

Tackling nuisance calls and messages: update on the Ofcom and ICO Joint Action Plan (December 2014)

In March 2014, the Office of Communications (Ofcom) and the Information Commissioner's Office (ICO) published an update¹ of their joint action plan² for tackling nuisance calls and messages.

The update set out the priority areas for action, enshrining both organisations' commitment to continue working together to tackle this issue and reduce consumer harm. The issue is complex and there is more to do, but we have been making good progress in the priority areas set out in our action plan, as follows:

- Ongoing, targeted enforcement action;
- Improving the tracing of nuisance calls and assessing technical measures to help address nuisance calls;
- Working together and with the Government, other regulators, Trading Standards, industry and consumer groups to ensure effective coordinated action; and
- Improving consumer information on how to reduce and report complaints about nuisance calls and messages.

We said we would publish a further update on our work in this area by the end of 2014.

Background

Ofcom carries out research to inform its work on nuisance calls. The annual diary research found that the incidence of nuisance calls received on landlines was similar in early 2014 to that in early 2013.³ In addition, Ofcom carries out a bi-monthly omnibus survey, which shows fluctuations during the course of the year (see Annex A), and in November 2014 the reported incidence of nuisance calls on landlines was seven in ten (71%), similar to that for November 2013.⁴

Complaints about nuisance calls to the ICO, Telephone Preference Service (TPS) and Ofcom have also fluctuated.⁵ The variations in total complaints to the ICO have largely been driven by changes in the volume of complaints about automated telesales calls, while complaints about live telesales and spam texts have remained broadly stable.

¹ http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/JAP_update.pdf

² <http://stakeholders.ofcom.org.uk/consultations/silent-calls/joint-action-plan/>

³ http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance_calls_research/

⁴ See Figure A.1, Annex A

⁵ See Annex B

In terms of the sectors generating nuisance calls, Ofcom's 2014 diary research found that the proportion of nuisance calls relating to payment protection insurance (PPI) was significantly lower in early 2014 compared to the same period in 2013 (down from 22% to 13%).⁶ There had however been increases in calls about home and loft insulation (up from 2% to 8%), other products relating to home improvements (up from 3% to 7%) and solar panels (up from 2% to 6%). In addition, the ICO has found that there has been a sharp increase in complaints about spam texts relating to accident claims and payday loans in 2014.⁷

A). Targeted enforcement action

Ofcom and the ICO are taking targeted formal and informal enforcement action to reduce harm caused by nuisance calls and messages.

ICO enforcement action

The ICO's enforcement activity is focused on those organisations that are contravening the Privacy and Electronic Communication Regulations 2003 (as amended) (PECR) by making live or automated telesales calls or sending spam texts to consumers. It provides regular updates on its enforcement action in relation to marketing calls and texts on its website.⁸

So far this year, the ICO has issued a total of five Enforcement Notices⁹ and two Monetary Penalties (a £50,000 penalty against Reactiv Media Ltd in July 2014 and a £70,000 penalty to EMC Advisory Services Limited in October 2014) in relation to nuisance calls. The ICO is currently monitoring a further 15 organisations for compliance with the PECR and, to date this year, has held compliance meetings with 15 of those organisations to discuss its concerns and demand improvements. In 2014, the ICO has also issued letters to a total of 204 organisations reminding them of their compliance obligations under PECR.

During the week beginning 19 May 2014, the ICO led a coordinated 'Week of Action' with a number of external agencies and regulators to publicise enforcement activity and guidance around the regulations relating to sending spam texts. As part of this, the ICO executed search warrants in the West Midlands, following which an Enforcement Notice was issued against All Claims Management Ltd. In August 2014, the ICO raided a claims management call centre in Llanelli following intelligence about spam texts supplied by the Ministry of Justice Claims Management Regulation Unit (CMRU), the telecoms industry and the ICO's online reporting tool. An investigation into this call centre is currently underway.

⁶ These figures relate to calls where the product or service could be identified.

⁷ See Figure B2 in Annex B

⁸ <http://ico.org.uk/enforcement/action>

⁹ Four of these have been issued since the March action plan update; further details can be found here: <http://ico.org.uk/enforcement/notices>

In June 2014, the ICO lost its appeal at the Upper Tribunal against the First Tier Tribunal's judgment in the case against Tetras Telecoms for sending unsolicited SMS text messages to consumers. The Upper Tribunal did not agree that the mass sending of unsolicited 'spam' text messages to members of the public met the current legal threshold of causing or being likely to cause 'substantial damage or substantial distress'. The Department for Culture, Media and Sport (DCMS), the government department with policy responsibility for PECR, is currently consulting to lower this legal threshold to make it easier for the ICO to take enforcement action.¹⁰

Ofcom enforcement action

Ofcom's enforcement action is focused on organisations that persistently misuse an electronic communications network or service, for example by making abandoned¹¹ or silent¹² calls, using its "persistent misuse" powers under sections 128 to 131 of the Communications Act 2003.

Abandoned and silent calls can be caused by the use of automated dialler technology to maximise the amount of time that call centre agents spend speaking to consumers. Ofcom has published a statement of policy on how it will use its persistent misuse powers to tackle abandoned and silent calls.¹³ This sets out the steps that Ofcom expects dialler users to take to avoid making abandoned and silent calls and, if such calls cannot be entirely avoided, to limit the consumer harm caused as a result. Where companies fail to comply, Ofcom can step in and take enforcement action.

Since the March 2014 action plan update, Ofcom has opened four formal enforcement cases.¹⁴ In October 2014 Ofcom issued one of these companies – Ageas Retail Limited – with a £10,000 financial penalty for making abandoned calls. In December 2014, Ofcom issued two further penalties, one to MYIML Limited (£20,000) and the other to Green Deal Savings Limited (£20,000). The remaining case is ongoing.

Ofcom has also continued to invest resources into informal enforcement action, which can be an effective and efficient means to bring companies into compliance. Since the March update, Ofcom has taken informal enforcement action against 23 organisations. This brings the number of organisations that Ofcom has taken action against in the first three quarters of 2014 to 43. As a result of this action,

¹⁰ The consultation is available here <https://www.gov.uk/government/consultations/nuisance-calls-consultation>

¹¹ This is a call where a connection is established but which is terminated by the person making the call when the consumer answering picks up the receiver. Ofcom expects that, in such circumstances, the consumer should hear a brief recorded information message from the organisation that is trying to call them providing the identity of the organisation and a means of contacting them to opt out of receiving further marketing calls from that organisation.

¹² A silent call is a type of abandoned call, where a consumer receives a call but can hear nothing on answering the phone and has no means of establishing whether anyone is at the other end of the line.

¹³ <http://stakeholders.ofcom.org.uk/consultations/silent-calls/statement/>

¹⁴ Up-to-date information on Ofcom's abandoned and silent calls enforcement work can be found here: http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/

complaints linked to the telephone numbers used by 39 of those organisations have either stopped or fallen significantly, while four cases are ongoing.

In addition, Ofcom has recently launched a review of how it uses its 'persistent misuse' policy, which sets out how we are likely to use those powers and take the policy into account when assessing whether to take enforcement action. On 1 October 2014, Ofcom published a call for inputs¹⁵ to ask stakeholders for initial views on what, if any, changes could be made to:

- help make enforcement more efficient and effective;
- reflect technological developments or other changes in the call centre industry; or
- clarify the policy to make it easier for companies to understand and follow.

Ofcom's next steps will be informed by the responses to the call for inputs. We plan to publish a consultation in the second quarter of 2015 setting out any proposals for changes to the policy statement and a final statement in the fourth quarter of 2015.

B). Improving call tracing and assessing technical measures to help address nuisance calls

It is essential for Ofcom and the ICO to be able to identify the organisations behind nuisance calls and messages in order for appropriate enforcement action to be taken. Therefore tracing nuisance calls and messages is a critical area of work.

Call tracing and validation of calling line identification (CLI) numbers

There can be significant challenges when tracing nuisance calls, especially in instances where organisations present invalid CLI numbers (these are essentially telephone numbers) as a means of wilfully hiding their identity. This is often referred to as "spoofing". Ofcom has been working closely with industry to facilitate and improve call tracing and the following progress has been made within the UK:

- **A new standard to improve call tracing processes** has been published by NICC.¹⁶ This is now being used routinely by Ofcom and the telecoms industry to trace calls more successfully. NICC members are continuing to work on further improvements to this standard and are expected to publish a revised version by the end of 2015.
- **Revised technical industry rules on how CLI numbers are passed between telecoms providers and presented to consumers.** Tracing problems can arise when calls are passed between providers and their different systems, for example between Voice over Internet Protocol (VoIP) and more traditional voice systems. The rules are being revised to help ensure that the

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-persistent-misuse-powers/summary/condoc.pdf>

¹⁶ This is the UK technical standards body for telecoms. It was formerly known as the Network Interoperability Consultative Committee.

information needed to trace calls is more consistently available and the CLI presented to called consumers is as accurate as possible, while observing data privacy regulations. These rules should be finalised by end 2014.

In addition, the global body responsible for VoIP technical standards, the Internet Engineering Task Force (IETF), is working on technical solutions that will make it harder for callers to use VoIP to present a deliberately misleading CLI. This work offers a promising long term solution to many of the CLI problems we see today, but as it involves making significant changes to global systems, it is likely to be at least five years before it will have a material impact.

Short code reporting

The Industry Working Group¹⁷ is working on the feasibility of providing a short code for reporting nuisance calls, similar to the service on mobile phones where consumers can report spam texts by forwarding them on to the number “7726”. So far, this work has identified that the approach used in the 7726 spam text scheme has no direct equivalent when considering voice calls. The group is therefore looking at the availability and feasibility of alternative approaches.

Call blocking

A number of stakeholders suggested **network based call blocking** as a possible solution to help reduce nuisance calls. TalkTalk launched its network call blocking service in October 2013.¹⁸ Ofcom has considered the issue of network based call blocking and concluded that there is some scope for telecoms providers to voluntarily choose¹⁹ to offer a service to its customers where it blocks access to those making potentially unlawful use of its communications network or service. It would, however, be for telecoms providers to consider the criteria they would use to decide when to block numbers and how to handle any complaints they might receive from those that have been blocked.

Ofcom also notes that there are a number of other important factors to consider when looking at network based call blocking. For example, it is possible that blocking CLI numbers could incentivise rogue businesses to spoof their number, move quickly to other numbers or use a range of numbers. This could not only limit the benefit of blocking the CLI, if the nuisance simply continues on different

¹⁷ This group was set up by Ofcom last year to develop and test new cross-industry approaches to tackle nuisance calls.

¹⁸ <http://www.talktalkgroup.com/press/press-releases/2013/30-10-2013.aspx>

¹⁹ Subject in BT's case to its access obligations not unreasonably to withdraw access to numbers and to telecoms providers' general compliance with General Condition (GC) 17.6 requiring them to not unduly discriminate against another telecoms provider in relation to its Adoption or use of Telephone Numbers. There are also limited provisions under GC 20.3, which implements Article 28(2) of the Universal Services Directive, for Ofcom to issue a direction to require a telecoms provider to block access to telephone numbers and/or Public Electronic Communications Services on a case by case basis where there is fraud or misuse (e.g. generating a call with a CLI which is also used for premium rate services and when the consumer calls it they are faced with high unexpected charges that they were not adequately warned about).

numbers, but could also make tracing for enforcement purposes more difficult. Ofcom is continuing to discuss network call blocking with telecoms providers to determine whether there is anything that could usefully be done, however it notes that there are practical limitations within the network equipment used by some telecoms providers, particularly older legacy systems, which Ofcom understands could make network based call blocking (for incoming calls) potentially very costly and time consuming to deploy²⁰.

An alternative form of network call blocking places the **recipient of the call** in the role of deciding which calls will be stopped from reaching them (recipient led call blocking). This is similar in principle and operation to the telephone handsets and standalone devices available which allow customers to set up lists of blocked numbers and/or automatically screen calls in various ways. Many telecoms providers already offer services which allow consumers to set up a simple list of CLIs they don't wish to be contacted by²¹. Ofcom is aware that more sophisticated offerings are being developed which it is expected will enable recipients of calls to deal more effectively with a larger number of unwanted CLIs. Ofcom is discussing the potential for such systems with telecoms providers.

C). Working together with the Government, other regulators, industry and consumer groups to ensure coordinated action

The ICO and Ofcom have continued to focus on taking co-ordinated action with the Government, other regulators, Trading Standards, industry and consumer groups to tackle nuisance calls and messages in an effective and efficient manner.

Key actions since the last update are:

- **Nuisance Calls and Texts Task Force on consent and lead generation.** In May 2014, at the request of the Government, Which? set up the Task Force to consider measures that could help tackle unsolicited sales calls and texts including those based on data provided by lead generation businesses. Ofcom and the ICO have both been actively involved in this work as members of the Task Force, which published its report on 8 December 2014. The report has a number of recommendations for the ICO and Ofcom, which we will consider and take forward in 2015.
- **Research on the impact of the Telephone Preference Service (TPS) on live telesales calls.** Ofcom and the ICO commissioned a joint study to measure how effective the TPS is at reducing

²⁰ The length of time it would take to implement changes to legacy systems becomes more of an issue the closer the legacy systems come to the end of their 'shelf life' and focus turns to the development and implementation of new systems.

²¹ Such services are typically accessed by dialling '14258' and have various names such as "Caller barring" and "Choose to Refuse". Some providers charge an additional fee for the service and some do not. See <http://consumers.ofcom.org.uk/phone/tackling-nuisance-calls-and-messages/phone-company-services-that-can-help-tackle-nuisance-calls/>

the number of live telesales calls received. Published in July 2014,²² the study found that registering with the TPS reduced the average volume of live telesales calls during March 2014 by around one third (31%). Nearly half (45%) of those registered with the TPS as part of the study did not receive any live telesales calls, compared to a quarter (26%) of those who were not registered. In addition, while the TPS exists to help reduce *live* telesales calls received by consumers, the study found that registering also triggered a reduction in the total volume of *all* types of nuisance calls. People registered to the TPS may still receive marketing calls from rogue companies who ignore the rules or from companies to whom they have given consent to make marketing calls. This research was shared with the Government and the Nuisance Calls and Texts Task Force to inform discussions about this issue.

- **Information sharing.** The Government has made legislative changes to make it easier for Ofcom to share intelligence with the ICO, which may help the ICO take enforcement action. This change became effective in July 2014 and has already been used to enable a fuller, quicker exchange of information with the ICO. The ICO works closely with the Ministry of Justice Claims Management Regulatory Unit (CMRU) and has attended a number of audits this year, where advice on compliance with the PECR has been provided to the CMRU and the organisations being audited.
- **Working closely with the Government.** Ofcom and the ICO have continued to work closely with the Government, both directly on issues such as lowering the threshold for ICO action and through a roundtable stakeholder discussion in September 2014 on a range of nuisance calls issues. In November 2014, the Government announced that it would consult on secondary legislation to change the provisions in PECR that currently allow companies making marketing calls to withhold their CLI.²³ The ICO and Ofcom will continue to engage with the Government on these proposals.
- **Lead generation / Operation Linden.** The ICO leads Operation Linden, a multi-agency group of stakeholders (including regulators, consumer groups, trade associations and industry) that work together to share intelligence and identify opportunities to tackle nuisance calls, in particular by working to improve compliance by industry. A key work stream concerns organisations that act as lead generators. The ICO has held nine meetings with organisations that collect and/or trade in personal data to look closely at the “opt-in” text that is being relied upon to obtain peoples’ consent to receive marketing calls.
- **Working with Trading Standards on commercial alternatives to the TPS.** Ofcom has been working with Trading Standards to consider how misleading claims by commercial alternatives to the TPS can best be addressed. The ICO has a number of investigations underway into organisations purporting to offer alternatives to the TPS, with the aim of considering

²² <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/tps/tps-effectiveness.pdf>

²³ Footnote to column 915 <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141126-0001.htm#14112649000696>

enforcement action for breaches of PECR. The ICO has also held a meeting with the National Trading Standards Scams Team to further joint working and share intelligence.

- **Encouraging BT to present international CLI.** In July 2014, BT completed its UK-wide programme to update its local exchanges so that, when present and not withheld, customers have the ability to see the full telephone number on calls from abroad as well as on calls from within the UK. Additionally the word "INTERNATIONAL" will continue to be displayed on suitable customer equipment. This helps recipients of international calls who have caller display²⁴ to decide whether or not to answer the call. It also makes it easier for recipients to report unwanted and silent calls to the relevant regulatory authorities.
- **Working with overseas organisations.** In addition to Ofcom's support for the work of the IETF on improving CLI data for VoIP calls (to improve call tracing), both Ofcom and the ICO continue to engage with the Do Not Call Forum of the London Action Plan²⁵ which includes overseas regulators with responsibility for tackling nuisance calls, and with the Federal Trade Commission (FTC) in the USA in particular. The ICO has recently joined the secretariat of the London Action Plan and is working with other members, the FTC and the Office of the Privacy Commissioner Canada, to drive forward co-ordinated actions for the group.

E). Improving consumer information on nuisance calls and messages

In May 2014 Ofcom launched two new consumer guides to help promote wider access to tips on preventing and dealing with nuisance calls and messages. The first guide is a short online educational video²⁶ that is available with subtitles to help people with hearing impairments. The second guide provides advice on preventing nuisance calls in an 'Easy Read' format²⁷ designed to be easily understood by people with learning disabilities. A number of organisations including Age UK, Citizens Advice, Mencap, StepChange, Which?, Helplines Partnership and the Communications Consumer Panel have helped to promote the guides.

Ofcom research has found that consumers cite their own phone providers as the most popular place to go for information about how to stop nuisance calls or how to complain about them.²⁸ In light of this, Ofcom has identified, in discussion with the Communications Consumer Panel, the essential information that phone providers should give their customers. It has also, through a review of telecoms providers' websites and material used to guide customer service representatives speaking to customers on the phone, identified deficiencies and examples of best practice. It has now written to the major telecoms

²⁴ Caller display shows you the number of the person calling (if the number has not been withheld and you have a phone with a display) so that you can choose whether to answer or not.

²⁵ <http://londonactionplan.org/>

²⁶ <http://consumers.ofcom.org.uk/phone/tackling-nuisance-calls-and-messages/>

²⁷ <http://consumers.ofcom.org.uk/files/2014/05/easy-read-nuisance-calls-guide.pdf>

²⁸ http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/TCE_Research_final.pdf

providers asking them to review the information they provide on their websites and over the phone in light of Ofcom's findings, to make changes as appropriate and report back to Ofcom.

In light of the delivery of the above work, Ofcom's ongoing consumer information work with consumer groups will be captured under the "*Effective coordinated working*" priority area in 2015.

Summary

Tackling nuisance calls and messages remains a priority for both the ICO and Ofcom. Progress has been made in all the priority areas set out in the update on the joint action plan published in March 2014. Our revised priority areas for 2015 will be:

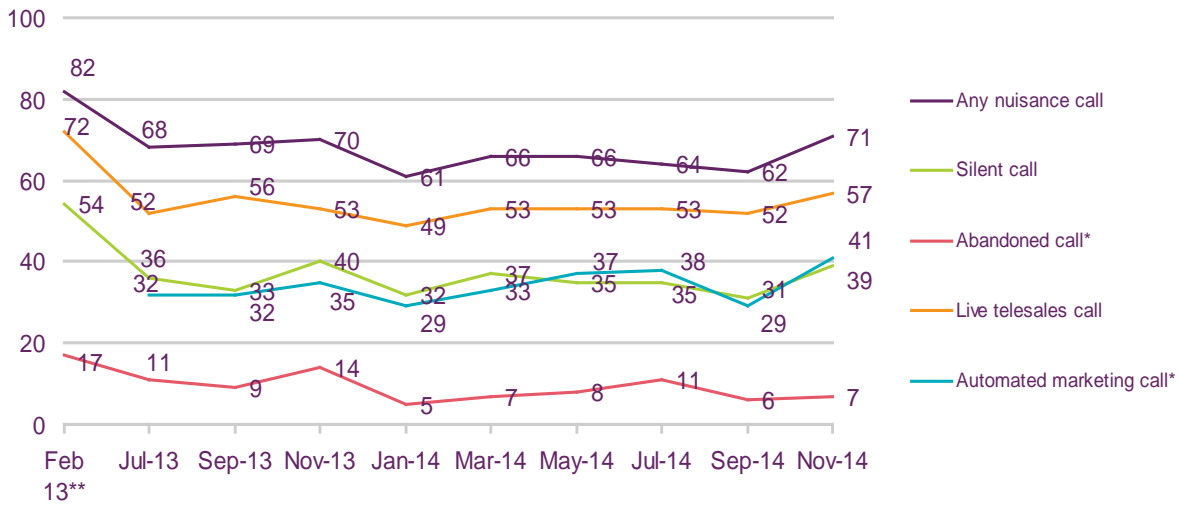
- **Ongoing, targeted enforcement action** against non-compliant organisations to stop nuisance calls and messages (including a review of Ofcom's 'persistent misuse' policy on how Ofcom is likely to use its persistent misuse powers);
- Continue working with industry to further **improve the tracing of nuisance calls and other potential technical measures to help reduce nuisance calls**; and
- **Effective coordinated action** to, for example, share intelligence, facilitate enforcement and improve consumer information to reduce consumer harm.

We intend to publish a further update on our work in this area by the end of 2015.

Annex A – Ofcom’s bi-monthly omnibus survey on nuisance calls received in the last four weeks

Figure A1 shows that consumers’ reported experience of all nuisance calls on landlines in the previous four weeks fell from eight in ten (82%) in February 2013 to six in ten in January (2014). This increased slightly in March 2014 but then it started to fall again so that by September 2014 it was at a similar level (62%) to January 2014. In November it rose to seven in ten (71%), similar to the level found in November 2013 (70%).

Figure A.1: Unwanted calls received on a landline in ‘the last four weeks’



Source: Kantar Media face to face omnibus

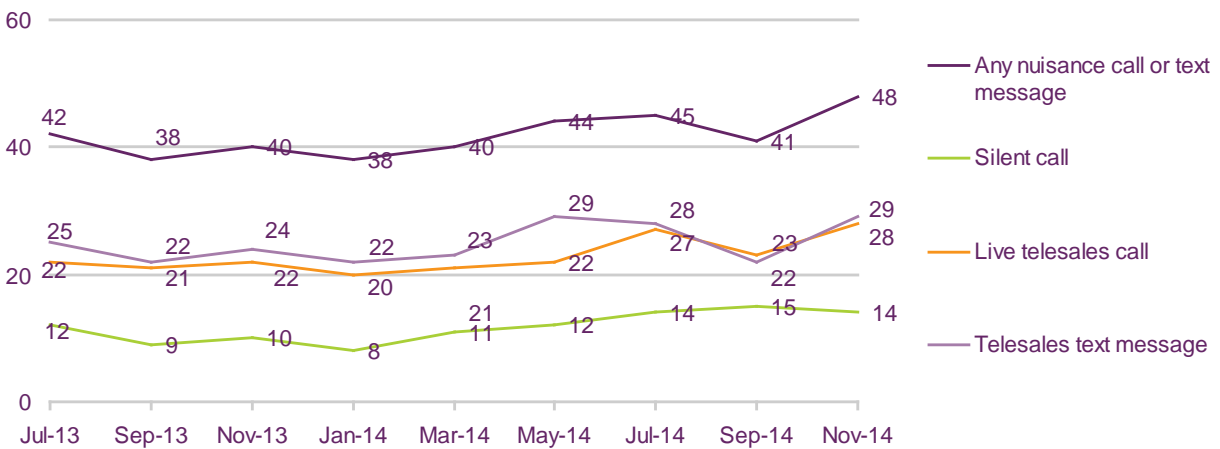
Base All with a landline phone (July 2013, 848); (Sept 2013, 896); (Nov 2013, 786); (Jan 2014, 848); (Mar 2014, 865); (May 2014 817); (July 2014, 807); (Sept 2014, 808) (Nov 2014, 786)

* These percentages are derived from a low base size- indicative only

** Data from pilot study: Source: GFK Random Location Omnibus; Base: All with a landline phone (1614)

Consumers' experience of nuisance calls on mobile phones remains lower than their experience of these types of calls on a landline phone. In November 2014, three in ten (29%) UK adults with a mobile phone reported receiving a marketing text message, three in ten (28%) reported receiving a live telesales call and less than one in five (14%) reported receiving a silent call in the last four weeks. Overall, in November 2014 the proportion of UK adults who say they have received a nuisance call or text on their mobile phone in the last four weeks was almost one in two (48%).

Figure A.2: Unwanted calls received on a mobile phone in 'the last four weeks'



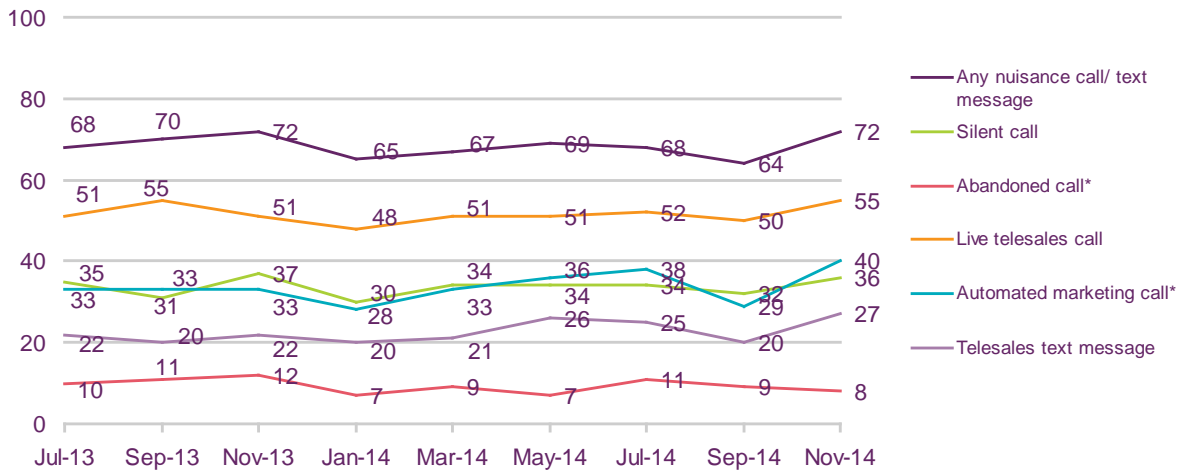
Source: Kantar Media face to face omnibus

Base: All with a mobile phone (July 2013, 895); (Sept 2013, 923); (Nov, 2013 838); (Jan 2014, 922); (Mar 2014, 965); (May 2014, 902); (July 2014, 873); (Sept, 903); Nov 2014 (923)

NB: base size too low to calculate abandoned calls and automated marketing messages

Figure A3 shows consumers overall reported experience of receiving an unwanted call on their landline or mobile phone in the last four weeks. In November 2014, seven in ten UK adults with a landline or mobile phone received an unwanted call in the last four weeks (72%), the same level that was reported in November 2013.

Figure A.3: Unwanted calls received on a landline or mobile in 'the last four weeks'



Source: Kantar Media face to face omnibus

Base All with a landline phone or mobile phone (July 2013, 1050); (Sept 2013, 1067); (Nov 2013, 960); (Jan 2014, 1038); (Mar 2014, 1097); (May 2014, 1030); (July 2014; 1003); (Sept 14; 1011); (Nov 14, 1036)

* These percentages are derived from a low base size- indicative only

Annex B: Complaints about nuisance calls and messages

The ICO, TPS and Ofcom collect complaints data about nuisance calls and texts. This data is used to identify potential non-compliance, and can also be an indicator of the scale of the problem.

Complaints to the ICO

Complaints to the ICO about live and automated telesales calls and SMS peaked in March 2013 and broadly declined until January 2014 (Figure B.1). The number of overall complaints then rose to 19,683 in July 2014, falling again in August to 14,557 before rising to 17,564 in October 2014. During this period, complaints received regarding live telesales calls remained relatively stable, whereas complaints about automated calls more than doubled between April and July 2014. Complaints about spam SMS messages also remained relatively stable throughout the period.

Figure B.1: Complaints to the ICO online reporting tool about live and automated telesales calls and SMS (March 2013 to October 2014)

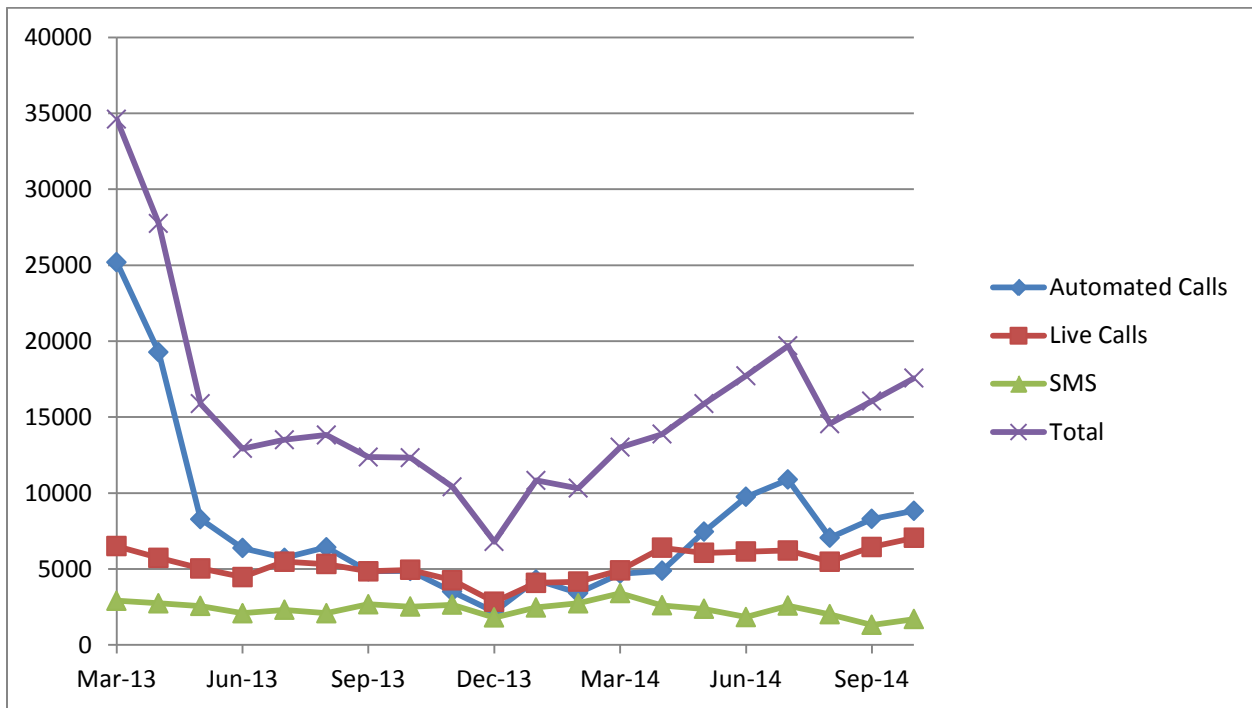
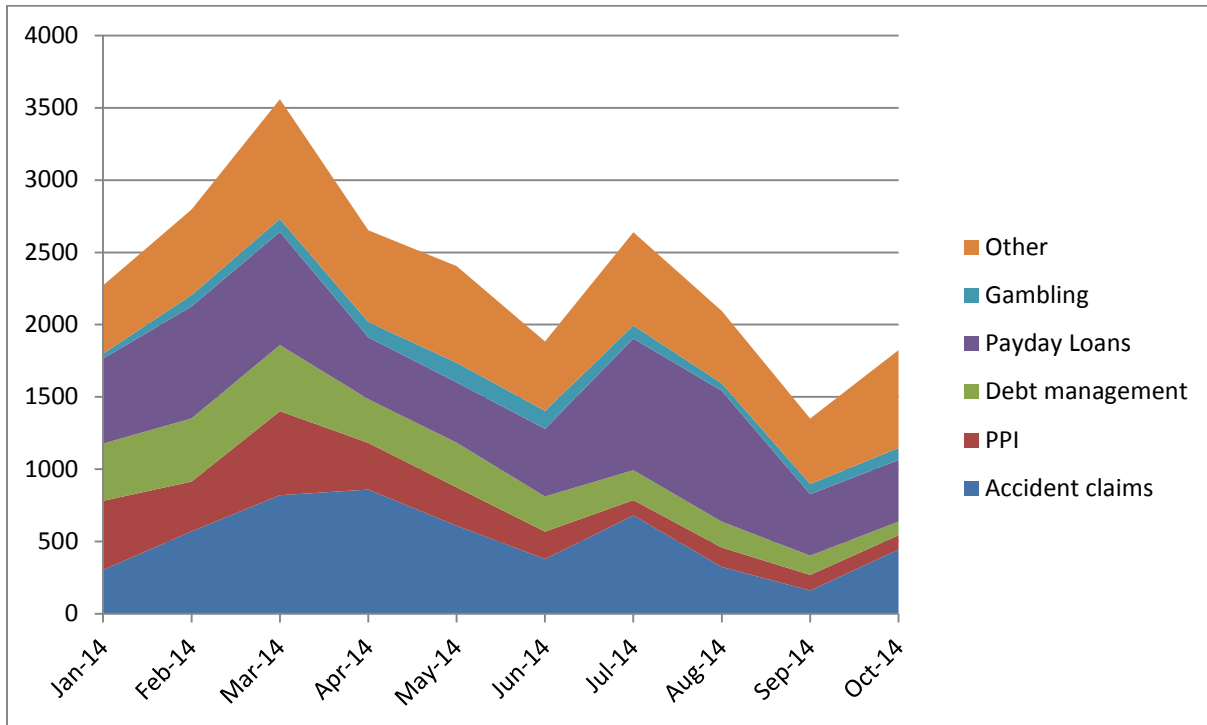


Figure B2: Complaints to the ICO online reporting tool about spam text messages, by subject, (January 2014 – October 2014))

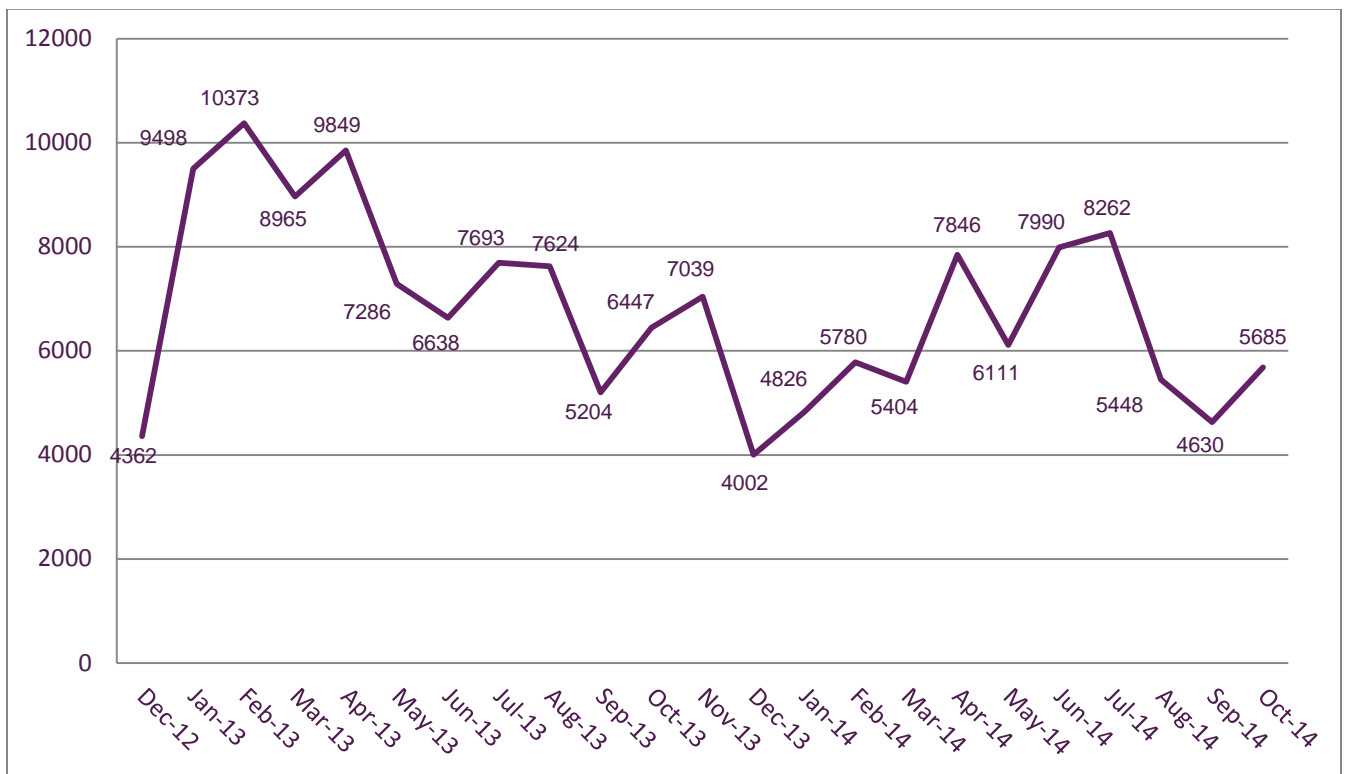
The ICO received complaints about spam SMS on the subject of accident claims and payday loans more frequently than any other issue throughout the period January 2014 - October 2014.



Complaints to the TPS

The TPS maintains, on behalf of Ofcom, a register of persons who do not want to receive marketing calls. Complaints volumes since December 2012 are set out in Figure B3. In 2014, the number of complaints to the TPS has fluctuated but increased to reach a peak of 8,262 in July before falling to 4,630 in September 2014, increasing to 5,685 in October.

Figure B3: Complaints to the Telephone Preference Service (TPS, December 2012 to October 2014)



Complaints to Ofcom

The number of complaints to Ofcom about abandoned and silent calls has fluctuated throughout the period, increasing to reach a peak of 4,136 in June 2014, before falling to 3,381 in October 2014. This number is higher than October 2013, when Ofcom received 2,282 complaints.

Figure B4: Complaints to Ofcom about abandoned and silent calls (Jan 2013 to Oct 2014, both business and residential complaints)

