



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

Notice served on
Ageas 50 Limited by the
Office of Communications ("Ofcom")

This is the non-confidential version.
Confidential information has been redacted.
Redactions are indicated by [X].

Issue date: 26 June 2014

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

1. This notification is issued to Ageas 50 Limited, trading as RIAS and Castle Cover (“Ageas 50”), registered company number **01324965** and registered address Deansleigh House, Deansleigh Road, Bournemouth, Dorset, United Kingdom, BH7 7DU.
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 Ageas 50 that Ofcom considers constitutes persistent misuse; and
 - c. specifies the period during which Ageas 50 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 21 July 2013 and 7 September 2013 (the “relevant period”), Ageas 50 persistently misused an electronic communications network or electronic communications service on the following basis:
 - a. Ageas 50 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, Ageas 50, 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) abandoned calls during each of three separate 24 hour periods. Ofcom estimates on the basis of the evidence available that Ageas 50 made approximately 148 abandoned calls in total on those days. Ofcom considers it appropriate to take enforcement action in respect of these periods because the abandoned call rate also exceeded three per cent of live calls.
 - ii) Including marketing content within an information message played in the event of an abandoned call 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: Ageas 50 provided information that evidenced it had made multiple abandoned calls during each of the three separate 24 hour periods identified and the abandoned call rate during these periods exceeded three per cent of live calls. We estimate on the basis of the evidence that Ageas 50 made 148 abandoned calls in total during these 24 hour periods.

Representations concerning this notification

13. Ageas 50 has until **5pm on 12 May 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.

Other matters

14. Following expiry of the deadline, if Ofcom is satisfied that Ageas 50 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

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

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 Ageas 50 under section 129 of the Act.

15. Additionally or alternatively, if Ageas 50 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 Ageas 50 under section 130 of the Act.

Nuala Cosgrove (Legal Director, Legal) and Neil Buckley (Director – Investigations, Competition 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 Ageas 50 Limited, trading as RIAS and Castle Cover ("Ageas 50"), 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 35,136 complaints about silent calls in 2013². Ofcom-commissioned research published in May 2013³ showed that 82 per cent of UK adults with a landline phone reported experiencing a nuisance call⁴ in the four week fieldwork period⁵. 54 per cent reported experiencing a silent call, and an estimated 17 per cent received an abandoned call. Calls about insurance made up 8 per cent of all nuisance calls where respondents were able to provide a description of the product or service. The research also reported that consumers found abandoned calls to be annoying (86 per cent), worrying (10 per cent) and distressing (4 per cent). Also relevant, for the reasons set out later in this statement, the research further found that consumers consider recorded sales calls to be the most annoying form of nuisance calls (94 per cent).

² Unpublished data.

³ Landline Nuisance Calls Panel, Figure 3.1, <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/nuisance-calls-research/nuisance-calls.pdf>

⁴ Defined as "unwanted" calls. This includes unsolicited sales calls, silent and abandoned calls.

⁵ 14 January 2013 to 10 February 2013.

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 £2,000,000⁶ 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 powers⁷.

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")⁸.

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)⁹, Ofcom notes that, "*Abandoned and silent calls will almost invariably result in consumer harm, which may range from inconvenience and annoyance through to genuine anxiety*"¹⁰.

⁶ 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, section 2(1).

⁷ <http://www.legislation.gov.uk/ukxi/2010/2291/article/2/made>

⁸ Section 131(4) of the Act.

⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>.

¹⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>.

¹⁰ 1.6, the policy statement.

- 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 sets 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 positives¹¹ 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 answered¹². 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) number¹³ 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.
 - 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

¹¹ 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.

¹² “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).

¹³ 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)’.

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 Numbers¹⁴.
- 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 key 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, in the event of an abandoned call, to play a recorded message, 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 letter¹⁵ 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 2010¹⁶. Since the new maximum penalty and the policy statement came into force, we have issued penalties against three companies for persistent misuse¹⁷.

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 Ageas 50. We received 19 complaints regarding the Calling Line Identification ("CLI") number [§<] between the period 21 July 2013 to 7 September 2013. Many of these complaints alleged that consumers had received two or more silent calls from this number during this time.

¹⁴Annex 1 of <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/#a>

¹⁵http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs_users.pdf

¹⁶<http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

¹⁷http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/

- 1.21 In light of these complaints, Ofcom sought to obtain information about Ageas 50's use of ACS using our formal information gathering powers.

Information gathering

- 1.22 Ofcom issued a Notice under section 135 of the Act to Ageas 50 on 28 November 2013 (the "Notice")¹⁸. The Notice required Ageas 50 to provide information on its outbound dialling activity using an ACS for its call centres and its measures to ensure compliance with the law on persistent misuse as interpreted in the policy statement. It also asked Ageas 50 to provide a corporate structure chart for the group which included Ageas 50.
- 1.23 Ageas 50 provided a response to the Notice on 13 December 2013 (the "Response")¹⁹. Ofcom wrote to Ageas 50 on 10 January 2014 requesting that the information be provided in a different format and separately for each call centre. Ageas 50 re-sent revised call centre data on 14 January 2014 and 23 January 2014. Ageas 50 confirmed on 14 January that it operated as, '*one call centre, albeit over two geographical locations*' with these two locations in Bournemouth and Belfast. It provided further detail on these operations in an email to Ofcom on 30 January 2014.
- 1.24 In the Response and subsequent clarifications, Ageas 50 told us that it:
- a) trades as 'RIAS' and 'Castle Cover';
 - b) operates two call centres (one in Bournemouth and one in Belfast as noted above), and that both call centres are used for outbound dialling and one dialler is used for both sites;
 - c) operated three campaigns during the relevant period: "HOME", "MOTOR" and "POLICY SERVING" using the presentation CLI number [X<] for all outgoing calls;
 - d) made outgoing calls, including abandoned calls, during the relevant period, amongst which were those in Table 1 below;
 - e) played the following recorded message in the event of each abandoned call:

"Hello this is a recorded message from Ageas 50, we would like to provide you with a quotation for Home (Motor) insurance but we are currently unable to put you through to one of our advisors, we may attempt to call you again in three days however, if you prefer that we don't please call [X<]. We apologise for any inconvenience caused"; and
 - f) did not use AMD technology over the relevant period.

Ofcom's assessment and decision

- 1.25 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;

¹⁸ Annex 1.

¹⁹ Annex 2.

- 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.

1.26 The following section sets out the basis on which Ofcom has decided to issue this notification to Ageas 50, taking into account the elements outlined above.

Use of an electronic communications network or electronic communications services

1.27 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.”²⁰

1.28 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.”²¹

1.29 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 apparatus²².”

1.30 In the Response and subsequent clarifications noted at paragraph 1.23 above, Ageas 50 reported that it made calls using an ACS in the relevant period. Ageas 50 therefore uses voice telephony to make outbound calls to users of publicly available telephony services²³. Making these calls comprises the use of an ECN as defined in the Act and use of an ECS as defined in the Act.

²⁰ Section 32(1) of the Act.

²¹ Section 32(2) of the Act.

²² Section 32(10) of the Act.

²³ A1.7-8, the policy statement.

- 1.31 Ofcom therefore considers that there are reasonable grounds for believing that Ageas 50 has used an ECN and ECS as defined in the Act.

Misuse

- 1.32 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.
- 1.33 Evidence obtained from Ageas 50 using our formal powers²⁴ demonstrates that Ageas 50 made approximately [§<] abandoned calls during the relevant period (see Annex 3). Ofcom research shows that consumers find abandoned calls “annoying”, “worrying” and “distressing” (see paragraph 1.5). Ofcom therefore considers that the use of an ECN or ECS by Ageas 50 in this case constitutes misuse.
- 1.34 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. Evidence provided in its Response shows that Ageas 50 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 on three separate 24 hour periods – on 27 July 2013 and 10 and 31 August 2013 – during the relevant period.
- 1.35 The policy statement also sets out at paragraph A1.52 that the information message to be played in the event of an abandoned call should not include marketing content or be used as an opportunity to market to the called person. In its Response, Ageas 50 stated that it played the following message in the event of an abandoned call during the relevant period:
- “Hello this is a recorded message from Ageas 50, we would like to provide you with a quotation for Home (Motor) insurance but we are currently unable to put you through to one of our advisors, we may attempt to call you again in three days however, if you prefer that we don’t please call [§<]. We apologise for any inconvenience caused”.*
- 1.36 It is Ofcom's view that the sentence, ‘we would like to provide you with a quotation for Home (Motor) insurance...’, is an attempt by Ageas 50 to use the recorded information message to market to the recipient of the abandoned call and that this is inconsistent with A1.52 of the policy statement.
- 1.37 In our view it is a message that seeks to draw attention to the service offered by Ageas 50, rather than simply to state its identity and contact telephone number. Ofcom infers this based on the following.
- 1.38 The information message removes the silence that would otherwise result where over-dialling occurs and insufficient call agents are available when a call is answered. As set out in the consultation statement accompanying the policy statement²⁵, the aim is to reduce the consumer harm likely to be caused by informing the called party

²⁴ The Response, see Annex 2.

²⁵ See paragraph 5.5 of the policy statement at

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

about who has called them and how to return the call in order to decline to receive further marketing calls.

- 1.39 This aim can be achieved in its entirety by a party like Ageas 50 stating its name and that the telephone number on which it could be contacted to decline further marketing calls. It is unnecessary to state that the party is seeking to provide insurance quotations or other services.
- 1.40 Accordingly, the inference Ofcom draws is that this was done not for the legitimate purpose of reducing the harm connected with an abandoned call. Rather, it was done to highlight the services Ageas 50 seeks to provide for its commercial benefit.
- 1.41 Moreover, Ofcom considers that the playing of this message on abandoned calls throughout the relevant period to be misuse of an ECN and an ECS by Ageas 50. As referred to above, the purpose of a recorded message is to reduce the unnecessary annoyance, inconvenience or anxiety a person is likely to suffer as a result of a person's use of the network or service or of the conduct for which that network or service is used. Failing to play such a message would mean those effects remain in place. Playing a message containing marketing content is, in Ofcom's view, likely to have the following two effects.
- 1.42 First, any reduction in harm that the playing of the message would otherwise achieve is limited. Second, that following on from an abandoned call which, relevant evidence suggests, is likely to cause consumers annoyance, the playing of a message containing marketing content, rather than a wholly legitimate recorded message, is likely to cause further annoyance. Ofcom takes this view in light of the evidence described in paragraph 1.5 that the calls consumers find most annoying are recorded sales calls.
- 1.43 Accordingly, Ofcom considers that there are reasonable grounds for believing, that the effect or likely effect of the use of an ECN and ECS by Ageas 50, on the three separate 24 hour periods noted at paragraph 1.34 above to make and treat abandoned calls in a way that is inconsistent with the policy statement, has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse. Likewise, in the playing of a message containing marketing content on abandoned calls throughout the relevant period. Ofcom makes these findings having regard, in particular, to the policy statement and the evidence referred to in paragraphs 1.5, 1.34 and 1.40 above. They 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, 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 question²⁶.
- 1.48 Ofcom considers that Ageas 50’s misuse was persistent because Ageas 50 made multiple abandoned calls, and certainly more than three abandoned calls, during each of the 3 days we have identified. The total number of abandoned calls on those days was 148. In line with the policy statement, we consider it appropriate to take enforcement action in respect of these periods because during each of the three separate 24 hour periods, the abandoned call rate exceeded three per cent of live calls. Table 1 sets out our determination of the abandoned call rates on these three occasions using data provided by Ageas 50 in the Response²⁷. Moreover, on those 148 abandoned calls Ageas 50 played a message including marketing content and which Ofcom considers itself amounts to persistent misuse.
- 1.49 On these bases, Ofcom considers that there are reasonable grounds for believing that the misuse engaged in by Ageas 50 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.

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

| A | | B | C | D | E | F | G | H |
|---------|------------------|-----------------|------------------------------------|----------------------------|--|---------------------------|---|-------------------------------------|
| Date | Campaign | Abandoned calls | AMs ²⁸ 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 % ²⁹ |
| | | | | | = C/(C+D) | = B*E | = B-F | = G/(G+D) |
| 31/8/13 | Home | 212 | 606 | 1174 | 0.34 | 72 | 140 | 10.64 |
| 27/7/13 | Policy Servicing | 3 | 3 | 29 | 0.09 | 0 | 3 ³⁰ | 8.57 |
| 10/8/13 | Policy Servicing | 5 | 10 | 98 | 0.09 | 0 | 5 ³¹ | 4.42 |

Source: Data is sourced from the Response and subsequent clarifications.

²⁶ Paragraph A1.10 of the policy statement.

²⁷ Annex 3 presents abandoned call rates for each campaign across the relevant period.

²⁸ “AMs” refers to Answer Machines.

²⁹ Please note that the figures in column E have been rounded to two decimal places for the purposes of succinctly presenting original source 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 Ageas 50 with this notification. The presentation of these figures does not affect whether or not the abandoned call rate exceeded 3 per cent.

³⁰ Although this is a low number in absolute terms (reflecting a lower volume of calls being made by Ageas 50 on that Saturday), the abandoned call rate was in excess of 3 per cent.

³¹ See footnote 31.

Other matters set out in the notification

- 1.50 Ageas 50 has until **5pm on 12 May 2014** (the “deadline”) to make representations to Ofcom about the matters set out in the notification and explained in this explanatory statement.
- 1.51 Ageas 50 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.
- 1.52 Following expiration of the deadline, if Ofcom is satisfied that Ageas 50 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 Ageas 50 under section 129 of the Act.
- 1.53 Additionally or alternatively, if Ageas 50 has persistently misused a network or services, as set out in the notification, Ofcom may impose a penalty on Ageas 50 under section 130 of the Act and in accordance with the Penalty Guidelines published on 13 June 2011 under section 392 of the Act³² and the policy statement. The maximum penalty that may be imposed is £2 million³³.

³² <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

³³ 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 Ageas 50 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 Ageas 50 to provide information to Ofcom. The specified information should cover the period from **21 July 2013** to **7 September 2013** inclusive ('**Relevant Period**').

The specified information should include all outbound calls to UK consumers during the Relevant Period, made either directly by Ageas 50 or by a third party acting on behalf of or under instruction from Ageas 50, 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 Ageas 50 to make calls to UK consumers on behalf of Ageas 50 during the Relevant Period.

Manner and form of provision of specified information

Please provide this information in electronic form.

Questions 4 and 7 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-compliance³⁴.

³⁴ Paragraphs 5.57 and 5.58, Ofcom's current Statement of Policy, published 1 October 2010.

Questions

Nature of Ageas 50's activity

- 1) Please provide a corporate structure chart for the group which includes Ageas 50.
The structure chart should:
 - a. Specify the full names of all subsidiaries and/or holding companies of Ageas 50.
 - 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 Ageas 50 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 Ageas 50 or on behalf of Ageas 50 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 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 spreadsheet which contains functioning formulae rather than 'hard-coded' numbers.
 - b. Please provide one worksheet per call centre (or 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 centre³⁵.

³⁵ 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.

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 ³⁶ | Total reasoned estimate figure of calls abandoned to answer machines ³⁷ |
| 1 | x/x/13 | | | | |
| 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 ³⁸ | Total reasoned estimate figure of calls abandoned to answer machines ³⁹ |
| 1 | x/x/13 | | | | |
| 2 | y/x/13 | | | | |
| 3 | z/x/13 | | | | |

³⁶ Refer to A1.35 – A1.46 of the Statement of Policy.

³⁷ Refer to A1.47 – A1.50 of the Statement of Policy.

³⁸ Refer to A1.35 – A1.46 of the Statement of Policy.

³⁹ Refer to A1.47 – A1.50 of the Statement of Policy.

Recorded information message

- 5) Please confirm if, within two seconds of a call being answered by an individual⁴⁰ and before being terminated or released by the ACS, Ageas 50, in each call centre and for each campaign, provided a brief recorded information message.
- 6) Please provide the script(s) of the recorded message referred to in question 5, per call centre or per campaign, as appropriate.

24 hour policy

- 7) Please confirm what procedures, if any, Ageas 50 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 number that calendar day is made with the guaranteed presence of a live operator. Again, please provide this information per call centre 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 | | | | |

⁴⁰ See A1.51 of the Statement of Policy for an explanation of 'within two seconds of the call being answered'.

Caller Line Identification

- 8) Please state the CLI used for each outgoing call during the Relevant Period, whether Ageas 50 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 per call centre or per campaign where appropriate.

Annex 2

**Ageas 50 response to Information request
sent under section 135 of the Act**

[✂].

Annex 3

Ofcom calculation of Abandoned Call Rates using Ageas 50 data

Campaign: Home

| A | B | C | D | E | F | G | H ⁴¹ |
|---------|-------------------------|---|----------------------------------|--|-----------|-------------------------------------|---------------------|
| Date | Abn ⁴² calls | Answer Machines passed to live operator ⁴³ | Live to live calls ⁴⁴ | Ratio of AM to all calls passed to live operator | Abn to AM | Abn calls excluding calls abn to AM | Abn Call Rate (ACR) |
| | | | | =C/(C+D) | =B*E | =B-F | G/(G+D) |
| 21/7/13 | | | | | | | |
| 22/7/13 | | | | | | | |
| 23/7/13 | | | | | | | |
| 24/7/13 | | | | | | | |
| 25/7/13 | | | | | | | |
| 26/7/13 | | | | | | | |
| 27/7/13 | | | | | | | |
| 28/7/13 | | | | | | | |
| 29/7/13 | | | | | | | |
| 30/7/13 | | | | | | | |
| 31/7/13 | | | | | | | |
| 1/8/13 | | | | | | | |
| 2/8/13 | | | | | | | |
| 3/8/13 | | | | | | | |
| 4/8/13 | | | | | | | |
| 5/8/13 | | | | | | | |
| 6/8/13 | | | | | | | |
| 7/8/13 | | | | | | | |
| 8/8/13 | | | | | | | |
| 9/8/13 | | | | | | | |
| 10/8/13 | | | | | | | |
| 11/8/13 | | | | | | | |
| 12/8/13 | | | | | | | |
| 13/8/13 | | | | | | | |
| 14/8/13 | | | | | | | |
| 15/8/13 | | | | | | | |
| 16/8/13 | | | | | | | |
| 17/8/13 | | | | | | | |
| 18/8/13 | | | | | | | |
| 19/8/13 | | | | | | | |
| 20/8/13 | | | | | | | |
| 21/8/13 | | | | | | | |
| 22/8/13 | | | | | | | |
| 23/8/13 | | | | | | | |
| 24/8/13 | | | | | | | |
| 25/8/13 | | | | | | | |
| 26/8/13 | | | | | | | |

[X]

⁴¹ Please note that the figures in column E have been rounded to 2 decimal places for the purposes of succinctly presenting original source 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 Ageas 50 with this notification. The presentation of these figures does not affect whether or not the abandoned call rate exceeded 3%.

⁴² 'Abn' refers to 'Abandoned' (therefore, an 'abandoned call').

⁴³ Calls put through to live operators that have been answered by an answering machine.

⁴⁴ A1.23, policy statement.

| | | | | | | | |
|--------------|-----|-----|------|------|----|-----|--------|
| 27/8/13 | | | | | | | |
| 28/8/13 | | | | | | | |
| 29/8/13 | | | | | | | |
| 30/8/13 | | | | | | | |
| 31/8/13 | 212 | 606 | 1174 | 0.34 | 72 | 140 | 10.64% |
| 1/9/13 | | | | | | | |
| 2/9/13 | | | | | | | |
| 3/9/13 | | | | | | | |
| 4/9/13 | | | | | | | |
| 5/9/13 | | | | | | | |
| 6/9/13 | | | | | | | |
| 7/9/13 | | | | | | | |
| TOTAL | | | | | | | |

Campaign: Motor

| A | B | C | D | E | F | G | H |
|---------|-----------|---|--------------------|--|-----------|-------------------------------------|-----------------------------|
| Date | Abn calls | Answer Machines passed to live operator | Live to live calls | Ratio of AM to all calls passed to live operator | Abn to AM | Abn calls excluding calls abn to AM | Abn Call Rate ⁴⁵ |
| | | | | =C/(C+D) | =B*E | =B-F | G/(G+D) |
| 21/7/13 | | | | | | | |
| 22/7/13 | | | | | | | |
| 23/7/13 | | | | | | | |
| 24/7/13 | | | | | | | |
| 25/7/13 | | | | | | | |
| 26/7/13 | | | | | | | |
| 27/7/13 | | | | | | | |
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| 31/8/13 | | | | | | | |
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| 2/9/13 | | | | | | | |
| 3/9/13 | | | | | | | |
| 4/9/13 | | | | | | | |
| 5/9/13 | | | | | | | |

[X]

⁴⁵ Please note that the figures in column E have been rounded to 2 decimal places for the purposes of succinctly presenting original source 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 Ageas 50 with this notification. The presentation of these figures does not affect whether or not the abandoned call rate exceeded 3 per cent.

| | |
|--------------|--|
| 6/9/13 | |
| 7/9/13 | |
| TOTAL | |

Campaign: Policy Servicing

| A | B | C | D | E | F | G | H |
|---------|-----------|---|--------------------|--|-----------|-------------------------------------|-----------------------------|
| Date | Abn calls | Answer Machines passed to live operator | Live to live calls | Ratio of AM to all calls passed to live operator | Abn to AM | Abn calls excluding calls abn to AM | Abn Call Rate ⁴⁶ |
| | | | | =C/(C+D) | =B*E | =B-F | G/(G+D) |
| 21/7/13 | | | | | | | |
| 22/7/13 | | | | | | | |
| 23/7/13 | | | | | | | |
| 24/7/13 | | | | | | | |
| 25/7/13 | | | | | | | |
| 26/7/13 | | | | | | | |
| 27/7/13 | 3 | 3 | 29 | 0.09 | 0 | 3 | 8.57% |
| 28/7/13 | | | | | | | |
| 29/7/13 | | | | | | | |
| 30/7/13 | | | | | | | |
| 31/7/13 | | | | | | | |
| 1/8/13 | | | | | | | |
| 2/8/13 | | | | | | | |
| 3/8/13 | | | | | | | |
| 4/8/13 | | | | | | | |
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| 6/8/13 | | | | | | | |
| 7/8/13 | | | | | | | |
| 8/8/13 | | | | | | | |
| 9/8/13 | | | | | | | |
| 10/8/13 | 5 | 10 | 98 | 0.09 | 0 | 5 | 4.42% |
| 11/8/13 | | | | | | | |
| 12/8/13 | | | | | | | |
| 13/8/13 | | | | | | | |
| 14/8/13 | | | | | | | |
| 15/8/13 | | | | | | | |
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| 2/9/13 | | | | | | | |
| 3/9/13 | | | | | | | |
| 4/9/13 | | | | | | | |

⁴⁶ Please note that the figures in column E have been rounded to 2 decimal places for the purposes of succinctly presenting original source 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 Ageas 50 with this notification. The presentation of these figures does not affect whether or not the abandoned call rate exceeded 3 per cent.

| | |
|--------------|--|
| 5/9/13 | |
| 6/9/13 | |
| 7/9/13 | |
| TOTAL | |