

Other campaigning organisations have recently starting calling for action to correct the long-standing failure of Ofcom and the ICO to effectively use their statutory powers in relation to Nuisance Calls.

The **fair telecoms campaign** has presented its outline proposals (see [this open message](#)) to **Citizens Advice**, the defender of both the consumer and the citizen interest. We also seek to engage with other bodies and groups who wish to be involved. As may be seen, we address comments and ideas put forward by others, as well as pressing our own.

Indications of involvement

Appended to this document are copies of messages sent to a number of organisations, which have become involved in one or more of the following ways:

1. Signing [a letter](#) to **Ofcom**, the **ICO** and the **TPS** (copied to **DCMS**) expressing concern about the issue.
2. [Attending the DCMS Communications Review Consumer Perspective Seminar](#), during which the issue was [discussed](#), as "unwanted calls, text and spam".
3. Responding, in some way, to the specific questions posed in the [discussion paper](#) issued to follow up that seminar, under the heading "Unsolicited marketing calls": "*Are the current arrangements adequate and if not, how could they be improved?*".
4. Associating themselves, alongside the **Ministry of Justice**, the **Office of Fair Trading**, **TPS**, **FPS** and the **ICO**, with a newly published 22-page **Ofcom** [Nuisance Calls Consumer Guide](#).

(For some, the latter item is seen to provide the necessary improvements being demanded. Conversely, I see it as clearly demonstrating the very problem that needs to be addressed.)

The organisations

I have identified the following organisations. The relevant points of involvement (as numbered above) are shown, the name gives a link to the appended copy message.

- **Citizens Advice / Citizens Advice Bureaux** (1, 2, 3, 4) - [open message](#)
- [Communications Consumer Panel](#) (1, 2, 3, 4)
- [Consumer Focus](#) (1, 2, 3, 4)
- [Federation of Small Businesses](#) (2)
- [Hearing Link / Telecommunications Working Group](#) (1)
- [National Consumer Federation](#) (1, 4)
- [National Council of Women of Great Britain](#) (1)
- [PhoneAbility](#) (1)
- [Privacy International](#) (1)
- [TAG](#) (1)
- [Taxpayer's Alliance](#) (2)
- [Which?](#) (1,2,3)

From: [David Hickson \(fairtelecoms\)](#)
Sent: Tuesday, 09 October 2012
To: [Bob Warner - Chairman - Communications Consumer Panel](#)
Cc: [Roger Darlington - Communications Consumer Panel](#)
Subject: Improved arrangements to address Nuisance Calls

Bob

I was interested to read the "[CCP response to the DCMS' Communications Review](#)", published on 27 September.

I am looking for responses to the questions posed in the [Consumer Perspective Seminar paper](#) with reference to Unsolicited marketing calls - "***Are the current arrangements adequate and if not, how could they be improved?***". I may take it that the comments under the heading "Unwanted marketing contacts and internet/mobile scams" represent that response from CCP.

The one concrete suggestion made, for the publication of a "guide", appears to have been fulfilled with the publication of "[NUISANCE CALLS AND MESSAGES - CONSUMER GUIDE](#)" by Ofcom, in association with yourselves and a number of other bodies. This leaves no specific proposals from the CCP outstanding.

By suggesting only that the adequacy of the arrangements needs to be reviewed, it would appear that the CCP has an open mind on the question posed, and no suggestions for possible improvements to recommend for consideration by such a review.

I have published an [extended open message](#), responding to the parallel submission on behalf of the CAB network and presenting my proposals, which are [outlined here](#). By circulation of the open message, I seek to engage with those who may wish to make a worthwhile contribution on this issue, by engaging in serious discussion about positive proposals for how the arrangements may be improved.

(This message to you, along with other similar messages may be viewed here - [Engagement with other "Nuisance Calls" campaigners](#).)

Do please get in touch to discuss this.

regards

[David](#)



From: [David Hickson \(fairtelecoms\)](#)
Sent: Tuesday, 09 October 2012
To: [Marzena Kisielowska-Lipman - European policy manager - Consumer Focus](#)
Cc: [Adam Scorer - Director of External Affairs - Consumer Focus](#)
Subject: Improved arrangements to address Nuisance Calls

Marzena

I was interested to read your [response to the DCMS seminar papers on the Communications Review](#).

I am looking for responses to the question posed in the [Consumer Perspective Seminar paper](#) with reference to Unsolicited marketing calls - *"Are the current arrangements adequate and if not, how could they be improved?"*

Your response states that the adequacy of the current arrangements is open to question, and in need of review. You fail to address the question by presenting even a provisional view on behalf of **Consumer Focus**, and no hint of ways in which you believe the arrangements could be improved.

You refer to *"action to enforce the Telephone Preference Scheme"*. This is the responsibility of **Ofcom**, but I am not aware of any evidence that the **DMA** is failing in its duties to operate this service, which simply registers the withdrawal of assumed consent to certain types of calls. The BBC news item to which you refer addresses the failure of the **ICO** to enforce item #21 of the Privacy and Electronic Communications Regulations.

You later suggest that there is a need to review the arrangements with regard to text messages (PECR #24), although these are (currently) outside the scope of the Telephone Preference Service. You surely cannot be thinking that they be brought within its scope!

You do not address the issue of unsolicited marketing voice calls without human intervention. You will, I trust, be aware that the relevant single provision in the Directive (Article 13, paragraph 1) was split on drafting PECR #19 to cover only those cases where direct marketing material was communicated by a recording. It was assumed that other cases would be covered by Ofcom's use of the persistent misuse powers, which need have no regard for the purpose of the call.

Many have suggested that citizens and consumers are unclear as to the respective duties and regulations. I am disappointed to read that **Consumer Focus**, their "champion", is apparently in no position to assist.

As I look to put forward serious suggestions for how the current arrangements could be improved, I am anxious to work with those with knowledge and expertise on these matters and to draw on their ideas and experience. I am therefore very disappointed to find the statutory advocate of the consumer interest displaying none of these, despite having itself been able to draw on the knowledge, experience and ideas of others.

One has to hope that when **Citizens Advice** takes over responsibility for the role currently being fulfilled by **Consumer Focus**, it will be able to demonstrate a better grasp of the issues and present positive advocacy. I think it is reasonable to assume that an "advocate" will be sufficiently well briefed to be able to offer opinions and to directly respond to requests for suggestions about what should be done, when invited to do so.

(continued)

I have published an [extended open message](#), responding to the parallel submission on behalf of the CAB network and presenting my proposals, which are [outlined here](#). By circulation of the open message, I seek to engage with those who may wish, or be under a duty, to make a contribution on this issue, by engaging in serious discussion about positive proposals for how the arrangements may be improved.

(This message to you, along with other similar messages may be viewed here - [Engagement with other "Nuisance Calls" campaigners.](#))

Do please get in touch to discuss this.

regards

David



From: [David Hickson \(fairtelecoms\)](#)
Sent: Tuesday, 09 October 2012
To: [Richard Lloyd - Executive Director - Which?](#)
Cc: [Sumedha Pathak - Which?](#)
Subject: Improved arrangements to address Nuisance Calls

Richard

I was interested to read your "Consultation Response - Communications Review – The Consumer Perspective", prepared by Sumedha Pathak, published for the benefit of its members by the **Consumer Forum for Communications** [at this url](#).

I am looking for responses to the question posed in the Consumer Perspective Seminar paper with reference to Unsolicited marketing calls - "**Are the current arrangements adequate and if not, how could they be improved?**". I may take it that the comments under the heading "Telephone Preference Service" represent that response from **Which?**.

Your response to the questions

Unlike many other respondents, you clearly state that the current arrangements are not adequate, and you directly and implicitly suggest a number of interesting potential "improvements".

I do not agree with your suggestion that the Telephone Preference Service should become a means by which an individual can choose exactly which telephone calls they wish to receive. I see the term "unwanted" as unhelpfully broad, as I expect that all of our needs and requirements change from time to time and cannot be adequately predicted, even by ourselves. I totally disagree with your suggestion that a willingness to receive properly conducted unsolicited sales calls should be treated as consent to receipt of Silent Calls and other forms of misuse.

I also disagree with your suggestion that the present regulatory provisions are not sufficient. It is the interpretations, policies and enforcement activity of **Ofcom** and the **ICO** which have led to the problem remaining as great as it is. There will always be a need for Automated Call Rejection and I cannot imagine a world in which a product like **trueCall** will not offer benefits. There is much that needs to be done in this area, however I do not believe that we should get carried away with the idea that a ringing telephone is an invasion of one's privacy or that one may be in total control of one's relationship with the world.

The legislation

Your suggestion that "**legislation covering direct marketing (by telephone) is fragmented and covered by various regulators**" would be strongly challenged by the ICO, which holds the view that a direct marketing purpose does not exist, unless it is stated in the course of the call. The relevant provisions of the PECR are closely grouped (#19-#24) and all covered by the ICO. The fact that the mechanisms for the withdrawal of implied consent to receipt of calls covered by #20 and #21 are administered by a subsidiary of the DMA under contract to Ofcom does not amount to fragmentation, as the relevant provisions are found at #25 and #26.

The problem to which you may be referring relates to calls with a direct marketing purpose where the caller hangs up in silence. These have been explicitly omitted from the legislation to implement the relevant provision of the Directive (2002/58/EC - Article 13 paragraph 1), which demands explicit consent for the receipt of all calls with a direct marketing purpose, that are made without human intervention.

(continued)

When implementing the EU Directive in 2003, it was thought that Ofcom would be using its persistent misuse powers to effectively address the issue of Silent Calls, made with any purpose. PECR #19 was therefore restricted to cover only those cases where direct marketing material was delivered by a recorded message.

Ofcom has subsequently amended its formal policy on use of the persistent misuse powers, to apply a percentage tolerance of Silent Calls, which it previously recognised as being wholly inappropriate. Furthermore, Ofcom has chosen never to use its powers to impose even a limit on the making of Silent Calls in any case.

This issue of a separation between the purpose of the call and the material delivered is continued into ICO enforcement policy, despite the fact that PECR #20 #21 and #22 refer to purpose (unlike #19). The ICO effectively only considers a call to have a direct marketing purpose if that purpose is explicitly stated by the caller. This is therefore an issue of policy, not legislation.

Ofcom has never had a policy of regarding misrepresentation of the purpose of a call as "misuse". Under the relevant legislation, Ofcom has complete discretion regarding use of the persistent misuse powers, so it cannot be said that this legislation covers direct marketing.

You are totally wrong to suggest that the DMA has any regulatory responsibility (other than that which it exercises over its own voluntary membership). It has a contractual duty, to Ofcom, to maintain and distribute the TPS and FPS registers. It chooses to accept reports of alleged breaches and pass them on, in the way that it did before the TPS was adopted as having a formal place in the regulatory structure.

It is largely because of the way in which it is being applied that the legislation is commonly misunderstood as being more complex than it truly is.

“Single Complaints Portal”

I wholly agree with the suggestion that there should be what is described as ***“a single complaints portal for all types of unwanted communication”***. I describe my outline proposal for an agency to handle “nuisance calls” below, although I use different words, for good reason. For example, I do not see it as dealing with “Dear John” letters, all telephone calls at mealtimes and balance warning text messages from the bank, however “unwanted” these communications may be.

My own experience in this area enables me to endorse and take further the points made regarding enforcement. In particular, I am careful to use the word “report”, rather than “complaint”. I will look to develop this in detail, and write on these points at length, if we are able to take forward my suggestion for a “nuisance calls agency”.

Consent

In discussing the issue of consent, you again place far too much emphasis on the significance of the TPS. At present, it has no relevance whatsoever in the case of text messages, recorded message calls, Silent Calls and, under the present ICO policy, direct marketing calls where the caller fails to declare its direct marketing purpose. The percentage of registrations also means that the pool of legitimate “targets” is too small for many organisations to contemplate a general telephone marketing campaign.

(continued)

For most of this issue we are talking about situations where consent has not been given. I would think that the number of cases where a questionable claim of consent presents a serious obstacle to enforcement action would be relatively few. One of the features of my proposed agency is however that it would be able to make determinations on matters like this based on evidence, and thereby be able to present the issue for further discussion, should this be necessary.

I believe that a lot of the concern around the matter of "consent" does not relate to the matter of consent to receipt of unsolicited marketing telecommunications, but to consent for personal information (including conduct details) to be distributed. There can be a close connection, but the two issues are quite separate so far as regulation and legislation are concerned. The unauthorised sharing of personal data is an offence, regardless of the use to which it is put.

The anecdotal evidence presented of misrepresentation of the regulations and failure by the ICO to apply them serves only to demonstrate that the problem relates to the application of the regulations, rather than their actual nature. I cannot see how adding the complexity of a "sunset provision" would achieve any benefit. If taken seriously, one is asking for those who wish to use the consent for marketing purposes to deluge the "victim" with intensive communications over a short period, rather than including them in a campaign that may be undertaken at any suitable time. If, as I believe is the case, most of the activity that causes nuisance is undertaken without proper consent, then it will make little or no difference.

One relevant matter on which the issue of consent could warrant serious discussion is the perhaps retained wish of the responsible direct marketing industry to have mass telephone marketing as a legitimate and welcomed activity (I say "perhaps", because all hope may have now been abandoned). There are some, myself included, who believe that this need not be a totally fanciful notion, although it has some sizeable hurdles to cross. I would think it worthwhile to engage with the industry to discuss the scenarios under which B2C telephone contact that was not expressly invited could take place, without being regarded as "unwanted" or "nuisance".

My proposal

I have published an [extended open message](#), responding to the parallel submission on behalf of the CAB network and presenting my proposals, which are [outlined here](#). By circulation of the open message, I seek to engage with those who may wish, or be under a duty, to make a contribution on this issue, by engaging in serious discussion about positive proposals for how the arrangements may be improved.

(This message to you, along with other similar messages may be viewed here - [Engagement with other "Nuisance Calls" campaigners.](#))

Do please get in touch to discuss this.

regards

David



From: [David Hickson \(fairtelecoms\)](#)
Sent: Tuesday, 09 October 2012
To: [Arnold Pindar - Chairman - National Consumer Federation](#)
Subject: Improved arrangements to address Nuisance Calls

Mr Pinder

I note your interest in the issue of nuisance telephone calls. This is reflected by your signature to [a recent letter](#) to **Ofcom**, the **ICO** and **TPS Ltd**, copied to the **DCMS**. You are also associated with a recently published 22-page **Ofcom [Nuisance Calls Consumer Guide](#)**.

You may be aware that the **DCMS** sought to address your concerns by including discussion of the topic of Unsolicited Marketing Calls in the [Communications Review Consumer Perspective Seminar](#). More significantly perhaps, its [subsequent discussion paper](#) invited replies to the question *“Are the current arrangements adequate and if not, how could they be improved?”*.

I have not been able to find a published submission in reply, nor any published suggestions for improvement, from yourselves.

I have published an [extended open message](#), responding to the submission on behalf of the CAB network and presenting my proposals, which are [outlined here](#). By circulation of the open message, I seek to engage with those who may wish to make a contribution on this issue, by engaging in serious discussion about positive proposals for how the arrangements may be improved.

(This message to you, along with other similar messages may be viewed here - [Engagement with other "Nuisance Calls" campaigners](#).)

The **fair telecoms campaign** is very keen to use our knowledge, understanding and experience of these matters, in conjunction with that of others, in forming, refining and pressing suggestions for much needed improvement.

Do please get in touch if you would wish to engage with us on this matter.

regards

[David](#)



From: [David Hickson \(fairtelecoms\)](#)
Sent: Tuesday, 09 October 2012
To: [Jack Sandover - Hearing Link / Telecommunications Working Group](#);
[Sheila Eaton - President - National Council of Women of Great Britain](#);
[Tony Shipley - Vice-Chairman - PhoneAbility](#);
[Gus Hosein - Executive Director - Privacy International](#);
[Ruth Myers - Chairman - TAG](#)
Subject: Improved arrangements to address Nuisance Calls

Mr Sandover / Ms Eaton / Mr Shipley / Mr Hosein / Ms Myers

I note your interest in the issue of nuisance telephone calls. This is reflected by your signature to [a recent letter](#) to **Ofcom**, the **ICO** and **TPS Ltd**, copied to the **DCMS**.

You may be aware that the **DCMS** sought to address your concerns by including discussion of the topic of Unsolicited Marketing Calls in the [Communications Review Consumer Perspective Seminar](#). More significantly perhaps, its [subsequent discussion paper](#) invited replies to the question *"Are the current arrangements adequate and if not, how could they be improved?"*.

I have not been able to find a published reply, nor any published suggestions for improvement, from yourselves.

I have published an [extended open message](#), responding to the submission on behalf of the CAB network and presenting my proposals, which are [outlined here](#). By circulation of the open message, I seek to engage with those who may wish to make a contribution on this issue, by engaging in serious discussion about positive proposals for how the arrangements may be improved.

(This message to you, along with other similar messages may be viewed here - [Engagement with other "Nuisance Calls" campaigners](#).)

The **fair telecoms campaign** is very keen to use our knowledge, understanding and experience of these matters, in conjunction with that of others, in forming, refining and pressing suggestions for much needed improvement.

Do please get in touch if you would wish to engage with us on this matter.

regards

[David](#)



From: [David Hickson \(fairtelecoms\)](#)
Sent: Tuesday, 09 October 2012
To: [Ulrika Diallo - Policy Advisor - Federation of Small Businesses](#);
[Dominique Lazanski - Head of Digital Policy - Taxpayer's Alliance](#)
Subject: Improved arrangements to address Nuisance Calls

Ms Diallo / Ms Lazanski

I note you may be interested in the issue of nuisance telephone calls. I see that you attended the recent [Communications Review Consumer Perspective Seminar](#), which including discussion of the topic of Unsolicited Marketing Calls. More significantly perhaps, the [subsequent discussion paper](#) invited replies to the question *“Are the current arrangements adequate and if not, how could they be improved?”*.

I have not been able to find a published submission in reply, nor any published suggestions for improvement, from yourselves.

I have published an [extended open message](#), responding to the submission on behalf of the CAB network and presenting my proposals, which are [outlined here](#). By circulation of the open message, I seek to engage with those who may wish to make a contribution on this issue, by engaging in serious discussion about positive proposals for how the arrangements may be improved.

(This message to you, along with other similar messages may be viewed here - [Engagement with other "Nuisance Calls" campaigners](#).)

The **fair telecoms campaign** is very keen to use our knowledge, understanding and experience of these matters, in conjunction with that of others, in forming, refining and pressing suggestions for much needed improvement.

Do please get in touch if you would wish to engage with us on this matter.

regards

[David](#)

