



Vodafone response to Ofcom consultation:

“Review of how we use our persistent misuse powers

(Focus on silent and abandoned calls)”

VODAFONE RESPONSE

Vodafone welcomes the opportunity to input to Ofcom's review of the persistent misuse regulations. Calls which cause nuisance to our customers is something that Vodafone takes very seriously, consequently we have been an active participant in industry initiatives to reduce them, for example:

1. Vodafone participates in Ed Vaizey's regular nuisance calls round table,
2. Vodafone is an active member of industry groups aimed at sharing intelligence on reducing nuisance calls, run by OTA and BT,
3. Vodafone chairs the NICC group which developed ND1437, aimed at tracing nuisance calls. We have assisted Ofcom in tracing nuisance calls that traverse our network,
4. Vodafone is participating in the IETF STIR activity aimed at increasing reliability of CLI information in the long term,
5. Vodafone's website and customer service scripts are being updated to draw our customers' attention to Ofcom and Which? advice on dealing with nuisance calls,
6. Vodafone supports the 7726 mechanism for reporting spam texts, and we proactively monitor our network to detect patterns of spam text generation and disconnect the perpetrators, and
7. At the request of Mr Vaizey, we are working towards TPS-Assured accreditation for our outbound call centres and will encourage our subcontractors and customers to follow suit.

Vodafone is supportive of the need to periodically review the persistent misuse regulations. Via our account teams, we have encouraged our enterprise customers to respond to this consultation directly, and we are providing this response from the perspective of our own outbound call centres, as well as in the role of a communications provider.

Although we support periodic review of the regulations, there is a real chance that revisions to the regulations will lead to the wrong emphasis. Fundamentally, silent and nuisance marketing calls arise either because the originator of the call doesn't care about the rules, or because they're aware of the rules but are negligent in complying with them, or because they are fully aware of the rules, make all reasonable efforts to comply with them, but inadvertently manage to fall foul of them.

Vodafone's experience is that the majority of calls causing irritation to our customers fall into the first category. These type of call-centres – or just as commonly equipment playing pre-recorded marketing material – are operated by companies that frankly don't give a damn about the persistent misuse regulations, and tightening the regulations will have no effect as they don't seek to comply with them in any case. Vodafone notes that it is depressingly easy to predict what the nature of such calls will be, by following the political and financial pages of the news. Historically the focus was PPI-reclaim (after the Financial Services Authority identified mis-selling); currently the focus is energy saving Government grants; we can be reasonably confident that in the spring the focus will switch to companies seeking to provide assistance in releasing pension funds as regulation in that area changes. Government and regulators could go some way to reducing such calls if thought was given as to the likely markets that will develop from their regulatory initiatives.

It is our belief that any tightening of the persistent misuse regulations will impose costs on those call-centres that are seeking to play by the rules, but as these are not in general the source of nuisance silent calls, have little impact on nuisance call volumes.

Any reduction in the current 3% target will impose costs on industry, but a reduction to 0% would be draconian and impose severe cost: the only way to practicably achieve this would be to go back to the days of each call-centre agent manually generating calls. Vodafone's fear is that this would be uneconomic, and merely result in a proportion of outbound call-centres being forced overseas in an attempt to hide from the regulation, with consequent damage to the UK economy and employment - while potentially resulting in more nuisance silent calls.

Meeting the current target is far from trivial. As Ofcom notes, Answer Machine Detection (AMD) technology is far from perfect, and via NICC, Vodafone has been working with AMD manufacturers to see if improvements in accuracy can be achieved, particularly where network-based voicemail servers are employed. However, even where these improvements are made, we are not confident that a 1% target would be realistically achievable.

Taking all of these issues into account, Vodafone is of the view that a change to the regulations cannot be justified unless there is compelling evidence that to do so will materially reduce the volume of silent calls, and that the burden on UK businesses can be justified. Keeping the regulations unchanged does not, however, imply retaining the status quo. In particular, we suggest;

- More flexible implementation of the rules via a co-regulatory approach: where a call-centre operator clearly falls into the third category of nuisance calls above, i.e. has made all reasonable effort to minimise silent calls but has technically breached the 3% limit,

Vodafone considers society would be best served if Ofcom didn't recourse to issuing financial penalties, instead worked with the call-centre to remedy and avoid a repetition. We would consider accreditation by TPS-Assured to be *prima facie* evidence that the call-centre has been seeking to comply. In the short term, while adoption of this scheme is nascent, it could be that rather than fining, Ofcom insisted on accreditation by the scheme within a given time period (to use a motoring analogy, the equivalent of a speeding awareness course in lieu of points on licence).

- Rigorous enforcement of the CLI Guidelines: where a company is found to be spoofing CLIs, financial penalties should be imposed.
- A points-based system: typically generators of nuisance calls break more than one set of rules – breaking the CLI Guidelines, generating silent calls in contravention of the persistent misuse regulation, and repeated live calls in contravention of the Privacy in Electronic Communications legislation (policed by ICO rather than Ofcom). Vodafone considers that the perpetrators should be pursued and fined on all points, rather than as is more typically the case, the situation being treated as a single offence.

In summary Vodafone agrees with the need to periodically review the persistent misuse regulations, but does not at this stage consider that wholesale change is required. We believe that tightening the rules would merely penalise those call-centres seeking to comply with the law, and have little material effect on consumer harm as the bulk of this is arising from those who ignore the regulation. We do, however, consider that a more co-regulatory approach should be taken, with accreditation to TPS-Assured being a tool which Ofcom can use to bootstrap call-centres to compliance with the regulation.

Vodafone UK
November 2014