



Review of how we use our persistent misuse powers

Focus on silent and abandoned calls

Call for inputs

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Closing Date for Responses: 7 November 2014

About this document

Ofcom has powers to take action if a person 'persistently misuses an electronic communications network or service'.

We are required to set out a 'general policy' on how we are likely to use these powers and to consider this when deciding whether to take enforcement action. The current policy sets out examples of those activities which Ofcom considers to represent 'persistent misuse' including the making of silent and abandoned calls. In particular, it describes steps organisations can take to help avoid making these types of calls and to reduce harm to consumers where they do occur.

We are carrying out a review of our policy. The purpose of this call for inputs is to ask for initial views on what, if any, changes should be made to our policy and how it might be improved.

Subject to the responses, Ofcom plans to consult on any proposals for changes to the policy next year. The call for inputs closes on 7 November 2014.

Contents

Section		Page
1	Summary	1
2	Relevant background	3
3	Persistent misuse by making silent and abandoned calls	9
4	Other examples of persistent misuse	24
5	Issuing notifications	31
6	How we plan to assess potential changes	32
Annex		Page
1	Responding to this call for inputs	34
2	Ofcom's consultation principles	36
3	Consultation response cover sheet	37
4	Call for inputs questions	39
5	Current statement of policy	42
6	Glossary and defined terms	43

Section 1

Summary

- 1.1 Ofcom has powers to take action against any person who persistently misuses an electronic communications network or service. We are required to set out a 'general policy' on how we are likely to use those powers and take the policy into account when assessing whether to take enforcement action.
- 1.2 We revised and published our current policy on persistent misuse in 2010. It describes the law on persistent misuse as set out in the Communications Act 2003, the areas which Ofcom considers to be persistent misuse and criteria for prioritising action in the case of certain examples of persistent misuse. It provides particular focus on the making of silent and abandoned calls – two examples of misuse. It describes steps organisations using automated calling systems can take to help avoid, in so far as is possible, making such calls and to reduce consumer harm should such calls be made. Ofcom assesses silent and abandoned calls against these steps when deciding whether to take enforcement action.
- 1.3 Silent and abandoned calls, along with other types of nuisance calls including certain unsolicited live and recorded marketing calls and messages, continue to cause annoyance and, in some cases, distress for consumers. It is important that consumers are not discouraged from using telecommunications as a result of receiving nuisance calls. Tackling nuisance calls is a priority for Ofcom and we have a joint nuisance calls action plan in place with the Information Commissioners Office. This call for inputs, which relates to how we use our persistent misuse powers, is part of our work under the 'targeted enforcement action' strand of the joint action plan.
- 1.4 We keep our policy under review to ensure it remains fit for purpose, amending it as appropriate. We are currently reviewing it to see if there are any improvements that we could make in light of our recent experience of work in this area and the consumer harm caused by silent and abandoned calls. In particular, we are considering:
 - In relation to an existing category of persistent misuse, silent and abandoned calls:
 - The potential drivers of silent and abandoned calls, the nature and magnitude of the harm these calls cause and how this has changed since we last reviewed our policy.
 - Whether there are changes that we could make to the policy, such as our prioritisation criteria, to help us enforce against silent and abandoned calls more efficiently and effectively e.g. set out additional steps organisations can take which may help reduce the number of these calls and/or the harm they cause, lower the threshold we would generally apply before deciding whether to take formal enforcement action.
 - Whether there have been technological developments or changes in the call centre industry that it would be appropriate for us to take account of e.g. developments in the accuracy and/or the use of answer machine detection equipment.

- Whether there are new developments which may be relevant to the areas which Ofcom considers to be persistent misuse.
 - Whether there are any clarifications we can make to the policy more generally to make it easier to understand and follow, and to enable more efficient and effective enforcement.
- 1.5 We are seeking views on the above areas and welcome any evidence stakeholders may be able to provide to support their views including the potential impact of any suggested changes.
- 1.6 We will consider whether any suggestions stakeholders put forward fall within the scope of our persistent misuse powers and this review. Where they fall outside the scope of our powers, we will share those suggestions with Government or other regulators that have relevant powers as appropriate. Where the suggestions involve potential legislative change, we note that there would need to be a sound evidence base to put forward any case for change to Government.
- 1.7 Our next steps will be informed by the responses to this call for inputs. Currently, we plan to publish a consultation early Q1 2015-16 setting out any proposals for changes to the policy and a final statement in early Q3 2015-16.
- 1.8 Please provide any response to this call for inputs by 7 November 2014.

Section 2

Relevant background

- 2.1 Nuisance calls cause annoyance and, in some cases, distress for consumers. There are various different types of calls and messages people regard as a nuisance. These can include certain unsolicited live and recorded marketing calls and unsolicited marketing text messages where the relevant requirements for making marketing contact have not been met, and silent and abandoned calls.
- 2.2 Tackling nuisance calls is a key priority for Ofcom. While Ofcom does not have specific statutory powers to regulate call centres, we are committed to using our powers and to work with stakeholders to help reduce the harm these calls cause. The Information Commissioners Office (ICO) and Ofcom share responsibility for taking action against organisations that generate unlawful nuisance calls or messages:¹
- The ICO has lead responsibility for tackling companies making unlawful live and/or recorded marketing calls, or sending unsolicited marketing text messages to consumers.²
 - Ofcom uses its powers under Sections 128 to 131 of the Communications Act 2003 (the Act) relating to ‘persistent misuse of networks or services’ to tackle silent and abandoned calls.
- 2.3 Ofcom and the ICO have a wide ranging programme of work in place as set out in our joint nuisance calls action plan and we published an update on this in March 2014.³ This call for inputs on how we use our persistent misuse powers is related to our work under the ongoing ‘targeted enforcement action’ strand of the action plan.

Current statement of policy and its focus on silent and abandoned calls

- 2.4 Ofcom has powers under Sections 128 to 131 of the Act relating to ‘persistent misuse of networks or services’. It specifies when a person ‘misuses’ a network or service, and when that misuse would become ‘persistent’. That is:
- a person ‘misuses’ a network or service if (i) use of the network or service causes or is likely to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety or (ii) use of the network or service to engage in conduct that has the effect or is likely to have the effect of causing another person to suffer annoyance, inconvenience or anxiety unnecessarily.
 - the misuse would become ‘persistent’ if it represents a pattern of behaviour or practice, or recklessness as to whether persons suffer annoyance, inconvenience or anxiety.

¹ Further information on the different types of nuisance calls and who to complain to is available at <http://consumers.ofcom.org.uk/complain/phone-and-broadband-complaints/privacy/>

² The ICO has primary responsibility for enforcing the Privacy and Electronic Communication (EC Directive) Regulations 2003 and the Data Protection Act 1998.

³ <http://stakeholders.ofcom.org.uk/consultations/silent-calls/joint-action-plan/> and http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/JAP_update.pdf

- 2.5 Section 128 enables Ofcom to issue a notification if we have reasonable grounds for believing that a person has persistently misused an electronic communications network or service. If, after a section 128 notification has been issued and the person has failed to stop its persistent misuse and prevent it from happening again, and failed to remedy the consequences of the misuse, Ofcom may issue an enforcement notification under section 129 to require that person to bring the misuse to an end and prevent it from happening again, and to remedy the consequences of the misuse. Section 130 enables Ofcom to apply penalties (in addition to a section 129 notification) for persistent misuse of a network or service.
- 2.6 Under section 131 of the Act Ofcom has a duty to publish a statement of its general policy on the exercise of our persistent misuse powers under sections 128 to 130 of the Act. We must have regard to the policy in exercising these powers. When deciding whether to take enforcement action, we also consider how we can best focus our resources to reduce consumer harm recognising that we will not have the resources to be able to take action in each and every case.
- 2.7 The policy (last revised in 2010 and set out at Annex 5),⁴ includes examples of the activities which Ofcom considers to be misuse of an electronic communications network or service and when such misuse may become 'persistent', our policy on issuing notifications under section 128 and the consequences of issuing such a notification, including the issuing of an enforcement notification under section 129 and a penalty under section 130.
- 2.8 Areas the policy defines as misuse includes misuse of automated calling systems (ACS – also known as predictive diallers), misuse for dishonest gain (scams), misuse of a Calling Line Identification (CLI)⁵ facility and number scanning. The policy also identifies silent and abandoned calls as two specific examples of misuse. They can be categorised as follows:
- An abandoned call is where a connection is established but which is terminated by the person making the call after the consumer answering picks up the receiver.
 - The policy sets out that an information message should be played by the person making the call in the event of an abandoned call – sometimes referred to as 'an abandoned call with message'.
 - Silent calls are a type of abandoned call where the consumer receives a call but can hear nothing on answering the phone and has no means of establishing whether anyone is at the other end of the line.
- 2.9 Our particular focus on silent and abandoned calls is because over a number of years research and complaints data has shown that silent and abandoned calls cause annoyance and, in some cases, distress and they remain a cause for concern for consumers.⁶

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>.

⁵ The information passed from the telephone number of the user making a call to the person receiving the call. It is sometimes referred to as the 'Caller ID'.

⁶ We note that consumers, including those taking part in the consumer research and that report complaints to Ofcom, may view silent or abandoned calls differently from the definitions set out in the policy. We consider the circumstances in which this might happen in section 3 of this document.

- 2.10 Further, the ICO has powers to enforce the Data Protection Act, which controls how organisations should use consumers personal information (e.g. use for limited, specifically stated purposes and process fairly), and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). For example, PECR prohibits organisations from making, among other things, unsolicited live marketing calls to subscribers who have registered their number with the Telephone Preference Service (TPS) or who have notified the caller that they do not wish to receive such calls, and automated direct marketing calls to subscribers who have not consented to receiving such messages. While ICO action to reduce these calls should also help tackle silent and abandoned calls, it may not fully address the harm they cause.
- 2.11 Abandoned or silent calls are not usually made by people with malicious intent or by people making prank calls but by organisations using automated calling systems. ACS are used by many types of organisation, including telemarketing companies, market research companies, debt collection agencies, charities carrying out fundraising activities and companies wishing to contact existing customers.
- 2.12 Organisations use this technology to maximise the amount of time their call centre agents spend speaking to consumers. It is designed to work by dialling telephone numbers automatically, then connecting the call recipient to a call centre agent as soon as the recipient answers the phone. However, silent or abandoned calls can occur when, for example, all the call centre agents are busy when the call recipient answers the phone and/or the customer may simply hear silence because the ACS may have disconnected the call.
- 2.13 Some organisations also use technology to detect answer machines to maximise the efficiency of call handling agents. However, this technology, referred to as Answer Machine Detection (AMD) may generate silent calls by mistaking a call recipient for an answering machine and disconnecting the call. In these circumstances the call recipient would hear nothing on answering the call.
- 2.14 Therefore the policy sets out the types of measures organisations using ACS may take to help avoid making abandoned or silent calls and to limit the consumer harm caused as a result of any such calls. We take into account the measures adopted by the organisation when deciding whether to take enforcement action in this area (see Annex 5, paragraphs A1.12 to A1.59). These measures are:
- Letting the phone ring for a minimum of 15 seconds before the call is terminated.
 - In the event of an abandoned call, the playing of a brief recorded information message no later than two seconds after the telephone has been picked up or no later than two seconds after the consumer begins to speak (or 'start of salutation'). The message should, at least, identify the company on whose behalf the call was made, provide a free or basic/geographic rate number the consumer can call to decline further calls and should not be used to market goods or services.⁷
 - Providing a CLI so consumers could return the call should they wish to. Any call the consumer makes to that number should not be used as a marketing opportunity without their consent.

⁷ There are specific requirements in PECR relating to recorded marketing messages that organisations need to comply with. The ICO is the primary enforcer of PECR.

- Guaranteeing the presence of a live call centre agent if a further call is made within 72 hours of a consumer receiving an abandoned call or within 24 hours in cases where AMD equipment used by the call centre has identified an answer machine.
- Limiting the number of abandoned calls made to no more than 3% of live calls per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over a 24 hour period. The policy also sets out guidance on how to calculate the abandoned call rate in cases where an organisation is using AMD and where it is not using AMD.
- Keeping records that demonstrate compliance with the above for a minimum of six months.

2.15 It is important to note that the policy does not say that persistent misuse only occurs where organisations have not incorporated the above measures. The policy identifies silent and abandoned calls as a form of misuse of an electronic communications network or service. We have powers to take enforcement action where we consider there are reasonable grounds for believing that the misuse is persistent (see Annex 5, A1.10 – 11). As set out in Annex 5, A1.83 – 86, when deciding whether to take enforcement action, we will be guided by a sense of administrative priority determined by the level of consumer detriment, the scale or amount of misuse and whether enforcement action will act as a deterrent. Whether the steps above have been taken by an ACS user will therefore be relevant in determining the level of consumer detriment and whether we should take action.

Why tackling silent and abandoned calls remains important

2.16 Our latest tracker and diary research found that the incidence of nuisance calls remains high. Our diary research, covering landline users only over a four week period, (May 2014)⁸ found:

- Eighty-four per cent of participants received an unwanted call over the four week period of the research. 67% of all participants reported experiencing a live marketing/sales call, 61% reported receiving a silent call with 14% reporting receiving an abandoned call⁹ with message. This equates to an average of 2.8 silent calls and 0.2 abandoned calls with message across all landline users over the four week research period.
- The majority of silent (88%) and abandoned (71%) calls were considered to be “annoying” but some consumers did find them distressing (9% silent, 6% abandoned). Relatively few consumers’ calls were recorded as “not a problem” (6% silent, 17% abandoned) or “useful” (0% silent, 2% for abandoned calls).

⁸ http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/nuisance-calls-research/Nuisance_calls_W2_report.pdf.

⁹ The diary research data may be more likely to include a higher proportion of abandoned calls in the reported incidence levels than the tracker research as among other differences; the two studies use different methodologies. In the diary research we ask consumers to say ‘hello’ and wait at least five seconds before they put the phone down (in line with A1.51 of the policy which says that an abandoned call message should be played within two seconds). There is a possibility that, in some cases, a message would have been played but might have been for example, delayed or not played before the consumer put the receiver down, leading to the consumer treating that call as a silent call, rather than an abandoned call.

- 2.17 The diary research referred to above is an annual study and only covers landline users. However we also run a bi-monthly tracker survey which covers those who have a landline, those who have a mobile and those who have both a landline and a mobile. The latest results from the tracker research¹⁰ found that:
- Sixty four per cent of participants (both landline and mobile users) received a nuisance call in the last four weeks: 62% for those who have a landline and 41% for those who have a mobile.
 - As with the diary research, for landline users the most common type of nuisance call was live marketing /sales calls: 52% of those with a landline phone reported receiving a live marketing/ sales call in the previous four weeks, 31% reported receiving a silent call and 6%¹¹ an abandoned call. Although lower than the findings of the diary research, it still shows that the incidence of nuisance calls remains high.¹² For those with a mobile 15% received a silent call in the previous four weeks (compared to 22% for telesales text message and 23% for live marketing/sales call with the base size too low to indicate the proportion receiving an abandoned call).
- 2.18 Complaints from consumers to Ofcom about silent and abandoned calls tend to fluctuate but generally remain high compared to other issues causing consumer complaints. Following a downward trend in 2013, we have seen an increase in 2014, with a high of 3,973 complaints in June but falling to 3,591 complaints in July.¹³
- 2.19 The data from the consumer research and complaints indicates that silent and abandoned calls cause harm to those receiving them. In terms of the specific form of the harm, we expect that, as a minimum, these calls harm consumers through inconvenience as the consumer wastes time in answering a call. This includes both the time spent while connected on the call but also the time taken in reaching and answering the handset (although this may be quite low when the calls are made on a mobile).¹⁴
- 2.20 The nature and extent of harm over and above the time costs involved is likely to be different across calls. Some individuals will find these calls more annoying or distressing than others. Our complaints data indicates that the factors associated with these calls, such as the time of day of the call, being able to identify the caller and the volume of calls received, may also influence the extent of the harm. For example, complaints from consumers receiving silent and abandoned calls through the night state it causes anxiety and annoyance, and consumers indicate more concern about a silent or abandoned call where a CLI is not provided.

¹⁰

http://stakeholders.ofcom.org.uk/binaries/research/statistics/2014sep/Consumer_issues_survey_experience_of_nuisance_calls_and_unexpectedly_high_bills.pdf.

¹¹ The abandoned calls figure for landline users is derived from a low base size and should be treated as indicative only.

¹² There are likely to be a number of reasons for the differences in the incidence levels across the diary and tracker research including the methodologies, survey sample and time periods for the fieldwork.

¹³ See section 3 of the Telecoms Complaints Bulletin at

<http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/August14.pdf>.

We receive a small number of complaints about silent and abandoned calls from businesses which are not included in these figures.

¹⁴ Some consumers may also spend time reporting complaints about silent and abandoned calls or taking steps to try and minimise the chance they receive these calls again in the future and reduce the harm they experience.

- 2.21 We believe that calls where the consumer only hears silence may cause more harm than abandoned calls where an information message is played. This view is based on our research and complaints data suggesting silent calls cause higher levels of harm than abandoned calls with a message (e.g. in our research, a higher proportion of consumers say they receive silent calls as compared to abandoned calls and consumers also report higher volumes of complaints to Ofcom about silent calls). This may be due to the fact that an information message informing the consumer who has called them and a contact number to use if they wish to contact the caller (to decline to receive further calls) helps mitigate the harm caused by the abandoned call. Silent calls on the other hand provide no information about the caller (unless a valid CLI is provided) and recipients may associate them with being a threatening or malicious call.

Call for inputs

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.

You may wish to consider the following points in your response:

- *Evidence of changes in the nature and magnitude of the harm since we last reviewed the policy in 2010.*
- *Whether the harm differs across landlines and mobiles, consumers or the different types of calls (e.g. the time of day the call is received, whether it is a silent call or a live call).*
- *Types of harm other than wasted time and distress.*
- *Whether the distress caused by nuisance calls can be quantified and if so how.*
- *Evidence of how long it takes consumers to deal with silent and abandoned calls (e.g. X seconds or minutes to answer the phone, deal with the call, take steps to prevent further calls) and how that time should be valued.*
- *Views on the relationship between silent and abandoned calls and other call types.*

Section 3

Persistent misuse by making silent and abandoned calls

3.1 Given the ongoing concerns of consumers about receiving silent and abandoned calls, we are keen to explore whether there is more that we can do, through our policy, to help reduce the likelihood of these calls being made or the harm these calls cause. The review will consider:

- **General approach:** whether there are changes that we could make to the policy and the way we use our persistent misuse powers to help us enforce against silent and abandoned calls more efficiently and effectively.
- **Industry developments:** if there have been technological developments or changes in the call centre industry that it would be appropriate for us to take into account when reviewing the policy.
- **Clarifications:** any clarifications we could make in order to make the policy clearer so it is easier for stakeholders to understand and follow and to enable more effective enforcement.

3.2 Our review is at an early stage. Based on evidence from:

- enforcement of the current policy;
- initial discussions with stakeholders;
- market and industry research; and
- complaints data

we set out in this section the likely causes of silent and abandoned calls and some initial thoughts on potential ideas for changes to the policy that we may wish to consider further as part of our review.

What causes silent and abandoned calls?

3.3 Silent and abandoned calls are largely a by-product of organisations trying to contact their existing customers or trying to sell products or services to potential new customers by telephone. In many cases, there will be a legitimate reason why the organisation is trying to contact the consumer (e.g. to arrange a delivery, to follow up on a complaint or enquiry the consumer has made or for marketing purposes where this is in line with the consumer's specified contact preferences). In other cases, the call may not be legitimate in that an organisation may be trying to contact the consumer to sell them a product or service but the consumer has signed up to the TPS 'do not call' register and/or has asked not to receive direct marketing calls from the organisation.¹⁵

¹⁵ TPS is a free service for consumers to opt out of receiving unsolicited live sales or marketing calls. If subscribers to the TPS receive (or believe they have received) unsolicited live sales or marketing

- 3.4 We note that action¹⁶ to tackle concerns about misuse of personal data to generate sales leads and marketing calls made without the consumer's consent should lead to a reduction in attempts to make live calls. This in turn should have a positive impact on the levels of silent and abandoned calls as well as unlawful live and/or recorded marketing calls. However, silent and abandoned calls may still occur, for example, when organisations are using ACS and either making non-marketing calls or legitimate marketing calls.
- 3.5 As explained in section 2, organisations use ACS to help maximise the amount of time their call centre agents spend speaking to consumers. The use of ACS can lead to consumers receiving abandoned and silent calls, for example, where all the call centre agents are busy when the call recipient answers the phone.
- 3.6 We are keen to develop a better understanding of the full range of reasons consumers may receive abandoned and silent calls and the key drivers for them. Having a good understanding of the drivers of these calls should help us identify which ones organisations should be able to take steps to address and which ones may fall outside of their control. It should also help us identify why silent and abandoned calls are occurring and how our persistent misuse powers could most usefully be exercised, including any potential changes to the policy and our general approach to tackling these calls e.g. if there are areas that we may wish to prioritise for action or focus more attention on. We are conscious that adjusting the policy will not necessarily address all the causes of or reduce the incidence of silent and abandoned calls and that on-going effective and targeted enforcement action will still be required.
- 3.7 We have set out above that the main cause of abandoned calls appears to be the use of ACS. Our research and complaints data suggest that consumers consider abandoned calls with a message to be a cause of harm. As that research also shows, silent calls cause higher levels of harm than abandoned calls with a message (e.g. in our research, a higher proportion of consumers say they receive silent calls as compared to abandoned calls and consumers also report higher volumes of complaints to Ofcom about silent calls), this section focuses on the potential reasons why consumers may be receiving silent calls.
- 3.8 Figure 1 outlines a number of reasons why consumers may receive silent calls and assesses each as to whether, in our provisional view, it is likely to be a key driver of overall volumes of silent calls. In drawing up this table, we have drawn on our formal and informal enforcement work, existing research and some informal discussions we had with stakeholders ahead of publishing this call for inputs. Some of the reasons below may also be relevant in explaining why consumers may receive abandoned calls.

calls more than 28 days after registering, they can complain to TPS. Consumers' registration with the TPS is overridden where they have given their consent to a particular organisation contacting them for direct marketing purposes.

¹⁶ DCMS asked Which? to convene a taskforce to review consent and lead generation issues. The taskforce is due to report back to DCMS by the end of 2014. The terms of reference for the taskforce are available at: <http://www.which.co.uk/documents/pdf/task-force-terms-of-reference-369453.pdf>. The Claims Management Regulator (a unit within the Ministry of Justice) regulates claims management companies: <https://www.gov.uk/government/groups/claims-management-regulator>. Details of the ICO's work to tackle nuisance calls is set out in the Ofcom / ICO joint nuisance calls action plan: http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/JAP_update.pdf.

Figure 1: Summary of reasons why consumers may receive silent calls

Reason for silent calls	Evidence and significance
Action taken by organisations	
<p>Use of AMD – as set out in section 2, AMD is used by call centres to establish when a call has been answered by an answer machine rather than a live individual. This helps prevent answer machines being put through to a live call centre agent and subsequently terminated by the agent. Unfortunately, current AMD technology can mistake a live consumer for an answering machine (a ‘false positive’) and lead to the ACS terminating the call without playing an information message.</p>	<p>AMD has tended to use speech pattern recognition and this can be unreliable. A report by Verint Consulting into the accuracy of AMD technology in 2009 found a broad range of false positives from 0% to 45%.¹⁷ The research found that false positive rates were impacted most by the dialler and AMD equipment used and how the equipment was managed in practice (i.e. how it was set to classify answer machine pick-ups). A report by Mott MacDonald in October 2013 found that “testing performed on systems with AMD shows considerable variations” and that “considerable discrepancies have been observed between tests in controlled environments which may show results as good as 99% compared with tests in an operational environment which may be as low as 75% accurate”.¹⁸</p> <p>Historically, use of AMD has been considered a key driver of overall volumes of silent calls. However, we don’t currently have data on the proportion of organisations that use AMD and the volumes of calls that are made using it. Some stakeholders have advised that some organisations have stopped using AMD or significantly restricted its use in recent years.</p>

¹⁷ http://stakeholders.ofcom.org.uk/binaries/consultations/persistent_misuse/summary/verint.pdf.

¹⁸ Mott MacDonald, October 2013, Developments in call centre and network answer phone detection, page 47: <http://stakeholders.ofcom.org.uk/binaries/research/technology-research/2013/call-centre-report.pdf>.

Reason for silent calls	Evidence and significance
<p>Intentional non-compliance – some companies will have no intention of complying with the law on persistent misuse and will not take account of our statement of policy on persistent misuse or have any systems or processes in place to prevent silent calls.</p> <p>Organisations that have no intention of complying may also try to hide their identity to help avoid detection.</p>	<p>It is difficult to identify the proportion of silent calls that may be being generated by ‘rogue’ organisations. If we were to use the proportion of complaints to Ofcom where the organisation did not provide CLI information as a very rough indication for these organisations (as the current policy suggests ACS users can reduce the harm of abandoned and silent calls by providing a CLI), there are indications that rogue organisations might account for a significant proportion of silent and abandoned call complaints to Ofcom.¹⁹ On this basis, we might estimate the proportion to be 67% but we note that the actual proportion may be different to this.</p> <p>Rogue organisations may also be less likely to play an information message in the event of an abandoned call, thereby increasing the likelihood that they may be a key driver of overall volumes of silent calls.</p>
<p>Lack of awareness – some organisations may not take measures to prevent silent and abandoned calls as they are not aware of the persistent misuse provisions in the Act or our policy.</p>	<p>It is an organisation’s responsibility to ensure they are aware of the relevant rules relating to the activities they carry out.</p> <p>We are aware, through our enforcement and engagement with industry, of organisations that are not aware of the provisions in the Act or our policy. A lack of awareness can sometimes be more of an issue with organisations operating overseas and are less familiar with the UK legal framework.</p> <p>It is difficult to quantify the level of awareness in organisations operating call centres, but we consider this could be a key driver of silent calls.</p>
<p>Management and process failures – Poor management or a failure to have appropriate processes in place can result in issues at an organisational or call centre agent level. For example, not carrying out tests when setting up or making changes to ACS systems and processes to make sure they work properly, poor procedures for when members of staff that are responsible for key functions (such as management of the dialler or compliance) are unexpectedly out of the office, poor management of call centre agents.</p>	<p>We have seen evidence of poor management or a lack of appropriate processes in place to quickly identify and fix issues that may be causing silent and abandoned calls in our enforcement work.</p> <p>Issues caused by poor management or lack of appropriate processes may be a key driver of overall volumes of silent calls.</p>

¹⁹ PECR includes provisions on the withholding of CLI information so this is an indicative estimate only based on detailed analysis of two weeks of Ofcom complaints data in January 2014. Similar analysis carried out in 2012 suggested 70% of callers could not be identified from the CLI information.

Reason for silent calls	Evidence and significance
<p>Number scanning (or ‘pinging’) – automated dialling to sequentially check through lists of phone numbers to see which are ‘live’ and which are disconnected. The equipment is supposed to make a call and as soon as the network sends back the message that the line is ringing it should terminate the call. However, sometimes the consumer’s phone may ring and the consumer picks up but there is no person on the other end.</p>	<p>Organisations using the equipment suggest that the called party’s phone does not ring or at most just get a partial ring (sometimes referred to as a ‘bell tinkle’). The DMA silent calls report 2005²⁰ referenced data from BT which suggested that one of these campaigns launched 3,000 calls in an hour and 18% were answered each generating a silent call. However, we note that this analysis was carried out some years ago and may be out of date.</p> <p>Number scanning may be a key driver of overall volumes of silent calls.</p>
<p>Intentional behaviour (agents) - deliberate action by live agents, such as terminating live calls after they have been put through to them but before the conversation starts.</p>	<p>We have seen only limited evidence of this in our enforcement work to date.</p> <p>We think this is less likely to be a key driver of overall volumes of silent calls.</p>
Timing issues	
<p>Delays in connection - organisations may not start to play an abandoned call message or connect the call to a live agent until <i>after</i> the consumer hangs up</p>	<p>Consumers will react to silence on a call in different ways. If there is a ‘delay’ before an abandoned call message is played or a live agent is connected and starts to speak, some consumers may not stay on the phone long enough to hear either of these happening. Consumers would likely regard these as silent calls, whereas organisations would likely classify them differently. We don’t have data on how quickly organisations connect calls to live agents but some consumers have reported delays of several (up to seven) seconds before being connected and hearing the live agent speak.</p> <p>Such calls are more likely to feature in CCT complaints data and our tracker research. However, they may be less likely to feature in the reported incidence levels in our diary research as we ask consumers to say ‘hello’ and wait at least five seconds before they put the phone down (in line with A1.51 of the policy which says that an abandoned call message should be played within two seconds).</p> <p>This may be a significant cause of consumers reporting calls as silent where in fact the organisation was going to play an abandoned call message or connect them to a live agent.</p>

²⁰ <https://www.truecall.co.uk/media/1933/Brookmead%20report%202005.pdf>

Reason for silent calls	Evidence and significance
<p>Simultaneous pick up / disconnection - the consumer may pick up the call at <i>the same time</i> as the call is being disconnected by the ACS.</p>	<p>Consumers may pick up the phone just as the ACS disconnects the call. Consumers may consider and report such calls as silent calls. However, the ACS will record these correctly as unconnected calls.</p> <p>Some organisations stop ringing at 15 seconds in order to meet the minimum ring time in the policy but to avoid network based answer machines which are often pre-programmed to answer a call between 18 – 20 seconds.</p> <p>Preliminary testing by an industry stakeholder that was reported in our 2010 review of the policy indicated that this may occur in 0.8% of all live calls encountered which, for organisations making large volumes of calls, could represent a significant number of silent calls for consumers.²¹</p>
<p>Handsets and ringtones - the organisation terminates the call just <i>before</i> the consumer picks up. The call has been terminated but the ring cycle on the phone is still playing.</p>	<p>We understand this can happen with Digital Enhanced Cordless Telecommunications (DECT) phones if a particular ring tone has been chosen by the consumer.²² We don't have data on the proportion of consumers who might be affected by this issue. This may be a significant cause of consumers reporting calls as silent but will likely depend on whether the consumer hears a dial-tone or not when they pick up the phone and how they interpret that.</p>
<p>Other causes</p>	
<p>Errors (by call centre agents) – errors can happen which can be a result of a genuine one-off mistake e.g. call centre agents leaving their headsets on mute so they are not aware that a live call has been put through.</p>	<p>We do not have data on how often one-off individual errors by call centre agents are likely to occur. However, we do not think this is likely to be a key driver of overall volumes of silent calls.</p>
<p>Errors (individuals) – individual consumers may accidentally dial the wrong number and hang up when they realise.</p>	<p>We do not have data on how often consumers are likely to misdial. However, we do not think this is likely to be a key driver of overall volumes of silent calls.</p>
<p>Intentional behaviour (individuals) – individual consumers may make calls to other consumers for mischievous or malicious reasons.</p>	<p>We do not have data on how often individual consumers make malicious calls. Whilst this can be particularly distressing for the individual receiving the call, we do not think this is a key driver of overall volumes of silent calls.</p>

²¹ See paragraph 3.55 of <http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/statement/silentcalls.pdf>.
²² <http://youtu.be/CvYVyZkemOA>.

Reason for silent calls	Evidence and significance
<p>Mobile coverage – calls made to or from mobile phones may be ‘dropped’ due to mobile network coverage/performance issues and generate what appears to be a silent call.</p>	<p>Ofcom published research in August 2014 which suggested that a significant proportion of consumers have experienced problems with ‘dropped calls’.²³ We have also been advised that call centres are making more calls to mobiles as contact preferences change and mobile use increases.</p> <p>Mobile coverage may be a key driver of overall volumes of silent calls.</p>

3.9 We recognise that some of the causes identified in Figure 1 above are unlikely to be affected by any changes that we could make to the policy, even if they are key drivers of overall volumes of silent calls. For these drivers (handsets and ringtones and mobile coverage), we propose to take no further action as part of this review but note that in some areas we have other work programmes in place that may help tackle the underlying issue, for example, our broader work to improve mobile coverage.²⁴

3.10 Equally, where a cause is unlikely to be a key driver of overall volumes of silent calls, for example, errors by call centre agents as individuals or malicious calls made by individuals, we propose to take no further action as part of this review.

Call for inputs

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

You may wish to consider the following points in your response:

- *Whether the main driver for abandoned calls is the use of ACS or if there are other key drivers.*
- *Whether you agree with the possible reasons why consumers may receive silent calls and the extent to which they are likely to be a key driver of the overall volume of silent calls as set out in Figure 1.*
- *Evidence of the key drivers of silent or abandoned calls.*
- *Aside from mobile coverage, whether there are other issues specific to mobiles that could be causing silent or abandoned calls.*
- *Any information you have on how long organisations will ring consumers before disconnecting an unanswered calls (e.g. 15 seconds) or how quickly they connect consumers to a live agent (e.g. two seconds).*

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.

²³ See Figure 4 at <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/consumer-experiences-mobile-phone-calls/report.pdf>.

²⁴ <http://consumers.ofcom.org.uk/phone/mobile-phones/coverage/five-point-plan-to-improving-mobile-coverage/>.

Potential ideas for changes to the policy

3.11 Above, we set out the likely causes of silent and abandoned calls. Below, we set out some potential changes to the policy that may help deal with the causes of silent and abandoned calls. As Ofcom continues to consider that silent and abandoned calls remain forms of misuse, these are potential changes to how Ofcom administratively prioritises those cases and which may have an impact on some of the key drivers: the use of ACS and AMD; management and process failure; and some of the timing issues. However, as set out above, any potential changes to the policy may not necessarily address all the causes of or reduce the incidence of silent and abandoned calls. We provide some initial thoughts on the potential advantages and issues that may need further consideration. Section 6 of this document provides more detail on how we plan to assess any possible changes.

3.12 For each of the ideas set out below, we note that:

- Any change may have a knock on effect or implication on other aspects of the policy. These would have to be considered more fully if any idea was pursued further.
- Any change aimed at reducing certain types of nuisance calls, such as silent or abandoned calls, could impact on other types of nuisance calls as some of them are a by-product of call-centres' intentions to contact an individual. Action to tackle misuse of personal data for lead generation and direct marketing calls made without a consumer's consent could have a positive impact and help to reduce the overall levels of silent and abandoned calls. Action to tackle silent calls could convert these types of calls into abandoned calls where a message is played or live calls.
- We are aware that there are some organisations which do not comply with the law on persistent misuse and our current policy and would not seek to comply with any new policy. As mentioned in Figure 1, these organisations may account for a significant proportion of silent calls. This is something that we would also seek to consider as part of our assessment of any proposed changes. We will continue to take effective and targeted enforcement action against organisations that are causing persistent misuse, prioritising action where organisations have not taken the steps set out in the (current or any revised) policy.

Enforcing against abandoned calls and silent calls caused by use of ACS and AMD

3.13 As set out in section 2 and Figure 1, the use of ACS and AMD can result in silent and abandoned calls. The current policy sets a general administrative priority of cases where the abandoned call rate²⁵ exceeds three per cent of live calls per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over a 24 hour period (Annex 5, paragraph A1.30). The policy states that AMD users must include a reasoned estimate of AMD 'false positives' when calculating an abandoned call rate (see Annex 5, paragraph A1.33). The policy allows for AMD to be used even if it is not 100% accurate in distinguishing an answer machine from a live person. As noted in Figure 1, false positive rates when using AMD can vary significantly.

²⁵ Annex 5, paragraph A1.18 defines the abandoned call rate as "the number of abandoned calls as a proportion of total live calls. It must include a reasoned estimate of AMD false positives and where AMD is used and may exclude a reasoned estimate of calls abandoned to answer machines".

- 3.14 It is important to note that the policy does not say that there is only persistent misuse at rates higher than 3%. The policy identifies silent and abandoned calls as a form of misuse of an electronic communications network or service and we determine whether the misuse is persistent on a case-by-case basis (see Annex 5, paragraph A1.10 – 11). We then decide whether to take enforcement action, taking into account whether steps have been taken by ACS users to reduce the level of consumer detriment, including whether the level of the abandoned call rate has been exceeded. We could take enforcement action where organisations persistently misuse the network below the 3% rate or in relation to other types of silent call (e.g. if an agent was terminating calls).
- 3.15 However, the effect of the abandoned call rate is that organisations can make a certain number of abandoned or silent calls caused by the use of ACS and AMD whilst still operating within the 3% rate.
- 3.16 Companies with larger call centre operations may end up generating a higher absolute number of abandoned calls while remaining within the 3% rate than a smaller call centre that makes relatively few total calls yet exceeds the 3% rate. Therefore, uniform enforcement applying the 3% rate may not always directly address the largest sources of abandoned calls and hence consumer harm.
- 3.17 Stakeholders have also suggested that it can be harder for call centres making lower volumes of outbound calls to manage their abandoned call rate and remain within the 3% rate. They say this is because they have less flexibility in terms of ‘correcting’ for an increase in the number of abandoned calls, particularly if the abandoned calls are experienced towards the end of the day, and are then not able to make a sufficient number of live calls to reduce their abandoned call rate to below 3%.
- 3.18 Given on-going concerns about silent and abandoned calls, we think it is important to consider whether there are changes that we could make to the abandoned call rate and in relation to AMD, which may consequently help reduce the overall number and the harm from these calls.

Potential changes to the policy

- 3.19 Below we set out some potential changes we could make to the policy by amending the threshold before we would generally consider taking enforcement action against silent and abandoned calls and the approach to silent calls caused by the use of AMD. We consider that the potential changes outlined may provide a useful framework for organisations and may encourage them to take greater steps to reduce the likelihood of silent and abandoned calls, and the harm resulting from them. We also set out some provisional views on the potential impacts of each change.

Figure 2: Potential changes to the abandoned call rate and approach to AMD

Potential change	Potential advantages	Potential issues
<p>Reduce the current 3% abandoned call rate to a lower level e.g. to 1%.</p>	<p>Reducing the rate could help reduce the number of abandoned or silent calls consumers receive from certain organisations.</p> <p>There may be no cost impact for those organisations that are already taking additional measures to limit the level of silent and abandoned calls they make and operating at lower levels. We are aware that some call centres already operate below 1%.</p> <p>There may also be no cost impact for those organisations that do not use AMD. We have been informed by stakeholders that some organisations have stopped using AMD or significantly restricted its use in recent years with those organisations indicating that the time an agent spends dealing with answer machines is low (under five seconds) and they consider that agent productivity remains high.</p>	<p>This change would still not control the actual volume of silent and abandoned calls made as this will depend on the number of live calls made by an organisation.</p> <p>If many organisations are already operating below 1% then it is unlikely to have a big impact on the number of silent and abandoned calls consumers receive. However, if many organisations are not operating below 1% then it may have more of an impact.</p> <p>If organisations use AMD, this option may require careful use of current AMD technology or the use of more accurate AMD. We are aware that new types of AMD are being developed that could potentially reduce the number of false positives, and therefore the number of silent calls consumers receive, including:²⁶</p> <ul style="list-style-type: none"> • Network level binary matching which compares a known digitized voice pattern to identify an answer machine. • Network based answer machine detection (or Answering Service Detection) which relies on signals being sent to the dialler from a known network based service such as '1571'. • Live person detection which uses automated technology to identify a real person rather than an answering machine before transferring the call to a live agent. <p>However, we do not have data on the accuracy or availability of these options. We note that organisations may need to consider new technology in light of the relevant provisions in PECR e.g. the provisions on recorded marketing messages.</p> <p>There would be a cost impact for</p>

²⁶ <http://stakeholders.ofcom.org.uk/binaries/research/technology-research/2013/call-centre-report.pdf>.

Potential change	Potential advantages	Potential issues
		<p>some organisations, particularly for those organisations that do use AMD. This may only be a one off cost while agents transition to dealing with answer machines or switch to a different AMD technology. We don't currently have data on the proportion of organisations that use AMD and the volumes of calls that are made using it. It has been suggested that AMD may still be in use in particular sectors.</p>
<p>Remove the current 3% abandoned call rate set out in the policy i.e. move to zero</p>	<p>This option could help reduce the number of abandoned or silent calls consumers received from certain organisations.</p>	<p>This option would require very or 100% accurate AMD where it is used (see row above for further information on AMD) and may restrict the use of ACS to ensure agents are always available to take calls.</p> <p>This option would have a cost to organisations to ensure agents are available for every call.</p>
<p>Differentiate between abandoned calls with message and silent calls, and apply a lower or zero threshold for enforcing against silent calls</p>	<p>This option focuses on silent calls which appear to cause more harm than abandoned calls which play an information message. Reducing the rate could help reduce the number of silent calls consumers receive from certain organisations. Research and complaints data indicates that a higher percentage of consumers are affected by silent calls and a higher proportion of silent calls are rated as annoying or distressing, or less useful than abandoned calls.</p> <p>There may be no cost impact for those organisations that do not use AMD. We have been informed by stakeholders that some organisations have stopped using AMD or significantly restricted its use in recent years.</p>	<p>This option would require AMD to be very or 100% accurate where it is used (see row above for information on AMD).</p> <p>This option would have a cost to organisations who use AMD.</p>

Potential change	Potential advantages	Potential issues
<p>Specify that we are more likely to take enforcement action once a certain number of abandoned and/or silent calls over a set period (e.g. 24 hours) have been exceeded (though we may nonetheless take action below that level if appropriate).</p>	<p>This option could reduce the number of abandoned or silent calls consumers receive from certain organisations.</p> <p>This option would provide an absolute number and provide clarity to organisations on when we are likely to take enforcement action.</p>	<p>We would need to consider an appropriate level to set the threshold, the relevant time period and any limitations for repeat calls during that time period. For example, using consumer research to assess the point when abandoned calls cause annoyance, inconvenience or anxiety.</p> <p>We would also need to consider whether to apply it in addition to or instead of a percentage based abandoned call rate and whether to set the threshold at a call centre, campaign or agent level.</p> <p>Depending on the number set, may impact on the use of AMD and ACS.</p> <p>Potential cost to organisations in relation to use of AMD or ACS and to ensure checks and balances and training are in place to prevent, identify and rectify any errors or deliberate actions by staff.</p>

Enforcing against silent calls caused by timing issues

- 3.20 As highlighted in Figure 1 above, where there is a delay before an organisation starts to play an abandoned call message or connects the consumer to a live agent, the consumer may hang up before they hear either of these happening. Alternatively, the consumer may pick up at the same time as the call is disconnected by the ACS. There may be potential to reduce the likelihood of either of these happening through changes to the policy.
- 3.21 The policy (Annex 5, paragraph A1.29) states that “An unconnected call may also be terminated after a predetermined period (i.e. greater than 15 seconds) because it has not been answered, perhaps because no one is there to take it. For purposes of the Statement of Policy such calls are not classified as abandoned calls”. In addition, the policy (Annex 5, paragraph A1.53) states that “Calls which are not answered must ring for a minimum of 15 seconds before being terminated”.
- 3.22 This means that organisations should let the phone ring for at least 15 seconds before ringing off. As set out Figure 1 above, some organisations ring off at 15 seconds in order to be consistent with our policy but to avoid network based answer machines which are often pre-programmed to answer a call between 18 – 20 seconds. The 2010 Statement on ‘Tackling abandoned and silent calls’ set out (paragraph 3.56) that ACS users may wish to consider the effect of only allowing a call to ring for 15 seconds if they are making calls to existing or potential consumers and the efficiency of disconnecting a call too early if the number has to be contacted

again. We are aware that some organisations call for longer as they consider that the risk of encountering and the time required to deal with an answer machine is manageable.

- 3.23 The policy (Annex 5, paragraph A1.51) sets out that in the event of an abandoned call, a brief recorded information message should be played no later than two seconds after the telephone has been picked up or no later than two seconds after an individual begins to speak (or 'start of salutation'). The policy does not explicitly refer to how quickly calls should be connected to a live agent and when that agent should start to speak.

Potential changes to the policy

- 3.24 Below we set out some potential changes to the policy which may help to reduce silent calls related to timing issues and initial views on the potential impacts of each change.

Figure 3: Possible changes to time limits

Potential change	Potential advantages	Potential issues
Specify a time limit for calls being connected to a live agent and then starting to speak to the consumer e.g. two seconds to align with how quickly an abandoned call message should be played.	<p>We understand that many organisations will already manage their calls in such a way as to ensure that either an abandoned call message or a live agent speaks within two seconds of the consumer picking up the telephone or they start to speak. There would be no cost impact on these organisations.</p> <p>This option should reduce the number of silent calls consumers receive from organisations that do not manage their calls in this way.</p>	<p>This option could have a cost impact if organisations do not currently manage their calls in such a way as to ensure that either an abandoned call message or a live agent speaks within two seconds.</p>
Extending the minimum ring time to longer than 15 seconds	<p>This option could reduce the number of silent calls consumers receive from certain organisations where the consumer picks up just as the ACS is disconnecting the call.</p>	<p>We would need to consider an appropriate level for the minimum ring time. Depending on where it was set it could have a cost impact on those organisations whose agents do not currently deal with answer machines.</p> <p>The ring time may still not be sufficient for those who take a long time to answer</p>

		the phone and may increase annoyance of those consumers who may screen their calls.
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Enforcing against silent calls caused by management or process failures

3.25 In Figure 1, we identified that management and process failures could be a key driver of overall volumes of silent calls e.g. where systems and processes are not set up correctly. These failures could occur whether ACS is used or not but we consider are more likely to occur when ACS is used.

Potential changes to the policy

3.26 Below we set out some potential changes to the policy which may reduce silent calls caused by management or process failures and our initial views on the potential impacts of each change.

Figure 4: Possible changes to encourage good management and appropriate processes

Potential change	Potential advantages	Potential issues
Specify explicitly that we will take into account whether an organisation has processes in place to help prevent, identify and rectify any (unintentional or deliberate) issues causing silent calls. For example carrying out test calls when first setting up or making changes to systems and processes, having agent performance monitoring in place, ensuring that management of the dialler is carried out by competent persons.	We are aware that some organisations already have effective processes in place to help prevent, identify and rectify problems.	There will be a cost to some organisations that don't have appropriate checks and balances and training in place to prevent, identify and rectify any problems.

Call for inputs

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).

You may wish to consider the following points in your response:

- *Views on whether it would be worth pursuing any of the potential changes identified in Figures 2 to 4 or if there are other potential changes that should be considered, for*

example, to make it clearer and easier for stakeholders to understand and follow or to specifically address calls made to mobile phones.

- *Data indicating the likely impact of the potential changes in terms of reducing the harm caused by silent and/or abandoned calls and the potential cost of the change (both one-off and ongoing costs).*

Section 4

Other examples of persistent misuse

- 4.1 In addition to identifying silent and abandoned calls as examples of misuse, the policy identifies five further general areas where persistent misuse may occur: misuse of automated calling systems; number-scanning; misuse of a CLI facility; misuse for dishonest gain – scams; and misuse of allocated telephone numbers (see Annex 5 paragraphs A1.63 to A1.77). The policy explains that the examples it sets out are illustrative only and do not prevent Ofcom from taking action in respect of other behaviour that is persistent misuse but is not identified in the policy.
- 4.2 As set out in section 3, it is evident that some of the general areas of misuse may also be drivers of silent calls e.g. misuse of ACS. Others, such as misuse for dishonest gain, relate to our broader work to help tackle nuisance calls (as set out in our joint action plan with the ICO) and certain types of scams.
- 4.3 The policy also acknowledges that there is some degree of overlap between these general areas and that some types of behaviour may also be covered by other legislation, for example consumer protection legislation. Where such overlaps exist, Ofcom seeks to determine in consultation with relevant enforcement authorities the set of legislative requirements which is more appropriate and may be more effective in tackling the underlying problem and reducing consumer harm.
- 4.4 We outline below some ideas that have been suggested about possible changes to the more general areas covered by the policy. We describe the potential advantages of these along with issues that may arise, noting that these changes would need further consideration if any were to be taken forward.

CLI information

- 4.5 Some stakeholders have suggested that we should amend the provisions in the policy relating to CLI information. Ofcom considers it important that the CLI information provided to consumers is accurate as it helps consumers to choose whether to answer a call or not and thereby shield themselves from potential nuisance calls. Similarly CLI information is required for the effective use of handsets and services that rely on CLI information to block and filter certain calls. Consumers can also use the CLI to report nuisance calls to Ofcom and other regulators. It can help reduce consumer harm as complaints data indicates that consumers are more concerned where a CLI is not provided when receiving silent or abandoned calls.
- 4.6 As noted in section 2, the persistent misuse policy sets out that providing a CLI, so that consumers could return the call should they wish to, is a step that ACS users can take to help reduce the harm caused by silent and abandoned calls and something we would take into account when deciding whether to take enforcement action.
- 4.7 More generally, the policy sets out that we would consider the repeated forwarding of inauthentic or misleading CLI information, whether in relation to calls generated through ACS or not, to be persistent misuse. It also states that where users can choose the CLI that is presented, that we would consider the deliberate sending of an inauthentic or a misleading number where it is not possible to identify the caller and does not allow a return call to be made to be a form of misuse.

Work to improve the CLI information

- 4.8 We have been taking forward broader work relating to CLI information as part of our joint nuisance calls action plan with the ICO. A new call tracing standard is now in place which aims to minimise the complexity and improve the chances of being able to successfully trace the organisations that made the call and take enforcement action where appropriate.
- 4.9 We note that one potential reason for inaccurate or missing CLI information being accidentally presented to consumers is the greatly increased use of Voice over Internet Protocol (VoIP) technology in telecoms networks. In particular, problems can occur when CLI information is passed between VoIP and traditional voice systems due to differences in how they operate. We asked NICC,²⁷ the industry standards body, to update their technical rules on how communication providers should handle CLI across these interfaces to reduce such problems. This work is nearing completion, with the final document expected to be issued by the end of October. Ofcom will then consider whether Ofcom's Guidelines for the provision of Calling Line Identification Facilities and other related services over Electronic Communications Networks²⁸ should be updated to reflect the revised industry rules.
- 4.10 The use of VoIP also increases the opportunities for rogue callers to deliberately present misleading CLI to called consumers. The global nature of telecoms and the fact that these callers could be based outside the UK makes tackling this issue particularly difficult. The global body²⁹ responsible for the relevant VoIP technical standards has work underway to deal with it, which Ofcom is participating in. However, it is likely that significant changes will be needed, globally, in how telephone numbers are issued and managed and how millions of existing telephone systems operate, so while this work offers a promising long term solution to many of the CLI problems we see today, it is likely to be at least five years until it has a significant impact.

Mandating CLI information for telemarketers

- 4.11 Some stakeholders have suggested that Ofcom should require all telemarketing calls to carry a valid and returnable CLI. For example, if a call has not been answered by the consumer and they subsequently decide to call the CLI they get through to a message about who has called (i.e. similar to the abandoned call information message) or to a live agent who can explain the same. They have also suggested that telemarketers should be required to register the CLIs they use with a central publicly accessible register.
- 4.12 We note that whilst ideas to improve CLI provision are attractive as they are likely to be beneficial to consumers, they need to be considered in light of the provisions in PECR and the Privacy and Electronic Communications Directive which PECR derives from. These regulations contain provisions requiring communication providers to enable a calling party to withhold their CLI, where a facility to present CLI is available. Therefore, with regard to requiring all telemarketer calls to carry a valid and returnable CLI, we do not consider we can take further action by way of amending our policy. The ICO has primary responsibility for enforcing PECR and any changes to these regulations would need to be considered by the ICO and

²⁷ Network Interoperability Consultative Committee.

²⁸ <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/>.

²⁹ Internet Engineering Task Force (IETF).

Government, and would ultimately be a matter for Parliament.³⁰ We will pass these stakeholder views (in relation to requiring telemarketers to carry valid and returnable CLIs) on to the ICO and Government for their consideration.

- 4.13 There are some circumstances where we would already consider taking enforcement action in relation to CLI information. We are of the view that where a CLI is provided, it should be an authentic CLI. Under Ofcom's current policy, we categorise the misuse of a CLI facility as a form of misuse. In the policy (Annex 5, paragraph A1.69) it states that the repeated forwarding of inauthentic or misleading CLI is regarded as persistent misuse. Where users have the ability to choose the CLI number that is forwarded (Presentation Number), the deliberate sending of an inauthentic or misleading number from which it is not possible to identify the caller and which does not enable the recipient of a call to return a message is a form of misuse. This is without prejudice to a caller's right (under PECR) to preserve their anonymity by withholding their number. The policy (annex 5, paragraph A1.70) also states that it will also be a form of persistent misuse to forward a CLI that has been allocated to a Premium Rate Service provider. A return caller may suffer annoyance or inconvenience by unwittingly making a return call to which they are charged more than they may reasonably expect.
- 4.14 Separately, the provision of CLI information is also relevant to our enforcement policy of another category of misuse, silent and abandoned calls. The policy (Annex 5, paragraph A1.56) sets out that for each outbound call made using ACS a CLI is presented to which a return call may be made which is either a geographic number of a non-geographic number adopted as a Presentation Number which satisfies the Ofcom Guide to the use of Presentation Numbers.³¹ The policy (Annex 5, paragraph A1.57) sets out that technological limits of international networking may result in some dialler calls being delivered to the UK without CLI identification. In these circumstances it is even more vital that such centres use the information message and a UK based number so that they may be contacted by called parties after an abandoned call. In this case, the persistent misuse, and consumer harm, results from the making of silent or abandoned calls. We would consider that the provision of a CLI would reduce the consumer detriment caused by these calls and therefore under our current policy and taking into account other relevant circumstances, may be more likely to take enforcement action if a CLI was not provided.
- 4.15 We consider that we could make some potential clarifications to the current policy to make clear what should happen where an organisation provides a CLI on the call itself and in any information message. For example, the policy could say in addition to being an authentic CLI for the company which made the call, the recipient should connect to a live person or recorded message rather than always ringing out or getting an unobtainable tone, what information should be given if the recipient calls back (e.g. the right to opt-out) and who the 'caller' identified should be (e.g. the company on whose behalf the call was made). Provisionally, we consider that not taking these steps could amount to misuse of a CLI such as to be persistent misuse, and to be factors we would take into account in prioritising enforcement action cases involving silent and abandoned calls.

³⁰ For example, Article 15 of the Privacy and Electronic Communications Directive allows Member States to adopt legislative measures which restrict the right of a calling party to withhold their CLI, subject to certain criteria being fulfilled.

³¹ Annex 1 of the Guidelines for the provision of Calling Line Identification Facilities and other related services over Electronic Communications Networks:
<http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/>.

Using localised or rotating CLIs

- 4.16 Some stakeholders have questioned whether using (i) localised CLIs (e.g. if the consumer the organisation is calling is based in Glasgow the presentation CLI is based on local area code '0141' but if the same organisation is calling a consumer in Cardiff it would present a number based on '029') or (ii) multiple CLIs (which are valid and returnable ones) on a rotating basis, to maximise the chances of the consumer answering could be considered persistent misuse.
- 4.17 We are aware this is a developing issue and will need further evidence to consider if such practices could represent a form of persistent misuse that we should explicitly cover in the policy. For example, this could be because the effect or likely effect is to mislead a consumer which could cause a person unnecessarily to suffer annoyance, inconvenience or anxiety because they may have been misled into picking up a call they may not have wanted or would not otherwise have picked up, thinking it was a local number (e.g. friends and family) or a different number (e.g. which they hadn't blocked). It may also reduce the effectiveness of call blocking technology a consumer may be using.

Calls made during unsociable hours

- 4.18 One of our consumer stakeholders suggested that we consider whether there are changes we could make to the policy around calls being made during unsociable hours. Our complaints data indicates that a small proportion of consumers contacting us receive silent and abandoned calls all through the night, causing anxiety and annoyance.
- 4.19 The policy states that (Annex 5, paragraph A1.10) ringing someone repeatedly in the middle of the night is an example of behaviour that is so patently annoying that it amounts to misuse and recklessness as to whether persons suffer annoyance, inconvenience or anxiety. The policy allows us to take action if calls are repeatedly made at unsociable hours. However, this could be made clearer in the policy and specify which hours might be considered to be unsociable. Further consideration would need to be given to existing protections in this area e.g. provisions in industry codes of practice³² and/or sector specific rules and guidance.³³
- 4.20 This option would provide clarity to organisations on when we are more likely to take enforcement action.

Live caller identifying themselves

- 4.21 Some stakeholders have suggested that we should amend the provisions in the policy to require telemarketers to provide more information about themselves upfront when speaking to consumers on a live call. In particular, it has been suggested that the agent provides clear information about who they are calling on behalf of and from where they obtained the consumers contact information.

³² For example, Rule 39 of the Market Research Society code of conduct requires members to ensure marketing activities do not take place before 9am Monday to Saturday, before 10am on a Sunday or after 9pm on any day of the week.

<https://www.mrs.org.uk/pdf/mrs%20code%20of%20conduct%202014.pdf>.

³³ For example, 3.8.2 and 3.8.3 of the Mortgages and Home Finance: Conduct of Business Sourcebook: <http://media.fshandbook.info/content/FCA/MCOB/3/8.pdf>.

- 4.22 We note that PECR requires an organisation carrying out marketing activity such as live calls to give the identity of the caller and if requested either a contact address or Freephone number they can be reached on (regulation 24(1)(b)). In the first instance, there is scope for the ICO take action in appropriate cases where agents are not providing consumers with information on who was calling. Any potential strengthening of these requirements in PECR would need to be considered by the ICO and Government, and would ultimately be a matter for Parliament. We will pass stakeholders views on this to the ICO and Government for their consideration.

Use of automated voice messaging systems

- 4.23 In 2010 our consultation and statement made reference to Interactive Voice Messaging (IVM) technology in relation to activating credit cards, check any abnormal credit use, arranging deliveries or reminders for payments or appointment. We also discussed the use of IVM in combination with AMD to reduce the level of false positives.
- 4.24 Some stakeholders have recently raised concerns about the use of ACS in combination with IVM systems (which was not specifically covered in the 2010 review). For example, it has been suggested to us that some organisations may be using IVM for outbound calling and increasing the speed of the ACS by having an IVM generated recorded message that says press 1 to speak to an agent – if a consumer presses 1 they are then placed on hold until an agent is available. As the caller has not terminated the call, we understand the organisations would not treat this type of call where the consumer has pressed 1 as an abandoned call (nor a silent call) and it would not be counted in their abandoned call rate. Stakeholders also questioned whether this may raise Data Protection Act issues as there is no guarantee that the person who answered the phone is the person the agent needs to speak to.
- 4.25 We note that under PECR, organisations can only make automated marketing calls to people who have specifically consented to receiving automated calls from them (regulation 16). As set out in the ICO's direct marketing guidance,³⁴ consent to receive live marketing calls is not sufficient. However, we acknowledge that such rules would not apply to organisations which are not making marketing calls, for example certain debt collection agencies.
- 4.26 We would like to gather more evidence on the use of ACS and IVM systems as referred to in paragraph 4.24 above, in order to consider whether this type of use where a consumer hears an automated message requiring a response, could potentially be a form of persistent misuse. Our preliminary view is that such calls may be similar in effect to an abandoned or silent call. For example, where the consumer has answered the phone but not been connected to a live agent, there may be concerns as to the extent of information provided to the consumer by the IVM and the potential length of time a consumer (who chooses to hold) may have to wait before a live agent is available. It is possible that the level of harm may lie between that caused by silent calls (where no information is provided to the consumer) and abandoned calls with message (where more specific information is provided). It may be appropriate to consider, once we have received further information and evidence, whether this sort of use of an ACS in combination with IVM should be explicitly covered in the policy (e.g. including measures that we might expect to be taken to reduce the consumer harm caused or how such calls might be included within the

³⁴ [http://ico.org.uk/~media/documents/library/Privacy_and_electronic/Practical_application/direct-marketing-guidance.pdf](http://ico.org.uk/~/media/documents/library/Privacy_and_electronic/Practical_application/direct-marketing-guidance.pdf) (paragraph 112).

calculation of the abandoned call rate). We note that the possible change referred to in Figure 3 to “specify a time line for calls to be connected to a live agent and then starting to speak to the consumer e.g. two seconds to align with how quickly an abandoned call message should be played” may have some overlap with this issue.

Other actions we could take outside of the policy

- 4.27 We are concerned that some organisations, particularly those operating from overseas or contracting out services to call centres, may not fully understand the steps which we think should be taken to help avoid causing persistent misuse and to reduce the consumer harm this can cause.

Checklist

- 4.28 One option, to try to raise awareness of the persistent misuse rules in the Act and the associated policy and in turn increase compliance and reduce consumer harm, would be to produce a checklist or short summary to accompany the full policy. This could be used to help engage with overseas call centres and regulators and also be a useful reference for those contracting out call centre services (e.g. it could help inform thinking about what it may be useful to consider when setting up service level agreements and in on-going performance monitoring). We consider this could potentially be a useful tool to aid and encourage compliance which could be produced once any revised policy was finalised.
- 4.29 Regardless of whether a checklist is produced, organisations would need to ensure that they abide by the law on persistent misuse, taking into account our policy. It is the organisation’s responsibility to ensure compliance with the law on persistent misuse, having regard to that policy, regardless of whether they have contracted out services to a third party.

Best practice guide

- 4.30 We consider that it may also be useful to set out examples of best practice to allow lessons to be learned and shared across call centres.
- 4.31 We already make suggestions to organisations on how to avoid future, more serious and potentially damaging, enforcement action as part of any investigation we carry out. We consider it could be useful to draw on these and other industry good practice into one place for ease of reference. For example, the best practice could consider processes organisations have in place to avoid problems, how consumer data (including opt outs) is handled and management of ACS/ predictive diallers. Trade associations are likely to already offer some guidance to their members so this may be something they would be interested in taking forward. Regardless of whether a best practice guide is produced, organisations would need to ensure that they abide by the law on persistent misuse, taking into account our policy.

Call for inputs

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.

You may wish to consider the following points in your response:

- *Whether the five general examples of persistent misuse remain relevant or if there are any changes or other types of persistent misuse that we should consider.*
- *Views on whether there are changes we should consider making to the policy relating to the provision of CLI information (noting the issues we set out in paragraphs 4.8 to 4.15).*
- *Views on whether it would be useful to clarify how we might use our persistent misuse powers in relation to calls made during unsociable hours and if so how and why.*
- *Views or evidence on the use of and harm caused by (a) localised CLI or multiple CLIs (b) IVM systems being used for outbound dialling where a consumer is kept on hold rather than immediately connected to a live agent.*
- *Whether a checklist and/or best practice guide would be useful and, if so, how such documents could be best developed and communicated.*

Section 5

Issuing notifications

- 5.1 As set out in section 2, the policy sets out Ofcom's approach to the issuing of section 128 notifications and the consequences of issuing those notifications, including the issuing of section 129 notifications and section 130 penalty notices. The policy mainly explains the provisions set out in the Act, providing examples as appropriate. However, the policy also includes information on our priorities on issuing notifications under section 128.
- 5.2 We have powers to take enforcement action in any case where we consider there are reasonable grounds for believing that a person has persistently misused an electronic communications network or service. However, the policy (Annex 5, paragraphs A1.83 – 85) sets out that, in general, we will be guided by a sense of administrative priority in the exercise of our enforcement powers. We consider that if a particular form of persistent misuse is more likely to harm consumers then we are more likely to take enforcement action. The policy prioritises persistent misuse and the harm it causes in three ways:
- qualitative (the degree of harm caused to a consumer, with anxiety more detrimental than annoyance or inconvenience);
 - quantitative (the scale or amount of persistent misuse, with the more people affected impacting on the likelihood of us taking enforcement action); and
 - deterrence (where a new serious form of misuse has come to light and we need to act quickly to stop and deter others from engaging in misuse).
- 5.3 The policy also sets out that where persistent misuse may have been caused by silent and abandoned calls we will consider any steps organisations have taken to help reduce the harm these calls cause (these are summarised in section 2, paragraph 2.14).

Call for inputs

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.

Section 6

How we plan to assess potential changes

- 6.1 The ideas discussed in sections 3 and 4 outline some of the potential changes and clarifications that could be made to help address calls which could be considered to be persistent misuse, including silent and abandoned calls. If we considered it appropriate to take any of these potential changes forward we would assess them in more detail before they were consulted on and proposed for implementation.
- 6.2 We would expect a more detailed assessment of any individual option to follow a typical impact assessment in which we assess the benefits and costs of the policy.³⁵ We describe our expected approach to assessing the benefits and costs and their comparison in more detail below.

Likely benefits from changes or clarifications

- 6.3 We believe that the main benefits will be associated with possible reductions in the overall number of silent and abandoned calls to consumers and/or the harm these calls cause. One way we will consider the potential effectiveness of any changes will be in considering whether the change may reduce the number of these calls as organisations adopt the steps set out in our policy.
- 6.4 However, as set out in section 3, silent and abandoned calls are largely a by-product of organisations making other types of call e.g. live marketing calls, in order to legitimately contact an individual. While Ofcom does not have specific statutory powers to regulate call centres including marketing calls they make, we are aware that any potential changes to our policy may have an impact on other types of calls (e.g. live marketing calls, impacts on information campaigns, product recall etc).
- 6.5 We will also consider whether any changes that involve clarifications to the current policy, could help to reduce the costs of compliance, perhaps through reducing management time required to understand and ensure that they are meeting the policy requirements.

Likely costs from changes or clarifications

- 6.6 Most of the ideas for changes and clarifications that we are considering will impose some costs on stakeholders. The types of costs that we are considering will mostly fall on organisations making outbound calls, primarily call-centres, and may be passed on in whole or in part to call-centres' clients and in turn to consumers.
- 6.7 For example, it is possible that a number of the potential changes and clarifications we are considering would impact on the efficiency of call centres, largely through reducing call agent utilisation time. Call centres use various technologies (e.g. ACS, AMD) to increase the proportion of time that their agents spend talking to live individuals. Given that in most cases a call centre wishes to inform or sell to a live individual, any time in which a call centre agent is employed but not speaking to a live individual could be considered wasted or inefficient time. For some of the potential changes, organisations might instead be faced with one-off costs or investment in new/replacement technology.

³⁵ As such we will follow Ofcom impact assessment guidelines where relevant, see, Ofcom (2005), 'Better Policy Making: Ofcom's approach to Impact Assessment', July.

- 6.8 We will consider how it might be appropriate to take account of any changes to these and any other types of costs in our assessment of any proposed policy change.

Comparing costs and benefits

- 6.9 Once we have analysed the costs and benefits of each of the potential changes/clarifications we are considering we will assess the benefits and the costs. Where possible, we will try to quantify the costs and benefits but we note that in some cases we are likely to be reliant on a qualitative assessment.

Further considerations

- 6.10 We are aware that although the policy is in place there are some organisations that do not comply with the policy and that these organisations could be the cause of a large number of silent and abandoned calls. These organisations may be based overseas or may be small scale organisations or individuals. Given this, we are conscious that adjusting the policy will not address all silent and abandoned calls and that enforcement against firms that breach the law on persistent misuse will still be required. In assessing any change to the policy we will consider the extent of compliance with the policy and how compliance levels may change.

Call for inputs

- 6.11 As noted in section 3, we are keen to gather views on the likely magnitude and type of costs that the various potential policy changes may create. In addition to the questions set out in section 3, we welcome views on any aspect of this section. In particular, we welcome any evidence stakeholders may be able to provide in response to the following questions:

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.*

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.*

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.

Annex 1

Responding to this call for inputs

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 7 November 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/review-persistent-misuse-powers/> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email kiera.bower@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Kiera Bower
Consumer Affairs
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a consultation in Q1 2015/16.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Call for inputs questions

Section 2

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.

You may wish to consider the following points in your response:

- *Evidence of changes in the nature and magnitude of the harm since we last reviewed the policy in 2010.*
- *Whether the harm differs across landlines and mobiles, consumers or the different types of calls (e.g. the time of day the call is received, whether it is a silent call or a live call).*
- *Types of harm other than wasted time and distress.*
- *Whether the distress caused by nuisance calls can be quantified and if so how.*
- *Evidence of how long it takes consumers to deal with silent and abandoned calls (e.g. X seconds or minutes to answer the phone, deal with the call, take steps to prevent further calls) and how that time should be valued.*
- *Views on the relationship between silent and abandoned calls and other call types.*

Section 3

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

You may wish to consider the following points in your response:

- *Whether the main driver for abandoned calls is the use of ACS or if there are other key drivers.*
- *Whether you agree with the possible reasons why consumers may receive silent calls and the extent to which they are likely to be a key driver of the overall volume of silent calls as set out in Figure 1.*
- *Evidence of the key drivers of silent or abandoned calls.*
- *Aside from mobile coverage, whether there are other issues specific to mobiles that could be causing silent or abandoned calls.*
- *Any information you have on how long organisations will ring consumers before disconnecting an unanswered call (e.g. 15 seconds) or how quickly they connect consumers to a live agent (e.g. two seconds).*

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.

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).

You may wish to consider the following points in your response:

- *Views on whether it would be worth pursuing any of the potential changes identified in Figures 2 to 4 or if there are other potential changes that should be considered, for*

example, to make it clearer and easier for stakeholders to understand and follow or to specifically address calls made to mobile phones.

- *Data indicating the likely impact of the potential changes in terms of reducing the harm caused by silent and/or abandoned calls and the potential cost of the change (both one-off and ongoing costs).*

Section 4

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.

You may wish to consider the following points in your response:

- *Whether the five general examples of persistent misuse remain relevant or if there are any changes or other types of persistent misuse that we should consider.*
- *Views on whether there are changes we should consider making to the policy relating to the provision of CLI information (noting the issues we set out in paragraphs 4.8 to 4.15).*
- *Views on whether it would be useful to clarify how we might use our persistent misuse powers in relation to calls made during unsociable hours and if so how and why.*
- *Views or evidence on the use of and harm caused by (a) localised CLI or multiple CLIs (b) IVM systems being used for outbound dialling where a consumer is kept on hold rather than immediately connected to a live agent.*
- *Whether a checklist and/or best practice guide would be useful and, if so, how such documents could be best developed and communicated.*

Section 5

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.

Section 6

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.*

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.*

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.

Annex 5

Current statement of policy

- A5.1 Published separately to this document, available on the Ofcom website at the following link: <http://stakeholders.ofcom.org.uk/binaries/consultations/review-persistent-misuse-powers/annexes/annex5.pdf>.

Annex 6

Glossary and defined terms

Abandoned call	<p>A call where a connection is established but which is terminated by the person making the call after the consumer answering picks up the receiver.</p> <p>Where an information message is played by the person making the call in the event of an abandoned call, this is sometimes referred to as 'an abandoned call with message'.</p>
Answer machine detection (AMD)	Technology used to automatically detect answer machines.
Automated calling systems (ACS)	Technology which can automatically dial and connect calls. Automated calling systems can be used for outbound, inbound and a mixture of outbound and inbound calls. Outbound automated calling systems work by accepting a bulk input of telephone numbers, usually from a computer drive or database and then making calls and try to connect the called party to a live agent or play a pre-recorded message.
Calling Line Identification facility (CLI)	Facilities by which the telephone number of a calling party is presented to the called party prior to the call being established.
Communications Act	The Communications Act 2003, which came into force in July 2003.
Data Protection Act	The Data Protection Act 1998.
Digital Enhanced Cordless Telecommunications (DECT)	Technology primarily used for creating cordless phone systems which allow the use of multiple handsets to one base station and one phone line socket. This allows several cordless telephones to be placed around the house.
Electronic communications network	As defined in section 32 of the Communications Act, a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals (i) apparatus comprised in the system; (ii) apparatus used for the switching or routing of the signals; (iii) software and stored data and (iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.
Electronic communications service	As defined in section 32 the Communications Act, a service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a content service.
ICO	The Information Commissioners Office. This is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies

	and data privacy for individuals.
Interactive voice messaging (IVM)	Technology that automates telephone contact between humans and machines. Typically operated by computers and typically includes prompts for the consumer to either press a button or speak a response. Depending on the consumers input, the automated phone system may play some information, route the caller to another prompt or connect the caller with a human operator.
Nuisance calls	The various different types of calls and messages people regard as a nuisance including unsolicited live marketing calls, recorded marketing calls and unsolicited marketing text messages where the relevant requirements for making marketing contact have not been met and silent and abandoned calls.
Ofcom	The Office of Communications. The UK communications regulator.
Persistent misuse	<p>As defined in section 128 the Communications Act, a person misuses an Electronic Communications Network or Electronic Communications Service if—</p> <ul style="list-style-type: none"> (a) 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; or (b) he 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. <p>The cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents—</p> <ul style="list-style-type: none"> (a) a pattern of behaviour or practice; (b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.
Predictive dialler	See the definition for Automated Calling Systems (ACS).
Privacy and Electronic Communications Regulations (PECR)	The Privacy and Electronic Communications (EC Directive) Regulations 2003.
Privacy and Electronic Communications Directive	Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).
Silent call	A type of abandoned call where the consumer receives a call but can hear nothing on answering the phone and has no means of establishing whether anyone is at the other end of the line.
Voice over Internet Protocol (VoIP)	The methodology and group of technologies for the delivery of voice communications and multimedia sessions over Internet Protocol which is the data protocol used for routing and carriage of messages across the internet and similar networks.

