

**From:** webform@ofcom.org.uk  
**Sent:** 16 December 2011 12:01  
**To:** Competition Complaints  
**Subject:** Responding to the consultation

**Title:**

Ms

**Forename:**

Sara

**Surname:**

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**Representing:**

Organisation

**Organisation (if applicable):**

The Direct Marketing Association

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**What do you want Ofcom to keep confidential?:**

Keep nothing confidential

**If you want part of your response kept confidential, which parts?:**

**Ofcom may publish a response summary:**

Yes

**I confirm that I have read the declaration:**

Yes

**Ofcom should only publish this response after the consultation has ended:**

Yes

**Additional comments:**

## 1. Naming and shaming

Ofcom publishes a company's name before they have finished their investigation, but they have also said that the reputational damage associated with this action is a deterrent factor. They must therefore acknowledge that publishing the company's name before they pronounce guilt is unfair.

Notice also that naming and shaming is a blunt instrument - if you name two companies - one which completely ignored the rules and another that was a percent over the limit the reputational damage is similar. Much better to name and shame when the level of the fine is announced as it is clear then who is the biggest transgressor.

## 2. Transparency

The procedures for nuisance call investigations are not clear. What are the steps?

## 3. Redaction / confidentiality

The rules about whether or not Ofcom will fine a company are very unclear as is the relationship between level of nuisance and level of fine. We raised this with Ofcom when the rules were introduced and they said that this would all become clear as Ofcom took enforcement action - that we would get to understand their thinking as cases were judged. The problem is that there have been very few actions by Ofcom, and when there has the key data that tells us the size of the breach is redacted because of commercial confidentiality. Surely if Ofcom are fining a company because they have broken the law then this information cannot be privileged under commercial confidentiality?

## 4. Tendency to pursue big names

We believe that there are companies who are seriously flouting the rules on nuisance calls, yet Ofcom have picked up on big companies who have just stepped slightly over the line. These companies are big names, and we get the feeling that this is a factor - getting a big name scalp is better for Ofcom. We understand of course that big call companies = big call centres = large numbers of calls, and that a 1% overage by a big company can cause more nuisance calls than a small call centre that ignores the rules, however there are many big call centres that aren't household names.

## 5. Client/Outsourcer responsibility - Due diligence

Lots of legitimate companies (clients) use outsource call centres. The best companies have stringent contracts with those outsourcers to ensure that they carry out work on their behalf in a compliant way. It appears that this is not sufficient to protect a client company. For example, Ant Marketing (an outsourcer) were one of the first companies given a notice by Ofcom about nuisance calls - they were named and shamed, and not the client. In the current set of notifications, client companies are named rather than outsourcers, even where the outsourcer is suspected of being in breach.

This understandably makes companies very nervous about outsourcing work. DMA client members would like guidance as to what level of due diligence is necessary for them to carry out to ensure that if an outsourcer acts in a non-compliant way, it is the outsourcer, not the client who is named, shamed and fined by Ofcom.

## 6. Evidence based regulation and investigation

It is not clear from information released so far that efforts are made to establish a formal causal link between activities that potentially cause nuisance and the actual nuisance being caused. Where investigations are triggered by specific complaints it is important that the calls to which they relate are traced fully as individual calls, rather than simply as part of a general data gathering exercise. Allowing root causes to be established in this way means that regulations can be effectively targeted.

Without the correct causal links there is a danger that causes are misinterpreted meaning that actions taken by responsible companies to be compliant do not reduce nuisance as expected. This could be seen as a general failure to

follow the regulations and lead to harsher enforcement when, in fact, different regulations or extra education could be much more effective.