



Nuisance calls and messages

Update to ICO-Ofcom joint action plan

Introduction

Five years ago, the Information Commissioner's Office (ICO) and Ofcom announced an action plan to address the consumer harm caused by nuisance calls and messages.

Since then, the ICO and Ofcom have published regular updates to the plan, with the most recent in December 2016. That update set out our joint areas of focus for 2017:

- Taking targeted enforcement action;
- Working with communications providers to develop and refine technical measures to help prevent nuisance calls; and
- Sharing intelligence and working together to fight nuisance calls.

As this update shows, we have made progress in each of these key areas.

Our combined efforts are making a positive difference for consumers. Total complaints made to the ICO and Ofcom about nuisance calls have fallen for the second year in a row, reversing a nearly decade-old trend of annual increases. Ofcom's consumer research corroborates a decrease in these calls.

Background

Nuisance calls include marketing calls (live and recorded), silent calls, and abandoned calls.¹ Ofcom's latest estimate is that approximately 3.9 billion nuisance calls are received by UK landlines per year. As large as this number is, it is about 20% less than our estimate of 4.8 billion calls to landlines in 2015. These estimates are based on Ofcom's diary research (explained below).

Diary research

For the past five years, Ofcom has asked a nationally representative panel of consumers to record, over a four-week period each year, their experience of nuisance calls as they receive them on their landline. This is our diary research. In the last wave of the research,² covering January and February 2017, 81% of participants received some form of nuisance call. This is the lowest incidence recorded in any of the research waves, and a decrease of five percentage points since 2015 (86%). The highest proportion of these calls in 2017 were live sales calls and silent calls (36% each), followed by recorded sales calls (13%), and abandoned calls (4%).³ The only significant change in the distribution of calls from 2016 was in sales calls; live sales calls increased from 33% and recorded sales calls fell

¹ An abandoned call is one in which the caller connects to the called party, but then ends the call when the called party answers, in which case Ofcom expects the calling party to play a brief recorded information message to identify itself and provide a means for the called party to opt out of receiving further calls. A silent call is, at its name suggests, one where the called party hears nothing.

² https://www.ofcom.org.uk/data/assets/pdf_file/0020/101972/landline-nuisance-calls-wave-5.pdf. Research results from all five waves are set out at the link.

³ 12% were other or unspecified types of calls.

from 16%. Home improvements and PPI were the most common call subjects in both 2016 and 2017.

Ofcom is evaluating how to refresh its approach to researching nuisance calls and is not repeating the diary research in its current form.

Tracker research

In addition to the diary research, Ofcom also conducts tracker omnibus surveys. Ofcom asks participants to report, for a four-week period prior to the survey, their experience of nuisance calls received on their landline and/or mobile phones. Currently, Ofcom conducts this research three times a year, in January, May, and September. In July 2015, 74% of participants (the highest ever) reported receiving a nuisance call. In September 2017, the figure was 58%, representing a fall of around 20% in just over two years. In the latest survey, covering January 2018, the downward trend has continued with 54% of participants reporting that they received a nuisance call on their landline or mobile phone.

Complaints data

Ofcom receives and records consumer complaints about silent and abandoned calls, while the ICO receives and records complaints about live and recorded marketing and sales calls, as well as unsolicited emails and text messages. In 2017, Ofcom received 33,189 complaints about silent and abandoned calls. This is the second year in a row that annual total complaint volumes have fallen, representing a 22% reduction on 2016 and a 28% decrease since volumes peaked at 46,648 in 2015. December 2017 saw the lowest monthly complaint volume since 2012. Ofcom's monthly and yearly comparative complaints data for 2017 are shown in Annexes 1 and 2.

The ICO's complaint volumes tend to trend in the same direction as Ofcom's.

During 2017 the ICO received 127,623 concerns, a decrease of approximately 17% on the 153,525 concerns reported during 2016. In December 2017, 5780 concerns were reported, also representing the lowest monthly total since 2012. Monthly ICO complaint figures for 2016 and 2017 are in Annex 3.

Taking targeted enforcement action

ICO action

The ICO's enforcement activity is focused on those organisations contravening the Privacy and Electronic Communication Regulations 2003 (as amended) (PECR). It therefore has lead responsibility for taking enforcement action against companies that make live and recorded nuisance marketing calls, send nuisance text messages or emails, or ignore or abuse the TPS 'do not call' register.

Since the last update, the ICO has maintained a relentless focus on the issue of unsolicited electronic direct marketing and making full use of its regulatory powers. In 2017, the ICO issued 29 civil monetary penalties totalling £2,833,500. The largest penalty of £400,000 was against Keurboom Communications Ltd for making over 99 million unlawful automated marketing calls. During the year, seven penalties were issued for amounts of £100,000 or more. The ICO provides monthly enforcement updates on its website.

As well as the use of monetary penalties to punish organisations committing serious breaches of the Regulations, the ICO also issued 12 Enforcement Notices which compel organisations to abide by the law in future marketing activities or risk criminal prosecution. In December 2017, the ICO exercised its powers of search and seizure by executing search warrants on two premises in Nottingham. This is part of a wider investigation centred on a network of organisations and individuals responsible for unsolicited personal injury claims-related automated calls.

The ICO continued its "mystery shopping" project, which is aimed at finding out more about how personal data is traded and shared in relation to certain sectors and issues. The ICO published information about this project earlier in 2017.

Partnership-working. The ICO works closely with the Ministry of Justice Claims Management Regulator (CMR), and has attended a number of CMR-led audits this year. The audits assess compliance by claims management companies with direct marketing rules. The ICO provided advice on compliance with the Data Protection Act and PECR to the CMR and the organisations being audited.

In January 2017, the ICO assumed statutory responsibility for the Telephone Preference Service (TPS). Over the course of the year, the ICO worked to improve the evidence and intelligence sharing of TPS data, and to more effectively use the information for enforcement opportunities. As a result, more monetary penalties for TPS breaches were issued in 2017 than ever before, and for a higher amount.

Ofcom action

Historically, Ofcom's enforcement activity has focused on taking action, including issuing penalties, against call centres that make silent or abandoned calls. However, the proliferation of smaller organisations making these calls has required a change of approach in recent years.

Our work over the last year has therefore increasingly focused on ensuring that communications providers play an effective role in protecting their customers against nuisance calls.

Formal blocking directions. In June 2017, as part of our new enforcement guidelines, Ofcom adopted new procedures setting out how we will issue call-blocking directions to communications providers to stop nuisance calls getting through to consumers in the first place.⁴ General Condition 20.3 requires providers to block problem calls at source when instructed by Ofcom to do so, based on evidence of fraud or misuse. Our new enforcement guidelines set out a clear process for issuing these directions and will facilitate swift action for future such directions.

New rules on Calling Line Identification. In September 2017, Ofcom adopted a new rule relating to Calling Line Identification ('CLI') facilities.⁵ These facilities enable the telephone number of the person making the call to be displayed to the person receiving the call. This helps the call recipient to make a more informed decision about whether to accept the call, and to report problem calls to regulators and law enforcement agencies more effectively. The new rules become effective in October 2018, and require communications providers to:

- provide CLI facilities and turn them on by default, where technically feasible and economically viable. Communications providers must not charge any additional or separate fees for access to standard CLI facilities;
- ensure that, where technically feasible, any CLI data that is provided, includes a valid, dialable telephone number that uniquely identifies the caller; and
- take reasonable steps, where technically feasible, to identify and block calls on which invalid or non-dialable CLI is provided.

Consultations on CLI guidelines and number withdrawal. As well as adopting the new rules on CLI facilities, we also consulted on proposed revisions to the CLI guidelines, and a new proposal to strengthen our number withdrawal powers. This latter proposal would enable Ofcom to take away numbers it has allocated to a provider when it has failed to take adequate steps to address harm or nuisance associated with the numbers that has been brought to its attention by Ofcom. The consultations on the CLI guidelines and the proposal on number withdrawal have closed, and the final decisions made are expected to become effective in October 2018 (alongside the new rule on CLI).

Other enforcement-related actions. In 2017, we contacted approximately 20 different providers to whom Ofcom had allocated telephone numbers that appeared to be generating high levels of consumer harm. These were identified by our consumer complaints, the Strategic Working Group measurement data (described below), or other intelligence. In some cases, we issued formal correspondence seeking explanations for the high level of complaints generated using their numbering allocations and information on how each planned to tackle the issue. Providers responded by taking a range of actions, from reminding their customers of their obligations, to terminating the service where necessary. For example, one provider terminated all services to a

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf. See section 8.

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf. See section 13.

business customer who was found to be among the worst offenders and responsible for a significant proportion of complaints to Ofcom. Thereafter, complaints associated with numbers assigned to the provider fell by 90%. We expect all communication providers to take reasonable steps to ensure their number allocations are not misused; our proposal on numbering withdrawal (explained above) is intended to reinforce this obligation.

Technical solutions to tackle the problem

Ofcom also continues to use its influence and relationships with communications providers in other ways to address nuisance calls. We have been working with the largest communications providers in the UK to develop technical measures to disrupt these calls, and continue to contribute to global efforts to enhance the reliability of CLI.

Strategic Working Group

In 2015, Ofcom formed a Strategic Working Group (SWG), consisting of nine major communications providers,⁶ with a remit to explore technical measures to reduce the impact of unlawful nuisance calls, including by blocking and stopping calls. Members of the SWG have identified characteristics of nuisance calls, and each month measure the traffic across their networks that fit these characteristics, and report that information to Ofcom. They may also take voluntary action to block or interrupt such calls. This data feeds into Ofcom's intelligence that informs our enforcement.

As of the end of 2017, six of nine working group members were routinely blocking problematic calls at the network level, and/or offering their customers a free service to block or divert problematic calls. These efforts are reducing the number of calls received by their customers. We estimate that these providers collectively have blocked, diverted, screened, or otherwise disrupted at least 500 million calls over the past year. We continue to work with providers to expand technical ways to disrupt nuisance calls.

To facilitate voluntary call blocking, Ofcom in 2017 also created a database for working group members to share the numbers they block, and view those blocked by others for consideration of further action. Ofcom has also identified and shared with group members a list of 'protected' numbers that can be blocked safely because Ofcom has not allocated them, and does not expect to do so soon. No caller has the right to use these numbers, and so any calls that present them are, by definition, unlawful and a nuisance.

CLI authentication through new global Internet Engineering Task Force (IETF) technical standards

Internet-based networks are now carrying most business (including call centre) voice traffic at some point during a call, using Voice over Internet Protocol (VoIP) technologies. The way VoIP technology works means that CLI spoofing (the falsification of the telephone number presented with a call to hide a caller's true identity) is relatively easy to do and difficult for authorities around the world to prevent. This, combined with VoIP's ability to allow huge volumes of very low-cost calls from

⁶ The CPs are BT (which includes EE), Gamma, KCom, Sky, TalkTalk, Telefonica, Three, Virgin Media, and Vodafone.

anywhere in the world with an internet connection, has contributed to the proliferation of nuisance calls.

The IETF is working on a new technical standard⁷ to ensure that only calls with valid CLIs, where callers have the right to use that number, are passed along the 'call chain' from the caller to the call recipient. This means that called parties can rely on the CLI being shown to them and make a more informed judgement on whether to answer the call. This standard will be finalised shortly.

Throughout 2017, Ofcom engaged with our international partners on this work, as it is vital to future prevention, and the continued reduction in harm. Network deployment of Secure Telephone Identity Revisited (STIR) is expected to commence in the USA and Canada in 2018 and Ofcom has agreed that it will liaise with US counterparts and prioritise UK implementation preparation work. The timetable for deployment of the standard in the UK is still being defined, but it will be longer than in North America since VoIP systems still only carry a minority of consumer traffic in the UK, and some changes to how numbers are allocated and managed may be necessary.

Sharing intelligence

Ofcom and the ICO routinely share information with each other, as well as other bodies, both in the UK and around the world, to help us address nuisance calls.

ICO-Ofcom. Ofcom and the ICO are in regular contact about matters of mutual interest, sharing intelligence about practices and enforcement targets, as well as investigative methods and techniques. Ofcom also regularly shares the results of the SWG's monthly network monitoring. To ensure our information sharing is as streamlined as possible, we are updating our Letter of Understanding with one another and will publish a revised version this year.

Operation Linden. The ICO leads Operation Linden, a multi-agency group of stakeholders (including regulators, consumer groups, trade associations, and industry) that work together to share intelligence and identify opportunities to tackle nuisance calls. Regular contributors to the group include, Ofcom, Citizens Advice, Which?, BT representing the telecommunications industry, The Direct Marketing Association, Ministry of Justice Claims Management Regulator, National Trading Standards and the Gambling Commission. The group reports on initiatives aimed at preventing or disrupting nuisance calls, and sharing information. This group last met in 2017 on 7 September. Minutes and actions for group members are published on the ICO website.

International collaboration. The ICO is a member of the executive committee of the Unsolicited Communications Enforcement Network, (UCENET, formerly the London Action Plan), along with the Federal Trade Commission, Canadian Radio-television and Telecommunication Commission (CRTC), Korea Internet and Security Agency, the Australian Communications and Media Authority (ACMA) and the New Zealand Department of Internal Affairs.

This group of international regulators co-ordinates information and intelligence sharing to combat nuisance calls and unsolicited messaging.

⁷ Secure Telephone Identity Revisited (STIR)

A key focus of UCENET this year has been the development and delivery of the new operational plan. This is based around four pillars of activity – Intelligence, Enforcement, Communication and Training. One of the main aims this year has been to undertake a ‘Sweep’ in respect of affiliate marketing activity in each jurisdiction. The results of the Sweep will be published in 2018.

Ofcom has observer status in UCENET, and in 2018 will continue to work with its international telecom regulator partner members – ACMA, CRTC, US Federal Communications Commission – to share intelligence on approaches to dealing with nuisance calls at the provider level.

UK Finance. In 2017, Ofcom also developed further its relationship with UK Finance, an industry body representing the UK financial sector, to address nuisance calls involving scams. Among other things, Ofcom and UK Finance are exploring the possibility of creating a list of numbers that banks will never use on outbound calls, similar to the protected numbers list discussed above. The list would consist of numbers assigned to banks that they tell us would never be used on outbound calls. As a result, any outbound call to a consumer presenting this number can be identified as potentially fraudulent and therefore blocked. We will continue our work with UK Finance to combat scam calls throughout the course of 2018.

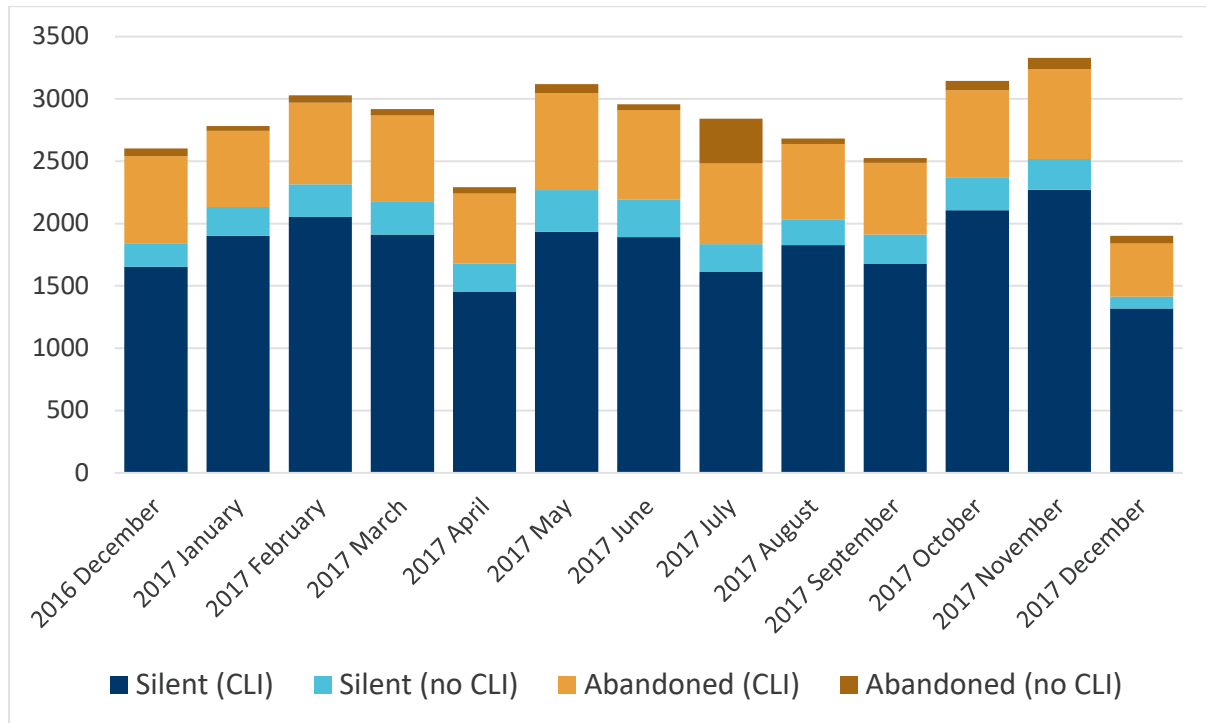
Plan for 2018

The ICO and Ofcom believe that our approach to nuisance calls in 2017 had a positive impact in addressing nuisance calls and reducing consumer harm. We therefore intend to continue to focus on the same approach in 2018:

- taking targeted enforcement action;
- working with communications providers to disrupt and prevent calls;
- sharing intelligence with others, including international partners, and enforcement agencies with responsibility for tackling scams and fraud; and
- continue to identify opportunities through joint-working with other regulators and agencies, where we can bring our respective powers together to deter and punish organisations and individuals responsible for the harm caused by nuisance calls.

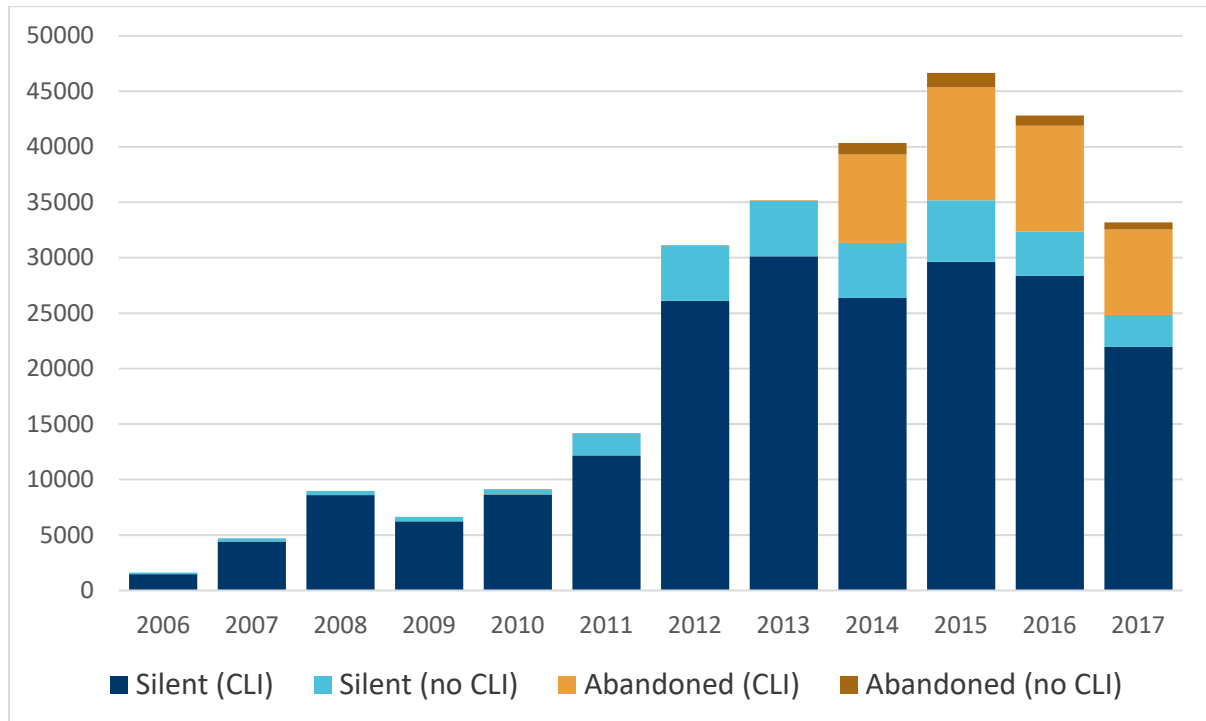
Annex 1

Ofcom's monthly comparative complaints data for 2017



Annex 2

Ofcom's yearly comparative complaints data for 2017



Annex 3

The ICO's complaint data for 2016 and 2017

