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Dear Ms Bower

Ofcom Consultation – Review of How We Use Our Persistent Misuse Powers – Focus on Silent and Abandoned Calls

I am writing on behalf of Vanquis Bank in response to the Ofcom consultation paper above dated 2 December 2015 for response by 24 February 2016.

Introduction

Vanquis Bank, part of the Provident Financial Group (PFG), is a specialist credit card company that uses its expertise to lend responsibly to the under-served, higher risk credit market offering 'credit builder' credit cards. Vanquis currently has more than 1.4 million customers. Vanquis also offers fixed rate savings bonds.

Vanquis operates two call centres in the UK located in Chatham and in Bradford. Across these two sites outbound telephony services are used for a variety of purposes including:

- New accounts (Welcome Call) – applicants who pass initial credit scoring receive a welcome call as part of our credit card application process;
- Outgoing account management – instances where accounts are proactively serviced;
- Collections activities;
- Notification to customers of suspicious activity/potential fraud on an account.

In all we have c250 agents working on new accounts and a further 400-450 on collections.

With regard to silent and abandoned call, the main subject of the consultation:

- Vanquis does not make any silent calls.
- Vanquis policy is that the rate of abandoned call never runs near 3%. This rate is currently averaging <1% for abandoned calls on collections, rates which have also been achieved for new accounts since November 2015.

Key Points

- We believe that Ofcom may have over-estimated the benefits of its proposed clarification and underestimated the impacts on both consumers (by way of detriment) and firms;
- We would expect the standard response by compliant firms to the clarification would be to move from predictive dialling to less efficient manual preview/progressive dialling. For Vanquis it is estimated that this would require deployment of up to three times as many call centre staff than at present;
- Given that our abandoned call rates are already less than 1%, a move to manual processes with the associated risk of human error suggests that any improvement will be marginal at best at a considerable and disproportionate cost. Whilst we strive to minimise abandoned call rates the risk of human error means that, in reality, a zero abandonment rate could never be achieved;
- The Ofcom clarification will have most impact on firms that already try hard to be compliant. In our view, non-compliant firms will not improve their behaviour in response to the clarification. Indeed, some currently compliant firms may choose not to comply. Essentially this means that the underlying problem that we believe Ofcom is trying to address will not be materially impacted;
- We believe there is a material difference in consumer detriment between (i) silent calls, (ii) abandoned cold calls and (iii) abandoned calls where the caller has an existing relationship with the customer, and that this differentiation should be reflected in Ofcom's enforcement policy. Vanquis only ever calls existing customers;
- The Ofcom proposal on the use of multiple CLIs is directly opposite to that of the Financial Conduct Authority, where diametrically opposing views between regulators creates obvious difficulties. Precluding multiple CLIs stands to be of particular detriment in two ways: (i) introducing a delay in contacting customers at risk of financial difficulties increases the risk that they will fall into actual financial difficulties; and (ii) putting customers at an additional risk of fraudulent activity where use of only one CLI per campaign makes it simpler for fraudulent parties to exploit a company's CLI for malicious intent ("number spoofers").
- We believe that the increase in customer detriment that we foresee could be addressed by continuing with the existing policy as far as it relates to instances where a firm has an existing relationship with a customer and/or operate in the consumer credit market.

General Points

Whilst we accept the Ofcom view that the consultation paper concerns a clarification of existing rules rather than a change in the rules we observe that moving from a regime where there is some degree of tolerance to one where there is potentially none is, in fact, a significant and material reinterpretation with profound implications for both consumers and firms. Essentially the change makes any user of any predictive dialler guilty of misuse and at risk of enforcement action. That risk is best mitigated by moving to preview/progressive dialling, though this is not a perfect solution as it introduces the risk of human error.

We suspect that Ofcom has over-estimated the benefits to consumers of its clarification and has underestimated the disproportionate risk of consumer detriment and impact on firms which stands to:

- introduce/increase consumer detriment, especially for those at risk of financial difficulties;
- increase the risk of fraud; and
- impact upon firms' operational procedures, disproportionately inflating costs and required resource.

We anticipate that the main impact will be on those legitimate firms such as ourselves that work hard to comply with the existing interpretation of the regime. In our view those non-compliant firms that make no attempt to comply at present are even less likely to be persuaded to do so in a less tolerant regime and some firms that currently comply may choose not to. As a result, any benefit to consumers is likely to be small, perhaps unnoticeable, whilst the core of the underlying problem will remain unaddressed.

If Ofcom decide to proceed as proposed, given that compliant firms will potentially require major operational reconfiguration, we would request that sufficient time is allowed to review and devise plans to address the necessary changes.

Specific Questions

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

Yes, we believe that OFCOM is right to have its main focus being the tackling of silent and abandoned calls. However, we would encourage a greater differentiation of what constitutes an abandoned call.

In particular the consultation document fails to differentiate between cold calling and calls relating to an existing customer relationship. We believe that this is an important distinction that could be used as a basis for an appropriately differentiated approach. Where contact is with existing customers the potential for customer harm is likely to be lower than for unsolicited calls which, we believe, should be less tolerated or not tolerated at all.

In fact, we would go so far as to say that where firms have an existing relationship with a customer, they are not part of the problem Ofcom appear to be trying to solve yet are likely to be the most impacted.

Vanquis does not cold call customers. At Vanquis Bank dialling is largely utilised for arrears management and is in line with standard industry practice. To monitor customer feedback Vanquis actively seeks evaluation through surveys after customer contact and measures customer satisfaction. Complaints about abandoned calls are monitored/tracked but volumes are insignificant. For example, during the period from 1 January 2014 to date, Vanquis has received 40,583 complaints across all topics. Of these just four (4, or 0.001%) related to abandoned calls.

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

Vanquis has nothing to add here.

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

We agree with the proposals relating to IVM and PECRs. In particular we welcome Ofcom's clarification that Answer Machine Detection (AMD) is considered a misuse.

However, we do not agree that use of multiple CLIs should be considered as misuse in all circumstances for the reasons elaborated on in our response to Q12.

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

No comment.

Q5: Do you have any comments on: a) the evidence of consumer harm from the forms of persistent misuse we propose to include in the policy (and on silent and abandoned calls in particular); and b) our approach to estimating the consumer harm from those forms of misuse? In all your responses, please state your reasons and provide evidence to support your views

No comment.

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

We would only comment that any action or clarification should focus on the core of the problem and that remedies be proportionate to the problem, and in particular on those firms who do not intend to comply. According to Ofcom's own published data, of 4.8 billion nuisance calls 200 million of these are abandoned calls, less than 5% of the total. The focus of the document then appears to be on this 5% rather than the 95%.

We understand that the vast majority of these 4.8 billion nuisance calls are made by non-compliant firms that do not follow the regulation and, in all likelihood, have no intention of following the regulation. In our view, reducing the tolerance to those compliant firms that do follow the regulation will not address this fundamental underlying problem which can only be addressed through more rigorous enforcement.

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

We would reiterate the point that the greatest consumer detriment results from silent calls rather than abandoned calls, and that where it arises as a result of abandoned calls, consumer detriment is mostly associated with calls relating to cold calling rather than where an existing customer relationship exists. This hierarchy should inform and determine Ofcom's enforcement priorities and the degree of tolerance applied.

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

In our view the definition of an abandoned call might usefully be refined such that an inbound call transfer generated from an IVM call whereby the customer has to wait 'a long period' is also defined as an abandoned call – notwithstanding the need to be careful around defining what constitutes 'a long period'.

Q9: Do you agree with the proposed policy on silent calls – that these should be Ofcom's highest priority for enforcement action, however caused and in whatever number? Do you have any information that would help to quantify further the potential costs and benefits of the proposal?

Yes, Vanquis agrees with the proposed policy on silent calls. Vanquis does not make any silent calls and therefore there would be no implications for us in terms of costs or benefits.

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

We would have no issue with the proposed policy on abandoned calls that, where a caller's abandoned call rate is three per cent in any 24 hour period, this should represent a higher priority for Ofcom enforcement, and that enforcement action should take into account all of the abandoned calls a caller makes. The Vanquis policy is that the rate of abandoned call never runs near 3%.

However, we are finding it difficult to reconcile this position with other paragraphs in the consultation document, particularly paragraphs 4.69 and 4.97. These paragraphs state that Ofcom will consider taking action where the caller makes more than three abandoned calls. This seems a very specific and low number and we are curious as to why it has been selected.

Where any more than three abandoned calls constitute persistent misuse, we cannot imagine any call centre operation not being captured by this limit. This essentially makes any user of any predictive dialler guilty of misuse, driving the need for a significant alteration to existing practice i.e. a move to preview/progressive dialling.

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

Aside from the costs and benefits that we have identified below there are also a number of areas where we believe customers will experience increased detriment.

Detriment

Our core business model is based upon high contact rates with customers (more so than for main stream credit card companies), particularly with those customers who fall into arrears in making payments and who enter our collections process. If the clarification obliges us to move from predictive to preview/progressive dialling we anticipate that we will see a reduction in contact rates across all departments (new accounts; account servicing; collections; fraud). In particular, were we to experience a reduction in contact rates or take longer than is currently the case to make contact then consumers at risk of financial difficulties may find themselves actually in difficulties that currently would be avoided, or may be exposed to the risk of fraud for longer than at present.

We also anticipate a risk of increased customer detriment relating to the use of multiple CLIs, discussed in response to Q12.

Benefits

The only obvious benefit is that reputable, legitimate companies who currently try to minimise abandoned calls will seek to eliminate all such calls.

However, given that under predictive dialling our current abandoned call rates are already less than 1%, a move to less efficient manual preview/progressive dialling – which will be subject to human error – is likely to show little, if any, improvement to this rate. Preview/progressive dialling is not the perfect solution.

We do not see any benefits accruing to customers from non-complaint firms who are unlikely to change behaviour in response to the clarification.

Costs

An increase in costs is, for us, a secondary consideration behind any detrimental impact on consumers. However, we agree with the statement made in paragraph 4.99 that the proposals will result in 'costs (that) may exceed the benefits', in our view by a very significant margin.

We have undertaken a test in preview/progressive dialling in order to assess the impact that migration to this method of dialling would incur. It has been calculated that the inefficiencies relating to preview/progressive dialling would require Vanquis to deploy an additional **three times** the current number of call centre agents in order to make the same volume of outbound dial attempts to our existing customers. This does not include staffing to cover inbound volumes where additional agent support would also be required.

This will arise as a result of the following factors:

- Inefficiencies in dialling will be created as agents will be required to handle every call rather than just connected calls (this impact is already acknowledged in the consultation paper in paragraphs 4.85/4.86);
- With more agents being required to make an equivalent number of calls using preview/progressive technology. This, in turn, means:
 - the time to make contact with a customer will increase;
 - more agents means that there will be a need for more desks, licences, equipment and additional premises;
- Staffing requirements will fluctuate more significantly at peak times (e.g. at times of high applications or large collections cycles);
- Higher demand for inbound calls resulting in a change to staffing demands.

Ultimately it is probable that these additional costs will be passed on to consumers and have significant economic implications.

So whilst Ofcom may believe that its position regarding abandoned calls has not altered, the clarification in the current consultation suggests a number of very significant alterations in practice, not least a significant increase in the resource required.

We would therefore request that Ofcom reconsiders its position to take into account the proportionality of the expected benefits relative to the expected consumer detriment, where we believe the consumer detriment and impact on firms will heavily outweigh what we believe will be a marginal consumer benefit at best.

In particular, given the hierarchy of customer detriment, we prefer to see a tolerance regime that differentiates between:

- Silent calls;
- Abandoned cold calls;
- Abandoned calls where a customer relationship already exists.

For example, this might also allow for an approach whereby the existing 2010 policy specifically limiting the number of abandoned calls to no more than 3 per cent of live calls per campaign could continue to apply where a firm has an existing customer relationship, but that no tolerance would be granted to silent calls or abandoned cold calls.

However, if Ofcom decides to go ahead as proposed then the time period in which to make alterations should be sufficient to allow an efficient and orderly migration period to review and devise plans to implement the necessary changes.

Q12: Do you have any comments on our proposed changes to the policy in relation to persistent misuse arising from: a) misuse of ACS; b) misuse of a CLI facility; and c) breaches of the PECRs?

Paragraphs 4.156/4.157 of the Ofcom consultation considers the use of a range of Caller Line Identifiers (CLIs) on a rotating basis and how this may mislead customers into picking up calls that they may not otherwise have answered.

Although paragraph 4.157 references debt recovery and the role that using different CLIs plays in increasing the chances of a call being picked up, the consultation paper does not appear to reference the Financial Conduct Authority's work in this area, undertaken in particular with reference to the high cost short credit industry but applicable across consumer credit.

The Financial Conduct Authority (FCA) released a thematic review in March 2015. Point 3.7 (pages 21 and 22) considers the FCA's response to early identification of customers in financial difficulties (particularly those in financial difficulty or in vulnerable circumstances) and the importance of exercising forbearance or any special assistance the customer may require at an early stage. Utilising different CLIs increases the chances of contacting customers which is in support of the focus of the FCA's review.

Furthermore, CONC 7.9 looks at the rules with respect to contacting customers, misleading communication, premium rates and calling at unreasonable times¹. There is no mention of CLIs as a cause for concern.

This means that we are now faced with contradictory opinions from Ofcom and the FCA meaning that we will be forced to choose how to comply when, on the face of it, we cannot comply with both at the same time.

In addition, with regard to the use of CLIs per customer per campaign we do currently use multiple CLIs which are rotated on an intraday basis. Mobile, landline and geographic CLIs are used across campaigns contributing to a high contact rate. Removal of this will lead to:

- A reduction in Right Party Contacts (RPCs). We typically see a material uplift in collections when using smart CLIs. If we were to use a single CLI per campaign then we would inevitably see a reduction in promises/payments for collections. This will increase the risk of customer detriment by increasing the possibility of a negative outcome for customers that might be at risk of financial difficulties arising from a delay in making initial contact;
- Multiple CLIs are also used to help direct customers to the right team. For example, a different number is used for applications with missing data than those that are complete. It would be difficult for systems to be redesigned to accommodate this change. Therefore consumers would be inconvenienced by longer calls that involve some form of routing and possible queuing. The good reasons for using multiple CLIs are acknowledged in paragraph 4.160 although ultimately Ofcom concludes that the use of multiple CLIs is likely to aggravate detriment;
- Fraudulent organisations can exploit company CLIs to mask deceptive activity ("number spoofing") which is best countered by changing CLIs on a frequent basis. Therefore restrictions on the use of multiple CLIs means that both consumers and firms will be more exposed to the risk of fraud.

¹ See <https://www.handbook.fca.org.uk/handbook/CONC/7/9.html>

Finally, feedback from our own customer listening sessions (a continuous programme of qualitative consumer research group discussions) has been that customers are grateful for the different CLI presentation as it has encouraged them to respond to Vanquis' contact attempts in that it emphasises that Vanquis are actively trying to contact them.

Again, we believe that Ofcom has over-estimated the benefits of precluding use of multiple CLIs and under-estimated the inadvertent consequences that will increase consumer detriment and fraud risks. We therefore request that Ofcom reconsider the approach to multiple CLIs and continue to allow their use.

If blanket use of multiple CLIs is not desirable, one way of addressing the apparently conflicting positions of Ofcom and the FCA would be to state that multiple CLIs would continue to be allowed for debt recovery practices used by in the consumer credit market, or if preferred, in the under-served high-risk credit market, in the interest of exercising forbearance for customers at risk of financial difficulties.

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

No comment.

Q14: Do you have any further comments or views on other aspects of this consultation or the proposed policy set out in Annex 5 which are not covered above? In all your responses, please state your reasons and provide evidence to support your views.

No comment.


Conclusion

In summary we believe that Ofcom has generally over-estimated the benefits to consumers of its proposed clarification and under-estimated the resulting consumer detriment and the impact on compliant firms. We would therefore encourage Ofcom to revisit its proposals to ensure that the changes resulting from the clarification will have a material impact on the underlying problems, are proportionate and worthwhile, not penalising compliant firms while not resulting in any change in behaviour among non-compliant firms.

As members of the British Bankers' Association we are aware that the BBA will be submitting a response to which we have contributed and fully support.

Should you require any clarification we are happy to discuss any of the above points with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Rodford', with a long horizontal flourish extending to the right.

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