CALLMEDIA'S RESPONSE TO OFCOM'S CONSULTATION REGARDING THE USE OF PERSISTENT MISUSE POWERS

FEBRUARY 2016

INTRODUCTION TO CALLMEDIA

Callmedia provides contact centre management software that helps organisations to serve the needs of their customers across multiple channels delivering world class productivity and compliance.

Callmedia's Expert Contact product has always embraced responsible outbound dialling, since its launch in the late 1990s. An early adopter of the Direct Marketing Association's (DMA) Code of Practice, Callmedia has always "locked down" its configuration to ensure that organisations comply with the relevant codes of practice and laws and has done so even before the introduction of the 2006 statement that introduced the regulations on persistent misuse as they apply to Automatic Calling Systems.

Callmedia is a member of the Direct Marketing Association and has contributed significantly to the DMA's efforts to champion best practice and responsible outbound calling, including:

- Sitting on the DMA's Contact Centre and Telemarketing Council and its associated Compliance Hub

- Writing the DMA note on calculating Abandoned Call Rates that was cited in Ofcom's 2010 statement as an appropriate way to calculate the ACR.

- Participating in many industry events promoting best practice and responsible behaviour

Callmedia welcomes this opportunity to respond to the current consultation document and is happy to present further evidence and data should Ofcom require.

We have also been involved in the production of the DMA's response to this consultation, which we fully endorse.

www.callmedia.co.uk

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Azzurri's flexible services and integrated solutions include unified communications, enterprise mobility and flexible working, networks, contact centres and document solutions.

Today, Azzurri is focused on delivering transformational solutions for mid-market private enterprise and public sector organisations. Azzurri helps securely connect organisations with their people and their customers, in the office, on the move and in the cloud.

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

Callmedia welcomes Ofcom's willingness to clamp down on those responsible for making nuisance calls. We also agree with Ofcom that silent calls represent a greater problem than abandoned calls because they

- Create additional anxiety amongst the recipients of such calls

- Provide no identity as to the originator of the calls, thus making it difficult for consumers to take action

However, according the figures provided in Appendix 7 of the consultation documentation, there are 4.8 billion outbound calls made in the UK each year of which only 200 million are abandoned calls. 1.5 billion calls are then silent calls, against which there should be priority action, but in the balance of calls cited in the research many of the live calls and recorded message calls cause much more harm to consumers in that they can be misrepresentative and in some cases even fraudulent and should therefore constitute the highest priority for enforcement action.

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

We agree that for abandoned calls, Ofcom has identified the main cause, that being predictive dialling equipment. Indeed, by definition, an abandoned call is marked out by the information message played making absolutely clear that the call has been made by a contact centre unable to connect a call to a live agent.

However, we believe that there are a number of causes of significant numbers of silent calls not mentioned by Ofcom in the consultation document.

Cause	Description	Significance
AMD False Positives	It is undoubtedly true that false positive identifications of answering machines are a cause of silent calls. However, the number caused by diallers attempting to dial compliantly is not going to be anywhere near the 1.5 billion cited in the section 3.15. Looking at it mathematically, the numbers indicate that the vast majority of silent calls cannot be made by the legitimate and responsible outbound industry. Under the current guidelines, the only way a silent call can be made by a "compliant" contact centre is as a false-positive resulting from the use of Answer Machine Detection (AMD). From the research conducted by Contact Babel and referenced as an annex in the consultation document, a large number of outbound contact centres do not use AMD at all, and those that do use it less than 50% of the time. Even at a generous estimate, if you assume that one silent call due to AMD is generated for every abandoned call, that would still only leave 200 million silent calls to have been created in this way. That leaves a net of 1.3 billion silent calls made by other means.	Low
Non-compliant abandoned calls	Silent calls are made by diallers which do not leave an information message when they abandon a call. Traditionally this was a very prominent cause of silent calls until the 2006 revised statement introduced the information message.

Although any organisation trying to dial compliantly would not generate silent calls in this way, it is our experience that there are many organisations, both UK based and overseas, that have no interest in dialling compliantly and simply configure their diallers to drop a call if there is no agent available. These operators, working outside of any compliance restraints, also are unlikely to show any regard for keeping the rate of dropped calls down to a reasonable level | High |
| Dialler "hold "queues | In the early days of predictive diallers, many systems gained efficiencies by holding customers on the line for as long as possible waiting for an agent to become available. This is entirely incompatible with responsible outbound practice, but we see evidence of it from our own experiences as consumers. It is likely that this is a much greater cause of silent calls than AMD false positives from diallers attempting to operate compliantly. | High |

Agent and system error	Occasionally we all fumble with a telephone or headset, either cutting off live calls accidentally, "dropping" a handset when the phone rings, or even phoning people accidently with the phone in our pockets. These generate many silent calls, most of which will have nothing to do with contact centres. However, sometimes an agent will press the wrong button, or pull out a headset chord at the wrong time, and that can generate an effective silent call.	Very Low
Over-ringing on wireless phones	Many consumer DECT handsets will continue to play a ring-tone after the caller has stopped alerting the phone. This is particularly the case with longer or novelty ring-tones. This may well provide the impression of a silent call in that the call recipient my attempt to answer the call while the ringtone is playing, but some seconds after the actual call was disconnected.	Medium

Q.3 Do you agree with the other forms of misuse we propose to include in the policy?

We agree that the abuse of CLIs constitutes a form of misuse, particularly when that is for fraudulent purposes. We have worked with some organisations which have been victims of CLI fraud, where their CLIs have been cloned by others for illegitimate purposes.

However, we also believe that there are some uses of multiple CLIs that are beneficial to customers – for example, allowing inbound calls to be routed to the correct department, so we welcome the flexibility suggested in section 4.160.

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)?

None, other than those causes of silent calls identified in our response to question 2.

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?

We have no comment to make on this.

SECTION 4 QUESTIONS

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?

We do agree that changes need to be made to the 2010 policy in order to address the causes of persistent misuse in a more effective way. In particular, we welcome the clarity around a zero-tolerance approach to silent calls, the position around CLI abuse and the clarity around the definition of an abandoned call. We also welcome the focus on appropriate time of day to call.

We also feel that the tone of the documentation implies that the users of predictive diallers are most likely to be making telemarketing calls. However, it is our experience that for most of our clients, they are contacting their existing customers to service accounts.

We also believe that there is plenty that can be done against rogue operators under the current statement to address the consumer harm being done, particularly by the makers of silent, recorded message and fraudulent 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 mentioned above, we welcome the focus on silent calls, and on calls at anti-social hours.

However, we also believe that there are many types of nuisance call that will not be addressed by these changes, which seem to be very focussed towards operators of ACS that are already trying to be compliant. Many organisations simply do not care about compliance and will breach PECR, fail to correctly identify themselves, mislead call recipients as to the purpose of the call and use CLI numbers against which a return call cannot be made.

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

We do agree, but some of the causes of silent calls may have been missed, as we outlined in our response to question two. It may, therefore, be simpler to define a silent call from the point of view of the recipient answering the call, rather than the call origination process.

Where there is a degree of clarity required is in the definition of an abandoned call during an IVM call. Currently the documentation refers to the caller having to wait for a "long" time – that is undefined. We believe that this could lead to widespread misuse.

There also remains an anomaly between the dialler experience and the IVM experience in that:

- If a contact centre sets out to make a call with the intention of connecting the call to a live person, then they can only play a recorded message as defined by the abandoned call rate. We support this limit as being good practice and respectful of consumers.
- If a contact centre sets out to make a call with no intention of connecting the call to a live person but to connect the caller to an IVM session, then it is deemed quite acceptable for the call recipient to be greeted with a recorded message 100% of the time – and the call will only be deemed to have become a nuisance if there is a "long" wait time for an agent transfer.

We believe that the introduction of IVM has had an overwhelmingly negative effect on the consumer experience, and that much greater tightening in this area is required, together with tighter enforcement for those who ignore the rules.

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

We believe that the proposed policy on silent calls is appropriate. Because of the impact on consumers of silent calls and the attendant anxiety that can result, Callmedia has always advocated not using AMD and operating an environment in which no silent calls are routinely made. Occasionally, as with anybody using any type of telephone, a silent call will be made through human error, as we discussed in our response to question 2.

While we do not believe that AMD false positives are the cause of the vast majority of silent calls, they remain the only way that a silent call can be generated "legitimately" under the 2010 statement. In the discussions we have had with our clients none of them use AMD and therefore there will be no cost impact for them.

However, as we have detailed earlier in this consultation, mistakes by agents are made, as they are by all individuals, and we feel it would be disproportionate for Ofcom to pursue with vigour otherwise compliant organisations for the occasional fumble by a contact centre agent when there is so much malpractice that ought to be a higher priority for investigations.

Q10. Do you agree with the proposed policy on abandoned calls: (a) that cases where a caller's abandoned call rate is three percent in any 24 hour period or more should represent a higher priority for enforcement and; (b) where we take enforcement action, we should take into account all abandoned calls a caller makes?

Regarding the specifics of the question – we do agree that 3% is still a reasonable figure that strikes the appropriate balance between consumer detriment and business effectiveness. An abandoned call is "closed loop" experience for the call recipient – the brand of the organisation calling them has to be clearly announced and there is therefore an imperative for that organisation to minimise the risk of brand reputational harm.

As to taking all abandoned calls into account, we are concerned that approach is rather against natural justice. A large organisation serving many thousands or millions of customers will be subject to different regulation than an equivalent number of smaller organisations serving the same number of individuals. It will also make it very difficult for a compliance manager to understand if they are operating compliantly: under the current proposals a company that on Monday is well under the 3% abandoned call threshold will only be able to assure they've been compliant on that day depending on what happens on Tuesday or Wednesday. This introduces an almost quantum mechanical degree of randomness to compliance. We believe that organisation want to comply, and that very clear rules make this much simpler. "Have your ACR at under 3% every day" is simple to understand and to manage. Anything else is unclear and difficult to manage.

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

We have worked with many of our customers to understand the costs that would be incurred if Ofcom sticks to the current wording in the statement, and that is taken to an effective "ban" on predictive dialling. Depending on the type of work they do, then in order to continue to deal with the same volume of work they would need to increase the size of their contact centre operations between 20 and 100% - although the majority is around the 35% mark. The attendant costs around recruitment, additional systems, office accommodation, management overhead etc. would be disproportionate to the degree of consumer harm caused – and it is Callmedia's belief that this is not Ofcom's intention.

Looking at the figures quoted in Ofcom's own research, section 4.114 sizes the cost of a 1% reduction in ACR at £672 million. The cost of abandoning predictive dialling would be considerably greater than that – perhaps three times that figure.

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

a) misuse of ACS;

It is in this area where the proposals introduce changes from the 2010 statement that Callmedia has the greatest area of concern – a concern shared with the trade bodies, other technology companies and our customers. Callmedia has always championed the responsible use of predictive dialling equipment and work with our customers and the industry to ensure best practice both to reduce consumer harm and to protect the sustainability of the industries we serve. To this end, it has always been our belief that a contact centre adhering to the guidelines on the use of predictive dialling equipment laid down in the statement of policy on persistent misuse were complying with the needs of the statement and hence the communications act. Many of our customers work in heavily regulated industries such as utilities and financial services and compliance and adherence to regulation is of paramount importance to them.

The language set out in both the consultation document and in the proposed statement (Annex 5) tends to imply that any abandoned calls constitute misuse, and that the guidelines outlined in the statement of policy are only there to determine the priority of the regulator in launching investigations and issuing fines. It therefore implies that even if an organisation follows those guidelines, which are extensive, to the letter – they are still "uncompliant" and are only

avoiding censure if there are other organisations committing worse acts of misuse on the network and therefore drawing on Ofcom's investigatory resources.

For many of our customers this is a very difficult position. In Ofcom's own figures, the economic harm caused by abandoned calls is dwarfed by the economic benefit of using predictive diallers (sections 4.114 and 4.116 of the consultation document). Yet for many of our customers, the re-drafting of the statement to place any use of predictive dialling equipment outside regulatory compliance will mean that they will no longer be able to make use of this equipment.

We do not believe that this is Ofcom's intention. Having spoken with representatives from Ofcom during this consultation process, we believe that Ofcom's intention is to reduce the harm caused to consumers by those organisations who pay no attention to the law whatsoever; to eliminate silent calls, and reduce abandoned calls to the levels that would exist should all organisations comply with the requirements of the statement of policy on persistent misuse. We therefore strongly urge Ofcom to consider carefully the wording that goes into the final version of the statement of policy – to allow those organisations for whom compliance is a key requirement to continue to operate predictive dialling equipment responsibly to the benefit of both those organisations and the customers they serve.

We would also like to take this opportunity to remind Ofcom that, while predictive diallers are used by telemarketing companies for the purpose of telemarketing, they are used in many other environments: including account servicing by utilities and financial services organisations, by government departments such as HRMC managing revenue collections, for the purposes of both collecting and helping customers to manage debt and personal finance, by healthcare organisations organising and management appointments, by pollsters and marketing research organisations canvasing public opinion and charities reaching out to the people they serve – to name but a few. While we of course agree that there are many nuisance calls made in the UK, that to equate all outbound calls with nuisance calls is a grave misunderstanding whose ramifications could be severe.

b) misuse of a CLI facility; and

Callmedia recognises the misuse of CLI facilities amongst some practitioners as being deliberately deceptive, and we welcome Ofcom taking an interest in this area. However, there are many legitimate applications where displaying different CLIs makes sense – including identifying the purpose of the call, aiding the routing of inbound calls, and avoiding situations where legitimate organisations have their own CLIs "spoofed" for fraudulent or dishonest purposes.

For this reason, Callmedia suggest that Ofcom take a pragmatic approach to the regulation of the use of CLI and ensure that it is only deemed non-compliant where deliberate deception is intended. As intent to deceive is difficult to prove, perhaps organisations ought to publish on their website, or register with Ofcom, all CLIs they use for outbound calls to enable consumers to identify directly from the source who is calling them.

c) breaches of the PECRs?

We understand that breaches of the PECRs fall under the jurisdiction of the ICO and welcome the agreement between Ofcom and the ICO that makes it clear which body will investigate in each case. However, from the figures published in the consultation document and from our customer research, it is recorded message calls, TPS violations and unsolicited texts that cause more nuisance and annoyance with consumers than any abandoned calls

made by ACS operators, and we look forward to seeing some tough regulation against the perpetrators of these calls and texts.

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 think Ofcom's approach and research has been thorough in this regard.

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

We have no additional comments.