

## Communications Consumer Panel and ACOD's response to Ofcom's 'Review of how we use our persistent misuse powers: Focus on silent and abandoned calls'

### Introduction

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to Ofcom's consultation following Ofcom's review of how it uses its Persistent Misuse powers, with a focus on silent and abandoned calls.

The Panel works to protect and promote people's interests in the communications sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues.

In their ACOD capacity, Members provide advice to Ofcom on issues relating to older and disabled people including accessibility to telecommunications, television, radio and other services regulated by Ofcom.

### Response

The Panel welcomes that Ofcom has reviewed its statutory policy statement on the exercise of its powers relating to the persistent misuse of electronic communications networks and services and is proposing to reset the policy, tightening it up to provide the best chance to take effective and efficient enforcement action. We agree that no-one should make nuisance or silent calls or send nuisance messages. We welcome the clarification in relation to abandoned calls although we would urge Ofcom to go further and enhance its enforcement process, so that it can take greater, and more effective, enforcement action more quickly.

The Panel and ACOD therefore strongly support the proposals made in Ofcom’s draft statement of policy, which we consider demonstrate a flexible, fair and proportionate approach to assessing persistent misuse.

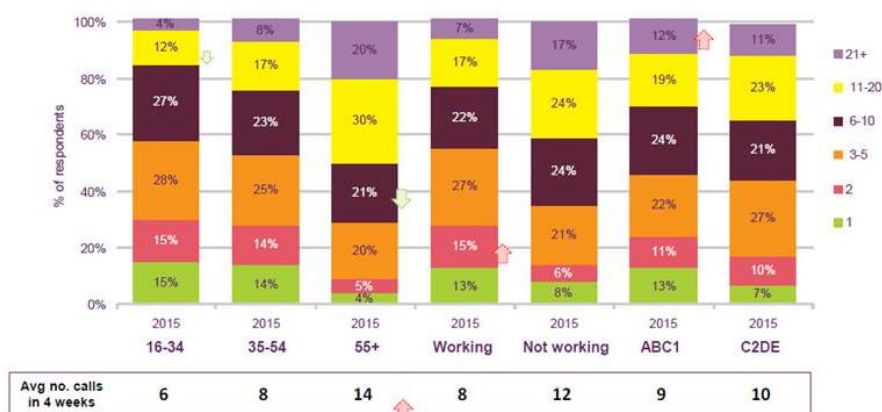
The problem is significant - Ofcom has estimated that the overall number of nuisance calls made to UK consumers is around 5 billion per year: silent calls comprise about 1.5 billion calls, abandoned calls around 200 million, live sales 1.7 billion calls and recorded sales messages 940 million.

For the past three years, Ofcom has commissioned diary research, which involves around 1,000 consumer participants making a record of all the nuisance calls they receive during a four-week period in each study year. The research for 2015 showed that:

- 86% of participants received a nuisance call of some kind on their landline phone;
- 70% received a live marketing or sales call to their landline;
- 60% received a silent call to their landline;
- 52% received a recorded sales call to their landline;
- and 17% received an abandoned call to their landline<sup>1</sup>

Older people are significantly more likely to be affected by the incidence of such calls. In the research, overall experience of nuisance calls increased with age, and those 65 years and over reported a significantly higher incidence of nuisance calls compared with those aged 16-34. For live marketing/sales calls, silent calls, recorded sales calls and ‘other’ nuisance calls, incidence was also higher amongst those aged 65+ compared to those under 55 years old. The incidence of abandoned calls was higher amongst those under 35 than those aged 35-54.

Figure 1.5: Number of calls received by demographics amongst all who received each call type



Base: All UK panel participants with landlines who received each type of call, Jan-Feb 2015 (n=106, 185, 227, 247, 271, 288, 229)  
 ↓ indicates significant change since 2014 at the 99% level  
 ↑ indicates significant change since 2013 at the 99% level

<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/telecoms/nuisance-calls-2015/Nuisance\\_calls\\_W3\\_report.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/nuisance-calls-2015/Nuisance_calls_W3_report.pdf)

Silent and abandoned calls are a nuisance to consumers as a whole, but may cause more harm to people who rely solely on their landline, as they will not have alternative messaging channels such as email, IM and text. For example Ofcom's Consumer Experience Report, published earlier this month, showed that the 10% of the UK population living in fixed, voice-only households were more likely to be older people and people on lower incomes<sup>2</sup>.

Ofcom's landline panel research illustrated the harmful effect that these calls have on people's use of their telecommunications services - in addition to the annoyance and distress caused to people, 9% of landline users and six per cent of mobile users said that they regularly 'do not answer calls at certain times of the day'; 3% of landline users and 7% of mobile users switch the ringtone down or off; and 3% of landline users unplug their phone.

Ofcom also estimated the financial harm caused by all nuisance calls to landlines at a figure of £406m per year. It estimates £139 to 169m of this is caused by silent calls and £12-17m by abandoned calls.

We believe Ofcom should be bold and robust in its enforcement against persistent misuse, especially to protect the most vulnerable consumers - to that end we also supported the update to Ofcom's penalty guidelines in 2015<sup>3</sup>. In tackling the persistent misuse of Calling Line Identification (CLI), Ofcom will help consumers to identify callers and reject calls from disreputable companies; consumers will also have the ability to report further breaches by those companies. CLI is of no use unless it is accurate and genuine and the number provided needs to be one that the consumer can call back, not least because people who are not active internet users will have no other way of verifying which organisation made the call.

However, for consumers to truly benefit from the proposed display of CLI on calls from direct marketing companies and be able to make an informed decision about whether to answer a call, they must be able to see immediately what that number is. The Panel has urged the provision of free caller line identification (CLI) by default for consumers. The Panel believes that, since it is the service provided by telephone companies, and paid for by the consumer, that is being abused then it is logical for CLI - one of the main available defence mechanisms against nuisance calls - to be freely available to all consumers. Additionally, the CLI service can be used to report nuisance calls to regulators as well as being critical for the effective use of handsets and services that rely on caller display to block and filter certain calls.

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<sup>2</sup> [http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-15/CER\\_2015\\_FINAL.pdf](http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-15/CER_2015_FINAL.pdf)

*"'Voice-only' use is most prevalent among older consumers (59% are aged 75+), and among DE households on the socio-economic scale - nearly half (47%) of voice-only homes fall into this category."*

<sup>3</sup> <http://www.communicationsconsumerpanel.org.uk/downloads/revising-the-penalty-guidelines-240915.pdf>

Particularly in light of the Government's drive to ensure the provision of CLI, we cannot see how some communications providers can continue to justify charging for CLI, especially when other providers provide CLI to all their customers free of charge. BT offer CLI at no additional charge for customers who take out 12 months line rental in advance - although it could be argued that there is a cost in terms of making an upfront payment and the consumer being "locked in" to a contract; and such an offer discriminates against those not wealthy enough to make a year's payment in advance. Even so, BT customers are required to indicate separately that they require CLI. If they do not, they are charged £1.75 per month. Virgin Media charge £2.25 a month. KCOM charge KC Local customers £1.02 per month.

We strongly support Ofcom's intention to publish details of enforcement action, which we believe will act as a powerful deterrent to persistent misuse, in conjunction with other enforcement actions. As a principle it also demonstrates transparency on Ofcom's behalf, which we encourage, and will give consumers greater confidence in Ofcom, as a consequence encouraging them to report misuse. Publicising the names of companies helps to redress the power imbalance in this area - whereby some companies abuse the personal information they hold about consumers (for the purpose of making unwanted calls) through the channel of communications services that people have paid for.

We welcome the proposed strategy of collaboration between Ofcom and other regulators and enforcement agencies, to determine the best enforcement approach for each offence, with consumer protection as its focus. We believe it is right that whether a consumer reports having received silent or abandoned calls to Ofcom, the Information Commissioner's Office, or another enforcement agency, those organisations should share information responsibly and swiftly to ensure the best outcome for consumers.

We would encourage Ofcom to continue to publicise the work it - and other regulators - undertake to protect consumers from the harm caused by silent and abandoned calls and to continue to give providers clarity about what is expected of them and what will happen if they fall short of those expectations. Consumers also need clear and consistent information about how to report nuisance calls.

Some of the types of misuse that have been set out by Ofcom in their draft policy statement would pose a particular risk of harm to older people and people on lower incomes - but also to disabled people and people with a learning impairment or a chronic illness. One example highlighted by the consultation document is number-scanning, or 'pinging', which could cause overload to the system and hence outages. This could pose a high risk of harm, particularly to disabled or chronically ill consumers; for people who rely on care alarms and live in a landline-only household, this type of behaviour could mean they are unable to get emergency medical assistance.

It is important that companies who have access to details about the individuals they are calling - such as information they have registered about their age or any impairments, allow enough time for the individual to answer the call, to prevent creating what appear to be abandoned calls unnecessarily.

We would also highlight the burden of silent and abandoned calls to micro businesses (employing 10 or fewer employees) which is also great. Micro businesses are affected by many of the same issues as consumers and have similarly limited resources to tackle them. Many micro businesses have call forwarding and pay for the use of call answering services when out and about doing their work. As many work from home it impacts them as much as it impacts older people who are at home, albeit in different ways.

## Summary

Persistent Misuse Powers are a very important element of the protection framework for consumers. We urge their revision so that they better meet the needs of consumers in the context of high volumes of nuisance calls; and so that businesses can be very clear about expectations and consequences in respect of misuse.

The current policy limits the number of abandoned calls made to no more than 3% of live calls per campaign (i.e. across all call centres acting for an organisation) or per call centre (i.e. handling several campaigns on behalf of a number of organisations) over a 24 hour period.

The Panel supports Ofcom in encouraging industry to aim higher to ensure that consumers are safeguarded from annoyance, inconvenience and anxiety. We recommend reducing the abandoned call rate threshold, ideally to 0% - but to a maximum of 1% - to work towards eliminating one potential source of nuisance calls.

We would also recommend that Ofcom considers a curfew time for marketing calls, so that consumers can be sure that any calls received after a set time in the evening (for example, 8pm) will not be from a marketing organisation and consumers can feel safer when answering the phone.