

## Communications Consumer Panel and ACOD response to Ofcom's call for inputs on its review of its use of persistent misuse powers

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### Introduction

The Communications Consumer Panel and ACOD welcomes Ofcom's call for inputs on its review of its use of persistent misuse powers.

The Panel works to protect and promote people's interests in the communications sector. We are an independent body, established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, 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 face 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.

Following the alignment of the Advisory Committee for Older and Disabled People with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

### Response

The Panel believes the existing regime is no longer effective or sustainable given the current volumes of nuisance calls that are having a detrimental impact on consumers.

#### **Abandoned calls, threshold rates and Answer Machine Detection (AMD) technology**

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 call for inputs explores a number of potential changes to the abandoned call rate and seeks views on these. The Panel supports reducing the abandoned call rate threshold to 0%, so that one potential source of nuisance calls is eliminated.

We are unsure what percentage of call centres use AMD but are concerned about the error rates suggested by the Verint Consulting report - with false positives potentially ranging from 0% - 45%. Given this apparent level of error, we would welcome the phasing out

completely of the use of AMD technology in call centres - removing another potential source of nuisance calls.

We appreciate that it may take time to phase out AMD usage completely. However, as false positives result in what consumers may experience as a silent call, we would suggest that as an interim measure - and in line with the policy on abandoned calls - there should be the guaranteed presence of a live call centre agent if a further call is made within 72 hours (where AMD equipment used by the call centre has identified an answer machine) rather than the current 24 hour period.

## Consent

The Panel strongly believes that the issue of consent to contact is fundamental - both in relation to people being able to give informed consent to be contacted or otherwise, and the proving of such if there is a dispute. Following research in 2011 [Online Personal Data: the Consumer Perspective](#), the Panel stated that consumers can only take responsibility if they know how their data are being collected and processed online. In general, the Panel considers that companies should improve consumers' awareness of how their data are collected and used, and provide straightforward information for consumers.

Consumers have few tools to combat nuisance calls. Calling Line Identification (CLI) is one such tool but, in order to control the flow of one's personal information and potentially related calls, it is vital that it is easy to check what consent one has given and to whom. This resource should be accompanied by an easy way to withdraw that consent. Companies should be required to inform other companies they have sold data to if a consumer withdraws his or her consent; and consent should be withdrawn in respect of all such third party companies.

It is currently too easy for consumers to inadvertently give consent which overrides their TPS registration. The Panel fully supports the view that there should be a consistent opt-in standard of consent; that companies should check with consumers that their consent is still valid; fixed time-limits on consent should be adhered to; and that a company making a call should be able to state, proactively, when and where consent was given, and have such information to hand when the call is made.

To expand on these points, currently the UK regime for direct marketing calls is an 'opt out' regime, as set out in PECR, but the Panel believes that call centres should only be allowed to make calls to those consumers from whom they have actively received consent; in other words, we favour an 'opt in' regime.

We are also aware that PECR requires an organisation carrying out marketing activity such as live calls to give the identity of the caller and, if requested, either a contact address or Freephone number they can be reached on (regulation 24(1)(b)). We believe that companies carrying out direct marketing should always state up front who they are, why they are calling and where and when they got the recipient's contact/consent information. We recognise that strengthening these requirements in PECR would need to

be considered by the ICO and Government, and would ultimately be a matter for Parliament.

### **Awareness**

We consider that Ofcom, together with others, could do more to increase businesses' understanding of the requirements on them and work with trade associations to promote awareness. We would support Ofcom's consideration of the viability of a shorter version of a checklist or the guide.

To encourage good management and appropriate processes, we believe that it is vital to be explicit in any enforcement decision about the importance of whether an organisation had processes in place to help prevent, identify and rectify any issues causing silent calls.

### **Focus on Consumers**

We would highlight the need throughout this work to see things through consumers' eyes. The consumer experience must be paramount if the industry and enforcement agencies are serious about tackling the issue of nuisance calls. Any number of situations that result in a silent call for the consumer may not be regarded as such by the business generating the calls, e.g. delays before an abandoned message is played or before a live agent starts speaking; or the automatic disconnection by the automated calling systems (ACS) of a call just as it is being picked up. We would therefore support the specification of a two second time limit for calls being connected to a live agent and then starting to speak to the consumer.

We would also support Ofcom's exploration of the appropriateness of imposing a curfew on when calls can be made by call centres to customers (e.g. before 9am or after 7pm) or specifying which hours might be considered unsociable.

We are increasingly concerned by the malicious and abusive nature of some scams carried out via the telephone network and we encourage Ofcom to work with partners to reduce such incidents.

It is vital that consumers are able to easily report their concerns about scam calls, in addition to nuisance calls and we welcome the work that is underway eg exploring short form code-like reporting to assist consumers in both these areas.

### **Caller Line Identification**

People cannot make an informed decision about whether to answer a call if they cannot see immediately whether a caller's number is displayed - and if so, what that number is. In the area for which Ofcom has direct responsibility (i.e. abandoned and silent calls) the Guidelines set out that callers should help consumers identify the source of the call by ensuring a valid and accurate CLI is available. However this is not the case for all marketing calls as PECR and the Privacy and Electronic Communications Directive contain provisions enabling a calling party to withhold their CLI. We would strongly support a requirement for all business calls to carry an authentic and returnable CLI - with an

exemption process for those that may have a legitimate reason for withholding e.g. abuse shelters.

The Panel has long called for CLI to be offered free of charge by default, which is not the case currently among all providers. As it is the service provided by telephone companies, and paid for by consumers, that is being abused it seems logical for CLI - one of the main available defence mechanisms against nuisance calls - to be freely available for all consumers. It is a matter of surprise and concern for the Panel that this is not already the case; we continue to advocate very strongly that it should be so.

People who receive nuisance calls can also use the CLI to report nuisance calls to regulators and it is also critical for the effective use of handsets and services that rely on caller display to block and filter certain calls.

## 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 Panel supports:

- Reducing the abandoned call rate threshold to 0%
- Rapid phasing out the use of AMD technology
- Until AMD can be phased out, the guarantee of a live operator if a further call is made within 72 hours
- An "opt in" consent regime
- Easy access to enable consumers to revoke consent
- Transparency in respect of how consumers' data is collected and used
- Consideration of a shorter checklist/guide to the requirements
- A two second time limit to be connected to a live agent
- Free CLI by default from all CPs
- A curfew arrangement so that calls are not made at unsociable hours