



How Ofcom formally tolerates Silent Calls, and fails to use its statutory powers to serve citizens

This briefing supports our news release [Ofcom fails to deal with Silent Calls](#). It covers the [powers](#) available to meet Ofcom's statutory [duty to citizens](#), its [formal policy](#) and [action in practice](#).

Ofcom may issue a **Notification of Persistent Misuse** in any case where it determines that: *"there are reasonable grounds for believing that a person has persistently misused ..."*.

Persistent misuse occurs where *"the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety"*.

Further powers exist, for subsequent use where necessary.

Ofcom uses these powers in ways that most people would think to be improper and insufficient.

Most of us would think that	Ofcom, apparently, thinks that
The effect of any misuse is suffered by a number of citizens. Other activities by the same person on the same day are irrelevant. If hanging up in silence results from a repeated process, then it is "persistent".	The total number of non-silent calls made by the caller on the same day is the key factor in determining whether making silent calls represents persistent misuse.
Use of obsolete Answering Machine Detection devices is unnecessary. It is known to be an inevitable cause of Silent Calls. For this reason, it simply cannot be used,.	It is not misuse if someone suffers only one AMD Silent Call per caller per day. If AMD was banned, consumer prices would rise.
A <u>valid</u> caller who cannot complete a call, but apologies and states their true name, using a recorded message, is making an unwelcome call. This is however different in its effect from a caller who hangs up in silence.	These "Abandoned Calls" should be treated as cases of misuse, essentially in the same way as Silent Calls. The two are counted together when making the critical percentage calculation.
Every case where <b>Ofcom</b> has <i>"sufficient grounds for believing ..."</i> misuse to be occurring on a significant scale should be subject to a simple prompt Notification.  Refined action using the further powers, including the imposition of penalties, should take place when past misuse has had an extreme effect, or where it is not ceased immediately upon receipt of the Notification.	Notifications should only be issued as part of a lengthy process, which concludes with the imposition of a financial penalty.  In the case of TalkTalk, the penalty was imposed over two years after the misuse occurred. The initial Notification was not issued until more than 6 months after it had ceased.

The declared Ofcom policy of tolerating Silent Calls is obviously totally unacceptable. Furthermore, its unauthorised pseudo-regulatory "enforcement" approach to use of the powers means that very few cases may be handled. Action is always retrospective; it never addresses current problems.

The table which follows overleaf shows that since adopting the policy of only issuing Notifications in cases where a financial penalty would follow, **Ofcom** has only been able to use its powers in 12 cases of "Silent Calls" made in three periods:

April to July 2006

October 2006 to April 2007

1 February to 21 March 2011

The average delay between the misuse being addressed and the conclusion of the case with imposition of a penalty has been 18 months. On average, the delay between the misuse having been thought to have ceased and the issuing of the initial Notification has been over 7 months.

We believe that the purpose of the persistent misuse powers is to eliminate persistent misuse, by notifying offenders and taking further action when they do not cease it. **Ofcom** is wrong to apply an unauthorised pseudo-regulatory approach, including explicit tolerance of intolerable behaviour.



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Use of the persistent misuse powers since 2006

During the last 7 years Ofcom has only used the persistent misuse powers to address 12 high profile cases. They have always been used to address past behaviour, never to correct current activity, and only when leading to the imposition of a penalty.

The published versions of the Notifications have the figures which detail the scale of the nuisance redacted.

The details are as follows:

Company	Misuse from	Misuse to	Excess Silent	Excess Abandoned	repeated use of AMD	Notification issued	Penalty imposed	Penalty Amount
Toucan (IDT)	1 Apr 06	31 Jul 06	Y	Y	? ‡	3 Nov 06	30 Jan 07	£32,500
Carphone Warehouse	1 Apr 06	31 Jul 06	Y	Y	? ‡	3 Nov 06	30 Jan 07	£35,000
Bracken Bay Kitchens	1 Apr 06	31 Jul 06	Y	Y	? ‡	3 Nov 06	30 Jan 07	£40,000
Space Kitchens and Bedrooms	1 Apr 06	31 Jul 06	Y	Y	? ‡	3 Nov 06	30 Jan 07	£45,000
Abbey National	1 Oct 06	30 Apr 07	0 †	Y	? ‡	29 Nov 07	19 Mar 08	£5,000
Complete Credit Management	1 Oct 06	30 Apr 07	0 †	Y	? ‡	29 Nov 07	19 Mar 08	£30,000
Barclaycard	1 Oct 06	10 May 07	Y	Y	? ‡	20 Jun 08	24 Sep 08	£50,000
Ultimate Credit Services Limited	1 Oct 06	30 Apr 07	0 †	Y	? ‡	6 Aug 08	28 Jan 09	£45,000
Equidebt	1 Oct 06	31 Mar 07	Y	Y	? ‡	15 Oct 08	16 Dec 08	£36,000
Homeserve	1 Feb 11	21 Mar 11	0 †	Y	Y	6 Jul 11	18 Apr 12	£750,000
nPower	1 Feb 11	21 Mar 11	0 †	Y	0	6 Jul 11	5 Dec 12	£60,000
Talk Talk	1 Feb 11	21 Mar 11	Y	Y	Y	12 Oct 11	18 Apr 13	£750,000

Notes:

† In some cases, there is no evidence of any Silent Calls having been made.

‡ Prior to 1 February 2010, Ofcom did not treat any Silent Calls caused by use of AMD as misuse. Since then, it only deems misuse to have occurred where a second AMD call is made to a number within 24 hours of a positive AMD detection.