Tackling abandoned and silent calls

Consultation

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Section 1

Executive summary

Introduction

1.1 Ofcom has powers under the Communications Act 2003 (the Act) to issue notifications (and to enforce them accordingly) where it has reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services[1]. For the purposes of the Act, an electronics communications network or an electronic communications services may be "misused" by a person in one of two ways, either:

- in such a way that the effect, or likely effect of that use is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or
- to engage in conduct, the effect, or likely effect, of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety[2].

1.2 Where Ofcom issues a notification it must, amongst other things, specify the use that it considers constitutes "persistent misuse" [3].

1.3 Ofcom is required under the Act to prepare and publish a statement of our general policy with respect to our powers to deal with persistent misuse of an electronic communications network or service[4]. This includes setting out:

- Ofcom's policy as to the type of conduct that is likely to constitute persistent misuse of an electronic communications network or electronic communications services; and
- Ofcom's policy criteria as to the factors it is likely to take into account when determining whether or not to exercise its powers under the Act.

1.4 Ofcom published a Statement of Policy on 1 March 2006 (the 2006 Statement)[5]. It subsequently published a Revised Statement of Policy on 10 September 2008 (the 2008 Statement)[6]. It identifies making abandoned or silent calls as examples of persistent misuse:

i) An abandoned call is where a connection is established but terminated by the caller even though the call has been answered by a consumer. Our policy is that these calls should play an information message to inform the consumer who made the call.

[1] Sections 128 – 130 of the Communications Act 2003.
[2] Section 128(5) of the Communications Act 2003.
[3] Section 128(2)(b) of the Communications Act 2003.
[4] Section 131 of the Communications Act 2003.
[5] http://www.ofcom.org.uk/consult/condocs/misuse/misuse_state.pdf
[6] Revised statement of policy on the persistent misuse of an electronic communications network or service http://www.ofcom.org.uk/consult/condocs/persistent_misuse/statement/misuse_statement.pdf amended on 30 October 2009 http://www.ofcom.org.uk/consult/condocs/persistent_misuse/amendment/

ii) A silent call is a type of abandoned call where the consumer hears nothing on answering the phone and has no means of establishing whether anyone is at the other end. Any type of silent call is almost certain to cause inconvenience and is very likely to cause annoyance to the consumer.

1.5 Ofcom's primary objective in publishing the 2008 Statement was to ensure that call centres take steps to avoid – insofar as possible – making abandoned calls; and that when abandoned calls are made, steps are taken to limit harm to consumers. In particular, our policy is that consumers should know who made the call and how they can block future calls.

1.6 The Act allows Ofcom to revise its policy statement from time to time as it thinks fit[7]. We aim to make our policy more effective and explicit to reduce further consumer harm. This consultation therefore proposes to make various changes to the 2008 Statement and clarify our existing policy. The revised policy that Ofcom is now proposing is contained in Annex 1 to this consultation.

Silent and abandoned calls

1.7 Most silent and abandoned calls are not generated with malicious or mischievous intent but by automated calling systems (ACS) and answer machine detection (AMD) technology, both used by call centres.

1.8 ACS are used by call centres to improve efficiency by maximising the amount of time call centre agents spend speaking to consumers. Use of AMD technology further improves this efficiency by disconnecting calls that go through to consumers' answer machines. Companies making these calls include household names.

1.9 Companies using ACS and AMD may pass on to consumers cost savings that these technologies allow. They may also benefit when companies need to contact large numbers of people in a short time period to communicate important information; for example when a bank needs to contact customers about a potential fraud.

1.10 However consumers might receive an abandoned or silent call if there are not enough call centre agents to handle a call when the consumer picks up, or if AMD mistakes a live consumer to be an answer machine and disconnects the call without playing an information message.

1.11 Abandoned and silent calls will almost invariably result in a consumer having a negative experience, which may range from inconvenience and annoyance through to genuine anxiety.

1.12 Therefore the benefits of the use of ACS and AMD need to be weighed against the failure of these technologies to achieve total accuracy and the impact this has on consumers.

Tackling repeat silent calls

1.13 Consumer harm caused by silent and abandoned calls can be made worse where individuals receive a number of calls over a short period of time, and may conclude they are being specifically targeted especially if these are silent.

[7] Section 131(2) of the Communications Act 2003.

1.14 We have analysed the complaints we receive and found that the majority (over 70%) are from consumers receiving two or more silent calls a day, from the same company – often over a period of days or weeks. Our data therefore suggests these 'repeat silent calls' are the major cause of consumer harm.

1.15 Ofcom understands that the majority of repeat silent calls are caused by the inaccuracies of AMD technology. The way AMD works means that if a consumer is mistaken to be an answer machine once, it is likely that this will happen again, so they receive multiple silent calls over the course of a call centre campaign.

1.16 We are therefore consulting on changes to our policy to limit the number of times a company can call an answer machine to once every 24 hours, unless the presence of a call centre agent can be guaranteed. This would mean those consumers currently worst affected would no longer receive repeat silent calls over the course of a day.

1.17 We will continue to monitor the level of consumer harm caused by silent and abandoned calls. If we do not see a continued reduction in this harm – evidenced by fewer complaints and moves by industry towards more accurate and reliable use of AMD technology – we may need to revisit our approach. This would involve consulting on whether tighter regulation of AMD technology is required; this could lead to Ofcom considering an outright policy ban of AMD or a policy that AMD is 100% accurate.

Clarifying our existing policy

1.18 Following engagement with stakeholders, certain aspects of the 2008 Statement were identified as areas which would potentially benefit from clarification. These include:

i) The abandoned call rate – we set out the terminology used when calculating the abandoned call rate as well as an updated formula for calculating the abandoned call rate. Where companies use Answer Machine Detection (AMD) we set out how an AMD user can provide a 'reasoned estimate' of AMD false positives and how to calculate an abandoned call rate when AMD technology is in use. Finally we set out how to calculate an abandoned call rate when AMD technology is not in use.

ii) Information messages for abandoned calls – we state when an information message is to be played in the event of an abandoned call (the 'two second policy') and what information it may and may not contain.

iii) Campaign – we clarify what we mean by campaign.

1.19 In this consultation, we invite further comments from stakeholders on these and in some instances propose revisions to the 2008 Statement.

1.20 We have also made minor amendments to the 2008 Statement including incorporating policy previously contained in consultations or in statements but not included in the statement of policy. We are not seeking to consult on these.

1.21 Finally we note that the Department of Business, Innovation and Skills (BIS) issued a consultation in October 2009 followed by a statement in March 2010 on raising the maximum penalty from £50,000 to £2 million. Stakeholders were overwhelmingly in favour of increasing the maximum penalty to £2 million and the increase could possibly be implemented later this year.

Implementation period

1.22 We propose to give industry two months to comply with the proposals and clarifications set out in this consultation, following publication of our revised statement.

Section 2

Background and consultation scope

Ofcom's role

2.1 Ofcom is required, under section 131 of the Communications Act 2003 ('the Act'), to prepare and publish a statement of its general policy with respect to its powers to deal with persistent misuse of an electronic communications network or electronic communications services.

2.2 On 1 March 2006, Ofcom published the *Statement of Policy on the persistent misuse of an electronic communications network or service* (the "2006 Statement")[8]. It identified the making of silent or abandoned calls as an example of persistent misuse.

2.3 Ofcom may revise its statement on persistent misuse from time to time as it thinks fit and has done so on two occasions since 2006 as follows:

i) On 10 September 2008, publishing the Revised Statement of Policy on the persistent misuse of an electronic communications network or service (the '2008 Statement')[9] following a period of consultation[10].

ii) On 30 October 2009, making an amendment to the Revised Statement (the "2009 Amendment")[11].

2.4 Ofcom's focus in publishing its statements on persistent misuse has been to target abandoned calls which have been identified as a major cause of annoyance, inconvenience and anxiety to consumers. Sections of the 2006 Statement and the 2008 Statement have aimed specifically at the misuse caused by the use of automated calling systems, identified as the single biggest source of abandoned calls.

Background

Abandoned and silent calls

2.5 An abandoned call is where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. Ofcom expects that such calls should include an information message as set out in paragraph 2.17(ii).

2.6 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. Any type of silent call is almost certain to cause inconvenience and is very likely to cause annoyance to the called person.

2.7 There are a number of circumstances which give rise to abandoned calls. The most serious are silent calls made with a malicious intent to deliberately frighten or annoy the person called.

[8] http://www.ofcom.org.uk/consult/condocs/misuse/misuse_state.pdf
[9] http://www.ofcom.org.uk/consult/condocs/persistent_misuse/statement/misuse_statement.pdf
[10] http://www.ofcom.org.uk/consult/condocs/persistent_misuse/misuse.pdf
[11] http://www.ofcom.org.uk/consult/condocs/persistent_misuse/amendment/

2.8 Most abandoned calls however are not generated with malicious or mischievous intent but are caused by automated calling systems (ACS) such as predictive or power diallers used by call centres. These diallers are programmed to generate and attempt to connect calls. If there are not enough call centre agents available to handle a call it is terminated by the ACS.

Automated calling systems and answer machine detection technology

2.9 ACS are used by call centres to increase the amount of time that their agents spend speaking to existing or potential customers. This is achieved by automating the manual processes associated with physically making a call i.e. locating a valid record, dialling a relevant contact number and listening to the ring tone.

2.10 The efficiency benefits of ACS may initially fall to industry, making it cheaper and easier for companies to contact consumers. But ultimately consumers may benefit from these efficiencies to the extent that lower costs feed through into lower prices. Consumers may also benefit from ACS when companies need to get in contact with a large group of customers in a limited time period to communicate important information, such as an online shopping company arranging delivery of purchases.

2.11 Another source of efficiency for some call centres is the use of Answer Machine Detection (AMD) technology, which may be used in conjunction with ACS. AMD technology disconnects calls made to answer machines before they are put through to call centre agents. This is significant because a typical daily proportion of an ACS users calls made to answer machines lies between 30% and 50% of all outbound calls. AMD equipment is therefore popular within industry as it cuts out large elements of agent activity when they are not talking to consumers (for example, listening to and cutting off calls picked up by answer machines) and lowers the operational costs of running a call centre.

2.12 The use of AMD may accentuate the consumer benefits derived by ACS overall. This is because call centre agents spend less time being put through to answer machines and more time talking to live individuals. However, these benefits need to be weighed against the failure of AMD to attain total accuracy and the side-effects this creates for consumers.

2.13 AMD is not always accurate and can lead to the generation of AMD ‘false positives’. These arise when an AMD device mistakenly identifies a call as being answered by an answer machine whereas, in reality, it has been answered by a live individual. An AMD device will terminate the call if it believes it has detected an answer machine, and so the call becomes an abandoned call.

2.14 Calls abandoned as a result of AMD false positives are unlikely to be accompanied by an information message. This is because ACS users who do leave a message on answer machine calls have received complaints from customers regarding the high number of messages left on a daily basis. There is also the potential for part messages to be left if ACS users leave messages on all answer machine calls (these occur if the salutation on an answer machine doesn’t finish before the recorded information begins).These calls are therefore likely to be silent calls.

2.15 A further aggravating factor is that the detection of an answer machine may lead to repeat silent calls over a relatively brief period as the ACS user retries the number. As a result, in the event of a sequence of false positives, the consumer may receive several silent calls in the same day. It is likely that these calls will cause a greater level of anxiety if the consumer concludes that they are being specifically targeted.

Our current policy as set out in the 2008 Statement

2.16 Ofcom's primary objective has therefore been to ensure that call centres take steps to avoid, in so far as is possible, making abandoned calls; and that when abandoned calls are made, steps have been taken to reduce the degree of harm caused – in particular that the called person knows who made the call and how they can prevent further calls.

2.17 When considering whether our objective has been met, Ofcom is currently guided by the following policy criteria[12].

i) The 'abandoned call' rate shall be no more than three per cent of 'live calls', calculated per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over any 24 hour period, and shall include a reasoned estimate of Answer Machine Detection (AMD) false positives.

ii) In the event of an 'abandoned call', a very brief recorded information message must be played either no later than two seconds after the telephone has been picked up, or no later than two seconds after an individual begins to speak, which contains 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 no charge (0800) or Special Services basic rate (0845) number the called person can contact so they have the possibility of declining to receive further marketing calls from that company; and
- includes no marketing content and is not used as an opportunity to market to the called person.

iii) Calls which are not answered must ring for a minimum of 15 seconds before being terminated.

iv) When an 'abandoned call' has been made to a particular number, any repeat calls to that number in the following 72 hours may only be made with the guaranteed presence of a live operator (the 72 hour policy).

v) For each outbound call a [Caller Line Identification] number is presented to which a return call may be made which is either a geographic number or a non-geographic number adopted as a Presentation Number which satisfies the Ofcom Guide to the use of Presentation Numbers.

vi) Any call made by the called person to the contact number provided shall not be used as an opportunity to market to that person, without that person's consent.

vii) Records are kept for a minimum period of six months that demonstrate compliance with the above.

2.18 Ofcom's policy on persistent misuse has also had wider application to other types of misuse including to number scanning[13].

[12] 2008 Statement, 4.16.

What this consultation will address

2.19 Broadly speaking, our existing policy remains largely unchanged: ACS users should take steps to avoid, in so far as possible, making abandoned calls and that when 'unavoidably' abandoned calls are made, steps have been taken to reduce the degree of harm caused. This will continue to be reflected in limiting the number of abandoned calls made by ACS users in any one 24 period (the '3% policy') and the policy to leave an information message in the event of an abandoned call.

2.20 Ofcom is consulting on revising the 2008 Statement, continuing to focus on abandoned calls and the misuse caused by the use of predicative diallers in call centres but specifically:

i) Addressing the problem of repeat silent calls.

ii) Clarifying parts of the 2008 Statement.

Repeat silent calls

2.21 The overall number of silent calls has fallen from its peak in 2005 (shortly after which Ofcom issued the 2006 Statement). While this fall appears to be levelling out, Ofcom continues to receive 100-200 complaints every week from consumers receiving silent calls.

2.22 To understand what prompts consumers to complain to Ofcom when they receive a silent call, we commissioned research to analyse the characteristics of the complaints we receive on this issue. This research found that of a sample of the 6000 complaints we received last year on this issue which noted the frequency of silent calls a consumer received, over 70% of consumers stated that they received two or more silent calls per day. Ofcom's April and May 2010 complaint records present a very personal representation of the annoyance, inconvenience and anxiety that repeat silent calls cause:

> "Silent calls constantly all weekend, waking children up when they are having a nap"
>
> "This number keeps calling, more than a dozen times over the last 2 days, as soon as the phone is answered, the caller hangs up. I answered the call a few minutes ago even before the telephone had properly rung …and still there was nobody there."
>
> "I have had an additional 6 silent calls from this number today. Our number is both ex-directory and signed up to the TPS, so we should not be getting any unsolicited marketing calls, let alone automated silent calls. Please make them stop."

2.23 We have defined repeat silent calls as two or more silent calls from the same company over a 24 hour period. Our policy as set out in the 2008 Statement in relation to abandoned calls is that companies should;

- play an information message in the event of an abandoned call; and

[13] Number scanning (also known as 'pinging') occurs when calls are made to find out which telephone numbers, out of a range of numbers, are in service or not. As soon as a tone is received which establishes the status of a particular number the call is terminated. See Annex 1 – 1.67-68.

- guarantee the presence of a live operator if they call back within a 72 hour period (the '72 hour policy').

2.24 Repeat silent calls may arise through the use of AMD technology and specifically the generation of AMD false positives. This is because AMD false positives are not recorded by ACS as abandoned calls and therefore not considered against the above policy criteria by ACS users.

2.25 Ofcom believes that AMD technology is responsible for the majority of repeat silent call complaints that Ofcom receives but recognises the limitations of AMD users when seeking to act in a way that is consistent with policy criteria. This consultation considers whether a more tailored approach would be more effective in limiting the extent of repeat silent calls. Our proposals are outlined in Section 3.

Clarification of the 2008 Statement

2.26 Following engagement with stakeholders, certain aspects of the 2008 Statement were identified as areas which would potentially benefit from clarification. These include:

i) The abandoned call rate – we set out the terminology used when calculating the abandoned call rate as well as an updated formula for calculating the abandoned call rate. Where companies use answer machine detection (AMD) technology we set out how an AMD user can provide a 'reasoned estimate' of AMD false positives and how to calculate an abandoned call rate when AMD technology is in use. Finally we set out how to calculate an abandoned call rate when AMD technology is not in use.

ii) Information messages for abandoned calls – we state when an information message is to be played in the event of an abandoned call (the 'two second policy') and what information it may and may not contain.

iii) Campaign – we clarify what we mean by campaign.

2.27 In this consultation, we invite further comments from stakeholders on these and in some instances propose revisions to the 2008 Statement.

2.28 We have also made minor amendments to the 2008 Statement including incorporating policy previously contained in consultations or in statements but not included in the statement of policy. We are not seeking to consult on these.

2.29 Finally we note that the Department of Business, Innovation and Skills (BIS) issued a consultation in October 2009 followed by a statement in March 2010 on raising the maximum penalty from £50,000 to £2 million. Stakeholders were overwhelmingly in favour of increasing the maximum penalty to £2 million and the increase could possibly be implemented later this year.

2.30 We do not consider it appropriate or necessary to revisit any of the other policy criteria or aspects of the 2008 Statement for the reasons set out below in 2.33 – 2.41.

Implementation

2.31 Section 3 outlines our preferred proposal to tackle the problem of 'repeat silent calls'. For reasons outlined in that section, we believe that a period of two months from publication of the revised statement is an appropriate length of time for Ofcom to

allow ACS users to work towards compliance with this proposal. We propose to also allow stakeholders a period of two months from publication of the revised statement to undertake any changes following the clarifications.

2.32 We expect stakeholders to continue to conduct themselves in a way that is consistent with our existing policy during the implementation period.

What this consultation will not address

The 3% Abandoned Call Rate threshold

2.33 Companies should ensure their abandoned call rate is less than 3% of all live calls. The Direct Marketing Association had previously set this threshold at 5%. In the 2006 Statement we stated that the 3% target over a 24 hour period was '*achievable, proportionate and represented a move in the right direction*'[14].

2.34 Some stakeholders have asked Ofcom to review whether 3% continues to be an appropriate threshold for the abandoned call rate specifically given that AMD false positives must be included in an ACS user's abandoned call rate (as clarified in the 2008 Statement).

2.35 The impact of the inclusion of AMD false positives on the abandoned call rate was already considered in the 2008 Statement. Generally, increasing the abandoned call rate threshold would go against our overall policy objective of reducing the number of abandoned calls.

2.36 We have not received any persuasive arguments and/or evidence to persuade us to conduct a review of the abandoned call rate threshold at the current time.

Distinguishing between 'marketing' and 'service' calls

2.37 Stakeholders have suggested that any statement of policy should take into account the reason why companies contact consumers and distinguish between the types of calls that companies make, specifically between 'service' and 'marketing' calls[15].

2.38 Ofcom's view is that the purpose behind an abandoned call does not prevent it from being an abandoned call. In the 2008 Statement we already noted that '*if a consumer receives an abandoned call, and in particular a silent call, the harm caused is not necessarily mitigated by the reason for which that call is being made*'[16].

2.39 We have not received any persuasive arguments and/or evidence to persuade us to conduct a review of our policy regarding the nature of calls at the current time.

2.40 In response to concerns regarding contacting large numbers of individuals in the case of a product recall for example, it should be noted that the 72 hour policy does not apply where the presence of an operator can be guaranteed.

[14] 2006 Statement, 2.16.
[15] Service calls as defined by calls between a company and a consumer where there is an existing contractual arrangement. This distinction was proposed in recognition of the perceived difference in status between 'service' and 'marketing' calls – one being something that is optional and one which could be considered necessary within a business relationship.
[16] 2008 Statement, 2.30.

The 2008 Statement generally

2.41 The remaining parts of the 2008 Statement which are not discussed in this consultation have not been reconsidered and therefore remain unchanged.

Impact assessments

2.42 The analysis presented in sections 3-5 and the Annexes of this consultation represent an impact assessment, as defined in section 7 of the Act. Ofcom has, in particular, given careful consideration to how the proposed revisions to its policy statement prepared under section 131 of the Act will further both the interests of citizens and consumers in accordance with its general duty under section 3 of the Act.

2.43 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on the Ofcom website: http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

2.44 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.

2.45 We are required by statute to have due regard to any potential impacts that our proposals in this consultation may have on race, disability and gender equality – an Equality Impact Assessment (EIA) is our way of fulfilling this obligation. Ofcom has undertaken an EIA for this consultation because of concerns that vulnerable consumers could be more adversely affected by silent and abandoned calls. Where we have specific areas of concern with equality we have highlighted these, and our proposed remedies, in this consultation document (see paragraphs 3.45 – 3.48 and 3.106 – 3.109).

Independent research

2.46 Since the 2008 Statement was published, we have commissioned independent research to examine AMD technology and the drivers of silent call complaints received by Ofcom. The independent research that we refer to in this document is as follows:

i) The Verint Report[17] (July 2009). This was commissioned to:

- draw conclusions on the reliability of AMD;
- examine the scenarios where users could use AMD and comply with a 3% abandoned call rate;

[17] http://www.ofcom.org.uk/consult/condocs/persistent_misuse/amendment/verint.pdf

- identify the sources of information available to ACS users regarding the provision of a reasoned estimate of AMD false positives; and

- comment on the efficiency gains attributed to AMD technology.

ii) The Mott McDonald report (April 2010, see Annex 6). This was commissioned to analyse the drivers, patterns and key factors relating to the prevalence of silent calls. The analysis was based on a review of a sample of complaints to Ofcom and external data on silent calls, including data held by BT's Nuisance Call Bureau (NCB).

iii) Guidance from Ember Services Limited (Ember). Under the direction of Ofcom, Ember discussed with industry stakeholders the likely effect of our proposals to address repeat silent calls (see Section 3). The resulting analysis should be considered indicative only and is not meant to be representative of the entire industry. We intend to publish this separately in due course.

Consultation outline

2.47 As indicated above, this consultation will focus on the following:

- Section 3: examines the impact of repeat silent calls on consumers and presents Ofcom's preferred option for addressing repeat silent calls; and

- Sections 4 to 5: clarifies certain aspects of the 2008 Statement:

    - Section 4: concentrates on how ACS and AMD users should be calculating an abandoned call rate; and

    - Section 5: discusses other points of clarification including when an information message is to be played in the event of an abandoned call (the 'two second policy') and what information it may and may not contain and clarify what we mean by campaign.

Section 3

Repeat silent calls

Introduction

3.1 The use of Automated Calling Systems (ACS) and Answer Machine Detection (AMD) technology allows companies to lower the operational costs of running a call centre. Therefore, properly managed, consumers may benefit to the extent that these cost savings are ultimately passed on to them in the form of lower prices[18]. They also benefit when companies need to contact large numbers of people in a short time period to communicate important information; for example when a company needs to undertake a product recall.

3.2 However these technologies can also generate abandoned calls and specifically silent calls. This can result in consumer harm, particularly where consumers receive repeat silent calls.

3.3 Repeat silent calls are two or more silent calls from the same company over a 24 hour period.

3.4 This section considers the benefits of AMD technology against the harm suffered by consumers receiving repeat silent calls. It considers whether further and more specific intervention is required to limit the impact of repeat silent calls on consumers. Finally it sets out our recommended proposal to limit the number of times that an ACS user can contact a number already identified that day as being picked up by an answer machine.

Silent call complaints

3.5 The 2008 Statement made clear that AMD false positives are a type of abandoned call and a reasoned estimate of AMD false positives should therefore be incorporated into an ACS user's abandoned call rate (see Section 4, below). An abandoned call rate reflects the number of abandoned calls as a proportion of calls picked up by a live individual.

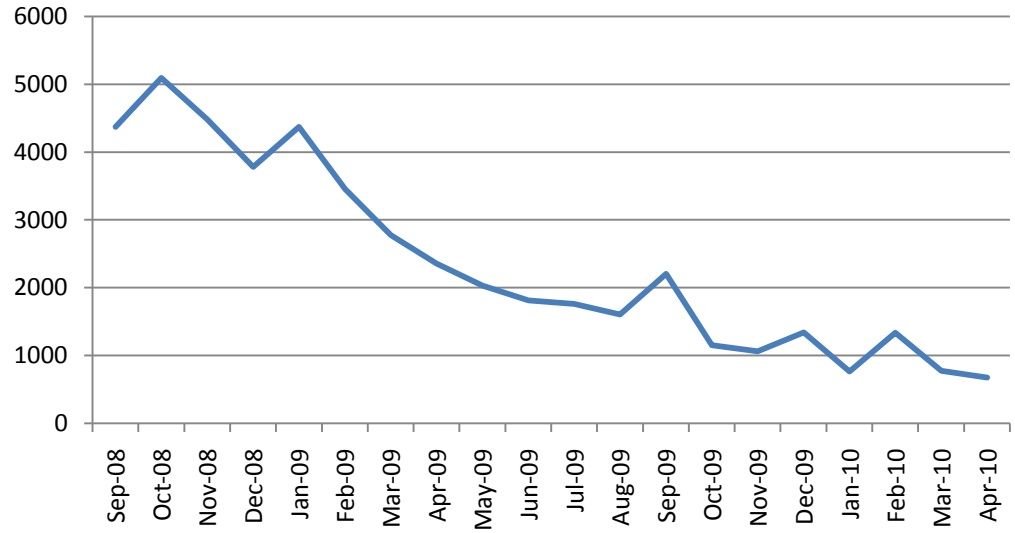
3.6 This clarification may have had some success in reducing the level of consumer harm caused by silent calls.

3.7 Anecdotal evidence suggests that many ACS users have either turned off AMD devices which produce an excessive amount of false positives in breach of the abandoned call rate, or undertaken measures to ensure compliance.

3.8 However complaints data on the effectiveness of the 2008 Statement is inconclusive. For example, while complaints to BT's Nuisance Call Bureau (NCB) about silent calls have steadily fallen to under 1,000 a month (see Figure 1), complaints to Ofcom's Advisory Team (OAT) fell initially, but have generally risen since the middle of 2009 (see Figure 2).

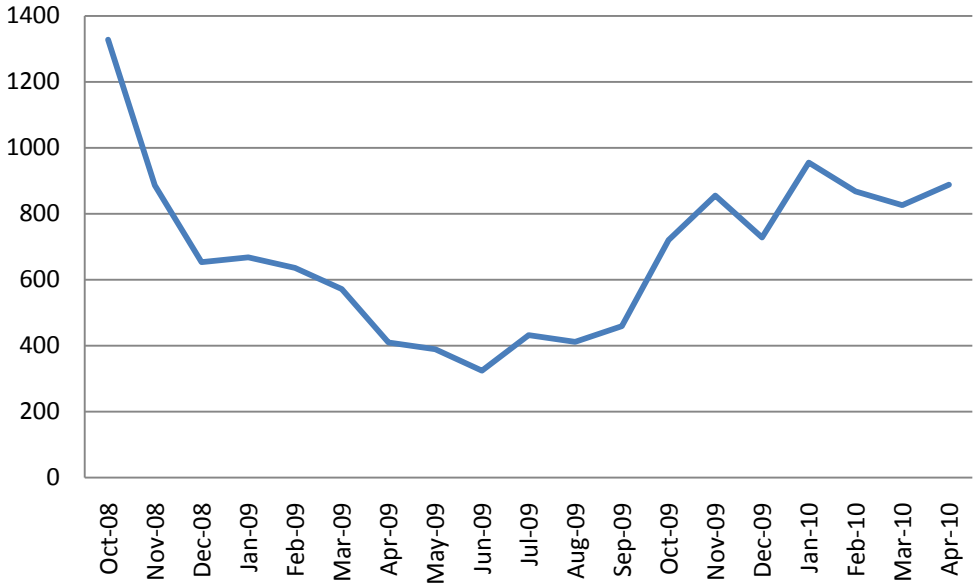
[18] These private efficiency gains are also likely to result in an increase in the volume of call centre calls. Increased call volumes may be either a cost or a benefit to consumers depending on whether consumers value these calls or consider them to be a nuisance.

Figure 1: BT Nuisance Call Bureau complaints about silent calls



Source: BT

Figure 2: Complaints to Ofcom about silent calls



Source: Ofcom Advisory Team

3.9 One possible explanation for the increase in OAT complaints since June 2009 is that the profile of abandoned calls may have increased following the publication of the Department for Business Innovation and Skills (BIS) consultation on raising the maximum penalty for the persistent misuse of an electronic communications network or service[19] published in September 2009 and Ofcom's publication in October 2009 of the 2009 Amendment.

[19] http://www.bis.gov.uk/files/file53311.pdf

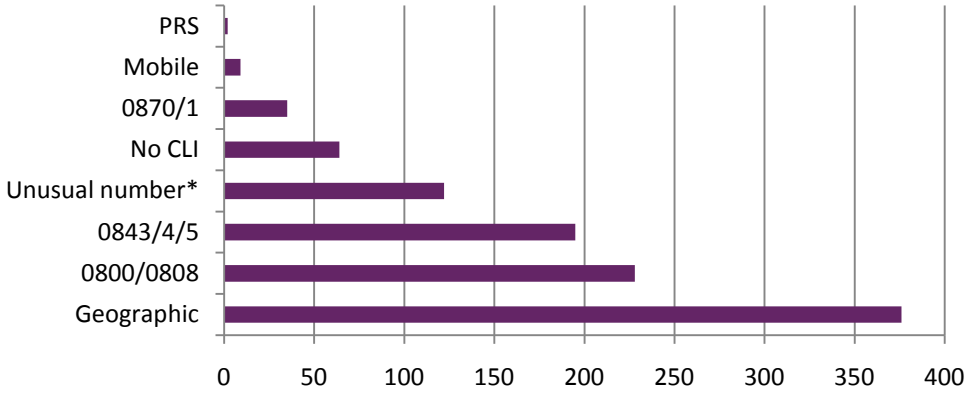
3.10 To help determine the main factors driving silent calls complaints to the OAT, Ofcom commissioned Mott McDonald to conduct a more detailed analysis of complaints about silent calls (see Annex 6).

3.11 Mott MacDonald's analysis of complaints to Ofcom about silent calls found the majority of companies making silent calls do display a valid, recognisable UK number (geographic, 080 or 084 number).

3.12 However, as set out in Figure 3 below, a significant minority of silent calls display no number, or display an 'unusual number' which differs from conventional UK numbers (i.e. not a recognisable geographic, non-geographic or mobile number).

3.13 In such cases, consumers are then unable to return the call and indentify the company using a Calling Line Identification (CLI).

Figure 3: The number of calls by type of CLI



* A number which differs from conventional numbers (i.e. not a recognisable geographic, non-geographic or mobile number).
Source: Mott MacDonald (see Annex 6)

3.14 This goes some way into addressing stakeholders' concerns that most silent calls are generated from call centres outside the UK.

3.15 Another of the principal findings of this analysis was that the overwhelming majority of silent calls complaints related to the receipt of repeat silent calls:

- 83% of complaints about silent calls concerned the receipt of multiple silent calls; and
- where the frequency of calls was referenced in a complaint, 72% of consumers complaining about silent calls stated that they received two or more silent calls per day.

3.16 These findings are confirmed by Ofcom's consumer research in March 2010 which suggests a quarter of those who have experienced silent calls on their home phone have received two or more from the same company – although a further 46% have never checked (see Figure 4 below).

Why do repeat silent calls occur?

3.17 Repeat silent calls occur when a company does not include an information message in the event of an abandoned call and does not comply with our policy that companies guarantee the presence of a live operator if they make repeat calls to that number in the following 72 hours[20].

3.18 There are a number of reasons why a consumer may be subject to repeat silent calls. For instance, repeat silent calls may occur as a direct result of AMD technology where live calls mistakenly assessed as 'answer machines' are not recorded as abandoned calls and are therefore not identified by an ACS user as subject to the 72 hour policy or the policy to play an information message. As a result, a consumer may receive several silent calls in the same day (the frequency being determined by the call-back settings applied to answer machine calls by the ACS user).

3.19 It is Ofcom's opinion that the majority of repeat silent calls are a direct result of AMD technology. The policy criterion to include an information message with ACS recorded abandoned calls is well established. When this was introduced in the 2006 Statement, it was done so with '*general agreement*'[21] by stakeholders. We believe that ACS users are well aware of the importance of including an information message on 'known' abandoned calls and we do not believe that the majority of silent calls are the result of ACS users ignoring this policy.

3.20 A company not using AMD that makes abandoned calls that do not include an information message and do not follow the 72 hour policy, can correct this through better management practices. If repeat silent calls are the result of AMD technology however, then the company in question may not even realise they are leaving repeat silent calls because AMD false positives are recorded by ACS as calls disconnected to answer machines. We also receive very few complaints about ACS users subjecting consumers to multiple abandoned calls within a continuous 72 hour period indicating that ACS users would not knowingly call back consumers who have received an abandoned call within that time period.

3.21 In this regard, the current policy for abandoned calls – most notably to include an information message and to guarantee the presence of a live operator if they make repeat calls to that number in the following 72 hours – do not address these types of repeat silent calls. In this regard, our current policy criteria does not protect consumers receiving these types of calls as, in theory, an ACS user using AMD can continue to make these calls indefinitely – provided it remains within the 3% abandoned call rate threshold.

3.22 In addition, AMD false positives are not evenly distributed and as a result they may have a disproportionate effect on a limited number of people. When Ofcom initiated action on persistent misuse in 2005, we noted that the volume of silent calls received was not equally spread out. The figures at the time suggested the worst affected 5% of the population receive 35% of all silent calls, the worst affected 10% receive 60% and the worst affected 15% receive 70%[22]. Research has also been carried out by MORI on behalf of the Telephone Preference Service (TPS)[23] to track the number of

[20] 2008 Statement, 4.16.4.
[21] 2006 Statement, 2.17.
[22] TPS Report on unwelcome calls 2008, p11.
[23] Consumers who provide their contact details to the TPS cannot be contacted subsequently by companies for marketing purposes http://www.mpsonline.org.uk/tps/.

silent calls people receive. This research suggests that 7% of UK consumers received 54% of all silent calls in 2009[24].

3.23 If a consumer receives a silent call as a result of an AMD false positive, then they are likely to keep receiving them. This is because AMD accuracy is not exclusively dependent on the technical nature of the device, but is also conditioned by external factors. These factors include the telephone type called (fixed, mobile or VoIP), consumer location (where the consumer is likely to be at the time of the call and whether there is background noise) and how a call is answered (whether the consumer answers with a lengthy greeting). These factors will all contribute as to whether an AMD device makes an accurate assessment or not. If these factors stay largely constant, then a consumer who receives one AMD false positive is likely to keep receiving more of these calls as ACS users continue to attempt to contact a number previously recorded as being received by an answer machine.

What are the benefits of AMD?

3.24 When AMD is turned on, companies (ACS users) are able to make more calls using the same levels of staff, reducing the costs of their operation. It also reduces the time it takes to contact a large group of consumers – this can benefit consumers when arranging deliveries of online purchases, utilities organising meter reads or banks getting in touch about potential cases of fraud.

3.25 Research presented to Ofcom estimates that using AMD technology can reduce staffing costs by between 2% and 13% depending on how high the answer machine rate is set i.e. the percentage of calls being answered by an answer machine (see Table 1 below).

Table 1: AMD Productivity[25]

	Answer Machine Rate			
	20%	30%	40%	50%
Live Talk Time AMD On (1)	75%	75%	74%	73%
Live Talk Time AMD Off	73%	71%	68%	60%
Increase in live talk time with AMD use (percentage)	2%	4%	6%	13%
Increase in live talk time with AMD use (minutes)	1 min	2min	4min	8min

Source: The Verint Report.

3.26 Should intervention aimed at reducing the incidence of repeat silent calls effectively or specifically require businesses to turn AMD off, the cost to a typical 100 seat call operation with staff costs of £12/hour, and using an answer machine rate of 30% to 40% would be approximately £64,000 to £96.000 per annum (see Table 2 below)[26].

[24] Brookmead Consulting, April 2010.
[25] This is when working to a 3% abandoned call rate.
[26] Operational cost per hour is an estimation of typical costs per hour assuming an element of sunk costs. Calculation assumes 115 hours calling per seat per month. If the calling window increases, the saving pa will also obviously increase.

Table 2: Additional cost without AMD

	Answer Machine Rate			
	20%	30%	40%	50%
Typical operational Cost Per Hour	£12	£12	£12	£12
Annual cost for 100 seat operation	£1.6m	£1.6m	£1.6m	£1.6m
Additional cost without AMD	£32k	£64k	£96k	£208k

Source: The Verint Report.

3.27 In principle it may be possible to avoid some of these additional operational costs through reducing capital expenditure. However research suggests it is unlikely that any capital costs savings could be achieved as in practice diallers are selected on the basis of many factors and a theoretical cost saving for de-scoping AMD functionality is unlikely to be realisable.

3.28 However, the operational cost savings from using AMD are likely to overstate the overall efficiency effects for two main reasons.

3.29 First, the above analysis assumes that businesses turn off AMD altogether. In practice, businesses are likely to have less costly alternatives, such as a more passive AMD setting[27]. For example, if the response of the 100 seat operation illustrated above was to reduce the answer machine rate by 10%, their costs would only increase by £32,000. Firms may also choose to invest in technology so improve AMD reliability rates rather than turning AMD off.

3.30 Second, there is evidence that the use of AMD can have a negative impact on efficiency through reducing sales conversion rates.

3.31 Ember's analysis of data from several campaigns of sales agencies indicate that, when AMD is switched off, this can have a positive effect on the number of sales made. It indicates that there can be up to a 33%-35% increase in conversion rates per call (i.e. calls which convert into sales)[28] and a 2%-14% increase in sales per hour[29]. This finding of AMD's impact on sales is also supported in the Verint report[30].

3.32 However, we recognise that such significant positive impacts on an ACS user's output from switching off AMD may not be replicated in all marketing campaigns and insignificant in the collections sector.

3.33 Nevertheless, they do need to be netted off against the cost savings inherent in the use of AMD. This means the cost saving figures presented above may overstate the likely reduction in efficiency that any intervention to restrict their use would have.

[27] AMD technology can be set to have a more aggressive or passive estimation of the presence of answer machines. If a more aggressive setting is used, it will assume less certain identifications are answer machines, and conversely if it is more passive, it will assume that less certain identifications are live. AMD technology set more aggressively is likely to drive more false positives. An ACS set to a more passive configuration is likely to drive more false negatives (calls which are put through to an agent but have actually been answered by an answer machine and therefore mistakenly categorised as been answered by a live individual by the AMD technology) as more of the uncertain calls are transferred to live agents and some of these will be answered by answer machines.
[28] This is because a consumer may identify the pause at the beginning of an AMD call as a sales call and subsequently hangs up.
[29] Sampling and testing methodologies are not statistically robust. Findings are indicative only.
[30] Ibid.

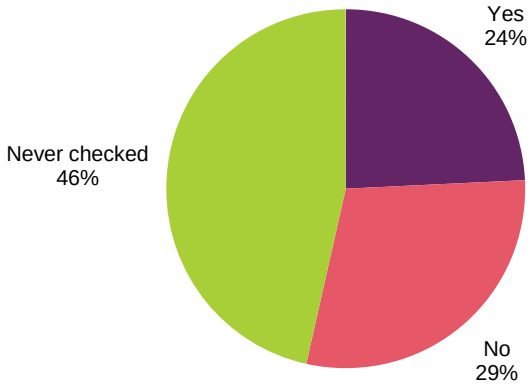
Consumer harm generated by repeat silent calls

3.34 To assess the level of consumer harm generated by repeat silent calls we have looked at evidence on the overall number of consumers likely to be affected by repeat silent calls and how much consumers would be willing to pay not to receive repeat silent calls.

How many consumers receive repeat silent calls?

3.35 Ofcom consumer research indicates over 1 in 5 of the population (22%) have experienced silent calls on their landline in the last 6 months. Of these, 24% have received more than two silent calls in a 24 hour period from the same number although nearly half – 46% – have never checked (see Figure 3 below).

Figure 4: Have you ever received two or more silent calls from the same number over a 24 hour period on your landline?



Base: All experiencing silent calls on fixed phone in last 6 months (231)
Source: Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010[31]

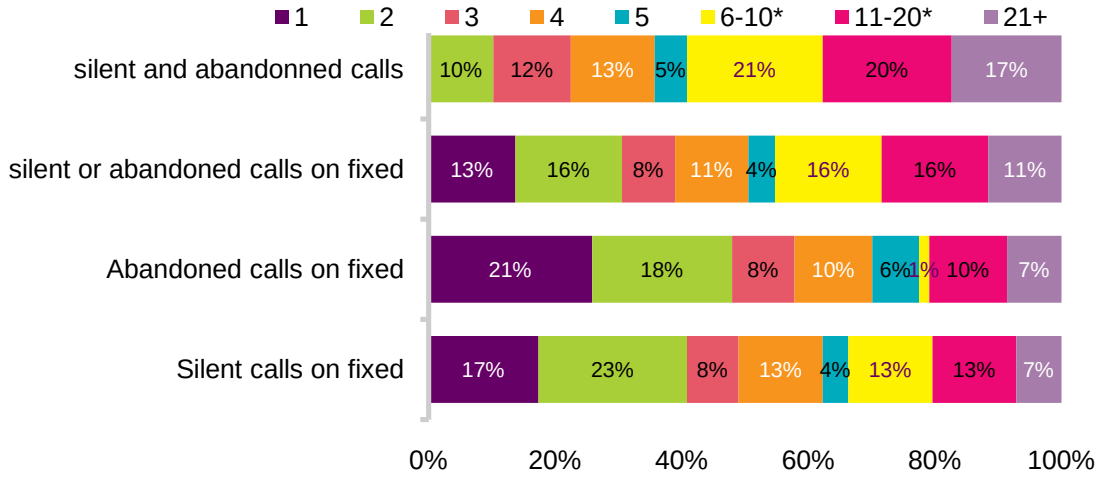
3.36 There are roughly 22 million residential fixed lines in the UK. Applying the proportion of consumers who say they have received a silent call in the last 6 months (22%[32]) to the number of residential fixed lines there could be as many as 4.8 million consumers affected by silent calls.

3.37 Analysis of our complaints records indicate that not all consumers are aware that they can see who called them by dialling 1471 and establishing the Calling Line Identification (CLI – and therefore 'check' whether they have received silent call from the same number over a period of time). Assuming that consumers who have 'never checked' are affected by repeat silent calls in the same proportion as those who have checked, this would suggest that just over 2m fixed line users in the UK suffer from repeat silent calls[33] This corresponds to around 10% of active fixed lines.

[31] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010
http://www.ofcom.org.uk/research/stats/
[32] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010.
[33] Mott MacDonald's analysis of Ofcom OAT complaints data on silent calls find that the predominant generator of repeated multiple silent calls is the fact that the customers are called repeatedly by the same number rather than being called singly by multiple numbers.

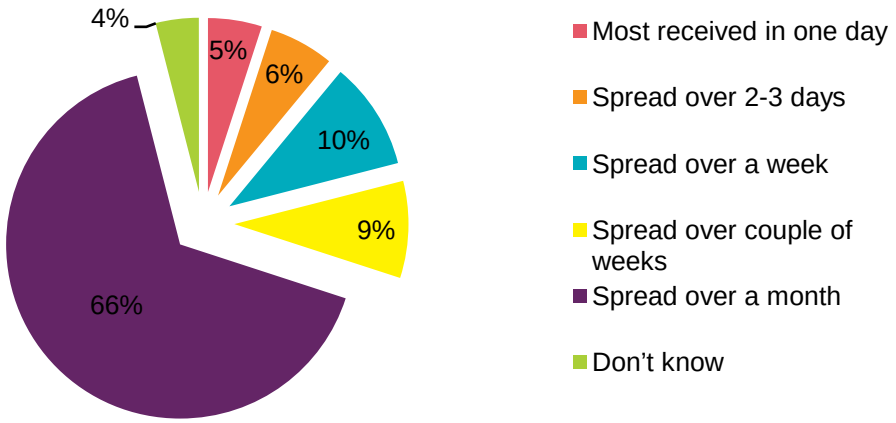
3.38 Although the majority of the population do not suffer from repeat silent calls, the impact on those who do, is significant. For example, 20% of those who received two or more silent calls in the last 6 months had received more than 10 silent calls (see Figure 5). The distribution of two or more silent calls received over a month on fixed lines shows that the majority of silent calls are however spread over this period rather than being concentrated over a short period (see Figure 6).

Figure 5: Average number of silent/abandoned calls received on fixed phone each month in the last 6 months



Base sample: Experiencing silent and abandoned calls on fixed phone in the last 6 months (155); experiencing silent calls on fixed phone in last 6 months (231), experiencing abandoned calls on fixed phone in last 6 months (330), experiencing silent or abandoned calls on fixed phone in last 6 months (406),
Source: Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010[34].

Figure 6: Distribution of 2 or more silent calls received over a month on fixed lines in the last 6 months



Base sample: experiencing 2+ silent calls on fixed line in last 6 months (192)
Source: Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010[35]

[34] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010
http://www.ofcom.org.uk/research/stats/

How much would consumers pay not to receive repeat silent calls?

3.39 One way to assess the level of consumer harm generated by repeat silent calls is to estimate the cost to consumers of purchasing technological solutions which are capable of eliminating such calls[36].

3.40 We have identified two technological solutions that are capable of blocking repeat silent calls:

i) trueCall[37].

ii) CallBlocker[38].

3.41 In addition to blocking repeat silent calls, both of these technologies are also capable of blocking a number of other types of nuisance calls such as "cold calling" and marketing calls. The current costs of these technological solutions are shown below.

Table 3: Cost of technological solutions against nuisance calls

	Upfront	Annual	Other
trueCall	£100	Optional £15 for online management of call lists and logs	Optional Caller ID cost £31 pa
CallBlocker	£55	-	-

3.42 TrueCall carried out a market survey on the likelihood that consumers would be willing to pay £12, £25, £50 or £75 a year for a service that would allow them to avoid nuisance calls. The results are presented in Table 4 below[39]. They estimated that roughly 4.3m households are willing to pay at least £4/month (£48 a year) to stop nuisance calls[40]. Of the households considered to be willing to pay for the service, the weighted average willingness to pay for the service was about £32 per year.

Table 4: trueCall TNS consumer survey

Amount to be paid per annum for service to avoid nuisance calls	Percentage of respondents				
	Definitely would register	Probably would register	Not sure	Probably would not register	Definitely would not register
£12	13%	19%	15%	19%	32%
£25	11%	19%	13%	21%	34%
£50	7%	13%	16%	23%	40%
£75	4%	12%	18%	19%	45%

[35] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010 http://www.ofcom.org.uk/research/stats/

[36] This approach is similar to that of Capital Economic and LECG in 2002 when tasked by the Consumer Choice Coalition to assess the economic impact of the Federal Trade Commission's proposed amendments to the Telemarketing Sales Rule, 16 CFR Part 310 - Miller, Bowater, Higgins and Budd (2002).

[37] http://www.trueCall.co.uk/

[38] http://www.callblocker.co.uk/

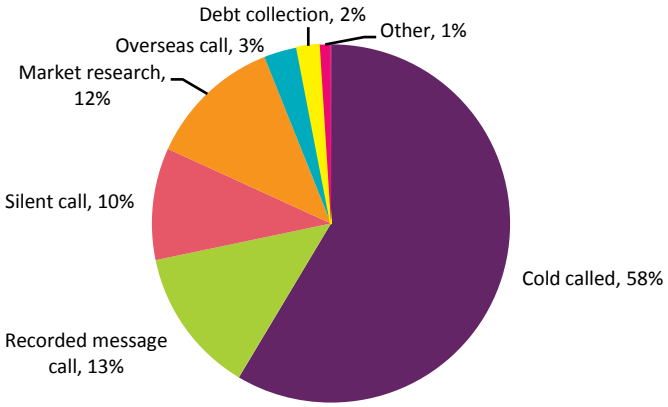
[39] Percentages in Table 4 do not add up to 100% as respondents who indicated "Don't know" are not displayed.

[40] The survey authors assumed that all respondents who indicated "Definitely would register" and 20% of those who indicated "Probably would register" would take up the service at the price level indicated.

3.43 However repeat silent calls account for only a proportion of nuisance calls. From TPS and BT NCAL complaints data we know that approximately 10%-21% of all complaints were about silent calls including repeat silent calls (see Figure 7 below).

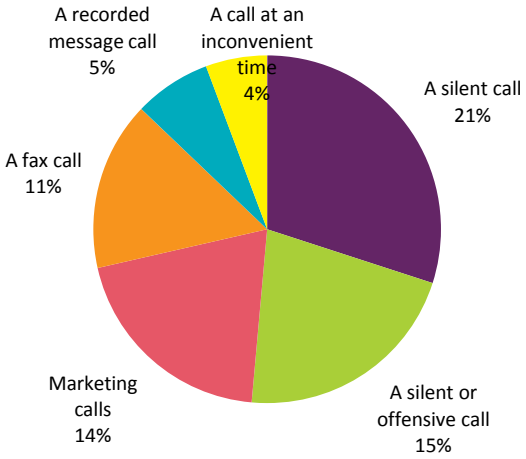
3.44 On the assumption that the value placed on avoiding repeat silent calls relative to other nuisance calls is similar to the proportion of complaints accounted for by silent calls (10%-21%), this would suggest that the upfront cost to consumers of avoiding repeat silent calls is between £6 and £21. This is based on the capital cost of the technological solutions in Table 3 above. Applying the same assumption to trueCall's market research and consumer survey findings suggest that consumers average willingness to pay to avoid repeat silent calls is between £3 and £7 per year.

Figure 7: TPS Complaints Breakdown[41]



Source: 2008 Brookmead Report

Figure 8: BT NCAL Complaints Breakdown, from Brookmead 2008[42]



Source: 2008 Brookmead Report

[41] Brookmead Consulting, TPS report on unwelcome calls 2008.
[42] Ibid.

Older and disabled consumers

3.45 Ofcom data from December 2009 indicates that silent calls are more likely to be received by adults aged 45 years and over[43]. This is likely to be due to the amount of time spent at home. It indicates that older consumers are affected more by silent calls.

3.46 This is evidenced by the complaints Ofcom receives about repeat silent calls. Complainants often mention that they (or family members) are more adversely affected by receiving repeat silent calls because of their age or disability (see case studies below).

3.47 We expect the true harm to consumers from receiving repeat silent calls to be higher than our estimates. In practice, some repeat silent call victims, particularly older and disabled people, will suffer the higher cost of repeat silent calls due to poor awareness of or investment in a technological solution, as well as any physical difficulty in reaching the phone.

3.48 The following case studies collected by Ofcom over the last six months illustrate the consumer harm on this group from repeat silent calls:

> "Up to 20 times a day rings and silence when answering. Research shows this number to belongs to [✂][44]. Unable to ring it back….I am on the preference service but that don't seem to help and being disabled the journey to the phone for this is becoming a burden."
>
> "Repeated silent calls. Very annoying as I am elderly with health problems."
>
> "This number has started calling regularly. When the phone is answered there is no reply and the call is disconnected after a few seconds. This phone belongs to my elderly parents and it's a struggle for them to get to the phone and answer it, so calls such as this are particularly upsetting."
>
> "The consumer is calling on behalf of his parents who are elderly. The consumers parents have been receiving silent calls twice a day for the past 5-6 weeks from the above number. The consumer is a [✂] customer and wants to log the case and some advice on how to proceed."

Business users

3.49 Repeat silent calls will also have an impact on business fixed lines. The following case study from May 2010 illustrates the harm experienced by one particular business:

> "This number has been phoning one of our mobiles in our group every 30 mins, which is proving most annoying and dangerous because it's becoming a distraction"

3.50 About a third of all fixed lines are business fixed lines (9.3m) and a proportion of these lines will be affected by silent calls as well. Typically, businesses' take up of services against nuisance calls such as 'Anonymous Call Reject' and 'Choose to Refuse', Although comparatively this is much lower than for residential consumers

[43] Ofcom Consumer Concerns Tracker, TNS omnibus, December 2009 http://www.ofcom.org.uk/research/stats/

[44] Confidential information and data have been redacted. Redactions are indicated by [✂].

(about 5% of residential take up) this does suggest that the problem of repeat silent calls is not limited to residential consumers and business consumers are also likely to incur a cost to avoid repeat silent calls.

Mobile users

3.51 Ofcom market research has found only 7% of mobile users say they have experienced silent calls in the last 6 months – and in those cases the volume of silent calls received has been low – only one or two calls each month[45].

3.52 While it is possible that the harm of repeat silent calls on mobile users could grow over time as the volume of calls to mobile increase as termination rates fall and more households become 'mobile only', we note that there is also further scope for mobile users to prevent harm from silent calls received:

i) 35% of mobile users are aware that mobile numbers can also be registered on TPS with actual registrations of mobile numbers low (about 1m or roughly 7% of total registrations) and we would expect mobile TPS registrations to rise in the future[46].

ii) The 'caller ID' function on mobile phones allows users to more effectively screen their calls before answering, reducing the likely harm that silent calls may cause on mobile users (this functionality is also available on some fixed line phones).

3.53 However, whilst we do not consider the harm to mobile users to be significant at present, this aspect may be considered in greater detail in future analysis by Ofcom.

Tackling repeat silent calls

3.54 We have identified a number of policies that Ofcom could adopt to address the issue of repeat silent calls and assess the impact of these below:

Option 1: Do nothing. The current policy would continue to apply with no additions.

Option 2: Stop using AMD. The policy would be that companies should stop using AMD.

Option 3: Introduce a '24 hour policy'. In the event that AMD indicates that an answer machine has been reached, subsequent calls to that number within a 24 hour period could only be made with the guaranteed presence of a live operator.

Option 4: Introduce a '24 hour policy' (as above) and a policy that information messages be played on both abandoned calls and calls answered by answer machines.

Option 5: Extend the '72 hour policy' to cover answer machine calls. In the event that AMD indicates that an answer machine has been reached, subsequent calls to that number within a 72 hour period could only be made with the guaranteed presence of a live operator.

[45] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010 http://www.ofcom.org.uk/research/stats/

[46] Mobile phone users who provide their contact details to the TPS cannot be contacted subsequently by companies for marketing purposes http://www.mpsonline.org.uk/tps/

3.55 We consider the impact of each option below.

Option 1: Do nothing

3.56 Our research shows that more than 1 in 5 consumers have experienced silent calls in the past 6 months – and a large number of these have received multiple silent calls in one day[47]. Our research and complaints data suggests an inequitable distribution of harm caused by silent calls across the UK, with older and disabled consumers the worst affected.

3.57 However we also recognise the efficiency benefits offered by AMD. As set out above, when AMD is turned on, ACS users may be able to make more calls using the same levels of staff which increases their efficiency. Consumers may benefit from these efficiency benefits by way of lower prices on goods and services – they also benefit when it is important for large numbers of consumers to be contacted in a short space of time.

3.58 Our approach to silent calls as set out in the 2006 Statement and 2008 Statement has been to balance consumer protection with innovation by industry. This is reflected in our policy criteria which aim to reduce the impact of abandoned calls on consumers while preserving the efficiency benefits inherent in ACS and AMD technology. For example, it is reflected in setting the enforcement priority at a 3% abandoned call rate and including a reasoned estimate of false positives, rather than a zero tolerance approach. This allows industry to use ACS and AMD despite some degree of harm caused to consumers.

3.59 In our view, based on the analysis above, the consumer harm from repeat silent calls is likely to outweigh the efficiency benefits enjoyed by AMD users. This is because the existing policy does not effectively place a limit on the number of times an ACS user can call an answer machine. Where AMD mistakes a live consumer to be an answer machine, this can result in a series of repeat silent calls, where consumers may feel they are being specifically targeted. We estimate that two million people in the UK are affected by this problem.

3.60 It is also important to note that there could be grounds for intervention even if the efficiency benefits exceeded consumer harm, so long as our targeted intervention would improve overall net benefits to society. That is, if the net benefit following intervention was higher than the current net benefit.

3.61 On this basis, we do not consider it is appropriate to do nothing. We are therefore looking at measures designed to prevent excessive harm to consumers from repeat silent calls while preserving the efficiency benefits gained from some use of AMD technology (Options 2 – 5 below).

Option 2: Stop using AMD technology

3.62 Under this option the policy is that companies should stop using AMD technology. This would be likely to eliminate the majority of silent calls and repeat silent calls.

3.63 This approach would depart from previous policy as set out in the 2006 Statement and 2008 Statement whereby we have sought to balance consumer protection with

[47] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010 http://www.ofcom.org.uk/research/stats/

industry innovation, allowing the industry some margin of error instead of advocating a zero tolerance approach. This is reflected in our policy criteria namely:

- the 3% abandoned call rate threshold; and
- the 72 hour limit on contacting consumers without the guaranteed presence of a live operator who have received an abandoned call.

3.64 If properly managed AMD can benefit consumers. As set out above, AMD produces cost efficiencies for call centres which may be passed on to consumers in the form of lower prices for goods and services. It also reduces the time it takes to contact a large group of consumers – this can benefit consumers when arranging deliveries of online purchases, utilities organising meter reads or banks getting in touch about potential cases of fraud.

3.65 Since the publication of the 2008 Statement, stakeholders have demonstrated a number of advances in AMD technology. These advances have focused on improving accuracy rates and developing solutions where customers who may receive AMD false positives are given the opportunity to be transferred to dedicated call centre agents.

3.66 A policy of avoiding AMD would remove any incentive for innovation in AMD technologies that could lead to an increase in these efficiency benefits while lowering the consumer harm caused by its use.

Option 3: Introduce a 24 hour policy for calls to answer machines

3.67 Under this option we would amend the 2008 Statement to include a new policy criterion that, in the event that AMD equipment indicates that an answer machine has been reached, subsequent calls to that number within a 24 hour period can only be made with the guaranteed presence of a live operator.

Impact on consumer harm

3.68 Imposing a 24 hour policy on answer machine calls would effectively tackle repeat silent calls to consumers. As set out above, this is because repeat silent calls are mainly generated by AMD false positives (recorded by ACS users as calls to answer machines) and are defined as two or more silent calls received from the same caller in a 24 hour period.

3.69 The accuracy of AMD is not exclusively dependent on the technical nature of the device and is conditioned by external factors such as line quality, consumer location and associated background noise. This indicates that consumers receiving one AMD false positive are likely to keep receiving these calls due to these external factors.

3.70 The only way for ACS users using AMD to avoid repeat silent calls during a 24 period is to limit the number of times that they call numbers previously identified as being picked up by an answer machine.

3.71 Introducing a 24 hour policy would dramatically reduce the incidence of silent calls while preserving some of the industry and consumer benefits that are derived from the use of AMD technology, set out above.

Impact on AMD efficiency benefits

3.72 The operational cost increase to call centres to implement this policy as represented to Ember were (based on a 100 seat operation):

- Setup costs – Estimated in the region of £5,000-10,000 implementation cost per operating site to re-programme the dialler (in reality this is likely to be a sunk cost). There is likely also to be a charge to create the monitoring and reporting suite that would be required. This was estimated in the regions of thousands of pounds, but could be significantly more if presented by dialler manufacturers as a product upgrade; and

- Ongoing support cost – Management and monitoring cost increase from the increase complexity for managing delayed calls, estimated in the region of £30,000 per year per operating site although costs are likely to vary significantly.

3.73 Aggregating both setup costs (assuming a fixed cost recovery time horizon of three years) and ongoing support costs, we estimate that the annual operational cost for implementing a 24 hour policy with AMD use would be roughly £32,000-£35,000 per year. This cost erodes part of the efficiency benefit of AMD (estimated to be £64,000-£96,000 per year for a 100 seat operation) examined in Table 2 but we consider there would still be a net efficiency benefit from AMD use with a 24 hour policy imposed before operational efficiency considerations are included.

3.74 We recognise that a 24 hour policy could potentially affect operational performance for some ACS users. ACS operations are more efficient the larger and more interchangeable the pool of records to be called. Constraining the pool of records that can be called back within 24 hours would reduce the efficiency of calling. This impact is dependent on a number of variables including the answer machine rate, the nature of campaign and the value of sales/debt profile, and would be difficult to quantify.

3.75 Under the direction of Ofcom, Ember asked industry stakeholders what impact a 24 hour policy would have on their performance. Responses suggested a degree of uncertainty but the range of anticipated impacts included:

i) No effect – policy not to call back within 24 hours already in place.

ii) Campaign data sets likely to be pulled 10%-15% earlier resulting in a significant drop in sales made but probably off set to a certain degree by the reduction in cost per sale as the less efficient calling at the end of a campaign is dropped.

iii) 5% loss in overall productivity (as represented by agent talk time).

3.76 We are also aware that debt collection agencies argue that the main sufferer from the introduction of a limit on answer machine call backs would be the customer as failure to contact them and arrange repayment terms would result in the escalation of their case to a higher level of arrears.

3.77 While we note the time sensitive nature of debt collection calls, this type of policy would not restrict agencies calling consumers if they could guarantee the presence of an operator. Guaranteeing the presence of an operator for calls recorded as answer machines within a 24 hour period would increase operational costs, therefore this effect would largely be controlled by considering the higher operational cost of imposing a 24 hour policy.

3.78 Regardless, we believe that this option preserves some efficiency benefits for AMD users.

Option 4: Introduce a '24 hour policy' and a policy that information messages to be played on calls to answer machines

3.79 Under this option we would introduce a 24 hour policy and expect information messages to be played on all calls to answer machines.

Impact on consumer harm

3.80 The impact of a 24 hour policy on calls to answer machines is considered above.

3.81 In addition, a policy that information messages should be played on calls to answer machines and abandoned calls would effectively eliminate all silent calls as a result of AMD false positives.

3.82 However this approach could create a nuisance in itself by leaving information messages on answer machines where previously no message had been left (although these would be limited to one per 24 hours). Consumers are likely to feel annoyed and inconvenienced if a company leaves a large number of (part) messages on their answer machine. We understand from stakeholders that this could translate into a negative impact on the company's image where a high proportion of the calls it makes are picked up by consumers' answer machines[48].

3.83 This would be accentuated by the strong likelihood that a company would end up leaving part messages (when an information message begins playing before an answer machine begins recording) in order to comply with the two second policy. Allowing a longer time period before an information message needs to be played would increase the likelihood that the consumer hangs up the phone before an information message is played (see Section 5).

3.84 On this basis we do not believe that increasing the number of information messages consumers are likely to receive would reduce consumer harm any more than ensuring a live operator is available when a number previously identified as being picked up by an answer machine in the preceding 24 hours is called (Option 3). In fact, it is Ofcom's opinion that this may increase consumer harm by creating a new nuisance in itself.

Impact on AMD efficiency benefits

3.85 We believe there would be an increase in costs to ACS users leaving information messages on all answer machine calls, including[49];

- Set up costs – same as in the case of the 24 hour policy (see 3.72 above); and
- Ongoing increased telecommunications costs due to messages being left. This would depend on the answer machine rate but is likely to be in the

[48] If we assume that anywhere between 30-50% of all calls an ACS user makes on a daily basis are picked up by answer machines, this is the proportion of calls that would be subject to this requirement. This is significantly higher than a maximum of 3% of all live calls that require information messages under the current requirements.
[49] This is an upper bound estimate as it may be cheaper for an operation to simply switch AMD off.

region of a 0.2%-0.4% of overall cost for an answer machine rate of between 30%-60%[50].

3.86 Further, there could be a wider impact of brand damage if the information messages were not left properly (e.g. part messages being left) which would be detrimental to the business concerned.

3.87 Overall, given the lack of improvements to overall AMD efficiency and the significant increase in levels of inconvenience posed to consumers from an increased number of information messages; leaving information messages on answer machine disconnects is unlikely to improve net societal benefits from the use of AMD technology and would not be an effective remedy.

Option 5: Extend the 72 hour policy to include calls to answer machines

3.88 The policy in Ofcom's 2008 Statement is that, in the event of an abandoned call, calls to that number may only be made in the following 72 hours with the presence of a live operator.

Impact on consumer harm

3.89 Extending the 72 hour policy to include calls to answer machines would dramatically reduce the number of silent calls received by those consumers worst affected, as set out in 3.22. However, extending the 72 hour policy to cover calls to answer machines would mean that all calls (i.e. both abandoned calls and answer machine calls) would be subject to the 72 hour policy so that the impact on ACS users would be more significant.

Impact on AMD efficiency benefits

3.90 Under the current policy, the abandoned call rate should be no more than 3% of live calls. In addition, where an abandoned call is made to a particular number, there should not be a repeat call to that number within 72 hours unless a live operator is available.

3.91 In practice, this should mean that a maximum of 3% of live calls are subject to the 72 hour policy. If we assume that anywhere between 30-50% of all calls a call centre makes are picked up by answer machines, then this same proportion would not be able to be called without the guaranteed presence of a live operator in addition to the maximum 3% of live calls if the 72 hour policy was extended.

3.92 The consequence of extending the 72 hour policy would be a shortening of campaigns. ACS users would not attempt to contact as many people as they normally would if they had to wait a number of days to call numbers using AMD previously answered by an answer machine.

3.93 The operational cost increase to call centres to implement this policy as represented to Ember were:

- Setup costs – same as in the case of the 24 hour policy (see 3.72 above).
- Ongoing support cost – management and monitoring cost increases as a result of the increased complexity for managing delayed calls. Analysis

[50] Analysis provided by Ember.

provided by Ember estimates this cost to be in the region of £40,000 per year per operating site (although costs are likely to vary significantly)[51].

3.94 On-going performance when the 72 hour policy is imposed is affected in a similar fashion to that when a 24 hour policy is imposed (see paragraph 3.74) but further exacerbated as call centre campaigns are shortened:

i) Campaign data sets are likely to be pulled 15%-20% earlier. This will result in a significant drop in sales made but should be offset by the reduction in cost per sale as the less efficient calling at the end of a campaign is removed.

ii) 5%-10% loss in overall productivity (as represented by agent talk time per hour).

3.95 A 72 hour policy applied to all answer machine calls is likely to significantly increase operational inefficiency above and beyond a 24 hour policy as estimated in section 3.75 above. We believe the further reduction in consumer nuisance does not outweigh this increased cost.

Ofcom's preferred option to address repeat silent calls

Option 3 – Introduce a new 24 hour policy

3.96 Our preferred option is Option 3 – to introduce a new policy criterion that, in the event that an answer machine has been reached, subsequent calls to that number within a 24 hour period should only be made with the guaranteed presence of a live operator.

3.97 We believe that two months from the publication of the revised statement is an appropriate implementation period for industry to comply with this proposal. Ofcom understands that some ACS users may already be operating to this standard. We also believe that the technical requirements for ensuring this proposal is adhered to are not complex. It is our understanding that ACS have the ability to delay recalling records and this could be programmed to occur on answer machine identified calls.

3.98 Not taking action (Option 1) would ignore the current levels of consumer harm generated by repeat silent calls. Avoiding AMD (Option 2) would ignore the consumer benefits AMD may produce (both direct and indirect) and curtail industry innovation.

3.99 Instead, we consider it would be beneficial to have policy that would limit the harm to consumers from repeat silent calls while allowing efficiency benefits from some use of AMD to be maximised.

3.100 Requiring information messages on all calls (Option 4) is likely to create a bigger and more widespread nuisance than the one it is seeking to remove. Extending the 72 hour policy (Option 5) has its merits, but we are conscious of the costs to industry and consumers this may impose.

3.101 A 24 hour policy for calls made to answer machines would reflect the standards that some ACS users are already operating to and we believe would produce the best balance between ensuring consumer protections and allowing industry innovation.

3.102 We believe a 24 hour policy would be likely to bring the most net benefit to society as it allows some of the efficiency benefits of AMD to be retained while eliminating repeat silent calls and the harm they cause to consumers.

[51] Analysis provided by Ember.

3.103 We believe that this could also significantly reduce silent calls (and certainly tackle repeat silent calls) while preserving the efficiency benefits of AMD. We regard this is a better outcome for society than an outright ban of AMD.

3.104 However we note that while this remedy would effectively tackle repeat silent calls within a 24 hour period – from where we believe the majority of consumer harm from silent calls currently stems – it would not eliminate silent calls completely. As a result, consumers could still suffer from consistent silent calls over repeated days even if firms were entirely compliant with our proposals.

3.105 It would be important, therefore, for Ofcom to monitor the impact on consumers from silent calls over repeated days.

Equality Considerations

3.106 In relation to equality considerations, we have had due regard to the potential impacts our proposals may have on race, disability and gender equality.

3.107 As set out in paragraphs 3.45 – 3.48 Ofcom research indicates that older and disabled consumers are affected more by silent calls. Complaints received by Ofcom about silent calls also indicate that levels of annoyance, concern and anxiety are likely to be greater for disabled consumers.

3.108 On this basis we expect the true harm to consumers from receiving repeat silent calls to be higher than our estimates, as in practice some repeat silent call victims, particularly older and disabled people, will suffer the higher cost of repeat silent calls due to various factors. These factors include, experiencing greater difficulty in reaching the telephone and having poor awareness of or investment in a technological solution. Moreover as it is likely that these individuals spend more time at home, and therefore they are more likely to be present to receive a silent call.

3.109 It is therefore essential that Ofcom adopts measures that will have a positive effect on the likelihood of these more vulnerable groups receiving repeat silent calls. We believe the introduction of a 24 hour policy would achieve this.

Ofcom's proposal

3.110 We therefore propose to amend the 2008 Statement as follows (see A1.55):

> *"When a call has been identified by AMD equipment as an answer machine (including AMD false positives), any repeat calls to that number in the following 24 hours may only be made with the guaranteed presence of a live operator."*

Monitoring the impact of a 24 hour policy

3.111 We will continue to monitor the level of consumer harm caused by silent calls.

3.112 If we do not see a continued reduction in this harm – evidenced by fewer complaints and moves by industry towards more accurate and reliable use of AMD technology – we may need to revisit our approach. This may involve policy consulting on whether tighter regulation of AMD technology is required; this could lead Ofcom considering an outright policy of avoidance of AMD technology or a policy that AMD is 100% accurate.

Question 1: Do you agree that Ofcom should limit the number of times a company can call an answer machine without guaranteeing the presence of a live operator to once every 24 hours?

Question 2: Do you agree with Ofcom that a two month implementation period (from publication of Ofcom's revised statement) would be an appropriate length of time for industry stakeholders to adopt any changes to comply with the proposed 24 hour policy?

Section 4

The abandoned call rate

Introduction

4.1 Ofcom's primary policy objective in relation to persistent misuse has been and continues to be to ensure that users of automated calling systems (ACS) take steps to avoid making abandoned calls; and that when abandoned calls are made, steps are taken to reduce the degree of harm caused.

4.2 This is because even a single abandoned call may cause unnecessary annoyance, inconvenience or anxiety. Properly managed call centres will strive to ensure that they do not generate more calls than their agents can handle and therefore do not cause calls to be abandoned. A persistent failure to do so may constitute an act of persistent misuse and following an investigation may lead to Ofcom issuing a notification under section 128 of the Act.

4.3 This section sets out:

i) The terminology used when calculating the abandoned call rate.

ii) An updated formula for calculating the abandoned call rate.

iii) How Answer Machine Detection (AMD) users can provide a 'reasoned estimate' of AMD false positives.

iv) How to calculate an abandoned call rate when AMD technology is in use.

v) How to calculate an abandoned call rate when AMD technology is not in use.

Terms defined

4.4 We have defined the terms below which are relevant to calculating the abandoned call rate. These definitions can be found in the glossary annexed to the draft statement of policy.

4.5 A *live call* is where a connection is established and the call is answered by a *live individual*. This includes *live calls to a live operator* and *abandoned calls*.

4.6 A *live individual* refers to a UK consumer who is called by an ACS and/or AMD user.

4.7 A *live call to a live operator* is a call where a live operator is put through to a live individual. A *live call to a live operator* does not include calls made by ACS and/or AMD users that are answered by answer machines.

4.8 An *abandoned call* is where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. An abandoned call includes a reasoned estimate of *AMD false positives* and excludes a *reasoned estimate of calls abandoned to answer machines*.

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

4.10 A *reasoned estimate of AMD false positives* is an estimate of the number of AMD false positives as a proportion of total answer machine calls.

4.11 A *reasoned estimate of calls abandoned to answer machines* is an estimate of the number of ACS identified abandoned calls that have actually been answered by an answer machine.

4.12 An *unconnected call* may also be terminated after a predetermined period (i.e. greater than 15 seconds) because it has not been answered, perhaps because no one is there to take it. Within industry terminology and for the purposes of this consultation such calls are not classified as 'abandoned calls'. This is because an abandoned call is one which has been picked up by a live individual.

Ofcom's proposal

4.13 We propose to insert the terms defined above in the revised statement.

The abandoned call rate formula

Previous wording in past policy statements

4.14 Ofcom's 2006 Statement established a limit to the number of abandoned calls a company can make and outlined how an abandoned call rate should be calculated. This was maintained in the 2008 Statement where we stated:

> *'the abandoned call' rate shall be no more than three per cent of 'live calls', calculated per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over any 24 hour period, and shall include a reasoned estimate of Answer Machine Detection (AMD) false positives'*[52].

4.15 We are aware that the following formula for calculating the abandoned call rate provided in a footnote to the 2008 Statement may not have fully reflect our policy above:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) +\ Calls\ passed\ to\ a\ live\ operator\ (y)} * \frac{100}{1}$$

4.16 The difference between Ofcom's use of the terms 'live calls' (in text above at 4.13) and 'calls passed to a live operator' (in the formula above at 4.15) has led to confusion. Some stakeholders have thought that 'calls passed to a live operator' implies that ACS users should include **all** calls passed to an operator in their calculation – including calls picked up by answer machines.

4.17 However, including calls picked up by answer machines in the abandoned call rate calculation – the (y) value – does not give an accurate representation of the number of abandoned calls as a proportion of total live calls made[53]. This is because calls picked up by answer machines are not defined as 'live calls' by Ofcom.

[52] 2008 Statement, 4.16.1.

[53] Including calls picked up by answer machines will have the effect of inflating the denominator and diluting the abandoned call rate.

4.18 We are aware that when using AMD, some calls are put through to an agent but have actually been answered by an answer machine and therefore mistakenly categorised as being answered by a live individual by the AMD technology. These are referred to as 'False Negatives'.

4.19 False Negatives are not live calls as they have been picked up by an answer machine rather than a live individual. Therefore for the purposes of calculating the abandoned call rate, false negatives are not live calls and therefore should not be included in the abandoned call rate.

Suggested amended wording

4.20 To remove any existing confusion, we are replacing the formula in 4.15 with the one presented below:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

4.21 The terms included in this definition are defined in 4.4 onwards.

4.22 Ofcom believes that this formula more clearly reflects our policy to present the number of abandoned calls as a proportion of live calls i.e. abandoned calls [value x] plus live calls to a live operator [value y].

Ofcom's proposal

4.23 We therefore propose to include the following formula to be used by ACS users when calculating an abandoned call rate (see paragraph A1.27):

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

Question 3: Has Ofcom provided sufficient clarity on how the abandoned call rate is to be calculated?

4.24 How the number of abandoned calls is calculated will depend on whether or not AMD is used.

4.25 AMD users must include a reasoned estimate of AMD false positives when calculating an abandoned call rate. This is on the premise that AMD false positives are abandoned calls and should be recorded as such.

4.26 Non AMD users must ensure that a reasoned estimate of calls abandoned to answer machines is not included in the number of abandoned calls.

Providing a reasoned estimate of AMD false positives

4.27 Current technology means that an AMD false positive cannot be recorded as a call picked up by a live individual. Rather it is wrongly identified as a call to an answer machine that has been disconnected. Because of this, AMD false positives are not recorded by AMD users as abandoned calls. Therefore these are not included in the abandoned calls figure produced by the AMD user.

4.28 Moreover it is not possible to give an exact figure of the number of AMD false positives AMD users generate. Therefore AMD users must produce a reasoned

estimate of AMD false positives. In the 2008 Statement we provided some guidance for providing a reasoned estimate of AMD false positives and noted that:

> '*Accuracy of AMD could be tested by comparing the different connection rates when it is on and off or by making test calls to a range of numbers where the actual presence of an answer machine is known in advance. Providers could listen to a range of calls where AMD is being used. Calls where an answer machine is detected could also be passed to live operators for a limited period and this may help to quantify numbers of false positives*.[54]'

4.29 This reflects that a reasoned estimate of AMD false positives is essentially an estimate of how accurate an AMD device is in detecting calls to answer machines (based on reasonable evidence about how that estimate was derived).

4.30 Since the 2008 Statement, some industry stakeholders have indicated to Ofcom that they are unclear what the appropriate methods to calculate a reasoned estimate of AMD false positives are. In response to this, Ofcom commissioned the Verint report to address what testing methodology ACS users could follow to ascertain AMD accuracy rates.

4.31 Ofcom is basing its discussion on this area on the findings of this report, information from industry stakeholders on typical testing practices already being undertaken and – in the event of an investigation – the information Ofcom would typically request from an ACS user to determine compliance.

Different methodologies for producing a reasoned estimate of false positives

4.32 ACS users can calculate a reasoned estimate of AMD false positives via a number of different testing methodologies. We have identified three possible methodologies:

i) 100% analysis.

ii) Staged analysis.

iii) Live sampling.

4.33 Below, we consider the advantages and disadvantages of each.

100% analysis

4.34 The first methodology we have identified to calculate a reasoned estimate of AMD false positives is **100% analysis**. This would involve every call that has been identified as an answer machine being checked to identify whether it was a true detection.

4.35 Clearly, this would be a very time consuming task and would remove any advantages gained by using AMD technology. On this basis, in the 2008 Statement, we ask for a reasoned estimate of AMD false positives instead. We continue to consider that 100% analysis is an unsuitable approach.

[54] 2008 Statement, footnote 16.

Staged analysis

4.36 The second methodology we have identified is **staged analysis**. This testing methodology involves test-calling known outcomes and generally occurs in two ways:

i) **Scenario testing**. A variety of answer machines with varying recorded messages are linked to specific numbers and live consumers are linked to other numbers. Accuracy is determined by the extent to which an AMD device correctly recognises these known outcomes.

ii) **Laboratory testing**. This testing is undertaken by dialler manufacturers in laboratory conditions (often referred to as 'the manufacturer's accuracy claims').

4.37 Staged analysis testing is attractive if it is assumed that AMD false positive rates do not fluctuate significantly due to external factors. However, we believe this is an unrealistic assumption because AMD accuracy is not exclusively dependent on the technical nature of the device, and so a constant, but rather is also conditioned by external factors.

4.38 Broadly speaking, AMD works by analysing live and recorded (answer machine) salutations against known patterns of response. It breaks the start of the call into small parcels of time and assesses the sound on the line during that period. Therefore external factors such as the telephone type called (fixed, mobile or VoIP), consumer location (where the consumer is likely to be at the time of the call and associated background noise), how a call is answered and the type of consumer called (demographic factors such as the age group being called) will all contribute to what sounds are on the line when an AMD device makes its assessment.

4.39 It is Ofcom's belief that any form of testing that keeps these factors constant or does not vary these factors will not produce a correct assessment of how accurate an AMD device is. For this reason, we will not accept manufacturers claims regarding testing as the sole basis of a reasoned estimate of AMD false positives.

Live sampling

4.40 The third form of testing we have identified is **live sampling**. This testing methodology is based on sampling real answer machine detected calls to determine a reasoned estimate of AMD false positives. There are a number of different types of live sampling:

i) **Trunk side recording**[55]. Where an answer machine has been identified by the AMD device this should be recorded by the AMD device. These dials can then be retrieved and sample tested by re-playing to identify the rate of AMD false positives.

ii) **Agent validation**. A random sample of calls that are identified by the AMD device are passed on to call centre agents rather than being disconnected. The agent can then verify if the answer machine detected call is correct or was in fact an AMD false positive.

[55] **Trunk side** recording captures the call from the point the call starts ringing until the call is terminated. By comparison **agent side** recording would start recording from the point when the call is started by the agent. Trunk side recording allows reporting on all the calls made by the dialler.

iii) **Side-by-side comparison**. This testing methodology relies on a comparison of two scenarios: one where an AMD device is switched on and one where it is switched off. From the 'AMD on' scenario, the answer machine rate is recorded and compared to the answer machine rate recorded in the 'AMD off' scenario i.e. the rate defined by agents listening to all calls. If false negatives are accounted for[56], the difference will be the reasoned estimate of AMD false positives.

Conclusion

4.41 From the evidence available, we believe that live sampling is the most practical and comprehensive testing available for AMD users to adopt when producing a reasoned estimate of AMD false positives.

4.42 Where available and not ruled out by cost, trunk side recorded answer machine calls is the most preferable type of live sampling. Side by side comparison testing removes observer interference and is preferred to agent validation testing so long as a robust sampling methodology is followed. Generally these two forms of live sampling are preferred to agent validation due to the risk of observer interference in the testing.

4.43 100% analysis – whilst being the most accurate form of determining a reasoned estimate of AMD false positives – is likely to be impractical from cost and technical considerations.

4.44 Staged calling is unlikely to give a reliable assessment of AMD accuracy across campaigns because it does not use live data or uses live data that is not as variable as data gained from a real time environment.

What Ofcom will look for when assessing an ACS user's methodology for calculating a reasoned estimate of AMD false positives

4.45 At this stage, Ofcom is not inclined to prescribe testing methodology to be used by all ACS users when producing a reasoned estimate of AMD false positives. On the assumption that every ACS user may have a different way of operating, we feel that prescribing a single form of testing methodology across all ACS users would benefit some whilst disadvantaging others.

4.46 Rather, we are proposing to outline what we will look for when assessing the methodology used when testing AMD accuracy. In the event of an investigation, Ofcom would expect that testing be based on this outline. We would also expect to have sight of relevant details of testing such as the date and times of testing, the procedure used and the number of calls made. Furthermore, we expect that any reasoned estimate to be based on high quality data.

4.47 The following table sets out how we will assess the robustness of testing used to determine a reasoned estimate of AMD false positives:

Data authenticity	Testing based on past/actual call records is always preferred to scenario testing because of the high number of external factors that can influence AMD accuracy rates.
Data	The reasoned estimate of AMD false positives should be based on

[56] **False negatives** are calls answered by an answer machine but mistakenly categorised as a live call. For the purposes of calculating an abandoned call rate, these should be removed to ensure the reasoned estimate of AMD false positives is not applied to a much bigger total of answer machine calls (i.e. they are not recorded as 'live calls').

relevance	relevant campaign data. Whenever campaign data is changed, to an extent that it could materially change AMD accuracy rates, the testing should reflect this.
Operational environment	The reasoned estimate should be calculated in an environment the same or materially the same as that in which regular calling occurs. This means that all operational variables (AMD sensitivity, calling windows and other operational metrics) should remain unchanged for the length of the test and should be equivalent to the ongoing non-test environments.

4.48 The following should also be followed if live sampling is undertaken:

Actual event analysis	Where possible, actual answer machine classifications should be analysed rather than side by side comparisons.
Observer interference	The test should not be allowed to interfere with the process being tested.
Sampling	Sampling should be robust enough to give high confidence levels across the population being tested.
Testing periods	Testing should be undertaken during representative times of the day and days of the week.

4.49 Following the above, AMD users should undertake testing on a per campaign basis or when material changes are made to an AMD[57]. The 2008 Statement also states that records must be kept for a minimum of six months that demonstrate compliance with the stated policy and procedures[58]. We are not proposing to change this policy and will continue to expect that AMD users can at all times demonstrate compliance in the preceding six months.

Independent auditors

4.50 A further option for AMD users would be to seek the services of an independent auditor to assess AMD accuracy. On the condition that this is done on a regular basis and whenever significant changes are made to their use of AMD, Ofcom would take this into account when considering the accuracy of the reasoned estimate of false positives. However it should be noted that AMD users are ultimately responsible for the quality of this auditing in producing an accurate reasoned estimate of AMD false positives.

Ofcom's proposal

4.51 We propose to insert the methodologies for providing a reasoned estimate of AMD false positives in the revised statement (see A1.35-38):

Question 4: Do you agree with the factors set out by Ofcom for determining a reasoned estimate of AMD false positives in an ACS user's abandoned call rate?

[57] A material change could be considered to be changing the settings on a dialler (e.g. making the AMD more or less aggressive, a dialler upgrade or a reconfiguration of dialling patterns).
[58] 2008 Statement, 4.16.7.

Applying the formula for calculating the abandoned call rate when using AMD

4.52 The formula for calculating the abandoned call rate is as follows:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

4.53 For the purposes of calculating the abandoned call rate when AMD is used, we note that the following definitions will apply:

Abandoned calls	The number of calls where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. An abandoned call includes a reasoned estimate of AMD false positive.
Reasoned estimate of AMD False Positives	A reasoned estimate of AMD false positives is an estimate of the number of AMD false positives as a proportion of total answer machine calls.

4.54 An illustrative example using broadly typical industry experience involving the use of AMD might assume that of 1000 calls made in a 24 hour period:

- 392 are live calls to a live operator;
- 8 are abandoned;
- 400 are identified as answer machine responses;
- 4 are a reasoned estimate AMD false positives (on the basis that it is estimated than 1 per cent of all answer machine calls generate false positives); and
- 200 are unconnected.

The calculation of the abandoned call rate is based on the following:

Value	Type of call	Number of calls
y	Live calls to a live operator	392
x	Abandoned calls	8
	Reasoned estimate of AMD False Positives	(1%x400)=4

Using the formula the abandoned call rate will be calculated as follows:

$$\frac{8 + 4\ (x)}{(8 + 4)\ (x) + \ 392\ \ (y)} * \frac{100}{1} = 2.97$$

The abandoned call rate will therefore be 2.97%.

Ofcom's proposal

4.55 We therefore propose to include the application of the formula for calculating the abandoned call rate when using AMD as set out above in the revised statement (see A1.39-41):

Question 5: Has Ofcom provided sufficient clarity on how AMD users should calculate an abandoned call rate that includes a reasoned estimate of AMD false positives?

Calculating the abandoned call rate when AMD is not used

Clarifying previous policy

4.56 We are aware that some industry stakeholders who do not use AMD technology have experienced difficulty in calculating their abandoned call rate. This is because without AMD, an ACS will – in the event of abandoning a call – abandon it before it has determined whether the call was received by a live recipient or by an answer machine.

4.57 The calculation of the abandoned call rate only applies to live calls. Therefore calls abandoned to answer machines should not be included in the calculation of an abandoned call rate.

4.58 Organisations representing the interests of those ACS users affected have developed various formulas using ACS statistics to determine the number of calls abandoned to answer machines. The basic premise of these formulas is that the proportion of calls that are passed to an agent and answered by an answer machine in a real-time environment, is equal to the proportion of calls that are abandoned by the ACS and answered by an answer machine. These organisations have consequently asked Ofcom to formally endorse their calculations.

4.59 Ofcom is not minded to adopt the formulas put forward by stakeholders as formal policy requirements for two important reasons:

i) First, adopting a formula to factor in calls that have been abandoned to answer machines will add another layer of complexity to our policy.

ii) Secondly, we have seen a variety of reasonable calculations used to factor in these calls. Adopting one formula over another may not recognise different ACS functionality or may not be able to be adopted universally by call centres working on behalf of UK companies.

4.60 However Ofcom does intend to clarify that calls to answer machines are not live calls and therefore should not be included in calculating the abandoned call rate. We recognise that our position on this may lead to an increased number of abandoned calls. This is because ACS users may not be currently factoring in a reasoned estimate of calls abandoned to answer machines.

4.61 We suggest that a reasoned estimate of calls abandoned to answer machines is deducted from the number of abandoned calls.

Providing a reasoned estimate of calls abandoned to answer machines

4.62 A reasoned estimate of calls abandoned to answer machines is an estimation of the number of abandoned calls assumed to have been picked up by answer machines

and is to be calculated based on live call data and specifically the number of answer machine calls put through to live operators as a proportion of total calls made.

4.63 Ofcom will need to be satisfied that the calculations used by non-AMD users are well evidenced, theoretically sound and based on data produced in a real time environment. We will assess the methodology used to factor in the number of calls abandoned to answer machines into an abandoned call rate on a case by case basis.

Applying the formula for calculating the abandoned call rate when not using AMD

4.64 The formula for calculating the abandoned call rate is as follows:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

4.65 For the purposes of calculating the abandoned call rate when AMD is not used, we note that the following definitions will apply:

Abandoned calls	The number of calls where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. An abandoned call excludes a reasoned estimate of calls abandoned to answer machines.
Reasoned estimate of calls abandoned to answer machines	A reasoned estimate of calls abandoned to answer machines is an estimate of the number of ACS identified abandoned calls that have actually been answered by an answer machine.

4.66 An illustrative example using broadly typical industry experience involving the use of AMD might assume that of 1000 calls made in a 24 hour period:

- 392 are live calls to a live operator;
- 8 are abandoned;
- 400 are connected answer machine responses (put through to a live operator);
- 3.2 is a reasoned estimate of calls abandoned to answer machines (on the basis that it is estimated the proportion of calls put through to live operators is 40% and therefore the number of abandoned calls that were picked up by answer machines is statistically likely to be 40%); and
- 200 are unconnected.

The calculation of the abandoned call rate is based on the following:

Value	Type of call	Number of calls
y	Live calls to a live operator	392
x	Abandoned calls	8
	Reasoned estimate of calls abandoned to answer machines	(40%x 8)=3.2

Using the formula the abandoned call rate will be calculated as follows:

$$\frac{8 - 3.2\ (x)}{(8 - 3.2)\ (x) + \ 392\ \ (y)} * \frac{100}{1} = 1.2$$

The abandoned call rate will therefore be 1.2%.

Ofcom's proposal

4.67 We therefore propose to clarify the position on calls abandoned to answer machines and include the application of the formula for calculating the abandoned call rate when not using AMD as set out above in the revised statement (see A1.42-48):

Question 6: Has Ofcom provided sufficient clarity on how non-AMD users should calculate an abandoned call rate that includes an estimate of abandoned calls picked up by answer machines?

Section 5

Additional clarifications

Introduction

5.1 We propose to consult on the following clarifications:

i) The two second policy – the timing of when an information message is to be played in the event of an abandoned call.

ii) Information messages for abandoned calls – when an information message is to be played in the event of an abandoned call (the 'two second policy') and what information it may and may not contain.

iii) What constitutes a campaign.

5.2 We have also amended the 2008 Statement:

i) To include policy set out in previous consultations and statements but not expressly included in the statement of policy.

ii) By reformatting certain sections to provide greater clarity.

iii) To set out a possible increase to our maximum fine.

Two second policy

5.3 The 2008 Statement as amended in October 2009 contains a policy that companies, in the event of an abandoned call, play an information message within two seconds of either a telephone being picked up or a live individual starting to speak.

5.4 This section sets out the background to the 'two second policy' and considers some of the issues stakeholders have raised with us since it was amended in October 2009.

5.5 We also set out how we would assess compliance with the two second policy in the event of an investigation.

Background

5.6 On 30 October 2009 Ofcom announced a change to the timing of when an information message must be played in the event of an abandoned call[59] (the '2009 Amendment').

5.7 The original policy, published in the 2006 Statement, was that a recorded message must be played within two seconds after a telephone has been answered. This was changed in the 2008 Statement to 'two seconds after a telephone has been picked up'. Following research carried out by Ofcom and representations received from

[59] http://www.ofcom.org.uk/consult/condocs/persistent_misuse/amendment/

industry, we found some evidence that this policy diminished the effectiveness of AMD technology[60].

5.8 The 2009 Amendment addressed this impact on AMD effectiveness by allowing call centres to choose from two options on when an information message needs to be played in the event of an abandoned call, either;

- no later than two seconds after the telephone has been picked up; or
- no later than two seconds after an individual begins to speak (or 'start of salutation').

Reviewing the two second policy

5.9 To date, we have received generally positive feedback about the 2009 Amendment. Stakeholders have indicated that allowing AMD devices slightly more time to make a determination about the presence of an answer machine has improved the accuracy of this technology and subsequently reduced the number of AMD false positives generated.

5.10 However, Ofcom has received information from some stakeholders that AMD accuracy rates may further be improved by allowing an information message to be played from the end of the individual's salutation (rather than the start, as is the current policy). The argument put to us is that increasing the time available for classification will further improve AMD accuracy rates and also prevent part messages being left on answer machines[61].

5.11 Ofcom recognises that allowing information messages to be played from the end of an individual's salutation may be advantageous for these reasons. However, such a policy may also lead to difficulties.

5.12 The first difficulty relates to how the 'end of salutation' can be accurately defined. As noted in a consultation document published on 17 December 2007, the end of the individual's salutation is an indeterminate event as some people, confronted by silence on the phone, may extend their salutation while waiting for an answer[62].

5.13 The aim of the information message is to remove silent calls and reduce consumer nuisance. Extending the time period allowed for classification also means extending the time period that consumers who pick up an abandoned call need to wait for an information message to be played. It may be the case that most classifications do not need the full period (some may only require one second from end of salutation). But if the ability to extend the classification time is available to ACS users, some may take it.

5.14 Finally, extending the time period allowed for classification may act as a disincentive on ACS manufacturers to continue to minimise the time an AMD device needs to make an accurate assessment or develop solutions that address AMD false positives. Since the 2008 Statement, we have witnessed innovation in this field, for example;

[60]Based on the assumption that increasing the time allowed for AMD assessment, even marginally, improves accuracy rates.
[61] **Part messages** occur when an information message beings playing before an answer machine begins recording.
[62] http://www.ofcom.org.uk/consult/condocs/persistent_misuse/misuse.pdf, 1.22.2.

- solutions that will make an answer machine classification before a phone starts ringing; and

- AMD used in co-ordination with an Interactive Voice Message (IVM) to ensure that recipients of AMD false positives are given the opportunity to speak with a call centre agent[63].

5.15 We are, however, also aware of the potential downsides of the use of IVM and would expect any call centre employing IVM to ensure that recipients of these messages (as a result of AMD false positives) are;

- always transferred to a call centre agent should they choose;

- informed of the identity of the company making the call; and

- given no marketing information within the short message.

Compliance

5.16 Some stakeholders have asked Ofcom how we assess compliance with the two second policy. In the event of an investigation we would expect relevant evidence, including;

- call records that demonstrate compliance (showing that an information message was played within two seconds of salutation); and/or

- evidence that the functionality to play a message no later than two seconds from beginning of salutation was in place during the period being examined.

Ofcom's proposal

5.17 Ofcom does not propose to amend the two second policy from 'start of salutation' to 'end of salutation'. Ofcom will however amend the wording in the revised statement to reflect the 2009 Amendment.

5.18 We therefore propose to amend the 2008 Statement by inserting the following wording (see paragraphs A1.50-51):

'In the event of an 'abandoned call', a very brief recorded information message is played within two seconds of the call being answered [within two seconds of the call being answered means either:

- no later than two seconds after the telephone has been picked up; or

- no later than two seconds after an individual begins to speak,

whichever is more applicable to the technology deployed].'

[63]An IVM is played before an answer machine begins recording. In the event of a false positive, the called person is played this message and given the opportunity to be transferred to a dedicated call centre agent. If the AMD assessment is correct, the IVM has finished playing before an answer machine begins recording.

5.19 Some stakeholders have asked Ofcom how we assess compliance with the two second policy. In the event of an investigation we would expect relevant evidence, including;

- call records that demonstrate compliance (showing that an information message was played within two seconds of salutation); and/or
- evidence that the functionality to play a message no later than two seconds from beginning of salutation was in place during the period being examined.

Question 7: Do you agree that Ofcom should not amend the existing two second policy as set out in the 2009 Amendment from 'start of salutation' to 'end of salutation'?

Information messages

5.20 The policy set out in Ofcom's 2008 Statement is that companies, in the event of an abandoned call, play an information message which identifies the company making the call and provides a contact phone number for individuals to call. The message must not contain marketing content or be used as an opportunity to market to consumers.

5.21 This section sets out the background to this policy and considers some of the issues stakeholders have raised with us since it was introduced.

5.22 In particular, this section considers call back options for consumers receiving abandoned calls on their mobile phones and provides clarity on how Ofcom is likely to enforce the policy on the prohibition of marketing content during an investigation.

5.23 This section also considers consumers' ability to contact companies making silent calls (where by definition no information message is played).

Background

5.24 The aim of an information message is to remove silence when over dialling occurs and there are not enough call centre agents available to handle a call which has been answered i.e. when a call is abandoned.

5.25 Information messages reduce consumer harm by informing the called party about who has called them and how they can return the call. Information messages must also be free of marketing content. Our current policy regarding information messages is set out in paragraph 4.16.2 of the 2008 Statement (as amended by the 2009 Amendment in brackets):

'In the event of an 'abandoned call', a very brief recorded information message is played within two seconds of the call being answered [within two seconds of the call being answered means either:

- *no later than two seconds after the telephone has been picked up; or*
- *no later than two seconds after an individual begins to speak,*

whichever is more applicable to the technology deployed.]

The information message must 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 no charge (0800) or Special Services basic rate (0845) number the called person can contact so they have the possibility of declining to receive further marketing calls from the company; and*

- *includes no marketing content and is not used as an opportunity to market to the called person.'*

Playing information messages on calls identified as answer machines

5.26 It should be noted that the policy to play an information message only applies to abandoned calls (calls which a live individual has picked up). The requirement does not extend to calls identified as answer machines. We are aware that some ACS users do include information messages on these calls to prevent silent calls in the event of an AMD false positive.

5.27 Whilst we recognise the benefits of playing information messages on calls identified as answer machines, we also note a potential downside.

5.28 Doing so is likely to lead to part messages – where an information message begins playing before an answer machine begins recording – that does not identify the source of the message left.

5.29 Also, in the case of repeat silent calls, this means leaving a significant number of messages (full or part) where an individual consumer's answer machine is reached several times a day.

5.30 Part or repeat answer machine messages could create a new type of consumer harm. They also have the potential to damage a company's reputation and brand.

5.31 ACS users should be able to leave information messages on calls picked up by answer machines if they so choose. However they should be aware of the potential negative effect part messages may have on consumers (in some cases, existing customers) before deciding on this course of action.

Reviewing the policy that contact phone numbers be included in information messages

5.32 Some stakeholders have raised concerns with Ofcom regarding the call back options for recipients of abandoned calls to mobile phones. These concerns are premised on the fact that calling 080 or 0845 numbers can be significantly more expensive from a mobile phone than from a fixed line phone because these numbers are not always included 'in bundle' for mobile customers and are charged at much higher prices than from fixed lines. The implication of this is that recipients of abandoned calls to a mobile phone may pay significantly more for a return call than the recipient of an abandoned call to a fixed line phone.

5.33 Ofcom research indicates that 7% of mobile users received an abandoned call in the six months to March 2010[64]. Whilst the number of consumers receiving abandoned calls on their mobile phones has fallen over the last 12 months and remains relatively

[64] Ofcom Consumer Concerns Tracker, TNS omnibus, March 2010 http://www.ofcom.org.uk/research/stats/

low, there is a possibility that this may rise in the future as mobile call termination rates fall, the proportion of mobile-only households increases and companies more generally attempt to contact consumers via mobile phones.

5.34 We believe that all called persons should be given equal opportunity to opt out of marketing calls and it is not our intention to disadvantage mobile customers with this policy. This may occur if mobile users who receive an abandoned call;

- pay more for a return call to an 080 or 0845 number;
- need to return a call from a fixed-line phone in order to avoid higher call charges; or
- are deterred from returning an abandoned call from the contact information provided for the reasons above.

5.35 One option, put forward by some stakeholders, would be for companies to provide a mobile phone contact number to consumers.

5.36 However, a policy that allows ACS users to include a mobile number as a return contact to abandoned calls received on a fixed line phone may produce a similarly negative effect – increasing the cost for fixed line consumers to contact the company who has abandoned the call.

5.37 Moreover for certain mobile users, including pay as you go customers or contract customers with a limited package, the price of the call to a mobile is also likely to be significant.

5.38 Another option for consumers would be if a geographic number (01/02) and/or an 03 number was provided for calling back in addition to the free phone number (which is still a reasonable option when calling from a fixed line). Calls to 03 numbers must be charged for in the same was as geographic numbers; that is, at the same tariff and included in bundles and counting towards inclusive minutes in the same way as geographic numbers are. Calls from mobiles to geographic or 03 numbers are more likely to be included in bundles or count towards inclusive minutes and be cheaper than calls to 080 numbers

Ofcom's proposal

5.39 Information messages play an important role in protecting consumers from the harm generated by abandoned calls. They enable consumers to indentify the company making the call and contact that company to decline further marketing calls if applicable.

5.40 It is important that consumers receiving abandoned calls on their mobile phones have the same opportunities as fixed line consumers to contact these companies and are not put off from doing so by higher costs.

5.41 We therefore propose to amend the 2008 Statement as follows (see A1.50-52):

"The information message must 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 freephone (080) and geographic (01/02 numbers) and/or a 03 number the called person can contact so they have the possibility of declining to receive further marketing calls from the company; and*

- *includes no marketing content and is not used as an opportunity to market to the called person."*

5.42 We believe the increased cost of playing a new, extended message where two numbers are offered instead of one would be negligible. We also believe the cost of adapting existing information messages to reflect this change would be straightforward and cheap to implement.

Question 8: Do you agree with Ofcom's policy proposal that companies provide a geographic contact number (01, 02 or 03) in addition to a freephone (080) number in the information message provided in the event of an abandoned call?

5.43 Ofcom is undertaking a review of non geographic calls services and on 30 April 2010 issued a Call for Inputs[65]. This document asks for views from all stakeholders about the main issues relating to non geographic numbers before developing our detailed options and proposals. Within the scope of the review are 'freephone' numbers (080 numbers).

Excluding marketing content from the information message – examples of non-compliance

5.44 The 2008 Statement stipulates that the information message played in the event of an abandoned call includes no marketing content and is not used as an opportunity to market to the called person. Ofcom continues to consider that this is an important element of our policy as the possibility of including marketing content in the information message could, perversely, act as an incentive and indeed reward, for making abandoned calls.

5.45 Whether or not a company has included marketing content within an information message will be assessed on a case by case basis. However we would like to take this opportunity to provide greater clarity on the circumstances in which we are likely to consider that a company's conduct does not reflect this policy.

5.46 For instance, if an information message contained a website address that took the recipient of an abandoned call to a sales pitch, we would consider this to be out of step with our policy. If, however, the website address took the recipient of an abandoned call directly to a page where they could register not to receive further marketing calls from the company – and this page contained no marketing content whatsoever – we would be likely to consider this acceptable.

5.47 In the latter example, we would still expect that a return number that met our policy above was provided as an alternative option for the recipients of abandoned calls to use to decline further marketing calls from the company.

Ofcom's proposal

5.48 We are therefore not proposing to amend the existing part of the 2008 Statement that covers this area, which says,

[65] www.ofcom.org.uk/consult/condocs/ngnservices/main.pdf

"Any call made by the called person to the contact number shall not be used as an opportunity to market to that person, without the person's consent" (see paragraph A1.58).

What constitutes a 'campaign'?

5.49 For the purposes of calculating the abandoned call rate, an individual **campaign** is identified by the use of a single call script to make a single proposition to a single target audience. A campaign can be run from more than one call centre over a 24 hour period (for example a mobile phone company calling existing subscribers to offer them an upgrade from two different sites).

5.50 As noted in our 2008 Statement, in some cases calls cannot always be ascribed to a single proposition so as to fit neatly into the definition of a campaign. An example put to us in the past has been debt recovery calls. Some industry stakeholders in the debt recovery sector have told us they do not consider that the calls they make are part of a 'campaign'.

5.51 For the purpose of clarity, if calls are made for identifiable purposes with a single script to a single target audience, then Ofcom will continue to regard this as a 'campaign'. In the event of an investigation, Ofcom will consider the facts of each case on its own particular merits.

Ofcom's proposal

5.52 We therefore propose to include the following guidance within the revised statement:

"For the purposes of calculating the abandoned call rate, an individual 'campaign' is identified by the use of a single call script to make a single proposition to a single target audience. A campaign can be run from more than one call centre over a 24 hour period. If calls are made for identifiable purposes with a single script to a single target audience, then Ofcom will continue to regard this as a 'campaign'. In the event of an investigation, Ofcom will consider the facts of each case on its own particular merits." (see paragraph A1.49).

Question 9: Has Ofcom provided sufficient clarity on what constitutes a 'campaign'?

Other points of clarification

5.53 We are also seeking to amend the 2008 Statement in the following way:

- include policy set out in previous consultations and statements but not expressly included in the statement of policy; and
- by reformatting sections to provide greater clarity.

Including previous policy

<u>Calls to UK consumers made on behalf of a company</u>

5.54 Our policy in enforcement has been to ask a targeted company for data of all call centre(s) which made calls to UK consumers on its behalf.

5.55 In addition, the 2006 Statement sets out the following in paragraph 2.4:

"Although there are no reliable statistics about the proportion of silent calls generated from offshore centres, Ofcom wishes to dispel any ambiguity about offshore immunity. We wish to make it clear that we are willing to take action against any company with a UK presence on whose behalf calls are made from an offshore centre where those calls constitute acts of persistent misuse."

Ofcom's proposal

5.56 To reflect this in the revised statement of policy itself we will be amending the 2008 Statement to include the following wording under the heading "Defining 'misuse' of a network or service" (see A1.5):

"*Section 128 of the Communications Act 2003 applies where "a person has persistently misused an electronic communications network or electronic communications services". In Ofcom's view, such misuse may be either direct or indirect. This means a person may be caught by section 128 either where they are misusing a network or services themselves, or where they have engaged another person to use the network or service on their behalf.*

An example of this may arise in the context of network or service misuse by a call centre. Where a person engages representatives, such as third party call centres to contact UK consumers on its behalf, that person may be the target of an investigation and ultimately action under the Act for persistent misuse by its representatives. This includes where the representative is an offshore centre.

To be clear, there may be circumstances where the representatives are also persons who are misusing a network or service in their own right. In those circumstances, Ofcom may also consider investigating these individuals or companies. This decision would be taken on a case by case basis."

Offshore call centres and CLIs

5.57 The 2006 Statement further states in paragraph 2.27:

"Ofcom reluctantly accepts that the technological limits of international networking may result in some dialler calls being delivered to the UK without CLI identification but flagged 'international'. In these circumstances it is even more vital that such centres use the information message and a UK based number so that they may be contacted by called parties after an abandoned call."

Ofcom's proposal

5.58 To reflect this in the revised statement of policy itself we will be amending the 2008 Statement to include the following wording under the heading "CLI" (see A1.57):

"*Ofcom reluctantly accepts that the technological limits of international networking may result in some dialler calls being delivered to the UK without CLI identification but flagged 'international'. In these circumstances it is even more vital that such centres use the information message and a UK based number so that they may be contacted by called parties after an abandoned call.* "

Reformat sections to provide greater clarity

5.59 In addition to the proposed amendments to the 2008 Statement above, we have reformatted the 2008 Statement generally to add greater clarity. This does not represent a change in policy.

5.60 Specifically, we have also removed a number of paragraphs discussing how we would expect a misuser to remedy the consequences of a breach when issuing a section 129 notification under the Act. This is to more accurately reflect our general policy approach to consider the factors of the particular case and whether the remedy is proportionate to the harm caused.

A possible increase to our maximum fine.

5.61 Finally we note that the Department of Business, Innovation and Skills (BIS) issued a consultation in October 2009 followed by a statement in March 2010 on raising the maximum penalty from £50,000 to £2 million. Stakeholders were overwhelmingly in favour of increasing the maximum penalty to £2 million and the increase could possibly be implemented later this year.

Annex 1

[Draft] Revised statement of policy on the persistent misuse of an electronic communications network or service 2010

Introduction

A1.1 This statement is published in accordance with section 131 of the Communications Act 2003 ("the Act") and sets out Ofcom's general policy with regards to the exercise of its powers under sections 128 to 130 of the Act.

A1.2 The purpose of this statement is to provide clarity about the operation of the 'persistent misuse' provisions in sections 128 to 130 of the Act. These sections enable Ofcom to issue notifications if it has reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services.

A1.3 Sections 128 to 130 also set out enforcement procedures and factors relevant to the application of Ofcom's Penalty Guidelines[66] where there has been 'persistent misuse'. Section 131(4) of the Act imposes a duty on Ofcom to have regard to the statement in exercising the powers conferred on it by the relevant sections. However, the statement cannot bind Ofcom absolutely in exercising those discretionary powers. Section 131(2) enables Ofcom to revise the statement from time to time as it thinks fit.

A1.4 The statement addresses the following areas:

i) Defining 'misuse' of a network or service.

ii) Identifying when misuse becomes 'persistent'.

iii) Guidance on persistent misuse by making silent or abandoned calls.

iv) Other examples of persistent misuse

v) Ofcom's policy on the issuing of section 128 notifications.

vi) The consequences of a notification.

vii) Factors relevant to the application of Ofcom's Penalty Guidelines.

Defining 'misuse' of a network or service

A1.5 Section 128(5) sets out two definitions of what constitutes misuse of an electronic communications network or electronic communications service. A person misuses a network or service if:

[66] Published by Ofcom in accordance with section 392 of the Act and available at: http://www.ofcom.org.uk/about/accoun/pg/penguid.pdf

- '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*'*. This requires the use of a network or service for example where a person uses a telephone to make an abandoned call (i.e. one which is terminated by an ACS as soon as the called person tries to answer it); or

- '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*'*. This captures a wider category of behaviour which involves conduct dependent on the use of a network or service for example conduct that results in a person being led unknowingly to dial a premium rate service.

A1.6 In both cases the significance of the words "likely effect" is that the effect has to be probable, not necessarily proven.

A1.7 Section 128 of the Communications Act 2003 applies where "a person has persistently misused an electronic communications network or electronic communications services". In Ofcom's view, such misuse may be either direct or indirect. This means a person may be caught by section 128 either where they are misusing a network or services themselves, or where they have engaged another person to use the network or service on their behalf.

A1.8 An example of this may arise in the context of network or service misuse by a call centre. Where a person engages representatives, such as third party call centres to contact UK consumers on its behalf, that person may be the target of an investigation and ultimately action under the Act for persistent misuse by its representatives. This includes where the representative is an offshore centre.

A1.9 To be clear, there may be circumstances where the representatives are also persons who are misusing a network or service in their own right. In those circumstances, Ofcom may also consider investigating these individuals or companies. This decision would be taken on a case by case basis.

Identifying when misuse becomes 'persistent'

A1.10 The misuse also must be persistent. Section 128(6) states that this is where the misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents:

- *'a pattern of behaviour or practice'.* This is met by instances of repetitive misuse. It is difficult to define in advance what cycle of repetitive behaviour may reasonably be described as forming a pattern. This will need to be determined on a case by case basis. However any such pattern is likely to require a minimum of three instances of the conduct in question in order to be recognised as such; or

- *recklessness as to whether persons suffer annoyance, inconvenience or anxiety.* This requires the misuse to represent 'recklessness' on the part of the misuser. This will need to be determined on a case by case basis. Evidence that points to recklessness could be:

i) that the misuser was informed of the effect of his behaviour but continued with it;

ii) that the behaviour in question is so patently annoying amounts to misuse (e.g. ringing someone repeatedly in the middle of the night) that a reasonable person would realise it would have that effect; or

iii) a failure to take reasonable steps to establish whether or not the behaviour could cause annoyance, inconvenience or anxiety to other people.

A1.11 In determining whether misuse is persistent or not, section 128(7) states that it is immaterial whether networks were used on some occasions and services on other occasions; that different networks or services were used on different occasions; or that the persons exposed to the misuse were different on different occasions.

Policy on persistent misuse by making silent and abandoned calls

A1.12 This section sets out our policy on persistent misuse by making silent and abandoned calls.

A1.13 An abandoned call is where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. Ofcom expects that such calls should include an information message as set out in paragraph 2.17.(ii).

A1.14 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. Any type of silent call is almost certain to cause inconvenience and is very likely to cause annoyance to the called person.

A1.15 In deciding whether to take enforcement action in a particular case Ofcom will be guided by a sense of administrative priority determined by the level of consumer detriment and will take account of the steps that have been taken by ACS users to reduce the degrees of concern that silent or abandoned calls cause including those set out below.

A1.16 Ofcom considers that conduct which is inconsistent with its policy on the abandoned call rate and information messages (paragraphs A1.13 – A1.26, A1.35 – 44 and A1.46 – 48 below) is likely to constitute an act of persistent misuse in particular.

Abandoned call rate

A1.17 This section sets out:

i) The terminology used when calculating the abandoned call rate.

ii) The formula for calculating the abandoned call rate.

iii) How Answer Machine Detection (AMD) users can provide a ‘reasoned estimate’ of AMD false positives.

iv) How to calculate an abandoned call rate when AMD technology is in use.

v) How to calculate an abandoned call rate when AMD technology is not in use.

(i) Terms defined

A1.18 We have defined the terms below which are relevant to calculating the abandoned call rate.

A1.19 A *live call* is where a connection is established and the call is answered by a *live individual*. This includes *live calls to a live operator* and *abandoned calls*.

A1.20 A *live individual* refers to a UK consumer who is called by an ACS and/or AMD user.

A1.21 A *live call to a live operator* is a call where a live operator is put through to a live individual. A *live call to a live operator* does not include calls made by ACS and/or AMD users that are answered by answer machines.

A1.22 An *abandoned call* is where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. An abandoned call includes a reasoned estimate of *AMD false positives* and excludes a *reasoned estimate of calls abandoned to answer machines*.

A1.23 An *AMD false positive* is when an AMD device mistakenly identifies a call as being answered by an answer machine whereas, in reality, it has been answered by a live individual.

A1.24 A *reasoned estimate of AMD false positives* is an estimate of the number of AMD false positives as a proportion of total answer machine calls.

A1.25 A *reasoned estimate of calls abandoned to answer machines* is an estimate of the number of ACS identified abandoned calls that have actually been answered by an answer machine.

A1.26 An *unconnected call* may also be terminated after a predetermined period (i.e. greater than 15 seconds) because it has not been answered, perhaps because no one is there to take it. Within industry terminology and for the purposes of this consultation such calls are not classified as 'abandoned calls'. This is because an abandoned call is one which has been picked up by a live individual.

(ii) The abandoned call rate formula

A1.27 The abandoned call rate formula is as follows:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

A1.28 How the number of abandoned calls is calculated will depend on whether or not AMD is used.

A1.29 AMD users must include a reasoned estimate of AMD false positives when calculating an abandoned call rate. This is on the premise that AMD false positives are abandoned calls and should be recorded as such.

A1.30 Non AMD users must ensure that a reasoned estimate of calls picked up by answer machines is not included in the number of abandoned calls.

(iii) Providing a reasoned estimate of AMD false positives

A1.31 Current technology means that an AMD false positive cannot be recorded as a call picked up by a live individual. Rather it is wrongly identified as a call to an answer machine that has been disconnected. Because of this, AMD false positives are not recorded by AMD users as abandoned calls. Therefore these are not included in the abandoned calls figure produced by the AMD user.

A1.32 Ofcom's general policy is that live sampling is likely to be the most practical and comprehensive testing available for AMD users to adopt when producing a reasoned estimate of AMD false positives. This testing methodology is based on sampling real answer machine detected calls to determine a reasoned estimate of AMD false positives. There are a number of different types of live sampling:

vi) **Trunk side recording**[67]. Where an answer machine has been identified by the AMD device this should be recorded by the AMD device. These dials can then be retrieved and sample tested by re-playing to identify the rate of AMD false positives.

vii) **Agent validation**. A random sample of calls that are identified by the AMD device are passed on to call centre agents rather than being disconnected. The agent can then verify if the answer machine detected call is correct or was in fact an AMD false positive.

viii) **Side-by-side comparison**. This testing methodology relies on a comparison of two scenarios: one where an AMD device is switched on and one where it is switched off. From the 'AMD on' scenario, the answer machine rate is recorded and compared to the answer machine rate recorded in the 'AMD off' scenario i.e. the rate defined by agents listening to all calls. If false negatives are accounted for[68], the difference will be the reasoned estimate of AMD false positives.

A1.33 Where available and not ruled out by cost, trunk side recorded answer machine calls is generally the most preferable type of live sampling. Side by side comparison testing removes observer interference and is preferred to agent validation testing so long as a robust sampling methodology is followed. Generally these two forms of live sampling are preferred to agent validation due to the risk of observer interference in the testing.

A1.34 Ofcom is not , however, inclined to prescribe testing methodology to be used by all ACS users when producing a reasoned estimate of AMD false positives. Rather, we outline below the types of factors we will look for when assessing the methodology used when testing AMD accuracy. In the event of an investigation, Ofcom would expect that testing be based on this outline. We would also expect to have sight of relevant details of testing such as the date and times of testing, the procedure used and the number of calls made. Furthermore, we expect that any reasoned estimate to be based on high quality data.

[67] **Trunk side** recording captures the call from the point the call starts ringing until the call is terminated. By comparison **agent side** recording would start recording from the point when the call is started by the agent. Trunk side recording allows reporting on all the calls made by the dialler

[68] **False negatives** are calls answered by an answer machine but mistakenly categorised as a live call. For the purposes of calculating an abandoned call rate, these should be removed to ensure the reasoned estimate of AMD false positives is not applied to a much bigger total of answer machine calls (i.e. they are not recorded as 'live calls').

A1.35 The following table sets out how we will assess the robustness of testing used to determine a reasoned estimate of AMD false positives:

Data authenticity	Testing based on past/actual call records is always preferred to scenario testing because of the high number of external factors that can influence AMD accuracy rates.
Data relevance	The reasoned estimate of AMD false positives should be based on relevant campaign data. Whenever campaign data is changed, to an extent that it could materially change AMD accuracy rates, the testing should reflect this.
Operational environment	The reasoned estimate should be calculated in an environment the same or materially the same as that in which regular calling occurs. This means that all operational variables (AMD sensitivity, calling windows and other operational metrics) should remain unchanged for the length of the test and should be equivalent to the ongoing non-test environments.

A1.36 The following should also be followed if live sampling is undertaken:

Actual event analysis	Where possible, actual answer machine classifications should be analysed rather than side by side comparisons.
Observer interference	The test should not be allowed to interfere with the process being tested.
Sampling	Sampling should be robust enough to give high confidence levels across the population being tested.
Testing periods	Testing should be undertaken during representative times of the day and days of the week.

A1.37 Following the above, AMD users should undertake testing on a per campaign basis or when material changes are made to an AMD[69].

A1.38 A further option for AMD users would be to seek the services of an independent auditor to assess AMD accuracy. On the condition that this is done on a regular basis and whenever significant changes are made to their use of AMD, Ofcom would take this into account when considering the accuracy of the reasoned estimate of false positives. However it should be noted that AMD users are ultimately responsible for the quality of this auditing in producing an accurate reasoned estimate of AMD false positives.

(iv) Applying the formula for calculating the abandoned call rate when using AMD

A1.39 The formula for calculating the abandoned call rate is as follows:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

A1.40 For the purposes of calculating the abandoned call rate when AMD is used, we note that the following definitions will apply:

[69] A material change could be considered to be changing the settings on a dialler (e.g. making the AMD more or less aggressive, a dialler upgrade or a reconfiguration of dialling patterns).

Abandoned calls	The number of calls where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. An abandoned call includes a reasoned estimate of AMD false positive
Reasoned estimate of AMD False Positives	A reasoned estimate of AMD false positives is an estimate of the number of AMD false positives as a proportion of total answer machine calls.

A1.41 An illustrative example using broadly typical industry experience involving the use of AMD might assume that of 1000 calls made in a 24 hour period:

- 392 are live calls to a live operator;
- 8 are abandoned;
- 400 are identified as answer machine responses;
- 4 are a reasoned estimate AMD false positives (on the basis that it is estimated than 1 per cent of all answer machine calls generate false positives); and
- 200 are unconnected.

The calculation of the abandoned call rate is based on the following:

Value	Type of call	Number of calls
y	Live calls to a live operator	392
x	Abandoned calls	8
	Reasoned estimate of AMD False Positives	(1%x400)=4

Using the formula the abandoned call rate will be calculated as follows:

$$\frac{8 + 4\ (x)}{(8 + 4)\ (x) + \ 392\ \ (y)} * \frac{100}{1} = 2.97$$

The abandoned call rate will therefore be 2.97 %.

(v) Calculating the abandoned call rate when AMD is not used

A1.42 Calls to answer machines are not live calls and therefore should not be included in calculating the abandoned call rate. We recognise that our position on this may lead to an increased number of abandoned calls. This is because ACS users may not be currently factoring in a reasoned estimate of calls abandoned to answer machines.

A1.43 Therefore a reasoned estimate of calls abandoned to answer machines should be deducted from the number of abandoned calls.

Providing a reasoned estimate of calls abandoned to answer machines

A1.44 A reasoned estimate of calls abandoned to answer machines is an estimation of the number of abandoned calls assumed to have been picked up by answer machines

and is to be calculated based on live call data and specifically the number of answer machine calls put through to live operators as a proportion of total calls made.

A1.45 Ofcom will need to be satisfied that the calculations used by non-AMD users are well evidenced, theoretically sound and based on data produced in a real time environment. We will assess the methodology used to factor in the number of calls abandoned to answer machines into an abandoned call rate on a case by case basis.

Applying the formula for calculating the abandoned call rate when not using AMD

A1.46 The formula for calculating the abandoned call rate is as follows:

$$\frac{Abandoned\ calls\ (x)}{Abandoned\ calls\ (x) + \ Live\ calls\ to\ a\ live\ operator\ \ (y)} * \frac{100}{1}$$

A1.47 For the purposes of calculating the abandoned call rate when AMD is not used, we note that the following definitions will apply:

Abandoned calls	The number of calls where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual. An abandoned call excludes a reasoned estimate of calls abandoned to answer machines.
Reasoned estimate of calls abandoned to answer machines	A reasoned estimate of calls abandoned to answer machines is an estimate of the number of ACS identified abandoned calls that have actually been answered by an answer machine.

A1.48 An illustrative example using broadly typical industry experience not involving the use of AMD might assume that of 1000 calls made in a 24 hour period:

- 392 are live calls to a live operator;
- 8 are abandoned;
- 400 are connected answer machine responses (put through to a live operator);
- 3.2 is a reasoned estimate of calls abandoned to answer machines (on the basis that it is estimated the proportion of calls put through to live operators is 40% and therefore the number of abandoned calls that were picked up by answer machines is statistically likely to be 40%); and
- 200 are unconnected.

The calculation of the abandoned call rate is based on the following:

Value	Type of call	Number of calls
y	Live calls to a live operator	392
x	Abandoned calls	8
	Reasoned estimate of calls abandoned to answer machines	(40%x 8)=3.2

Using the formula the abandoned call rate will be calculated as follows:

$$\frac{8 - 3.2\ (x)}{(8 - 3.2)\ (x) + \ 392\ \ (y)} * \frac{100}{1} = 1.2$$

The abandoned call rate will therefore be 1.2 %.

Defining a 'campaign'

A1.49 For the purposes of calculating the abandoned call rate, an individual 'campaign' is identified by the use of a single call script to make a single proposition to a single target audience. A campaign can be run from more than one call centre over a 24 hour period. If calls are made for identifiable purposes with a single script to a single target audience, then Ofcom will continue to regard this as a 'campaign'. In the event of an investigation, Ofcom will consider the facts of each case on its own particular merits.

Information messages – timing and content

A1.50 In the event of an abandoned call, a very brief recorded information message must be played no later than two seconds after the telephone has been picked up or within two seconds of the call being answered.

A1.51 '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;

whichever is more applicable to the technology deployed.

A1.52 The information message must 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 freephone (080) and geographic (01/02 numbers) and/or a 03 number the called person can contact so they have the possibility of declining to receive further marketing calls from the company; and
- includes no marketing content and is not used as an opportunity to market to the called person."

Unanswered calls

A1.53 Calls which are not answered must ring for a minimum of 15 seconds before being terminated.

72 hour policy

A1.54 When an abandoned call has been made to a particular number, any repeat calls to that number in the following 72 hours may only be made with the guaranteed presence of a live operator.

24 hour policy

A1.55 When a call has been identified by AMD equipment as an answer machine (including AMD false positives), any repeat calls to that number in the following 24 hours may only be made with the guaranteed presence of a live operator.

Caller Line Identification

A1.56 For each outbound call a Caller Line Identification (CLI) number is presented to which a return call may be made which is either a geographic number or anon-geographic number adopted as a Presentation Number which satisfies the Ofcom Guide to the use of Presentation numbers.

A1.57 Ofcom reluctantly accepts that the technological limits of international networking may result in some dialler calls being delivered to the UK without CLI identification but flagged 'international'. In these circumstances it is even more vital that such centres use the information message and a UK based number so that they may be contacted by called parties after an abandoned call.

Marketing

A1.58 Any call made by the called person to the contact number provided shall not be used as an opportunity to market to that person, without the person's consent.

Record management

A1.59 Ofcom expects that where organisations are subject to this statement, records are kept for a minimum of six months that demonstrate compliance with the above policy and procedures.

Other examples of Persistent Misuse

A1.60 Having analysed the reasonable grounds for believing that behaviour may be persistent misuse, this section identifies five further general areas within which such forms of behaviour typically occur. There is a degree of overlap between these areas; several forms of misuse may fall into more than one category.

A1.61 Given the breadth of the legislation, some forms of misuse, say those involving the misuse of automated calling systems or scams, may also represent contraventions of other consumer protection legislation. Where such legislative overlap exists and Ofcom is faced by a particular instance of misuse, it shall determine in consultation with the relevant competent authorities which set of legislative requirement is more appropriate and may be more effectively deployed.

A1.62 The examples given are intended to be illustrative rather than inclusive and will not prevent Ofcom from investigating and issuing a notification in respect of behaviour which is not identified by this statement. That could occur if, for example, a new technology or new use of technology allowed for the operation of a form of misuse not previously known to Ofcom, which has the potential to cause unnecessary annoyance, inconvenience or anxiety to consumers. In these circumstances Ofcom would take the necessary measures to prevent further harm and also revise the statement to incorporate the new form of misuse.

Misuse of automated calling systems

A1.63 Under the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the "2003 Regulations"), it is an offence to use automated calling systems to make direct marketing calls which do not consist of live speech unless the called person has previously notified the caller that for the time being they consent to such communications being sent. An example of such a call is a recorded message for marketing purposes where no operator is present.

A1.64 The concept of direct marketing that the 2003 Regulations rely on is very broad and applies not just to the advertisement of goods and services but also to the promotion of an organisation's aims and ideals. It therefore applies to political and charitable, in addition to commercial, organisations. However there may be types of unsolicited recorded messages sent by automated calling systems that cause annoyance or inconvenience but which, for whatever reason, fall outside the 2003 Regulations.

A1.65 Ofcom believes that the persistent use of automated calling systems to transmit recorded messages that are not marketing messages within the meaning of the 2003 Regulations or to make silent or abandoned calls (see the section on misuse by making silent or abandoned calls below) or fax-scanning calls may be persistent misuse within the meaning of section 128.

A1.66 However some uses of automated calling systems are beneficial, either to the general public or to the individual recipient. An obvious example of a public benefit would be where emergency authorities transmit a recorded hazard warning to subscribers within a defined geographical area. More limited cases, where the benefit is restricted to the individual, are the application of Interactive Voice Messaging ('IVM') technology to activate credit cards, check abnormal credit card use, arrange deliveries or remind for payments and appointments. Ofcom will consider each case on its own merits in terms of assessing whether misuse has occurred in the context of section 128(5) of the Act.

Number-scanning

A1.67 Another type of silent call arises from the practice of number-scanning (also known as 'pinging') where calls are made to find out which telephone numbers, out of a range of numbers, are in service or not. As soon as a tone is received which establishes the status of a particular number the call is terminated. This activity is carried out in order to develop lists of active telephone numbers. As well as the inconvenience that may be caused to the recipient of an abruptly terminated call such behaviour is detrimental to consumers in general by adding to network congestion without generating any revenue for providers. In a worst-case scenario high-volume number-scanning could overload either the originating or terminating local exchange thus depriving subscribers connected to that exchange of the ability to make or receive any calls at all

A1.68 A common variant of number scanning is fax scanning where a call is made to determine the presence of a fax receiver at the terminating end. This activity is motivated by the commercial value of a directory of validated fax numbers. Persistent number-scanning or fax-scanning both clearly fall within section 128.

Misuse of a CLI facility

A1.69 CLI (as defined earlier) is a technology that identifies the number from which a call is made or enables a return call to be made. Ofcom will regard the repeated forwarding of inauthentic or misleading CLI information as persistent misuse. Where

users have the ability to choose the CLI number that is forwarded (this is known as a Presentation Number), the deliberate sending of an inauthentic or misleading number from which it is not possible to identify the caller and which does not enable the recipient of a call to return a message is a form of misuse. This is without prejudice to a caller's right to preserve their anonymity by withholding their number.

A1.70 It will also be regarded as a form of misuse to forward a CLI number that has been allocated to a Premium Rate Service provider. A return caller may suffer annoyance or inconvenience by unwittingly making a return call for which they are charged more than they may reasonably expect.

Misuse for dishonest gain - scams

A1.71 There are a number of activities associated with the use of electronic communications networks or services motivated by a desire for unscrupulous or dishonest gain. Although this statement will not fully describe all those that have been discovered (so as not to encourage their perpetration) and cannot describe schemes that have yet to be practised, these activities share certain common features.

A1.72 The first feature they share is that they are primarily aimed at defrauding end-users, rather than communications providers.

A1.73 The second feature they share is the exploitation of premium rate or revenue sharing services, or in some instances, where these services are not used, by directly billing the person who has been duped into making a call. In either case, the essence of the scam is that users are deceived into phoning a number without realising that it is a premium rate or revenue sharing service or may lead to a fraudulent bill and so costs more than they expect. Examples of this that have come to light in recent years include:

i) faxing a premium rate or revenue sharing fax number where the terminating fax machine has been set to run deliberately slowly thus increasing the duration of a call;

ii) the apparently personal text message that invites a return call to a premium rate or revenue sharing number;

iii) making a silent call where any return call connects the caller to a premium rate or revenue sharing number (this latter example is also misuse through silent calls and misuse of CLI facilities);

iv) the use of recorded ringing tone to deceive the caller that charging has not yet started; or

v) inviting people to telephone a revenue sharing number on the pretext that they have won a prize or need to take delivery of an important message or parcel.

A1.74 In some circumstances the deception that incites a caller to phone a premium rate or revenue sharing number will be a form of direct marketing and additionally subject to applicable legislation. For example, under Regulation 8 of The Electronic Commerce (EC Directive) Regulations 2002 any unsolicited commercial communication sent by electronic mail must be clearly and unambiguously identifiable as such as soon as it is received. Regulation 23 of the 2003 Regulations prohibits the practice of disguising or concealing the identity of the sender of

electronic mail used for direct marketing purposes and additionally requires the provision of a valid address to enable the recipient to request the cessation of such communications. The definition of "electronic mail" in the 2003 Regulations applies to SMS or text messages as well as email.

A1.75 PhonepayPlus is the regulatory body for all premium rate telecommunications services. PhonepayPlus prohibits misleading behaviour and requires providers of premium rate services to ensure that consumers are fully informed of the terms of the service (including pricing). Ofcom considers that the deceptions identified in this section are also likely to be in breach of its Code of Practice, which is available at http://www.phonepayplus.org.uk

A1.76 Ofcom will regard the practice of tricking callers into phoning a premium rate or revenue sharing number, including numbers in the 08xx range, or non-revenue sharing service that leads to the presentation of a fraudulent bill as misuse and if repeated, persistent misuse.

Misuse of allocated telephone numbers

A1.77 Where end-users have been allocated telephone numbers, Ofcom will regard their use in a way that is inconsistent with designations and/or restrictions in the National Telephone Numbering Plan (“the Plan") as a form of persistent misuse by either the end-user or a relevant communications provider. An example would be where Personal Numbers (070) are used for anything other than “Personal Numbering” (as defined in the Plan) or Mobile Numbers (077, 078 and 079) are used for services other than those which fall within the definition of "Mobile Service" (as defined in the Plan). Condition 17 of the General Condition of Entitlement requires the range holder and any other communications provider using the number to take all reasonably practicable steps to secure compliance by their customers.

Ofcom’s policy on the issuing of section 128 notifications

A1.78 Section 128 authorises Ofcom to issue a notification to a person where it has reasonable grounds for believing that a person has engaged in persistent misuse of a network or service.

A1.79 In some cases this power may be limited insofar as section 128(8) enables the Secretary of State to make an order that behaviour of a specified description is not to be treated as a misuse of an electronic communications network or service where there is an appropriate alternative means of dealing with it.

A1.80 There is a general presumption that a notification will not be given where an alternative legal remedy is available, although it should be noted that section 130(8) allows for the imposition of a penalty under the 'persistent misuse' powers in respect of the same conduct for which a person is also liable for an offence under sections 125 to 127 of the Act.

A1.81 Under section 128(2) the notification must include the following elements:

i) a determination that a person has persistently misused an electronic communications network or electronic communications service;

ii) a specification of the use that Ofcom considers persistent misuse; and

iii) a specification of the period within which the notified person may make representations.

Ofcom's priorities on issuing notifications

A1.82 Because persistent misuse is defined in very broad terms and the powers in section 128 may be potentially invoked whenever a person believes that they have suffered inconvenience through another person's use of a network or service, Ofcom needs to be guided in the exercise of its enforcement powers by a scale of priorities. We believe that the 'persistent misuse' powers are primarily about protecting consumers and that the more likely a particular form of misuse is to harm consumers by causing them annoyance, inconvenience or anxiety, the more incumbent it is on Ofcom to take enforcement action. In general terms, misuse and the harm it causes the public may be prioritised in three ways.

A1.83 First, there is the degree of harm caused to an individual consumer, on a scale where anxiety is more detrimental than annoyance or inconvenience. As an example, we believe that anonymous silent calls are more likely to give rise to anxiety than those associated with an information message and a CLI. This could be described as a qualitative test.

A1.84 Second, there is the scale or amount of the misuse. Other things being equal, the more people are affected by an act of misuse the more likely it is that Ofcom will take enforcement action. Causing annoyance to a significant number of people is inherently more serious than causing annoyance to a small number and is more likely to justify enforcement action. This could be described as the quantitative test.

A1.85 Third, is where a new serious form of misuse has come to light and Ofcom needs to act quickly in order to stop the misuse and deter others from engaging in the practice. An example might be where a person provides a commercial service offering to overlay outbound phone calls with an inauthentic CLI number, thus enabling callers to send misleading information about their identity and preserve their anonymity. This could be described as the deterrence test.

A1.86 Ofcom policy on taking action under its s128 powers will be driven by the three factors set out above.

A1.87 Ofcom will monitor consumer complaints in this area, and will look at other ways to identify priority cases of persistent misuse. In addition, the overview that communications providers have of network activity makes them particularly well placed to pick up on instances of high-volume misuse of which isolated consumers may only have a single experience. Ofcom welcomes such cases being brought to its attention by communications providers.

A1.88 Where Ofcom receives complaints, they will be assessed to ascertain whether there is sufficient evidence to provide reasonable grounds for believing that persistent misuse has occurred, and whether taking action would be a priority for Ofcom.

The determination and the specification

A1.89 The determination will need to refer to the evidential basis that supports the occurrence of persistent misuse. As the notification is required to be given to the person who is responsible for the misuse it will also be necessary for Ofcom to establish the identity of the persistent misuser. As a point of clarification, it will not be possible to take action under this legislation against a communications provider

over whose network or service the persistent misuse takes place, unless the communications provider itself is responsible for perpetrating the misuse. A provider over whose network silent or abandoned calls are made cannot be made responsible for those calls.

A1.90 The specification will describe the actual behaviour that constitutes persistent misuse supported by the grounds for believing that this behaviour is likely to give rise to annoyance, inconvenience or anxiety.

A1.91 The specification of the period during which the notified person may make representations must not normally be less than a month but may be as short as seven days, in urgent cases. An urgent case is defined by section 128(4) as one where the misuse is both continuing and causing a degree of harm that requires it to be stopped as soon as is practicable.

A1.92 Whether or not the misuse is continuing is a matter of fact; the degree of harm that it is causing is necessarily a matter of judgement. The factors that would tend towards a shorter period for representations are the scale of the misuse, the number of consumers on whom the misuse is impacting and the degree of detriment caused. An example of an urgent case might be where automated calling systems are being exploited to send a high volume of recorded messages seeking to influence voting in a TV phone-in.

The consequences of a notification

A1.93 Once the period allowed for the making of representations has expired, Ofcom has three options:

i) it can decide whether or not to issue an enforcement notification to the misuser under section 129 of the Act;

ii) it can impose a penalty under section 130 of the Act; or

iii) it can issue an enforcement notification and impose a penalty.

Enforcement notification under section 129

A1.94 An enforcement notification under section 129 is appropriate where Ofcom is satisfied that:

i) the person who has been notified under section 128 (“the notified user”) has persistently misused an electronic communications network or service;

ii) the notified user has not, since the giving of the notification, taken all the steps that Ofcom considers appropriate to ensure that the misuse is ended and not repeated; and

iii) the notified user has not, since the giving of the notification, remedied the consequences of the notified misuse in a manner that Ofcom considers appropriate.

A1.95 The enforcement notification will impose a requirement on the misuser to take the necessary steps:

i) to end the misuse and not repeat it; and

ii) to remedy the consequences of the misuse.

A1.96 It will impose clear and enforceable obligations on a misuser and allow a reasonable period for compliance with them.

A1.97 In many cases of persistent misuse, there may be no pecuniary loss or damage, say in the case of silent or abandoned calls. However a degree of annoyance, inconvenience or anxiety will invariably be present.

A1.98 When considering whether a misuser has remedied the consequences of a breach, Ofcom will consider the factors of the particular case and whether the remedy is proportionate to the harm caused.

A1.99 Section 129(5) of the Act makes compliance with an enforcement notification a duty of the notified user, and enables Ofcom to enforce that duty through civil proceedings which, as set out in section 129(6), may lead to an injunction, a requirement for specific performance of a statutory duty or any other appropriate remedy or relief. The appeal procedures available against notifications and penalties are set out in sections 192 to 196 of the Act.

Issuing a penalty under section 130

A1.100 Where Ofcom has issued a section 128 notification, or both a section 128 notification and a section 129 enforcement notification, Ofcom will be able to impose a penalty on a persistent misuser, once the period for making representations has elapsed.

A1.101 Ofcom may also impose a financial penalty where a notified misuser has contravened a requirement of a section 129 enforcement notification.

A1.102 Additionally, section 130(8) of the Act allows for the imposition of a penalty where a person is liable for an offence under sections 125 to 127 of the Act. (These sections relate to the offences of dishonestly obtaining electronic communication services, possession or supply of apparatus which may be used for dishonestly obtaining such services or improper use of a public electronic communications network).

A1.103 The upper limit for such a penalty is currently £50,000 although this amount may be changed by order of the Secretary of State[70].

A1.104 Ofcom is required under section 130(4) to determine an amount, which is both appropriate and proportionate to the misuse. In making such a determination, section 130(5) requires Ofcom to have regard to:

i) any representations made by the notified misuser;

ii) any steps taken by the misuser to bring the misuse to an end and not repeat it; and

iii) any steps taken by the misuser to remedy the consequences of the misuse.

[70] The Department of Business, Innovation and Skills (BIS) issued a consultation in October 2009 followed by a statement in March 2010 on raising the maximum penalty from £50,000 to £2 million. Stakeholders were overwhelmingly in favour of increasing the maximum penalty to £2 million and the increase could possibly be implemented later this year.

A1.105 Section 130 thus confers discretion on Ofcom to impose a penalty that it considers to be appropriate and proportionate to the notified misuse.

A1.106 Furthermore, under section 392 of the Act Ofcom is required to publish a statement containing the guidelines it proposes to follow in determining the amount of penalties it imposes under the Act. By virtue of section 392(6) of the Act, Ofcom must also have regard to the statement for the time being in force when setting the amount of any penalty under this Act.

Factors relevant to the application of Ofcom's Penalty Guidelines

A1.107 The statement on Ofcom's Penalty Guidelines is published at http://www.ofcom.org.uk/about/accoun/pg. The general criteria it sets out are that the amount of any penalty must be appropriate and proportionate to the contravention in respect of which it is imposed. In addition Ofcom must have regard to any representations made to them by the regulated body in breach. Accordingly, Ofcom, in setting the level of penalty will consider all relevant circumstances.

A1.108 The Penalty Guidelines establish a three-step procedure for determining the level of penalty.

1. Ofcom determines a starting figure by reference to such general and specific criteria as it considers relevant in the circumstances of the notified misuse;

2. Ofcom considers whether there are any relevant aggravating factors according to which the starting figure should be increased; and

3. Ofcom considers whether there are any relevant mitigating factors according to which the starting figure should be decreased.

A1.109 In accordance with the Penalty Guidelines, Ofcom is likely first to consider the following factors in determining the starting figure of any penalty:

- the seriousness of the contravention;
- any precedents set by previous cases; and
- the need to ensure that the threat of penalties will act as a sufficient incentive to comply.

A1.110 The seriousness of persistent misuse will be a key factor in determining a section 130 penalty. However, the development of a calibrated scale of seriousness involves a degree of subjective judgement and Ofcom recognises that people will have differing perceptions of how various forms of behaviour should be ranked.

A1.111 In the context of persistent misuse, Ofcom may consider the following in applying its statement of policy and determining the seriousness of a contravention:

i) the type of misuse (for example, a serious contravention could include conduct such as the making of a very high number of abandoned calls, or the making of silent calls, or misuse for dishonest gain);

ii) the degree of persistence and regularity of misuse;

iii) the number of people exposed to the misuse (for example, where an Automated Calling System targets a great number of people); or

iv) the degree of harm caused by the misuse (for example, where does the misuse fall on the spectrum of distress that extends from inconvenience – *e.g. I have to stop what I'm doing to get up to answer a single silent call – through to irritation – e.g. I answer the phone several times to hear a caller chortling, who then rings off – to anxiety – e.g. I have recently emerged from an abusive relationship and receive several silent calls a day - I no longer feel safe in my new home?*)

A1.112 As at May 2010 Ofcom has imposed penalties under section 130 for contraventions of section 128 in eight cases. Ofcom's penalty determinations can be found at:

http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_905 /
http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_880/
http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_891/

Annex 2

Responding to this consultation

How to respond

A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 July 2010**.

A2.2 Ofcom strongly prefers to receive responses using the online web form at https://www.ofcom.org.uk/consult/condocs/silentcalls/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A2.3 For larger consultation responses– particularly those with supporting charts, tables or other data – please email silentcalls@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Matthew Chapman
6th Floor
Consumer Affairs Team
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3333

A2.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A2.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 5. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Matthew Chapman on 020 7981 3809.

Confidentiality

A2.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A2.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A2.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/about/accoun/disclaimer/

Next steps

A2.11 Following the end of the consultation period, Ofcom intends to publish a statement in September 2010.

A2.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

A2.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 3.

A2.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A2.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 3

Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A3.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A3.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 4

Consultation response cover sheet

A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.

A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.

A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing ☐

Whole response ☐

Part of the response ☐

Name/contact details/job title ☐

Organisation ☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here. ☐

Name

Signed (if hard copy)

Annex 5

Consultation questions

Question 1: Do you agree that Ofcom should limit the number of times a company can call an answer machine without guaranteeing the presence of a live operator to once every 24 hours?

Question 2: Do you agree with Ofcom that a two month implementation period (from publication of Ofcom's revised statement) would be an appropriate length of time for industry stakeholders to adopt any changes to comply with the proposed 24 hour policy?

Question 3: Has Ofcom provided sufficient clarity on how the abandoned call rate is to be calculated?

Question 4: Do you agree with the factors set out by Ofcom for determining a reasoned estimate of AMD false positives in an ACS user's abandoned call rate?

Question 5: Has Ofcom provided sufficient clarity on how AMD users should calculate an abandoned call rate that includes a reasoned estimate of AMD false positives?

Question 6: Has Ofcom provided sufficient clarity on how non-AMD users should calculate an abandoned call rate that includes an estimate of abandoned calls picked up by answer machines?

Question 7: Do you agree that Ofcom should not amend the existing two second policy as set out in the 2009 Amendment from 'start of salutation' to 'end of salutation'?

Question 8: Do you agree with Ofcom's policy proposal that companies provide a geographic contact number (01, 02 or 03) in addition to a freephone (080) number in the information message provided in the event of an abandoned call?

Question 9: Has Ofcom provided sufficient clarity on what constitutes a 'campaign'?

Annex 6

Analysis of Silent Calls

Mott MacDonald

Summary Report

Analysis of Silent Calls

Summary Report

May 2010

Ofcom

Mott MacDonald

Analysis of Silent Calls

Summary Report

May 2010

Ofcom

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Executive Summary

Mott MacDonald found the Ofcom Advisory Team's (OAT) complaints data to be a good source of information on the drivers and characteristics of silent calls complaints. 83% of complaints related to the receipt of multiple calls, and it was clear that many consumers had received repeated silent calls for a sustained period of time. The majority of the companies responsible for the silent calls were found to be financial services organisations. Whilst the chasing of debt was a small factor in generating repeated calls – and there is some evidence that a few companies are knowingly using silent calls as a tactic to put pressure on consumers – the majority of the calls appeared to be a side-effect of attempts to market financial products of various types. A number of telcos were also high up the list of perpetrators.

Mott MacDonald found little evidence to back up claims that overseas organisations or entities are responsible for generating significant volumes of silent calls. Whilst consumers did occasionally identify or speculate that overseas entities lay behind the calls, there were a far greater number of cases in which the consumers were clear of the identity of the perpetrator and that it was UK based. Mott MacDonald saw no evidence to suggest that the (often very well-known) UK companies identified are the tip of a hidden overseas iceberg. This viewpoint was consistent with most of the external sources consulted.

Data provided by BT provided a high-level snapshot of the volume of calls received about silent calls over the last 4 years. The data shows a decline in the number of calls about the issue. Other major communications providers (CPs) – both fixed and mobile – operate Nuisance Calls Bureaus to advise and support their customers who may be the victims of nuisance and malicious calls. However, the information currently being collected by CPs does not in general provide a detailed insight into the silent call issue. Primarily this is because, even where nuisance call reports are sub-categorised by the CPs, silent calls are not usually separately identified.

However, useful information is provided by annual surveys commissioned by Telephone Preference Service Ltd (TPSL) to investigate consumer awareness of the Telephone Preference Service (TPS) and experiences of silent calls and other types of nuisance call. These surveys provide valuable, nationally representative data which goes back several years. The survey data has also been augmented by occasional in-depth research on silent and unwelcome calls commissioned by TPSL. In addition, TPSL complaints data, and "Report A Call" records collected by trueCall – though not nationally representative – provided further interesting insights into the consumer experience of silent calls and other types of unwanted call. These sources are a useful complement to the data captured by OAT, given that they have proactively sought to understand the consumer experience of silent calls – for example through quantifying levels of anxiety and annoyance – which are apparent but not quantifiable from current information held by OAT.

1. Introduction

One of Ofcom's strategic priorities is to reduce the harm caused to consumers by silent and abandoned calls. Generating such calls is a form of persistent misuse of an electronic communications network or service, and under S128-130 of the Communications Act 2003 (the "Act") Ofcom has the power to take action if it has reasonable grounds to believe that persistent misuse has taken place.

Silent and abandoned are usually made to consumers by companies using automated calling systems (ACS), also known as predictive diallers, to make outbound calls. If the called party answers the call and no agent is available, then the call is disconnected, which results in the consumer receiving an abandoned call. If no recorded information message is played upon disconnection, then the call will be silent. Silent and abandoned calls (of which Ofcom considers silent calls to be more harmful) can cause annoyance, inconvenience and anxiety to consumers, especially to vulnerable groups. Sometimes the caller's number (the Calling Line Identification, the CLI) is withheld, which means that the consumer is unable to find out who made the call.

Ofcom issued revised guidance in 2008 to reduce the harm caused to consumers from silent and abandoned calls. Since June 2006, Ofcom has taken formal enforcement action against nine companies under s128 of the Act. Moreover, after consultation, the government has recently increased the maximum penalty for persistent misuse to £2m.

Ofcom engaged Mott MacDonald in February 2010 to conduct an analysis of information and data on silent calls, in order to provide an insight into the nature of the silent and abandoned calls being generated by companies. The exercise conducted by Mott MacDonald reviewed and analysed data from the following sources:

- The Ofcom Advisory Team (OAT), which is the main point of contact for consumers wishing to seek advice or to make complaints to Ofcom about a range of issues, including silent calls.
- BT's Nuisance Call Advice Line (NCAL) and Nuisance Call Bureau (NCB).
- The Nuisance Call Bureaus operated by other major communications providers (CPs) – both fixed and mobile.
- Telephone Preference Service Limited.
- Other sources identified by Mott MacDonald.

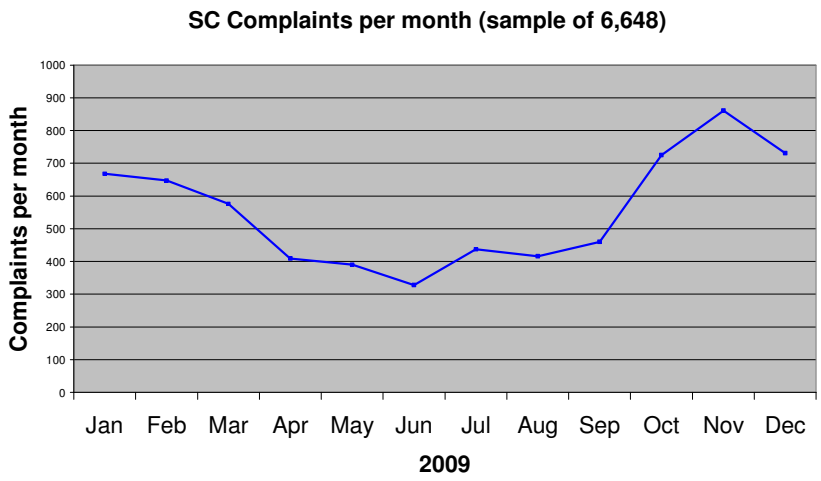
This report presents some key findings of the review.

2. Review of OAT complaints data

2.1 Overview

OAT received 6,648 silent calls cases in 2009 – an average of just over 550 per month. Figure 2-1 shows the distribution of complaints across the year. As this indicates, the number of complaints received each month varied widely from a low of just over 300 in June 2009 to a high of just under 900 in November 2009.

Figure 2-1: Silent Calls complaints per month (all 6,648)



To conduct an analysis of the data within the time available, Mott MacDonald reviewed a sample of around 1,000 of these cases, representing just over 15% of the total Silent Calls complaints received by OAT in 2009. A sampling methodology called stratified random sampling was used to ensure that a representative sample of cases was selected for review. The actual sample analysed by Mott MacDonald focussed on OAT records relating to 1,031 Silent Calls cases.

2.2 Frequency of silent calls

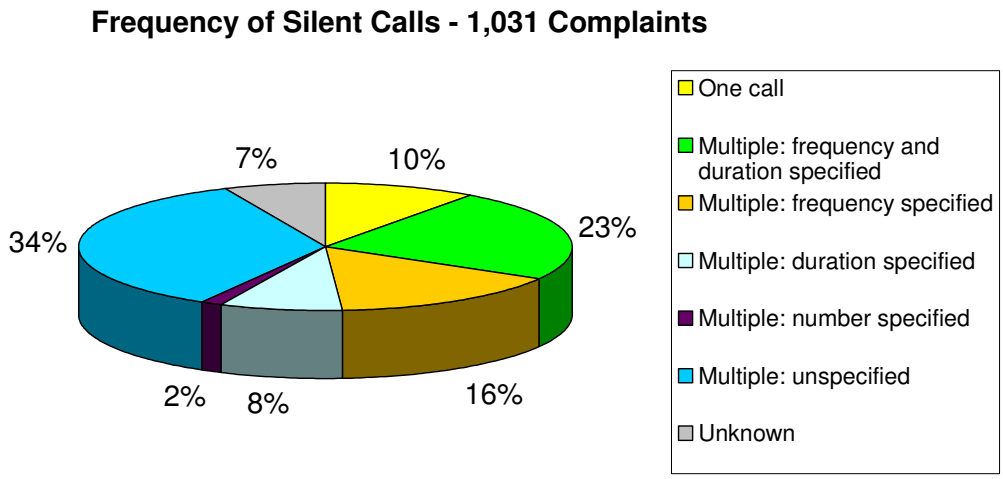
Information collected by OAT about the frequency of Silent Calls was provided in a variety of forms. Where some consumers commented on frequency in terms of the number of calls received per day or per week, others commented on the duration of the issue (ie for how many days or weeks they had been receiving Silent Calls). Others simply stated they had been receiving Silent Calls, without giving any indication of frequency or duration. Nevertheless, the clear impression created was

that the majority of consumers complaining have been triggered to do so by receiving multiple silent calls.

It should be noted that customers sometimes complained about more than one number – in fact 42 cases of 1,031 (4%) concerned more than one number. **Nevertheless, it is clear that the predominant generator of repeated multiple calls is the fact that customers are called repeatedly by the same number, rather than being called singly by multiple numbers.**

A breakdown of the 1,031 Silent Calls cases according to the information provided on frequency is illustrated in Figure 2-2:

Figure 2-2: Overview of SC complaint frequency



As can be seen from Figure 2-2 in 10% of cases (102 of 1,031) the complaint concerned a single Silent Call. In a further 7% of cases the frequency of Silent Calls was unknown – meaning that it was not possible to determine anything about frequency from the information recorded on the case. In the remaining 83% of cases (859 of 1,031) the complaint concerned the receipt of multiple Silent Calls.

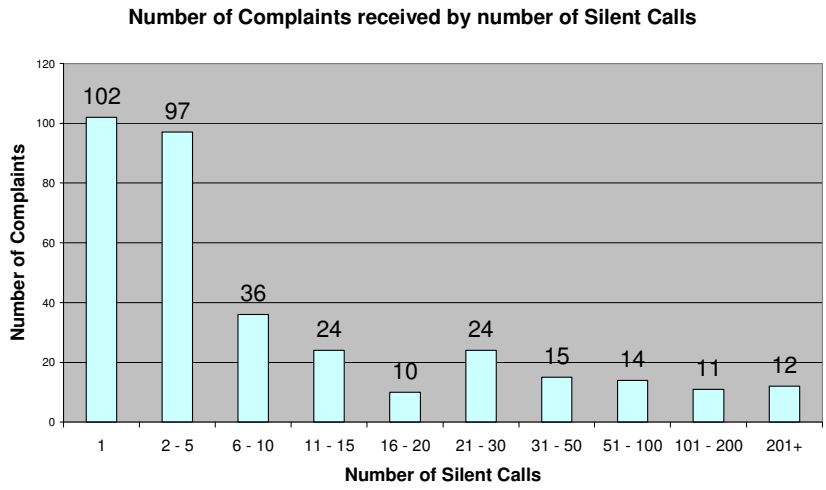
Silent Calls: frequency and duration specified

There were 243 multiple Silent Calls cases (23% of 1,031) for which the customer specified both the frequency of receiving Silent Calls (eg 2 calls per day) and the period of time over which this had occurred (eg for 2-3 weeks). Given the possession of information on both frequency and duration, it was possible to work out the absolute number of calls each consumer has received. As mentioned above, there were also 102

cases in which the customer specified that only a single call was received – making 345 cases in total about which it was possible to state the total number of calls received by the consumer.

A breakdown of these 345 cases is shown in Figure 2-3:

Figure 2-3: Number of complaints received by number of Silent Calls

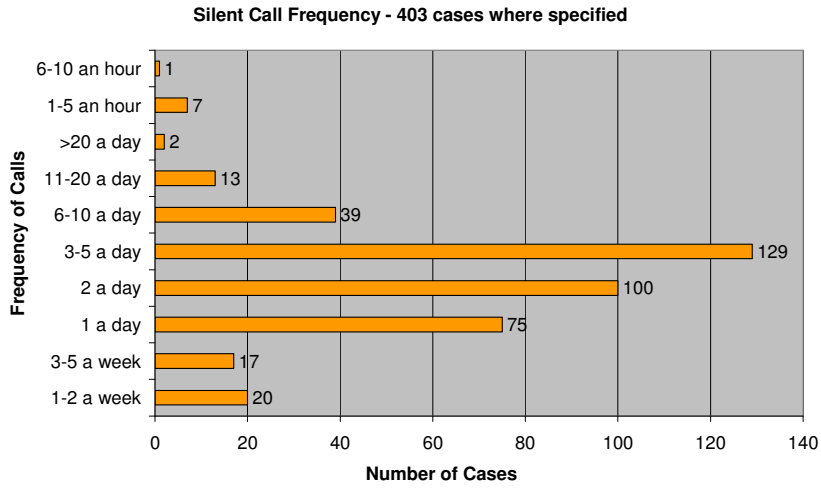


The graph shows that whilst the majority of consumers giving specifics of frequency and duration received a single call or up to 5 silent calls in total, significant numbers of consumers received larger numbers of Silent Calls – with some receiving tens or even hundreds of calls.

Silent Calls: frequency specified

160 consumers gave information about frequency only (eg 2 Silent Calls per day) without stating for how long they had endured this form of nuisance call. As mentioned above, 243 consumers gave details of frequency along with duration (not including cases of only a single call being received). All in all there were therefore 403 cases for which Mott MacDonald was able to gather information on the frequency of Silent Calls complaints. A breakdown of these 403 cases in terms of call frequency is shown in Figure 2-4:

Figure 2-4: Silent Call Frequency – 403 cases where specified



As can be seen from Figure 2-4, 175 consumers (43% of the 403) receiving silent calls and stating call frequency were receiving 1-2 silent calls a day. A further 129 consumers (32%) were receiving 3-5 calls a day. It is also notable that considerable numbers of consumers were receiving Silent Calls at an even higher level of frequency – with 62 receiving more than 5 calls a day (15% of 403) and a small number receiving multiple hourly calls.

Silent Calls: duration specified

There were 81 cases in which the consumer indicated the duration over which they had been receiving Silent Calls, but not the frequency or number of calls received. As mentioned above, there were also 243 cases in which the consumer specified both the frequency and duration of this experience (not counting cases of a single call). There were therefore 324 cases in all for which information on the duration of the problem was provided. A breakdown of these calls is shown in Figure 2-5:

Figure 2-5: Silent Call Duration, where specified (324 cases)

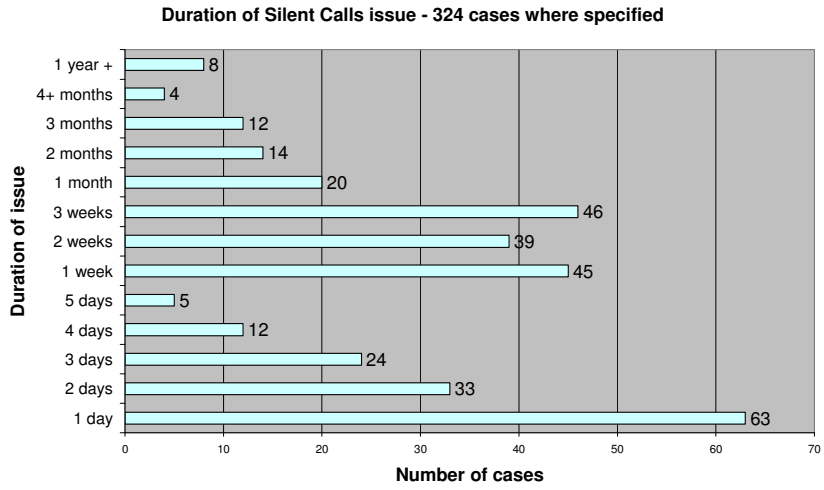


Figure 2-5 shows that many consumers had been receiving silent calls for a few days when calling to complain – with 63 complaints (20% of 324) coming after a day of silent calls, and 74 consumers calling after less than a week (23%). However, a significant number have been receiving silent calls for a longer period, with 130 consumers (40%) experiencing calls from 1-3 weeks, and 58 (18%) for a month or more.

Silent calls: unspecified data

There were a further 359 cases where all that was recorded was that the consumer had experienced multiple Silent Calls, as well as 79 cases for which it was not possible to tell if the complaint related to single or multiple silent calls.

2.3 Complaints by type of CLI

In many cases the consumer complaining was able to attribute a CLI to the party making the silent call, either through having CLI display on their phone or by dialling 1471. A breakdown of the types of numbers responsible for the complaints is shown in Figure 2-6:

Figure 2-6: The number of Silent Calls by type of CLI

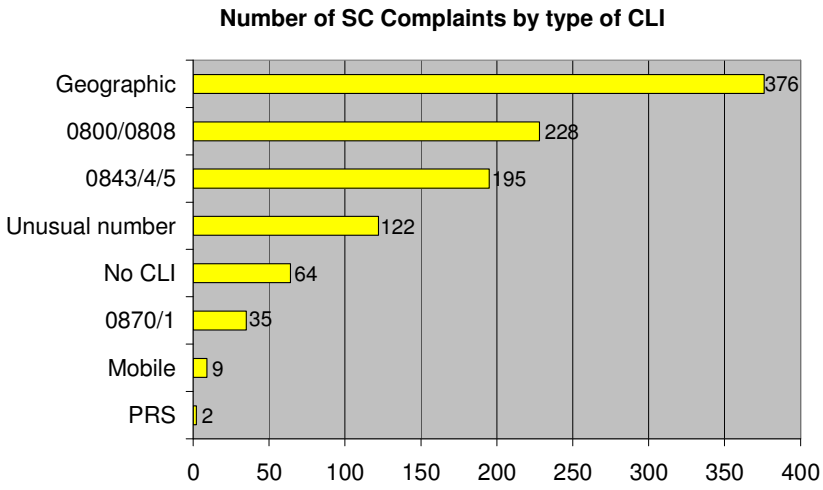


Figure 2-6 shows that the most common source of Silent Calls was UK geographic numbers, responsible for 376 of 1,031 complaints (36%). Freephone numbers were the next most prevalent, with 22% of cases generated by this type of number, and 0843/4/5 numbers were also common, with a further 19% of complaints stating this type – 0845 being the most common type used, with 153 cases. 64 cases came without a CLI, but a further 122 cases came with a CLI which was an unusual number – one with no recognisable significance. Some of these numbers appeared to be UK geographic or non-geographic numbers at first sight, but contained too many or too few digits, or local area codes which do not exist. Other numbers were evidently invalid – such as numbers composed only of zeros.

It is notable that the majority of numbers appear to be UK based, and this was consistent with the impression gained from reviewing consumers' evidence: that in the majority of cases the organisations behind the calls are believed to be UK based organisations.

2.4 The prevalence of Silent Calls from overseas

As stated above in Section 2.3, in the majority of cases the perpetrators of Silent Calls appear, on the surface at the very least, to be UK based organisations. Firstly, the CLIs involved appear to be largely UK geographic or NTS numbers, and secondly the evidence presented by consumers with knowledge of the companies involved almost all points towards dealings with UK organisations. Of course UK CLIs can be used by overseas contact centres – many large companies have moved

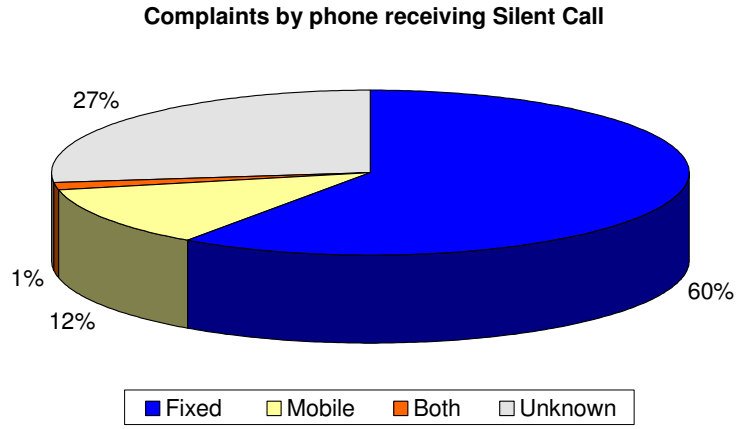
or outsourced their contact centre operations to offshore locations – but the sense gained from reading case notes and listening to consumers' calls to OAT is that the root of the problem does not lie overseas.

There were 28 cases in which the consumer stated or speculated that the organisation responsible was overseas – though often this was based on little more than the fact that they had spoken to someone with an Asian accent. There are doubtless overseas organisations perpetrating Silent Calls, and some are likely to lie behind some of the unusual numbers encountered and cases for which it was not possible to identify the organisation involved. There is also an argument which suggests that consumers are frustrated by being unable to identify overseas companies which frequently call them, and that they take this frustration out on UK companies which unwittingly make the occasional silent call. The suggestion is that the UK companies blamed are like the tip of an iceberg, with the real issue – nuisance calls from abroad – unjustly hidden beneath the surface. Mott MacDonald saw no evidence in the OAT data to give substance to this view and believes the root of the problem lies currently in the UK, not overseas.

2.5 Fixed versus mobile

A breakdown of the type of phone on which consumers had received Silent Calls is shown in Figure 2-7:

Figure 2-7: Breakdown of phone on which Silent Calls received (1,031 cases)



As might be expected, the majority of calls were received on a fixed-line phone, but a significant proportion were received by mobile, and it is also notable that a few consumers (15 of 1,031) had received calls on both types of phone.

2.6 Consumer reactions and actions

It is hard to present a quantitative view of consumer reactions and actions, because the majority of consumers responded by web form and this type of information was not directly required by the form. Nevertheless many consumers did fill in extensive details of their case and commented on the distress and anxiety the Silent Calls had caused. Words and phrases such as “very annoying”, “harassment”, “extremely irritating”, “abhorrent” and alike were sometimes used – though the majority of customers commented on the practical details of the case rather than the feelings the calls engendered.

In terms of the actions they had taken, many consumers had contacted their CP and asked about either tracing the number and / or having it blocked. Consumers tended to be told by CPs that the number couldn’t be blocked, or that certain types of numbers (eg withheld calls) could be blocked by subscribing to a blocking service. Some consumers objected to this – reasoning that they should not be required to pay to prevent a prohibited activity. Others had previously subscribed to such a service but complained that Silent Calls were still getting through (that is not to say such services are not effective – presumably the consumers they do work for have little reason to complain to Ofcom).

The most common means of blocking unwanted calls was to join the TPS. 127 of the consumers complaining, however, were already TPS members[1], and the fact that they were registered already often added to their ire. Others stated they had recently joined or were planning to do so. Some customers had spoken to the ICO or Cisas in an attempt to prevent further calls.

Many consumers had attempted to call the company making the Silent Calls to request removal from call lists. Often customers had retrieved a number for the company through 1471 and, on calling this number, encountered a pre-recorded message which sometimes gave them the option to opt out. A number of customers had done this but had found it made little difference. Others had called the company and spoken to employees requesting removal – again, often without much success, a factor which had led them to call Ofcom. A few consumers had written to the company in question to ask for a cessation of the calls.

[1] It should be noted that in 870 cases it was not known whether the consumer was a member of the TPS, as this question was not specifically asked by web forms. It is likely higher numbers of consumers are TPS members but did not mention it.

The impression gained overall from consumers was that the measures available to them were inadequate or ineffective. Membership of the TPS was not eliminating the issue, CPs were not doing enough to block numbers and the companies making the calls were not keeping promises to cease the calls. There was also a degree of frustration with Ofcom itself – mainly stemming from the fact that they wanted targeted action rather than advice and a promise to monitor complaint numbers – though many were happy to receive advice.

2.7 Factors driving Silent Calls complaints to OAT

There is no doubt that the primary driver of complaints about Silent Calls complaints to OAT is the experience of having received repeated Silent Calls, often over a sustained period. Whilst 102 cases concerned consumers who had experienced a single Silent Call, most consumers had received multiple calls of one kind and another.

Consumers are also often driven to complain to OAT by having failed to stop the problem by other means – having talked to their CP about tracing or blocking the calls, called the offending organisation to ask it to stop, signed up with the TPS etc, all without much success. There is certainly a sense from some consumers that this is a problem no one seems willing or able to solve, and there is a hope therefore that Ofcom will take action to sort it out.

In terms of the underlying factors causing Silent Calls to occur, which generate complaints to OAT as a result, there was little concrete insight into the causes of Silent Calls. Many consumers speculated that automatic diallers were behind the issue. A few blamed overseas organisations or contact centres for the calls, but many were clearly annoyed with a UK based organisation. However, evidence presented tended to focus on the manifestations of the issue as experienced by the individual or their household, rather than the drivers.

The general drivers of Silent Calls are well documented. In considering the factors driving Silent Calls, Mott MacDonald believes key questions are: who are the organisations perpetrating the calls, how aware are they that the Silent Calls are taking place, and are they doing enough or anything to stop them?

Mott MacDonald is of the opinion that the organisations largely responsible for the calls are UK based organisations. There was no significant evidence from the OAT data to suggest this is a problem which predominantly has an overseas root. The majority of cases have a known CLI which has the appearance of being a UK number. Almost

100% of the organisations identified by consumers are UK companies, many of them well known names. The argument that behind these facts lie a lot of anonymous numbers and organisations that the consumer cannot identify precisely because of their foreign status is hard to justify – principally because it is not an argument consumers themselves commonly make. If the visible UK based part of the problem was merely the tip of an overseas iceberg one would expect to see much more allusion to this in consumer evidence. On the contrary, consumers commonly know who the culprits are – they just have trouble stopping them.

In terms of their business focus, many of the organisations generating Silent Calls are from the financial services industry. Whilst some of these organisations are involved in debt management and recovery, only a small number of cases were identifiable as situations in which the consumer was being pursued for a debt owing. In most cases the financial organisations were involved in some sort of telemarketing activity (judging from interactions the consumers had had with the companies and occasionally connected calls). And there were many examples of other financial products being promoted – such as insurance and loans.

It is hard to say, from the OAT evidence, how aware the organisations are of the offences taking place. Anecdotal evidence suggests consumers often call numbers provided to stop Silent Calls, but that these frequently have no effect. On the other hand the cases do not give much visibility of success stories – since they are complaints – so it is hard to gauge how often perpetrators do comply with such requests. It is also almost certain that some organisations do know this Silent Calls are happening and fail to stop them – as occasional consumer evidence indicates failure to action repeated cease requests, and sometimes rudeness and denial from the staff of offending companies. In some cases the scale of the problem is such that it constitutes harassment – and it seems that some companies not only do not attempt to stop Silent Calls, but use them as a tactic to put pressure on consumers, sometimes in situations of debt. It should be noted too that if companies are not aware Silent Calls are being generated, this is a failing in itself.

3. Review of information from communications providers

3.1 Introduction

All the main CPs provide advice and support for customers who are the victims of nuisance and malicious calls. The following CPs contributed information and opinions on the silent call issue as part of this review:

- BT
- Sky
- TalkTalk
- Virgin Media
- O2
- Orange
- Vodafone.

3.2 BT's NCAL and NCB

BT's Nuisance Call Advice Line (NCAL) and Nuisance Call Bureau (NCB) are services that provide guidance and help to BT customers experiencing problems with unwanted calls, including sales and marketing calls from companies who are largely not complying with call centre best practice . NCAL provides advice to callers, giving them the option of listening to recorded advice or speaking to an advisor. NCAL in turn refers some calls on to the Nuisance Call Bureau (NCB), which has specialists that can provide more detailed advice and can also arrange a trace to be put on a BT consumer's line should it be required.The NCB will also provide a caller with their direct number if the caller may need to call back (for example to follow up on a line trace). Calls can be referred into the NCB from other parts of BT and it deals not only with Silent Calls but all types of malicious and nuisance calls.

NCAL Data

Data provided by BT on the volumes of calls handled by NCAL over the period June 2006 to February 2010 showed the following trends:

- Calls to NCAL on the subject of Silent Calls typically account for about 25% of all calls handled by NCAL
- The total number of calls to NCAL about silent calls has reduced in recent years
- The number of callers choosing to speak to an NCAL advisor has fallen significantly

- There does not appear to be an overall decline in the average number of callers that choose the option to listen to recorded advice on silent calls
- Callers listening to recorded advice represented about 50% of calls to NCAL on the issue of Silent Calls in 2006. By 2009 this proportion was more than 85%.

NCB Data

Regarding the NCB Data, BT is just beginning to undertake additional analysis of both nuisance and malicious calls via analysis of CLI statistics. The objective is to log whether there is a CLI identified with regard to complaints BT considers may fall under the Ofcom Revised statement of policy on persistent misuse .

3.3 Other Communications Providers

The other CPs interviewed for this assignment also operate Nuisance Call Bureaus or equivalents. In most cases, the first line support is provided by customer services representatives, and where required, more serious cases are escalated to specialist NCB teams.

Few of the CPs interviewed were able to provide detailed data about nuisance call volumes, partly due to the tight timescales for the assignment. Those that did provide data were largely unable to quantify the number of silent calls, for a variety of reasons. In particular:

- None of the CPs logs or categorises Silent Calls separately from other types of nuisance/malicious calls
- Several respondents commented that a broad category such as “silent calls” is not necessarily helpful or informative, since the underlying causes of the problem – and therefore the ways to resolve it –may differ. For example, a silent call might be generated by a predictive dialler abandoning a call without playing an information message, but could also be caused by number scanning, fax broadcasting, malicious or accidental reasons

Although unable to quantify the silent call issue, the CP respondents provided some views on causes and trends:

- A number of respondents expressed the view that the scale of the nuisance calls problem, including silent calls, is stabilising or gradually reducing.
- One respondent commented that the problem of silent calls has reduced dramatically in recent years, largely due to the introduction

of more stringent Ofcom regulations governing the use of outbound dialling.

- Several respondents stated that the use of Answer Machine Detect (AMD) technology was one factor driving the generation of silent calls.
- Calls from overseas are part of the problem (whether international companies calling the UK, or UK companies outsourcing their outbound calling to overseas call centres). However, the general feeling is that calls from abroad are not the sole or even major generator of silent/nuisance calls.

4. Review of other external sources

4.1 Overview

Additional key sources identified and contacted by Mott MacDonald included:

- Telephone Preference Service Ltd (TPSL): for some years, TPSL has been conducting annual surveys to assess consumer awareness of the Telephone Preference Service (TPS), and to investigate a range of issues relating to silent and other types of unwelcome calls. In addition, TPSL has commissioned Brookmead Consulting to carry out several in-depth research programmes[2] into these issues.
- Brookmead Consulting: this company carries out research into problems caused by nuisance telephone calls, and advises call centre operators on how to minimise the nuisance for consumers and remain compliant with regulatory requirements. Brookmead consultants contributed to the development of the Direct Marketing Association's dialler guidelines and have experience of running call centres and installing and maintaining call centre technology.
- trueCall: in October 2008, two directors of Brookmead Consulting launched trueCall – a device that allows consumers to screen and control the phone calls they receive. Customers of the device can also report details of nuisance calls received via a free service called ReportACall (http://www.reportacall.co.uk/). Initial ReportACall data has been made available to Mott MacDonald.

4.2 Insights of external parties about the issue of Silent Calls

4.2.1 TPSL

TPSL has conducted regular research on nuisance calls, including silent calls, for a number of years. This research includes:

- Annual consumer surveys to assess awareness of the TPS and a range of issues concerning nuisance calls.
- "Silent Calls Research 2005", DMA Research & Information Centre: Brookmead Consulting was commissioned in November 2004 to carry out this project. It included an omnibus survey of 1,000 adults interviewed by TNS in January 2005. In addition, 250 questionnaires were completed by new TPS registrants and complainants to the nuisance call bureaus.

[2] "Silent Calls Research 2005", DMA Research & Information Centre; "TPS Report on Unwelcome Calls 2008", TPS/Brookmead Consulting Ltd.

- "TPS Report on Unwelcome Calls 2008": TPSL re-commissioned Brookmead Consulting in Autumn 2008 to repeat and extend the original research. The research included three separate surveys – a MORI omnibus of 2,000 people, a survey of a sample of people registered with TPS, and a survey of callers to BT's NCAL and NCB.

In addition, TPSL receives complaints from consumers about unsolicited sales calls and other types of nuisance calls, and since 2008 has been logging these complaints by category on a monthly basis. The majority (c. 75%) of these complaints are made via the TPSL website, where complainants complete an online form. Consumers who call the TPSL to complain are also asked to complete a form.

Key extracts from these various TPSL data sources are presented in Section 4.3 below. The TPSL respondent interviewed for the purposes of this project expressed the following views and opinions concerning silent calls and related issues:

- Since 2005 the scale of the nuisance call problem has declined somewhat. However, TPSL survey data from the past few years suggests that this decline is now levelling out. This trend is also reflected in TPSL complaints data, which suggests that the volume of complaints about silent calls is no longer declining. Indeed, the number of silent calls complaints in 2009 was almost 10% greater than the total for 2008, and the figures for the first two months of 2010 are almost 20% up on the number of complaints for the corresponding period in 2009.
- One reason for this apparent levelling out in the numbers of silent calls may be that consumer awareness of TPS, and the number of landline TPS registrations, appears to have reached a plateau. TPS registrations grew steeply between 2004 and 2006, as the issue of unwelcome calls became the focus of consumer concern and media attention. Growth has slowed dramatically since 2006, and the total number of registrations now stands at 15.5 million, of which about 1.1 million are mobile numbers.
- TPSL survey data suggests that nuisance calls received by consumers on their mobile phones is a much smaller scale problem at present. However, this is expected to increase, particularly if Ofcom's proposals to reduce mobile termination rates are implemented, thus reducing the costs of marketing to mobile users.
- Awareness of TPS is relatively high – about 55% of consumers interviewed in the last three TPSL surveys said they had heard of the scheme. However, two thirds of these respondents (ie those people who knew of TPS) were not aware that mobile phones can be registered in addition to landlines.

- Undoubtedly, some of the nuisance calls received by UK consumers, including silent calls, are generated by overseas call centres. However, the scale of this problem is hard to quantify. Only about 2% of complaints received by TPSL are specifically about overseas calls, though, as the respondent commented, consumers are not always aware of the origin of the nuisance calls they receive.
- The recent decision to raise the maximum fine for companies that persistently generate unacceptable levels of silent calls may help to reduce the problem further.

4.2.2 Brookmead Consulting

Through the extensive work conducted on behalf of TPSL and clients in the call centre industry, Brookmead Consulting has a great deal of experience of the nuisance call issue and of current trends.

Relevant extracts of the data provided by Brookmead are presented in Section 4.3 below. The respondent's comments and opinions on silent calls and related issues are as follows:

- All the available data shows that the number of silent calls has reduced considerably since the peak in 2004-05. However, the rate of decrease has been arrested.
- There is no clear explanation for the fact that silent call numbers have levelled off at about 2 to 3 per consumer per month on average. The tightening of regulations by Ofcom in recent years has led to most "responsible" call centres curtailing or severely limiting their use of AMD technology, which is thought to have been a major factor driving silent calls. The fact that the numbers of silent calls have hardly fallen in the past three years is therefore somewhat puzzling.
- Many complaints to TPSL concern pre-recorded message calls, which are thought to be increasing in numbers. Organisations using this method to contact consumers include political parties and, increasingly, financial services companies offering debt management solutions.
- Other problem call types expected to increase in numbers include:
  - nuisance calls to mobiles
  - wrong numbers and misdials: these are increasing because telephone numbers are "recycled" more quickly nowadays, and because number ranges are becoming more densely populated, meaning that people are more likely to dial a "real" number when they misdial.

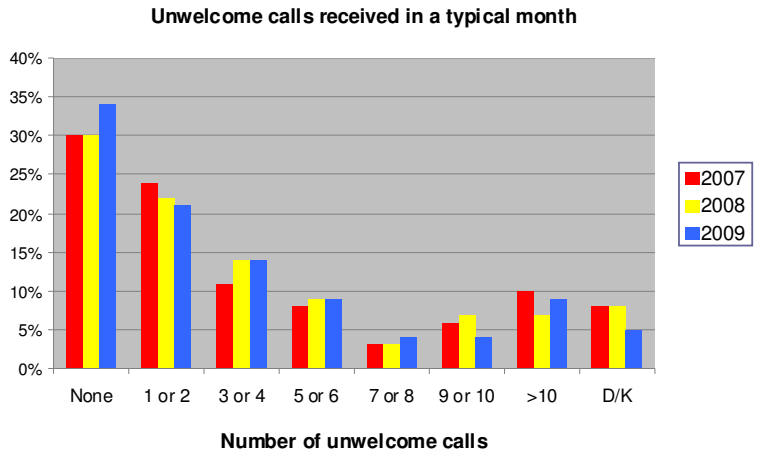
- As with other contacts interviewed for this review, the Brookmead respondent found it difficult to estimate the impact of overseas call centres on the silent call problem. There is some circumstantial evidence to suggest calls from overseas are part of the problem, but there is no doubt that silent calls are also being generated from UK contact centres.

4.3 Key trends

4.3.1 TPSL/Brookmead data

Figure 4-1 shows the number of unwelcome calls received by respondents in the MORI surveys commissioned by TPSL for the last three years.

Figure 4-1: TPSL data on number of unwelcome calls received by consumers



Source: TPSL surveys; MORI 2007, 2008, 2009. Excludes respondents stating "don't know".

The survey defined “unwelcome” calls as meaning unwanted sales calls, silent calls, and unwanted pre-recorded message calls. The average number of unwelcome calls in 2008 fell by 20% compared to the figure in 2007, from 5.7 to 4.6 calls per month. However, the figure for 2009 has increased slightly and is estimated to be around 5 calls per month.

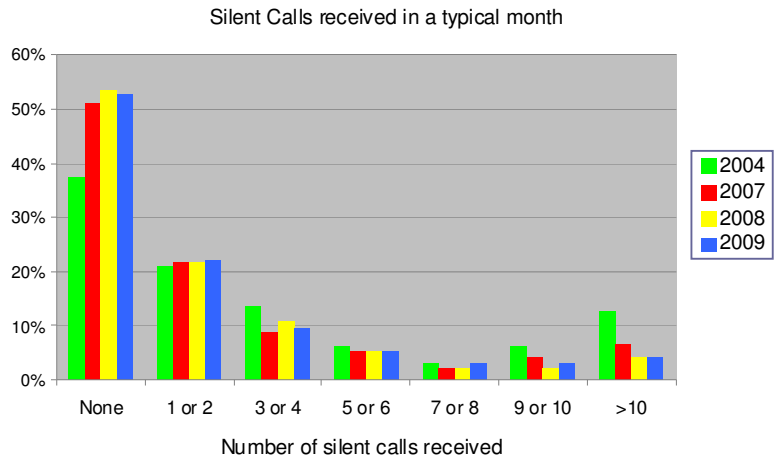
The number of silent calls received by consumers is illustrated in Figure 4-2. This includes data from a TNS survey conducted at the beginning of 2005 and characterised by Brookmead as representing the situation in 2004. The average number of silent calls per month over the period is as follows:

2004 (TNS): 5.7
2005 (BMRB): 9.6
2007 (MORI): 3.0
2008 (MORI): 2.7
2009 (MORI): 2.5.

The BMRB data comes from research published by Ofcom and mentioned in the Brookmead 2008 report.

Although there has been a significant fall in the number of silent calls since 2005, the level of decrease has been relatively modest in the last three years, as mentioned by the respondents from TPSL and Brookmead Consulting.

Figure 4-2: TPSL data on the number of silent calls received by consumers



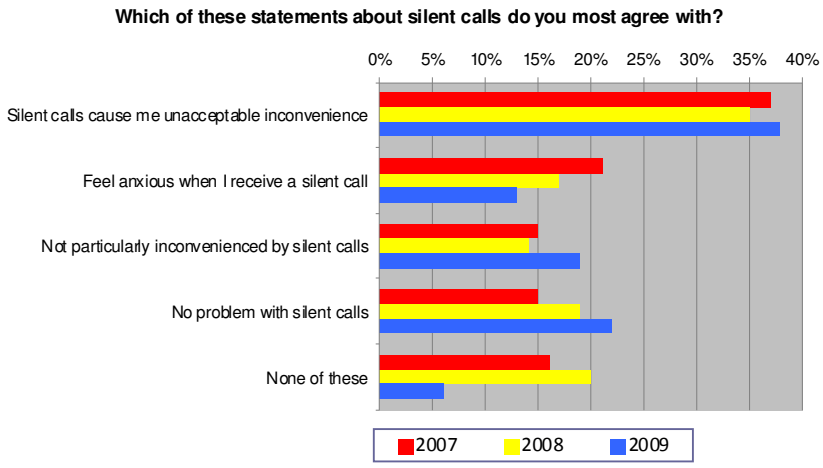
Source: TPSL surveys; TNS 2004, MORI 2007, 2008, 2009. Excludes respondents stating "don't know".

Other key points to emerge from the TPSL and Brookmead research include the following:

- The surveys have consistently shown a significant concentration of calls; although about 50% of respondents received no silent calls in the past three TPSL surveys, a small minority received a very large number. For example, in 2008, 2% of respondents received over 20 unwelcome calls per month, and 1% of respondents reported receiving over 30.

- As Figure 4-3 demonstrates, the levels of anxiety caused by silent calls have fallen over the past three years. However, it is clear they continue to cause unacceptable inconvenience to consumers.
- The 2004 Brookmead Consulting/TNS research identified two demographic groups who expressed particular anxiety about silent calls – women in their 20s and women over 65. The 2008 MORI survey showed that anxiety had reduced from 41% to 19% for young women, and from 35% to 19% for the over 65s.
- Although levels of anxiety about silent calls have fallen, they are still a big concern for some consumers. Of those respondents in the 2008 survey who were anxious when they received a silent call, 18% were concerned that burglars were watching their house and checking whether they were at home, 10% thought that it may be a malicious or offensive caller, and 3% were concerned that it was a family member who was in trouble.

Figure 4-3: The effect of silent calls on the consumer



Source: TPSL surveys; MORI 2007, 2008, 2009.

- In 2009 the TPSL survey asked consumers about other types of nuisance calls they might be receiving. The results showed that:
  - 21% of consumers had received telemarketing calls on their mobile phone (average 1.8 per annum)
  - 10% had received silent calls on their mobile (average 0.38 per month)
  - 46% had received pre-recorded message calls (average 1.98 per month).

As discussed earlier, TPSL also collects data on complaints received from consumers. The figures by category for the past two years are shown in Figure 4-4.

As this shows, most complaints are from TPS registered consumers, complaining about cold calls. However, complaints about silent and pre-recorded message calls are also significant. The main points to note are:

- The number of complaints about silent calls increased between 2008 and 2009.
- Complaints about pre-recorded message calls represented the second largest category in 2008; there were fewer of these complaints in 2009.

Figure 4-4: Total complaints received by TPSL, 2008 and 2009

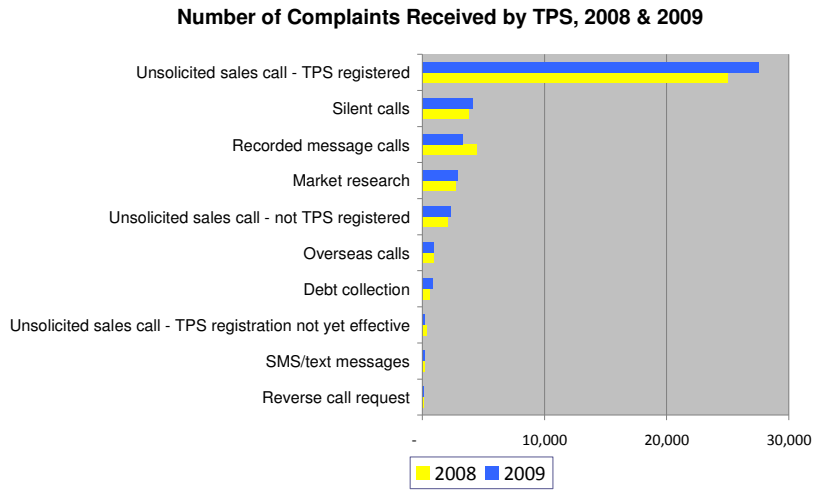


Figure 4-5 and Figure 4-6 show the pattern of monthly complaints about silent calls for 2008 and 2009. There were 314 complaints per month on average in 2008, and 343 in 2009. The picture for 2009 in particular shows a fairly constant level of complaints throughout the year, with no signs of an overall decrease.

Figure 4-5: Silent Calls Complaints, 2008 (TPSL)

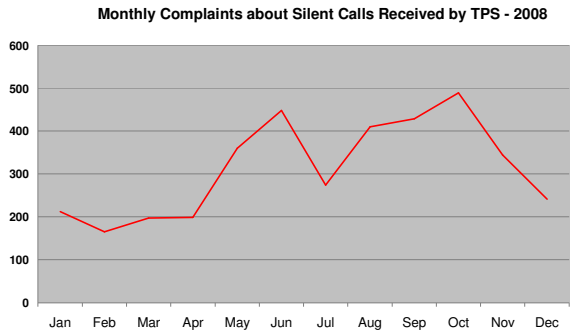
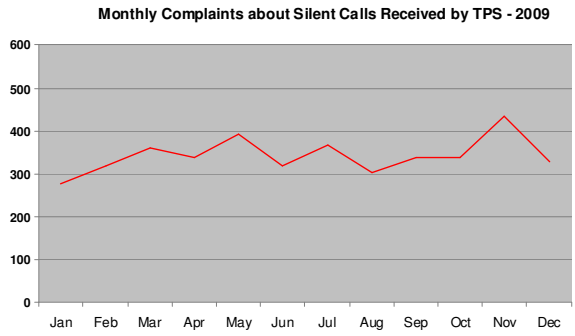


Figure 4-6: Silent Calls Complaints, 2009 (TPSL)



4.3.2 Report A Call data

As mentioned previously, trueCall is a device that allows consumers to screen and control the phone calls they receive

Customers of the device can also report details of nuisance calls they receive, using a free online service called Report A Call (http://www.reportacall.co.uk/). Customers complete an online form that captures the following information:

- Company calling the consumer (if known)
- Consumer relationship with the company
- Whether the consumer is TPS registered
- Call details
- Level of annoyance and anxiety caused
- Type of call
- Reasons why the consumer considered the call to be unwelcome.

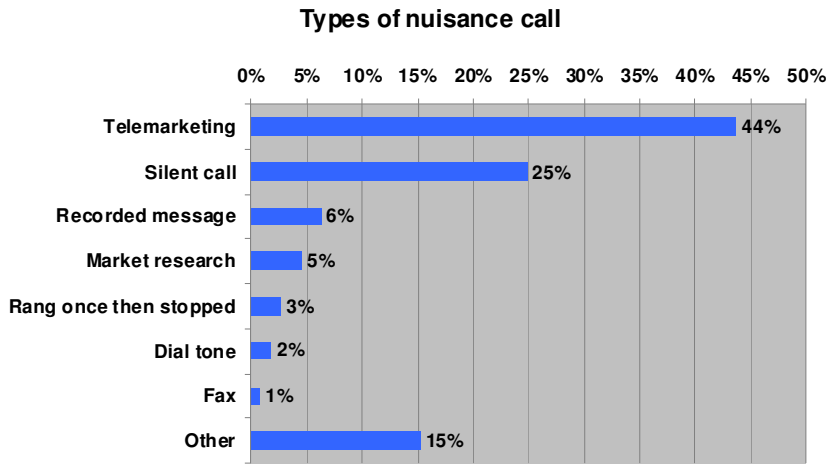
Initial Report A Call data for the period July 2009 to April 2010 has been made available to Mott MacDonald by trueCall for the purposes of this project. A high level analysis of the data provides a valuable insight into the types of nuisance call problems encountered by consumers, and the levels of anxiety and annoyance caused.

When assessing the Report A Call data it should be stressed that the consumers reporting these nuisance calls are not a representative sample of UK consumers. They have (presumably) had sufficient previous problems with nuisance calls to justify the purchase of the trueCall device, and are therefore likely to have strong opinions about

these types of calls. Nevertheless, the data reveals some interesting information:

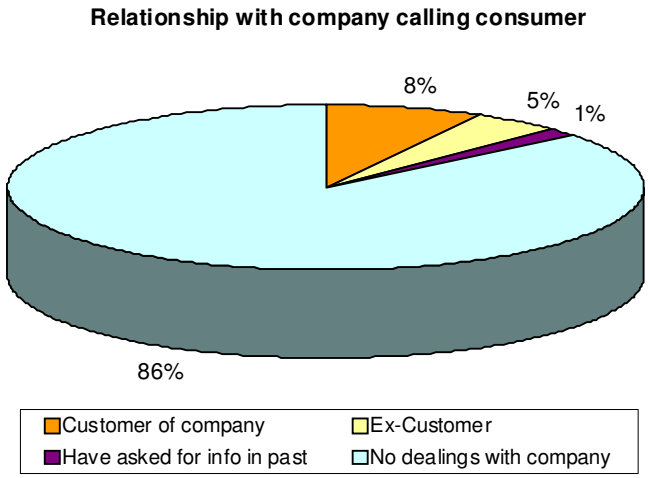
- 60% of the records were received from people registered with TPS.
- Figure 4-7 shows a breakdown of the types of nuisance calls reported, suggesting that silent calls are clearly a major issue for these consumers.
- According to consumers, the majority of these nuisance calls are being made by companies that have no contractual relationship with the consumer (see Figure 4-8).

Figure 4-7: Types of nuisance calls reported to Report A Call



Source: trueCall

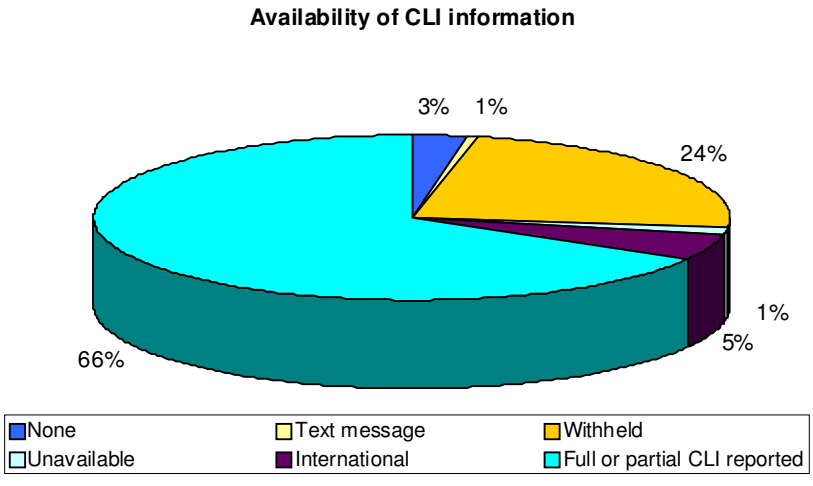
Figure 4-8: Relationship with the company calling the consumer for calls reported to Report A Call, July 2009 – March 2010



Source: trueCall

- Looking at the information about the availability of CLI information, it is not clear that international callers are a major issue, as is sometimes claimed. (See Figure 4-9).

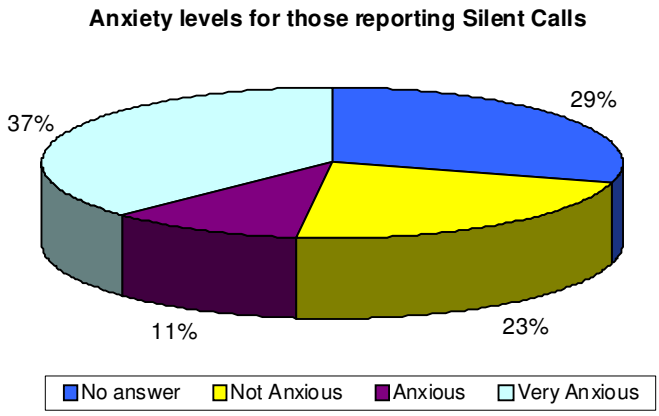
Figure 4-9: Availability of CLI information for calls reported to Report A Call, July 2009 – March 2010



Source: trueCall

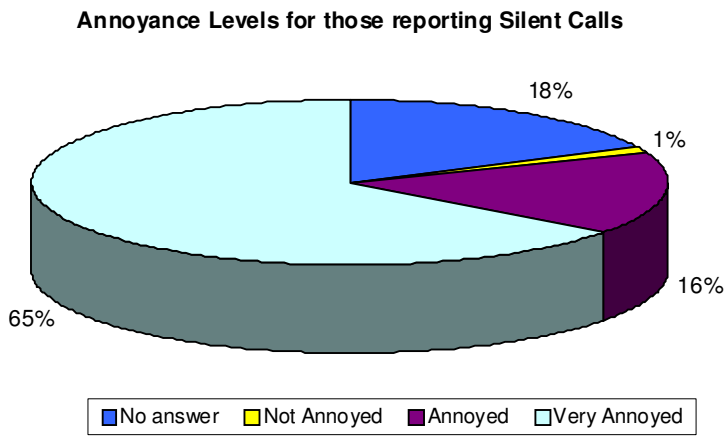
- Figure 4-10 and Figure 4-11 suggest that consumers contacting Report A Call about silent calls had fairly high degrees of annoyance and anxiety about these calls. This contrasts with the most recent TPSL survey (2009), in which 13% of respondents agreed with the statement "I feel anxious when I receive a silent call". (Also, 38% of TPSL respondents in 2009 felt that silent calls caused unacceptable convenience). It is notable that levels of annoyance are higher than levels of anxiety, though anxiety is arguably more concerning so this should not be dismissed lightly.

Figure 4-10: Levels of anxiety for those reporting silent calls to Report A Call, July 2009 – March 2010



Source: trueCall

Figure 4-11: Levels of annoyance for those reporting silent calls to Report A Call, July 2009 – March 2010



Source: trueCall

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