



# Tackling abandoned and silent calls

## Communications Consumer Panel Consultation Response

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### 1. About the Panel

The Communications Consumer Panel is an independent panel of experts established under the Communications Act 2003. Its role is to influence Ofcom, Government, the EU and service and equipment providers, so that the communications interests of consumers and citizens are protected and promoted.

The Panel pays particular attention to the needs of older people and people with disabilities, to the needs of people in rural areas and people on low incomes, and to the needs of small businesses, which face many of the same problems as individual consumers.

The Consumer Panel is made up of part-time members with a balance of expertise in consumer issues in the communications sector. There are members representing the interests of consumers in Scotland, Wales, Northern Ireland and England.

Consumer Panel Members are appointed by Ofcom, subject to approval by the relevant Secretaries of State. They are appointed in accordance with Nolan principles and are eligible for re-appointment. The Consumer Panel is assisted by a small advisory team.

### 2. Introduction

The Communications Consumer Panel welcomes Ofcom's proposal to revise the 2008 Statement of Policy on the persistent misuse of an electronic communications network or service to reduce silent calls to consumers.

Ofcom is required under the 2003 Communications Act to prepare and publish a statement of its general policy with respect to its powers to deal with persistent misuse of an electronic communications network or service. The current 2008 Statement identifies making abandoned or silent calls as examples of persistent misuse.

An abandoned call is where a connection is established but terminated by the caller even though the call has been answered by a consumer. A silent call is a type of abandoned call where the consumer hears nothing on answering the phone and has no means of establishing whether anyone is at the other end.

Ofcom's view, as stated in the consultation, is that most silent and abandoned calls are not generated with malicious or mischievous intent but by automated calling systems (ACS) and answer machine detection (AMD) technology, both used by call centres.

The majority of complaints Ofcom receive on this issue are from consumers receiving two or more silent calls a day, from the same company, often over a period of days or weeks. They therefore argue that 'repeat silent calls' are the major cause of consumer harm.

Ofcom's view is that the majority of repeat silent calls are caused by the inaccuracies of AMD technology. The way AMD works means that if a consumer is mistaken to be an answer machine once, it is likely that this will happen again, so they receive multiple silent calls over the course of a call centre campaign. Ofcom are therefore proposing to change its policy to limit the number of times a company can call an answer machine to once every 24 hours, unless the presence of a call centre agent can be guaranteed. If effective, this would mean those consumers currently worst affected would no longer receive repeat silent calls over the course of a day.

### 3. Harm caused by abandoned and silent calls

The Panel believes that abandoned and silent calls can cause significant consumer harm. Although the number of silent calls has decreased since 2005, an Ofcom survey from June 2009 showed that over three quarters (77%) of adults questioned were very or fairly inconvenienced by silent calls and almost two thirds (61%) were very or fairly concerned by them.

In the Panel's view it is reasonable to infer that complaints about silent calls represent only a small fraction of the total number of silent calls likely to be received. Not all consumers who receive silent calls will complain. We therefore welcome Ofcom's efforts to use research to assess the consumer harm caused by silent calls.

The Panel agrees with Ofcom's assessment that older, and possibly also some disabled consumers are more likely to be affected by silent calls. As Ofcom's case study evidence illustrates, these consumers are likely to find it difficult to get to the phone, making repeat silent calls particularly burdensome. They are also more likely to be at home during the day and therefore more likely to receive repeat silent calls. The Panel therefore agrees with Ofcom that the true harm to consumers from receiving repeat silent calls is likely to be higher than their estimates, which are based on willingness to pay assessments among the general population. The Panel also notes that older consumers may be less likely to

complain, adding further weight to the argument that the impact of silent calls is higher than the complaints data would suggest<sup>1</sup>.

The Panel also agrees with Ofcom's assessment that businesses as well as consumers are affected by silent calls. Typically, businesses' take up services against nuisance calls such as 'Anonymous Call Reject', which rejects calls from callers who block their number, and 'Choose to Refuse', which allows users to block certain numbers. These services are relatively low cost (normally between £3 and £4 a month per service). Nevertheless, this is still a burden for businesses, and one which is likely to be disproportionately onerous for small businesses where it will be a larger proportion of turnover.

#### 4. Tackling abandoned and silent calls

The Panel therefore supports Ofcom's recommendation to amend the 2008 Statement of Policy to include a new policy criterion that, in the event that AMD equipment indicates that an answer machine has been reached, subsequent calls to that number within a 24 hour period can only be made with the guaranteed presence of a live operator.

The Panel believes that, in those cases where the generation of abandoned and silent calls is done with malicious intent, effective enforcement action is crucial. We encourage Ofcom to continue to monitor the sector in order to identify and take action against malpractice where necessary.

The Panel also supports the announcement by the Department for Business, Innovation and Skills in March 2010 that it intends to increase the maximum penalty for persistent misuse of an electronic communications network or service from £50,000 to £2million, to tackle the problem of silent and abandoned calls to consumers. We look forward to the swift introduction of legislation to enact this change.

#### 5. Monitoring abandoned and silent calls

The Panel urges Ofcom to monitor the impact of the amendment on the level of silent calls received by consumers. Given the problems with complaints data identified above, we also encourage Ofcom to use further research into the level of silent calls to complement complaints data.

If complaint volumes do not fall substantially, or if further research suggests that repeat silent calls remain at a high level, particularly among more vulnerable consumers, we recommend that Ofcom review its policy again, with a view either to:

- extending from 24 to 72 hours the amount of time in which, should AMD equipment indicate an answer machine has been reached, a subsequent call to that number is prohibited; or

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<sup>1</sup> See, for instance, data on who complains by age group in the Department of Business, Innovation and Skills Consumer Rights Study, 2009, available at: <http://www.bis.gov.uk/files/file52823.pdf>

- proscribing the use of AMD equipment.

The Panel also notes that while current levels of silent calls to mobiles appear to be relatively low, mobiles are becoming more vulnerable to unsolicited marketing as prices for calling mobiles from fixed lines decrease and lists of mobile numbers become more available to companies. At the same time, awareness of the availability of services such as the Telephone Preference Service (TPS) register, which allows consumers to opt out of unsolicited marketing calls, is lower for mobiles than for landlines. As Ofcom points out, in 2008 only 35% of those aware of the TPS were aware that it can be used for mobile phones.

The increase in marketing to mobiles combined with a much lower awareness and take-up of opt-out services such as the TPS register means there will be an increased risk of silent calls to these phones. Consumers may receive silent calls when they had previously not received any or they could receive them both on their landline and mobile, which would exacerbate the existing anxiety, inconvenience and annoyance caused by such calls. We would encourage Ofcom to monitor the level of silent calls to mobiles and take action to reduce these should the numbers increase.

## 6. Conclusion

The Panel supports Ofcom's proposal to amend the 2008 Statement of Policy to tackle repeat abandoned and silent calls, imposing a 24 hour no call-back policy. However, this change should take place within the context of a rigorous enforcement programme to tackle any cases of malicious misuse. In addition, the Panel urges Ofcom to monitor the effectiveness of the amendment, taking further action to address the problem if repeat silent calls remain at a high level, either among all consumers or among more vulnerable consumers.