



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

Notice served on  
XS Remarketing Limited,  
trading as Debt Masters Direct,  
by the Office of Communications

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Confidential information and data have been  
redacted. Redactions are indicated by [X]

Issue date: 18 May 2015

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

1. This notification is issued to XS-Remarketing Limited, trading as Debt Masters Direct (“DMD”), registered company number SC269362 and registered address 2<sup>nd</sup> Floor, 4 West Regent Street, Glasgow, G2 1RW.
2. This notification:
  - a. sets out the determination of the Office of Communications (“Ofcom”) 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 DMD that Ofcom considers constitutes persistent misuse; and
  - c. specifies the period during which DMD 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 9 March 2014 and 28 April 2014 (the “Relevant Period”), DMD persistently misused an electronic communications network or electronic communications service on the following basis:
  - a. DMD 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; and as set out in section 128(6)(b) of the Act as the misuse represented recklessness as to whether persons suffered annoyance, inconvenience or anxiety.
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**

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 2010<sup>1</sup>.
10. Accordingly, Ofcom considers that there are reasonable grounds for believing that, during the Relevant Period, DMD, by virtue of its use of an automated calling system ("ACS"), has persistently misused an electronic communications network or electronic communications services by:
- a. making multiple (and certainly more than three)<sup>2</sup> abandoned and silent calls<sup>3</sup> during each of 37 separate 24 hour periods. Ofcom considers it appropriate to take enforcement action in respect of these periods, having regard in particular to paragraphs A1.12 – A1.50 of the Policy Statement, as the abandoned call rate also exceeded three per cent of live calls in each of the 37 separate 24 hour periods;
  - b. where a call has been identified by Answer Machine Detection ("AMD") equipment as being picked up by an answer machine (including AMD false positives<sup>4</sup>), making one or more repeat calls to specific numbers within the same 24 hour period during each of 37 separate 24 hour periods. This is likely to have resulted in individuals receiving repeat silent calls from DMD within a 24 hour period. Ofcom considers it appropriate to take enforcement action in respect of these periods, having regard in particular to paragraph A1.55 of the Policy Statement; and
  - c. in the event of an abandoned call, failing to include details of a *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *Non-Geographic Number charged at a geographic rate* (03)<sup>5</sup> in the information message to enable the called person to return the call and decline further marketing calls from the company. Ofcom considers it appropriate to take enforcement action in respect of this aspect of persistent misuse, having regard in particular to paragraphs A1.51 – A1.52 of the Policy Statement.

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

<sup>2</sup> As explained in paragraph 1.47 below, the Policy Statement (see paragraph A1.10) sets out Ofcom's view that what constitutes a pattern of behaviour or practice needs to be determined case by case. However, it is likely to require a minimum of three incidents of the conduct in question.

<sup>3</sup> See paragraphs 1.2 to 1.5 of the accompanying Explanatory Statement below.

<sup>4</sup> See paragraph 1.4 of the accompanying Explanatory Statement below.

<sup>5</sup> As defined in the National Telephone Numbering Plan, 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\\_Plan\\_Dec\\_2013.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_Dec_2013.pdf).

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*”, as set out in section 128(6)(a) of the Act:
  - a. Firstly, DMD provided information which enabled Ofcom to show that DMD had made multiple abandoned and silent calls during each of the 37 separate 24 hour periods identified. The abandoned call rate during each of these periods exceeded three per cent<sup>6</sup> of live calls. We estimate on the basis of the evidence that DMD made approximately 55,193 abandoned calls<sup>7</sup> in total during the Relevant Period. Of these, approximately 53,757 were silent calls resulting from the use of AMD,
  - b. Secondly, we estimate on the basis of the evidence available that during the Relevant Period DMD also made approximately 427,765 repeat calls to individual Calling Line IDs (“CLIs”) without the guaranteed presence of a live operator after the detection of an answer machine. As noted above, this is likely to have generated repeat silent calls to individuals due to the use of AMD equipment resulting in AMD false positives.
  - c. Thirdly, when an information message was played in the event of an abandoned call, DMD failed to include details of an appropriate phone number to enable the recipients to decline receiving further calls. We estimate that DMD made approximately 1,436 such calls during the Relevant Period.
13. In addition, Ofcom also considers that the misuse was repeated on a sufficient number of occasions to represent “recklessness as to whether persons suffer annoyance, inconvenience or anxiety”, as set out in section 128(6)(b) of the Act. The Policy Statement states that this will need to be determined on a case by case basis and evidence that the misuser was informed of the effect of his behaviour but continued with it could point to recklessness.<sup>8</sup>
14. DMD told Ofcom that following an update to DMD’s Dialler Administration programme over the weekend of 8 March 2014, duplicate data was not being removed from contact lists when it was imported into the dialler. As a result a number of records were loaded into the dialler multiple times. Evidence suggests that DMD was aware that this problem could lead to repeat calls within 24 hour periods to CLI numbers that were loaded into the dialler multiple times.
15. DMD notified its dialler supplier of this problem on 10 March 2014 and worked with the dialler company to try and remedy the problem. DMD stated that the database was “fully cleansed” by 19 March 2014. From the time when DMD became aware of the problem of multiple entry of contact details (10 March 2014) until DMD considered that the problem had been resolved, it continued to dial as it had done previously. Ofcom considers DMD’s failure to suspend or adjust the dialler settings (for example to slow the dialler down, switch off AMD, or to move to a “pre-view” mode where calls are only attempted

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<sup>6</sup> As explained in paragraph 1.17 of the Explanatory statement accompanying this Notification, the extent to which ACS users have taken steps to ensure that the abandoned call rate does not exceed three per cent of live calls per campaign or per call centre over any 24 hour period is one of the factors set out in the Policy Statement which Ofcom takes into account in deciding whether to take enforcement action.

<sup>7</sup> This excludes calls abandoned to answer machines.

<sup>8</sup> Paragraph A1.10, the Policy Statement.

when an agent has been specifically allocated to the call from the outset) to reduce the risk of repeat abandoned and silent calls to CLI numbers as evidence that points to recklessness. In total, DMD continued to dial as normal over 7 separate 24 hour periods<sup>9</sup> while it worked to resolve the issue. During this time we estimate on the basis of the evidence available that DMD made approximately 87,275<sup>10</sup> repeat calls to the same CLI numbers within 24 hours following detection of an answer machine.

### Representations concerning this notification

16. DMD has until 5pm on **15 June 2015** (the “deadline”) to:
- a. make representations to Ofcom about the matters set out in this notification as explained in the accompanying explanatory statement; and
  - b. 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

17. Following expiry of the deadline, if Ofcom is satisfied that DMD 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 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 DMD under section 129 of the Act.
18. Additionally or alternatively, if DMD 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 DMD under section 130 of the Act.



**Neil Buckley (Director of Investigations, Competition Group) and  
David Clarkson (Competition Policy Director) as decision makers for Ofcom**

<sup>9</sup> 10 to 18 March 2014 includes seven 24 periods where DMD used its dialler.

<sup>10</sup> Table 4.1, Mott MacDonald additional analysis, Annex 8.

## 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 XS-Remarketing Limited, trading as Debt Masters Direct ("DMD"), has persistently misused an electronic communications network ("ECN") or electronic communications services ("ECS") between 9 March 2014 and 28 April 2014 by:
- Making multiple abandoned and silent calls during each of 37 separate 24 hour periods. The abandoned call rate during each of these periods exceeded three per cent of live calls, primarily due to silent calls generated by Answer Machine Detection ("AMD") equipment. We estimate that DMD made approximately 55,193 abandoned and silent calls in total.
  - Failing to ensure that a live operator was on hand to take return calls that were made to numbers previously identified within the same 24 hour period by AMD equipment as being picked up by an answer machine. We estimate that a total of approximately 427,765 such repeat calls were made. This is likely to have led to repeat silent calls to individuals due to the use of AMD equipment resulting in AMD false positives.
  - Failing to include details of an appropriate phone number in the information message played in the event of an abandoned call to enable call recipients to decline to receive further calls. We estimate that DMD made approximately 1,436 abandoned calls in which this information message was played.
  - Failing to suspend or adjust its dialler settings to reduce the risk of repeat abandoned and silent calls over seven separate 24 hour periods, during which time it was trying to fix an error in the process for loading call data into its dialler.

## Abandoned and silent calls

- 1.2 The Notification concerns persistent misuse of an ECN or ECS by making abandoned and silent 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, for example when:

- an ACS user does not include an information message in the scenario described above;
- there is a handling error by a call centre agent, such as leaving a headset on mute; or
- when AMD mistakes a live individual for an answer machine and terminates the call. This is referred to as an AMD 'false positive'.

1.5 Ofcom received 38,902 complaints about abandoned and silent calls in 2014<sup>11</sup>. Ofcom-commissioned research published in 23 May 2014<sup>12</sup> showed that 84 per cent of participating UK adults with a landline phone reported experiencing a nuisance call<sup>13</sup> in the four week fieldwork period<sup>14</sup>. 61 per cent reported experiencing a silent call, and an estimated 14 per cent received an abandoned call (with an information message)<sup>15</sup>. The research reported that abandoned calls with an information message were considered to be annoying (71 per cent of calls) and distressing (6 per cent of calls). The research also reported that more silent calls were considered to be annoying (88 per cent of calls) and distressing (9 per cent of calls). Indeed, a higher proportion of silent calls were considered to be annoying compared to any other type of call; and a higher proportion of silent calls were also considered to be distressing (9 per cent of calls) compared to recorded sales calls (3 per cent of calls) and live sales calls (5 per cent of calls).

## 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

<sup>11</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/February15.pdf>

<sup>12</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

<sup>13</sup> Defined as "unwanted" calls. This includes unsolicited sales calls, silent and abandoned calls.

<sup>14</sup> 13 January 2014 to 9 February 2014.

<sup>15</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

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 £2,000,000<sup>16</sup> 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

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<sup>16</sup> 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, article 2(1).  
<http://www.legislation.gov.uk/ukxi/2010/2291/article/2/made>

(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 powers<sup>17</sup>.

## 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")<sup>18</sup>.
- 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 and silent 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)<sup>19</sup>, 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*"<sup>20</sup>.
- 1.16 The Policy Statement sets out that whether repetitive conduct forms a pattern of behaviour or practice will need to be determined on a case by case basis, however any such pattern is likely to require a minimum of three instances of the conduct in question in order to be recognised as such.
- 1.17 The Policy Statement also provides examples of evidence that Ofcom considers may represent "recklessness as to whether persons suffer annoyance, inconvenience or anxiety". Paragraph A1.10 of the Policy Statement sets out that, while this will need to be determined on a case-by-case basis, such evidence could include:
- i) that the misuser was informed of the effect of his behaviour but continued with it;
  - ii) that the behaviour in question is so patently annoying that it amounts to misuse (e.g. ringing someone repeatedly in the middle of the night) that a reasonable person would realise that it would have that effect; or
  - iii) that the misuser has failed to take reasonable steps to establish whether or not the behaviour could cause annoyance, inconvenience or anxiety to other people.
- 1.18 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.
- 1.19 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 set out the following measures:

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<sup>17</sup> Section 131(4) of the Act.

<sup>18</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf>.

<sup>19</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>

<sup>20</sup> Paragraph 1.6, *Tackling abandoned and silent calls*.

- 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 positives<sup>21</sup> 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 answered<sup>22</sup>. 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) number<sup>23</sup> 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 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. The aim of this measure is to prevent individuals receiving repeat silent calls within a 24 hour period due to the

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<sup>21</sup> 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.

<sup>22</sup> “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).

<sup>23</sup> 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).

use of AMD equipment resulting in AMD false positives (which are recurrent in nature).<sup>24</sup>

- 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 Numbers<sup>25</sup>.
  - 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.
- 1.20 One effect of the Policy Statement is that Ofcom will take into account several factors in deciding whether to take action in respect of persistent misuse. Examples include, whether the abandoned call rate, as calculated in line with the statement, exceeds three per cent; whether there has been a failure to play a recorded message in the specified format in the event of abandoned calls; and whether when a call has been identified by AMD equipment as being picked up by an answer machine, any repeat calls to the same CLI number within 24 hours are only made with the guaranteed presence of a live operator.

## Ofcom's programme of monitoring and enforcement

- 1.21 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.
- 1.22 In December 2010, we published an open letter<sup>26</sup> 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 2010<sup>27</sup>. Since the new maximum penalty and the Policy Statement came into force, we have issued penalties against eight companies for persistent misuse<sup>28</sup>. In May 2012, we published another open letter<sup>29</sup> to ACS users about the importance of Ofcom's monitoring and enforcement programme which seeks to prevent and reduce harm caused by both abandoned and silent calls.

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<sup>24</sup> The way AMD technology works means that if a consumer is mistaken to be an answer machine once, it is likely that this will happen again (see paragraph 1.15, *Tackling abandoned and silent calls*).

<sup>25</sup> Annex 1 of <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/#a>

<sup>26</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs\\_users.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/acs_users.pdf)

<sup>27</sup> <http://news.bis.gov.uk/content/Detail.aspx?ReleaseID=415608&NewsAreaID=2>

<sup>28</sup> [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_905/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/)

<sup>29</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/Open\\_letter\\_to\\_stakeholders.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/annexes/Open_letter_to_stakeholders.pdf)

## The investigation

### Background

- 1.23 As part of the programme, Ofcom received complaints about abandoned and/or silent calls which appeared to be generated by or on behalf of DMD. We received 50 complaints regarding calls from the Calling Line Identification (“CLI”) number 01413600184 during the Relevant Period. Of the 50 complaints, 15 were about alleged abandoned calls and 35 were about alleged silent calls.<sup>30</sup>
- 1.24 The Managing Director of DMD confirmed to Ofcom by email on 29 April 2014 that it was the end user of CLI number 01413600184.<sup>31</sup>
- 1.25 In light of this information and the complaints, Ofcom sought to obtain information about DMD’s use of ACS using our formal information gathering powers.

### Information gathering

- 1.26 Ofcom issued a Notice under section 135 of the Act to DMD on 14 May 2014 (the “First Notice”).<sup>32</sup> The First Notice required DMD to provide a corporate structure chart for the group which included DMD; information on its outbound dialling activity using an ACS for its call centres, and on its measures to ensure compliance with the law on persistent misuse as interpreted in the Policy Statement.
- 1.27 DMD provided a response to the Notice on 29 May 2014 (the “First Response”).<sup>33</sup> In the First Response it told us that:
- a) DMD is a limited company, with no holding company or subsidiaries. It trades as ‘Debt Masters Direct’ and is a lead generation business;
  - b) DMD made outgoing calls during the Relevant Period and provided data about the calls made. The CLI 01413600184 was only used from 24 March 2014 until 23 April 2014 but DMD provided information in relation to another CLI for calls made during the Relevant Period;
  - c) all calls using CLI 01413600184 during the Relevant Period were made on behalf of DMD only;
  - d) all of DMD’s offices dial as one virtual call centre from one hosted dialler such that all call centres dial from the same campaign, “Campaign 1”;
  - e) it played an information message in the event of an abandoned call during the Relevant Period:

*“You have been called today by Debt Masters Direct. You do not need to return our call. If you would like your number removed please email us at: [removenumbers@debtmasterdirect.co.uk](mailto:removenumbers@debtmasterdirect.co.uk). Thank you.”*

<sup>30</sup> Of the 15 complaints about abandoned calls, two consumers (13%) told Ofcom that they considered the calls to be distressing and 13 (87%) considered them to be annoying. Of the 35 complaints about silent calls, nine consumers (26%) told Ofcom that they considered the calls to be distressing and 24 (68%) considered them to be annoying. Two complaints did not specify whether the calls were annoying or distressing.

<sup>31</sup> Annex 1, DMD email to Ofcom, 29 April 2014.

<sup>32</sup> Annex 2.

<sup>33</sup> Annex 3.

- f) It used AMD technology during the Relevant Period;
- g) A reasoned estimate of false positives of 4.02% was determined by analysing a sample of over 6,500 records which had the disposition of “answer phone.” The test was conducted in AMD “High” mode which was the same dialler mode that DMD was operating during the Relevant Period;
- h) the dialler was configured not to reattempt a call following the detection of an answer machine within 24 hours (1440 minutes) or within 72 hours (4320 minutes) in the event of an abandoned call.
- 1.28 The information provided in response to the First Notice indicated possible issues with DMD’s use of its ACS. Ofcom therefore issued a second Notice under section 135 of the Act to DMD on 28 July 2014 (the “Second Notice”)<sup>34</sup> to ensure that DMD’s use of its ACS could be assessed fully. The Second Notice required DMD to provide further information on its outbound dialling activity during the Relevant Period, including:
- Details of all CLIs being used.
  - Revised call records covering outbound calls across all CLIs used during the Relevant Period.
  - An explanation of how the reasoned estimate of false positives and resulting calculations had been produced.
  - Clarification about the number of campaigns being undertaken.
- 1.29 DMD responded to the Second Notice on 11 August 2014 (the “Second Response”).<sup>35</sup> Ofcom wrote via email to DMD on 17 September 2014, 7 October 2014, 24 November 2014, 8 December 2014 and 15 December 2014 seeking clarification of information provided in the First and Second Responses. DMD responded to these clarification requests on 24 September 2014, 17 October 2014, 2 December 2014, 12 December 2014 and 15 December 2014 respectively. Copies of this correspondence are at Annex 6.
- 1.30 In the Second Response and subsequent clarifications DMD stated that:
- a) It used six different CLI numbers during the Relevant Period: 0115 8285 039; 0141 3600 183; 0141 3600 184; 0800 0987 013; 0800 7747 091; and 0800 9949 103.
- b) All of the outbound calls made using an ACS during the Relevant Period were made on behalf of DMD alone; no calls were made on behalf of any third party.
- c) There was one single campaign in operation throughout the Relevant Period. The different CLI numbers were used to gauge the success of the different mix of agents. The purpose of the campaign was to identify people that may be in financial difficulties and to “*establish if [DMD] can recommend a potential solution that could help them to improve their financial situation.*” “Campaign 1”, the “Elite” campaign and “pre-qualified contact list” all used the same call scripts, of which DMD provided copies.

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<sup>34</sup> Annex 4.

<sup>35</sup> Annex 5.

- d) It had made outbound calls, including abandoned calls, during the Relevant Period, as set out in Table 2, page 21.
- e) It did not record its AMD dispositioned calls due to its call volumes and the implications of its system. Instead it had used data from another company running a dialler with the same AMD properties ("AMD high" which was the same mode as that used by DMD during the Relevant Period) to calculate an estimate of AMD false positives. This data had been provided to DMD by its dialler supplier. DMD provided to Ofcom a file to demonstrate the testing carried out and how it had produced its reasoned estimate of 4.02%. DMD also stated that this other company was a debt collection company, who called only consumers within the UK on a mixture of both landlines and mobiles. Those consumers would be a subset of DMD's target consumers (consumers in financial difficulties with specific companies).
- f) The reasons why Ofcom had not been able to reproduce the figures for the number of false positives provided by DMD in the Second Response were as follows:
- The discrepancy was caused by the way that calls were reported in the dialler and the way the dialler worked. The detailed call records provided included call attempts, including those to invalid numbers. However unconnected calls would have been stripped from the records by the dialler.
  - The dialler ran with technology that allowed it to detect some digital answer phones at a network level, enabling it to terminate a call before a connection was actually made. DMD provided revised call data for each 24 hour period in the Relevant Period showing: the date, time of call, CLI number dialled, answerphone detected (Y/N) and network detection of digital answer phones (Y/N).
- g) Call jobs were entered into the dialler from the database and dialled in sequence. Although the dialler could store up to a maximum of 4 numbers per contact, DMD stated that the process followed ensured that the same contact did not receive multiple calls at the same time.
- h) An error had arisen when loading data into the dialler. DMD became aware of this issue over the weekend of 8 March 2014. This resulted in a failure to remove duplicate data from contact lists and as a result *"a number of records [were] being loaded in to the Dialler multiple times. Both within single call lists and on multiple call lists. As soon as this was discovered, we worked with our dialler company to:*
- A) *Install a manual workaround to limit repeated instances of this happening when loading new data*
  - B) *Look back at existing database to remove duplicate records*
  - C) *Work on updating the system to correct the issue.*
- A manual process to de-duplicate new uploads was implemented on COB on 11<sup>th</sup> March. On the 11<sup>th</sup> March numbers with high volumes of repeats were manually suppressed so that these were no longer active in the Database, by*

*19<sup>th</sup> of March the Database was fully cleansed, both within contact list and across contact lists.”*

## **Ofcom’s assessment and decision**

- 1.31 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;
  - 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.
- 1.32 The following section sets out the basis on which Ofcom has decided to issue this Notification to DMD, taking into account the elements outlined above.

### **Use of an electronic communications network or electronic communications services**

- 1.33 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.”<sup>36</sup>

- 1.34 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.”<sup>37</sup>

- 1.35 The Act defines “signal” as including:

“(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

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<sup>36</sup> Section 32(1) of the Act.

<sup>37</sup> Section 32(2) of the Act.

(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 apparatus.”<sup>38</sup>

- 1.36 In the First Response, DMD reported that it made calls using an ACS in the Relevant Period. DMD therefore used voice telephony to make outbound calls to users of publicly available telephony services<sup>39</sup>. Making these calls comprises the use of an ECN as defined in the Act and the use of an ECS as defined in the Act.
- 1.37 Ofcom therefore considers that there are reasonable grounds for believing that DMD has used an ECN and ECS as defined in the Act.

## Misuse

- 1.38 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.
- 1.39 The 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 per campaign or per call centre over a 24 hour period. Evidence obtained from DMD using our formal powers demonstrates that it made multiple abandoned calls during the Relevant Period, as set out in Table 2 below. The available evidence also demonstrates that in the Relevant Period DMD exceeded an abandoned call rate of 3 per cent during 37 separate 24 hour periods. Ofcom research shows that consumers find abandoned and silent calls “annoying” and “distressing” (see paragraph 1.5). Ofcom therefore considers that the use of an ECN or ECS by DMD in this case constitutes misuse. This view is consistent with the contents of the Policy Statement described in this document.
- 1.40 The Policy Statement also sets out that repeat calls cannot be made to a specific number, without the guarantee of a live operator, within the same 24 hour period if AMD equipment has identified an answer machine.<sup>40</sup> The aim of this requirement is to prevent repeat silent calls within the same 24 hour period arising from AMD ‘false positives’.<sup>41</sup>
- 1.41 Due to the very high volumes of outbound calls made by DMD, Ofcom used external consultants (Mott MacDonald) to analyse the call data. Mott MacDonald produced two reports for Ofcom; the first report was delivered on 17 November 2014 and a second report with additional analysis on 13 March 2015 – these are at Annexes 7 and 8 respectively. The second report shows that DMD failed to guarantee that when return calls were made to numbers previously identified that day (within a 24 hour period) by AMD equipment as being picked up an answer machine, a live operator was on hand to take the call.<sup>42</sup> This is likely to have generated repeat silent calls to

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<sup>38</sup> Section 32(10) of the Act.

<sup>39</sup> A1.7-8, the Policy Statement.

<sup>40</sup> A1.55, the Policy Statement.

<sup>41</sup> An AMD false positive is defined at A1.20 of the Policy Statement as when “ *an AMD device mistakenly identifies a call as being answered by an answer machine whereas, in reality, it has been answered by a live individual.*”

<sup>42</sup> Annex 8, Mott MacDonald report to Ofcom, 13 March 2015, Table 4.1, pages 10 to 11.

individuals within 24 hour periods due to the use of AMD equipment resulting in repeat AMD false positives.

- 1.42 The Policy Statement also sets out at paragraphs A1.51 and A1.52 the content of the information message to be played in the event of an abandoned call. The First Response stated that DMD played the following message in the event of an abandoned call during the Relevant Period:

*“You have been called today by Debt Masters Direct. You do not need to return our call. If you would like your number removed please email us at; [removenumber@debtmasterdirect.co.uk](mailto:removenumber@debtmasterdirect.co.uk). Thank you.”*

- 1.43 This information message is not consistent with A1.52 of the Policy Statement because it fails to include “...details of a *Special Services* (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)<sup>43</sup> the called person can contact so that they have the possibility of declining to receive further calls from that company.” Instead consumers who did not wish to receive further calls were directed in the message left by DMD to email DMD to request removal.
- 1.44 Ofcom considers that this shortcoming in respect of playing an information message is liable to amount to relevant misuse, in respect of which we may take action. As set out in the Policy Statement and above, Ofcom considers that the making of abandoned and silent calls involves misuse within the meaning of section 128 of the Act. The aim of playing a recorded information message in the event of an abandoned call is to reduce harm by informing the recipient who has called them and how they can return the call to decline to receive further calls. Failure to include an appropriate telephone number in the information message hinders the ability of abandoned call recipients to return the call and decline further calls.
- 1.45 Where such failure occurs any reduction in anxiety, annoyance or inconvenience that the playing of the message would otherwise achieve is limited. There is, accordingly, misuse within the meaning of section 128 of the Act in the making of abandoned calls in which there is a failure to play a recorded message including all the appropriate information. Taking action in respect of it is consistent with the Policy Statement.
- 1.46 On the basis of the above, Ofcom considers that there are reasonable grounds for believing that the effect or likely effect of the use of an ECN and ECS by DMD has been to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety so as to amount to misuse. This is on the bases that during the Relevant Period DMD:
- a) made multiple abandoned and silent calls and did not ensure that its abandoned call rate remained below 3 per cent of live calls in any 24 hour periods during the relevant period;
  - b) where a call has been identified by AMD equipment as being picked up by an answer machine (including AMD false positives), made one or more repeat calls to specific numbers within the same 24 hour period.

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<sup>43</sup> 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\\_Plan\\_Dec\\_2013.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_Dec_2013.pdf).

- c) in the event of an abandoned call, failed to include details of a *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *Non-Geographic Number charged at a geographic rate* (03) in the information message to enable the called person to return the call and decline further marketing calls from the company.

1.47 Ofcom makes these findings having regard as described, in particular, to the Policy Statement and the evidence referred to in paragraphs 1.5 and 1.39 to 1.45 above. They are consistent with the Policy Statement and the regulatory statement accompanying it.

### **The misuse is persistent**

1.48 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.

1.49 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.

1.50 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.

### ***The misuse is a pattern of behaviour or practice***

1.51 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 question.<sup>44</sup>

1.52 Ofcom considers that DMD's misuse, as set out above, was persistent because DMD made multiple abandoned and silent calls, and certainly more than three abandoned and silent calls, during each of the 37 separate 24 hour periods on which DMD dialled during the Relevant Period. In line with A1.86 of the Policy Statement, we consider it appropriate to take enforcement action in respect of these calls because the abandoned call rate also exceeded three per cent of live calls in respect of each of these 37 separate 24 hour periods, primarily due to DMD's use of AMD equipment which generated a significant number of silent calls resulting from AMD false positives.

1.53 Ofcom has calculated the abandoned call rates using data which was provided by DMD in response to Ofcom's information requests. Specifically, as DMD used AMD throughout the Relevant Period, Ofcom has calculated the abandoned call rate including a reasoned estimate of AMD false positives and excluding a reasoned estimate of calls abandoned to answer machines, in line with A1.36 of the Policy Statement. In doing so Ofcom has:

- a) Excluded calls that were recorded as calls abandoned to an answer machine where further evidence from DMD stated that the call attempts were terminated

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<sup>44</sup> A1.10, the Policy Statement.

before a connection was made following network detection of a digital answer machine.

- b) Used DMD’s estimated false positive rate of 4.02%, which was derived from a detailed review of calling data from another company which had been provided to DMD by its dialler supplier. DMD stated in its response to the Second Notice that “*due to the volume of its calls and the implication of its system DMD did not record its AMD dispositioned calls*” and that in order to calculate an estimate of AMD false positives it had used the data from another company in its analysis.<sup>45</sup> DMD also explained that:<sup>46</sup>
- i) the company whose data was used was also a debt collection company;
  - ii) it used the same dialler, with the same AMD properties that DMD was running at the time (“AMD high”);
  - iii) the company called only consumers within the UK, on a mixture of both landlines and mobiles; and its target consumers were a subset of DMD’s own target customers.

In light of the above, Ofcom used the false positive estimate provided by DMD.

- c) Calculated the reasoned estimates of false positives, as set out at Table 1 below.

- 1.54 In addition, when examining DMD’s detailed call data, Ofcom observed that there were a number of occasions when DMD’s dialler was attempting “simultaneous calls”<sup>47</sup> to the same CLI number. DMD explained in its clarifications to the Second Response that this issue arose following an error in the process for removing duplicates from its database.<sup>48</sup>
- 1.55 We consider that it is extremely unlikely that the “second” of the two “simultaneous” call attempts would have connected to a live person and therefore would not have resulted in a false positive. Ofcom therefore removed those call attempts that would not have connected prior to calculating the reasoned estimates of false positives.
- 1.56 Ofcom’s calculation of the reasoned estimate of false positives, taking account of the factors referred to in paragraph 1.53, is set out in Table 1.

**Table 1: Reasoned estimate of false positives at 4.02% false positive rate**

Date	Answer machines detected – total of (Y/N) in 24 data files	‘Simultaneous’ calls (Mott MacDonald additional analysis, Table 4.1, Annex 8) <sup>1</sup>	Total answer machines, excluding simultaneous calls	4.02% false positive rate	Reasoned estimate of false positives
	A	B	C = A - B	D	= C x D
10/03/14	21,491	37	21,454	0.0402	862
11/03/14	34,195	27	34,168	0.0402	1,374
12/03/14	43,068	0	43,068	0.0402	1,731
13/03/14	48,638	2	48,636	0.0402	1,955
14/03/14	41,670	4	41,666	0.0402	1,675
17/03/14	35,348	4	35,344	0.0402	1,421

<sup>45</sup> Annex 5.

<sup>46</sup> DMD explained this in the Second Response and its letter dated 24 September 2014.

<sup>47</sup> Calls at the same time or with 1 second of each other.

<sup>48</sup> Annex 6, email from DMD to Ofcom, 12 December 2014.

18/03/14	41,889	0	41,889	0.0402	1,684
19/03/14	42,019	1	42,018	0.0402	1,689
20/03/14	39,204	0	39,204	0.0402	1,576
21/03/14	41,051	0	41,051	0.0402	1,650
22/03/14	11,664	0	11,664	0.0402	469
24/03/14	44,765	0	44,765	0.0402	1,800
25/03/14	48,211	172	48,039	0.0402	1,931
26/03/14	51,504	3	51,501	0.0402	2,070
27/03/14	38,908	54	38,854	0.0402	1,562
28/03/14	44,428	1	44,427	0.0402	1,786
31/03/14	46,270	2	46,268	0.0402	1,860
01/04/14	35,746	0	35,746	0.0402	1,437
02/04/14	50,178	4	50,174	0.0402	2,017
03/04/14	45,310	3	45,307	0.0402	1,821
04/04/14	47,535	10	47,525	0.0402	1,911
07/04/14	30,591	1	30,590	0.0402	1,230
08/04/14	39,744	0	39,744	0.0402	1,598
09/04/14	55,111	0	55,111	0.0402	2,215
10/04/14	37,129	7	37,122	0.0402	1,492
11/04/14	38,151	10	38,141	0.0402	1,533
14/04/14	39,378	6	39,372	0.0402	1,583
15/04/14	49,621	12	49,609	0.0402	1,994
16/04/14	30,072	7	30,065	0.0402	1,209
17/04/14	32,706	0	32,706	0.0402	1,315
18/04/14	20,907	0	20,907	0.0402	840
21/04/14	29,380	0	29,380	0.0402	1,181
22/04/14	34,576	1	34,575	0.0402	1,390
23/04/14	20,990	0	20,990	0.0402	844
24/04/14	8,173	0	8,173	0.0402	329
25/04/14	9,612	0	9,612	0.0402	386
28/04/14	8,367	0	8,367	0.0402	336

Note 1: See column headed "Difference after adding new requirement" of Table 4.1, Annex 8.

1.57 The abandoned call rates for each day during the Relevant Period are shown in Table 2. This shows that the estimated total number of abandoned calls, including a reasoned estimate of false positives, made by DMD during the Relevant Period was approximately 55,193.

**Table 2: DMD's abandoned call rate during the Relevant Period**

Date	Live calls to live agent	AMs <sup>49</sup> passed to live agent	All calls passed to a live agent	Ratio of AM to all calls passed to a live agent (%)	Total abn <sup>50</sup> calls (exc. false positives)	Estimate abn to AMs	Abn calls (exc abn to AM)	Reasoned estimate of false positives (Table 1)	Total of abn calls (inc. false positives)	ACR (%)
A	B	C	D	E	F	G	H	I	J	K
			B + C	(C/D) x 100		E x F	F - G		= H + I	= J / (B + J)
10/03/14	5,217	3,427	8,644	39.6%	66	26	40	862	902	14.74
11/03/14	8,831	6,717	15,548	43.2%	83	36	47	1,374	1,421	13.86
12/03/14	10,444	9,094	19,538	46.5%	81	38	43	1,731	1,775	14.52
13/03/14	8,761	10,352	19,113	54.2%	96	52	44	1,955	1,999	18.58
14/03/14	7,800	8,779	16,579	53.0%	77	41	36	1,675	1,711	17.99
17/03/14	7,632	8,295	15,927	52.1%	138	72	66	1,421	1,487	16.31
18/03/14	9,901	9,998	19,899	50.2%	108	54	54	1,684	1,738	14.93
19/03/14	7,492	14,102	21,594	65.3%	69	45	24	1,689	1,713	18.61
20/03/14	7,689	15,494	23,183	66.8%	74	49	25	1,576	1,601	17.23
21/03/14	6,067	10,221	16,288	62.8%	59	37	22	1,650	1,672	21.61
22/03/14	1,715	2,532	4,247	59.6%	24	14	10	469	479	21.82

<sup>49</sup> "AMs" refers to Answer Machines.

<sup>50</sup> "Abn" refers to abandoned calls.

24/03/14	7,170	11,985	19,155	62.6%	48	30	18	1,800	1,818	20.22
25/03/14	8,284	11,529	19,813	58.2%	57	33	24	1,931	1,955	19.09
26/03/14	7,700	10,500	18,200	57.7%	24	14	10	2,070	2,080	21.27
27/03/14	8,043	7,801	15,844	49.2%	96	47	49	1,562	1,611	16.68
28/03/14	7,361	8,820	16,181	54.5%	33	18	15	1,786	1,801	19.66
31/03/14	8,468	9,539	18,007	53.0%	95	50	45	1,860	1,905	18.36
01/04/14	8,115	7,345	15,460	47.5%	86	41	45	1,437	1,482	15.44
02/04/14	7,468	11,666	19,134	61.0%	36	22	14	2,017	2,031	21.38
03/04/14	7,906	10,990	18,896	58.2%	94	55	39	1,821	1,861	19.05
04/04/14	6,677	10,860	17,537	61.9%	54	33	21	1,911	1,931	22.43
07/04/14	7,911	9,075	16,986	53.4%	83	44	39	1,230	1,268	13.82
08/04/14	8,512	10,513	19,025	55.3%	92	51	41	1,598	1,639	16.15
09/04/14	8,223	13,617	21,840	62.3%	43	27	16	2,215	2,232	21.35
10/04/14	10,079	9,255	19,334	47.9%	186	89	97	1,492	1,589	13.62
11/04/14	8,105	8,864	16,969	52.2%	80	42	38	1,533	1,571	16.24
14/04/14	7,797	10,122	17,919	56.5%	66	37	29	1,583	1,611	17.13
15/04/14	7,107	12,825	19,932	64.3%	95	61	34	1,994	2,028	22.20
16/04/14	6,582	8,946	15,528	57.6%	72	41	31	1,209	1,239	15.84
17/04/14	6,807	9,553	16,360	58.4%	101	59	42	1,315	1,357	16.62
18/04/14	4,711	7,084	11,795	60.1%	91	55	36	840	877	15.69
21/04/14	6,139	9,432	15,571	60.6%	114	69	45	1,181	1,226	16.65
22/04/14	6,667	11,111	17,778	62.5%	87	54	33	1,390	1,423	17.58
23/04/14	6,643	7,658	14,301	53.5%	94	50	44	844	887	11.78
24/04/14	7,481	9,521	17,002	56.0%	129	72	57	329	385	4.90
25/04/14	6,904	9,227	16,131	57.2%	126	72	54	386	440	6.00
28/04/14	8,945	8,000	16,945	47.2%	211	100	111	347	459	4.88
<b>TOTAL</b>					<b>3,168</b>	<b>1,732</b>	<b>1,436</b>	<b>53,757</b>	<b>55,193</b>	

Source: Ofcom analysis of DMD response to the Second Notice.

1.58 Ofcom also considers that DMD's misuse was persistent in that on multiple (and more than three) occasions it failed to ensure adherence to the 24 hour policy. This means that it failed to guarantee that when return calls were made to numbers previously identified that day (within a 24 hour period) by AMD equipment as being picked up by an answer machine, a live operator was on hand to take these calls. As noted in paragraph 1.19(vi), this measure is in place to prevent consumers from receiving repeat silent calls that occur when AMD technology mistakes a consumer for an answer machine (AMD false positives).

1.59 DMD provided Ofcom with details of all calls made using AMD for each 24 hour period of dialling during the Relevant Period. As noted in Paragraph 1.41, due to the very high volumes of outbound calls Ofcom used external consultants (Mott MacDonald) to analyse the data to determine whether DMD made repeat calls which did not comply with the requirements set out in the Policy Statement. In doing so, Mott MacDonald :

- a) Excluded calls that were recorded as calls abandoned to an answer machine where further evidence from DMD indicated that the calls had been terminated before being connected following network detection of a digital answer machine.
- b) Excluded "simultaneous" calls to the same CLI number where the call attempts would not have connected, for reasons set out at paragraph 1.50.

1.60 Mott MacDonald reported its findings to Ofcom on 13 March 2015<sup>51</sup> (this updated a previous report provided to Ofcom on 17 November 2014<sup>52</sup>). The analysis of DMD's daily dialling using AMD equipment demonstrated that DMD had undertaken repeat dialling to individual CLIs without the guaranteed presence of a live operator in contravention of A1.55 of the Policy Statement, on each of 37 separate 24 hour

<sup>51</sup> Annex 8, Mott MacDonald report to Ofcom, 13 March 2015.

<sup>52</sup> Annex 7, Mott MacDonald report to Ofcom, 17 November 2014.

periods where it dialled in the Relevant Period. For example, on 2 April 2014 DMD made a total of 28,780 repeat calls to CLIs which had previously been identified as an answer machine. During the Relevant Period, DMD made a total of approximately 427,765 such calls<sup>53</sup>. In addition, Mott MacDonald's additional analysis sets out those CLIs subject to the most repeat dials during each day in the Relevant Period.<sup>54</sup> In particular, we note that on 25 March 2014, one CLI number received 329 repeat calls following the detection of an answer machine; and on 10 March 2015 another CLI number received 86 repeat calls following the detection of an answer machine.

- 1.61 Ofcom also considers that DMD's misuse was persistent in that on multiple (and more than three) occasions it did not play an information message with an appropriate CLI number, in accordance with paragraphs A1.51 and A1.52 of the Policy Statement.
- 1.62 As set out at paragraph 1.39, DMD failed to include details of an appropriate CLI number<sup>55</sup> within the information message played in the event of an abandoned call that the call recipient could contact to decline further marketing calls from DMD. DMD failed to do this across 37 separate 24 hour periods of dialling during the Relevant Period resulting in approximately 3,168 relevant calls (see Column F of Table 2). However, Ofcom estimates that approximately 1,732 relevant calls would have been abandoned to answer machines and therefore not caused harm to a live individual; leaving a balance of approximately 1,436 calls potentially listened to by live individuals (see Column H of Table 2).

***The misuse represents recklessness as to whether persons suffered annoyance, inconvenience or anxiety***

- 1.63 In addition, Ofcom also considers that DMD's misuse represented recklessness as to whether persons suffered annoyance, inconvenience or anxiety. The Policy Statement sets out Ofcom's view that although what represents recklessness will need to be determined on a case-by-case basis, evidence that points to recklessness includes the person being informed of the effect of his behaviour but continuing with it.
- 1.64 DMD told Ofcom that following an update to its "Dialler Administration programme" over the weekend of 8 March 2014, it became aware that the data import process was not working properly. Specifically, duplicate data was not being removed from contact lists when imported into the dialler. As a result, a number of records were loaded into the dialler multiple times. DMD notified its dialler supplier of this problem on 10 March 2014 and worked with the dialler company to try and remedy the problem (for example by installing a manual workaround to limit repeated instances of this happening). It stated that the database was "*fully cleansed*" by 19 March 2014.
- 1.65 However between 10 March 2014, when DMD was aware of the problem, and 19 March 2014 when DMD believed that the problem had been resolved, DMD continued to dial as normal on each of the seven days of dialling during this period.<sup>56</sup> Ofcom considers that DMD must have been aware that the failure to remove duplicate data risked multiple repeat calls to the same CLI numbers within a 24 hour

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<sup>53</sup> Annex 8, Mott MacDonald report to Ofcom, 13 March 2015, Table 4.1, pages 10-11.

<sup>54</sup> Annex 8, Mott MacDonald report to Ofcom, 13 March 2015, Table 4.2, pages 13 – 15.

<sup>55</sup> *Special Services* (080 – no charge) or a *Special Services* basic rate (0845 only) or a *Geographic Number* (01/02) or a *Non Geographic Number charged at a geographic rate* (03).

<sup>56</sup> There was no dialling by DMD on Saturday, 15 March 2014 and Sunday, 16 March 2014 and DMD stated that the problem had been resolved "by 19 March 2014."

period. When Ofcom highlighted, by way of example, that a significant volume of repeat calls had been made to CLI number [redacted] on 10 March 2014, following detection of an answer machine, DMD stated that its dialler manager had called this CLI number on 12 March 2015 to offer an apology and compensation for the error that had occurred.

- 1.66 Ofcom considers that DMD's failure to suspend or adjust its dialler settings (for example to slow the dialler down, switch off AMD, or to move to a "pre-view" mode where calls are only attempted when an agent has been specifically allocated to the call from the outset<sup>57</sup>) between 10 March 2014 and 19 March 2014 even though it must have been aware of the risk of persons receiving repeat calls within a 24 hour period during this period constitutes evidence that points to recklessness. During this time we estimate on the basis of the evidence available that DMD made approximately 87,275<sup>58</sup> repeat calls to the same CLI numbers within 24 hours following detection of an answer machine.

## **Conclusion**

- 1.67 On these bases, Ofcom considers that there are reasonable grounds for believing that the misuse engaged in by DMD 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. Ofcom also considers that there are reasonable grounds for believing that the misuse engaged in by DMD between 10 March 2014 and 19 March 2014 was persistent in that it was reckless as to whether persons suffer annoyance, inconvenience or anxiety as set out in section 128(6)(b) of the Act. Ofcom considers that the taking of enforcement action in respect of in respect of this persistent misuse is consistent with the Policy Statement.

## **Other matters set out in the notification**

- 1.68 DMD has until 5pm on **15 June 2015]** (the "deadline") to make representations to Ofcom about the matters set out in the Notification and explained in this explanatory statement.
- 1.69 DMD 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.
- 1.70 Following expiration of the deadline, if Ofcom is satisfied that DMD 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;

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<sup>57</sup>This is in contrast to 'predictive' dialling in which calls are initiated without the guaranteed presence of a live operator and which is the mode of dialling that would have been used throughout the Relevant Period.

<sup>58</sup> Table 4.1, Mott MacDonald additional analysis, Annex 8, column 5 for 10 March – 18 March 2014 inclusive.

then Ofcom may issue a further notification to DMD under section 129 of the Act.

- 1.71 Additionally or alternatively, if DMD has persistently misused a network or services, as set out in the Notification, Ofcom may impose a penalty on DMD under section 130 of the Act and in accordance with the Penalty Guidelines published on 13 June 2011 under section 392 of the Act<sup>59</sup> and the Policy Statement. The maximum penalty that may be imposed is £2,000,000<sup>60</sup>.

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<sup>59</sup> <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

<sup>60</sup> 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

# Correspondence between Ofcom and DMD

DMD email to Ofcom, 29 April 2014

[✂]

## Annex 2

# Notice under section 135 to DMD, 14 May 2014 (the “First Notice”)

In preparing the specified information requested below, please note the following.

### **Scope of specified information**

This notice requires XS-Remarketing to provide information to Ofcom. The specified information covers the period from **9 March 2014** to **28 April 2014** inclusive (the ‘Relevant Period’).

Your response should encompass all outbound calls to UK consumers during the Relevant Period, made either directly by XS-Remarketing or by a third party acting on behalf of or under instruction from XS-Remarketing, using an ACS.

Your response should therefore include any outsourced or other call centre(s) (including those located outside the UK), which were contracted by XS-Remarketing to make calls to UK consumers on behalf of XS-Remarketing during the Relevant Period.

### **Manner and form of provision of specified information**

For the questions 1-5, 7-9 and 11, please provide your response in a Microsoft Word or Adobe Reader document that contains XS-Remarketing stationary and then email this document to [redacted].

Questions 6 and 10 request information based on templates. Please provide this information in a Microsoft Excel spread sheet and email this document to [redacted]. 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.

The information must reach [redacted] by no later than **5pm (BST) on 29 May 2014**.

### **Explanation of terms**

Section 3 of the policy statement provides an explanation of the terms used below and an explanation of the methodology which can be used when determining compliance with the policy statement.

## Questions

### **Nature of XS-Remarketing's activity**

- 1) Please provide a corporate structure chart for the group which includes XS-Remarketing. The structure chart should:
  - a. specify the full names of all subsidiaries and/or holding companies of XS-Remarketing; and
  - b. for each of the above, specify the nature of the activity undertaken (for example "claims management").

### **Call centres and campaigns**

- 2) Please confirm whether calls using the CLI number **01413600184** were originated by XS-Remarketing or another member of its corporate group or connected person (in which case, please specify who) during the Relevant Period.
- 3) Please list all calls made by XS-Remarketing (or by one or more members of XS-Remarketing's corporate group or by a connected person) during the Relevant Period where the CLI number **01413600184** was presented. In each case, please state whether the call was made:
  - a. on behalf of XS-Remarketing;
  - b. on behalf of one or more members of XS-Remarketing's corporate group (and in which case, who); or
  - c. on behalf of one or more third parties (and, if so, who).
- 4) If the calls referred to in question 3 were made on behalf of one or more third parties, for each third party please provide:
  - a. its name;
  - b. its UK registered company number;
  - c. its postal address;
  - d. a contact name;
  - e. a contact telephone number;
  - f. an email address; and
  - g. a copy of any documents evidencing your contractual arrangement(s) with, and the scope of any authority to act conferred on you by, the third party.
- 5) For each campaign conducted during the Relevant Period, please confirm:
  - a. the campaign name or title; and
  - b. the call centre(s) that worked on the campaign.
- 6) Please provide:
  - a. the data as set out in both 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 a Microsoft Excel spread sheet;
  - b. both one worksheet per call centre and one worksheet per campaign, making clear which campaign(s) or call centre/s the data refers to. Where AMD was not used, please disregard column D; and

- c. evidence to substantiate the reasoned estimate of AMD false positives incurred where AMD was used at a call centre<sup>61</sup>.

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 <sup>62</sup>	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/14				
2	y/x/14				
3	z/x/14				

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 <sup>63</sup>	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/14				
2	y/x/14				
3	z/x/14				

- 7) Please confirm whether and how XS-Remarketing reviews calls put through to its live operators to ensure these operators are correctly classifying 'live calls' and 'calls to answer machines' (thus ensuring live calls are not incorrectly disconnected). Please provide the results of any review(s) that were undertaken during the Relevant Period

<sup>61</sup> Refer to A1.35 – A1.46 of the policy statement. 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.

<sup>62</sup> Refer to A1.35 – A1.46 of the policy statement.

<sup>63</sup> Refer to A1.35 – A1.46 of the policy statement.

(or closest to the Relevant Period if none were undertaken during the Relevant Period).

**Recorded information message**

- 8) Please confirm whether, within two seconds of a call being answered by an individual<sup>64</sup> and before being terminated or released by the ACS, XS-Remarketing provided a brief recorded information message. Your response should make it clear the extent to which this applied throughout the relevant period and in relation to each call centre and each campaign.
- 9) Please provide the script(s) of the recorded message referred to in Question 8, per call centre and per campaign.

**24 hour policy**

- 10) Please confirm what procedures, if any, XS-Remarketing 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 both per call centre and per campaign.

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; and
- 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/14			
2				
3				

<sup>64</sup> See A1.51 of the policy statement for an explanation of ‘within two seconds of the call being answered’.

**Annex 3**

**DMD response to the First Notice, 29 May 2014.**

[X]

## Annex 4

# Notice under section 135 to DMD, 28 July 2014 (the “Second Notice”)

### Call centres and campaigns

1. Please list **all CLI numbers** used by XS-Remarketing (or by one or more members of XS-Remarketing’s corporate group or by a connected person) as presentation numbers during the Relevant Period.
  
2. For **all outbound calls** made by XS-Remarketing (or by one or more members of XS-Remarketing’s corporate group or by a connected person) using an ACS during the Relevant Period, please state whether the calls were made:
  - a. on behalf of XS-Remarketing;
  - b. on behalf of one or more members of XS-Remarketing’s corporate group (and in which case, who); or
  - c. on behalf of one or more third parties (and, if so, who).

Please present this information by CLI number as set out in the table below.

	A	B
	CLI	Entity on whose behalf calls were made
1	0XXXX	
2	0XXXX	
3	0XXXX	

- 3) If any calls referred to in question 2 were made on behalf of one or more third parties, for each third party please provide:
  - a. its name;
  - b. its UK registered company number;
  - c. its postal address;
  - d. a contact name;
  - e. a contact telephone number;
  - f. an email address; and
  - g. a copy of any documents evidencing your contractual arrangement(s) with, and the scope of any authority to act conferred on you by, the third party.

- 4) For all **campaigns**<sup>65</sup> conducted during the Relevant Period, please confirm:
- the campaign name or title;
  - a brief description of the campaign purpose;
  - the call centre(s) that worked on the campaign; and
  - which CLI numbers were presented for each campaign.
- 5) Please provide:
- the data as set out in both Templates 1 and 2 below, broken down by each 24 hour period for **all outbound calls** during the Relevant Period. The data should be provided electronically by means of a Microsoft Excel spread sheet;
  - both one worksheet per call centre and one worksheet per campaign, making clear which campaign(s) or call centre/s the data refers to. Where AMD was not used, please disregard column D;
  - evidence to substantiate the reasoned estimate of AMD false positives incurred where AMD was used at a call centre<sup>66</sup>; and
  - an explanation of how the reasoned estimate of AMD false positives, and the resulting calculations, have been produced, including the dates and times of the calls analysed, as well as the CLI numbers presented. You should refer to A1.37 to A1.43 of the policy statement in preparing your answer.

*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 <sup>67</sup>	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/14				
2	y/x/14				
3	z/x/14				

<sup>65</sup> Refer to A1.21 of the policy statement.

<sup>66</sup> Refer to A1.35 – A1.46 of the policy statement. 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.

<sup>67</sup> Refer to A1.35 – A1.46 of the policy statement.

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 <sup>68</sup>	Number of calls passed to a live operator and classified as answered by an answer machine
1	x/x/14				
2	y/x/14				
3	z/x/14				

### 24 hour policy

- 6) Please supply the data, as set out in Template 3 below, on **all outbound calls** made using AMD technology for **each 24 hour period**<sup>69</sup> during the Relevant Period:
- Please either provide the information in chronological order or specify the time of each call; and
  - Please provide one worksheet per call centre per 24 hour period, 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/14			
2	y/x/14			
3	z/x/14			

<sup>68</sup> Refer to A1.35 – A1.46 of the policy statement.

<sup>69</sup> Refer to A1.16 of the policy statement.

**Annex 5**

**DMD response to the Second Notice, 11 August 2014.**

[✂]

## Annex 6

# Correspondence between Ofcom and DMD

### 1. Ofcom email to DMD, 17 September 2014

From: [✗]  
Sent: 17 September 2014 17:36  
To: [✗]  
Cc: [✗]  
Subject: Clarification of XS Remarketing's response to 2nd s135 notification

Dear [✗],

Further to XS Remarketing's response of 11 August 2014 to the second information request issued on 28 July 2014, we have some follow-up questions where we require further explanation or clarification of the information provided. Please provide the following additional information:

1. In response to question 4, you stated that a mix of the CLIs had been used from 9 March 2014 to 28 April 2014 inclusive (the "relevant period") and XS Remarketing had used the CLIs "to identify and test different agent levels or sales scripts to gauge the success of the different mix of agents." Please provide all of the call scripts used by your agents for all CLIs and all campaigns (including both predictive and preview campaigns (e.g. the Elite Campaign)) in operation during the relevant period.

In addition, please clarify the following:

2. In response to question 5, XS Remarketing provided two spreadsheets entitled "Q5 Template\_1.AbandonedCallBreakdown.By\_CallCentre" ("Spreadsheet 1") and "Q5 Template\_2.AbandonedCallBreakdown.By\_Campaign" ("Spreadsheet 2"). In response to question 5(d), you said that an AMD false positive rate was 4.02%. Please explain how you have calculated the reasoned estimates of false positives contained in column E ('AMD\_FALSE\_POSITIVE\_ESTIMATE') in Spreadsheet 1 and Spreadsheet 2 using the AMD false positive rate of 4.02%.

By way of example, the spreadsheet for 22 March 2014 which you provided in response to question 6 shows that there were 36,774 calls made on that day in total and that 13,957 calls were identified as being answered by an answer machine. Applying the false positive rate of 4.02% to the 13,957 calls identified as being answered by an answer machine on 22 March 2014 gives a reasoned estimate of false positives on that day of 561. However, in column E of Spreadsheet 1 you calculated that the reasoned estimate of false positives on 22 March 2014 was 473. In answering question 2 please explain the reason for this difference and any other differences which may arise on any other day during the relevant period.

3. In response to question 5d you said that "due to the volume of your calls and the implication of your systems" you do not record your AMD dispositioned calls. You explained that in order to complete the exercise of calculation of an estimate of AMD false positives you had been in contact with your dialler provider who had provided you with data from

another company. You said that that company was running the dialler with the same AMD properties that XS Remarketing was using at the time and that you had used that data for your analysis. In order to enable us to consider XS Remarketing's reasoned estimate of false positives derived from the sampling of this call data, please provide further details about the nature of the company whose data has been used, including the sector in which the company operates, the prefix of the CLI number that was presented when dialling on 19 February 2014 and its target customers and how this compares with XS Remarketing's target customers during the relevant period.

Please provide your response to the above questions by 5pm on 24 September 2014.

If you have any questions, please do not hesitate to contact me.

Regards,

[redacted]

:: [redacted]  
Policy Advisor  
Consumer Protection  
[redacted]  
[redacted]@ofcom.org.uk

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London SE1 9HA  
020 7981 3000  
www.ofcom.org.uk

2. DMD email to Ofcom, 24 September 2014

[redacted]

3. Ofcom email to DMD, 7 October 2014

From: [redacted]  
Sent: 07 October 2014 11:18  
To: [redacted]  
Subject: RE: Response

Dear [redacted],

Thank you for your letter of 24 September 2014 explaining and clarifying the information which you provided in response to the second information request issued on 28 July 2014 ("the second information request").

I've been project managing this case and working alongside Gemma. I'll now be taking over the day-to-day running of the case.

Having reviewed your response, we have an additional follow-up question where we require further explanation and clarification of how you had calculated the reasoned estimates of false positives in two spreadsheets which you provided in your response to question 5 of the second information request (spreadsheets entitled “Q5 Template\_1.AbandonedCallBreakdown.By\_CallCentre” and “Q5 Template\_2.AbandonedCallBreakdown.By\_Campaign”, and thereafter referred to as the “Spreadsheets”).

You explained in your response of 24 September 2014 that the way in which XS Remarketing had calculated the reasoned estimates of false positives in the Spreadsheets takes account of the way calls are reported within its dialler, and the way its dialler works. You said that the dialler uses technology which allows it to detect some digital answerphones at a network level, allowing it to terminate a call before a connection is actually made. To illustrate this, you provided a spreadsheet for 22 March 2014 which set out all calls where AMD technology was used, and highlighted those calls which were terminated at a network level before the connection was made (spreadsheet entitled “22-03-14 Network Detection” and thereafter referred to as the “22 March Spreadsheet”).

In order to allow us to understand how XS Remarketing calculated the reasoned estimates of false positives contained in column E (‘AMD\_FALSE\_POSITIVE\_ESTIMATE’) of the Spreadsheets, please provide spreadsheets for the remainder of the relevant period (i.e. from 9 March 2014 to 23 April 2014 with the exception of 22 March 2014) for all calls where AMD was active. Please set out the following in each spreadsheet:

- \* the time and date of each call;
- \* the CLI dialled;
- \* whether the call was detected as an answer machine; and
- \* whether the call was detected at a network level.

Please provide each spreadsheet in the format of the 22 March Spreadsheet following the below template:

Date  
Time of Call  
CLI Dialled  
Answerphone Detected? (Y/N)  
Network detection? (Y/N)

Please provide your response to the above question by 5pm on Monday 13 October 2014.

Kind regards,

[redacted].

:: [redacted]  
Senior Consumer Affairs Manager

[redacted]  
[redacted]@ofcom.org.uk

:: Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
020 7981 3000

www.ofcom.org.uk

[✂]

4. DMD email to Ofcom, 17 October 2014

[✂]

5. Ofcom email to DMD, 24 November 2014

From: [✂]

Sent: 24 November 2014 16:28

To: [✂]

Subject: Debt Masters Direct - compliance with Ofcom's persistent misuse statement

Attachments: 10-Mar-2014 - examples of possible duplicates.xlsx

Dear [✂],

This email seeks clarification of the following:

- \* the response provided by Debt Masters Direct (DMD) on 29 May 2014 to questions 8 and 9 of the first information request dated 14 May 2014 (the "First Information Request"); and
- \* your email of 17 October 2014 in which you provided further data which relates to your calculation of the reasoned estimates of false positives in the second information request dated 28 July 2014 (the "Second Information Request").

Having reviewed your responses and having analysed the data provided by DMD for the purposes of assessing compliance with the 24 hour rule (A1.55 of the Revised Statement of Policy), we have additional follow-up questions where we require further explanation and clarification of your pattern of dialling.

In your response of 29 May 2014 to question 8 of the First Information Request, you provided a screen shot of the dialler settings which prevent redialling in the event of an answer machine being detected. You explained in response to question 9 that DMD's system is configured not to re-attempt a redial again for 24 hours (1440 minutes). However, Ofcom's analysis of DMD's data has identified multiple attempted redials within 24 hours and this does not reconcile to the provided dialler settings. In addition, Ofcom has also identified possible duplicate entries within this data. By way of example, the attached spreadsheet shows that on 10 March 2014 there were 121 attempted redials made to CLI [✂] after the detection of an answer machine; we have highlighted those calls which may also be duplicates. You will notice that multiple calls to this number appear to be dialled at the same time or within one second, which suggests that they may be duplicate entries within the data.

Ofcom seeks to understand the nature of this pattern of dialling and how it reconciles to the screen shot of the dialler settings for repeat dialling in the event of an answer machine being detected.

Clarification Questions

1. Does the dialler initiate calls in parallel or on a sequential basis?
  - a. If in parallel, how many calls can be initiated simultaneously?
  - b. If sequentially, what is the frequency of call initiation?

2. When the dialler chooses the next number (or set of numbers) to dial, what checks, if any, are carried out to determine:
  - a. Duplicate numbers in the list (so as to avoid simultaneous calls being initiated in parallel)?
  - b. Whether a call to a chosen number is already in progress?
3. When a call to a number has been attempted, how quickly is the list (database) of numbers updated to indicate that an attempt has been made?
4. Please provide details of the dialler, including the make, model and software version in use during the relevant period (i.e. from 9 March 2014 to 23 April 2014).
5. How long, on average, does non-network based answer machine detection equipment take to determine whether a call has been answered by an answer machine?

Please respond and provide the requested information by 5pm on Tuesday 22 December 2014.

I can be reached on [redacted] if you would like to discuss the contents of this email before responding.

Kind regards,

[redacted].

:: [redacted]  
Senior Consumer Affairs Manager  
[redacted]  
[redacted]

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[www.ofcom.org.uk](http://www.ofcom.org.uk)

6. DMD email to Ofcom, 2 December 2014

[redacted]

7. Ofcom email to DMD, 8 December 2014

From: [redacted]  
Sent: 08 December 2014 14:39  
To: [redacted]  
Subject: RE: Debt Masters Direct - compliance with Ofcom's persistent misuse statement  
Attachments: 10-Mar-2014 - examples of possible duplicates.xlsx

Dear [redacted],

Many thanks for your timely response to the clarification questions set out in my email of 24 November. It has shed some useful light on the workings of your automated dialler. However, there remains an unexplained discrepancy between the description of the dialler settings that you have outlined and the call data provided by Debt Masters Direct (DMD). In response to question 3 of my email of 24 November 2014, you described the process used by DMD to update the database of numbers and said that this process ensures that the same contact does not receive multiple calls at the same time. In your response of 29 May 2014 you said that DMD's system is configured not to reattempt to redial again for 24hours (1440 minutes).

However, the call data, provided on 21 October 2014, shows multiple repeat call attempts to a single CLI within 24 hours after an answer machine has been detected. Our analysis of your data also shows that multiple calls are being made to the same CLI at the same time or within 1 or 2 seconds. I have attached the example provided in my email of 24 November which shows that on 10 March there 121 attempted redials made to CLI [redacted] after the detection of an answer machine. Your recent response to the clarification questions does not explain how Ofcom's analysis of DMD's calling data can be reconciled to the description of the dialler settings set out in DMD's response to the information request dated 14 May 2014.

Therefore, please provide a clear explanation as to the apparent discrepancies between your description of the dialler settings/processes used by DMD and Ofcom's analysis of the call data provided by DMD.

I would be grateful if you could provide a response by mid-day on Friday 11 December 2014.  
Kind regards,  
[redacted].

From: [redacted]  
Sent: 02 December 2014 16:11  
To: [redacted]  
Subject: RE: Debt Masters Direct - compliance with Ofcom's persistent misuse statement

Dear [redacted],

[redacted]

Kind Regards,

[redacted].

[redacted] | Managing Director | Debt Masters Direct  
M: [redacted] | T: [redacted] | F: [redacted]  
E: [redacted] W: <http://www.debtmastersdirect.co.uk/>

A: Debt Masters Direct, 4 West Regent Street, Glasgow, G2 1RW

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From: [redacted]  
Sent: 24 November 2014 16:28  
To: [redacted]  
Subject: Debt Masters Direct - compliance with Ofcom's persistent misuse statement

Dear [X],

This email seeks clarification of the following:

- \* the response provided by Debt Masters Direct (DMD) on 29 May 2014 to questions 8 and 9 of the first information request dated 14 May 2014 (the "First Information Request"); and
- \* your email of 17 October 2014 in which you provided further data which relates to your calculation of the reasoned estimates of false positives in the second information request dated 28 July 2014 (the "Second Information Request").

Having reviewed your responses and having analysed the data provided by DMD for the purposes of assessing compliance with the 24 hour rule (A1.55 of the Revised Statement of Policy), we have additional follow-up questions where we require further explanation and clarification of your pattern of dialling.

In your response of 29 May 2014 to question 8 of the First Information Request, you provided a screen shot of the dialler settings which prevent redialling in the event of an answer machine being detected. You explained in response to question 9 that DMD's system is configured not to re-attempt a redial again for 24 hours (1440 minutes). However, Ofcom's analysis of DMD's data has identified multiple attempted redials within 24 hours and this does not reconcile to the provided dialler settings. In addition, Ofcom has also identified possible duplicate entries within this data. By way of example, the attached spreadsheet shows that on 10 March 2014 there were 121 attempted redials made to CLI [X] after the detection of an answer machine; we have highlighted those calls which may also be duplicates. You will notice that multiple calls to this number appear to be dialled at the same time or within one second, which suggests that they may be duplicate entries within the data. Ofcom seeks to understand the nature of this pattern of dialling and how it reconciles to the screen shot of the dialler settings for repeat dialling in the event of an answer machine being detected.

#### Clarification Questions

1. Does the dialler initiate calls in parallel or on a sequential basis?
    - a. If in parallel, how many calls can be initiated simultaneously?
    - b. If sequentially, what is the frequency of call initiation?
  2. When the dialler chooses the next number (or set of numbers) to dial, what checks, if any, are carried out to determine:
    - a. Duplicate numbers in the list (so as to avoid simultaneous calls being initiated in parallel)?
    - b. Whether a call to a chosen number is already in progress?
  3. When a call to a number has been attempted, how quickly is the list (database) of numbers updated to indicate that an attempt has been made?
  4. Please provide details of the dialler, including the make, model and software version in use during the relevant period (i.e. from 9 March 2014 to 23 April 2014).
  5. How long, on average, does non-network based answer machine detection equipment take to determine whether a call has been answered by an answer machine?
- Please respond and provide the requested information by 5pm on Tuesday 22 December 2014.

I can be reached on [redacted] if you would like to discuss the contents of this email before responding.

Kind regards,

[redacted].

:: [redacted]  
Senior Consumer Affairs Manager  
[redacted]  
[redacted]

:: Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
020 7981 3000  
www.ofcom.org.uk

8. DMD email to Ofcom, 12 December 2014

[redacted]

9. Ofcom email to DMD, 15 December 2014

From: [redacted]  
Sent: 15 December 2014 09:41  
To: [redacted]  
Subject: RE: Debt Masters Direct  
Dear [redacted],

Many thanks for the explanation. I was wondering you did not bring this to our attention at an earlier stage in the investigation.

Kind regards,

[redacted].

From: [redacted]  
Sent: 12 December 2014 11:43  
To: [redacted]  
Subject: Debt Masters Direct

Dear [redacted],

[redacted]

Kind Regards,

[redacted]

[REDACTED] | Managing Director | Debt Masters Direct

M: [REDACTED] | T: [REDACTED] | F: [REDACTED]

E: [REDACTED] W: <http://www.debtmastersdirect.co.uk/>

A: Debt Masters Direct, 4 West Regent Street, Glasgow, G2 1RW

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10. DMD email to Ofcom, 15 December 2014

[REDACTED]

**Annex 7**

**Mott MacDonald report to Ofcom, 17  
November 2014**

[X]

**Annex 8**

**Mott MacDonald report to Ofcom, 13  
March 2015**

[✂]