



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofcom consultation: Tackling abandoned and silent calls

July 2010

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland. We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Consumer Focus is grateful for the opportunity to contribute to Ofcom's consultation on tackling abandoned and silent calls. This response is non-confidential and we are happy for it to be published on the Ofcom website.

Tackling abandoned and silent calls

Summary of response

- The receipt of any silent or abandoned call is likely to be inconvenient and, in some cases, distressing for consumers
- Consumer Focus believes Ofcom's policy requiring providers to guarantee the presence of a live operator for repeat silent calls should cover a period longer than the proposed 24 hours
- Companies must be sufficiently incentivised to invest in technological improvements in answer machine detection technology
- Improved consumer information provision has an important role to play in reducing the impact of abandoned and silent calls
- Ofcom must possess sufficient enforcement capacity to enforce both new and existing regulations on abandoned and silent calls

Consumer harm from silent calls

The impact of silent calls on consumers can range from inconvenience to genuine stress and anxiety. In some cases, consumers may worry that they are being targeted by burglars or that they are the victims of scams or pranks. The consultation paper proposes that Ofcom should adopt a new policy, that when answer machine detection (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.

Consumer Focus agrees that action of the type proposed by Ofcom is appropriate to address the consumer harm caused by repeat silent calls, but questions the decision to adopt a 24 hour policy for calls to answer machines. The receipt of multiple silent calls within a 24 hour period is likely to be a considerable source of frustration and potential distress. Similarly, however, the receipt of multiple silent calls is also likely to cause significant consumer harm if it takes place over a number of days, even at a rate of one per day. In our view, more evidence is needed to demonstrate that greater consumer harm occurs due to repeat silent calls over a 24 hour period, rather than a longer period. We believe Ofcom should consider a policy that requires the guaranteed presence of a live operator for repeat calls within a 48 or 72 hour period.

On the basis of Ofcom Advisory Team statistics showing consumer harm arising from repeat silent calls, Ofcom has placed a specific focus on addressing repeat silent calls via the proposals in this consultation paper. While this objective is certainly justified, we urge Ofcom to maintain a focus on eliminating silent calls altogether, not just their repeated use.

Use of ACS and AMD technology

Consumer Focus believes Ofcom has demonstrated very little by way of clear, evidence-based benefits conferred on consumers through the use of automated calling systems (ACS) and AMD technology.

Ofcom refers to cost savings that companies using ACS and AMD may potentially pass on to consumers, but has not presented evidence to quantify these savings. Similarly, the benefit of being able to contact large numbers of people to communicate important information such as bank fraud is highlighted. While it is reasonable to presume some advantage to consumers from this practice, some supportive examples and statistics on how regularly the technologies have been used for these purposes would have helped to illustrate the extent to which consumers derive some benefit from their use.

In the absence of this evidence, it is hard for Consumer Focus to support the use of technologies that provide cost savings for industry but considerably greater consumer harm than benefit. However, we believe a better solution than an outright ban on AMD technology would be to reach a position in which technological improvements in AMD have eliminated the occurrence of silent calls. In order to achieve this, Ofcom must create an environment in which users of AMD are strongly incentivised to invest in improvements to the technology in order to reduce instances of silent calls.

While we do not propose to explore in detail in this response how to produce these incentives, we note that they are likely to be created primarily through financial penalties for making silent calls and associated reputational costs to the companies involved. In response to the recent consultation by the Department of Business, Innovation and Skills (BIS) on a proposed new maximum penalty for persistent silent calling, Consumer Focus supported the option of increasing the penalty to £2 million, in order to provide the greatest deterrent to companies. However, we raised the importance of future-proofing the penalty, noting that the impact of a fixed penalty will lessen over time. We suggested that a penalty based on a percentage of annual turnover, similar to the approach used in the energy market, would act as a more effective deterrent to larger companies, as well as reducing the need to revisit the level of the maximum penalty in future.

Although the level of the maximum financial penalty for persistent silent calling has been set by BIS, it is within the power of Ofcom to examine the extent to which companies that break the rules suffer negative reputational exposure as a result of their actions. It may be appropriate to expose those guilty of breaches, for example by drawing greater attention to the enforcement action that Ofcom has taken, if it is determined that this will increase the incentives on companies to invest in improvements in AMD technology.

In the case of abandoned calls, the accuracy of ACS depends to a lesser extent on technological improvements and more on companies employing sufficient numbers of agents to handle calls. Restricting the number of calls dialled per agent would reduce the instances of agents being unavailable to handle calls and consequently reduce the number of abandoned calls received by consumers. Consumer Focus has insufficient experience of calculating abandoned call rates to take an informed view on the specific formulas proposed by Ofcom for calculating these rates. However, we judge that it would be appropriate for these formulas to be devised on the basis that they should highlight a need to reduce the number of calls dialled per agent, based on current levels of abandoned calls.

Consumer information

As outlined above, silent calls can have a range of detrimental impacts on consumers, ranging from inconvenience and annoyance to stress and anxiety. The consumer harm arising from silent calls may be addressed, to a significant extent, through the provision of better consumer information, to inform consumers about the causes of silent calls and what they can do if they experience silent calls. For example, elderly and vulnerable consumers are less likely to suffer anxiety as a result of silent calls if they know that the reasons for the calls are not malicious.

In order to address the need for better consumer information around silent calls, there are a number of steps Ofcom could take.

It would be appropriate for Ofcom to review and update its November 2008 guide on how to avoid nuisance calls¹, as well as to examine how best to promote it to consumers. Ofcom should also work with industry to ensure that all communication providers include information on how to make a complaint about a silent call in introductory information for new customers, and have clear information about silent and nuisance calls on their websites, including contact details for Ofcom and other relevant bodies.

The information on silent calls that should be provided to consumers should include:

- what silent calls are, why they occur and who is typically responsible for making them
- what consumers should do if they receive silent calls: where they should go to register a complaint and seek advice
- further facilities open to consumers who experience silent calls, such as the use of Caller Line Identification to establish who has called them and the Telephone Preference Scheme, to restrict the receipt of marketing calls

Further to the third point above, Consumer Focus recently launched a website, www.stayprivate.org, which provides a free and easy way of opting out of receiving unwanted mail and sales calls by simplifying the process of registering with the Direct Marketing Association's various preference services, including the Telephone Preference Scheme. We would welcome promotion of StayPrivate.org as a facility for consumers, through any activity Ofcom undertakes to disseminate information to consumers about silent calls.

The Telephone Preference Service (TPS) provides a valuable facility to consumers, but there are limitations to its effectiveness. These arise from, firstly, consumers not signing up to the TPS, either through lack of awareness or other reasons and, secondly, companies operating outside the rules of the Direct Marketing Association and targeting TPS members with marketing calls. Consumer Focus believes Ofcom should work with the Telephone Preference Service Limited to address gaps in awareness of the TPS, such as among mobile users² and, where possible, seek to increase the effectiveness of the TPS in eliminating greater numbers of unsolicited marketing calls.

Effective enforcement

Previous amendments to the statement of policy on the persistent misuse of an electronic communications network or service have introduced rules that on all outbound calls, caller line identification should be present, while in cases where a call is abandoned, a short information message should be played to the consumer.

Ofcom Advisory Team complaints about silent calls have shown a significant rise since June 2009 and it is suggested that the profile given to the issue of silent calls by the BIS consultation on raising the maximum penalty may have contributed to this rise. There remains a likelihood, however, that if the above rules had been enforced sufficiently strictly, complaints about silent calls should not have shown the rise that they have.

Any amendments to the statement of policy on abandoned and silent calls must be accompanied by Ofcom having sufficient capacity to properly monitor the use of ACS and AMD technology and take swift action in cases where companies are in breach of the rules. A lack of capacity to enforce existing rules will not be addressed by further changes to the regulations.

¹ Ofcom guide, *How to avoid nuisance calls*

<http://consumers.ofcom.org.uk/files/2009/07/nuisance.pdf> (PDF 332KB)

² The consultation paper notes that '35 per cent of mobile users are aware that mobile numbers can also be registered on TPS with actual registrations of mobile numbers low (about 1 million or roughly 7 per cent of total registrations)' (page 24)



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