding in any case whether to take enforcement action, Ofcom will be guided by administrative priority determined by the level of consumer detriment.

1.17 It also says that Ofcom will take account of steps taken by ACS users to reduce the degree of consumer harm that abandoned or silent calls cause. Paragraphs A1.12- A1.59 of the Policy Statement provide guidance to ACS users as to how they can achieve this, and sets out the following measures:

---

<sup>10</sup> Section 130(4) of the Act as amended by the Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2010, SI 2010/2291, section 2(1).

<http://www.legislation.gov.uk/ukxi/2010/2291/article/2/made>

<sup>11</sup> Section 131(4) of the Act.

<sup>12</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>.

<sup>13</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

<sup>14</sup> 1.6. of the regulatory statement which accompanies the Policy Statement.

- i) ACS users should ensure that the abandoned call rate is no more than three per cent of live calls per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over a 24 hour period. The Policy Statement provides the formula for calculating this. It also notes that all ACS users may exclude a reasoned estimate of calls abandoned to answer machines from the abandoned call rate<sup>15</sup> and Ofcom has used this allowance in the calculation of MYIML abandoned call rates during the Relevant Period.
- ii) As the abandoned call rate will depend on whether or not answer machine detection technology (“AMD”) is used, AMD users must include a reasoned estimate of AMD false positives<sup>16</sup> when calculating an abandoned call rate (because AMD false positives are abandoned calls and should be recorded as such).
- iii) In the event of an abandoned call (other than an AMD false positive), the ACS should start playing a very brief recorded information message no later than two seconds after the telephone has been picked up or within two seconds of the call being answered<sup>17</sup>. The information message should contain at least the following information:
  - the identity of the company on whose behalf the call was made (which will not necessarily be the same company that is making the call);
  - details of a *Special Service* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a geographic rate* (03) number<sup>18</sup> the called person can contact so they have the possibility of declining to receive further calls from that company; and
  - the information message should not include marketing content and should not be used as an opportunity to market to the called person.
- iv) Where a call is not answered, the phone should ring for a minimum of 15 seconds before the call is terminated.
- v) When an abandoned call (other than an AMD false positive) has been made to a particular number, the ACS user should ensure that any repeat calls to that number in the following 72 hours are made with the guaranteed presence of a live operator.
- vi) When a call has been identified by AMD equipment as being picked up by an answer machine (including AMD false positives), the ACS user should ensure

---

<sup>15</sup> Policy Statement, A1.34.

<sup>16</sup> AMD false positives occur when the technology mistakes a live person for an answer machine and terminates the call. In such circumstances the called party will experience a silent call.

<sup>17</sup> “*within two seconds of the call being answered*” means either (i) no later than two seconds after the telephone has been picked up; or (ii) no later than two seconds after an individual begins to speak (or “*start of salutation*”); or whichever is more applicable to the technology deployed (A1.51 of the Policy Statement).

<sup>18</sup> As these terms are defined in the National Telephone Numbering Plan as published from time to time by Ofcom under section 56 of the Act. The version referred to in the Policy Statement has been updated. The current version is at <http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numbering-plan201212.pdf>. ‘*UK wide Number at a geographic rate*’ is no longer listed as a defined term. The equivalent term in the revised plan is now, ‘*Non-Geographic Numbers charged at a geographic rate* (see Part A: Telephone Numbers Available for Allocation, page 11)’.

that any repeat calls to that number within the same 24-hour period are made with the guaranteed presence of a live operator.

- vii) For each outbound call, the ACS user should present a number to which customers can make return calls. This should be either a geographic number or a non-geographic number adopted as a Presentation Number that satisfies the Ofcom Guide to the use of Presentation Numbers<sup>19</sup>.
- viii) If a consumer calls the contact number provided, this should not be used as an opportunity to market to that consumer without his or her consent.
- ix) The ACS user should keep records for a minimum of six months that demonstrate compliance with the above procedures.

1.18 One effect of the Policy Statement is that Ofcom may regard the making of abandoned and silent calls as persistent misuse. Another is that one of the factors Ofcom will take into account in deciding whether to take action in respect of persistent misuse is whether the abandoned call rate, as calculated in line with the Policy Statement, exceeds three per cent. Another still is that Ofcom may regard the failure, in the event of an abandoned call, to play a recorded message, as persistent misuse in respect of which we take enforcement action.

## Ofcom's programme of monitoring and enforcement

- 1.19 On 22 June 2006 Ofcom opened an own-initiative programme of monitoring and enforcement of principles preventing annoyance caused to consumers by silent and abandoned calls (the "Programme"). The Programme has been on-going since that time.
- 1.20 In December 2010, we published an open letter<sup>20</sup> to ACS users about the 24 hour policy, the threat of enforcement action should this and other elements of our persistent misuse policy not be complied with, and the increased maximum penalty level for persistent misuse which came into effect on 25 September 2010<sup>21</sup>. Since the new maximum penalty and the Policy Statement came into force, we have issued penalties against three companies for persistent misuse<sup>22</sup>. In May 2012, we published another open letter to ACS users about the importance of Ofcom's monitoring and enforcement programme which seeks to prevent and reduce harm caused by both abandoned and silent calls<sup>23</sup>.

## The investigation

### Background

- 1.21 Ofcom received complaints about abandoned and/or silent calls which appeared to be generated by or on behalf of MYIML. We received 31 complaints regarding the Calling Line Identification ("CLI") number 08443760139 between the period 16 December 2013 to 3 February 2014 (the "Relevant Period"). These complaints

---

<sup>19</sup>Annex 1 of <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/#a>

<sup>20</sup>[http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs\\_users.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs_users.pdf)

<sup>21</sup><http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

<sup>22</sup>[http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_905/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/)

<sup>23</sup>[http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/Open\\_letter\\_to\\_stakeholders.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/Open_letter_to_stakeholders.pdf)

alleged that some consumers had received abandoned and silent calls once while others had received them on a daily, weekly and monthly basis and also in some cases on multiple occasions during a single day.

- 1.22 In light of these complaints, Ofcom sought to obtain information about MYIML's use of ACS using our formal information gathering powers.

### Information gathering

- 1.23 The CLI number 08443760139 was allocated by Ofcom to Telephony Services Limited ("Telephony Services") in the National Numbering Scheme<sup>24</sup>. In response to Ofcom enquiries, Telephony Services referred Ofcom to Gradwell Communications Limited ("Gradwell Communications")<sup>25</sup>. Ofcom issued a notice under section 135 of the Act, requiring the provision of information, to Gradwell Communications on 7 February 2014<sup>26</sup>.
- 1.24 Gradwell Communications provided a response to Ofcom on 11 February 2014<sup>27</sup>. It stated, '*08443760139 is currently administered by Gradwell Communications.*' It also noted that number in question, '*... is currently assigned to [redacted] MYIML Limited.*
- 1.25 MYIML is a UK registered company (company number 08679439) whose registered address is 53 Fountain Street, Manchester M2 2AN. Ofcom issued a Notice under section 135 of the Act, requiring the provision of information, to MYIML on 7 March 2014 (the "Notice").<sup>28</sup>
- 1.26 The Notice required MYIML to provide information on its outbound dialling activity using an ACS for its call centres and its measures to ensure compliance with the law on persistent misuse as interpreted in the Policy Statement. It also asked MYIML to provide a corporate structure chart for the group which included MYIML.
- 1.27 Ofcom received a response to the Notice from MYIML in three separate emails received on 5 March 2014<sup>29</sup>, 22 March 2014 and 26 March 2014 respectively (the "Response")<sup>30</sup>. The Response stated, in summary, that MYIML:
- a) is a limited private company with no subsidiaries and is not a subsidiary to any holding companies;
  - b) operated via a call centre based in Reading, England and made all calls during the Relevant Period on behalf of a third party, namely a company called [redacted] (UK) Limited ("[redacted]");
  - c) operated one campaign during the Relevant Period using the presentation CLI number 08443760139 for all outgoing calls (the campaign was referred to as '[redacted]');
  - d) made outgoing calls, including abandoned calls, during the Relevant Period, as set out in Table 1 below;

---

<sup>24</sup> <http://www.ofcom.org.uk/static/numbering/index.htm>

<sup>25</sup> Annex 5.

<sup>26</sup> Annex 6.

<sup>27</sup> Annex 7.

<sup>28</sup> Annex 1.

<sup>29</sup> Annex 2.

<sup>30</sup> The contents of which are transcribed in Annex 2.

e) played the following recorded message in the event of each abandoned call:

*"This is a call from MYIML. No agents are currently available to speak with you. We will phone you again soon. If you'd rather not receive another call from us, please call this number back and leave your name and number. Thank you."*

f) used the CLI number 08443760139 for the duration of the campaign; and

g) did not use AMD technology over the Relevant Period<sup>31</sup>.

1.28 On 28 March 2014, in response to further enquiries by Ofcom asking whether a written contract existed between MYIML and [X], MYIML stated that, "...there is no written contract between MYIML and [X]. We merely have a verbal agreement<sup>32</sup>."

1.29 Ofcom also issued a notice under section 135 of the Act to [X] on 16 April 2014<sup>33</sup>This request required [X] to provide information about its commercial relationship with MYIML during the Relevant Period.

1.30 [X] provided a response to the notice on 25 April 2014<sup>34</sup>. [X] stated that:

a) MYIML made lead generation calls on its behalf during the Relevant Period;

b) Prior to the calls being made [X] provided MYIML with leads via their dialler software supplier;

c) [X] did not have a formal agreement in place with MYIML;

d) [X] paid Infynity Marketing Limited ("Infynity Marketing") for services undertaken by MYIML during the Relevant Period and stated that they did so under the instruction of [X] of MYIML (confirmed in an email of 27 May 2014 from [X] of [X]). [X] also provided invoices addressed to Infynity Marketing for the services provided during the Relevant Period and explained that payment had been made, "on an invoice for leads basis"<sup>35</sup>; and

e) to the best of its knowledge, Infynity Marketing and MYIML were operated as a single entity<sup>36</sup>.

## Ofcom's assessment and decision

1.31 In order to exercise its power under section 128(1) of the Act to issue a notification, Ofcom must be satisfied that there are reasonable grounds for believing:

a) that a person has used an electronic communications network or electronic communications services;

---

<sup>31</sup> Annex 2, Representations, A2.3. This point was noted in an email sent from [X](MYIML) to [X] (Ofcom) on 5 March 2014. [X] had been asked to comment on the Notice in draft form.

<sup>32</sup> Annex 2, A2.5. This was provided in an email from [X] (MYILM) to [X] (Ofcom) after Ofcom had sought clarification on whether a written contract existed between MYIML and [X] during the Relevant Period. Ofcom had presented this question via email on 27 March 2014.

<sup>33</sup> Annex 3.

<sup>34</sup> Annex 4.

<sup>35</sup> Annex 4, see response to Question 3.

<sup>36</sup> See Annex 4, A4.5. We presented this question to [X] because [X] is a Director of both MYIML Limited and Infynity Marketing Limited, with the same contact address provided for [X] in respect of both companies.

- b) that the effect or likely effect of that use, or of conduct arising from that use, is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse; and
- c) that the misuse is persistent in that it represents either a pattern of behaviour or practice, or recklessness as to whether persons suffer annoyance, inconvenience or anxiety.

1.32 The following section sets out the basis on which Ofcom has decided to issue this Notification to MYIML, taking into account the elements outlined above and the Policy Statement.

### **Use of an electronic communications network or electronic communications services**

1.33 The Act defines an “electronic communications network” as:

“(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals –

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals;

(iii) software and stored data; and

(iv) (except for the purposes of sections 125 to 127) other resources including network elements which are not active<sup>37</sup> .”

1.34 The Act defines an “electronic communications service” as:

“...a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.”<sup>38</sup>

1.35 The Act defines “signal” as including:

“(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus<sup>39</sup> .”

1.36 MYIML confirmed in the Response that it made calls using an ACS in the Relevant Period. MYIML therefore used voice telephony to make outbound calls to users of

---

<sup>37</sup> Section 32(1) of the Act.

<sup>38</sup> Section 32(2) of the Act.

<sup>39</sup> Section 32(10) of the Act.

publicly available telephony services<sup>40</sup>. Making these calls comprises the use of an ECN as defined in the Act and use of an ECS as defined in the Act.

- 1.37 In reaching this view, Ofcom takes account that MYIML and [X] also told us in their various responses to requirements and requests for information (see Annexes) that MYIML had made calls on behalf of [X]. Ofcom has considered whether this relationship was such that MYIML should be considered to be an agent acting on behalf of [X], such that [X] was the user of an ECN and/or ECS for the purposes of section 128 of the Act. However, Ofcom has reasonable grounds to believe that MYIML was making calls on its own behalf, and was therefore the user of an ECN and/or an ECS, for the reasons set out in the following paragraphs.
- 1.38 First, it is clear MYIML made the relevant calls. As set out above, it has confirmed it did so.
- 1.39 Second, the question then becomes whether there is evidence it did so as agent for another person, such that the other person was the user of the ECN and/or ECS. There is insufficient evidence to suggest MYIML and [X] entered into an agency agreement and that it was their intention that the former's conduct in making the calls should be attributable to the latter as principal.
- 1.40 We note in particular that MYIML and [X] told us that there is no written agreement between them. Whilst there is no requirement for parties to enter into written agreements in order to create an agency, neither party has provided any documents specifying the contractual arrangements and/or any specific description of any verbal agreement which existed between them.
- 1.41 Third, we also note that [X] told us that it had made all payments to MYIML "*on an invoice for leads basis*"<sup>41</sup>. Arrangements describing the basis on which one party is paid by another for the provision of services are unlikely to be in themselves a conclusive factor. Nevertheless, we consider that payment for generated leads is more likely to be agreed upon where the party who is paid on such basis uses an ECN or ECS on its own behalf. That is, those leads are more likely a valuable commodity a party generates to sell to another person, as part of a business on its own account.
- 1.42 Fourth, paragraph A1.52 of the Policy Statement states that the information message must identify the company on whose behalf the calls are being made. The information message played in the event of an abandoned call stated that the calls were being made by MYIML.

## Misuse

- 1.43 As stated above, section 128(5) of the Act sets out what constitutes a misuse of an ECN or ECS; that the effect or likely effect of that use, or of conduct arising from that use, is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse.
- 1.44 Evidence obtained from MYIML using our formal powers demonstrates that it made multiple abandoned calls during the Relevant Period as set out in Table 1 below. Ofcom research shows that consumers find abandoned calls "annoying" and "distressing" (see paragraph 1.5). Ofcom therefore considers that the use of an ECN

---

<sup>40</sup> A1.7-8 of the Policy Statement.

<sup>41</sup> Annex 4, see response to Question 3.

or ECS by MYIML in this case constitutes misuse. This view is consistent with the contents of the Policy Statement described in this document.

- 1.45 In addition, the Policy Statement also sets out at paragraphs A1.51 and A1.52 the content of the information message to be played in the event of an abandoned call. The Response stated that MYIML played the following message in the event of an abandoned call during the Relevant Period:

*“This is a call from MYIML. No agents are currently available to speak with you. We will phone you again soon. If you’d rather not receive another call from us, please call this number back and leave your name and number. Thank you.”*

- 1.46 This recorded message is inconsistent with A1.52 of the Policy Statement because it fails to include, ‘...details of a *Special Service* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a geographic rate* (03) number the called person can contact so they have the possibility of declining to receive further calls from that company.’ If recipients did not wish to receive another call, they were directed in the message left by MYIML to call the CLI number 08443760139, which does not fall within the number ranges specified by A1.52 of the Policy Statement and which may be more expensive to call than numbers falling within those number ranges<sup>42</sup>.
- 1.47 Ofcom considers these shortcomings in respect of the playing of an information message liable to amount to relevant misuse, in respect of which we may take action, as follows.
- 1.48 As set out in the Policy Statement and above, Ofcom considers that the making of abandoned and silent calls involves misuse within the meaning of section 128 of the Act. One aim of playing a recorded information message in the event of an abandoned call is to reduce harm by informing the recipient who has called them and how they can return the call, without undue expense, to decline to receive further calls. Failure to include an appropriate telephone number in the information messages hinders the ability of abandoned call recipients to return the call and decline further calls.
- 1.49 Where such failure occurs, any reduction in anxiety, annoyance or inconvenience that the playing of the message would otherwise achieve is limited. There is, accordingly, misuse within the meaning of section 128 of the Act in the making of abandoned calls in which there is a failure to play a recorded message including all the appropriate information. Taking action in respect of it is consistent with the Policy Statement.
- 1.50 On the basis of the above, Ofcom considers that there are reasonable grounds for believing, that the effect or likely effect of the use of an ECN and ECS by MYIML has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse. This is on the bases that during the Relevant Period MYIML:
- i) made (multiple) abandoned calls; and

---

<sup>42</sup> According to the National Telephone Numbering Plan, calls to numbers on the ‘0844’ number range can be charged at up to and including 4.26p per minute or per call for BT customers and the price charged by other communications providers may vary: see <http://stakeholders.ofcom.org.uk/telecoms/numbering/>.



- ii) in the event of an abandoned call, failed to include details of a *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a geographic rate* (03) number the called person can contact so they have the possibility of declining to receive further calls from the company.

Ofcom makes these findings having regard as described, in particular, to the Policy Statement and the evidence referred to in paragraphs 1.5 and 1.44-1.46 above. They are consistent with that statement and the regulatory statement accompanying it.

### **The misuse is persistent**

- 1.51 As set out in paragraphs 1.8 and 1.9, sections 128(6) and 128(7) of the Act set out the basis on which misuse may be considered persistent.
- 1.52 Organisations using ACS should ensure, as far as possible, that they do not generate more calls than they can handle using live agents. A persistent failure to do so will constitute an act of persistent misuse and may lead to the issue of a section 128 notification.
- 1.53 The Act states that misuse becomes persistent when the behaviour in question is repeated on a sufficient number of occasions for it to be clear that the misuse represents a pattern of behaviour or practice or recklessness as to whether persons suffer annoyance, inconvenience or anxiety<sup>43</sup>.
- 1.54 In Ofcom's view there are reasonable grounds for believing that in this case the misuse was repeated often enough to represent a pattern of behaviour or practice. The Policy Statement states Ofcom's view that although what constitutes a cycle of repetitive behaviour will need to be determined on a case by case basis, it is likely to require a minimum of three instances of the conduct in question<sup>44</sup>.
- 1.55 Ofcom considers that MYIML's misuse, as set out above, was persistent because it made multiple abandoned calls, and certainly more than three abandoned calls, during each of the 45 days we have identified in the Relevant Period. The total number of abandoned calls on those days was 30 296. Table 1 sets out our determination of the abandoned call rates on these 45 occasions using data confirmed by MYIML as a true and accurate representation of its dialling during the Relevant Period. In line with the Policy Statement, we consider it appropriate to take enforcement action in respect of these 45 separate 24 hour periods because, during each, the abandoned call rate exceeded three per cent of live calls.

---

<sup>43</sup> This is reflected in paragraph A1.10 of the Policy Statement.

<sup>44</sup> This is reflected in paragraph A1.10 of the Policy Statement.

**Table 1: Abandoned call rates in excess of 3 per cent during the Relevant Period**

A	B	C	D	E	F	G	H	
Date	Campaign	Abandoned calls	AMs <sup>45</sup> to Live Operator	Live call to Live Operator	Ratio of AM to all calls passed to live operator	Estimated abandoned to AM	Estimated abandoned calls excluding calls abandoned to AM	Abandoned call rate % <sup>46</sup>
					$= C/(C+D)$	$= B \times E$	$= B - F$	$= G/(G+D)$
16/12/2013	[X] <sup>47</sup>	3268	12021	10204	0.54	1768	1500	12.82%
17/12/2013	[X]	1634	12511	7111	0.64	1042	592	7.69%
18/12/2013	[X]	1615	14030	7154	0.66	1070	545	7.08%
19/12/2013	[X]	1516	16905	7419	0.69	1054	462	5.87%
20/12/2013	[X]	833	8662	4201	0.67	561	272	6.08%
21/12/2013	[X]	1514	6085	5798	0.51	775	739	11.30%
22/12/2013	[X]	1084	4616	3937	0.54	585	499	11.25%
23/12/2013	[X]	1152	7063	3944	0.64	739	413	9.47%
27/12/2013	[X]	1214	6839	3560	0.66	798	416	10.45%
28/12/2013	[X]	985	4783	3434	0.58	573	412	10.70%
29/12/2013	[X]	833	3715	2506	0.60	497	336	11.81%
30/12/2013	[X]	1617	5279	4690	0.53	856	761	13.96%
02/01/2014	[X]	2163	10144	7585	0.57	1238	925	10.87%
03/01/2014	[X]	2508	9281	7523	0.55	1385	1123	12.99%
04/01/2014	[X]	2041	5139	6299	0.45	917	1124	15.14%
05/01/2014	[X]	759	3570	3022	0.54	411	348	10.33%
06/01/2014	[X]	1660	11551	8407	0.58	961	699	7.68%
07/01/2014	[X]	1078	11357	5867	0.66	711	367	5.89%
08/01/2014	[X]	1461	10507	6426	0.62	907	554	7.94%
09/01/2014	[X]	999	10482	6450	0.62	618	381	5.57%
10/01/2014	[X]	1071	9352	5223	0.64	687	384	6.85%
11/01/2014	[X]	576	5384	4546	0.54	312	264	5.48%
12/01/2014	[X]	1007	4816	4771	0.50	506	501	9.51%
13/01/2014	[X]	1131	11798	5947	0.66	752	379	5.99%
14/01/2014	[X]	1060	9834	4884	0.67	708	352	6.72%
15/01/2014	[X]	1013	13388	6298	0.68	689	324	4.89%
16/01/2014	[X]	792	10034	5064	0.66	526	266	4.98%
17/01/2014	[X]	644	10188	4291	0.70	453	191	4.26%
18/01/2014	[X]	1132	5933	5145	0.54	606	526	9.27%

<sup>45</sup> "AMs" refers to Answer Machines.

<sup>46</sup> Please note that the figures in column E have been rounded to two decimal places for the purposes of succinctly presenting original source data. The figures in columns F and G have been rounded to the nearest whole number for the same reason. The figures in column H have been calculated using the original values of these figures before any rounding was undertaken and a copy of these values has been provided to MyIML with this Notification. The presentation of these figures does not affect whether or not the abandoned call rate exceeded 3 per cent.

<sup>47</sup> '[X]' refers to '[X]' (the name of the campaign undertaken by MYIML during the Relevant Period).

19/01/2014	[X]	375	4955	2868	0.63	238	137	4.57%
20/01/2014	[X]	1646	10539	6557	0.62	1015	631	8.78%
21/01/2014	[X]	2265	10859	7210	0.60	1361	904	11.14%
22/01/2014	[X]	2286	14703	7818	0.65	1492	794	9.22%
23/01/2014	[X]	3775	21728	10613	0.67	2536	1239	10.45%
24/01/2014	[X]	2795	16894	7862	0.68	1907	888	10.14%
25/01/2014	[X]	3222	9814	8330	0.54	1743	1479	15.08%
26/01/2014	[X]	1702	5987	4769	0.56	947	755	13.66%
27/01/2014	[X]	2793	17592	8532	0.67	1881	912	9.66%
28/01/2014	[X]	2267	14819	7238	0.67	1523	744	9.32%
29/01/2014	[X]	2923	12352	8597	0.59	1723	1200	12.24%
30/01/2014	[X]	2715	12865	8469	0.60	1637	1078	11.29%
31/01/2014	[X]	3478	16846	9778	0.63	2201	1277	11.55%
01/02/2014	[X]	1974	5081	5926	0.46	911	1063	15.21%
02/02/2014	[X]	1522	5564	3849	0.59	900	622	13.92%
03/02/2014	[X]	2361	10918	6969	0.61	1441	920	11.66%

Source: Data is sourced from the Response.

- 1.56 Ofcom also considers that MYIML's misuse was persistent in that on multiple (and more than three) occasions it did not play an information message in accordance with paragraphs A1.51 and A1.52 of the Policy Statement. Specifically, in the case of abandoned calls during the Relevant Period MYIML failed to include details of a *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a geographic rate* (03) number within a recorded message played in the event of an abandoned call that the called person could contact so they had the possibility of declining to receive further calls from the company. MYIML failed to do this on across 45 days of dialling during the Relevant Period in respect of (Ofcom estimates) 30 296 relevant calls.
- 1.57 On these bases, Ofcom considers that there are reasonable grounds for believing that the misuse engaged in by MYIML was persistent in that it was repeated on a sufficient number of occasions for it to be clear that the misuse represents a pattern of behaviour or practice as set out in section 128(6)(a) of the Act. Ofcom considers that the talking of enforcement action in respect of this persistent misuse is consistent with the Policy Statement as set out.

### Other matters set out in the Notification

- 1.58 MYIML has until **5pm on 26 August 2014 (BST)** (the "Deadline") to make representations to Ofcom about the matters set out in the Notification and explained in this explanatory statement.
- 1.59 MYIML has until the same Deadline to take appropriate steps for securing that the misuse is brought to an end and is not repeated and to remedy the consequences of the notified misuse.
- 1.60 Following expiration of the Deadline, if Ofcom is satisfied that MYIML has:
- a. in one or more of the notified respects persistently misused an ECN or ECS;

- b. not taken all such steps as Ofcom considers appropriate for securing that the misuse is brought to an end and is not repeated; and
- c. not taken all such steps as Ofcom considers appropriate to remedy the consequences of the notified misuse;

then Ofcom may issue a further notification to MYIML under section 129 of the Act.

- 1.61 Additionally or alternatively, if MYIML has persistently misused a network or services, as set out in the Notification, Ofcom may impose a penalty on MYIML under section 130 of the Act and in accordance with the Penalty Guidelines published on 13 June 2011 under section 392 of the Act<sup>48</sup> and the Policy Statement. The maximum penalty that may be imposed is £2 million<sup>49</sup>.

---

<sup>48</sup> <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

<sup>49</sup> The maximum level of penalty in section 130(4) of the Act was increased from £50,000 to £2 million in September 2010, as a result of an order made by the Secretary of State pursuant to section 130(9) of the Act – see *The Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service)*, SI 2010/2291, section 2(1).

## Annex 1

# Information request sent to MYIML under section 135 of the Act dated 7 March 2014

In preparing the specified information requested below, please note the following.

### **Scope of specified information**

This notice requires MYIML to provide information to Ofcom. The specified information should cover the period from **16 December 2013** to **3 February 2014** inclusive (the Relevant Period).

The specified information should include all outbound calls to UK consumers during the Relevant Period, made either directly by MYIML or by a third party acting on behalf of or under instruction from MYIML, using an ACS.

The specified information should therefore include any outsourced or other call centre(s) (including those located outside the UK), which were contracted by MYIML to make calls to UK consumers on behalf of MYIML during the Relevant Period.

### **Manner and form of provision of specified information**

Please provide this information in electronic form.

Questions 6 and 10 request information based on templates. If the information is held in your records management systems in a form from which it is not possible to complete the templates, please provide the information requested in an alternative format, ensuring that it is electronically searchable and explaining how what you provide comprises the information requested.

### **Explanation of terms**

Section 3 of the Statement of Policy provides an explanation of the terms used below and an explanation of the methodology which can be used when determining compliance with the Statement of Policy.

### **Aggregation and disaggregation basis**

Ofcom considers that where a company is operating multiple campaigns simultaneously from one or more call centres, it may be appropriate to calculate the abandoned call rate using an aggregation of data across all calls centres and/or all campaigns run by and on behalf of the company. Where Ofcom has aggregated a company's call data and proposes to rely on those figures for the purpose of a notification issued under section 128 of the Act, Ofcom may also set out the underlying information on a disaggregated basis (that is by call centre and/or campaign) to aid understanding of any non-compliance<sup>50</sup>.

---

<sup>50</sup> Paragraphs 5.57 and 5.58, Ofcom's current Statement of Policy, published 1 October 2010.

## **Questions**

### **Nature of MYIML's activity**

- 1) Please provide a corporate structure chart for the group which includes MYIML. The structure chart should:
  - a. Specify the full names of all subsidiaries and/or holding companies of MYIML;  
and
  - b. For each of the above, specify the nature of the activity undertaken (for example claims management).

### **Call centres and campaigns**

- 2) Please confirm whether calls using the CLI number **08443760139** were originated by MYIML or another member of its corporate group or connected person (in which case, please specify who) during the Relevant Period.
- 3) Please list all calls made by MYIML (or one or more members of MYIML's corporate group) during the Relevant Period where the CLI number **08443760139** was presented. In each case, please state whether the call was made:
  - a. on behalf of MYIML;
  - b. on behalf of one or more members of MYIML's corporate group (and in which case, who); or
  - c. on behalf of one or more third parties (and, if so, who).
- 4) If the calls referred to in question 3 were made on behalf of one or more third parties, for each third party please provide:
  - a. its name;
  - b. its UK registered company number;
  - c. its postal address;
  - d. a contact name;
  - e. a contact telephone number;
  - f. an email address; and
  - g. a copy of any documents evidencing your contractual arrangement(s) with, and the scope of any authority to act conferred on you by, the third party.
- 5) For each campaign conducted during the Relevant Period, please confirm:
  - a. the campaign name or title; and
  - b. the call centre(s) that worked on the campaign.
- 6) Please provide:
  - a. the data as set out in both Templates 1 and 2 below, broken down by each 24 hour period during the Relevant Period. The data should be provided electronically by means of an Excel spread sheet;

- b. please provide both one worksheet per call centre and one worksheet per campaign, making clear which campaign(s) or call centre/s the data refers to. Where AMD was not used, please disregard column D; and
- c. evidence to substantiate the reasoned estimate of AMD false positives incurred where AMD was used at a call centre<sup>51</sup>.

Template 1:

**Call Centre X / all campaigns (and so on per call centre)**

	A	B	C	D	E
	Date	Number of live calls passed to a live operator	Unadjusted total of abandoned calls	Actual AMD false positives figure or reasoned number of AMD false positives <sup>52</sup>	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/13				
2	y/x/13				
3	z/x/13				

<sup>51</sup> Refer to A1.35 – A1.46 of the Statement of Policy. How we will assess the robustness of testing used to determine a reasoned estimate of AMD false positives is outlined in A1.40 – A1.43.

<sup>52</sup> Refer to A1.35 – A1.46 of the Statement of Policy.

Template 2:

**Campaign X** / all call centres (i.e. that were involved in dialling within that campaign)

	A	B	C	D	E
	Date	Number of live calls passed to a live operator	Unadjusted total of abandoned calls	Actual AMD false positives figure or reasoned number of AMD false positives <sup>53</sup>	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/13				
2	y/x/13				
3	z/x/13				

- 7) Please confirm whether and how MYIML reviews calls put through to its live operators to ensure these operators are correctly classifying 'live calls' and 'calls to answer machines' (thus ensuring live calls are not incorrectly disconnected). If MYIML does conduct such reviews, please provide the results of any review(s) that were undertaken during the Relevant Period (or closest to the Relevant Period if none were undertaken during the Relevant Period).

**Recorded information message**

- 8) Please confirm whether, within two seconds of a call being answered by an individual<sup>54</sup> and before being terminated or released by the ACS, MYIML, in each call centre and for each campaign, provided a brief recorded information message.
- 9) Please provide the script(s) of the recorded message referred to in question 6, per call centre or per campaign, as appropriate.

**24 hour policy**

- 10) Please confirm what procedures, if any, MYIML has in place to ensure that, in instances where a call is made to a number and that call is identified by AMD technology as being answered by an answer machine, any subsequent call to that number that calendar day is made with the guaranteed presence of a live operator. Again, please provide this information per call centre and /or per campaign, as appropriate.

<sup>53</sup> Refer to A1.35 – A1.46 of the Statement of Policy.

<sup>54</sup> See A1.51 of the Statement of Policy for an explanation of 'within two seconds of the call being answered'.



Please supply the data as set out in Template 3 below, on all calls made using AMD technology between midnight and midnight on each calendar day during the Relevant Period:

- a. Please either provide the information in chronological order, or specify the time of each call and
- b. Please provide one worksheet per call centre per day, making clear which campaign(s) the data refers to.

*Template 3:*

	A	B	C	D
	Date	Time of call	CLI dialled	Answerphone detected? (Y/N)
1	x/x/13			
2				
3				

### **Caller Line Identification**

- 11) Please state the CLI used for each outgoing call during the Relevant Period, whether MYIML displayed a CLI number to which a return call may be made. Please provide the CLI number(s) in question. Again, please provide this information both per call centre and per campaign

**Annex 2**

**MYIML response to Information request  
sent under section 135 of the Act**

[REDACTED].

## Annex 3

# Information request sent to [X] under section 135 of the Act dated 16 April 2014

## Annex 1

In preparing the specified information requested below, please note the following.

### **Scope of specified information**

This notice requires [X] to provide information to Ofcom. The specified information should cover the period from **16 December 2013** to **3 February 2014** inclusive (the Relevant Period).

### **Manner and form of provision of specified information**

Please provide your response in a Microsoft Word or Adobe Reader document that contains [X] stationary and then email this document to [X].

### **Questions**

#### **Calls made by MYIML**

1. Please confirm whether MYIML made lead generation calls on behalf of [X] on outbound calls made during the Relevant Period.
2. If MYIML did make such calls, please provide a copy of any documents (including relevant letters and e-mails as well as formal contracts) evidencing your contractual arrangement(s) with MYIML to make lead generation calls on behalf of [X] in outbound calls made during the Relevant Period.
3. If no contractual documentation exists, then please provide a copy of any receipts made out by MYIML detailing payment received from [X] for services provided during the Relevant Period, and a description of any verbal agreement which existed.
4. If calls were made by MYIML on behalf of [X] during the Relevant Period, please detail what information/materials were provided by [X] to MYIML prior to these calls being made, so as to facilitate this service.

#### **Due diligence, contractual requirements and monitoring**

5. Please provide details of any steps [X] carried out to check MYIML's arrangements for outbound dialling (in particular in relation to compliance with Ofcom's statement of policy on persistent misuse), prior to signing a contract with [X].
6. Please provide details of any monitoring carried out by or on behalf of [X] to ensure that calls including questions for [X] were made in accordance with Ofcom's policy statement during the Relevant Period.

**Annex 4**

[REDACTED] response to Information request sent under section 135 of the Act

[REDACTED].

Annex 5

Email received from Gradwell  
Communications Limited on 4 February  
2014 regarding administration of CLI  
number 08443760139

[✂].

## Annex 6

# Information request sent to Gradwell Communications Limited under section 135 of the Act dated 7 February 2014

## Own-initiative investigation: Persistent misuse of an electronic communications network or service

### 1<sup>st</sup> Notice requiring the provision of specified information under Section 135 of the Communications Act 2003

This is a formal notice under Section 135 of the Communications Act 2003 (“the Act”) addressed to Gradwell Communications Limited (“Gradwell Communications”), whose registered company number is 03673235.

This notice requires you to provide the information set out below, in the manner and form specified, for the purpose of identifying, in relation to certain calls made in which the Calling Line Identification (“CLI”) number **08443760139** was presented, on whose behalf those calls were made. This is part of an own-initiative investigation into the potential persistent misuse of an electronic communications network or service by the end user/s of this number through the generation of abandoned and silent calls.

### Background to the investigation

Ofcom has the power under section 128(1) of the Act to issue a notification to a person if they have reasonable grounds to believe that that person has persistently misused an electronic communications network or electronic communications services. Under section 130 of the Act, Ofcom is required to publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130 of the Act. Ofcom’s current statement of policy on persistent misuse<sup>55</sup> was published on 1 October 2010 and paragraphs A1.12 to A1.59 deal specifically with abandoned and silent calls<sup>56</sup>.

Ofcom has an on-going enforcement programme attached to this document which aims to prevent and reduce annoyance, inconvenience, or anxiety which consumers may suffer from abandoned and silent calls.<sup>57</sup> Tackling any form of persistent misuse, in particular silent or abandoned calls, is one of our key priorities.<sup>58</sup>

As part of that programme, we monitor complaints received by our Consumer Contact Team (CCT). The CLI number **08443760139** has been linked to a significant number of silent call complaints received by the CCT.

---

<sup>55</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>

<sup>56</sup> Statement on *Tackling Abandoned and Silent Calls* (1 October 2010).

<sup>57</sup> For more information on our enforcement programme please refer to:

[http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_905/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/)

<sup>58</sup> As set out in our Annual Plan for 2013/2014: <http://www.ofcom.org.uk/files/2013/03/annplan1314.pdf>

This CLI number has been allocated to Telephony Services Limited (company number 05134355) in the National Numbering Scheme<sup>59</sup>. In an email to [✕] at Ofcom on 4 February 2014, you indicated that you were administering the CLI number **08443760139**. We are therefore requiring Gradwell Communications provide the following specified information about this number in an attempt to identify the associated end user/s.

***For the CLI number 08443760139***

1. Please state the period during which this number has been administered by Gradwell Communications. If it is no longer administered by Gradwell Communications, please provide the name and postal address of the communication provider to whom the number was ported and the date on which this took place.
2. Please provide the name of any party or parties to whom you have made the number available during the period referred to in answer to question 1 (i.e. any party or parties to whom you have sub-allocated these numbers).
3. Please provide details about any other numbers that you have allocated to the same party or parties.
4. Please provide the following details for the party or parties identified in answer to question two:
  - a. full name;
  - b. UK registered company number;
  - c. postal address;
  - d. contact name;
  - e. contact telephone number;
  - f. contact email address; and
  - g. the date on which the number was sub-allocated (or simply when the contractual arrangement/s commenced).
5. Please provide copies of any documents evidencing your contractual arrangement(s) with, and the scope of any authority to act conferred on you by, any party or parties you identified in response to question 2 above. Please ensure that the date in which these contractual arrangements were finalised is made clear in your response.

---

<sup>59</sup> National Numbering Scheme <http://www.ofcom.org.uk/static/numbering/index.htm#geog1>

**Annex 7**

**Gradwell Communications Limited  
response to Information request sent  
under section 135 of the Act**

[X].