



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

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

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

Date: 12 October 2011

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Section 1

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

1. This notification is issued to TalkTalk Telecom Limited, trading as TalkTalk (“TalkTalk”), registered company number **04633015** and registered address 11 Evesham Street, London, W11 4AR.
2. This notification:
 - a. sets out Ofcom’s determination pursuant to section 128(1) of the Communications Act 2003 (the “Act”);
 - b. specifies the use made of an electronic communications network or electronic communications services by TalkTalk that Ofcom considers constitutes persistent misuse; and
 - c. specifies the period during which TalkTalk has an opportunity to make representations about the matters notified.
3. Words or expressions used in this notification and the accompanying explanatory statement have the same meaning as in the Act, except as otherwise defined.

Section 128 of the Act

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

Ofcom’s determination

7. Ofcom hereby determines that there are reasonable grounds for believing that, between 1 February 2011 and 21 March 2011 (the “relevant period”), TalkTalk persistently misused an electronic communications network or electronic communications services on the following basis;
 - a. TalkTalk misused the network or service in accordance with section 128(5) of the Act as the effect or likely effect of its use of the network or service has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety;

or, it used the network or service to engage in conduct the effect or likely effect of which was to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; and

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

The use Ofcom considers to be persistent misuse

9. In making this determination and in accordance with section 131 of the Act¹, Ofcom has had regard to its *Revised statement of policy on the persistent misuse of an electronic communications network or service 2010*, published on 1 October 2010². This statement of policy is contained within the document entitled *Tackling abandoned and silent calls: Statement*, published on 1 October 2010, at Annex 1. For ease of reference, both these documents (the *Revised statement of policy*, and *Tackling abandoned and silent calls: Statement*) are collectively referred to in this notification as the "Guidelines".
10. Accordingly, Ofcom considers that there are reasonable grounds for believing that TalkTalk, has persistently misused an electronic communications network or electronic communications services on the following basis by:
- exceeding an abandoned call rate of three percent of live calls over a 24 hour period on 20 separate occasions at one outsourced call centre operated by [redacted]³ at [redacted] across one campaign defined as "[redacted]" during the relevant period;
 - failing to guarantee that when return calls were made to numbers previously identified that day (within a 24 hour period) by AMD equipment as having been picked up by an answer machine, a live operator was on hand to take the call (i.e. adherence to the 24 hour policy⁴). This occurred 21 times on 22 February 2011 at the [redacted] call centre across one campaign defined as "[redacted]";
 - exceeding an abandoned call rate of three percent of live calls over a 24 hour period on 20 separate occasions at the [redacted] call centre across one campaign defined as "[redacted]" during the relevant period;
 - exceeding an abandoned call rate of three per cent of live calls over a 24 hour period on 20 separate occasions at the [redacted] call centre across every campaign that call centre was operating within during the relevant period ("[redacted]" and "[redacted]");
 - failing to provide a robust reasoned estimate of AMD false positives in respect of its use of AMD equipment. This failure to provide a robust reasoned estimate arose following the [redacted] call centre's use of AMD equipment across every

¹ Section 131(1) of the Act provides that "It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130".

² <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>.

³ [redacted].

⁴ The Guidelines, A1.55.

campaign that this call centre was operating within during the relevant period (“[X]” and “[X]”);

- failing to keep adequate records that demonstrate compliance with the policy and procedures outlined in paragraphs A1.30 to A1.58 of the Guidelines. This occurred at the [X] call centre across every campaign that call centre was operating within during the relevant period (“[X]” and “[X]”);
 - exceeding an abandoned call rate of three percent of live calls over a 24 hour period on 39 separate occasions at one outsourced call centre operated by [X]⁵ at [X] (the “Cape Town call centre”) across two campaigns (defined as “[X]” and “[X]-[X]”) during the relevant period;
 - failing to ensure that an information message was included in the event of an abandoned call at [X] call centre. This occurred at the Cape Town call centre across two campaigns that call centre was operating within during the relevant period (“[X]” and “[X]-[X]”); and
 - failing to ensure that when an abandoned call (other than an AMD false positive), has been made to a particular number, any repeat calls to that number in the following 72 hours were only be made with the guaranteed presence of a live operator. This occurred at the Cape Town call centre across two campaigns that call centre was operating within during the relevant period (“[X]” and “[X]-[X]”).
11. Ofcom considers that the effect or likely effect of such use of the network or service has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety and this use constitutes “misuse” under the Act.
12. Ofcom also considers that the misuse is persistent as the misuse has been repeated on a sufficient number of occasions for it to be clear that the misuse represents “a pattern of behaviour or practice”:
- TalkTalk provided information that evidenced it operated two in-house operations and a total of seven outsourced call centres to make calls on its behalf using ACS in the relevant period. At two of these outsourced call centres (one operated by [X] and one by [X]), the abandoned call rate exceeded three per cent of live calls on a total of 79 occasions in which automated dialling was in operation (40 and 39 days respectively) during the relevant period; and
 - The abandoned call rates on a day to day basis at the Cape Town call centre, were estimated by TalkTalk to be between 12 and 29 per cent during the relevant period. TalkTalk informed Ofcom that accurate abandoned call rates for this call centre are unavailable because the majority of abandoned and silent calls generated by this particular call centre during the relevant period appear to be as a result of call centre agents [X] classifying them as answered by an answer machine and disconnecting the call. Ofcom requested TalkTalk specify in each call centre and for each campaign whether a brief recorded information message was provided and in response TalkTalk stated “we confirm all contact centres have in place, and did so throughout the relevant period, the recorded information message as stipulated in Ofcom’s statement of policy”. However, TalkTalk has not

⁵ [X].

provided to Ofcom any further evidence indicating how recorded information messages were played when the [X] Cape Town call centre simply disconnects calls, nor has TalkTalk provided Ofcom with evidence that calls abandoned in this manner were only dialled again within the following 72 hours with the guaranteed presence of a live operator.

Representations concerning this notification

13. TalkTalk has until 5pm on **14 November 2011** (the “deadline”) to make representations to Ofcom about the matters set out in this notification as explained in the accompanying explanatory statement and to take steps for securing that the misuse is brought to an end and is not repeated and remedying the consequences of the notified misuse.

Other matters

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

Interpretation

16. Annex 1 provides definitions of the relevant terms used in the notification and accompanying explanatory statement. For the avoidance of any doubt, the definitions provided at Annex 1 have been provided by Ofcom for the purposes of assistance in the calculation of abandoned call rates and are not statutory definitions.



Lynn Parker
Director of Consumer Protection

12 October 2011

Section 2

Explanatory statement

Summary

2.1 This explanatory statement sets out Ofcom's reasons for its determination in paragraphs 9 to 12 of the attached notification (the "notification") that TalkTalk Telecom Limited, trading as TalkTalk ("TalkTalk"), has persistently misused an electronic communications network or electronic communications services.

Abandoned and silent calls

2.2 Abandoned and silent calls may not necessarily be generated with malicious or mischievous intent but by automated calling systems (ACS), used by call centres.

2.3 Use of ACS (also known as "power diallers" or "predictive diallers") means that calls can be initiated without the need for human intervention. If a telephone number is dialled by an ACS, and the call is answered by a live recipient but there is no call centre agent available, for whatever reason, to handle the call (including for example, circumstances where the agent is not prepared, or willing, or presented with the opportunity, to handle the call), then the call will be terminated by the ACS and it becomes an abandoned call. In this instance, the recipient of an abandoned call should – as a minimum – hear a recorded information message identifying the caller.

2.4 A silent call is a type of abandoned call where the person called hears nothing when answering the phone and has no means of establishing whether anyone is at the other end. Silent calls may occur for a variety of reasons. For example, a silent call may occur when an ACS user does not include an information message in the scenario described above or as the result of a call centre agent failing to handle the call.

2.5 Silent calls can also be the result of ACS technology referred to as Answer Machine Detection (AMD) technology⁶, which is used to try to identify whether a call has been answered by an answer machine. The technology may not be completely accurate. For example, it may mistake a consumer for an answer machine, in which case the AMD user disconnects a call without playing a recorded information message. This is referred to as an AMD false positive⁷. The way AMD technology works means that if a consumer is mistaken for an answer machine once, it is likely that this will happen again. This means that the consumer may receive repeat silent calls as a call centre continues in its attempts to speak to him or her. This type of systematic, repeated mistake may not necessarily be due to human error (see 1.15, the Guidelines).

2.6 Ofcom, through its Consumer Contact Team (CCT), received over 9,000 complaints about silent calls in 2010. Research undertaken in March 2011 indicated that of consumers who experienced silent calls on a fixed-line phone in the preceding six

⁶ AMD may be used in conjunction with ACS technology to disconnect calls made to answer machines before they are put through to call centre agents. This is significant because a typical daily proportion of ACS users' calls made to answer machines lies between 30 per cent and 50 per cent of all outbound calls. Therefore removing these calls can lead to increased contact time between call centre agents and live individuals and also lower operational costs.

⁷ An AMD false positive is when an AMD device mistakenly identifies a call as being answered by answer machine whereas, in reality, it has been answered by a live individual (A1.20, the Guidelines).

months, three quarters considered them an inconvenience and over half were concerned about their receipt⁸.

Legislative framework

2.7 Section 128(1) of the Act enables Ofcom to issue a notification to a person where it determines that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services.

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

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

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

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

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

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

(a) a pattern of behaviour or practice; or

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

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

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

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

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

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

⁸ Consumer Concerns Tracker, Kantar Media omnibus, March 2011. Survey participants were asked separately whether silent calls caused inconvenience and concern.

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

“(1) This section applies where –

- (a) a person (“the notified misuser”) has been given a notification under section 128;
- (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

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

- (a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and
- (b) that he has not, since the giving of the notification, taken all such steps as OFCOM consider appropriate for –
 - (i) securing that his misuse is brought to an end and is not repeated; and
 - (ii) remedying the consequences of the notified misuse.

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

- (a) securing that his misuse is brought to an end and is not repeated, and
- (b) remedying the consequences of the notified misuse,

as may be specified in the notification.”

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

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

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

- (a) a person (“the notified misuser”) has been given a notification under section 128;
- (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and

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

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

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

(4) The amount of penalty imposed is to be such amount not exceeding £2,000,000⁹ as OFCOM determine to be –

(a) appropriate; and

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

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

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

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

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

2.14 Under section 131 Ofcom has a duty to prepare and publish a statement of its general policy with respect to the exercise of its powers under sections 128 to 130 of the Act. Ofcom must have regard to the statement of general policy in exercising these powers¹⁰.

Ofcom's policy

2.15 Ofcom's statement of general policy (required by section 131 of the Act) was published on 1 October 2010 as the *Revised Statement of policy on the persistent misuse of an electronic communications network or service 2010* and is annexed to the document entitled *Tackling abandoned and silent calls: Statement*¹¹. The statement of general policy followed previous statements in 2006¹² and 2008¹³ and were under consultation between 1 June 2010 and 27 July 2010¹⁴. For ease of reference, the documents, the *Revised statement of policy*, and *Tackling abandoned*

⁹ Section 130(4) of the Act as amended by the Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2010, SI 2010/2291, section 2(1).

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

¹⁰ Communications Act 2003 section 131(4).

¹¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>.

¹² http://stakeholders.ofcom.org.uk/binaries/consultations/misuse/statement/misuse_state.pdf.

¹³ http://stakeholders.ofcom.org.uk/binaries/consultations/persistent_misuse/statement/misuse_statement.pdf

¹⁴ *Tackling abandoned and silent calls*

<http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/summary/condoc.pdf>

and silent calls: Statement are collectively referred to in this notification as the “Guidelines”.

- 2.16 The Guidelines provide some examples of the types of behaviour that Ofcom considers may be forms of persistent misuse. One such example is making abandoned or silent calls as a result of the use of ACS. In the Guidelines, Ofcom notes that, “Abandoned and silent calls will almost invariably result in consumer harm, which may range from inconvenience and annoyance through to genuine anxiety¹⁵”.
- 2.17 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. Ofcom will also take account of steps taken by ACS users to reduce the degree of consumer harm that abandoned or silent calls cause.
- 2.18 In the above context, the Guidelines at Annex 1, A1.12 – A1.59 set out procedures that companies using ACS can adopt which, if adopted comprehensively, may reduce the consumer detriment and/or the degree of concern that abandoned or silent calls cause. These procedures are:
- a) the abandoned call rate shall be no more than three percent of live calls per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over a 24 hour period¹⁶;

how the abandoned call rate is calculated will depend on whether or not AMD is used¹⁷;
 - i) 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 such¹⁸;
 - b) in the event of an abandoned call (other than an AMD false positive), a very brief recorded information message must start playing no later than two seconds after the telephone has been picked up or within two seconds of the call being answered^{19,20};

the information message must contain at least the following information²¹:
 - i) 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);
 - ii) details of a *Special Service* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a*

¹⁵ The Guidelines, 1.6.

¹⁶ The Guidelines, Annex 1, A1.30

¹⁷ The Guidelines, Annex 1, A1.32

¹⁸ The Guidelines, Annex 1, A1.33

¹⁹ The Guidelines, Annex 1, A1.51

²⁰ “within two seconds of the call being answered” means either (i) no later than two seconds after the telephone has been picked up; or (ii) no later than two seconds after an individual begins to speak (or “start of salutation”); or whichever is more applicable to the technology deployed.

²¹ The Guidelines, Annex 1, A1.52

geographic rate (03) number²² the called person can contact so they have the possibility of declining to receive further calls from that company; and

- iii) the information message must include no marketing content and must not be used as an opportunity to market to the called person.
- c) calls which are not answered must ring for a minimum of 15 seconds before being terminated²³;
- d) when an abandoned call (other than an AMD false positive), 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”)²⁴;
- e) when a call has been identified by AMD equipment as being picked up by an answer machine (including AMD false positives), any repeat calls to that number within the same period may only be made with the guaranteed presence of a live operator (the “24 hour policy”)²⁵;
- f) 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 a non-geographic number adopted as a Presentation Number²⁶ which satisfies the *Ofcom Guide to the use of Presentation numbers*²⁷;
- g) 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,²⁸ and
- h) records must be kept for a minimum period of six months that demonstrate compliance with the above policy and procedures²⁹.

Ofcom’s programme of monitoring and enforcement

- 2.19 On 22 June 2006 Ofcom opened an own-initiative programme of monitoring and enforcement (the “programme”) in order to monitor compliance by companies using ACS with the principles set out in the Guidelines. The programme is ongoing.
- 2.20 In December 2010, Ofcom published an open letter³⁰ which referred in particular to the 24 hour policy, and the threat of enforcement action should this and other elements of Ofcom’s persistent misuse policy not be complied with. It further stated that the increased maximum penalty level for persistent misuse which came into effect on 25 September 2010³¹.

²² As defined in the National Telephone Numbering Plan.

<http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numplan201210.pdf>

²³ The Guidelines, Annex 1, A1.53.

²⁴ The Guidelines, Annex 1, A1.54.

²⁵ The Guidelines, Annex 1, A1.55.

²⁶ The Guidelines, Annex 1, A1.56.

²⁷ See Annex 1 <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/#a>.

²⁸ The Guidelines, Annex 1, A1.58.

²⁹ The Guidelines, Annex 1, A1.59.

³⁰ http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs_users.pdf.

³¹ <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

The investigation

Background

2.21 As a part of the programme, Ofcom identified that 102 of the complaints received by the CCT during the relevant period, were from consumers alleging that they had received abandoned or silent calls either from TalkTalk or from numbers which we believe related to TalkTalk. Specific complaints received by Ofcom, which we believe relate to calls made on behalf of TalkTalk, indicated the annoyance, inconvenience and anxiety that repeat abandoned or silent calls cause. For example:

[REDACTED]

2.22 In light of the complaints Ofcom had received, Ofcom decided to conduct an investigation into TalkTalk's compliance with the Guidelines.

Information gathering – Section 135 information Request

2.23 Ofcom issued an Information Request (the "request") under section 135 of the Act to TalkTalk on 28 March 2011³².

2.24 TalkTalk provided a response to the request on 14 April 2011 (the "response"). The information provided by TalkTalk in its response included:

- a document that provided a written reply to each applicable question in the response;
- the aggregated abandoned call rates for every 24 hour period in the relevant period, across all call centres/all campaigns;
- data underlying the aggregated abandoned call rates for every 24 hour period in the relevant period – presented across all call centres; and
- the details of all calls made using AMD technology by TalkTalk or outsourced calls centres making calls on TalkTalk's behalf during the relevant period. These details included the CLI called, the time and date of calls and whether when called, an answering machine was detected.

2.25 Ofcom sought further information from TalkTalk after the response was submitted on 14 April 2011. The information sought referred to issues that Ofcom needed further explanation on or issues that Ofcom believed were not fully covered in the response. Information provided by TalkTalk to Ofcom as a result of these requests are referred to throughout this notification.

2.26 A summary of the information presented by TalkTalk to Ofcom over the course of the Investigation is provided in Annex 3.

³² See Annex 2 of this document. A draft information request was forwarded to TalkTalk on 23 March 2011. A draft was provided to allow TalkTalk to make comments on the request before a final information request was issued. TalkTalk did not provide any comment on the draft.

Ofcom's assessment and decision

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

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

2.28 The following section sets out the basis on which Ofcom has decided to issue the notification to TalkTalk, taking into account the elements outlined above.

Use of an electronic communications network or electronic communications services

2.29 The Act defines an "electronic communications network" as:

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

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

(i) apparatus comprised in the system;

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

(iii) software and stored data."³³

2.30 The Act defines an "electronic communications service" as:

"...a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except so far as it is a content service."³⁴

2.31 The Act defines "signal" as including:

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

(b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus."³⁵

³³ Section 32(1) of the Act.

³⁴ Section 32(2) of the Act.

- 2.32 In its response, TalkTalk provided information that it operated two n-house operations and used a total of seven outsourced call centres to make calls on its behalf in the relevant period. All in-house and outsourced call centres were using ACS in the relevant period. TalkTalk therefore uses voice telephony to make outbound calls to users of publicly available telephony services³⁶. Making these calls constitutes use of an electronic communications network (“ECN”) as defined in the Act and use of electronic communications services (“ECS”) as defined in the Act.
- 2.33 Ofcom therefore considers that, for the reasons outlined above, there are reasonable grounds for believing that TalkTalk has used an ECN and ECSs as defined in the Act.

Misuse

- 2.34 As stated above, section 128(5) of the Act sets out what constitutes a misuse of an ECN or ECS: that is, the effect or likely effect of that use, or of conduct arising from that use, is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse.
- 2.35 Evidence gathered during Ofcom’s investigation revealed that TalkTalk made abandoned and silent calls during the relevant period. For the reasons set out in paragraph 2.6, and as set out in the Guidelines, it is Ofcom’s view that the effect or likely effect of making abandoned and silent calls is to cause other persons to suffer unnecessary annoyance, inconvenience or anxiety. Ofcom therefore considers that TalkTalk’s use of an ECN or ECSs in this case constitutes misuse.
- 2.36 The Guidelines set out details of procedures that can be adopted which may reduce the consumer detriment and/or the degree of concern that abandoned or silent calls may cause (see 2.18 above). Evidence provided in its response suggests that TalkTalk failed to adhere to these procedures during the relevant period, by:
- i) Exceeding an abandoned call rate of three percent of live calls over a 24 hour period on 20 separate occasions at the [X] call centre across one campaign defined as “[X]” during the relevant period.
 - ii) Failing to guarantee that when return calls were made to numbers previously identified that day (within a 24 hour period) by AMD equipment as being picked up by an answer machine, a live operator was on hand to take the call (i.e. adherence to the 24 hour policy³⁷). This occurred 21 times on 22 February 2011 at the [X] call centre across one campaign defined as “[X]”.
 - iii) Exceeding an abandoned call rate of three percent of live calls over a 24 hour period on 20 separate occasions at the outsourced call centre operated by [X] call centre across one campaign defined as “[X]” during the relevant period.
 - iv) Exceeding an abandoned call rate of three per cent of live calls over a 24 hour period on 20 separate occasions at the [X] call centre across every campaign that it was operating within during the relevant period ([X] – “[X]” and “[X]”).
 - v) Failing to provide a robust reasoned estimate of AMD false positives when AMD equipment has been in use. This occurred at the outsourced call centre operated

³⁵ Section 32(10) of the Act.

³⁶ The Guidelines paragraph A1.7-A1.8.

³⁷ The Guidelines, A1.55.

by [X] across all campaigns that call centre was operating within during the relevant period ([X] – “[X]” and “[X]”)

- vi) Failing to keep adequate records that demonstrate compliance with the policy and procedures outlined in paragraphs 2.18. This occurred at the [X] call centre across every campaign that it was operating within during the relevant period ([X]–“[X]” and “[X]”).
- vii) Exceeding an abandoned call rate of three percent of live calls over a 24 hour period on 39 separate occasions at the [X] Cape Town call centre across two campaigns (defined as “[X]” and “[X]–[X]”) during the relevant period.
- viii) Failing to ensure that an information message was included in the event of an abandoned call at one call centre. This occurred at the [X] Cape Town call centre across two campaigns that [X] was operating within during the relevant period (“[X]” and “[X]–[X]”).
- ix) Failing to ensure that when an abandoned call (other than an AMD false positive), has been made to a particular number, any repeat calls to that number in the following 72 hours were only be made with the guaranteed presence of a live operator. This occurred at the [X] Cape Town call centre across two campaigns that call centre was operating within during the relevant period (“[X]” and “[X]–[X]”).

2.37 Ofcom believes that there are reasonable grounds for believing that the effect or likely effect of TalkTalk’s use of an ECN and ECS to make abandoned calls – has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse.

The misuse is persistent

2.38 As set out in paragraphs 2.9 and 2.10, sections 128(6) and 128(7) of the Act set out the basis on which misuse may be considered persistent.

2.39 Properly managed call centres will strive to ensure that they do not generate more calls than they can handle. A persistent failure to do so may constitute an act of persistent misuse and may lead to the issue of a section 128 notification.

2.40 The Guidelines also set out that misuse becomes persistent when the behaviour in question is repeated on a sufficient number of occasions for it to be clear that the misuse represents; a pattern of behaviour or practice, or it is clear that the misuse is reckless.

2.41 Ofcom is of the view that there are reasonable grounds for believing that in this case the misuse was repeated on a sufficient number of occasions that the misuse represents a pattern of behaviour or practice. Defining what cycle of repetitive behaviour may reasonably be described as forming a pattern is determined on a case by case basis, however the Guidelines state any such pattern is likely to require a minimum of three instances of the conduct in question in order to be recognised as such³⁸.

2.42 In this case, Ofcom considers that TalkTalk’s misuse was persistent because:

³⁸ The Guidelines, Annex 1, A1.10

- i) The [X] call centre had an abandoned call rate within a campaign titled “[X]” that was above 3 per cent for 20³⁹ of the 49 x 24 hour periods during the relevant period (see Annex 4). This outsourced call centre used AMD technology⁴⁰.

As noted in the Guidelines, “... *answer machines do not generate AMD false positives. Instead, the higher the incidence of calls answered by live individuals in a campaign, the higher the potential for AMD false positives. This is because each live individual represents an opportunity for an ACS to identify a live call as an answer machine and therefore generate an AMD false positive*”⁴¹. A paper provided by the Direct Marketing Authority (DMA) and referenced in A1.45 of the Guidelines expands upon this point⁴².

When the reasoned estimate of AMD false positives provided by TalkTalk was factored into the number of live calls, the number of 24 hour periods where the abandoned call rate was in excess of 3 per cent over the relevant period was 20 (every day during the relevant period that AMD technology was used).

- ii) A total of 21 calls (out of 1389) calls were made which did not adhere to the 24 hour policy during 22 February 2011. All of these calls were made by the outsourced call centre operated by the [X] call centre dialling within the campaign defined as “[X]”.
- iii) The [X] call centre had an abandoned call rate within a separate campaign defined as “[X]” that was also above 3 per cent for 20 of the 49 x 24 hour periods during the relevant period (see Annex 4). AMD was again used during this campaign (for the 20 x 24 hour periods where the abandoned call rate exceeded 3 per cent)⁴³.
- iv) On an aggregated level, the outsourced call centre operated by the [X] call centre made an excessive number of abandoned calls across both the campaigns it dialled within during the relevant period (“[X]” and “[X]”). That is, there were 20 x 24 hour periods where all the dialling it made led to abandoned call rates in excess of 3 per cent.
- v) TalkTalk failed to produce a robust reasoned estimate of AMD false positives. In respect of testing AMD accuracy, as set out in the Guidelines, Ofcom expects testing to be based on the outline provided and any reasoned estimate to be based on high quality data. The Guidelines state that, “*An ACS user undertaking its own testing is also important because we will not accept manufacturers’ claims regarding AMD accuracy as the sole basis of a reasoned estimate of AMD false*

³⁹ In its Response to the Request, TalkTalk only identified six periods where it believed that [X] had exceeded an abandoned call rate of 3 per cent. A possible reason as to why TalkTalk only identified six periods as opposed to 20, is that TalkTalk did not use the stated calculation method set out in the Guidelines but rather multiplied a manufacturer provided estimate of AMD accuracy against the number of answer machines recorded during a 24 hour period when it was incorporating a reasoned estimate of AMD false positives into its abandoned call rate. This was incorrect.

⁴⁰ According to TalkTalk this outsourced call centre was the only one that used AMD technology during the relevant period.

⁴¹ See 4.50, the Guidelines.

⁴² http://www.dma.org.uk/sites/default/files/tookit_files/calculating_abandoned_calls.pdf

⁴³ TalkTalk in the Response did not apply the stated calculation method set out in the Guidelines and incorrectly calculated the number of AMD false positives as a proportion of the total number of answer machines detected when incorporating a reasoned estimate of AMD false positives into its abandoned call rate.

*positives*⁴⁴. TalkTalk submitted in its Response that during the relevant period, the [X] call centre “originally declared that their AMD was not in use. However, the TalkTalk dialler audit team discovered that AMD had been used”. It indicated that as a result of this, it was unable to provide its own estimate of AMD accuracy, and instead, it had to rely on a manufacturer’s estimate when incorporating AMD false positives into its abandoned call rate. TalkTalk stated “In order to take into account the false positives generated by [X] AMD, we have added a 5% false positive proportion to the abandoned call rates in our information request response. This reasoned estimate of false positive was arrived at by taking the statement from the Dialler Provider’s website on the accuracy of their dialler.”

As TalkTalk did not provide evidence that the accuracy of the AMD technology used was better or worse than the manufacturer’s estimate and based its reasoned estimate of AMD false positives on the manufacturer’s claims as to accuracy, Ofcom used the above estimate to calculate the relevant abandoned call rates for 24 hour periods that the [X] call centre made calls using AMD technology on behalf. Ofcom has concluded that TalkTalk has not produced a robust reasoned estimate of AMD false positives. On the basis of TalkTalk’s own, and arguably, best evidence, Ofcom has reasonable grounds to believe that it exceeded a 3 per cent abandoned call rate in 39 x 24 hour periods, accordingly Ofcom has reasonable grounds for believing persistent misuse occurred.

- vi) TalkTalk’s failure to ensure that adequate records have been maintained by all parties making calls on its behalf is contrary to the requirement in A1.59 of the Guidelines, and led to TalkTalk being unable to adequately monitor compliance and stop misuse from being repeated. TalkTalk stated in its Response “no call recordings exist for this declaration [the manufacturer’s declaration as to AMD accuracy] to be tested but we believe that it is a reasonable estimate in the circumstances.” It is Ofcom’s opinion that the failure of TalkTalk to produce a robust reasoned estimate of AMD false positives in itself, indicates a failure to ensure that adequate records have been maintained by all parties making calls on its behalf⁴⁵.
- vii) TalkTalk made an excessive number of abandoned and silent calls. One of the outsourced call centres⁴⁶ dialling on TalkTalk’s behalf –[X]– had abandoned call rates that exceeded 3 per cent in 39 x 24 hour periods that the request covered. These 39 x 24 periods covered dialling in two campaigns defined as “[X]” and “[X] –[X]” (34 x 24 hour periods and 5 x 24 hour periods respectively).

TalkTalk submitted that the abandoned and silent calls in this case were the result of agents at the [X] Cape Town call centre classifying calls generated by ACS as answer machine calls when in fact they were live calls⁴⁷. [X].

TalkTalk did not initially acknowledge these calls as abandoned in its Response. The original declaration of abandoned call rates for the 34 x 24 hour and 5 x 24 hour periods that [X] dialled in during the relevant period in the [X] Cape Town

⁴⁴ See 4.39, The Guidelines.

⁴⁵ Response, answer 3(ii).

⁴⁶ [X].

⁴⁷ TalkTalk made these representations to Ofcom in a paper submitted on 29 June 2011. This paper was requested by Ofcom so as to address concerns that it had about complaints received against a specific CLI identified as being used in calls made on TalkTalk’s behalf.

call centre (i.e. across two separate campaigns) was 0.63 and 0.82 per cent respectively.

TalkTalk first informed Ofcom that live calls generated by the [redacted] Cape Town call centre were being classified as answered by answering machines in a separate meeting with Ofcom on 14 April 2011. Upon receipt of this information Ofcom began a process by which it requested from TalkTalk a "... *statistically calculated volume of the calls [redacted] abandoned by call centre agents in Cape Town*"⁴⁸. This request culminated in TalkTalk providing to Ofcom an estimate that between 12 and 29 per cent of live calls were [redacted] mis-classified by agents in the [redacted] Cape Town call centre as answer machine calls during the majority of days where dialling occurred during the relevant period⁴⁹.

TalkTalk did not classify these calls as abandoned calls in its Response. TalkTalk argued that the Guidelines are focused on misuse as a result of ACS.

It is TalkTalk's assertion that an abandoned call is one that is terminated by an ACS and not a call that is manually terminated by a call centre agent.

Ofcom does not agree with TalkTalk's assertion. The definition of an abandoned call is as presented in A1.17 of the Guidelines, "*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.*" A call terminated by a call centre agent in circumstances where the call is answered by a live individual falls within the Guideline definition.

TalkTalk stated how it undertook producing an estimate of the number of these calls; "*Using statistical modelling a representative sample of calls was selected, which we believe would give a very high degree of certainty that the sample would reasonably reflect the entire period concerned.*" On this basis, Ofcom has reasonable grounds to believe, based on the data and information provided by TalkTalk, that it is likely that analysis of the majority, if not all, of the 24 hour periods during which the [redacted] Cape Town call centre dialled would confirm the incidence and magnitude of the call centre agent behaviour referred to above and lead to abandoned call rates in excess of 3 per cent over each 24 hour period during which the outsourced call centre in question made calls.

- viii) TalkTalk failed to include an information message in accordance with A1.51 and A1.52 of the Guidelines in the event of an abandoned call, as on the facts calls to live individuals generated by the [redacted] Cape Town call centre were terminated and inaccurately classified as calls to answer machines, consequently, the live individual did not receive any information message notwithstanding that the calls were, abandoned calls (i.e. calls where a connection was established but terminated by its originator in circumstances where the call was answered by a live individual).
- ix) TalkTalk failed to ensure that when abandoned calls (other than an AMD false positives), were made to a particular number, any repeat calls to that number in the following 72 hours were only made with the guaranteed presence of a live operator.

⁴⁸ Requested by Ofcom in an email sent from [Ofcom] to [TalkTalk] on 8 June 2011.

⁴⁹ TalkTalk stated that the total number of calls passed to agents by the ACS in the period 1 February 2011 to 21 March 2011 was 692 191. In the same period, a total of 170 809 calls were classified by agents as answer machine calls.

As calls received by answer machines are not subject to the 72 hour restriction referred to above, it follows that TalkTalk could not have ensured that abandoned calls which were incorrectly classified as being answered by answering machines were only re-dialled within 72 hours with the guaranteed presence of a live operator. This occurred at the [X] Cape Town call centre.

- 2.43 Ofcom considers that there are reasonable grounds for believing that, in this case, the misuse engaged in by TalkTalk was persistent in that it was repeated on a sufficient number of occasions that the misuse represents a pattern of behaviour or practice as set out in section 128(6)(a) of the Act.

Other matters set out in the notification

- 2.44 TalkTalk has until 5pm on **14 November 2011** (the “deadline”) to make representations to Ofcom about the matters set out in this notification and to take all such steps as Ofcom considers appropriate for securing that the misuse is brought to an end and is not repeated and remedying the consequences of the notified misuse.
- 2.45 Following expiration of the deadline, if Ofcom is satisfied that TalkTalk has, in one or more of the notified respects, persistently misused an ECN or ECS, and has not taken all such steps as Ofcom considers appropriate for securing that the misuse is brought to an end and is not repeated, and remedying the consequences of the notified misuse, then Ofcom may issue to TalkTalk a further notification under section 129 of the Act.
- 2.46 If TalkTalk has, in one or more of the ways set out in this notification, persistently misused a network or services, Ofcom may impose a penalty on TalkTalk under section 130 of the Act and having regard to the Penalty guidelines published on 13 June 2011 under section 392 of the Act⁵⁰. The maximum penalty that may be imposed is £2,000,000.⁵¹

⁵⁰ <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

⁵¹ The maximum level of penalty in section 130(4) of the Act was increased from £50,000 to £2m in September 2010, as a result of an order made by the Secretary of State pursuant to section 130(9) of the Act – see *The Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service)*, SI 2010/2291, section 2(1).

Annex 1

Terms defined

- A1.1 We have defined the terms below which are relevant to calculating the abandoned call rate.
- A1.2 **24 hour period** means between midnight and midnight on a calendar day.
- A1.3 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*.
- A1.4 The **abandoned call rate** is the number of *abandoned calls* as a proportion of total *live calls*. It must include *a reasoned estimate of AMD false positives* where AMD is used and may exclude *a reasoned estimate of calls abandoned to answer machines*.
- A1.5 An **AMD false negative** is a call 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*).
- A1.6 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.
- A1.7 A **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.
- A1.8 **Guaranteed presence of a live operator** means to ensure that a live operator is available if a repeat call is made during the specific period. That is, when an ACS user makes a call, they can guarantee a consumer who picks up the call will be connected to a call centre agent.
- A1.9 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*.
- A1.10 A **live individual** refers to a person who is called by an ACS and/or AMD user.
- A1.11 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.
- A1.12 A **reasoned estimate of AMD false positives** is an estimate of the number of AMD false positives as a proportion of total live calls.
- A1.13 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. 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.

- 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.
- A1.15 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 the Revised Statement 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.

Annex 2

Questions from formal information request sent to TalkTalk under Section 135 of the Act

Questions

Call centres and campaigns

- 1) Please provide the following details of the call centre(s) which made calls to UK consumers on behalf of TalkTalk during the relevant period:
 - i. the call centre name or given identity;
 - ii. the address of the call centre;
 - iii. whether or not each call centre was operated directly by TalkTalk or on behalf of TalkTalk by a third party;
 - iv. the name and manufacturer of the ACS equipment used by the call centre; and
 - v. where applicable, the name and manufacturer of the Answer Machine Detection (“AMD”) hardware and/or software used by the call centre. In addition, please provide copies of the user guidance that accompanies each AMD device used.
- 2) For each campaign conducted during the relevant period, please specify:
 - i. the campaign name or title; and
 - ii. the call centre(s) which worked on the campaign.

Call data

- 3) Please supply:
 - i. the data as set out in Template 1 below, broken down by each 24 hour period during the relevant period. The data should be provided electronically by means of an Excel spreadsheet which contains functioning formulae rather than “hard-coded” numbers.

Please provide one worksheet per call centre, making clear which campaign(s) the data refers to. Where AMD was not used, please complete columns **A to D only**;
 - ii. evidence to substantiate the reasoned estimate of AMD false positives incurred where AMD was used at a call centre⁵²; and

⁵² Refer to A1.35 – A1.46 of the revised guidelines. How we will assess the robustness of testing used to determine a reasoned estimate of AMD false positives is outlined in A1.40 – A1.43.

- iii. the data as set out in Template 2 below, giving the aggregated figures for TalkTalk as a whole per 24 hour period during the relevant period, incorporating all calls made by all call centres across all campaigns.

Template 1:

Call centre 1 / Campaign X (and so on per call centre)

	A	B	C	D	E	F	G
	Date	Number of calls passed to a live operator	Number of abandoned calls (excluding reasoned estimate of false positives)	Abandoned call rate (excluding reasoned estimate of false positives) (%)	Actual false positives figure or reasoned estimated number of false positives	Total number of abandoned calls (including reasoned estimate of false positives) ⁵³	Abandoned call rate including false positives (%) ⁵⁴
1	x/x/11						
2	y/x/11						
3	z/x/11						

Template 2:

Aggregated figures (one sheet incorporating all call centre totals)

	A	B	C	D	E	F	G
	Date	Total number of calls passed to a live operator	Total number of abandoned calls (excluding reasoned estimate of false positives)	Aggregated abandoned call rate (excluding estimated number of false positives) (%)	Actual false positives figure or aggregated reasoned estimated number of false positives	Total number of abandoned calls (including reasoned estimate of false positives) ⁵⁵	Aggregated Abandoned call rate including false positives (%) ⁵⁶
1	x/x/11						
2	y/x/11						
3	z/x/11						

Recorded information message

⁵³ This column will therefore be the sum of columns C and E.

⁵⁴ This calculation should therefore be performed using the following formula: column F / (column F + column B) x 100/1.

⁵⁵ This column will therefore be the sum of columns C and E.

⁵⁶ This calculation should therefore be performed using the following formula: column F / (column F + column B) x 100/1.

- 4) Please specify if, within two seconds of a call being answered by an individual⁵⁷ and before being terminated or released by the ACS, TalkTalk, in each call centre and for each campaign during the relevant period, provided:
- i. a brief recorded information message to inform the called party of the identity of the company on whose behalf the calls was made; and
 - ii. details of a *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *UK wide Number at a geographic rate* (03) number⁵⁸ the called person can contact so they have the possibility of declining to receive further marketing calls from the company.
- 5) Please provide the script(s) of the recorded message referred to in question 4, per call centre or per campaign, as appropriate.

Call duration

- 6) Please state the length of time, in seconds, that the ACS was programmed to ring for before the call was terminated as unanswered, per call centre or per campaign, as appropriate.

Calls within 72 hours of an abandoned call

- 7) Please specify what procedures, if any, TalkTalk has in place to ensure that, in instances where an abandoned call is made to a number, any subsequent call to that number in the following 72 hours is made with the guaranteed presence of a live operator. Again, please provide this information per call centre or per campaign, as appropriate.

24 hour policy

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

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

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

⁵⁷ See A1.51 of the revised guidelines for an explanation of “within two seconds of the call being answered”.

⁵⁸ As defined in the National Telephone Numbering Plan

<http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numplan201210.pdf>

Template 3:

	A	[B]	C	D
	Date	[Time of call]	CLI dialled	Answer phone detected? (Y/N)
1	x/x/11			
2				
3				

Caller Line Identification

- 9) Please confirm whether TalkTalk displayed a calling line identification (CLI) number to which a return call may be made, for each outgoing call during the relevant period. Please provide the CLI number/s in question. Again, please provide this information per call centre or per campaign where appropriate.

Consumer complaints and compliance responsibility in relation to abandoned calls

- 10) Please:
- i. describe the arrangements that have been put in place by TalkTalk to ensure compliance in relation to outbound calling activity. Include in this description an explanation of the allocation of managerial responsibility for compliance; and
 - ii. outline the procedures that TalkTalk has in place, if any, to manage consumer complaints which relate specifically to its outbound call activities. This should include a full description of the remedial actions that TalkTalk may undertake or offer to undertake for persons who have complained about receiving abandoned and / or silent calls from TalkTalk.

Annex 3

Summary of relevant information and evidence

Part 1 – TalkTalk		
Company	TalkTalk Telecom Limited (specifically TalkTalk)	
Address	11 Evesham Street London W11 4AR	
Company number	04633015	
Short description	Communications Provider	
Use of ACS	During the relevant period for the notification TalkTalk operated 29 campaigns conducted by 9 in-house and outsourced call centres, all using ACS to make outbound calls.	
Non-compliance	<ul style="list-style-type: none"> • 20 x 24 hour periods of abandoned call rates above 3% on an individual campaign basis ([redacted] call centre,[redacted]); • 24 hour policy ([redacted] call centre ,[redacted]); • 20 x 24 hour periods of abandoned call rates above 3% on an individual campaign basis ([redacted] call centre, [redacted]); • 20 x 24 hour periods of abandoned call rates above 3% on a call centre basis ([redacted] call centre, [redacted] and [redacted]); • failure to provide an robust estimate of AMD false positives (TalkTalk relied on a manufacturers estimate instead); • failure to keep accurate records; • 39 x 24 hour periods of abandoned call rates above 3% on a call centre basis ([redacted] Cape Town call centre, [redacted] and [redacted]); • failure to include an information message with an abandoned call ([redacted] Cape Town call centre, [redacted] and [redacted]); and • non-compliance with 72 hour policy ([redacted] Cape Town call centre, [redacted] and [redacted]). 	
Part 2 – Persistent misuse		
Individual elements considered in Ofcom’s assessment of whether TalkTalk’s conduct during the relevant period amounted to persistent misuse		
3(i)	Abandoned call rate per call centre per campaign	<ul style="list-style-type: none"> • 20 x 24 hour periods of abandoned call rates above 3% on an individual call centre by campaign basis ([redacted] call centre,[redacted]); • 20 x 24 hour periods of abandoned call rates above 3% on an individual call centre by campaign basis ([redacted] call centre, [redacted]); • 20 x 24 hour periods of abandoned call rates above 3% on a call centre basis ([redacted] call centre, [redacted] and [redacted]); and • 39 x 24 hour periods of abandoned call rates above 3% on a call centre basis ([redacted] Cape Town call centre, [redacted] and [redacted]).

<p>3(ii)</p>	<p>Evidence to substantiate the reasoned estimate of AMD false positives incurred when AMD was used at a call centre</p>	<p>AMD was used by one call centre ([redacted]) across two campaigns for part of the relevant period (14 Feb – 11 Mar 2011). TalkTalk have stated that the [redacted] call centre had previously told TalkTalk that it was not using AMD. When TalkTalk found out that it was being used, AMD was switched off by the [redacted] call centre.</p> <p>TalkTalk did not produce evidence to substantiate the reasoned estimate of AMD false positives it presented. This is because no call recordings exist. As a consequence TalkTalk have relied on dialler manufacturers' claims regarding accuracy.</p>
<p>3(iii)</p>	<p>Aggregated abandoned call rate, per 24 hour period</p>	<p>TalkTalk made at least 25, 813 abandoned calls and a total of 5,185,829 live calls during the relevant period for an aggregated abandoned call rate of at least 0.5 per cent.</p> <p>A definitive aggregated abandoned call rate cannot be established because TalkTalk was only able to provide an estimate of the number of calls [redacted] abandoned by call centre agents in the outsourced call centre [redacted].</p>
<p>4(i)</p>	<p>Information message is played within two seconds from pickup/ start of salutation in the event of an abandoned call</p>	<p>TalkTalk confirmed that information messages were played in the event of an abandoned call as stipulated by the Guidelines, annex 1.</p> <p>However, it is Ofcom's view that information messages were not played in relation to abandoned calls which were incorrectly classified as being answered by answering machines.</p>
<p>4(ii)</p>	<p>An appropriate number provided in information message</p>	<p>080 and 045 numbers were used.</p>
<p>5</p>	<p>Call scripts used in information messages</p>	<p>Based around, "Hi, you were called today by the TalkTalk Group. If you would prefer not to receive future calls from us and would like to remove your details from our contact list please call [redacted] and leave your name and telephone number after the tone. We will remove your details within 5 working days. Thank you."</p>
<p>6</p>	<p>Length of time calls were left to ring before termination</p>	<p>All of the call centres left calls to ring for a minimum of 15 seconds before being terminated.</p>
<p>7</p>	<p>A process in place which ensured that repeat calls which were made within 72 hours of an abandoned call made by a live agent.</p>	<p>With the exception of abandoned calls generated by the [redacted] Cape Town call centre, there were measures in place to ensure that repeat calls made within 72 hours of an abandoned call were made by a live agent.</p>
<p>8</p>	<p>24 hour policy</p>	<p>AMD was used by one call centre ([redacted] call centre) across two campaigns for part of the relevant period</p>

		(14 Feb. – 11 Mar 2011). One day where the 24 hour policy was not complied with in one of these campaigns ([<] call centre,[<]); 21 numbers which had previously been called earlier that day, and recorded as been picked up by an answer machine, were redialled whilst AMD was in use.
9	Presentation of a CLI presented to which a return call may be made	Confirmed.
10(i)	Ensuring compliance	Compliance strategy provided included: <ul style="list-style-type: none"> • All in-house operations and outsourced call centres using ACS on TalkTalk’s behalf receive “a minimum of one audit visit per year; additional visits can be scheduled if required although this is extremely rare”. Audits cover compliance with Ofcom's Guidelines. • All in-house operations and outsourced call centres using ACS on TalkTalk’s behalf must accurately declare their dialler performance every week. • Carries out raw dialling data checks – these are conducted on a random basis and is compared to previously declared performance.
10(ii)	Managing complaints	Complaints are either received through TalkTalk’s Customer Service Team or the CEO Office. Each individual case is handled on a case by case basis. The normal response upon receipt of a complaint is to remove the complainants CLI from TalkTalk calling lists.
	Retention of adequate records which demonstrated compliance with the above procedures	TalkTalk stated that a manufacturer’s estimate was used for a reasoned estimate of AMD false positives because call records were not kept by the [<] call centre. This indicates a breach of A1.59.

Part 3 - Ofcom’s investigation

Date programme began	23 March 2011
Why information requested	TalkTalk was identified potentially generating abandoned and silent calls through complaints received by the CCT.
Date of information requests	28 March 2011
Date information received	14 April 2011

Annex 4

Relevant period outsourced call centre statistics

[X] – “[X]” campaign

A	B	C	D	E	F	G
Date	Number of calls passed to a live operator	Number of abandoned calls (excluding reasoned estimate of false positives)	Abandoned call rate (excluding reasoned estimate of false positives) (%)	Actual false positives figure or reasoned estimated number of false positives	Total number of abandoned calls (including reasoned estimate of false positives)	Abandoned call rate including false positives (%)
01/02/2011	485	10	2.0	N/A	10	2.0
02/02/2011	743	14	1.8	N/A	14	1.8
03/02/2011	1081	20	1.8	N/A	20	1.8
04/02/2011	784	9	1.1	N/A	9	1.1
05/02/2011	0	0	-	N/A	0	-
06/02/2011	0	0	-	N/A	0	-
07/02/2011	913	13	1.4	N/A	13	1.4
08/02/2011	1246	17	1.3	N/A	17	1.3
09/02/2011	786	11	1.4	N/A	11	1.4
10/02/2011	910	13	1.4	N/A	13	1.4
11/02/2011	762	11	1.4	N/A	11	1.4
12/02/2011	0	0	-	N/A	0	-
13/02/2011	0	0	-	N/A	0	-
14/02/2011	611	15	2.4	31	46	6.9
15/02/2011	552	11	2.0	28	39	6.5
16/02/2011	1722	22	1.3	86	108	5.9
17/02/2011	1878	29	1.5	94	123	6.1
18/02/2011	1196	17	1.4	60	77	6.0
19/02/2011	0	0	-	0	0	-
20/02/2011	0	0	-	0	0	-
21/02/2011	987	16	1.6	49	65	6.2
22/02/2011	1015	19	1.8	51	70	6.4
23/02/2011	634	12	1.9	32	44	6.4
24/02/2011	1430	22	1.5	72	94	6.1
25/02/2011	921	14	1.5	46	60	6.1
26/02/2011	0	0	-	0	0	-
27/02/2011	0	0	-	0	0	-

28/02/2011	1341	17	1.3	67	84	5.9
01/03/2011	970	18	1.8	49	67	6.4
02/03/2011	2490	33	1.3	125	158	5.9
03/03/2011	1628	24	1.5	81	105	6.1
04/03/2011	1173	17	1.4	59	76	6.1
05/03/2011	0	0	-	0	0	-
06/03/2011	0	0	-	0	0	-
07/03/2011	1259	18	1.4	63	81	6.0
08/03/2011	1509	25	1.6	75	100	6.2
09/03/2011	2354	37	1.5	118	155	6.2
10/03/2011	1505	18	1.2	75	93	5.8
11/03/2011	1000	10	1.0	50	60	5.7
12/03/2011	0	0	-	0	0	-
13/03/2011	0	0	-	0	0	-
14/03/2011	1545	0	0.0	N/A	0	0.0
15/03/2011	1811	0	0.0	N/A	0	0.0
16/03/2011	1318	0	0.0	N/A	0	0.0
17/03/2011	986	0	0.0	N/A	0	0.0
18/03/2011	397	0	0.0	N/A	0	0.0
19/03/2011	0	0	-	N/A	0	-
20/03/2011	0	0	-	N/A	0	-
21/03/2011	719	0	0.0	N/A	0	0.0
Aggregate totals	40661	512	1.2	1309	1821	4.3

[X] – “[X]” campaign

A	B	C	D	E	F	G
Date	Number of calls passed to a live operator	Number of abandoned calls (excluding reasoned estimate of false positives)	Abandoned call rate (excluding reasoned estimate of false positives) (%)	Actual false positives figure or reasoned estimated number of false positives	Total number of abandoned calls (including reasoned estimate of false positives)	Abandoned call rate including false positives (%)
01/02/2011	587	0	0	N/A	0	0
02/02/2011	595	0	0	N/A	0	0
03/02/2011	829	0	0	N/A	0	0
04/02/2011	501	0	0	N/A	0	0
05/02/2011	0	0	-	N/A	0	-
06/02/2011	0	0	-	N/A	0	-
07/02/2011	622	0	0	N/A	0	0

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08/02/2011	675	0	0	N/A	0	0
09/02/2011	615	0	0	N/A	0	0
10/02/2011	786	0	0	N/A	0	0
11/02/2011	416	0	0	N/A	0	0
12/02/2011	0	0	-	N/A	0	-
13/02/2011	0	0	-	N/A	0	-
14/02/2011	528	0	0	26	26	4.8
15/02/2011	438	0	0	22	22	4.8
16/02/2011	828	0	0	41	41	4.8
17/02/2011	652	0	0	33	33	4.8
18/02/2011	584	0	0	29	29	4.8
19/02/2011	0	0	-	0	0	-
20/02/2011	0	0	-	0	0	-
21/02/2011	669	0	0	33	33	4.8
22/02/2011	579	0	0	29	29	4.8
23/02/2011	453	0	0	23	23	4.8
24/02/2011	398	0	0	20	20	4.8
25/02/2011	344	0	0	17	17	4.8
26/02/2011	0	0	-	0	0	-
27/02/2011	0	0	-	0	0	-
28/02/2011	490	0	0	25	25	4.8
01/03/2011	427	0	0	21	21	4.8
02/03/2011	554	0	0	28	28	4.8
03/03/2011	726	0	0	36	36	4.8
04/03/2011	655	0	0	33	33	4.8
05/03/2011	0	0	-	0	0	-
06/03/2011	0	0	-	0	0	-
07/03/2011	814	0	0	41	41	4.8
08/03/2011	653	0	0	33	33	4.8
09/03/2011	400	0	0	20	20	4.8
10/03/2011	406	0	0	20	20	4.8
11/03/2011	263	0	0	13	13	4.8
12/03/2011	0	0	-	N/A	0	-
13/03/2011	0	0	-	N/A	0	-
14/03/2011	356	0	0	N/A	0	0
15/03/2011	338	0	0	N/A	0	0
16/03/2011	364	0	0	N/A	0	0
17/03/2011	431	0	0	N/A	0	0
18/03/2011	577	0	0	N/A	0	0

19/03/2011	0	0	-	N/A	0	0
20/03/2011	0	0	-	N/A	0	0
21/03/2011	1099	0	0	N/A	0	0
Aggregate totals	19 652	0	0	543	543	2.7

[X] – aggregate total

A	B	C	D	E	F	G
Date	Number of calls passed to a live operator	Number of abandoned calls (excluding reasoned estimate of false positives)	Abandoned call rate (excluding reasoned estimate of false positives) (%)	Actual false positives figure or reasoned estimate of number of false positives	Total number of abandoned calls (including reasoned estimate of false positives)	Abandoned call rate including false positives (%)
01/02/2011	1072	10	0.9	N/A	10	0.9
02/02/2011	1338	14	1.0	N/A	14	1.0
03/02/2011	1910	20	1.0	N/A	20	1.0
04/02/2011	1285	9	0.7	N/A	9	0.7
05/02/2011	0	0	-	N/A	0	-
06/02/2011	0	0	-	N/A	0	-
07/02/2011	1535	13	0.8	N/A	13	0.8
08/02/2011	1921	17	0.9	N/A	17	0.9
09/02/2011	1401	11	0.8	N/A	11	0.8
10/02/2011	1696	13	0.8	N/A	13	0.8
11/02/2011	1178	11	0.9	N/A	11	0.9
12/02/2011	0	0	-	N/A	0	-
13/02/2011	0	0	-	N/A	0	-
14/02/2011	1139	15	1.3	57	72	5.9
15/02/2011	990	11	1.1	50	61	5.8
16/02/2011	2550	22	0.9	128	150	5.5
17/02/2011	2530	29	1.1	127	156	5.8
18/02/2011	1780	17	0.9	89	106	5.6
19/02/2011	0	0	-	0	0	-
20/02/2011	0	0	-	0	0	-
21/02/2011	1656	16	1.0	83	99	5.6
22/02/2011	1594	19	1.2	80	99	5.8
23/02/2011	1087	12	1.1	54	66	5.8
24/02/2011	1828	22	1.2	91	113	5.8
25/02/2011	1265	14	1.1	63	77	5.8
26/02/2011	0	0	-	0	0	-
27/02/2011	0	0	-	0	0	-

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

28/02/2011	1831	17	0.9	92	109	5.6
01/03/2011	1397	18	1.3	70	88	5.9
02/03/2011	3044	33	1.1	152	185	5.7
03/03/2011	2354	24	1.0	118	142	5.7
04/03/2011	1828	17	0.9	91	108	5.6
05/03/2011	0	0	-	0	0	-
06/03/2011	0	0	-	0	0	-
07/03/2011	2073	18	0.9	104	122	5.5
08/03/2011	2162	25	1.1	108	133	5.8
09/03/2011	2754	37	1.3	138	175	6.0
10/03/2011	1911	18	0.9	96	114	5.6
11/03/2011	1263	10	0.8	63	73	5.5
12/03/2011	0	0	-	N/A	0	-
13/03/2011	0	0	-	N/A	0	-
14/03/2011	1901	0	0	N/A	0	0
15/03/2011	2149	0	0	N/A	0	0
16/03/2011	1682	0	0	N/A	0	0
17/03/2011	1417	0	0	N/A	0	0
18/03/2011	974	0	0	N/A	0	0
19/03/2011	0	0	-	N/A	0	-
20/03/2011	0	0	-	N/A	0	-
21/03/2011	1818	0	0	N/A	0	0
Aggregate totals	60313	512	0.8	1852	2364	3.8

Annex 5

AMD calls made which did not adhere to the 24 hour policy: outsourced call centre

[REDACTED] – “[REDACTED]” campaign

Date	Total calls made using AMD equipment	Calls not adhering to the 24 hour policy
22 February 2011	1389	21
TOTAL	1389	21