

**Nuisance calls - Ann Widdecombe confused by Ofcom and not on top of what is happening with the ICO**

This briefing addresses some **errors and omissions** from an item presented by **Ann Widdecombe** on “The One Show” broadcast by BBC1 on 8 July 2013 - see [this temporary link](#).

Ms **Widdecombe** confirms that explicit consent is required for marketing calls using a recorded message. This is an accurate statement of the provisions of [regulation 19 of the Privacy and Electronic Communications Regulations \(EC Directive\) 2003](#). It is also confirmed by the [relevant guidance](#) from the **Office of the Information Commissioner (ICO)**, which enforces compliance with the PECR. **(She fails to state that claims companies are regulated by the Ministry of Justice.)**

[Regulation 21](#) covers attended voice calls, for which consent is assumed, unless withdrawn by registration of the number with the **Telephone Preference Service**. (See [other ICO guidance](#).)

Claudio Pollock of **Ofcom** confuses the issue by suggesting that consent to an unwanted call may be deemed to have been given unintentionally. No tribunal has upheld an appeal against a ruling of the **ICO** on the basis of disputed evidence of consent. In the recent case of BBC TV’s “**The Call Centre**” spurious claims of “consent” were readily dismissed (see [this item](#)). Contrary to a report in the broadcast item, **no appeal has been presented in this case**.

By addressing the alleged limitations of the powers of the **ICO**, for which he has no responsibility, **Mr Pollock** is however making a rod for his own back. The **Persistent Misuse Powers**, held by **Ofcom** under [sections 128-131 of the Communications Act 2003](#), are intended precisely to cover cases where other regulators are unable to act against cases of nuisance calls.

These powers enable Ofcom to perform its [primary principal duty](#) *“to further the interests of citizens in relation to communications matters”* by taking action against a user who *“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”* [128 (6)(b)]. There can be no doubt about the effect reported by **Ms Widdecombe** and other contributors to the item!

Because the making of “**Silent Calls**” was explicitly omitted from the **PECR** when the provisions of the relevant EU Directive were applied in UK law, some people assume that this is the only type of nuisance call which falls through to be covered by **Ofcom**, using the **Persistent Misuse Powers**. This is untrue, both in terms of the legislation (as shown above) and also in practice.

For its own reasons, **Ofcom** regards the annoyance inconvenience or anxiety caused by some **Silent Calls** as *“necessary”*. Up to 3% of however many calls a caller makes in a day may result in silence. Any number of calls answered in person may be terminated in silence by ineffective Answering Machine Detection equipment, so long as the caller waits 24 hours between attempts.

This longstanding policy of tolerance is a disgrace.

Ofcom, unlike the **ICO**, is not restricted by the specifics of detailed regulations in taking action against Nuisance Calls in the public interest. **Ofcom** has wide discretionary powers, but chooses not to use them properly. **This important point should have been covered.**

It is disappointing that Ms Widdecombe was apparently not adequately briefed for her interview with Claudio Pollock, nor on recent developments with the ICO.

The item failed to mention action against **Tameside Energy Services**, [taken](#) and [reported](#) that day.

