



Company Information

DJN Solutions is a Contact Centre consultancy practice specialising in helping organisations optimise their outbound calling campaigns.

Services for predictive dialler users cover best practice and regulatory compliance. Other services include Project Management, Training, and Supportability Assessments that help ensure that Contact Centre projects deliver the expected business benefits.

DJN Solutions Ltd is Member of the UK Direct Marketing Association.

Overview

DJN Solutions welcomes the opportunity to respond to this consultation. We see it as an important step that Ofcom has chosen to move to a two stage process of consulting prior to drafting a new policy, and then consulting on the policy itself. We believe this is a more evidence based approach that should result in better policy decisions.

The views expressed in this response are those of DJN Solutions Ltd and do not necessarily reflect those of business associates, clients, or the Direct Marketing Association.

DJN Solutions Ltd is happy to provide further clarification of the points made in this response if required. We are also happy to engage in further discussions should they be thought necessary.

General Comments

We have responded to the specific questions raised but we feel that, at this time, the focus should be much more on enforcement than changes to the policies.

As evidence for this we present the following.

The table below shows the number of complaints Ofcom received about silent and abandoned calls between April 2013 and April 2014 ¹

Month	Number of complaints
Apr-13	3902
May-13	3262
Jun-13	2804
Jul-13	3448
Aug-13	3163
Sep-13	2288
Oct-13	2858
Nov-13	2826
Dec-13	1704
Jan-14	2645
Feb-14	2435
Mar-14	2612
Apr-14	4040

In 2014 five non-confidential Section 128 notices have been published. With the exception of the one for Redress Financial Management, which did not contain information regarding the number of complaints, we have used data from the notifications to produce the table below.

This table attempts to assess how the overall volume of complaints is likely to be affected by bringing the organisations into line using enforcement action. Because complaints data is given monthly and the monitoring periods do not exactly correspond we have calculated prorated complaint values for the relevant periods.

We assume that these organisations were subject to action because they received the most complaints in their period, and that other known organisations in those periods would therefore represent a smaller proportion of complaints. As can be seen Sambora Communications Incorporated generated the largest proportion of complaints in their monitoring period at just over 1%, with the others being significantly lower.

These figures suggest that 99% of complaints do not result in enforcement action, meaning that the existing enforcements are unlikely to significantly reduce complaint levels.

We assume, based on the information taken from Figure 1 in the Call for Inputs document where it states that for an estimated 67% of complaints no CLI is available, enforcement action is being hindered by the ability to trace calls.

¹ Taken from Telecom Complaints Bulletin http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/Telecoms_Complaints_Bulletin_June_14.pdf

It is understood that a lot of work has been done to improve call tracing but if that is the reason why these organisations represent such a small proportion of complaints, it would suggest that a far greater reduction in complaints could be achieved by concentrating on call tracing rather than revising the existing policies.

Details	Ageas 50 Limited	Green Deal Savings Limited	MYIML Limited	Sambora Communications Incorporated
Complaints	19	33	31	45
Start of monitoring period	21/07/13	27/10/13	16/12/13	01/09/13
End of monitoring period	07/09/13	14/12/13	03/02/14	19/10/13
Days in monitoring period	48	48	49	48
First date of complaint period	01/07/13	01/10/13	01/12/13	01/09/13
Last date of complaint period	30/09/13	31/12/13	28/02/14	31/10/13
Days in complaint period	91	91	89	60
Complaints in period	8899	7388	6784	5146
Prorated complaints	4694	3897	3735	4117
Proportion of complaints	0.40%	0.85%	0.83%	1.09%

As it stands organisations that strive for compliance but go astray are likely to be easy to catch by virtue of the fact that they supply a CLI and an information message. Organisations that totally ignore the rules are likely to escape enforcement.

In effect this polarises the situation. To avoid enforcement action I can either be completely compliant so that no complaints occur, or I can ignore all the rules and be untraceable. This leaves those striving to be compliant in a horrible situation where a small number of complaints might get them to the top of the enforcement league table despite there being far worse culprits.

Overall this means that any changes that make the rules stricter will become a tax on those who already strive for compliance while having no effect on those that ignore the rules.

Question Responses

Q1: We would welcome views and evidence from stakeholders on (a) the main types of harm that consumers experience from nuisance calls in general and specifically in relation to silent and abandoned calls; and (b) how to measure the harm.

We have seen a change over time as Ofcom's education programmes and media exposure have given consumers a better understanding of why silent and abandoned calls occur.

When diallers first started to be used most people could not think why an organisation might call then and then hang up. This led to them filling in the blanks and assuming that the call had some hidden untoward purpose. Our experience now is that most people recognise why the calls occur and the proportion of people who are concerned about them has reduced while the proportion that see them as a nuisance has increased.

There are clearly still some people for whom these calls are distressing; either because they still do not understand why they occur, or because their personal circumstances give silent calls some special significance. Continuing the education programmes will help in some cases, but it is difficult to see how this distress can be eliminated entirely especially given, as acknowledged in Section 3 of the Call for Inputs, silent calls can occur for reasons other than the use of ACS.

For most people we believe the main harm is time wasted, but it is very difficult to quantify and place a value on. It also needs to be put in context; for example in a typical day we will get stuck in traffic, spend time queuing at a supermarket, or waiting for a bus. There are solutions to these things but we balance the time spent against the economic consequences of the solutions (higher taxes, higher prices for goods or tickets). It is harder for consumers to see the economic value of silent or abandoned calls, but the call centre industry does contribute a lot to the UK economy and many people do derive value from the calls they receive. If this were not the case then calling would cease because it would not be economically viable.

One area that could be improved is the situation where opportunities to make money from calls come about as a result of government activities. In recent times huge numbers of calls have been the result of PPI, accident claims, and other government initiatives. While the initiatives themselves are valuable they create a market for data which companies can exploit by setting themselves up as middle men. Government should try to minimise the opportunities for this in any future initiatives.

Q2: We would welcome views and evidence from stakeholders on what are the key drivers of (a) silent calls and (b) abandoned calls.

We believe that there are many reasons that silent calls occur. Those reasons listed in the Call for Inputs provide a good summary of those reasons.

Some specific points:

Use of AMD has dropped dramatically since the introduction of the current policy. There are a number of reasons for this:

- Some organisations have tested their AMD and found that it cannot be made to comply
- Some organisations believe their systems to be compliant but are concerned as to how Ofcom would judge accuracy in the case of an investigation. They therefore feel more comfortable not using AMD at all
- Some organisations use their AMD selectively. That is, they use it when contact rates are low in order to gain productivity, but turn it off when contact rates improve in order to minimise false positives

Despite this change the number of silent call complaints has risen. This can only be because of other causes. It also calls into question the previous assertion that most silent calls were the result of AMD false positives.

Ofcom, with its powers to request information, is really the only organisation that can dig deeper into this issue. Existing efforts to use surveys and call diaries should be continued and improved in order to help determine the reasons behind silent and abandoned calls. Better technology support for call diary participants, including call and CLI recording equipment, would allow much better analysis and would place less of a burden on participants.

Our experience of connection times is that systems will usually connect to an agent very quickly. Subsequent delays may occur for many reasons such as:

- Call data does not arrive at the same time as the call, meaning that the agent does not know who to address
- Badly trained agents wait for the consumer to speak again before introducing themselves. As the consumer will already have spoken the agent should start speaking immediately
- Agents who mute their phones so that they can talk to other people between calls, and who subsequently take time to unmute before speaking

In most cases the delays caused are very short, but silence on the phone has a tendency to feel longer than it actually is so the consumer may register a half second delay as something much more significant. It is

difficult to know exactly how the agent based issues given above can be regulated because of the factors involved. Assuming that the above issues are controlled by good management, the existing two second rule should be sufficient. Any further policy needs can be fulfilled using the requirement for organisations to have properly documented processes and policies, as mentioned elsewhere.

Q3: We would welcome views and evidence on the use of AMD including (a) if call centres have changed their use of AMD in recent years and if so why (b) the volume of calls made by call centres with and without the use of AMD (c) false positive rates when using AMD and any data to suggest that the accuracy of AMD has improved in recent years.

As stated above the use of AMD had dropped dramatically. It is difficult to quantify but in terms of our clients we would estimate that today 5–10% would use AMD at some level, not necessarily continuously. Prior to the current policy being introduced this would have been 80–90%.

One of the services we provide is False Positive testing using sample recordings. Non-disclosure agreements prevent us from discussing specific results, but we have seen occasions where the false positive rate was easily low enough to allow the use of AMD and other occasions, particularly in international environments, where the false positive rate was very high.

Q4: We would welcome views and evidence on potential changes to the policy to help reduce the harm caused by silent and abandoned calls including those identified in Figure 2 (abandoned call rate and approach to AMD), Figure 3 (time limits for calling consumers and connecting to a live agent) and Figure 4 (good management and appropriate processes).

As stated in our general comments, we believe that the biggest change can be enacted by improvements to enforcement rather than changes to the policies.

Any policy changes are likely to only impact those that are already concerned about the way in which they call. Since they are already working in a compliant manner any changes will incur cost without significantly impacting the incidence of silent or abandoned calls.

Any organisation that is currently non-compliant is unlikely to change their behaviour because the rules have changed.

Specifically a reduction in the abandonment rate, whether to 1% or 0%, would disproportionately affect those organisations that are compliant now. In some cases it could make their businesses unviable. Like many industries call centres rely on technology for efficiency gains. The technology should be used responsibly, but it can make the difference between profit and loss.

Staff are usually the largest single factor in a company's costs. While estimates of dialler efficiencies vary according to technology and industry sector, a reasonably conservative estimate of the uplift would be 50%. That is, if you were using a predictive dialler with 100 agents you would need at least 150 agents if dialling manually.

Moving to a 0% abandonment rate effectively bans predictive dialling, meaning a complete loss of that uplift for all.

Moving to 1% may be viable for large organisations but would remove most of the uplift for small organisations.

Using an absolute number of abandoned or silent calls as a trigger for enforcement is likely to be unworkable. If it is set to a high number to accommodate large campaigns it will probably have no effect on smaller organisations. If it is set to a small number then it may prevent some larger campaigns from being dialled. Also, it is difficult to know how it would be enforced. Currently complaints are used as the trigger

and it is assumed that the complaints represent only a small proportion of the people affected by silent or abandoned calls. Unless the relationship between actual calls and reported complaints is clearly understood it might end up in a situation where every single complaint has to be investigated in case it's a symptom of a problem large enough to breach the threshold. While there are also issues with a percentage abandonment rate it is easier to make a broad brush assessment based on the size of the organisation.

Having a sliding percentage scale, where larger campaigns are expected to run at a lower percentage, may be a workable solution but in this case it would be helpful for the lower end of the scale to be increased. That is, allow higher than 3% for smaller campaigns. This would allow more flexibility for smaller organisations, which are disproportionately affected by low abandonment rates, but if the rates are set appropriately it would still result in an overall reduction. Care would need to be taken to ensure that campaigns could not be manipulated to gain advantage. For example, artificially breaking a large campaign into several smaller ones in order to use the higher abandonment rate.

We do believe that highlighting process as a contributing factor is an important step. When assessing organisations for compliance we do, on occasion, find that, while they may have taken significant steps initially, the on going checking and adjusting is lacking. A good analogy for this would be someone having a car MOT'ed and then assuming all is well for the following year, rather than taking into account how the car is driven and maintained.

Apart from the specific items mentioned in the Call for Inputs we believe that there are other areas where the policies should be reviewed:

Definition of an Abandoned Call

From the current policy:

“A1.17 An abandoned call is where a connection is established but terminated by its originator in circumstances where the call is answered by a live individual.”

This definition is too broad, the term was originally used with predictive diallers when no agent was available and the system hung up on a live individual. At some point the definition was broadened to remove the “no agent available” condition. While this may be useful in some cases, for example, the current definition also allows the use of the term in cases where a live agent is available but hangs up the call without speaking, it also allows some nonsensical use cases. For example, I call someone and speak to them for 30 minutes and conclude our business, if I hang up first it would still meet the definition of an abandoned call.

It is recognised that the definition has not, to date, been used in this way but we believe it would be better to have a definition of an abandoned call that includes the original “no agent available” condition and then define another term for those cases where the call is terminated inappropriately for other reasons.

72 Hour Policy

From the current policy:

“A1.54 When an abandoned call (other than an AMD false positive), has been made to a particular number, any repeat calls to that number in the following 72 hours may only be made with the guaranteed presence of a live operator.”

This policy was based on the original DMA guidelines, and was intended to limit the number of abandoned calls received by an individual. It dates back to 2000 when mobile phones were not widespread and collection of work telephone numbers as well as home ones was rare. This meant that, for most people, only one phone number would be available. Thus applying the 72 hour rule to the number worked.

Things have subsequently changed, it is common to have multiple numbers for an individual. Since some numbers, particularly landlines, can be shared by more than one person the policy as stated has some perverse consequences:

1. If I call Mr X on his home number and abandon the call I am prevented from calling that number again for 72 hours unless I guarantee that an agent is available. However, I can still call Mr X on his mobile and work numbers and can, potentially, abandon him two more times the same day.
2. If I had already intended to call Mrs X, who uses the same home number I cannot do so for 72 hours unless I guarantee that an agent is available.

This creates two issues, firstly the fact that I can dial different numbers for Mr X defeats the original purpose of minimising abandoned calls to an individual.

Secondly, I am forced to change my activities for Mrs X based on the original call to Mr X. This may have unforeseen consequences. For example, if I am calling Mrs X regarding a debt or fraud matter she may incur extra costs as a result of the delay.

While a single call centre may be able to deal with the above situation it becomes harder where data is used in different departments or is outsourced to multiple companies. For example, the call to Mr X may have been a marketing call made by an outsourced call centre, but the in house fraud team may be making the call to Mrs X. Ensuring that the outsourced centre updates the fraud team in real time is likely to be technically difficult.

A further issue is any possible data protection impact. Given that Mr and Mrs X are separate individuals with separate accounts with the company is it always permissible to use the fact that they have the same phone number to enforce the 72 hour policy?

Given that this situation is likely to be relatively rare it would be better to modify the policy wording from 'number' to 'individual' or some other more appropriate entity (possibly 'account' or 'calling list record'). This would improve the situation for most individuals. It would still leave the possibility of multiple abandons to people who share numbers, but would have the advantage of removing any possible data protection complications.

Definition of Campaign

From the current policy:

“A1.21 A campaign is identified by the use of a single call script to make a single proposition to a single target audience. A campaign can be run from more than one call centre over a 24 hour period. If calls are made for identifiable purposes with a single script to a single target audience, then Ofcom will continue to regard this as a campaign. In the event of an investigation, Ofcom will consider the facts of each case on its own particular merits.”

This definition, referring to calls scripts and proposition, is very telemarketing centric. Many call centres do not use scripts (even for marketing calls) and not all calls will be making a proposition.

This results in difficulties for some organisations in determining what they should consider to be a campaign.

One suggested change would be to change 'proposition' to purpose, and to remove the reference to a call script, something like the following:

“A campaign is identified as making calls for a single purpose to a single target audience.”

Q5: We would welcome views and evidence on potential changes that could be made to the policy relating to the (a) current five general examples of persistent misuse (misuse of automated calling systems; number-scanning; misuse of a CLI facility; misuse for dishonest gain – scams; and misuse of allocated telephone numbers) or (b) other examples of persistent misuse.

We believe all five general examples remain relevant. That said there are possibly some priority changes to take into account.

We have seen fewer issues relating to number scanning in recent years, it is not clear whether this is because it is no longer occurring or whether the ways of achieving it have improved.

Scams, in particular of the “your PC has a virus, but we can fix it” type have increased significantly. Given that most of these calls appear to originate from overseas it is not clear how Ofcom’s powers can be used, but scams of this type have a significant impact and should be treated seriously.

With regard to CLI we would make the following points:

- CLI is important it should be provided on all calls. We understand the limitations given regarding the legal position and PECR, but Ofcom should include this as best practice even if full enforcement isn’t possible.
- CLI’s should be authentic and returnable
- We do not feel that rotating CLI’s are a big concern assuming that all numbers meet the above condition. Our experience is that marketing calls typically do not use rotating CLI’s but they are in other areas, typically debt recovery. In this situation the potential nuisance needs to be balanced against the requirement for the caller to meet their duty of care to the debtor. It is clear that some people in debt do try to avoid contact, which is likely to be to their detriment overall. Alongside a policy of treating the customer fairly we feel that rotating CLI’s are an acceptable tool.

Q6: We have not identified any significant changes to this section of the policy, relating to the issuing of notifications, at this stage. However, we welcome views and evidence from stakeholders on any changes they consider may improve the understanding or clarity of this section of the policy.

Given that the processes used are largely controlled by legal requirements we agree that they work reasonably well. However, it would be good to have some clarity from Ofcom on their activities other than those which result in enforcement action.

We are aware that companies have been issued with requests for information and have then seen no further action, but to date there has been no official acknowledgement of this. The fact that all Section 128 notices are public has made some organisations believe that all Ofcom actions have resulted in enforcement, which leads to the impression that Ofcom has a “prosecute at all costs” policy. Publication of statistics relating to investigations where no further action was taken will improve confidence in the process.

Q7: We would welcome information on the current operation of the outbound call centre market, in particular:

- *The size of the current outbound calling market e.g. the annual number of calls made as well as the value.*
- *The size of total annual costs in the outbound market (where possible split by operating costs and capital costs (or depreciation)).*
- *The average costs per call/per agent (or per agent hour).*
- *The split of call centre locations (domestic or overseas) that make calls to UK numbers.*

We do not feel that we have sufficiently robust figures to be able to reply to this question.

Q8: We would welcome any initial views and evidence on the potential costs and benefits of any of the potential changes to the policy. In particular, whether any of the potential changes would:

- *require investment in new technology or other capital costs;*
- *have an impact on efficiency and operating costs;*
- *have an impact on call-centre costs or call-centre prices (to their clients);*
- *affect competition in the call-centre market; and*
- *have a different impact on different types of call centre, and if so, what factors affect the level of impact.*

As previously stated changes to some policies, like the abandonment rate, could have significant consequences to the call centre industry.

Any changes that disproportionately affected smaller centres would have a tendency to reduce competition.

Q9: We would welcome any views on what factors may influence a call centre's likelihood of adhering to the current or a stricter policy.

In general, as in most situations, we believe that organisations with longer-term outlooks are more likely to adhere to policies. Organisations trying to make short term gains because of time limited opportunities (for example PPI) may be prepared to take more risks because the potential for long term reputational damage is smaller.

With regard to stricter policies we would expect anyone who takes the current policies seriously to comply with stricter ones, assuming their business can operate profitably in the new environment. As previously stated we feel the organisations ignoring the current rules will continue to do so whatever happens. If the threat of a £2m fine isn't enough to get them to comply it is unlikely that stricter policies will.