

Dear Sir/Madam

Tackling nuisance calls and messages

Introduction

This is a joint letter from the Information Commissioner's Office (ICO) and the Office of Communications (Ofcom). We are writing to you as the statutory regulators with primary responsibility for tackling consumer harm created by nuisance calls and messages. This is a priority area for both organisations. We therefore want to stress the importance of complying with the legal and regulatory measures in place to protect consumers from harm. We also want to remind you of the sanctions that may apply should you fail to do so.

Unwanted sales calls and spam texts

The ICO takes enforcement action against companies making unwanted sales calls (both live and recorded) and spam texts.

The ICO is responsible for enforcing the Privacy and Electronic Communications (EC Directive) Regulations 2003 ('PECR'), which prohibit organisations from making unsolicited live or automated direct marketing calls to subscribers who have registered their number with the Telephone Preference Service (TPS). PECR also prohibits organisations from sending unsolicited direct marketing emails or SMS text messages to individual subscribers who have not consented to receiving such messages.

On 26 May 2011, the ICO gained powers to serve third party information notices on communications providers and to impose civil monetary penalties of up to £500,000 for the most serious breaches of PECR. New statutory guidance was published on 30 January 2012.

There are a number of steps that organisations engaged in marketing can, and should, take in order to ensure consumers are protected and that marketing is carried out in a responsible and lawful way, these include:

- Ensuring that clear and up to date consent has been obtained from a consumer which allows the marketing of information to that person;
- Taking responsibility for checking the provenance of leads, and that consent has been obtained if third party suppliers are involved;
- Screening against the TPS 'do not call' lists, and operating an effective and timely internal suppression list;
- Clearly identifying the company when calling consumers and explaining how consent was obtained and why they are calling;
- Having a clear complaints system that responds effectively to consumers concerns.

In the last few years, the ICO has issued 19 enforcement notices for breaches of PECR: eight for live calls, six for faxes, four for automated calls and one for both live and automated

calls. Two of these companies were subsequently prosecuted for breaching the enforcement notices. One company was fined £600 and the other was fined £5,200.

We have already exercised our new powers to serve Monetary Penalty Notices by issuing penalties totalling over half a million pounds against companies which have committed serious breaches of PECR. Just this week we served a company called DM Design with a monetary penalty of £90,000 after they continued to make unsolicited live marketing calls to individuals who had already registered with the TPS and confirmed that they did not wish to be contacted¹.

This week's action follows two previous penalties which were issued in November to the joint owners of a company called Tetras Telecoms who instigated the mass sending of unsolicited SMS text messages –which resulted in the two men receiving penalties totalling £440,000. Both individuals were also prosecuted by the ICO for failing to notify their processing of personal data, leading to a fine for each person of £2,000. Further monetary penalties are also under consideration as part of our work to clampdown on rogue companies who continue to cause distress to the public and drag down the reputation of the legitimate marketing industry.

The ICO works closely with other regulators including the OFT, Trading Standards, the FSA, the Insolvency Service and the Claims Management Regulator, and has provided evidence to these regulators for use in their investigations. This has led to two companies having their consumer credit licences revoked, an enforcement order being obtained under the Enterprise Act, charges being brought under the Fraud Act and the Consumer Protection from Unfair Trading Regulations and several companies being wound up.

The ICO is developing and strengthening its intelligence sharing arrangements with mobile network operators and industry associations, in order to take a co-ordinated approach to the prevention and enforcement of unsolicited marketing SMS text messages.

Abandoned and silent calls

Ofcom is responsible for taking enforcement action against organisations that make abandoned and silent calls, using its powers under sections 128 to 131 of the Communications Act 2003 in relation to persistent misuse of networks or services. Ofcom takes this issue very seriously as such calls are annoying, inconvenient and can cause anxiety, particularly for older people who live alone.

Ofcom has issued Guidelines² which set out the steps it expects users of Automatic Calling Systems (ACS) and Answer Machine Detection (AMD) technology to take so as to avoid making abandoned or silent calls and, if such calls are made, to limit the consumer harm caused as a result. These steps include:

¹ http://www.ico.gov.uk/news/latest_news/2013/glasgow-company-fined-90000-as-ico-tackles- nuisance-calls-20032013.aspx

² The Guidelines encompass both Ofcom's current statement of policy *Tackling Abandoned and silent calls: Statement 1* October 2010 and annexed to this, the *Revised statement of policy on the persistent misuse of an electronic communications network or service 2010*. This document is available at <http://stakeholders.ofcom.org.uk/consultations/silent-calls/statement/>.

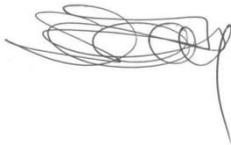
- Ensuring an abandoned call rate (including a reasoned estimate of false positives³) of no more than 3 per cent of live calls per campaign or per call centre over any 24 hour period;
- Ensuring that people are not contacted within 72 hours of their receiving an abandoned call without the guaranteed presence of a live operator;
- Playing an automated message in the event of an abandoned call telling the person called on whose behalf the call was made and providing them with a number to dial to stop any future marketing calls from that organisation;
- Making valid and accurate calling-line identification (CLI) information available to call recipients so they can identify who rang them via caller display or by dialling 1471 in the event of a silent call; and
- Ensuring that where a call has been identified by AMD equipment as being picked up by an answer machine, any repeat calls to that specific number within the same 24 hour period⁴ are only made with the guaranteed presence of a live operator.

These Guidelines also make it clear that Ofcom considers repeated forwarding of inauthentic or inaccurate CLI to be a form of persistent misuse. Such action denies call recipients the opportunity to identify the caller and ask the caller to remove them from their list.

In September 2010 the Government increased the maximum financial penalty for persistent misuse from its previous level of £50,000 to £2 million⁵. Last year, Ofcom issued a £750,000 penalty to HomeServe⁶ and a £60,000 penalty to npower⁷. An investigation into TalkTalk's compliance with our abandoned and silent calls policy is continuing. As announced in its five point action plan⁸, Ofcom will continue to take enforcement action to ensure compliance with the rules on abandoned and silent calls.

Conclusion

You should note that both the ICO and Ofcom continue to monitor consumer complaints closely to identify future investigation and enforcement targets. We therefore strongly advise you to take note of the content of this letter and to ensure that your organisation complies with the relevant legal provisions and Guidelines. For information related to Ofcom, please email matthew.chapman@ofcom.org.uk. For information related to the ICO, please email casework@ico.org.uk.



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³ An AMD false positive is where 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.

⁴ Between midnight and midnight on a calendar day.

⁵ http://www.legislation.gov.uk/ukxi/2010/2291/pdfs/ukxi_20102291_en.pdf

⁶ <http://media.ofcom.org.uk/2012/04/19/homeserve-fined-750000-for-silent-and-abandoned-calls/>

⁷ <http://consumers.ofcom.org.uk/2012/12/npower-fined-for-making-abandoned-calls/>

⁸ <http://media.ofcom.org.uk/2013/01/08/action-plan-to-tackle-nuisance-calls/>