



## Nuisance calls - Ofcom completes research and chooses not to use its powers

Ofcom today announces the completion of further research into Nuisance Calls, supplementing thousands of reports it receives regularly. (See [Ofcom research reveals extent of nuisance calls.](#))

It states, "*Ofcom is using the full extent of its legal powers to address the issue of abandoned and silent calls*". This is clearly untrue, as it also refers to having identified the source of calls that cause annoyance, inconvenience or anxiety, also referred to as being "worrying" and "distressing".

### Actual Legal Powers

Ofcom's relevant powers are in [Sections 128 - 131 of the Communications Act](#).

The first stage of the powers (section 128), which must be used ahead of enforcement action (initiated under section 129), enable a formal Notification to be issued ...

*"Where OFCOM determine that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services"*.

Persistent misuse occurs where someone ...

*"uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety"*.

### Ofcom policy of tolerance

Ofcom will not be issuing such Notifications in the cases identified by its research, but will instead be following its "*policy on abandoned and silent calls*" (under section 131) by "*investigating and considering enforcement action*".

Ofcom does not act in accordance with its powers, because it has a policy which seeks to regulate the amount of nuisance created, rather than acting to eradicate it.

- The policy sets a limit to the number of abandoned/silent calls which may be made. This is expressed not in terms of the amount of nuisance, but as a proportion (3%) of the total calling activity undertaken in any particular day.
- In the case of Silent Calls which result from use of Answering Machine Detection equipment, the Ofcom policy permits one per caller per victim per day.

Because the nuisance caused by the cases identified from the research may be found to be within Ofcom's tolerances, it cannot take action under its policy without investigation and consideration that could be extremely lengthy. In the recent Talk Talk case, a penalty (under section 130) was imposed over two years after the identified misuse had occurred.

### Persistent Misuse

Ofcom continues to misuse the powers granted to it by parliament. In many cases its role is to act as a regulator of markets in the interests of consumers. In this case, its role is to act against all identified cases of misuse in the interest of citizens.

This policy is unacceptable and continues to be in breach of the expectations of parliament - "*We expect you to use your powers to eradicate the nuisance of Silent Calls*" - see [this release](#).

