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Ofcom consultation response – Review of how we use our persistent misuse powers

1. The British Bankers' Association (BBA) is the leading trade association for the UK banking sector with 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Eighty per cent of global systemically important banks are members of the BBA. As the representative of the world's largest international banking cluster the BBA is the voice of UK banking.
2. Summary of key considerations and recommendations
 - We are supportive of the principle to address consumer harm caused by the persistent misuse of communications systems, with the focus on silent and abandoned calls.
 - The level of complaints identified in the report are indicative of a lack of compliance to existing procedures, and we urge caution that the introduction of tighter policy does not have inadvertent consequences for operators who have robust management of their technology and processes and do not generate material customer detriment.
 - We believe that the policy should be cognisant of the diverse range of sources from which a customer can receive calls. These could range from unsolicited cold calling from a marketing/sales agent, through to contact from an organisation with whom the customer has an existing contractual relationship (such as a banking relationship).
 - Our members are regulated by the Financial Conduct Authority (FCA) and are accustomed to a consumer centric regulatory policy focus. They are required to comply with a broad range of rules and principles which ensure that customers are 'treated fairly'. Misuse should be assessed not only by operational metrics but also customer outcomes (including monitoring through the level of complaints).
 - Call centres are an established contact approach in the Financial Services Industry, which introduce efficiencies and dialling accuracy. The effective management of technology and resources can help to deliver good customer outcomes.
 - We recommend that the policy on abandoned calls continues to relate to Abandoned Call Rate (ACR) above 3% being the priority for investigation, and that an absolute number of 3 abandoned calls is not introduced. The introduction of an operational metric trigger which is not directly correlated to customer experience could lead to negative outcomes as it would inhibit the ability to contact existing customers.
 - The use of multiple Caller Line Identifiers (CLIs) has been shown to improve customer contact rates. Where there is a contractual relationship with the customer, high contact rates can provide benefits, and help FCA regulated firms meet their obligations to support customers. We recommend that where an organisation has a contractual relationship with a customer, multiple CLIs should continue to be permitted.

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Background

3. Financial Institutions authorised by the Financial Conduct Authority (FCA) are required to comply with an extensive range of regulation. The FCA handbook specifies the rules that cover the engagement across the entire customer experience, and include;
 - Prescriptive rules around specified activities, including
 - Business Standards – Banking: Conduct of Business sourcebook (BCOBS)
 - Includes rules on communications with customers including financial promotions.
 - Specialist sourcebooks - Consumer Credit Sourcebook (CONC)
 - Includes rules to support customers to obtain debt advice and suspend recovery action for a reasonable time as this is sought.
 - Redress - Dispute Resolution: Complaints (DISP)
 - Contains rules and guidance on how firms must deal with complaints fairly and promptly.
 - Principle based rules
 - High Level Standards - Principles for Business (PRIN)
 - Including PRIN 6 Customers Interests - “firms must pay due regard to the interests of customers and treat them fairly”.
4. This comprehensive range of controls and tools enable the FCA to apply a principle based regulatory regime where the consumer outcome is a key factor. These rules afford the consumer a significant amount of protection.
5. Financial Institutions are familiar with a customer centric approach to establishing process and the monitoring and tracking of subsequent performance. In introducing the revised policy, care is needed to ensure that there is no conflict with any FCA regulatory principles which could cause inadvertent consumer detriment.
6. There are a number of situations whereby a financial institution may wish to (or be required under regulation) to contact its existing customers. Due to the existing contractual relationship with the customer and a defined specific reason for contact, this contact could be of benefit to the customer. Examples where customer contact can be sought include;
 - Customer Service – On boarding / welcoming call to the customer to ensure products and services have been correctly delivered and explained.
 - Account Management and Pro-active debt advice – Contacting customers who may be about to enter financial difficulty to offer support with a review of their income and expenditure, or signposting customers to the not-for-profit debt advice sector.
 - Overdue payments and collections – contacting customers to highlight overdue payments which could result in additional charges and the account performance reported on the customer credit history at the credit reference agencies.
 - Fraud investigation – contacting the customer where unusual transactions on their account have been attempted or identified.
7. The established operational approach for customer contact within the financial industry is typically through the use of dialler systems. The effective use and management of technology introduces efficiency and cost effectiveness into the process, as well as enhanced contact accuracy through the removal of manual dialling.

8. The consultation makes reference to the significant level of complaints that are generated. The data does not however provide a granular assessment of the extent to which these are generated by organisations that have an existing relationship with the customer, or are generated through unsolicited calls.
9. The report states that in the 12 months to October 2015, Ofcom received circa 45,000 complaints for silent and abandoned calls. Our members have advised that they receive an extremely low level of feedback from customers relating to abandoned and silent calls. Care must be exercised to ensure that policy is targeted at those organisations that are causing customer detriment.
10. The consultation highlights that effective management of technology and resources can mitigate the impact upon consumers. We fully support the approach for clear policies and processes to be embedded within companies to ensure effective and efficient use of the technology is adopted and customer detriment minimised.
11. Complaints are a key indicator of customer detriment, and these should be one of the metrics that firms making outbound calls track to identify if their processes, policy or systems are not effectively established or implemented.

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

12. Yes, silent and abandoned calls should be the main focus of persistent misuse.
13. However, the policy should be cognisant of the diverse range of calls that a customer can receive. These could range from unsolicited cold calling from a marketing/sales agent, through to contact from an FCA regulated financial firm with whom an existing contractual relationship is in place.
14. Members do not allow system generated silent calls, and have governance procedures to effectively manage and monitoring their use of diallers and any abandoned call rates. We advocate that the definition of what constitutes an abandoned call should not be tightened from the existing guidelines.
15. Persistent misuse should include customer detriment within its definition, which will typically be evident through customer complaints. Whilst Ofcom reports having received around 44,900 complaints relating to silent and abandoned calls in the 12 months to October 2015, members report that the level of complaints they receive are extremely low. This would indicate that contact with existing customers in a robust and well managed operating environment does not lead to material customer detriment. Identifying customer outcomes as a factor of persistent misuse will help direct Ofcom to the areas of greatest customer detriment.

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

16. No further comments.

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

17. We agree that IVM and PECR's should be included in policy.
18. We do not agree that CLIs should be considered a cause of misuse in all situations. Where there is an existing contractual relationship with the customer, firms can utilise different CLIs

to ensure that the customer is directed to the correct department relating to the nature of the reason for contact. Multiple CLIs have been proven to improve contact rates and in a collections environment this will facilitate firms in meeting their regulatory responsibilities to support customers in financial difficulty as well as improve collection and payment rates. The use of CLIs in these circumstances is not to mislead the customer into answering a call from an organisation with whom they have no relationship.

19. We recommend that where an organisation has a contractual relationship with a customer, multiple CLIs should continue to be permitted.

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

20. No further comments.

Q5: Do you have any comments on:

a) the evidence of consumer harm from the forms of persistent misuse we propose to include in the policy (and on silent and abandoned calls in particular); and

b) our approach to estimating the consumer harm from those forms of misuse?

In all your responses, please state your reasons and provide evidence to support your views.

21. No further comment. Members advise that they receive a very low level of complaints from their customers relating to silent or abandoned calls.

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

22. The consultation reports that there are in excess of 4.8bn nuisance calls per year which are causing detriment, within which there are 1.5bn silent calls and 200m abandoned calls.
23. The proposal tightens policy and provides greater clarity of misuse definitions to enable action to be taken against existing operators in the market that are causing significant customer detriment.
24. The policy should focus on the effective targeting of firms where 'persistent misuse' is evident, a key element of which should be evidence of poor customer outcomes (such as complaints). Changes to policy should not have the unintended consequence of penalising firms that are actively and effectively manage their diallers and tracking ACR where minimal customer detriment is evident.

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

25. The proposed policy targets a zero tolerance on silent calls and will deter callers from making abandoned calls. Enforcement action should be prioritised against firms where persistent misuse and customer detriment is evident.
26. The policy will be applied uniformly across the market by Ofcom. We believe it is relevant to recognise the diverse range of calls that a customer can receive. These could range from unsolicited cold calls from a marketing/sales agent, through to contact from an FCA regulated financial firm with whom an existing contractual relationship is in place. Reputable organisations that have embedded robust management and controls around customer contact processes should not be burdened with additional policy and restrictions due to the failure of less scrupulous organisations who are failing to meet existing policy requirements and who are responsible for the majority of complaints and customer detriment.

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

27. Silent calls – we agree with the definition (4.28). Responsible firms will use CLI, and in the event of a silent call, customers would be able to identify the caller and lodge a complaint.
28. Where the call is disconnected as soon as picked up or shortly after being answered it is not possible to know in real time that a defined “silent call” has been made. Members have internal processes to listen to outbound calls on a regular and ongoing basis to check compliance with policy and the quality of the call. This pro-active sampling together with a review of any complaints supports the effective management of customer contact strategies.
29. Abandoned calls – we agree with the definition (4.76).

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

30. Yes, we agree with the policy on silent calls. Members do not allow system generated silent calls, and therefore there should be no impact upon costs.

Q10: Do you agree with the proposed policy on abandoned calls:

a) that cases where a caller’s abandoned call rate is three per cent in any 24 hour period or more should represent a higher priority for enforcement and;

b) where we take enforcement action, we should take into account all abandoned calls a caller makes?

31. Yes, we agree with the proposed policy that enforcement action be prioritised where abandoned calls exceed 3% in a 24-hour period. Our members advise that they have effective automated controls to monitor any level of abandoned calls and implement changes to dialler frequencies to minimise customer impact. Members advise that they operate substantially below the 3% ACR level trigger for enforcement action (typically below 1%) and the level of complaints received for abandoned calls are very low.
32. We also agree that where enforcement action is considered, all abandoned calls are considered.
33. The policy however proposes the introduction of a new absolute number of three abandoned calls above which enforcement action will be taken (4.69). We do not agree that this new policy should be introduced. The customer outcome approach should be adopted, with a wider focus on the percentage of abandoned calls and any customer complaints driving the need for investigation by the regulator. Furthermore the policy is not specific as to how the ‘three abandoned calls’ are defined (to an individual customer or by total campaign) and is not time bound.
34. Should the policy intention of three abandoned calls be “a system level limit within a 24-hour period”, this would effectively implement a zero tolerance approach. We do not believe that this is the policy intention, and its introduction would lead directly to poor outcomes for customers. This operational trigger does not have an empirical link to customer detriment in all situations and therefore does not have a customer outcome focus (as the removal of dialler technology could introduce inaccuracy in dialling and operational efficiencies and costs).

35. Members will be using communications technology to contact consumers with whom they have an existing contractual relationship. They could therefore have important knowledge of their customer which would not be known to marketing/cold calling companies. Where members are aware their customer has been identified as in 'vulnerable circumstances' they will use this knowledge to assess the most appropriate method of contact, and typically the customer be excluded from any automated contact strategy.

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

36. Call centres are an established business tool that enable members to efficiently and accurately contact their existing customers.
37. Some example of reasons for contact are listed below. The effective management and monitoring of automated calling systems and processes brings benefits to both consumers and lenders.
- Customer Service – On boarding / welcoming call to the customer to ensure products and services have been correctly delivered and explained.
 - Account Management and Pro-active debt advice – Contacting customers who may be about to enter financial difficulty to offer support with a review of their income and expenditure, or signposting customers to the not-for-profit debt advice sector.
 - Overdue payments and collections – contacting customers to highlight overdue payments which could result in additional charges and the account performance reported on the customer credit history at the Credit reference Agencies. This contact can help customer to avoid preventable charges being incurred, and therefore has a direct positive outcome for them.
 - Fraud investigation – contacting the customer where unusual transactions on their account have been attempted or identified.
38. If the clarification / tightening of policy is intended to introduce an effective zero tolerance approach to abandoned calls (Three calls rule), this would require members to transition to a manual dialling operation. The potential implications of moving to manual dialling would result in increased costs through;
- Slower and less efficient contact with customers, as operators will need to handle every call and not just the calls where contact is made.
 - Increased resourcing levels (and therefore costs) will therefore be required to maintain the same level of customer contact.
 - Associated additional premises and infrastructure.
39. The introduction of manual dialling could also introduce inaccuracies through human error.
40. These are likely to be not insignificant costs for firms, and disproportionate to the potential benefit for customers (where little evidence of detriment is in evidence). These additional costs would affect the business model of products and services, and ultimately it is likely that the additional costs of providing the service would be passed onto customers.
41. We would therefore recommend that a proportionate and customer outcome focus approach to identifying persistent misuse of abandoned calls is adopted. Where customer detriment is identified, the prioritisation of enforcement action would use the existing criteria of ACR in excess of 3%. The new criteria of three abandoned calls should not be introduced.

Q12: Do you have any comments on our proposed changes to the policy in relation to persistent misuse arising from:

- a) misuse of ACS;
- b) misuse of a CLI facility; and
- c) breaches of the PECRs?

42. Caller Line Identifiers (CLI's) - Where there is an existing contractual relationship with the customer, the use of different CLIs (geographic, landline and free to caller) can result in greater contact rates and enable return calls to be made to the correct department to deal with the reason for contact more efficiently.
43. For customers who might be about to enter financial difficulty, or who might already be in arrears, the Financial Conduct Authority Credit Card Market Study - Interim Report published in November 2015, suggested a potential remedy that lenders should make contact with customers sooner to support customers. (<http://www.fca.org.uk/static/documents/market-studies/ms14-6-2-ccms-interim-report.pdf> p96)

8.19 - Earlier forbearance: We think firms could identify and address potentially problematic debt (e.g. persistent debt or systematic minimum repayment) sooner, before consumers miss payments and accumulate interest and avoidable charges. Firms are already required to monitor for signs that consumers may be struggling to repay, but could do more to respond, for example by contacting the consumer to find out if they are in financial difficulties and, if so, whether to exercise forbearance.

44. The regulator places an onus on lenders to support customers and has a focus on good customer outcomes. The restriction on the use of multiple CLIs would reduce contact rates and potentially increase customer detriment through the delayed provision of debt advice or referral to the free to client debt advice sector.
45. Given the FCA regulatory oversight of the financial industry and their principles based and customer outcome focus of the regulation, we would recommend that the use of multiple CLIs should not be banned as a matter of blanket policy. We recommend that where there is an existing contractual relationship with the customer, organisations can be allowed to continue to use multiple CLIs to effect contact

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

46. No further comments

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

47. No further comments

If you have any questions regarding this response please contact Ian Fiddeman, Policy Director (ian.fiddeman@bba.org.uk)

[Ends]