

CBI briefing August 2009

# Business concerns about Ofcom's revised policy statement on silent and abandoned calls

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## Introduction

The CBI is concerned about the business impact of Ofcom's Revised Statement on silent and abandoned calls published in September 2008.

Outbound calls are used by businesses to contact customers to sell products, collect debt and make various types of customer service calls.

In September 2008 Ofcom published a revised "statement of policy on the persistent misuse of an electronic communications network or service" (the "Revised Statement"). This Revised Statement set out a number of changes to the 2006 Statement.

An abandoned call is typically where an individual answers a call but the call is terminated by the organisation because there are not enough agents available to speak to the individual. In these circumstances various regulations are imposed by Ofcom, including a requirement to play a message to the individual to tell them the call has been abandoned and a requirement that abandoned calls should make up no more than 3% of live calls made. A silent call is a type of abandoned call, which occurs where a call is abandoned but no message is played to the individual.

The changes introduced in September 2008 include the following key requirements:

- Businesses are to ensure that a reasoned estimate of answering machines detection ("AMD") false positives are taken into account when calculating the 3% limit for abandoned calls (the "3% Rule")

- In the event of an abandoned call, a brief record message is to be played within 2 seconds of a call being 'picked up'. The previous statement had said a message should be played from when the call was 'answered' (the "2 Second Rule"). This allowed operators to play a message within two seconds of salutation.

This policy statement was intended to address concerns about the impact on consumers of silent and abandoned calls - particularly on vulnerable members of the public.

It is important to emphasise that the overriding policy objective to reduce the impact of silent and abandoned calls on consumers is one that business shares. Ofcom's previous statement published in 2006 did not raise objections from the business community and was implemented with few problems or concerns and was effective.

A recent report published by the Telephone Preference Service indicates that businesses are taking action to reduce the number of silent and abandoned calls received by consumers. It shows that the number of silent calls has been consistently falling since 2005. The average number received by consumers has reduced by around 70% since 2005.

It is also important to distinguish between cold marketing calls and calls that are made to customers because of an existing relationship. Many of the calls that companies make to customers are designed to offer assistance such as in the event of suspected fraud on a customer's bank account, or where a customer is getting into debt and the company is required to make contact. It would be disadvantageous to the customer as well as to the business

to make it difficult to contact individuals in these circumstances.

We suspect that many consumer concerns about silent and abandoned calls originate from overseas callers who are not bound by UK regulations. All UK companies are required to operate Caller Line Identification which would enable individuals to identify the source of the call. Therefore if no CLI is available then the caller must either be an overseas company or a UK company that is not complying with existing rules.

In this case it may be more appropriate to enforce the 2006 Statement more thoroughly before imposing new requirements on previously compliant companies.

Finally it is important to recognise that business has no interest in abandoning live calls. Given the number of calls that a business needs to make in order to speak to an individual they would not choose to hang up. In the case of business development calls, abandoning a live call could mean a lost opportunity. Therefore both Ofcom and business have a joint interest in achieving workable regulations around silent and abandoned calls.

**However, business is concerned about that the new provisions in the Revised Statement do not meet this test as they are unworkable and/or have a disproportionate effect on outbound call centre operations.**

## What are the key concerns about these requirements?

Key concerns about these requirements include:

- The 2 Second Rule and its impact on AMD accuracy and usage
- The options outlined in the consultation process
- The lack of transition period
- Application of the regulations to AMD false positives

## Change to the “2 second rule”

The change to the “2 second Rule” has had a very significant impact on the effectiveness of AMD. In particular, requiring a message to be played within 2 seconds of a call being picked up does not allow AMD sufficient time to operate. It is important to note that despite extensive consultation with our members we are unable to identify any technology currently available, or likely to become available, in the market that can meet the requirements of the Revised Statement.

As a result, AMD is less effective, to the point where it may be unusable to be fully compliant with the regulations.

Ofcom stated that their intention was not to ban the use of AMD technology as this could inhibit future innovation in this sector and would be intrusive.

Given Ofcom’s previous policy statements on this matter we do not believe that it was Ofcom’s intention to effectively ban the use of AMD technology through the revision to the “2 second rule”. Banning AMD technology is a serious and drastic action to take and it is not clear that it will deliver material consumer benefit.

Ofcom’s previous statement in 2006 allowed companies to time the 2 seconds from salutation rather than pick up which was sufficient time for AMD technology to operate. Ofcom’s original proposal contained within the 2008 consultation was to clarify that 2 seconds could mean from salutation which would have been acceptable to the majority of business.

We are aware of submissions in response to Ofcom’s consultation which may have led to the erroneous conclusion that the change to the “2 second rule” was in industry’s best interests. This is because the technology operated by some companies cannot identify a human voice as a trigger. However, by responding to these concerns by unilaterally changing the timing of the 2 seconds to start from pick up, Ofcom has effectively banned the use of AMD technology by all other companies.

We do not believe that the business consequences of the revised regulations were fully understood or have been given due consideration since September 2008.

**It seems Ofcom did not understand the impact of this rule change the affect of which indirectly appears to have banned the use of AMD software in the UK.**

## The consultation process

Prior to publication of the Revised Statement Ofcom consulted on proposed “clarifications” to the “2 seconds rule”. The original intention was to make it clear that the requirement to answer within 2 seconds “of answering” under the 2006 Statement meant within 2 seconds of salutation. However, during the consultation some respondents raised concerns which led Ofcom to change the rules to require a message to be played within 2 seconds of pick up.

The subsequent problems have arisen because the consultation did not even list this as an option for business to comment on. Businesses have informed the CBI that had they been aware that this change was an option they would have responded very differently to the consultation. This

lack of opportunity for industry comment on the final proposals explains why the full impact of the new rules was not fully understood by Ofcom.

The Revised Statement had the effect of placing many previously compliant users of AMD immediately in breach of the regulations.

### **Lack of transition period**

This lack of consultation was compounded by the **absence of a transition period** to allow businesses to assess the impact of the Revised Statement, assess what steps they needed to take to get compliant, and to provide time to implement those steps. The absence of a transition period had the effect of placing businesses immediately in breach of the requirements of the revised statement but with no time to adapt. This was not in accordance with good regulatory practice.

Significant changes to regulations which have operational and compliance impacts should be accompanied by an appropriate transition period to allow business to be compliant. Again we do not believe that this was deliberate on the part of Ofcom but reflects a lack of understanding about the serious impact of the Revised Statement.

### **Application of the Revised Statement to false positives**

There are number of other matters that we feel would benefit from further discussion regarding false positives and their treatment in the Revised Statement. For example, there remain uncertainties regarding the calculation of the 3% abandoned calls limit and concerns about how the 3% limit was arrived at as an appropriate ceiling for abandoned calls once false positives are included.

In addition, Ofcom has previously stated that it is 'highly unlikely' to accept manufacturers recommended false positives rates being used in abandoned call rate calculations but has given not clear reason for this or any guidance on what it considers to be a sufficiently robust test for businesses seeking to establish their own false positive rate.

Such issues cause uncertainty and confusion for businesses. We would appreciate the opportunity discuss these and other matters with you.

### **Impact on business**

The CBI is contacting Ofcom about this issue because of the broad range of businesses that have expressed concerns.

Business ranging from financial services, utilities, direct marketing and online/telephone shopping companies are all experiencing the same problems with the Revised Statement. Given the breadth of business concerns and financial impact of the new rules, especially in the context of the current recession, we consider this to be an issue which needs to be treated extremely seriously.

It is not clear that this impact on business is justified by the achievement of a material increase consumer benefit. Current technology allows the system to work within a 2.5-3 second window and it is not clear that the reduction to 2 seconds is beneficial for consumers.

### **What is the CBI seeking?**

**The CBI is seeking clarification of the Revised Statement to enable operators to play a message with 2 seconds of salutation in line with Ofcom's initial proposal.**

We believe that there are several potential options to achieve this. First Ofcom could simply revise the statement to this effect. This has the advantage of being a swift resolution to the issue.

Many businesses need to make equipment investment decisions in the near future and therefore the sooner that this issue is resolved the better. It is also worth stating that many UK companies also made significant investment in equipment on the basis of the 2006 Statement. If the Revised Statement is unaltered these investments will be rendered defunct. In the middle of a recession this is not an issue that business takes lightly.

The disadvantage of simply altering the rules is that it does not provide an opportunity for industry to comment and to help inform Ofcom about the potential business impacts of the proposals.

An alternative is to reissue the consultation. This has the advantage of seeking full industry input but will inevitably delay the process.

We would be interested to hear Ofcom's views on these, or any alternative methods, to meet the objective set out above.

