



# **Response to Consultation on proposed changes to Ofcom's Statement on Persistent Misuse**

## 1. Introduction

For the past 10 years we have been researching the issue of nuisance calls and campaigning for measures to block them. We have written a number of reports on the subject, and have acted as a consultant to the Telephone Preference Service. We have designed trueCall technology that is protecting over 500,000 UK homes and is blocking an estimated 150 million nuisance calls a year. When independently tested, trueCall technology blocks 95%+ of nuisance calls.

## 2. Response to specific consultation questions

### Question 1

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

#### Response

We would like to separate out the impact of silent and abandoned calls.

#### Silent calls

In the revision of the Statement Ofcom has banned silent calls. We believe that these call do cause consumer detriment, and support Ofcom on its efforts to tackle them.

#### Abandoned calls

The situation with abandoned calls is very different. While a compliant abandoned call is a nuisance call, it is arguably one of the least pernicious types of nuisance call. The caller identifies themselves and gives the user the option to opt out of further calls. This is much less detriment than many other types of nuisance call - you can't get scammed or slammed by an abandoned call!

Ofcom says that out of the 4.8 billion nuisance calls receive each year in the UK only 200 million are abandoned calls – less than 5% of all nuisance calls.

So, given that abandoned calls make up only 5% of the total, and their impact is less severe than many other types of nuisance call we think that Ofcom should reduce their focus on tackling abandoned calls and increase their focus in other areas of persistent misuse – in particular

- Localised or rotating Caller-ID
- The failure of call centres to identify themselves when asked
- The failure to remove people from calling lists when requested
- Misuse associated with robocalls – recorded message calls

### Question 2

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

#### Response

The way that modern DECT phones can 'over-ring' in certain circumstances could be the cause of a large number of consumers believing that they have received a silent call when this hasn't actually happened. The video clip in this link demonstrates the problem.

<https://www.youtube.com/watch?v=CvYVvZkemOA&feature=youtu.be>

If we assume that a call centre allows the phone to ring for an average of 15 seconds before it hangs up then a handset that over-rings by 5 – 8 seconds will certainly cause a significant number of 'dead calls' that a consumer would class as a silent call.

### Question 3

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

#### Response

Yes – please see answer to question 12. However the draft statement doesn't clearly set out all these forms of misuse. Given that call centres will use the Statement as their reference guide it is important that examples of all forms of misuse are details (see answer to question 12).

### Question 4

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 Caller-ID facility and breaches of the PECRs)?

#### Response

Evidence about the over-ringing of phones (see answer to question 2).

### Question 5

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.

#### Response

We believe that policy decisions about nuisance calls should be made on the basis of accurate statistics.

Ever since the results of the first Ofcom diary survey were published we have had concerns about its accuracy. The Ofcom Diary survey has consistently shown around half the number of nuisance calls that other surveys show. We note in the current consultation papers (A7.7) Ofcom say:

In estimating these figures we have assumed that survey respondents answered only their normal "fair share" of household calls (that is to say, if a household consists of two individuals; the calls the survey respondent records represent 50 per cent of the calls the household actually receives).

This assumption is grounded in the fact that the survey was designed to be representative at the level of the individual respondent (each respondent was asked to only record calls that they personally received).

The Ofcom diary survey has been running for a number of years, and this is the first time that we have heard this adjustment (highlighted) mentioned – this doubles the estimated number of nuisance calls from the diary research.

This may bring Ofcom's figures into line with the results from other surveys, but we are concerned about the logic behind the adjustment. In a 2-adult household both partners are frequently at home at the same time, so a single nuisance call received when they are both at home will be counted by the Ofcom diary survey as two calls.

We believe that the use of diaries for this purpose is flawed, and that these adjustments just make inaccurate figures even less accurate. We believe that it is better to collect accurate data rather than to collect inaccurate data and adjust it.

Using a diary survey to research the incidence of nuisance calls bring a number of problems:

1. A diary survey will inevitably underestimate the number of nuisance calls received. Some nuisance calls won't be marked down in the diary.
2. Those individuals who are most affected by nuisance calls – the older and vulnerable – will be less able to fill in diaries so the research results won't properly represent their experience. Other research shows that these groups receive more nuisance calls than the rest of the population.
3. Those at the highest risk – those with dementia – can't participate in a diary survey.

Points 2 and 3 are key because vulnerable individuals are those most affected by nuisance calls. If their experience isn't being measured then how can Ofcom make correct policy decisions to protect them?

We believe that Ofcom should consider other methodologies for monitoring the incidence of nuisance calls that accurately keep an electronic record of the calls received by households. This equipment can automatic log call information, and can optionally record of the first 10 seconds of each incoming call to help identify the caller (but protect the user's privacy). Equipment is available that can do this, and has been used over the last three years across the UK by over 130 local authorities and police forces.

## Question 6

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?

### Response

Yes

## Question7

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?

### Response

Yes, but please include localised or rotating Caller-ID, the failure of call centres to identify themselves, and the failure of call centres to remove people from their calling list when asked.

### **Question 8**

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

#### **Response**

Yes

### **Question 9**

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?

#### **Response**

Looking at silent and abandoned call ‘however caused and in whatever number’ seems to be a disproportionate. Other forms of misuse cause problems too, and Ofcom hasn’t taken action in these other areas. We believe that it would be a mistake for Ofcom to purely focus on silent and abandoned calls – rogue call centres must believe that they are taking a risk if they commit some of these other forms of persistent misuse.

### **Question 10**

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?

#### **Response**

We are surprised that in Ofcom’s enforcement action so far the focus has been on call centres that have attempted to be compliant but have occasionally lapsed, rather than those who ignore the regulations completely (who we believe are the source of the majority of silent calls).

### **Question 11**

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

#### **Response**

The work that Ofcom has carried out on estimating consumer harm in Annex 7 is extremely valuable – the first time that we have seen this approach taken.

## Question 12

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 Caller-ID facility; and
- c) breaches of the PECRs?

### Response

We would like to see more clarity in the Statement relating to these items, and a commitment to enforcement action outside the silent/abandoned call area.

#### Localised and rotating Caller-IDs

Inauthentic Caller-IDs are a growing problem, so any form of deceptive manipulation of Caller-ID should be clearly defined by the Statement as misuse. The only purpose of a localised Caller-ID is to deceive the called party into thinking that the call was from a local call centre when it wasn't. Even if the content of the call is completely legitimate, any deception about the origin of the call should be considered misuse.

We believe that the practice of presenting different Caller-IDs to different customers, or presenting different Caller-IDs at different times should be classed as persistent misuse, and Ofcom seems to agree saying in section 4.160 of the consultation document:

“There may be good reasons for organisations to use different Caller-ID numbers, such as routing return calls to the right parts of their organisation. However, our provisional view is that, though mixed, this evidence shows the potential for misleading Caller-IDs to aggravate the harm from misuse.”

**We note however that in the draft revised statement in Annex 5 there isn't any reference to this.** We know that these practices are already rife, and they are likely to increase if call centres are required to send a Caller-ID with all marketing calls. It is therefore essential that Ofcom make it clear in the Statement that it considers these activities to be persistent misuse.

Consider two scenarios

- 1) An agency provides a call centre with phone numbers in London, Manchester, Liverpool, Edinburgh, Belfast and Cardiff. The call centre can use these numbers as their Caller-ID to deceive consumers into believing that theirs is a local call. If the consumer calls the number back their call will be routed to the call centre's central phone number where they can ask to opt out.
- 2) A call centre buys a block of 100 geographic numbers from their service provider (eg 0208 123 45xx) and they use a different number from this block each day as their Caller-ID.

This:

- Allows them to defeat call blocking services and equipment that rely on a block list (domestic equipment and network services such as TalkTalk's and BT's)

- Reduces the possibility that their Caller-ID will appear on a network based block list like TalkTalk's and BT's.

In both these situations the call centre's behaviour is intended to mislead consumers, yet both would be acceptable according to the draft revised statement in Annex 5.

If Ofcom believe that the use of localised or rotating Caller-ID is misuse, then this should be much more clearly signalled in the Statement.

### **Authentic Caller-ID**

Ofcom are proposing that if a marketing call arrives with a Caller-ID then the Caller-ID must be valid, returnable, and that a call to the number will properly identify the caller and will allow the consumer to opt out of receiving further calls. If this is implemented then it would be appropriate for Ofcom to state clearly in the Statement that it would consider a call centre making a marketing call without a Caller-ID to be persistent nuisance (it will be illegal). This would make the situation clearer.

We have one concern in this area. If the DCMS change to make Caller-ID compulsory goes ahead then we understand that contraventions will be handled by the ICO, whereas the regulations saying that this Caller-ID must be valid, returnable, identifiable, etc. will be handled by Ofcom. Will this cause added confusion for consumers? If a consumer receives a call without a Caller-ID they have to complain to the ICO, but if the Caller-ID isn't returnable they have to complain to Ofcom.

Will this also make enforcement more difficult?

### **Failure to identify themselves**

We believe that the failure of a call centre agent to properly identify who they are, and who they are calling on behalf of constitutes misuse, and that this should be clearly signalled in the Statement. Many call centre agents just hang up when pressed to properly identify themselves, or give generic or non-specific company names ("I'm calling from CMG") - this is illegal behaviour under PECR but it is common practice, and we are not aware of any call centre that has ever been fined for doing this.

Without knowing who the caller is, how can a consumer make a meaningful complaint about a nuisance call?

### **Public database**

We were pleased to see that BT agreed with us that a central database of call centre Caller-IDs was an area worth of investigation, and while we understand that it may be a 'step too far' in this revision of the Statement, we think that it is worth serious investigation by Ofcom so that it could be considered as an option the next time the Statement is reviewed.

## **Question13**

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?

### **Response**

We agree with the way Ofcom propose to assess the harm from cases of persistent misuse, but not the prioritisation if this means that other forms of misuse are not followed up. We believe that some call centres will only change their behaviour if they know that there is a risk of being caught. If Ofcom focus solely on silent and abandoned calls and carry out no enforcement activity on other nuisance activities then call centres will continue to ignore these requirements.

#### **Question14**

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?

#### **Response**

Consumers need practical guidance to help them avoid nuisance calls. Call blocking technology has been proven to be extremely effective, but the market for blockers and related services is dysfunctional. Poorly performing call blockers and scam registry services are being sold to the public who cannot be expected to be able to distinguish between these different systems.

We believe that Ofcom should take the lead in giving guidance to consumers about the effectiveness of different call blocking technologies and call registry services so that consumers are armed with sufficient information to make an informed decision.