



Regulatory prohibition of Nuisance Calls

We note from [the latest report of the Ofcom/ICO Nuisance call and messages Action Plan](#) that you are closely engaged in the work on this topic.

We recognise your support of these bodies in the discharge of their prescribed statutory duties. We do however urge you to give careful consideration to your own role in setting, and enforcing compliance with, standards of conduct in your sector.

The regimes of both Ofcom and the ICO have to address all sectors, are limited by the terms of legislation and are less effective in communication and enforcement. By choosing not to impose any further restrictions on use of the telephone, for marketing and other activities, you are making a positive decision to permit harm to the consumers you are charged with protecting.

We urge you to give particular consideration to the following bulleted points. Please advise us of the stage that your considerations have reached, and let us know if we may perhaps assist.

1. Unsolicited Marketing Calls

'Unsolicited' Direct Marketing by telephone (including SMS text messages, and also email) requires "consent". Consent to calls that begin with a recorded message, as well as SMS and email, can only be given directly to the organisation making or instigating the call.

Consent to receipt of attended direct marketing telephone calls can be assumed by a failure to register the number called with the Telephone Preference Service.

- Are you content with the absurd notion that someone can knowingly and deliberately consent to something that is "unsolicited"? This is the legislative provision (derived from a EU Directive) with which the ICO and those you regulate have to wrestle - unless you specify something more sensible!
- Can you justify the inevitable public nuisance caused by callers having to trawl through many potential consumers, who have not solicited a telephone call (albeit that they have somehow been understood to have "consented"), in order to find each one that will benefit from the contact? You must stand accountable for the - perfectly legal - nuisance, which is an effect of the benefit derived by callers and a (probably very small) proportion of those they call.
- Given that other means of marketing are available, are you content that the public cost of permitting this practice in your sector is justified for the sake of the public benefit?
- Does the advice you provide, through your regulations and guidance, make it clear that marketing calls which begin with a recorded message, as well as SMS messages and emails, require explicit consent to that specific means of contact?
- **We believe that telephone marketing has had its day (this probably arrived not too long after the present ICO regime was applied in 2003). Have you considered an outright ban on this use of the telephone, within the scope of your powers?**





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2. Silent Calls

Ofcom is now coming close to effectively banning use of "Answering Machine Detection" technology, because it is an inevitable cause of Silent Calls. Furthermore, it is starting to become clear that all use of Automated Calling Systems (with whatever abandoned call rate) must be supported by use of an "Informative Message" in the event of no agent being available to deal with a call that is answered.

This applies to all calls to customers, not just marketing calls. Ofcom has no general powers of regulation with which to apply these requirements. It can only advise of its policy to intervene in cases warranting sufficient priority for attention by a small team.

- Have you considering making compliance with Ofcom's implied requirements a specific stipulation in your regulations?
- Have you considered supporting Ofcom's broad strategy by imposing your own clear mandatory requirements to ensure zero tolerance of Silent Calls? Ofcom cannot directly impose requirements in general; you can do so.
- **We have always believed that it is wholly unacceptable to operate outbound calling in a way that risks callers hearing silence when they pick up the phone. This is not, as some allege, an inevitable consequence of an efficient operation.**

3. Other matters

There are other points relevant to Nuisance Calls that we can make. There are also other "fair telecoms" issues where closely engaged regulators may play a more effective role than is possible through general regulation - e.g. misuse of 084/087 telephone numbers.

There is general regulation in place, but it is limited in many ways, because the best regulation requires a close relationship between the regulator and the regulated.

You cannot evade your responsibilities.

4. Circulation

This message is addressed to the bodies which hold responsibility for directing the activities of those who are seen to be most commonly responsible for Nuisance Calls. In some cases the activity may be undertaken by agents, rather than the actual licensed or regulated bodies themselves, but this is no justification for a failure to address the issues. In the case of Ofcom, we refer to its duty in respect of those who provide communications services, which is separate from that in respect of those who misuse them.

A list of those who are addressed by the message, and those to whom it is directly copied follows overleaf.





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The foregoing message is addressed to the following:

- ✉ Kevin Rousell - Head of Claims Management Regulation - Claims Management Regulator (MoJ)
- ✉ Mike Lordan - Chief of Operations - Direct Marketing Association
- ✉ Christopher Woolard - Director of Strategy and Competition - Financial Conduct Authority
- ✉ Alistair McLean - Chief Executive - Fundraising Standards Board
- ✉ Nick Tofiluk - Director of Regulatory Operations - Gambling Commission
- ✉ John McKenna - Policy Advisor - Green Deal Oversight and Registration Body (DECC)
- ✉ Claudio Pollack - Consumer and External Affairs Director - Ofcom
- ✉ Rob Salter-Church - Partner, Retail Markets - OfGem
- ✉ Lesley Titcomb - Chief Executive - Pensions Regulator

To cover cases where there is either a direct or indirect responsibility, it is also copied to the respective Government Ministers:

- ✉ Lord Faulks - Minister of State (Ministry of Justice)
- ✉ Ed Vaizey MP - Minister of Culture and the Digital Economy (DCMS)
- ✉ Harriett Baldwin MP - Economic Secretary to the Treasury (City Minister)
- ✉ Rob Wilson MP - Minister for Civil Society (Cabinet Office)
- ✉ Tracey Crouch MP - Minister for Sport, Tourism and Heritage (including Gambling)
- ✉ Amber Rudd MP - Secretary of State for Energy and Climate Change

For information, it is also copied to the respective parliamentary committees:

- ✉ Justice Committee
- ✉ Culture, Media and Sport Committee
- ✉ Treasury Committee
- ✉ Public Administration and Constitutional Affairs Committee
- ✉ Energy and Climate Change Committee
- ✉ Work and Pensions Committee

It is published [here](#), in the public domain, for all those who may have an interest in the issues.