DMA Response to Ofcom Review of how we use our persistent misuse powers – focus on silent and abandoned calls

Information about The DMA (UK) Ltd

The Direct Marketing Association (UK) Limited (DMA) is Europe’s largest trade association in the marketing and communications sector, with approximately 1,050 corporate members and positioned in the top 5% of UK trade associations by income.

The DMA represents both advertisers, who market their products using 1 to 1 marketing channels, including email, mobile, social media, advertising mail and inserts, and specialist suppliers of 1 to 1 marketing services to those advertisers – for example, advertising agencies, outsourced contact centres etc.

The DMA also administers the Mailing Preference Service, the Telephone Preference Service and the Fax Preference Service. On behalf of its membership, the DMA promotes best practice through its DMA Code, in order to maintain and enhance consumers’ trust and confidence in the direct marketing industry.

The Direct Marketing Commission is an independent body that monitors industry compliance. Please visit our website www.dma.org.uk for further information about us.

Introduction/Executive Summary

We welcome Ofcom’s focus on silent calls and abandoned calls. However, we believe that a distinction needs to be made between silent calls and abandoned calls. The real consumer harm comes from silent calls rather than abandoned calls. Ofcom should target its enforcement activity on those organisations that are making silent calls, rather than targeting organisations who are broadly compliant but on an occasional basis may breach the 3% Abandoned Call Rate.

It is obviously easier to target such broadly compliant organisations since they can be identified from the abandoned call message rather than those organisations who make silent calls, where identification is more difficult. We suspect that a lot of silent calls may be originating from overseas call centres but further research is needed to confirm our suspicions.

We have a particular problem with the three abandoned calls point and we provide detail of this in q12

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

While we agree that silent and abandoned calls do upset some consumers, we are concerned that Ofcom is concentrating on these to the exclusion of other types of persistent misuse which may cause more consumer harm. The other types of persistent misuse include:

1) The failure of call centre agents to identify who they are calling on behalf, such as giving generic names for example Claims Management Centre or simply hanging up when pressed to properly identify themselves.

This is illegal behaviour under the Privacy and Electronic Communications (EC Directive) Regulations 2003) as amended (PECR)

2) Automated recorded direct marketing calls made without the prior consent of the recipient of the call

This is in breach of PECR
3) Failure of organisations to respect numbers registered on the Telephone Preference Service or to place numbers on their own in house do not call list

This is in breach of PECR.

The DMA appreciates that Ofcom is not responsible for the enforcement of the other types of persistent misuse identified above, as these fall under the responsibility of the Information Commissioner’s Office (ICO). Nevertheless, under the Joint Action Plan on nuisance calls between Ofcom and the ICO it should be encouraging the ICO in its enforcement work in these areas, which probably cause a large number of nuisance calls.

It would be helpful if further research was done into the specific types of nuisance calls which consumers receive which could be used for more targeted enforcement action against organisations.

There is also the problem that many silent and abandoned calls came from offshore call centres. As Ofcom has identified in the 2010 Statement:

“A1.8 An example of this may arise in the context of network or service misuse by a call centre. Where a person engages representatives, such as third party call centres to contact UK consumers on its behalf, that person may be the target of an investigation and ultimately action under the Act for persistent misuse by its representatives. This includes where the representative is an offshore centre.”\(^1\)

The DMA appreciates that Ofcom may have trouble in identifying the offshore call centre because of the issues around Calling Line Identification. However it is hoped that the DCMS consultation on Requiring direct marketing callers to provide Calling Line Identification (January 2016)\(^2\) will help in identifying offshore call centres.

We welcome the change in that the rules on silent and abandoned calls will apply to all organisations even if they are using manual dialling and not just those organisations that are using Automated Calling Systems (ACS). However this raises a compliance issue in that it is impossible for all organisations even though they are not operating a call centre to comply with the rules. The writer is sure that the DMA, for example, will make 3 abandoned calls on a working day simply due to staff members realising that they have dialled a wrong number once the call has been connected but before they speak to the subscriber.

Ofcom needs to make efforts to identify those organisations that are persistently and wilfully not complying with the rules and take effective enforcement action against them rather than focussing enforcement action against organisations that are making an effort to comply with the rules but are falling short. For example, Ofcom should focus enforcement action against those organisations who are not providing CLI, rather than taking enforcement action against those that are using CLI, even though it may be easier to take enforcement action against those that are providing CLI Otherwise Ofcom runs the risk of not being seen as a proportionate regulator.

\(^1\) http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf
Q2: Have we identified the main causes and effects of silent and abandoned calls, and are there any others we should take into account?

We agree that for abandoned calls, Ofcom has identified the main cause, that being predictive dialling equipment. Indeed, by definition, an abandoned call is marked out by the information message being played making it absolutely clear to the recipient that the call has been made by a contact centre unable to connect a call to a live agent. However, when it comes to silent calls, we believe that the number of such calls that are caused by the direct marketing industry are not as many as Ofcom estimates. We believe that while the industry knows what they mean by a silent call, this is not a term fully understood by consumers. The trueCall system allows consumers to lodge a report about nuisance calls that they receive. trueCall reports that when they report calls as being silent calls they are actually calls where:-

- They pick up their phone and they hear a dial tone or NU tone
- They hear a few seconds silence before the caller speaks
- They hear the background noise of a call centre, but nobody speaks to them
- They play back their answering machine/voicemail messages and they get some messages that are silent.

None of these fall into Ofcom’s definition of a silent call.

For this reason we believe that Ofcom’s figures overstate the number of silent and abandoned calls. Looking at it mathematically, the numbers indicate that the vast majority of silent calls cannot be made by the legitimate and responsible telemarketing industry. Under the current guidelines, the only way a silent call can be made by a “compliant” contact centre is as a false-positive resulting from the use of Answer Machine Detection (AMD) technology. From the research conducted by Contact Babel and referenced as Annex 6 to the consultation document, a large number of outbound contact centres do not use AMD at all, and those that do use it less than 50% of the time. Even at a generous estimate, if you assume that one silent call due to AMD is generated for every abandoned call that would still only leave 200 million silent calls to have been created in this way. That leaves a net of 1.3 billion silent calls (from the numbers quoted in section 3.15 of the consultation paper) made by other means. Silent calls can be made by operators of non-compliant dialling equipment in many ways, some of which have been identified in the consultation document, but some have not. In our experience over many years and in several markets, many diallers attempt to hold the line open for a long time in the hope of an agent coming free. Clearly anybody trying to be compliant in the UK would only be able to do this for 2 seconds, but for somebody ignoring this rule, the experience for the call recipient is of a silent call. This may well be the case with overseas call centres.

Another way silent calls can be made that is not detailed in the consultation document is the way that modern DECT phones can over-ring in certain circumstances. This could be the cause of a large number of consumers believing that they have received a silent call when this hasn’t actually happened. We are surprised that Ofcom didn’t make any reference to this as a contributor to silent calls in the consultation documents.

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

If we assume that a call centre allows the phone to ring for 15 seconds and the handset over-rings by 5 – 8 seconds then it is clear that this will cause a significant number of ‘dead calls’ that a consumer would class as a silent call.
In a call centre environment managers will need to have controls in place to deal with systematic abuse caused by agent behaviour. However as noted above in our response to q1 even in a non-call centre environment most organisations will make more than 3 abandoned calls a day.

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

The DMA believes that if the objective is to deceive the consumer about the origin of the call (in order to hide the caller’s identity or make them more likely to pick up) then the practice of presenting different CLIs to different customers or presenting different CLIs at different times should be classed as persistent misuse.

We are pleased that you seem to agree. In section 4.160 of your consultation document you say:

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

Looking at the draft revised Statement of Policy in Annex 5 we can’t see any reference to rotating or localising CLIs as being misuse. We would like to see these points explicitly mentioned in the Statement.

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)?

Ofcom should take account of the problem of over-ring of DECT phones which we have identified in our response to q2.

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.

We believe that the impact of a silent or abandoned call isn’t as great on consumers as it once was. There has been a lot of consumer education over the last 10 years on the TV, radio and in the press and we believe that more people would be aware that a silent call was more likely to be a call centre rather than a criminal, and abandoned calls – where there is an information message which explains who is calling – don’t cause the same level of fear. We believe that policy decisions should be made on the basis of accurate statistics. We have been concerned for some time about the accuracy of Ofcom’s diary research into nuisance calls. This has consistently shows just half the number of nuisance calls that other surveys show. We note in the current consultation paper (A7.7) you say:

“In estimating these figures we have assumed that survey respondents answered only their normal “fair share” of household calls (that is to say, if a household consists of two individuals; the calls the survey respondent records represent 50 per cent of the calls the household actually receives). This assumption is grounded in the fact that the survey was designed to be representative at the level of the individual respondent (each respondent was asked to only record calls that they personally received). Further, this assumes that respondents did not change their behaviour during their participation in the survey.”

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The research has been running for a number of years, and this is the first time that we have heard this adjustment mentioned. This may bring Ofcom’s figures into line with other surveys, but we don’t accept the logic of the adjustment for two reasons:

- It is not the case that in a 2-adult household either one partner is at home or the other. They are frequently both at home at the same time, so a single nuisance call received when they are both at home will be counted by Ofcom as two calls.

- If a household is participating in a nuisance call diary survey we would guess that both partners in the household would fill in the diary.

We believe that the use of diaries is flawed, and this adjustment just make inaccurate figures even less accurate.

- It will inevitably underestimate the number of nuisance calls received as some nuisance calls won’t be marked down in the diary.
- Those individuals who are most affected by nuisance calls – the older and vulnerable – will be less able to fill in diaries so the research results won’t represent their experience. Other research shows that they receive more nuisance calls that the rest of the population.
- Those at highest risk – those with mental or physical problems – can’t participate.

We believe that Ofcom should consider other methodologies that accurately keep a record of the calls received by households.

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

We do agree that changes need to be made to the 2010 policy. In particular we welcome the stance taken on silent calls and the stipulations around the misuse of CLI. We also welcome the comments around appropriate time of day to call. All of these issues have been the subject of DMA best practice for many years.

However, as we have already identified above in the introduction and in our response to q1 and below in our response to q12 we have major concerns with the changes proposed in this consultation paper to the 2010 policy on abandoned calls.

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

We believe that many of the causes of nuisance calls will not be addressed by these changes, because the changes are focussed on those organisations who are already trying to be compliant, rather than those organisations who disregard compliance completely. We have already mentioned in our responses to q1, q3 and will mention in our responses to q12 below that Ofcom needs to target its enforcement action against those organisations that are wilfully and persistently not complying with the rules. As we discussed in our response to Q3, we believe that the compliant
telemarketing industry is not responsible for more than 90% of nuisance calls. There are many examples of misuse and nuisance not addressed by the consultation including:

- A failure for the agent to identify the organisation on whose behalf the call is being made
- CLI numbers being used for which a return call cannot be made, or where there is no option for the caller to “unsubscribe” or “opt-out” of further telemarketing calls.

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

Yes, but some of the causes may have been missed – for example DECT over-ringing, or diallers making use of very long wait times for agents. It may be simpler to define from the point of view of the recipient answering the call, rather than the call origination process.

Where there is a degree of clarity required is in the definition of an abandoned call during an IVM call. Currently the documentation refers to the caller having to wait for a “long” time – that is undefined. We believe that this could lead to widespread misuse.

There is also an anomaly between the dialler experience and the IVM experience in that:

- If a contact centre calls an individual with the intention of connecting the call to a live agent, but there is no free agent then they must play a recorded message under the abandoned call rules. The DMA supports this limit as being good practice and respectful of consumers.
- If a contact centre calls an individual with no intention of connecting the call to a live agent but to connect the caller to an IVM session, then it is deemed quite acceptable for the call recipient to be greeted with a recorded message 100% of the time provided the organisation has complied with the PECR rules on automated recorded calls. The call will only be deemed to have become a nuisance if there is a “long” wait time for an agent transfer.

The DMA believes that the introduction of IVM has had an overwhelmingly negative effect on the consumer experience. Tighter rules for the use of IVM are required together with tighter enforcement of the new rules by both Ofcom and the ICO.

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?

We accept that silent calls are a significant form of misuse, cause significant consumer harm and welcome Ofcom’s “zero tolerance” approach.

As identified in our response to Q1 there are other sources of nuisance calls which are the responsibility of the ICO and Ofcom should be encouraging the ICO to take effective enforcement action in these areas under the Joint Action Plan on nuisance calls.

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

a) that cases where a caller’s abandoned call rate is three per cent in any 24 hour period or more should represent a higher priority for enforcement and;
b) where we take enforcement action, we should take into account all abandoned calls a caller makes?

We are concerned that Ofcom has taken enforcement action on organisations who have attempted to be compliant, and fallen short rather than on those who have continually and wilfully ignored the persistent misuse statement completely. We believe that it is these organisations who are responsible for the majority of the silent calls. Please see our comments above in our introduction and our response to q1 and q3.

We would suggest that Ofcom needs to follow the Information Commissioner’s Office (ICO) which takes a different attitude where possible to organisations who are making an effort to comply but occasionally fall short from those organisations who are persistently and wilfully non - compliant.

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

No, but please see our response to q12

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

a) Misuse of ACS;

Automated Calling System (ACS) give significant productivity benefits to call centres but they do generate some abandoned calls. Ofcom has never advocated banning ACS – it has carefully considered all the factors and trodden a line that balances the interests of consumers and industry in this area saying that reducing the 3% threshold to 2% would cost UK industry £672 million vs a public detriment of £17m (4.114 and 4.116 of consultation document).

We believe that the proposed new wording of the statement strongly implies that any call centre making 3 abandoned calls is guilty of persistent misuse and is operating in a non-compliant way. It is not possible to make the productivity gains outlined above with ACS without making three abandoned calls, so the new wording could be interpreted as banning ACS and making anyone using this equipment non-compliant.

Indeed any organisation, not just call centres would be in breach of this obligation since over time all organisations will make 3 abandoned calls due to members of staff dialling wrong numbers and realising before they speak to a live person but after the call is connected.

We believe that it is not Ofcom’s intention to ban ACS, but an unintended and unforeseen consequence of the drafting of the 2016 Statement means that this might be the outcome.

The current situation

In section A1.10 of the 2010 version of the statement Ofcom said:
“A1.10 The misuse also must be persistent. Section 128(6) states that this is where the misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents:
”a pattern of behaviour or practice”. This is met by instances of repetitive misuse. It is difficult to define in advance what cycle of repetitive behaviour may reasonably be described as forming a pattern. This 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;”3

3 http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/SilentCalls.pdf
Furthermore the 2010 statement goes on to set out at paras A1.14-A1.50 in great detail how the Abandoned Call Rate is calculated.

In Ofcom’s Statement of policy on the persistent misuse of an electronic communications network or service dated 1 March 2006 at paragraph 6.15 it says

“It is undeniable that even a single abandoned call may cause unnecessary annoyance, inconvenience or anxiety and properly managed call centres will strive to ensure that they do not generate more calls than their agents can handle. A persistent failure to do so will constitute an act of persistent misuse and may lead to the issue of a notification under section 128. However, in deciding whether to take enforcement action in particular case Ofcom will be guided by a sense of administrative priority, determined by the level of consumer detriment and will take account of the steps taken by call centre operators to reduce the degree of concern that silent or abandoned calls cause. There are a number of procedures that call centre centres can adopt which, taken together as a package will act as mitigating factors in establishing the seriousness of a particular act or misuse.”

A Compliance Manager reading these statements may conclude that if they are using ACS they must be very careful to not cause a nuisance on the phone – in particular not to breach the 3% abandoned call limit, and to comply with the other specific requirements in the statement – but that Ofcom had some latitude on a case by case basis to determine whether a particular use of ACS at a particular time was causing persistent misuse, provided it was repetitive behaviour.

The proposed new statement

In the proposed new statement the following sentence is added at section 2.7:

“So, where a person engages in activities or conduct that amount to misuse on three or more occasions, Ofcom may regard that as ‘persistent misuse’.”

A Compliance Manager reading this may conclude that any use of ACS is non-compliant.

The fact that Ofcom won’t pursue the call centre for this persistent misuse unless these calls comprise more than 3% of all calls is a moot point for regulated companies who are required to abide by all relevant regulations. In particular a condition of DMA membership is compliance with all regulations. All organisations whose shares are traded on a recognised exchange will have to certify in their annual reports and accounts that they are operating in compliance with all relevant rules and regulations and the directors will have to sign off on this. No organisation can say that they have not and will not make 3 abandoned calls over time even if they are not a call centre. There is a huge jump between saying that persistent misuse in the 2010 statement amounts to three instances of the conduct and the 2016 statement saying that 1 abandoned call is an instance of the conduct and therefore that three abandoned calls is now persistent misuse.

In the Ofcom final ruling on the Ageas Case⁴, it was made clear that 3 separate occasions means breaching the 3% abandoned call limit over three separate 24 hour periods not making 3 abandoned calls.

The DMA therefore does not agree with the comments in paras 4.102 to 4.104 of this consultation paper.

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⁴ http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/Ageas_50_limited.pdf
“4.102 We also take account that our proposed position is not in any event a substantive change from the intended effect of the 2010 policy. That effect is that we prioritise for action those cases in which the ACR is above three per cent, but the current policy does not mean that we could or would not take action in cases where a calling organisation makes abandoned calls at a lower rate.

4.103 On the contrary, it follows from the 2010 policy that we may already take action in such cases. There are circumstances in which it may be particularly relevant to do so. These would include, but are by no means limited to, cases where the content of the recorded message played are unacceptable or where the absolute number of calls made means action to protect consumers is in any event appropriate.

4.104 Our provisional view is that we should make this position explicitly clear in the policy, so that organisations are absolutely aware that, if they want to avoid the risk of Ofcom taking action for their making abandoned calls, they should not make any at all. Since this does no more than confirm the status quo, it should not increase the legitimately reckoned costs to organisations of acting consistently with our policy. “

It is up to Ofcom to define persistent misuse under the Communications Act 2003 per section 128 (6)

(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 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.

The DMA does not therefore believe that its proposed solution above would cause Ofcom any of the problems identified in para 4.101 and the accompanying footnote in this consultation paper.

“4.101 Our proposed position also reflects that Ofcom may not adopt a policy that fetters its discretion and suggests that unlawful conduct, against which we are given powers to take action, will not be the subject of enforcement action. Any such policy would be contrary to the intention of Parliament.86

86 We note in this regard the comments of the House of Lords in R (Purdy) v Director of Public Prosecutions (Society for the Protection of Unborn Children intervening), [2009] UKHL 45, in which the court said:

“Such a policy could not lawfully identify any “category” of cases in which a prosecution would not be brought. Such a grant of de facto immunity to any category of offender would be contrary to the intention of Parliament and exceed the Director’s powers: see paras 39, 40, 65, 70, 82, 107-108, 117, 118, 121 and 124 and R (Mondelly) v Comr of Police of the Metropolis [2006] EWHC 2370 (Admin) at [49]...”

These comments were made in the context of prosecuting authorities’ approaches to prosecuting statutory criminal offences. They also seem to Ofcom relevant in relation to our policy towards statutory persistent misuse. “

The problems in 4.101 will only arise because of the changes between the 2010 statement and the 2016 statement.

The impact of abandoned calls on the consumer

The DMA draws a strong distinction here between silent calls and abandoned calls.
Silent calls

The DMA fully supports Ofcom’s view that a call centre operation should not make silent calls under any circumstances.

Abandoned calls

An abandoned call is defined in para 2.1 of this consultation paper as
“(where the consumer receives a call but where the person making the call terminates the call after playing an information message).”

An abandoned call may well be considered by consumers as a nuisance call, because it causes annoyance. However an abandoned call should not cause distress because the caller identifies themselves and gives the called party the option to opt out of further calls in the information message. This causes much less consumer detriment than the other forms of nuisance call identified in para 2.1 of this consultation paper.

On this basis we would query Ofcom’s cost – benefit analysis in respect of abandoned calls in that the economic benefits to consumers is greater than the cost to the legitimate telemarketing industry.

The DMA believes that the economic benefit of Automated Calling Systems vs their impact on consumers has been demonstrated by Ofcom’s own figures, so a de facto banning of ACS would be a disproportionate response. Ofcom have said that the cost to industry of a reduction from 3% to 2% would be £672 million. It would be reasonable to infer that the cost of banning ACS completely would be even greater – maybe over £1bn. This would have no impact on non-compliant call centres.

Ofcom says that out of the 4.8 billion nuisance calls receive each year in the UK only 200 million are abandoned calls – less than 5% of call nuisance calls. So, given that abandoned calls make up only 5% of the total, and their impact is less severe than many other types of nuisance call we think that it would be disproportionate for Ofcom to ban ACS and impose significant additional costs on the legitimate call centre industry.

Inconsistency in Ofcom’s statement

If Ofcom really believed that the use of ACS was non-compliant, then it seems inconsistent for it to then devote 8 out of the 29 pages of the draft Statement of Policy) Annex 5 to this consultation) explaining to call centres how they can calculate the Abandoned Call Rate if the ACR is not relevant as to whether such organisations will be acting in a compliant manner.

Proposed solution

The DMA proposes that Ofcom remove the clarifying text

‘So, where a person engages in activities or conduct that amount to misuse on three or more occasions, Ofcom may regard that as ‘persistent misuse’.’

from section 2.7 of its proposed statement, and the illustrative example

‘(for example, there are at least three instances)’

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5 Para 4.116 of the consultation paper
from section 5.9.

Alternatively Ofcom could clarify that 3 separate occasions does not mean 3 abandoned calls but breaching the 3% abandoned call rate on 3 separate 24 hour periods using the methodology in the Ageas case.

**Implications of this change**

- With regards to this point, it would leave this area of the Statement exactly as it was before but clarify it in the light of the Ageas judgement
- It wouldn’t limit Ofcom’s powers in any way – Ofcom would still have the flexibility of interpretation on a case by case basis.
- Careful call centres would be able to continue using ACS and gaining the productivity benefits

**Striking a balance**

There is political support for a balance to be struck between the needs of the consumer and the legitimate call centre industry that the DMA represents.

- In the Ministerial introduction to the DCMS consultation on **Requiring direct marketing callers to provide Calling Line Identification (January 2016)** Baroness Neville-Rolfe DBE CMG (Parliamentary Under Secretary of State at DCMS and BIS and responsible for nuisance calls policy) said that she wanted to “boost our efforts to protect individuals from unwanted marketing calls without adverse effects for the legitimate industry”.

- Lord Gardiner of Kimble Lords Spokesperson (Department for Culture, Media and Sport), Lord in Waiting (HM Household) (Whip) said in the House of Lords on 8th November 2013 in a debate on the Unsolicited Telephone Communications Bill that “Unsolicited calls and texts are a problem, but we have to be careful that, in dealing with this issue, we do not harm the direct marketing industry, which is a legitimate industry that provides employment and opportunities in support of our economy. …. Direct marketing can be beneficial for consumers—for example, calls from telecoms or energy companies advising on better deals or tariffs potentially save consumers money.”

- Ed Vaizey, the Parliamentary Under-Secretary of State for Culture, Media and Sport said in a Commons debate on 16th January 2014 “I was also grateful to the Members who pointed out that the direct marketing industry is valuable to the UK economy. We must not throw the baby out with the bathwater—we must recognise that a legitimate industry is doing a legitimate job—but make no mistake: as is clear to all Members who have done so much work on the issue, nuisance calls are a scourge that needs to be tackled.”
Other solutions

a) For Ofcom to clarify the concept of ‘a minimum of three instances of the conduct’ to three abandoned calls to
the same person. However the DMA has concerns that this may lead to an increase in the total number of
abandoned calls

b) Ofcom could set a different threshold for persistence for silent calls and abandoned calls. For example

- Silent calls: three silent calls could be considered to be persistent misuse
- Abandoned calls: breaching the abandoned call 3% limit on three separate days could be considered to be persistent misuse.

b) Misuse of a CLI facility;

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

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

However, looking at the draft revised statement in annex 5 we can’t see any reference to this. Call centres will use the
Statement as a guide, so it is essential that the Statement clearly explains that it considers this sort of activity to be
persistent misuse.

c) Breaches of the PECRs?

We have no further comments other than encouraging the ICO to take enforcement action where there are breaches.

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?

Yes we agree and Ofcom are to be applauded for carrying out a novel piece of research.

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?

We have no further comments.

Conclusion

If Ofcom would like to discuss any of the points in this response in more detail then we are happy to do so. Otherwise,
we look forward to Ofcom’s response to this consultation.