



'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

24 February 2016

BTs response to Ofcom Consultation

'Review of how we use our persistent misuse powers'

Focus on silent and abandoned calls

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Executive Summary

We applaud the continued work by Ofcom and other regulatory bodies to take action and tackle the issue of nuisance calls and provide consumers the protection they need from unwanted calls and the harm caused by them.

We welcome the opportunity to comment on Ofcom's proposed Persistent Misuse policy. As there is now more intelligence available about nuisance calls it is good that Ofcom is reviewing how it utilises its resource and where it should focus. BT's response highlights the areas of misuse that, in our view, causes most harm (as supported by verbatim evidence from customers captured by our Nuisance Calls Advice Line (NCAL) team). It is in these areas that if action were taken as soon as possible it could make more of a difference and help prevent consumer harm. Should Ofcom be in a position to allocate more resource in the future, other forms of misuse causing less harm could also be tackled. BT NCAL data can be found at Annex A, page 14.

We ask Ofcom to consider our views and suggestions, in particular:

- Consider what impact a 'no abandoned calls' view may have on the outbound calling industry
- Continue to prioritise Silent calls and extend this priority to Misuse of CLI and Network harm
- Focus enforcement action on the rogues who deliberately choose not to follow the rules
- Continue to work closely with Industry and cross border authorities
- Include a checklist of the Persistent Misuse Policy 'rules' to help promote best practice and raise awareness of what companies need to do to comply

In a revised policy Ofcom should:

- Include links to relevant guidance and regulations that will help companies minimise potential network and/or consumer harm, such as Ofcom's CLI Guidelines, the Privacy and Electronic Communications Regulations (PECR) and the Direct Marketing Guidelines.
- Explain how it will work with CPs to use network intelligence to identify potential misuse and where necessary take appropriate action
- Explain Ofcom will work with cross border regulators
- Explain that where a company is in breach of PECR Ofcom will, if there is evidence of misuse, also take action

Ofcom's resource should be used to prioritise:

- Acting quickly on intelligence gathered from industry e.g. network data and consumer complaints
- Misuse of a valid CLI and lack of CLI, instances where the frequency of calls made to a consumer is causing harm, and instances where there is a lack of intention to avoid causing annoyance or harm.
- Silent calls, as these continue to cause considerable consumer harm and distress.

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

BTs comments on the consultation and revised policy

1. We applaud the continued work by Ofcom and other regulatory bodies to tackle the issue of nuisance calls. These calls, and increasingly scams carried out on the back of them, can create considerable consumer harm; and continue to damage the reputation of the telemarketing industry. As a result the use of the fixed line is suffering as customers are reluctant to answer calls. This in itself may be harmful, particularly for example where elderly customers avoid answering calls from doctors and relatives.
2. The combined focus from government, regulators, consumer bodies and the telecoms industry has greatly helped to increase consumer awareness: from understanding the different types of calls and how to report them, to what consumers can do to take control and manage their calls by using network features and call blocking devices that are now in the market place. The increased awareness has been evidenced by the reduction of complaints into BTs Nuisance Call Advice Line (NCAL). Since Ofcom's last review in 2010 our complaints have reduced from an average of 50k to as low as 15k a month.
3. We welcome Ofcom's review of how it uses its powers in relation to its persistent misuse policy. It is important that the policy reflects Ofcom's learnings from the formal and informal action taken, provides further clarity on specific definitions, and promotes and encourages best practice to minimise consumer harm. It is also important that the policy is updated to expand on other forms of misuse, such as misuse of Calling Line Identity (CLI) and live sales and broadcast calls which are now a key driver of nuisance.
4. Feedback from our Nuisance Call Advice Line (NCAL) is that abandoned calls (where a valid CLI is used and a recorded message is left, containing the name of the company, the nature of the call and information as to how they can opt out of future marketing), are no longer as significant a problem, and calls where CLI's are misused appear to be the major cause of nuisance. Ofcom should focus its powers on taking action against silent calls, misuse of a CLI and network harm. Silent calls and calls made very frequently are likely to cause more annoyance and harm than calls that are less frequent, leave messages and use a valid CLI.
5. We agree with the following in the proposed policy and can see how these actions will help improve best practice and minimise consumer annoyance, anxiety and harm:
 - The definitions of silent and abandoned calls
 - Silent calls are still a priority
 - To combine the Ofcom notifications to speed up action
 - Care to make calls at an appropriate time of day
 - Appropriate process and dialler management encouraged to minimise harm
 - An appropriate CLI used to which a call can be returned, so as to find out who has called.
 - Action considered for misuse as well as action to be taken under PECR

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

6. Suggested changes to the proposed policy (**Annex 5**) and where further explanation and clarity is required:

6.1 Section 3. Misuse of CLI Facility

- a) Paragraph 3.27 says : “We regard the following to be a misuse of a CLI facility, and which may amount to persistent misuse where repeated:” should include another bullet that reads ‘where a number has been spoofed”
- b) Paragraph 3.28 proposes: “Where a person calls the provided CLI and is connected to an agent or an automated message, we will also regard it as misuse, which may be persistent misuse, if:
- “no information is provided as to the organisation which called or the organisation on whose behalf they called; and ,
 - “an opportunity is not provided for the person called to opt out of future calls or messages;” should be seen as misuse.”
 - “the call is used an opportunity to market to that person, without the persons consent.”

We agree with bullets 1 and 3 however we have concerns with bullet 2. We believe that the primary purpose of a CLI is to inform the customer who has called, to reassure them and minimise any harm, annoyance and anxiety. We do not think that lengthening the message to include additional wording is beneficial to the customer experience. It could potentially cause anxiety as some customers may think they have to call the company back.

Also to play a message giving customers an opportunity to opt out of receiving calls, where a call has been made to them as they have defaulted on their contract by not paying their bill, would not be appropriate as we have a right to collect payment.

We ask Ofcom to review this requirement and not include it as misuse.

6.2 Section 4. Overview of enforcement process

- a) Paragraph 4.4 – we would like to see ‘industry data’ expanded to include network data from the telecoms industry.

6.3 Section 5. Enforcement priority

- a) Paragraph 5.4 – We agree that Ofcom should focus its enforcement on tackling silent calls.
- b) Paragraph 5.9 requires clarity. We agree with “Ofcom’s decision in such circumstances would be guided by an overall assessment of all the circumstances of the case, including

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

the level of harm caused." However the policy is unclear and covers a number of eventualities in relation to when action may be taken as a result of abandoned calls. The policy states abandoned calls will 'amount to misuse where they represent a pattern of behaviour or practice for example where there are at least three instances'. It would be useful to understand the definition of 'instances'. For example, does it mean just three calls, or three separate occasions over the course of a campaign? The policy also states action will be taken if calls meet or exceed the three percent threshold and then says Ofcom may take action in any case where an organisation makes abandoned calls even where the rate is below threshold.

- c) Paragraph 5.10 should include 'valid' in the third bullet e.g. 'a *valid* CLI number was provided'
 - d) Paragraph 5.34 requires an effective abandoned call message to be in place that includes the name of the company that called. We agree with this. However we are concerned that including the wording "was unable to connect them to an agent" in the second bullet that starts "include an explanation" will cause more customer confusion and can see no additional benefit to including it. We ask Ofcom to remove this bullet.
7. We note Ofcom's approach in the consultation to aim for a zero tolerance of both silent and abandoned calls, and to avoid the risk of any action being taken, no silent or abandoned calls should be made. Whilst this is probably achievable for silent calls it is less likely to be achieved for abandoned calls where Automated Calling Systems (ACS) is used as outlined below
 8. The majority of outbound calling is undertaken by diallers working in predictive dialling mode to gain efficiencies, such as unanswered and engaged calls not being presented to agents. Whilst care is taken to get the balance right between setting the dialler to ensure effective productivity and a positive customer experience, there is potential for more calls to be made than there are agents who are free to take the calls. In order to minimise abandoned calls, companies are likely to have to dial in 'progressive' mode. Our analysis has identified that doing this would have an impact on productivity of approximately 25%.
 9. This would mean that for the same costs there would be reduced sales and therefore revenue. It would also mean, from a consumer perspective, that some customers would lose out on beneficial calls, such as improved broadband packages and any service messages. An important aspect to note is that there would be fewer calls made for payment collection which may lead to more restriction of service due to non-payment. This would be a negative customer experience and would potentially increase customers' costs through the incurring of reconnection fees.
 10. To achieve the current level of outbound contacts, including calls regarding payment of outstanding bills, costs would be increased as businesses would need more advisors to contact the same number of customers.
 11. Ofcom should consider the impact of a zero tolerance approach, as the productivity impact of companies having to move from predictive to progressive dialling could mean that for

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

some companies, the costs of complying vs reward would be too imbalanced to continue. Marketing companies exiting the market would result in redundancies and possibly less competition. This may leave a gap to be filled by companies who are less experienced within the industry, less affected by brand image pressures and more inclined not to comply.

12. Additional impacts of companies moving to progressive dialling could potentially include:

- An increase in idle time which can be demotivating for an advisor whilst they wait for a call to be presented to them, which will lead in turn to poorer customer experiences;
- Less Contacts per Hour for advisors might potentially lead to more aggressive selling on calls, particularly if commissions make up a big part of an advisors' pay;
- Customer contact might be pushed more towards email and text, which potentially pushes nuisance via another customer contact method.

13. In order to avoid the enforcement action Ofcom propose for abandoned calls, system development and training would be required to ensure it is done effectively. These could only be scoped once the proposals were published. This could require a longer implementation timescale than the two months proposed in the consultation. The statement and new policy would need to reflect this possibility.

14. We agree that Ofcom should continue to give priority to enforcement against silent calls. Based on our NCAL intelligence, calls where the following behaviours are displayed causes a high level of nuisance/anxiety to customers:

- Calls that have no valid CLI or a spoofed CLI and give no ability to make a return a call to the actual caller;
- Calls that are silent or abandoned repeatedly to the same number;
- Calls that ring for significantly too short or too long a time;
- Calls made at inappropriate times of day;
- Calls that do not carry an appropriate dropped call message; and
- Calls where customers have requested not to be contacted for marketing purposes.

15. In our view, in order to reduce nuisance to consumers, Ofcom should focus and prioritise the following:

- **Focus on tracing the rogues**, i.e. companies that continue to have a lack of regard for regulations or guidelines. Analysis of complaints into Ofcom indicate two thirds of complaints relate to the failure by companies to provide CLI information. It is highly likely that these companies will also fail to leave an abandoned call message and have potential to misuse the network by making high volume short duration calls. The majority of nuisance calls will be from companies usually where they do not have prior consent to call. We agree Ofcom should seek to take action where there is evidence of a company causing misuse at the same time the ICO is taking action the same company for a breach of PECR.

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

Consumers receiving calls from companies who display a valid CLI and leave an appropriate abandoned call message are far less likely to suffer harm. This is supported by our NCAL data and indicated by Ofcom (see Annex 7 page 24 'Causes of Silent and Abandoned calls).

- **Creating a focused program on addressing intentional non-compliant behaviour.** Priority should be given where intelligence is received by Ofcom that the policy has potentially been breached e.g. consumer complaints, data gathered from CPs, the ICO and other regulatory agencies. Ofcom should use this data to investigate and trace companies where there is evidence that there is little intention of following the persistent misuse rules.
- **Support CPs monitoring call traffic to identify potential nuisance calls.** Helping to highlight areas of concern, looking for solutions and when necessary facilitating checks between CPs, such as number range holdings to make sure innocent consumers do not lose service or have their number(s) blocked as a result of the CLI being spoofed, as agreed in the industry call tracing procedures in NICC ND1016.
- **Include more information in the policy about Ofcom's powers** and reference the MOU Ofcom has with CPs to share data with Ofcom e.g. the short duration high volume calls being made in the network that indicates potential misuse.
- **Include links to all guides and regulations available to help companies reduce the potential of any nuisance calls** e.g. CLI guidelines and Direct Marketing Association guidelines.
- **Provide an Ofcom best practice guide/checklist** – that will raise awareness of the policy and emphasise the need for better dialler management, to make sure any harm caused by silent calls and ACS is picked up immediately to minimise harm as quickly as possible.

16. We would be happy to continue to discuss and input to any of the points made with Ofcom and to provide any further input that would be helpful.

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

BT's Answers to the Consultation questions:

Q1: Should Ofcom's policy on persistent misuse continue to have as its main focus the tackling of silent and abandoned calls?

Ofcom's main focus should be on reducing silent calls. Whilst we acknowledge abandoned calls can and do cause nuisance, intelligence from our NCAL team identifies misuse of CLI causes more harm and distress than abandoned calls that have a valid CLI and appropriate message. This is supported by the statement in Annex 7 that two thirds of complaints to Ofcom are as a result of calls without a valid CLI which are mainly made by companies who have little interest in being compliant. Ofcom should have as its main focus, silent calls and misuse of CLI. Please see our comments on the consultation and revised policy in particular paragraphs 4 and 14.

Q2: Have we identified the main causes and effects of silent and abandoned calls, and are there any others we should take into account?

Yes, Ofcom has identified the main causes and effects.

Q3: Do you agree with the other forms of misuse we propose to include in the policy?

We broadly agree with Ofcom's proposals here; however we suggest Ofcom includes more detail in Section 5 of the revised policy such as 'misuse of the network' and in particular number scanning and fax scanning, as these types of calls can generate high volumes of silent calls. Please see our response in paragraph 6 of our comments on the consultation and revised policy.

In addition Section 4.160 of the consultation states that using more than one CLI may be considered as misuse. Often where a company uses partners to make calls on their behalf, use of a different CLI can help identify the specific partner and in particular where feedback and training may be required.

Q4: Is there any other evidence we should take into account in relation to the causes and effects of the other types of misuse identified (misuse of ACS, misuse of a CLI facility and Breaches of the PECRs)?

As outlined in paragraph 4 of our comments on the consultation and revised policy, feedback from our NCAL is that misuse of CLI is a major cause of nuisance and therefore should have more focus in the policy. Examples of the effects of invalid/spoofed CLI's include:

- Inability to see who is calling and therefore manage calls effectively;
- Misuse of withheld CLI can lead to a customer not answering important calls such as those from the hospital or close relatives;
- Incorrect blocking of customer's numbers because the number has been spoofed and complaints have been received that it is causing a nuisance;
- A customer being inundated with more unwanted calls because rogue companies have either spoofed or misused their CLI and called customers make a return calls to the number.

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

Misuse of a CLI facility:

In addition to paragraph 6 of our comments on the consultation and revised policy, including a reference in the policy to the MOU Ofcom has with CPs and the data that is shared with Ofcom e.g. the short duration high volume calls being made in the network that indicates potential misuse, would help raise awareness of the data Ofcom has and can use to take action. It would also be helpful if Ofcom could include links to all guides and regulations available to help companies reduce the potential of any nuisance calls e.g. CLI guidelines and DMA guidelines.

There should be a focus on companies that continue to disregard any regulations or guidelines. Ofcom's analysis of its complaints data indicates two thirds of nuisance calls (silent and abandoned calls) are made by rogue companies. It is highly likely that these companies will also fail to leave an abandoned call message, use a valid CLI and have potential to misuse the network. The majority of nuisance calls will be from marketing companies, usually where they do not have prior consent to call. We agree Ofcom should be taking action for the misuse as well breaching PECR.

Q5: Do you have any comments on:

a) The evidence of consumer harm from the forms of persistent misuse we propose to include in the policy (and on silent and abandoned calls in particular); and

b) Our approach to estimating the consumer harm from those forms of misuse?

See our answer to Question 4 and paragraphs 6 and 14 of our comments on the consultation and revised policy.

Q6: Do you agree with our provisional view that we need to make changes to the 2010 policy in order to address the causes and effects of persistent misuse in a more effective way?

As referenced in paragraph 2 of our comments on the consultation and revised policy, the 2010 policy has been effective. This is evidenced by the action Ofcom has informally and formally taken. There will always be a concern that amending the policy only impacts those who already comply whilst the rogues continue to have no regard for the rules. The review provides Ofcom with the opportunity to use the learning gained from dealing with specific cases to provide further clarity to help companies comply rather than to tighten existing regulation. Additionally in the light of new developments and access to data intelligence, it provides Ofcom with a chance to review its priorities in tackling this issue. Our executive summary outlines our views

Any changes to help reduce harm to customers are welcome; however we are concerned that the proposed policy changes such as a no abandoned calls will significantly impact the legitimate telemarketing industry, due to lost productivity efficiencies. In order for companies to strike an appropriate balance between compliance and efficiency we request clarity on the following in the proposed policy:

Section 2:

Paragraph 2. 7. "Where a person engages in activities or conduct that amount to misuse on three or more occasions Ofcom may regard that as 'persistent misuse' "

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

Section 5:

Paragraph 5.26 "we may accordingly take action in any case where a calling organisation makes such calls." [Abandoned calls]

Q7: Do our proposed changes target the right forms of persistent misuse and their causes and effects? If not, which forms, causes and effects should we target?

As referenced in our comments, we broadly agree that Ofcom are targeting the right forms of persistent misuse. However we are concerned that there is a focus on prioritising abandoned calls rather than on the misuse of CLI. Intelligence from our NCAL team is that misuse of a CLI causes more harm and distress than abandoned calls with a valid CLI. Inappropriately withheld CLI has the potential to cause more nuisance as customers may be inclined to answer a call from a withheld number as they may be expecting a call a doctor or hospital (who for privacy purposes withhold their CLI). This causes a nuisance whether the call answered is silent, abandoned or live.

Additionally we see number scanning misuse as a priority for Ofcom activity. Companies making high volume, short duration calls e.g. less than one second, which are by definition silent, need to be tackled as not only do they cause customers nuisance, they can cause network congestion and ongoing problems by selling their data onto companies who may be less scrupulous and who are unlikely to comply with either persistent misuse guidelines or PECR.

Q8: Do you agree with our proposed definitions of (i) silent calls and (ii) abandoned calls?

Yes, BT agrees with Ofcom's definitions

Q9: Do you agree with the proposed policy on silent calls – that these should be Ofcom's highest priority for enforcement action, however caused and in whatever number?

Yes we agree with the proposed policy on silent calls. As stated in our answer to Questions 1,3 and 4 above, we believe 'misuse of the network', in particular number scanning and fax scanning, and invalid CLI are fundamental characteristics of non-compliant behaviour that tend to generate high volumes of silent calls and consumer harm..

Q10: Do you agree with the proposed policy on abandoned calls:

a) That cases where a caller's abandoned call rate is three per cent in any 24 hour period or more should represent a higher priority for enforcement and;

Yes, BT agrees with this proposed policy where there is clear evidence the misuse is consistent and in particular where there is no valid CLI.

Harm caused by abandoned calls can be minimised by companies complying with the proposed dropped message requirements and leaving a valid CLI. If all companies were to comply, this would reduce harm and provide customers with confidence through knowing who has called and how they can get in touch.

‘Review of how we use our persistent misuse powers’ Focus on silent and abandoned calls

Companies need to have clear processes that enable them to monitor and identify any issue that may cause levels of harm caused by abandoned calls. This can be achieved by a clear direction from Ofcom on best practice.

It is recognised in Ofcom research (Landline Nuisance Calls Panel wave 3 February 2015) that abandoned calls can cause an element of customer harm, but nowhere near the same level as silent calls. Therefore we do not see properly managed abandoned calls as a priority. This is supported by feedback from our NCAL and NCB Teams.

We would like to see clarity on the tolerance levels for abandoned calls. Within the policy it is stated that priority for action will be where three percent of calls on a campaign basis in any calendar day are either silent or abandoned. However to avoid the risk of any action being taken Ofcom’s view is that no abandoned calls should be made. As we have outlined above, moving to a position of no abandoned calls would have significant productivity impacts for companies trying to comply and could ultimately have an unintended detrimental effect on the entire telemarketing industry.

As Ofcom are aware the majority of outbound calling is undertaken by diallers working in predictive dialling mode to gain efficiencies such as unanswered and engaged calls not being presented to agents. Whilst care is taken to get the balance right between setting the dialler to ensure effective productivity and a positive customer experience, there is always the likelihood of more calls being made than agents that are free to take the calls. In order to minimise abandoned calls companies would have to dial in ‘progressive’ mode. Our analysis has identified that by doing this it would have a potential to impact productivity by approximately 25- 30%.

This would mean that for the same costs marketing calls would become less effective which would mean from a customer perspective that some customers would lose out on beneficial calls, such as such as those promoting improved broadband packages and any service messages.

To achieve the current level of outbound contacts, costs would be increased as businesses would need more advisors to contact the same number of customers.

Ofcom need to consider the impact of a possible no abandoned calls approach. The productivity impact of companies having to move from predictive to progressive dialling will mean that some companies might feel that the costs of complying vs reward is too imbalanced to continue and they might exit the market resulting in redundancies and possibly less competition. Companies who find the costs of complying too high and decide to leave the market will potentially be replaced by companies who are less experienced within the industry, less affected by brand image pressures and more inclined not to comply.

Additional impacts of moving to progressive dialling could potentially include;

- An increase in idle time which can be demotivating for an advisor whilst they wait for a call to be presented to them – leading to poorer customer experiences
- Less Contacts per Hour for advisors might potentially lead to more aggressive selling on calls particularly if commissions make up a big part of advisors’ overall pay.
- Customer contact might be pushed more towards email and text – which potentially pushes nuisance via another customer contact method.

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

b) Where we take enforcement action, we should take into account all abandoned calls a caller makes?

We agree with this approach, where a company exceeds the three percent threshold and carries out other forms of misuse.

Q11: Do you have any information that would help to quantify further the potential costs and benefits of this proposal?

See our answer to Question 10.

In order to attempt to make no abandoned calls a company making outbound calls would need to move to progressive dialling. Our analysis shows this would have an impact on costs, increasing the cost of making outbound calls by approximately 25%. Additionally, further costs would be incurred to ensure checks are carried out on dialler modes. A lot of campaigns are blended with other functions to improve efficiency. To move to and from outbound calls in progressive mode would slow down operations.

Q12: Do you have any comments on our proposed changes to the policy in relation to persistent misuse arising from:

Misuse of ACS;

We have no further comments other than those already stated above.

Misuse of a CLI facility;

See answer to Question 4 and paragraphs 4 and 14 of our comments on the consultation and revised policy. We agree all companies using diallers to make outbound calls should make every effort to be compliant and display valid CLIs.

Breaches of the PECRs;

We agree Ofcom should take action if a company is found to be breaching PECR (calling customers without consent) and their behaviour is non-compliant with the persistent misuse policy, e.g. no valid CLI, calling outside of specified timescales no abandoned call message, use of premium rate numbers to call back on and misuse that leads to network harm.

Q13: Do you agree with the way we propose to assess the harm from cases of persistent misuse and prioritise enforcement action? In particular, have we identified the right factors to take into account and do you agree with the way we propose to apply them?

We agree with the factors in the proposed policy in Section 5. Please see our comments above about abandoned calls and productivity and paragraphs 7 – 13 in our comments on the consultation and revised policy.

Ofcom should focus their resource on minimising silent calls, lack of valid CLI including spoofed CLIs and no message left to say who called and any identified network harm which could in turn lead to heading off calls before they reach a customer.

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

When reviewing harm caused by silent and abandoned calls and prioritising resource, silent calls should be the first priority as they cause most harm. Companies breaching the 3% threshold consistently and not complying with other processes to mitigate harm, such as dropped calls messages and valid CLI, should be the next priority.

Our view, supported by NCAL data, is that the worst forms of harm in relation to silent and abandoned calls are the following in order of severity:

- Silent calls - with no CLI
- Silent calls - with CLI and no return call facility
- Silent calls - with appropriate CLI and return call facility
- Abandoned calls - constantly going over 3% and no mitigating process to minimise harm – no appropriate message or the ability to return a call.
- Abandoned calls - constantly going over 3% and having mitigating factors in place
- Abandoned calls - dropping calls under 3% and no mitigating factors in place
- Abandoned calls - dropping calls under 3% having mitigating factors in place
- Abandoned calls - dropping calls under 3% having mitigating factors in place and appropriate process to monitor and mitigate harm should unintentional issues arise.

Q14: Do you have any further comments or views on other aspects of this consultation or the proposed policy set out in Annex 5 which are not covered above?

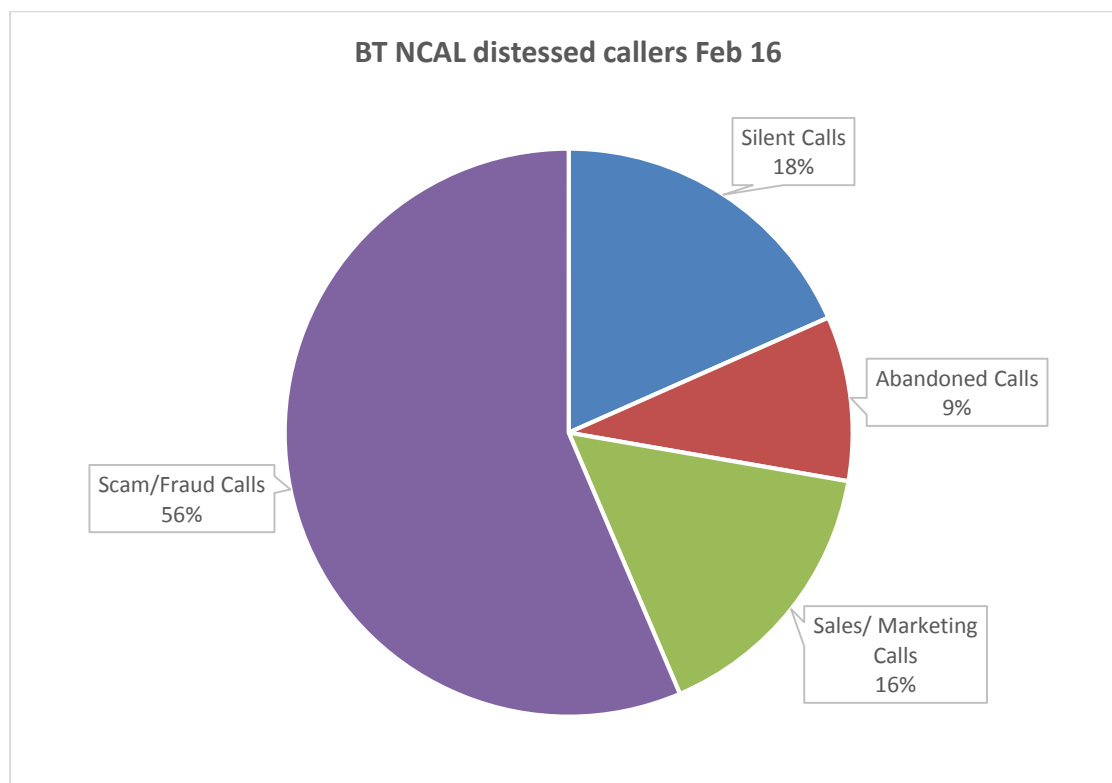
Please see our Executive Summary and our comments on the consultation and proposed policy sections above.

-END-

'Review of how we use our persistent misuse powers' Focus on silent and abandoned calls

Annex A

Callers to the BT Nuisance Calls Advice Line (NCAL) desk who were "distressed" - Sum of 2 samples taken during Feb 2016 Sample 1 - 8 Feb to 12 Feb 2016, Sample 2 - 19 Feb to 22 Feb 2016



Cause of distress	Total calls	%
Silent Calls	139	18%
Abandoned Calls	71	9%
Sales/ Marketing Calls	120	16%
Scam/Fraud Calls	427	56%
Total	757	