

**Ofcom response to Consumer Panel note dated 2<sup>nd</sup> July 2007.**

Ofcom welcomes interest and support from the Ofcom Consumer Panel (OCP) on issues related to the operation of the Telephone Preference Service (TPS). Discussion with the OCP is very useful in helping us to focus our work to improve the experiences of users of TPS.

The OCP provided advice to Ofcom in a note dated 2<sup>nd</sup> July 2007. This is Ofcom's response to some of the questions raised.

Ofcom agrees with the points made by the OCP in para 2, regarding the fact that the effective operation of the TPS is important, including effective complaints handling and proper deterrents to companies to ensure they comply with regulation.

The OCP has asked for evidence to support Ofcom's claim that that TPSL exercises its functions efficiently. Ofcom has quarterly meetings with TPSL in which they present statistics for the previous quarter. We also have more regular informal contact. Discussion with TPS and sample data indicates that:

- Use of online registration or online complaints forms result in an automated response
- Letters are responded to the next day
- Abandoned call rates to the call centre do not suggest a cause for concern.

There are occasional systems problems – but our understanding is that these are indeed occasional. We are putting in place more formal reporting arrangements to cover:

- System outages where automatic response times may not be met
- Time to answer calls

Data will be received from Dec onwards.

We note that receipt of a complaint will trigger a letter to the company. TPS do not have enforcement powers and cannot take action against the company complained about. However, information about the complaint, and any response from the company complained about, is forwarded to the Information Commissioner's Office (ICO). TPS standard letters explain this to the consumer.

We note that complaints to Ofcom regarding the operation of the TPS (ie the level of service offered by TPS) are minimal (3 complaints over the last year). Research conducted by Mori (Feb 07) indicates 86% of consumers registered are satisfied with the TPS.

The ICO receive regular files of complaint data from TPSL and work with them to ensure the complaints process is effective. The ICO are satisfied with the information provided by the TPS.

Since the end of last year, the ICO have had an active programme of enforcement – see:

[http://www.ico.gov.uk/what\\_we\\_cover/privacy\\_and\\_electronic\\_communications/enforcement.aspx](http://www.ico.gov.uk/what_we_cover/privacy_and_electronic_communications/enforcement.aspx)

We understand that the ICO follow up every complaint they receive directly. Action by ICO will include:

- initial correspondence asking the company for an explanation
- if there is no response / response is unsatisfactory, the case will usually be escalated for Regulatory Action
- the enforcement team will often make informal contact, including visiting the company to discuss the problem and explain what the company needs to do, and where possible get informal assurances of future compliance
- where there is no improvement in the complaints, enforcement will then
  - either get the company to sign undertakings
  - or will serve an enforcement notice
- where complaints continue to be received despite written Undertakings, the ICO will serve an Enforcement Notice. A breach of an Enforcement Notice is a criminal offence.

In some cases the company may be able to explain that the complaints do not relate to them.

TPS data is used to complement ICO complaint data:

- in practice TPS top complaints tend to reflect companies ICO also have complaints about
- but TPS data provides further evidence in pursuing complaints.

We note the OCP interest in comparisons with other countries, in particular the US. As the OCP notes, the US Do Not Call system provides much greater ability to fine companies. Ofcom, ICO and TPS can only operate within the legal framework Parliament has given us, and any comparisons between countries need to take account of different legal requirements. The ICO have repeatedly asked for enhanced powers to fine.

Information Ofcom has received from a US based firm suggests that, despite the greater ability to fine, a significant number of non-compliant marketing calls are still made (of 150m telemarketing calls, this company estimated 20% were non compliant – we are not able to comment on the accuracy of this estimate). The DMA are currently commissioning a report looking at a range of TPS and silent call issues, and expect to include a section looking at the US system. The results of this will be shared with Ofcom.

We are keen to keep the OCP informed of our progress and would of course welcome more engagement with the OCP on the issues we face.

26 November 2007