



## Introduction

I present a response to this consultation in the name of the **fair telecoms campaign**.

This reflects positions published on the website <http://fairtelecoms.org.uk>, given in responses to other consultations and published around the broadcast and printed media. I await any invitation to engage directly with **BIS** or **DCMS** on the issue of Nuisance Calls and will be happy to respond and engage in serious discussion of these matters.

## Summary

The **fair telecoms campaign** has long expressed the view that this proposal, which has been kicking around for a very long time, is wholly misguided and has no place amongst serious efforts to address the problem of nuisance calls. Its very proposition suggests that the proposer has little or no understanding of the problem, and no serious intent to address it sensibly.

This response attempts to address the points made in the proposal, answers the specific questions posed and concludes with alternative proposals which warrant far more attention than this proposal, as they represent effective steps that may be taken to address the issue.

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## What is CLI

CLI is a telephone number that is provided by the person calling that may be used to make a return call. Where the caller does not wish to receive, or is unable to handle, a return call (e.g. an outbound call centre) then it generally serves no useful purpose.

The one exception to the above applies in the case where the recipient of the call may be able to receive the CLI when the call is made (normally only available to landline users for a fee) and have equipment to display the number given, or other equipment able to process the CLI. In the case of a caller giving a number known to the person called (or their equipment) this may enable the caller to be identified before the call is answered.

**It is highly relevant to point out that an unrecognised number is no different to having no number at all, in respect of the person called identifying the caller. It is therefore given practice for the caller to introduce themselves at the start of a telephone conversation.**

The idea that CLI provides an assured identification of the person calling is complete nonsense. This false idea has however been strongly promoted by those who sell CLI-related services and equipment. It has sadly gained acceptance by many who fail to understand the complex reality of the situation.

This has led to people refusing calls (many of which are perfectly legitimate and even especially important) because there is no CLI. Many direct marketing callers therefore provide worthless CLI consisting of any series of digits, a randomly generated meaningful number, or a number connected to a meaningless message intended to reassure recipients of “missed calls” that the call was unimportant. Deceptive techniques known to be deployed include giving the number validly used by another company, or even that of the person being called.

**Ofcom** currently holds the power to act against anyone who misuses CLI, in the manner described above, regardless of the purpose of the call. It is disappointing to note that DCMS has no faith in **Ofcom**'s ability to use its powers under §§128-130 of the Communications Act in order to catch and deter those who persistently misuse the telephone network in this way. The proposal fails to make any reference to this power and “misuse of CLI” being one of the specific categories listed in the **Ofcom** Statement of Policy published under the terms of the Communications Act §131.

Those who do not have the benefit of CLI being given with the call and stored by their equipment generally have one opportunity to capture it - by dialling 1471 before they receive another call. This will enable them to hear the number given and, for a supplementary fee, make a return call.

It is easy to see why the telephone industry, which stands to earn considerable revenue from CLI-related products and services, is keen to promote its use – beyond its true usefulness.

If this proposal were to be carried forward and put into effect, one might also expect to see its commercial exploitation through the provision of “**CLI directories**”. The proposal even refers to one of its benefits being to enable “**people to identify direct marketing calls, and choose whether to accept them**”. **For this benefit to be realised, at the very least, someone would have to compile and sell a list of the CLI numbers used by all direct marketing companies.**





## What is a “Silent” Call

The **fair telecoms campaign** has always identified a “Silent” Call as being one which does not begin with the caller clearly stating who they are (and the purpose of their call, should this be necessary) when the call is answered. This obviously covers, but need not be restricted to calls where the person called only hears “silence”.

Whilst it is imperative for the caller to identify themselves when a call is answered, there is no essential purpose being served by enabling them to be identified before then. Many callers have valid reasons for not identifying themselves by CLI, and no-one can be expected to know every CLI that may be used around the world. A call that is “missed” can usually be covered by other forms of contact, or by leaving a message with an answering service where applicable. (See our second alternative proposal for a way in which callers may be identified before the person called engages in conversation with them.)

I deeply regret the fact that **Ofcom** does not regard the habitual failure of a caller to identify themselves as an example of persistent misuse of the telephone network and thereby potentially use its powers under **§§128-130 of Communications Act**. This would obviously cover truly “Silent” calls. Sadly, **Ofcom** extends its definition of Silent Calls into the technically similar category of “abandoned” calls (where the caller identifies themselves through a recorded message).

**This position reflects the belief that a voice telephone call consists of spoken words exchanged between two people. I see no valid purpose being served by trying to extend this, by regulation, to include a technical feature (i.e. CLI) that it is of highly variable, and often dubious, benefit.**

## What is unsolicited direct marketing

The EU Directive (**2002/58/EC**), which provides the basis for the **PECR**, specifies that direct marketing calls, which have not been solicited, may be made on the basis of the person called having either consented to receipt of such calls or failed to express a wish not to receive such calls. The business-friendly UK government of the time elected to take the second option, by forming the **PECR** to reflect an assumption that people were generally ready to receive personal speech communications by telephone for marketing purposes. Somewhat perversely, the less intrusive forms of electronic communication – fax, email and text message – require explicit consent, if for the purpose of unsolicited direct marketing.

**Reviewing that position now, in 2016, with consideration of the public reaction to the practice of telemarketing during the years since that decision was taken, the notion of “consent” to any “unsolicited” marketing call seems utterly absurd.**

Surely, if anything needs to be done to amend the **PECR**, notwithstanding any remaining need to comply with a 2002 EU Directive, it must be to remove the implicit consent provision and get as close as one may to a requirement for receipt of direct marketing telephone calls to be valid only where explicit consent to that form of contact has been granted. The idea that an “unsolicited” direct marketing call may be acceptable must surely be reduced to the absolute minimum.

This point was brought out in my exchange with **John Mitchison** of the **DMA** on **BBC Radio 5Live** two weeks ago – [listen here](#). It would be interesting to hear examples of welcome unsolicited direct marketing calls from **Baroness Neville-Rolfe**, who also refers to the “**legitimate direct marketing industry**”, and other proponents of this proposal.





## Why the proposed change in the law is unlikely to achieve the objectives which it claims to be able to achieve

The proposal suggests that a primary reason for the change to the provisions of the **PECR** is the fact that action is not possible in respect of all reported breaches of that regulation.

It is stated that in 85% of the cases reported to the **ICO** CLI was provided by the caller. One may assume that in at least some of the remaining 15% of cases the caller identified themselves in some other way. This calls into question the sense of priority which focuses attention on a measure to address only a small proportion of cases, when the failure of the **ICO** to promptly and effectively address breaches of the **PECR** is not limited to a handful of exceptions.

The proposal fails to point out why it is that an organisation already in breach of the **PECR** (by making an unsolicited direct marketing call without the necessary consent), which currently fails identify itself to the person called (neither by provision of valid CLI nor by stating the name in the course of the conversation), is likely to change its behaviour in order to comply with a further provision of the **PECR**, so that its breach of the existing terms may be detected.

I commonly address this point by citing **an absurd example of an item of proposed legislation - to require anyone committing a burglary to always leave behind a business card showing a recent photo and giving their full name, permanent address and a daytime telephone number**. This information would obviously be of great benefit to the Police in apprehending burglars, so the proposal would therefore be difficult to oppose. It is proposed to change the **PECR** so as to require those who breach the **PECR**, and seek to evade detection by withhold their identity, to identify themselves. **On this point, the proposal seems to be remarkably similar to my absurd example.**

The suggestion that provision of CLI would **"make it easier for people to identify direct marketing calls, and choose whether to accept them"** is also ridiculous. The calls which people wish to avoid are those which are made (in the opinion of the person being called) without their consent – i.e. they are illegal. Without the formal registration of all direct marketing callers and a list of their CLIs being available to all call recipients, the implication is that, once the proposed measure were in place, calls without CLI would be illegal direct marketing calls and should therefore be refused.

**BT** has already announced that it will shortly be removing its charge for the (misnamed) **"Anonymous Caller Rejection"** service, which blocks calls from those perfectly ready to announce who they are when the call is answered, but are unable or unwilling to accept return calls. **An unintended, and most unhappy, consequence of this measure could be an effective compulsion on all those who wish their calls to be answered to provide worthless CLI.**

One has to express the view that this proposal comes from deep inside the **"something must be done"** pool of thinking on the topic of nuisance calls. The ideas that every illegal caller could be identified and acted against, and that a citizen always knew who was calling before they answered the telephone, are immensely attractive. Unfortunately, this proposal cannot achieve either and may have more negative effects than those which are positive. Furthermore, there are many far more effective steps that could be taken to reduce the number of nuisance calls that are made and received. More resources for the **ICO** is one, although this is dismissed as unnecessary.





## Some further detailed points regarding the proposal

- It is interesting to note that adoption of this proposal will have no significant impact on the amount of work being undertaken by the **ICO** (para 5.4). This implies that this measure will have no impact on the continued growth in the amount of nuisance experienced, despite the continuing efforts of the **ICO**. Alternatively there must be capacity in the **ICO** resource that is currently unused, despite the appalling relationship between the growing level of complaints and the number of actions it is able to take against companies to cause them to cease their illegal activities. **There is something seriously wrong here!**
- Estimating the number of companies engaged in unsolicited direct marketing by using the membership figures for the **DMA** seems to miss the point. Any **DMA** member that fails to provide CLI is already in breach of the **DMA** code. Furthermore it is widely claimed and accepted that the vast majority of nuisance calls originate from, or are instigated by, companies that are not members of the **DMA**.
- Although technology is changing, in many cases the CLI given still relates to the line from which the call is made. This means that it is not possible to identify the company calling whenever work is outsourced to an agency call centre, unless the call centre is able to allocate lines to each client, or to somehow change the presentation number for each campaign being handled. **This is one reason why CLI is often associated with utterly meaningless messages.**

## Answers to the specific questions posed

- **Do you agree that the Government should amend PECR to make it a requirement for direct marketing callers to provide CLI?**

The relevant sections of the **PECR** address “unsolicited” calls for direct marketing purposes. This covers activities by those who would not consider themselves to be in the “direct marketing” business, e.g. those canvassing in relation to the EU membership referendum!

**It would be the most appalling error to cut back the scope of the relevant provisions of the PECR to cover only “direct marketing callers”.**

The key reason for answering “NO – I DO NOT AGREE” to this question is the danger of citizens being further misled into refusing genuine and often life-saving calls from emergency services, doctors, hospitals as well as other callers (e.g. collections agencies, employment bureaux and the BBC) who have perfectly good and valid reasons for withholding CLI.

**Proceeding with this proposal would also be a wicked distraction from the serious and effective steps that could be taken to address Nuisance Calls – see the following section of this response.**

- **Are there any other costs or benefits that may be associated with this proposal that you think the Government should consider before taking a final decision?**

If the primary declared purpose is to be achieved, i.e. enabling action to be taken against those currently in breach of the **PECR**, then serious consideration must be given to how many of those currently in breach, and therefore concealing their identity, would comply with this provision.

If citizens are to be able to recognise direct marketing calls, then some consideration needs to be given to the means by which they will be able to achieve this, and the associated costs!





## **Alternative proposals from the fair telecoms campaign**

### **The regulatory perspective**

We have long argued that regulation is best carried out as close as possible to the business in question – e.g. for each regulated sector, according to the needs of the providers and customers of that sector, with regard to the general public interest as appropriate.

For this reason, we believe that clear and proper regulations should be established by every statutory and voluntary regulator to cover the needs for the marketing of products and services in that sector, without undue damage to the wider public interest. The **ICO**, through its enforcement of the terms of the **PECR**, has an important back-up role to play. A number of sectors repeatedly feature highly amongst the areas in which the efforts of the **ICO** are deployed against nuisance calls, despite the fact that sectoral regulators hold much stronger powers, and consequently achieve a much higher degree of compliance than can ever be expected from the more remote **ICO**. – **They could prohibit, or constrain, telemarketing themselves!**

**The Claims Management Regulator is the most striking example in relation to Nuisance Calls.**

We have repeatedly suggested that the **CMR** (part of the **MoJ**) revises its code of practice for licensed operators to wholly prohibit use of leads gathered through telemarketing. It is not bound by the terms of the EU directive and so need not get tied up with the nonsense of “consent” and “unsolicited”. A restriction on licensed operators would cover the source of the lead, regardless of who actually carried out the telemarketing – thereby removing any need to catch those who make the calls that continue to plague so many people; one simply dries up their source of income.

We have made this point to a number of other regulators, who could be, and we believe should seriously consider, acting similarly. See [Open Message – Regulatory Prohibition of Nuisance Calls](#).

### **The personal perspective**

Technology has been developed to enable consumers to have **effective control of the telephone calls they receive**. This goes far beyond the concept of the “call blockers” that are widely available, are commonly associated with scam services and often do more harm than good.

Aside from other useful features, this technology makes effective use of CLI to identify known, welcome, callers and allows their calls to be handled in the normal way – i.e. the phone rings. All other, unrecognised, callers are challenged to identify themselves with a very brief recorded message, known as a “whisper”. If they choose to leave a “whisper” (most nuisance callers cannot, or do not, do so), the phone rings and the person called hears just the “whisper”. Without any direct pressure from the caller, they are then able to decide whether or not to accept the call.

This gives choice over which calls to accept in a way that no development around CLI ever could. The technology is proved both on handsets and on telephone networks. The technology was first deployed in the **trueCall** device, where independent tests have shown this to be enormously effective in almost eliminating Nuisance Calls. It has subsequently been adopted by **BT**, under the “**Call Guardian**” name, and is deployed on its current range of handsets.

**We now need this technology to be deployed on telephone networks (landline and mobile) so that all telephone users may benefit from control of which calls they accept. All agencies should be seeking to facilitate this deployment, with the committed support of Government.**

