



## Nuisance Calls - action

This briefing is drafted as a further formal submission to the **Culture Media and Sport Committee** inquiry into Nuisance Calls and also for sight of the **APPG** which is conducting a similar parallel inquiry. It represents an expression of relatively well-informed and long considered opinion.

### Regulation

It is generally recognised that the public problem of nuisance telephone calls has become worse over the last ten years, during which the **ICO** has been using its powers under the **PECR**, and **Ofcom** has been using its powers under the "Persistent Misuse" provisions of the **Communications Act**. It is generally understood that the former addresses cases where a direct marketing intention is declared and the latter where the call is Silent.

We believe it is reasonable to conclude that both the **ICO** and **Ofcom** have failed, in that the policy formed by Ofcom and the action taken by each has not had a perceivable effect on the problem. Our conclusion, noting the [Regulators' Code](#), is that neither the **ICO** nor **Ofcom** (excluding participants in the Communications market) is well placed to deliver effective regulation of the marketing and other consumer contact activities of those responsible for Nuisance Calls.

The **PECR** exists and must be enforced. The limited enforcement powers of the **ICO**, notably its inability to cause any serious financial damage to an offending business, make it wholly unsuitable for addressing the case of a business which is founded on breaching the principles of the **PECR**.

**Ofcom's** Persistent Misuse powers, which should serve as a catch-all for activity causing Nuisance that it is not picked up in other ways, have not been used to this end. They have been used as a means of applying a pseudo-regulatory tolerance of a controlled proportion of Silent Calling, on utterly spurious grounds. These should remain in place for their proper use. **Ofcom** also has an important role in ensuring that telephone service providers support measures to avoid the generation and receipt of Nuisance Calls and the detection of those responsible for them.

For effective regulation of relevant business activity, **the focus must be placed on those who have a meaningful relationship with the relevant businesses**, an understanding of the specific industry to enable determination of what types of consumer contact are both appropriate and necessary and the powers to achieve and enforce compliance with regulatory provisions - **the statutory (and voluntary) regulators of all those who engage in telephone contact**.

The provisions of the **PECR** provide a base point for acceptable direct marketing. A proper **Ofcom** policy on what is persistent misuse would provide a base point for acceptable contact for other purposes. It is however right and proper that these be extended to cover each sector in a manner that is appropriate to its participants (on both sides). It is for the relevant regulator to determine what specific practices, in terms of contact and consent to contact, are appropriate for its area.

In particular, we would propose that the **Claims Management Regulator** prohibited all use of unsolicited telephone calls and text messages in gathering leads - experience has shown that this is not an appropriate marketing technique for this industry. Similarly, we would propose that those businesses who claim to be unable to declare their identity when making telephone calls (e.g. collections agencies) be prohibited from making telephone calls. There are many other examples of how particular provisions could be applied to eliminate what is seen as Nuisance.





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### Consumer and Citizen engagement

Whilst it is the responsibility of regulators to ensure compliance by those for whom they are responsible, there needs to be a body responsible for representing and reflecting the interests and experiences of citizens and consumers.

A regulator must respond to meaningful reports of breaches of regulations that include the relevant and necessary evidence. In the case of Nuisance Calls, both **Ofcom** and the **ICO** have demonstrated that they are unable to behave in this way.

A further problem with Nuisance Calls is the fact that the victim is unlikely to be immediately aware of precisely which regulation (if any) has been breached. When dealing with a situation that has been, at the least, nothing more than a waste of some time or a distraction, it is absurd to assume that a victim will be keen to spend vastly more time researching how they need to report the incident in order to secure appropriate action in response. To expect time and effort to be spent when no meaningful response can be guaranteed is even more ridiculous.

There is already a wide variety of bodies that may be required to respond to a report of a Nuisance Call. These include; Ofcom, the ICO, the TPS, the Nuisance Calls Bureaux of the telephone companies, Trading Standards officers, the OFT and the Police. We propose that those regulators who should not already be considered part of this list need to be added, making the list longer.

These bodies already receive reports and engage in some form of information sharing between themselves. There is however no formal network, and it is understood that some potentially valuable information sharing is currently prohibited by law. We therefore propose that a single agency, independent of those with a regulatory duty to those who cause nuisance, take over the function of receiving reports from victims.

We propose that not only should this agency hold the responsibility for receiving reports and referring them on as appropriate, it should also perform a wider role in the interests of citizens and consumers. It will be in a position to collate reports and conduct limited investigations for itself - e.g. identifying callers where the necessary information is available without the use of special powers. It will also be able to report on the information it receives, potentially "naming and shaming" without prejudice to further action, although with due regard to propriety.

A most important role for the agency would be in relation to the regulators, as an advocate of the citizen and consumer interest, pressing for both the imposition and enforcement of appropriate regulatory measures. Its ability to reflect the true position, in the light of independently held evidence, would be valuable as a means of holding regulators to account.

**Citizens Advice** is seen as being an obvious and natural home for this agency, for many reasons.

### Conclusion

Measures that may be taken to improve the effectiveness of the **ICO** are to be welcomed and it would be most welcome if **Ofcom** were to remove its present tolerance of Silent Calls. The effect of such action is however only likely to be marginal. Present efforts to assist and encourage more complaints to be submitted to a failed process are likely to lead only to greater frustration.

**Serious action is needed - without further legislation.**

