



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

Notice served on
Green Deal Savings Limited by the
Office of Communications ("Ofcom")

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

1. This notification is issued to Green Deal Savings Limited, trading as Green Deal Savings (“GDS”), registered company number **07709734** and registered address 2nd Floor, Nelson Mill, Gaskell Street, Bolton, Lancashire, United Kingdom, BL1 2QE.
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 GDS that Ofcom considers constitutes persistent misuse; and
 - c. specifies the period during which GDS 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 27 October 2013 and 14 December 2013 (the “relevant period”), GDS persistently misused an electronic communications network or electronic communications service on the following basis:
 - a. GDS misused the network or service in accordance with section 128(5)(a) of the Act as the effect or likely effect of its use 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 Act, Ofcom has had regard to its *Revised statement of policy on the persistent misuse of an electronic communications network or service 2010* (the "policy statement"), published on 1 October 2010¹.
10. Accordingly, Ofcom considers that there are reasonable grounds for believing that, during the relevant period, GDS, by virtue of its use of an automated calling system ("ACS"), has persistently misused an electronic communications network or electronic communications services by:
 - i) making multiple (and certainly more than three)² abandoned calls during one 24 hour period (27 October 2013). Ofcom estimates on the basis of the evidence available that GDS made approximately 420 abandoned calls in total on that day. Ofcom considers it appropriate to take enforcement action in respect of this 24 hour period because the abandoned call rate also exceeded three per cent of live calls; and
 - ii) making multiple (and certainly more than three)³ abandoned calls during the relevant period where it failed to ensure that an information message was played. Ofcom estimates on the basis of the evidence available that GDS failed to include an information message on approximately 12,703 abandoned calls during the relevant period.
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 that 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: GDS provided information that evidenced it had failed to play an information message in the event of approximately 12,703 calls abandoned during the relevant period. Approximately 420 of these were made during one 24 hour period when the abandoned call rate also exceeded three per cent of live calls.

Representations concerning this notification

13. GDS has until 5pm on **21 July 2014** (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.

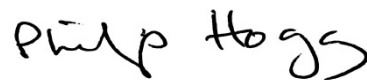
¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>.

² As explained in paragraph 1.47 below, the policy statement (see paragraph A1.10) sets out Ofcom's view that what constitutes a pattern of behaviour or practice needs to be determined case by case. However, it is likely to require a minimum of three incidents of the conduct in question.

³ See footnote 2 above.

Other matters

14. Following expiry of the deadline, if Ofcom is satisfied that GDS has in one or more of the notified respects persistently misused an electronic communications network or electronic communications services, 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 for remedying the consequences of the notified misuse, then Ofcom may issue a further notification to GDS under section 129 of the Act.
15. Additionally or alternatively, if GDS 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 GDS under section 130 of the Act.



Neil Buckley (Director of Investigations, Competition Group) and Philip Hogg (Legal Director of Spectrum, Legal Group) as decision makers for Ofcom

Section 1

Explanatory statement

Summary

- 1.1 This explanatory statement sets out Ofcom's reasons for its determination at paragraph 10 of the attached notification ("the notification") that Green Deal Savings Limited, trading as Green Deal Savings ("GDS"), has persistently misused an electronic communications network or electronic communications services.

Abandoned and silent calls

- 1.2 The notification concerns persistent misuse of an Electronic Communications Network ("ECN") or Electronic Communications Service ("ECS") by making abandoned calls. Most abandoned and silent calls are not generated with malicious or mischievous intent but by automated calling systems ("ACS"), used by call centres.
- 1.3 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, but when the call is answered by the called person there is no call centre agent available to handle it or presented with the opportunity to handle it, then it becomes an abandoned call. In this instance, Ofcom considers that the recipient of an abandoned call should – as a minimum – hear a recorded information message identifying the caller.
- 1.4 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. Silent calls may occur for a variety of reasons. They can occur for example when an ACS user does not include an information message in the scenario described above or as the result of a handling error by a call centre agent.
- 1.5 Ofcom – through its Consumer Complaints Team ("CCT") – received 35,119 complaints about silent calls in 2013⁴. Ofcom-commissioned research published in 23 May 2014⁵ showed that 84 per cent of participating UK adults with a landline phone reported experiencing a nuisance call⁶ in the four week fieldwork period⁷. 61 per cent reported experiencing a silent call, and an estimated 14 per cent received an abandoned call (with an information message)⁸. Calls about home/loft insulation made up 8 per cent of all nuisance calls, and solar panels made up 6 per cent, where respondents were able to provide a description of the product or service. The research reported that abandoned calls with an information message were considered to be annoying (71 per cent of calls) and distressing (6 per cent of calls). The research also reported that more silent calls were considered to be annoying (88 per cent of calls) and distressing (9 per cent of calls). Indeed, a higher proportion of

⁴ http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/Telecoms_Complaints_Bulletin_February_14.pdf

⁵ <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

⁶ Defined as "unwanted" calls. This includes unsolicited sales calls, silent and abandoned calls.

⁷ 13 January 2014 to 9 February 2014.

⁸ <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

silent calls were considered to be annoying compared to any other type of call; and a higher proportion of silent calls were also considered to be distressing (9 per cent of calls) compared to recorded sales calls (3 per cent of calls) and live sales calls (5 per cent of calls).

Legislative framework

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

1.7 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.”

1.8 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.”

1.9 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.”

1.10 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.”

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

1.12 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."

1.13 Under section 131 of the Act Ofcom has a duty to 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

1.14 Ofcom's current 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* (the "policy statement")¹¹.

1.15 The policy statement provides examples of the types of behaviour that Ofcom considers may be forms of persistent misuse. One such example is making abandoned calls as a result of the use of an ACS. In the document *Tackling abandoned and silent calls* (the regulatory statement in which the policy statement was published)¹², Ofcom notes that, "*Abandoned and silent calls will almost*

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, article 2(1).

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

¹⁰ Section 131(4) of the Act.

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

¹² <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

*invariably result in consumer harm, which may range from inconvenience and annoyance through to genuine anxiety*¹³.

- 1.16 The policy statement sets out that, in deciding in any case whether to take enforcement action, Ofcom will be guided by a sense of administrative priority determined by the level of consumer detriment.
- 1.17 It also says that Ofcom will take account of steps taken by ACS users to reduce the degree of consumer harm that abandoned or silent calls cause. Paragraphs A1.12- A1.59 of the policy statement provide guidance to ACS users as to how they can achieve this, and set out the following measures:
- i) ACS users should ensure that the abandoned call rate is no more than three per cent of live calls per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over a 24 hour period. The policy statement provides the formula for calculating this.
 - ii) As the abandoned call rate will depend on whether or not answer machine detection technology (“AMD”) is used, AMD users must include a reasoned estimate of AMD false positives¹⁴ when calculating an abandoned call rate (because AMD false positives are abandoned calls and should be recorded as such).
 - iii) In the event of an abandoned call (other than an AMD false positive), the ACS should start playing a very brief recorded information message no later than two seconds after the telephone has been picked up or within two seconds of the call being answered¹⁵. The information message should contain at least the following information:
 - 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);
 - 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 geographic rate* (03) number¹⁶ the called person can contact so they have the possibility of declining to receive further calls from that company; and
 - the information message should not include marketing content and should not be used as an opportunity to market to the called person.

¹³ 1.6, the policy statement.

¹⁴ AMD false positives occur when the technology mistakes a live person for an answer machine and terminates the call. In such circumstances the called party will experience a silent call.

¹⁵ “*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 (A1.51 of the policy statement).

¹⁶ As these terms are defined in the National Telephone Numbering Plan as published from time to time by Ofcom under section 56 of the Act. The version referred to in the policy statement has been updated. The current version is at <http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/numbering-plan201212.pdf>. ‘*UK wide Number at a geographic rate*’ is no longer listed as a defined term. The equivalent term in the revised plan is now, ‘*Non-Geographic Numbers charged at a geographic rate*’ (see Part A: Telephone Numbers Available for Allocation, page 11).

- iv) Where a call is not answered, the phone should ring for a minimum of 15 seconds before the call is terminated.
- v) When an abandoned call (other than an AMD false positive) has been made to a particular number, the ACS user should ensure that any repeat calls to that number in the following 72 hours are made with the guaranteed presence of a live operator.
- vi) When a call has been identified by AMD equipment as being picked up by an answer machine (including AMD false positives), the ACS user should ensure that any repeat calls to that number within the same 24-hour period are made with the guaranteed presence of a live operator.
- vii) For each outbound call, the ACS user should present a number to which customers can make return calls. This should be either a geographic number or a non-geographic number adopted as a Presentation Number that satisfies the Ofcom Guide to the use of Presentation Numbers¹⁷.
- viii) If a consumer calls the contact number provided, this should not be used as an opportunity to market to that consumer without his or her consent.
- ix) The ACS user should keep records for a minimum of six months that demonstrate compliance with the above procedures.

One effect of the policy statement is that one of the factors Ofcom will take into account in deciding whether to take action in respect of persistent misuse is whether the abandoned call rate, as calculated in line with the statement, exceeds three per cent. Another is that Ofcom may regard the failure to play a recorded message in the event of abandoned calls as persistent misuse.

Ofcom's programme of monitoring and enforcement

- 1.18 On 22 June 2006 Ofcom opened an own-initiative programme of monitoring and enforcement of principles preventing annoyance caused to consumers by silent and abandoned calls (the "programme"). The programme has been on-going since that time.
- 1.19 In December 2010, we published an open letter¹⁸ to ACS users about the 24 hour policy, the threat of enforcement action should this and other elements of our persistent misuse policy not be complied with, and the increased maximum penalty level for persistent misuse which came into effect on 25 September 2010¹⁹. Since the new maximum penalty and the policy statement came into force, we have issued penalties against three companies for persistent misuse²⁰. In May 2012, we published another open letter²¹ to ACS users about the importance of Ofcom's monitoring and enforcement programme which seeks to prevent and reduce harm caused by both abandoned and silent calls.

¹⁷ Annex 1 of <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/#a>

¹⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs_users.pdf

¹⁹ <http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

²⁰ http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/

²¹

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

The investigation

Background

- 1.20 As part of the programme, Ofcom received complaints about abandoned and/or silent calls which appeared to be generated by or on behalf of GDS. We received 33 complaints regarding calls from the Calling Line Identification (“CLI”) number 08458622106 between the period 27 October 2013 to 14 December 2013 (the “relevant period”). Of the 33 complaints against CLI 08458622106, 11 alleged nobody was speaking; 10 alleged that the line was dead; 7 alleged the line was dead followed by a “goodbye” after a lengthy period; and 5 alleged voices were heard in the background.
- 1.21 The CLI number 08458622106 was allocated by Ofcom to Telephony Services Limited in the National Numbering Plan.²² (Telephony Services Limited (TSL) is owned equally by Gradwell Communications Ltd and (aq) Ltd. TSL has its own number allocations which in turn are sub-allocated to both (aq) Ltd and Gradwell Communications²³.) On 13 December 2013, Gradwell Communications Limited confirmed to Ofcom that CLI 08458622106 was administered by Gradwell on behalf of 1 Solar Energy during the relevant period.
- 1.22 In light of this information and the complaints, Ofcom sought to obtain information about 1 Solar Energy’s use of ACS using our formal information gathering powers.

Information gathering

- 1.23 On 3 January 2013 Ofcom wrote to 1 Solar Energy Limited to inform them that Ofcom had received a number of complaints about abandoned and silent calls that were allegedly being generated by 1 Solar Energy Limited²⁴. On 9 January 2014 Ofcom received a response²⁵ from Green Deal Savings Limited informing Ofcom that 1 Solar Energy had changed its name to Green Deal Savings Limited in May 2013. It also stated that:

“These silent calls were caused by a misconfiguration of the dialler which would normally play a “No Agent Available” message...”

- 1.24 Ofcom issued a Notice under section 135 of the Act to GDS on 24 February 2014 (the “Notice”)²⁶. The Notice required GDS to provide information on its outbound dialling activity using an ACS for its call centres, and on its measures to ensure compliance with the law on persistent misuse, as interpreted in the policy statement. It also asked GDS to provide a corporate structure chart for the group which included GDS.
- 1.25 GDS provided a response to the Notice on 10 March 2014 (the “Response”)²⁷. Ofcom wrote via email to GDS on 20 March 2014 and 21 March 2014 seeking

²² <http://www.ofcom.org.uk/static/numbering/s8.xls>

²³ <http://stakeholders.ofcom.org.uk/binaries/consultations/geographic-numbers/responses/tsl-gradwell-aq-ltd.pdf>

Gradwell Communications Ltd was previously known as Gradwell Dot Com Ltd.

²⁴ Annex 6.

²⁵ Annex 7.

²⁶ Annex 1.

²⁷ Annex 2.

clarification of the responses given in its Response to the questions regarding the playing of a recorded message. GDS responded on the same day to each of these emails.

- 1.26 In the Response and subsequent clarifications, GDS told us that it:
- a) trades as 'Green Deal Savings';
 - b) operates one call centre in Glasgow;
 - c) operated one campaign, known as 'GDS', from a single location using the presentation CLI [3<] for all outgoing calls;
 - d) made outgoing calls, including abandoned calls, during the relevant period, amongst which were those in Table 1 below;
 - e) failed to play an information message in the event of any of the abandoned calls during the relevant period (confirmed in the clarifying emails of 20 and 21 March 2014); and
 - f) did not use AMD technology over the relevant period.

Ofcom's assessment and decision

- 1.27 In order to exercise its power under section 128(1) of the Act 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, or recklessness as to whether persons suffer annoyance, inconvenience or anxiety.
- 1.28 The following section sets out the basis on which Ofcom has decided to issue this notification to GDS, taking into account the elements outlined above.

Use of an electronic communications network or electronic communications services

- 1.29 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.”²⁸

1.30 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.”²⁹

1.31 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.”³⁰

1.32 In the Response, GDS reported that it made calls using an ACS in the relevant period. GDS therefore uses voice telephony to make outbound calls to users of publicly available telephony services³¹. Making these calls comprises the use of an ECN as defined in the Act and the use of an ECS as defined in the Act.

1.33 Ofcom therefore considers that there are reasonable grounds for believing that GDS has used an ECN and ECS as defined in the Act.

Misuse

1.34 As stated above, section 128(5) of the Act sets out what constitutes a misuse of an ECN or ECS; 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.

1.35 Evidence obtained from GDS using our formal information gathering powers³² demonstrates that GDS made approximately 12,703 abandoned calls during the relevant period (see Table 2 below). Ofcom research shows that consumers find abandoned calls “annoying” and “distressing” (see paragraph 1.5). Ofcom therefore considers that the use of an ECN or ECS by GDS in this case constitutes misuse.

1.36 Our policy statement sets out details of procedures that should be adopted to reduce the consumer detriment and/or the degree of concern that silent or abandoned calls cause. This includes monitoring the abandoned call rate using the formula set out in the policy statement to ensure that it does not exceed three per cent of live calls per campaign or per call centre over a 24 hour period. Evidence provided in its Response shows that GDS failed to do this, as it did not ensure that its abandoned call rate, as calculated in accordance with the policy statement, remained below three per cent of live calls during one 24 hour period (27 October 2013) during the relevant period.

²⁸ Section 32(1) of the Act.

²⁹ Section 32(2) of the Act.

³⁰ Section 32(10) of the Act.

³¹ A1.7-8, the policy statement.

³² The Response, see Annex 2.

- 1.37 The policy statement also sets out that a brief information message should be played in the event of an abandoned call (paragraph A1.51). It states at paragraph A1.52 that the message should contain information on the identity of the company and a number to contact the company so they have the possibility of declining further marketing calls³³ and that it should not include any marketing content or be used as an opportunity to market to the called person.
- 1.38 From the Response and clarifying emails, Ofcom confirmed that GDS failed to play an information message in the event of any abandoned call during the relevant period. As a result, there were approximately 12,703 such calls. GDS confirmed to Ofcom that the failure to play an information message was the result of an automated message function not being included in the settings for its 'GDS campaign'. GDS confirmed to Ofcom that the error was corrected on 20 January 2013 and that this was in response to the problem being brought to its attention by Ofcom³⁴.
- 1.39 Ofcom considers these shortcomings in respect of the playing of an information message are liable to amount to relevant misuse as follows. The aim of playing a recorded information message in the event of an abandoned call is to prevent recipients from receiving silent calls when over-dialling occurs and there are insufficient call centre agents to handle a call which has been answered. Information messages reduce harm by informing the recipient who has called them and how they can return the call to decline to receive further calls³⁵.
- 1.40 Where no message is played the call will, therefore, be a silent one. As set out in paragraph A1.83 of the policy statement, Ofcom considers that silent calls are more likely to give rise to anxiety, and accordingly a degree of detriment greater than annoyance or inconvenience, than abandoned calls in which an appropriate information message is played. The research evidence referred to in paragraph 1.5 above demonstrates that not only were a higher proportion of silent calls considered to be annoying compared to any other type of call, but also a higher proportion of such calls were found to be distressing compared to abandoned (or other kinds of nuisance) calls.
- 1.41 Silent calls, where no such information message is played, are particularly likely to give rise to consumer harm³⁶. The failure to play any recorded message means the greater harmful effects of silent calls apply to a full extent (limited only by the fact that, in this case, GDS did present a Calling Line Identification number).
- 1.42 Accordingly, on the basis of the information above, Ofcom considers that there are reasonable grounds for believing that the effect or likely effect of the use of an ECN and ECS by GDS has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse. This is on the grounds that during the relevant period, GDS:
- i) did not ensure that its abandoned call rate remained below three per cent of live calls on one 24 hour period during the relevant period; and

³³ 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) number (A152 of the policy statement).

³⁴ Ofcom letter of 3 January 2013, received by GDS on 10 January 2014, Annex 6.

³⁵ See paragraph 5.5 of the consultation statement at <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

³⁶ See paragraph 1.6 of the consultation statement, at <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

ii) failed to ensure that an information message was included in the event of any of the abandoned calls throughout the relevant period.

1.43 Ofcom makes these findings having regard, in particular, to the policy statement and the evidence referred to in paragraphs 1.5, 1.36 and 1.38 above. These findings are consistent with that policy statement and the consultation statement accompanying it.

The misuse is persistent

1.44 As set out in paragraphs 1.8 and 1.9 above, sections 128(6) and 128(7) of the Act set out the basis on which misuse may be considered persistent.

1.45 Organisations using ACS should ensure, as far as possible, that they do not generate more calls than they can handle. A persistent failure to do so will constitute an act of persistent misuse and may lead to the issue of a section 128 notification.

1.46 The Act makes it clear 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 recklessness as to whether persons suffer annoyance, inconvenience or anxiety. This is reflected in paragraph A1.10 of the policy statement.

1.47 In Ofcom's view there are reasonable grounds for believing that in this case the misuse was repeated often enough to represent a pattern of behaviour or practice. The policy statement states Ofcom's view that, although what constitutes a cycle of repetitive behaviour will need to be determined on a case by case basis, it is likely to require a minimum of three instances of the conduct in question³⁷.

1.48 Ofcom considers that GDS's misuse was persistent because GDS made multiple abandoned calls, and certainly more than three abandoned calls, during one 24 hour period we have identified. Ofcom estimates that the total number of abandoned calls on that day was 420 (Table 1). In line with the policy statement, we consider it appropriate to take enforcement action in respect of this period because the abandoned call rate exceeded three per cent of live calls. Table 1 sets out our determination of the abandoned call rates on that one occasion using data provided by GDS in the Response³⁸. Moreover, as regards those 420 abandoned calls, GDS failed to play an information message in the event of any abandoned call and Ofcom considers this itself amounts to persistent misuse.

³⁷ A1.10, the policy statement.

³⁸ Annex 2.

Table 1: Abandoned call rates in excess of 3 per cent during the relevant period for the GDS campaign

A	B	C	D	E	F	G	H
Date	Abandoned calls	AMs ³⁹ to Live Operator	Live call to Live Operator	Ratio of AM to all calls passed to live operator	Estimated abandoned to AM	Estimated abandoned calls excluding calls abandoned to AM	Abandoned call rate % ⁴⁰
				= C/(C+D)	= B*E	= B-F	= G/(G+D)
27 Oct 13	687	8,017	12,569	38.9%	268	420	3.23%

Source: Ofcom calculations using data sourced from the Response.

1.49 Ofcom also considers that GDS's misuse was persistent because GDS failed to play an information message when making multiple abandoned calls, and certainly more than three abandoned calls, across the relevant period. In total, we estimate that GDS made 12,703 silent calls during the relevant period. Table 2 sets out our determination of the total number of abandoned calls made over the relevant period. In line with the policy statement, we consider it appropriate to take enforcement action in respect of these silent calls.

Table 2: Abandoned calls, excluding calls abandoned to answer machines, during the relevant period

A	B	C	D	E	F	G
Date	Abandoned calls	AMs ⁴¹ to Live Operator	Live call to Live Operator	Ratio of AM to all calls passed to live operator	Estimated abandoned to AM	Estimated abandoned calls excluding calls abandoned to AM
27 Oct 13	687	8,017	12,569	39.8%	268	420
28 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]
29 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]
30 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]
31 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]

³⁹ "AMs" refers to Answer Machines.

⁴⁰ In its Response, GDS provided data in columns A to D. Please note that the figures in column E have been rounded to one decimal place for the purposes of succinctly presenting data. The figures in columns F and G have been rounded to the nearest whole number for the same reason. The figures in column H have been calculated using the original values of these figures before any rounding was undertaken and a copy of these values has been provided to GDS with this notification. The presentation of these figures does not affect whether or not the abandoned call rate exceeded 3 per cent.

⁴¹ "AMs" refers to Answer Machines.

1 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
2 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
3 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
4 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
5 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
6 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
7 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
8 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
9 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
10 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
11 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
12 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
13 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
14 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
15 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
16 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
17 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
18 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
19 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
20 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
21 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
22 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
23 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
24 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
25 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
26 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
27 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
28 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
29 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]

30 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]
1 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
2 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
3 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
4 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
5 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
6 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
7 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
8 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
9 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
10 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
11 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
12 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
13 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
14 Dec 13	[X]	[X]	[X]	[X]	[X]	[X]
Total						12,703

Source: Ofcom calculations using data sourced from the Response.

1.50 On these bases, Ofcom considers that there are reasonable grounds for believing that the misuse engaged in by GDS was persistent in that it was repeated on a sufficient number of occasions for it to be clear 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

- 1.51 GDS has until 5pm on **23 July 2014** (the “deadline”) to make representations to Ofcom about the matters set out in the notification and explained in this explanatory statement.
- 1.52 GDS has until the same deadline to take appropriate steps for securing that the misuse is brought to an end and is not repeated and to remedy the consequences of the notified misuse.
- 1.53 Following expiration of the deadline, if Ofcom is satisfied that GDS has:
- a) in one or more of the notified respects persistently misused an ECN or ECS;
 - b) not taken all such steps as Ofcom considers appropriate for securing that the misuse is brought to an end and is not repeated; and

- c) not taken all such steps as Ofcom considers appropriate to remedy the consequences of the notified misuse;

then Ofcom may issue a further notification to GDS under section 129 of the Act.

- 1.54 Additionally or alternatively, if GDS has persistently misused a network or services, as set out in the notification, Ofcom may impose a penalty on GDS under section 130 of the Act and in accordance with the Penalty Guidelines published on 13 June 2011 under section 392 of the Act⁴² and the policy statement. The maximum penalty that may be imposed is £2,000,000⁴³.

⁴² <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

⁴³ The maximum level of penalty in section 130(4) of the Act was increased from £50,000 to £2 million 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

Information request sent to Green Deal Savings Limited under section 135 of the Act

In preparing the specified information requested below, please note the following.

Scope of specified information

This notice requires Green Deal Savings to provide information to Ofcom. The specified information should cover the period from **27 October 2013** to **14 December 2013** inclusive (the 'Relevant Period').

The specified information should include all outbound calls to UK consumers during the Relevant Period, made either directly by Green Deal Savings or by a third party acting on behalf of or under instruction from Green Deal Savings, using an ACS.

The specified information should therefore include any outsourced or other call centre(s) (including those located outside the UK), which were contracted by Green Deal Savings to make calls to UK consumers on behalf of Green Deal Savings during the Relevant Period.

Manner and form of provision of specified information

Please provide this information in electronic form.

Questions 4 and 8 request information based on templates. If the information is held in your records management systems in a form from which it is not possible to complete the templates, please provide the information requested in an alternative format, ensuring that it is electronically searchable and explaining how what you provide comprises the information requested.

Explanation of terms

Section 3 of the Statement of Policy provides an explanation of the terms used below and an explanation of the methodology which can be used when determining compliance with the Statement of Policy.

Aggregation and disaggregation basis

Ofcom considers that where a company is operating multiple campaigns simultaneously from one or more call centres, it may be appropriate to calculate the abandoned call rate using an aggregation of data across all calls centres and/or all campaigns run by and on behalf of the company. Where Ofcom has aggregated a company's call data and proposes to rely on those figures for the purpose of a notification issued under section 128 of the Act, Ofcom may also set out the underlying information on a disaggregated basis (that is by call centre and/or campaign) to aid understanding of any non-compliance⁴⁴.

Questions

Nature of Green Deal Savings' activity

- 1) Please provide a corporate structure chart for the group which includes Green Deal Savings. The structure chart should:

⁴⁴ Paragraphs 5.57 and 5.58, Ofcom's current Statement of Policy, published 1 October 2010.

- a. Specify the full names of all subsidiaries and/or holding companies of Green Deal Savings.
- b. For each of the above, specify the nature of the activity undertaken (for example claims management).

Call centres and campaigns

- 2) For all call centres which made calls to UK consumers acting on behalf of or under instruction from Green Deal Savings during the Relevant Period, please confirm:
 - a. The call centre name (registered company name and trading name) and company number.
 - b. The address of the call centre.
 - c. Whether or not each call centre was operated directly by Green Deal Savings or on behalf of Green Deal Savings by a third party.
- 3) For each campaign conducted during the Relevant Period, please confirm:
 - a. The campaign name or title.
 - b. The call centre(s) that worked on the campaign.
- 4) Please provide:
 - a. The data as set out in both Templates 1 and 2 below, broken down by each 24 hour period during the Relevant Period. The data should be provided electronically by means of an Excel spread sheet.
 - b. Please provide both one worksheet per call centre and one worksheet per campaign, making clear which campaign(s) or call centre/s the data refers to. Where Answer Machine Detection ('AMD') was not used, please disregard column D.
 - c. Evidence to substantiate the reasoned estimate of AMD false positives incurred where AMD was used at a call centre⁴⁵.

Template 1:

Call Centre X / all campaigns (and so on per call centre)

	A	B	C	D	E
	Date	Number of live calls passed to a live operator	Unadjusted total of abandoned calls	Actual AMD false positives figure or reasoned number of AMD false positives ⁴⁶	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/13				

⁴⁵ Refer to A1.35 – A1.46 of the Statement of Policy. 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.

⁴⁶ Refer to A1.35 – A1.46 of the Statement of Policy.

2	y/x/13				
3	z/x/13				

Template 2:

Campaign X / all call centres (i.e. that were involved in dialling within that campaign)

	A	B	C	D	E
	Date	Number of live calls passed to a live operator	Unadjusted total of abandoned calls	Actual AMD false positives figure or reasoned number of AMD false positives ⁴⁷	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/13				
2	y/x/13				
3	z/x/13				

- 5) Please confirm whether and how Green Deal Savings reviews calls put through to its live operators to ensure these operators are correctly classifying 'live calls' and 'calls to answer machines' (thus ensuring live calls are not incorrectly disconnected). If Green Deal Savings does conduct such reviews, please provide the results of any review(s) that were undertaken during the Relevant Period (or closest to the Relevant Period if none were undertaken during the Relevant Period) and set out any adjustments made to the data provided in column E of Templates 1 and 2, in response to question 4.

Recorded information message

- 6) Please confirm whether, within two seconds of a call being answered by an individual⁴⁸ and before being terminated or released by the ACS, Green Deal Savings, in each call centre and for each campaign, provided a brief recorded information message.
- 7) Please provide the script(s) of the recorded message referred to in question 6, per call centre or per campaign, as appropriate.

24 hour policy

- 8) Please confirm what procedures, if any, Green Deal Savings 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

⁴⁷ Refer to A1.35 – A1.46 of the Statement of Policy.

⁴⁸ See A1.51 of the Statement of Policy for an explanation of 'within two seconds of the call being answered'.

number that calendar day is made with the guaranteed presence of a live operator. Again, please provide this information per call centre and /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 each calendar day during the Relevant Period:

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

Template 3:

	A	B	C	D
	Date	Time of call	CLI dialled	Answerphone detected? (Y/N)
1	x/x/13			
2				
3				

Caller Line Identification

- 9) Please state the CLI used for each outgoing call during the Relevant Period, whether Green Deal Savings displayed a CLI number to which a return call may be made. Please provide the CLI number(s) in question. Again, please provide this information both per call centre and per campaign.

Annex 2

**Green Deal Savings Limited response to
Information request sent under section
135 of the Act**

[X]

[X]

Annex 3

Ofcom calculation of Abandoned Call Rates using GDS data

Campaign: GDS

A	B	C	D	E	F	G	H
Date	Abandoned calls	AMs ⁴⁹ to Live Operator	Live call to Live Operator	Ratio of AM to all calls passed to live operator	Estimated abandoned to AM	Estimated abandoned calls excluding calls abandoned to AM	Abn Call Rate (ACR)
				= C/(C+D)	= B*E	= B-F	= G/(G+D)
27 Oct 13	987	8,017	12,569	39.8%	268	420	3.23%
28 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]	2.02%
29 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]	1.87%
30 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]	2.27%
31 Oct 13	[X]	[X]	[X]	[X]	[X]	[X]	1.51%
1 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.52%
2 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	
3 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.12%
4 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.25%
5 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.49%
6 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.34%
7 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.20%
8 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.14%
9 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	
10 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.65%
11 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.51%
12 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.21%
13 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.02%
14 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.70%
15 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.61%
16 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	
17 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.99%
18 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.14%
19 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.21%
20 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.72%
21 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	1.63%
22 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	0.97%
23 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	
24 Nov 13	[X]	[X]	[X]	[X]	[X]	[X]	2.18%

⁴⁹ "AMs" refers to Answer Machines.

Annex 4

Ofcom email of 20 March 2013 and GDS response of 20 March 2013

From: [✂]
Sent: [✂]
To: [✂]
Cc: [✂]
Subject: [✂]

Mr [✂],

[✂]

Kind regards,

[✂]

[✂]

[✂]

[✂]

[✂]

From: [✂]
Sent: 20 March 2014 09:20
To: [✂]
Cc: [✂]
Subject: Ofcom section 135 information request - clarification of your response

Mr [✂],

Thank you for your response of 10 March to the questions set out in the Annex to the section 135 information request of 24 February 2014. Questions 6 and 7 deal with the playing of a recorded information message in the event of an abandoned call.

Recorded information message

6) Please confirm whether, within two seconds of a call being answered by an individual and before being terminated or released by the ACS, Green Deal Savings, in each call centre and for each campaign, provided a brief recorded information message.

7) Please provide the script(s) of the recorded message referred to in question 6, per call centre or per campaign, as appropriate.

You responded to these questions as follows:

6) [✂].

7) [✂]

[✂]

In your response to the section 135 you are required to set out the situation during the relevant period, in this case the period covering 27/10 to 14/12 2013. I would therefore like to

give you the opportunity to correct your response to the section 135, if necessary, or to provide an explanation as to the apparent inconsistencies in your previous correspondence.

I would be grateful if you could respond by 5pm on Friday 21 March.

Kind regards,

[✂]

[✂]

Senior Consumer Affairs Manager

[✂]

[✂]

:: Ofcom

Riverside House

2a Southwark Bridge Road

London SE1 9HA

020 7981 3000

www.ofcom.org.uk

For more information visit www.ofcom.org.uk

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Annex 5

Ofcom email of 21 March 2014 and GDS response of 21 March 2014

From: [✂]
Sent: [✂]
To: [✂]
Subject: [✂]

Hi Mr [✂],
[✂]
From: [✂]
Sent: [✂]
To: [✂]

Subject: RE: Ofcom section 135 information request - clarification of your response

Mr [✂],

In relation to the automated message settings not being included in the campaign, could you please confirm the following:

- * The date on which you became aware of this issue;
- * The date you corrected the issue; and
- * The date you 'locked down' the function to prevent it reoccurring.

I would be grateful if you could respond by 5pm today.

Regards,
[✂].

From: [✂]
Sent: 20 March 2014 10:13
To: [✂]
Cc: [✂]
Subject: RE: Ofcom section 135 information request - clarification of your response

Mr [✂],

[✂]

6) [✂]

[✂]

Kind regards,
[✂]

[✂]

From: [✂]@ofcom.org.uk]

Sent: 20 March 2014 09:20

To: [REDACTED]

Cc: [REDACTED]

Subject: Ofcom section 135 information request - clarification of your response

Mr [REDACTED],

Thank you for your response of 10 March to the questions set out in the Annex to the section 135 information request of 24 February 2014. Questions 6 and 7 deal with the playing of a recorded information message in the event of an abandoned call.

Recorded information message

6) Please confirm whether, within two seconds of a call being answered by an individual and before being terminated or released by the ACS, Green Deal Savings, in each call centre and for each campaign, provided a brief recorded information message.

7) Please provide the script(s) of the recorded message referred to in question 6, per call centre or per campaign, as appropriate.

You responded to these questions as follows:

6) [REDACTED].

7) [REDACTED].

[REDACTED]

In your response to the section 135 you are required to set out the situation during the relevant period, in this case the period covering 27/10 to 14/12 2013. I would therefore like to give you the opportunity to correct your response to the section 135, if necessary, or to provide an explanation as to the apparent inconsistencies in your previous correspondence. I would be grateful if you could respond by 5pm on Friday 21 March.

Kind regards,

[REDACTED]

:: [REDACTED]

Senior Consumer Affairs Manager

[REDACTED]

[REDACTED]@ofcom.org.uk

:: Ofcom

Riverside House

2a Southwark Bridge Road

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020 7981 3000

www.ofcom.org.uk

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Annex 6

Ofcom letter to 1 Solar Energy Limited, 3 January 2014

03 January 2014



[REDACTED]

via email: [REDACTED]

[REDACTED]
Consumer Protection Team

[REDACTED]

[REDACTED]

Dear Mr [REDACTED],

1 Solar Energy – complaints in relation to ‘Abandoned Calls’

I am writing to inform you that Ofcom has received a number of complaints about abandoned calls⁵⁰ and silent calls⁵¹ that are allegedly being generated by 1 Solar Energy Ltd ('1 Solar Energy') and/or third parties acting for or on behalf of 1 Solar Energy from the telephone number 08458622106.

In light of the complaints that we have received, I want to emphasise the necessity of effective and continuous compliance. I am requesting, therefore, that you detail what 1 Solar Energy is doing to ensure that it is, and remains, compliant with Ofcom's policy in this area.

Consumer harm

A consumer receiving an abandoned or silent call may suffer harm, including inconvenience, annoyance and even anxiety. The level of harm may be exacerbated where individuals receive a number of such calls over a short period of time. Ofcom takes the consumer harm caused by these calls very seriously.

⁵⁰ 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.

⁵¹ 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.

Repeatedly making abandoned or silent calls can constitute persistent misuse for the purposes of section 128 of the Communications Act 2003 (the 'Act')⁵², and may lead to the imposition of a financial penalty of up to £2 million⁵³.

Statement of policy on persistent misuse

On 1 October 2010 Ofcom published its statement of policy, entitled the *Revised statement of policy on the persistent misuse of an electronic communications network or service 2010*⁵⁴, and annexed to the document entitled *Tackling abandoned and silent calls: Statement*.⁵⁵ For ease of reference, these are referred to here as the 'Statement of Policy'.

Ofcom considers that the repeated making of abandoned and/or silent calls constitutes persistent misuse for the purposes of section 128 of the Act. The Statement of Policy, amongst other things, set out Ofcom's current approach when assessing whether or not to take enforcement action for persistent misuse in relation to abandoned and silent calls.

The Statement of Policy set out the requirements for the compliant use of automated calling systems ('ACS') and answer machine detection ('AMD') technology⁵⁶ and the steps we expect companies to take to avoid making abandoned and/or silent calls and, if such calls are made, to limit consumer harm. These steps include⁵⁷:

1. Keeping abandoned calls to a rate not exceeding three per cent of live calls calculated per campaign or per call centre over any 24 hour period. Where AMD technology is used, this rate must include a reasoned estimate of AMD false positives⁵⁸;
2. When a call has been identified by AMD technology as being picked up by an answer machine (including AMD false positives), any repeat calls to that specific number within the same 24 hour period may only be made with the guaranteed presence of a live operator (the '24 hour policy');
3. Playing a very brief information message either within two seconds of the telephone being picked up, or within two seconds of an individual beginning to speak⁵⁹;

⁵² See section 128 to 131 of the Act.

⁵³ <http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

⁵⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>

⁵⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

⁵⁶ Technology used by ACS users to filter out calls picked up by answer machines.

⁵⁷ These are non-exhaustive and are detailed further in the Statement of Policy (see paragraphs A1.12-59).

⁵⁸ 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. AMD technology will terminate the call if it believes it has detected an answer machine, and so the call becomes an abandoned call.

4. Guaranteeing the presence of a live operator when repeat calls are made to a particular number that has received an abandoned call in the previous 72 hours;
5. Providing calling line identification ('CLI') information on outbound calls;
6. Maintaining a minimum 15 second ring time before terminating an unanswered call;
7. Ensuring that any call made by the called person to the contact number provided is not used as an opportunity to market to that person, without that person's consent; and
8. Maintaining records for a minimum period of six months that demonstrate compliance with the above policy and procedures.

Organisations using ACS and/or AMD are expected to comply with the Statement of Policy and to have done so since 1 February 2011⁶⁰. Further background information regarding abandoned and silent calls, can be accessed

here: <http://stakeholders.ofcom.org.uk/consultations/silent-calls/>.

I strongly recommend that you (as a minimum) carefully read the Statement of Policy to familiarise yourself with our policy and ensure your organisation and/or any third party acting for or on your organisation's behalf is compliant with the persistent misuse provisions in the legislation and with the Statement of Policy.

Ofcom's investigation programme

On 22 June 2006, Ofcom began an own-initiative enforcement programme in order to monitor compliance with the persistent misuse provisions and the Statement of Policy.

In September 2010 the government increased the maximum financial penalty for persistent misuse from its previous level of £50,000 to £2 million⁶¹. Penalties have subsequently been issued to HomeServe (19 April 2012, £750 000)⁶², npower (6 December 2012, £60 000)⁶³ and TalkTalk (18 April 2013, £750 000)⁶⁴.

We have an open investigation into Redress Financial Management Limited⁶⁵.

⁵⁹ Users of AMD technology can choose to play an information message in the event of an abandoned call from when an individual finishes speaking, on the condition that the total time taken to start playing an information message is no more than two seconds from the start of salutation.

⁶⁰ http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs_users.pdf

⁶¹ <http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

⁶² <http://media.ofcom.org.uk/2012/04/19/homeserve-fined-750000-for-silent-and-abandoned-calls/>

⁶³ <http://consumers.ofcom.org.uk/2012/12/npower-fined-for-making-abandoned-calls/>

⁶⁴ <http://media.ofcom.org.uk/2013/04/18/ofcom-takes-action-against-abandoned-and-silent-calls/>

⁶⁵ See Ofcom's Competition and Consumer Enforcement Bulletin at http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/

The purpose of this letter

Ofcom is concerned about the number of complaints it has received in respect of abandoned and silent calls allegedly being made by 1 Solar Energy and/or third parties acting for or on its behalf. Where third parties are engaged, we expect the party engaging the third party to have and maintain an effective compliance strategy, taking reasonable steps to monitor and assess ongoing compliance by that third party with the persistent misuse provisions and the Statement of Policy.

My purpose in writing to you is to bring this to your attention and to impress upon you the importance of compliance with section 128 of the Act. You should ensure that you and/or any third parties acting for or on your behalf in the generation of calls to consumers are in compliance with the persistent misuse provisions and the Statement of Policy. You should further note the potential consequences of failure to do so.

Ofcom will continue to monitor complaints received about abandoned and/or silent calls allegedly being made by 1 Solar Energy and/or third parties for or on its behalf. Ofcom may at any time make a formal request for information in order to consider whether formal enforcement action against 1 Solar Energy would be appropriate.

I would be grateful if you could detail in writing by **5pm on 17 January 2014** what 1 Solar Energy is doing to ensure it and/or third parties acting for or on its behalf are operating in accordance with the persistent misuse provisions in the Act and with the Statement of Policy. Your response should specifically respond to each of the eight points on pages 2 and 3 of this letter.

If you wish to discuss this letter, please contact please contact myself by email [✉] or on [✉].

Yours sincerely,

[✉]

Annex 7

**Green Deal Savings response to Ofcom
letter of 3 January 2014, 9 January 2014**

[X]