



Introduction

This further submission is to the **Culture, Media and Sport Committee** inquiry into Nuisance Telephone Calls and Text Messages, prior to presenting oral evidence on 2 September 2013.

As well as our oral evidence, we will be pleased to provide further material in support of the points made below, and to cover other points that may be of interest to the Committee.

These points refer to recent developments and specific matters identified as being of particular interest to the Committee.

Table of Contents

1. Ofcom's failure is confirmed again.....	1
2. Nuisance Calls that require a regulatory response	2
3. The potential effect of more complaints and regulatory tweaks is hyped.....	3
4. Lee Beaumont's revenge	3
5. Beyond voice calls	4
6. The Telephone Preference Service.....	4
7. Citizens Advice supports our proposals	5
8. The ICO responds to the Information Tribunal to maintain a penalty.....	5
9. Call Blocking technology trialled in Scotland	5

David Hickson, for the *fair telecoms campaign*

Friday 30 August 2013



1. Ofcom's failure is confirmed again

On Wednesday 28 August 2013, Ofcom announced its first use of the persistent misuse powers since that covering misuse which concluded in March 2011.

Out of the 63,785 complaints about Silent and Abandoned calls it has received over this period, Ofcom has identified not one case of Silent Calls and just this one case of a company that allegedly ceased making "an excessive number of abandoned calls" on 15 November 2012.

From examining all action taken, we note that Ofcom does not regard cases where the number of Silent or Abandoned calls made falls within 3% of the total made that day as causing unnecessary inconvenience, annoyance or anxiety so as to warrant the issuing of a Notification of Persistent Misuse, let alone the imposition of an enforceable regulatory requirement to cease the activity or a financial penalty.

We understand that those amongst this 63,785 who did not complain about Redress Financial Management Limited will not be told directly that Ofcom considers their inconvenience, annoyance or anxiety to have been necessary or unworthy of its attention.



2. Nuisance Calls that require a regulatory response

We suggest the following (non-exclusive) list covering only voice telephone calls.

■ ALL calls resulting only in silence.

Every "No Agent Available" call resulting from use of a predictive dialler should be required to be handled by an Informative Message.

Existing Answering Machine Detection equipment is not sufficiently reliable to warrant terminating a call on a positive detection. "Dead air" on the line whilst a sample of the voice answering the call is taken may lead the person called to assume that the call has been terminated in silence. Answering Service Detection should be explored by the call centre industry (and supported by Ofcom) if this would meet a valid need.

The persistent misuse powers held by Ofcom to intervene and apply enforceable regulations only in specific cases must be recognised as only being a "long stop". Wherever possible, general regulations should be applied and enforced to cover use of this technology applied on all users and their agents.

■ Calls not introduced by a clear statement of the caller's identity

Notwithstanding codes of practice, supported by regulation wherever possible, the Ofcom Statement of Policy on use of the Persistent Misuse powers should include this as an example of activity that may lead to the issuing of a Notification. (Fraud is a different issue.)

■ ALL voice calls using recorded announcements made without explicit consent having been given for receipt of such calls

If made for a direct marketing purpose, such calls are already prohibited under regulation #19 of the PECR. Ofcom regards such calls as potentially being regarded as an example of persistent misuse. We propose that sectoral regulators add the relevant provision to existing regulations, with the powers of the ICO and Ofcom as a back up.

■ ALL telemarketing calls from certain industry sectors

We believe that this means of marketing has been shown to be improper for certain business sectors, either by the nature of the business or following experience of how it has been conducted. This would need to cover not just the practice itself, but the receipt of leads generated by this means, possibly by overseas agencies.

Regulators who take this step may wish to add provisions to permit telephone responses to enquiries on the basis of a clear invitation for such a response. All must however ensure that provision of a valid contact telephone number is not a mandatory requirement in any situation.

(We would be happy to participate in discussions about which sectors / regulators should be particular urged to look at this, although many examples will come swiftly to mind.)

■ All calls requesting provision of "security" information

We believe that codes of practice, supported as necessary by regulation, should prohibit callers from requesting information used by that organisation for the purposes of securely identifying a person. To prevent fraud, such information should never be given to a caller, unless an agreed method of secure reciprocal identification may be devised and applied.





3. The potential effect of more complaints and regulatory tweaks is hyped

Having been involved with the issue for 10 years, one notes the way in which other campaigners and interested parties call for action and the response to such calls by the media, the public, the government and regulators. As public concern grows and demands for action become stronger, there is sadly a tendency to look for swift and easy remedies, diminishing rather than increasing the care that is taken is considering what action may be best able to deliver the intended result.

The bigger the problem, the more likely it is that bad solutions will be applied!

We note that many campaigners give undue weight to the likely effect of an increased number of complaints and relatively modest adjustments to enforcement powers under the current regime. There is no doubt that these are needed and proper, but there is no evidence to show that this will have any recognisable effect on the problem. (e.g. Ofcom and the ICO are not short of cases!)

We can see how some campaign groups, the government, the regulators and perhaps even this committee would be anxious to make bold claims of success for steps that may be seen to be wholly insignificant. For example, call blocking is commonly claimed to be a general solution, even though it only re-directs the nuisance to others on the same calling list.

We urge the committee not to be unduly distracted by suggestions of quick wins that may be politically attractive for various parties. Bold claims of what may be achieved by particular measures, e.g. "put people back in control of their personal data", must be supported by evidence to show that the measure proposed will actually achieve what is claimed.



4. Lee Beaumont's revenge

Extensive recent media coverage of the case of Lee Beaumont, who acquired a Premium Rate Services (0871) telephone number in the hope of discouraging nuisance callers has highlighted three points.

- Cost is no disincentive to nuisance callers. The calls continued, earning a little money for Mr Beaumont, but raising the question of the economics - including the risk of financial penalty.
- Contact information provided to utility providers "leaks" to claims management companies and their agents.
- Some people are so annoyed by nuisance calls that they are prepared to go to enormous lengths in an attempt to avoid them. Using a 0871 number incurs serious responsibilities.

Mr Beaumont himself, PhoneyPayPlus, the fair telecoms campaign and others have made it very clear that this is not an approach that should be recommended to others. Lee accepts and honours his duties as a provider of a "premium rate service", but doubts that others would be ready to accept this burden on their home phone. Despite this, providers of Premium rate Service numbers have already started marketing them to individual victims of nuisance calls.

This is a classic example of how ill considered, inappropriate responses to the problem of Nuisance Calls can gain significant media coverage and celebration of their proponents.



5. Beyond voice calls

Much of the focus of the Committee and witnesses, including ourselves, is restricted to voice telephone calls. The scope of inquiry and the provisions of the PECR does however cover the issue of unsolicited faxes [#20] and electronic mail ("email", SMS and other technologies) [#22].

The detriment to the recipient may not be as great as with nuisance voice calls and so this issue may be rightly seen as secondary, but it cannot be ignored. In terms of action and enforcement, the focus here must be on the communications service providers and their duties under the general conditions set by Ofcom. This responsibility presently falls on the ICO, but it is not best placed to get involved. It is also labouring under the burden of attempting to enforce compliance with #19 and #21, which we argue should be relieved by intervention nearer the source.

I note that in my own case I inadvertently gave my consent to receipt of unsolicited direct marketing SMS messages on my mobile phone arranged by the provider, EE. This is presented as being a free service to customers, however one suspects that very few would choose to register for this service. It would be interesting to hear from EE as to how far the cost of its services is subsidised as a result of customers unintentionally (albeit legally) registering for the service.

In respect of emails, we see the familiar problem with blocking techniques. My various levels of spam filters help, but I nonetheless have to check through all rejected messages to pick out those, often important, wanted messages that have been blocked.



6. The Telephone Preference Service

Many in the telemarketing industry concluded that the TPS had outlived its usefulness many years ago. Efforts to re-establish the concept that people may genuinely consent to unsolicited direct marketing calls in general are now wholly abandoned. I doubt that anybody would now contend that those who have failed to register their number with the TPS have done so deliberately as a means of providing consent to unsolicited direct marketing calls.

The "consent by default" principle reflected in #21 of the PECR is based on the assumption that the majority of the population are happy to receive unsolicited direct marketing calls. Such a suggestion would today be regarded as laughable.

There is however little purpose in reversing the rule and inviting the DMA to prepare a register of those who wish to consent to receipt of unsolicited direct marketing calls, as the enforcement capabilities of the ICO are already seen to be stretched too far by a looser regime. One also suspects that very few would be willing to invest any effort in attempting to solicit subscriptions to such a register.

Once sufficient means of recording consent to telephone contact and enforcement of effective regulations covering relevant sectors are in place, the public resources committed to maintenance of the TPS should fall to the minimum possible to maintain the essential integrity of the PECR. Likewise the contribution of businesses should be reduced to a minimal level to reflect concentration of proper means of consent to telephone contact.

In practical terms - the TPS is dead.



**NUISANCE TELEPHONE CALLS AND TEXT MESSAGES
- second submission**

7. Citizens Advice supports our proposals

In a recent media release, Citizens Advice calls for the Claims Management Regulator and the Financial Conduct Authority to prohibit cold calling. This is in line with our proposal that simpler regulation, by the appropriate regulators, be used to address the problem of nuisance calls.

The powers held by the ICO and Ofcom are required to address cases that fall through a much stronger and well focussed net, however they have been shown to be wholly incapable of addressing the whole of the problem that is faced.

It appears that Citizens Advice is not yet ready to take on its role as the Statutory Advocate of the Consumer Interest and has not fully assimilated its "Consumer Helpline" service. Given this position, we see that it is not yet ready to give consideration to the other aspects of our proposal.

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**8. The ICO responds to the Information Tribunal to maintain a penalty**

We Claim U Gain Ltd and Nationwide Energy Services Ltd (known to TV viewers as "The Call Centre") have appealed to the Information Tribunal against the penalty imposed by the ICO.

These proceedings will provide valuable evidence about what (if any) changes to the PECR may be required in relation to the issue of consent, which is assumed to be the basis of the appeal as this was the issue long contested during the progress of the ICO case.

The Tribunal does not normally publish papers until formal proceedings commence, however it is known that the deadline for the ICO response was 13 August 2013. There has been no announcement that the ICO has withdrawn the penalty.

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9. Call Blocking technology trialed in Scotland

Call blocking technology as particularly relevant for those who are in serious need of protection from nuisance calls. Such cases can warrant relatively involved procedures to allow unexpected important callers to get through. Trading standards officers in East Renfrewshire, Angus and East Dunbartonshire have recently completed trials using some of these devices with vulnerable residents. Social services departments have not yet approved funding of use of these devices.

We see Call Blocking Technology as valuable, but are very concerned about the specific and general effect of risking blocking wanted, and even very important, calls. This is a danger that exists with some of the cheaper options. The objective must be to make a connection to society through the telephone network a safe and happy experience for all those able to manage their relationships with others. We see it as most regrettable that many people choose to risk isolating themselves in order to prevent being a victim of nuisance.

There will always be a demand for special devices to protect the vulnerable or for those who require their calls to be managed automatically. The remainder of us should not need to spend money and risk isolation to avoid illegal activity that could, and should, be halted at source.