

[×] - details withheld] Response to Ofcom Consultation (Tackling Abandoned/Silent Calls: June 2010)

Introduction

[×] welcomes the opportunity to respond to Ofcom's consultation on proposals to tackle abandoned and silent calls. We are fully supportive of Ofcom's aim to protect consumers from harm through a best practice regulatory framework. In particular we feel the commitment to minimise the negative impact which abandoned calls (including Silent Calls) have on UK consumers is a positive policy. We also thank Ofcom for engaging with our business through the CBI and directly.

As evidence of our own commitment to reduce the number of silent calls we make, we accept the restrictions being proposed for sales and marketing calls. We share Ofcom's appraisal that the use of AMD on such calls was/is a productivity driver only and, as no time criticality exists, then the benefits of using the technology can be outweighed by a more effective dialling strategy. However, we do have concerns about the application of the policy across the broader spectrum of outbound dialling. Our concerns are centred on the impacts that the Ofcom proposals have on our debt collection ability and the potential consumer harm that could result from the implementation of the proposals. We are pleased that Ofcom has recognised in its proposal that these regulations could potentially result in a detriment to some customer groups. We would stress those impacts on our ability to manage our debt levels effectively could have wide ranging impact in terms of our ability to lend to some consumers.

We would urge Ofcom to reconsider its stance on regulating the Outbound Industry as a 'one size fits all' framework. Other regulators, such as the Financial Services Authority (FSA), recognise that sweeping regulations cannot be applied to every type of financial service industry. For example the FSA has specific regulations for the General Insurance industry and within those regulations further rules for different types of insurance products e.g. Payment Protection Insurance and then specific regulations for the various types of medium used to communicate with consumers.

For this reason, our response will focus on the potential impacts on debt collection activity both in terms of consumer debt concerns, collection levels, and therefore on lending policy to consumers. We will also highlight the potential conflicts with other regulatory bodies that arise in implementing Ofcom's proposals.

Taking each of Ofcom's specific consultation questions in turn.

Q1: *Do you agree that Ofcom should limit the number of times a company can call an answer machine without guaranteeing the presence of a live operator to once every 24 hrs?*

We are pleased that Ofcom considered a number of options, which included an outright ban of the technology, and proposed the least restrictive option available. As stated above, we would accept this principle for Sales and Marketing calls due to there being less of a time critical nature to the calls. For debt collection activity, the 24 hour proposal would result in a dramatic reduction in our ability to successfully contact our customers within the timeframes that are available to us. Whilst Ofcom argues that the rules do not prevent further calls being made e.g. where an agent is present, the reality is that the increase in staffing levels, necessary to achieve this, would be cost prohibitive. In these circumstances, a reduced collection rate will impact on the decisions about who to lend to and could ultimately lead to a reduction in our provision of consumer credit. Ofcom's example of the potential impacts, contained within the consultation, is not indicative of a debt collection environment, where Answer Machine detections are often in 70-80% plus.

Additionally, if we make fewer collection calls (even with increased staffing levels) and thereby fail to resolve our customers' debt issues, we could be in conflict with the OFT's "Irresponsible Lending" practices i.e.

- Failing to establish and implement clear, effective, and appropriate, policies and procedures for dealing with borrowers whose accounts fall into arrears.
- Failing to treat borrowers in default or arrears difficulties with understanding and due consideration.
- Failing to inform the borrower when he has gone into arrears.

We would urge Ofcom to carry out an in depth analysis of the differing consumer behaviours when individuals finds themselves in payment difficulties. We believe this would demonstrate that consumers expect to be contacted by lenders and indeed, many introduce call screening behaviour into their habits. We feel Ofcom's own complaints analysis demonstrates that only a small percentage of complaints on Silent Calls are generated by the debt collection sector (2%), despite it being one of the largest sectors in terms of call volume. Whilst the application of this proposal could reduce the complaints on silent calling by 2%, we feel 100% of customers in the debt arena could be negatively impacted through the possibility of the increased application of administration fees (where we have not made contact with the customer), restrictions in the availability of credit and a perception among our customers of harsher penalties when they are in payment default. The obvious outcome of the application of Ofcom's proposal on Debt Collection calls would be a reduction in the success of contacting our customers. This could lead to an increase in disputes with our customers and this in turn could lead to an increase in

complaints to Financial Ombudsman Service (FOS) which would be an unnecessary and unwelcome additional burden on both parties. There could also be the further detrimental impact of our customers' credit ratings being adversely affected. The volume of consumers impacted as a consequence could dwarf the numbers that Ofcom highlight as being harmed by silent calling.

We would also request that Ofcom similarly consider the negative customer impacts that such a rule would have on Customer Service Campaigns. Ofcom has recognised that such campaigns exist, but has not appreciated the impact in applying 24 hour restrictions to campaigns that have a small window of opportunity to contact customers about a specific service issue. An example would be when we have a delivery failure e.g. due to adverse weather conditions affecting many thousands of customers. We typically would have a small time window, perhaps 2-3 hours, to inform customers before effectively breaking our delivery promise. It is simply not practical, at such short notice, to multiply our staff to guarantee an adviser is available and we would effectively have only one chance to contact them.

The cost increases that would accompany compliance with the 24 hour rule for service campaigns may force us to utilise other, less costly, contact routes such as E mail and SMS, which have a significantly lower success rate. We would be interested in Ofcom carrying out research, with consumer panels, that does not focus on the issues of silent calling, but instead on the desire of consumers to receive timely information on a verbal basis versus a passive contact. Whilst this activity would result in a percentage of silent calling, we believe that the trust built between us and our customers through regular contact, and our compliance with CLI regulations would not result in any form of distress to the vulnerable consumers that Ofcom highlights through its research. The potential nuisance factor associated with these silent calls should be weighed against the nuisance our own customers suddenly experience through our inability to contact them as efficiently and effectively as we can today (within the 3% guidelines).

We accept that Ofcom is focused on reducing silent call harm in its entirety, and we are fully appreciative that this is likely to result in changes in regulation going forward. However, we would urge Ofcom to accept the specific issues that exist, specifically for the Collections sector, and suggest that through a joint working approach, with both business and the other regulatory bodies who govern this sector, introduce a of less restrictive framework. The Ofcom policy for the collections sector that seeks to remove one type of harm should not result in another, arguably more harmful, impact.

Q2: *Do you agree with Ofcom that a two month implementation period (from publication of Ofcom's revised statement) would be an appropriate length of time for industry stakeholders to adopt any changes to comply with the proposed 24 hour policy?*

Ofcom is proposing a two month compliance period on the basis that the technical requirements of compliance are not difficult. We would agree that the technical requirements are not complex should a business' equipment be capable of complying.

However, there are significant impacts on the time lines when we consider that there is a need to increase staffing levels, which would almost certainly lead to us to explore outsourcing as a means of introducing the flexibility we would require to be compliant. Should this be the case, there could be an impact on existing staff terms and conditions which legally require a statutory three month (90 days) notice period along with possible union negotiations. Finally, if we have doubts that our systems are capable of complying we would be forced to carry out a procurement process. All of these outcomes would significantly add to the proposed two months time frame.

For example

1. Recruitment and speed to competency takes a minimum of 12 weeks plus additional time for staff training.
2. Due diligence to set up Outsourcer agreements and/or procure new dialler technology carry timescales greater than 6 months.

The likely outcome would be a combination of all of the above scenarios being necessary and we therefore feel the minimum period needed is at least four months with a more realistic six month period being preferred.

Q3: *Has Ofcom provided sufficient clarity on how the abandoned call rate is to be calculated?*

Q4: *Do you agree with the factors set out by Ofcom for determining a reasoned estimate of AMD false positives in an ACS user's abandoned call rate?*

Q5: *Has Ofcom provided sufficient clarity on how AMD users should calculate an abandoned call rate that includes a reasoned estimate of AMD false positives?*

Q6: *Has Ofcom provided sufficient clarity on how non-AMD users should calculate an abandoned call rate that includes an estimate of abandoned calls picked up by answer machines?*

We are pleased that Ofcom have provided clarity on how the abandoned call rates are to be measured. The calculations provided and testing methodology on how to establish an AMD false positive are clear enough. However, we believe the fundamental issues with the calculation itself still exist. At present the calculation set out by Ofcom aims to measure the number of times a person is incorrectly identified as an answering machine as a proportion of total answer machine detections during a campaign. However, we believe that it would be more appropriate to measure the false positive rate as a proportion of total live calls. We would also like to see the opposite result of False Positives included in the calculation for AMD users. Ofcom have recognised the existence of False Negatives within the policy and therefore recognise these are not live calls, but the example provided by Ofcom does not deduct false negatives. Currently

these are included in the abandoned call rate and if we accept a reasoned estimate for False Positives should be included then False Negatives should be removed.

Q7: Do you agree that Ofcom should not amend the existing two second policy as set out in the 2009 Amendment from 'start of salutation' to 'end of salutation'?

We would thank Ofcom for their decision in 2009 to address our concerns with the original 2008 statement and would agree that Ofcom should not amend the existing two second policy.

Q8: Do you agree with Ofcom's policy proposal that companies provide a geographic contact number (01,02 or 03) in addition to a freephone (080) number in the information message provided in the event of an abandoned call?

The broad principle for this is sound and should be supported. However, we would again ask Ofcom to consider the full implications of using a single approach for information messages and the impacts on collections of providing an opt out. Ofcom recognised in face to face meetings that allowing a consumer in debt to opt out of receiving collections calls is not possible. This reinforces the need for a separate Ofcom framework for Collection dialing so that the position is formalised.

Q9: Has Ofcom provided sufficient clarity on what constitutes a 'campaign'?

Ofcom has defined a campaign as "a single call script to make a single proposition to a single target audience". We believe this definition is too restrictive when we consider the "single proposition element". Sales and Marketing campaigns commonly have a range of offers available, which are communicated as part of the telephony conversation. Accordingly, we would prefer the definition to refer to a "proposition" which might incorporate several offers as opposed to a "single proposition" which would tend to suggest a single offer. The definition could be worded as "a single call script to make a proposition to a single target audience". This would allow us to continue with single campaigns using dynamic routing single scripts and achieve Ofcom's aim.

[3<] is committed to working closely and positively with Ofcom for this and future regulatory changes. We would like to make it clear that it is not in our interest to operate in a manner that upsets our customers. To this end, we would invite Ofcom to take a more transparent approach around the complaint data it holds relating to the Silent Call statistics. We hope that Ofcom will be willing to allow us to identify and rectify any issues therein through sharing this information with us in the first instance rather than only disclosing such information as part of its enforcement role. Although we would expect any issues to be evident through our own complaint processes, we are not complacent and believe any complaint data that Ofcom holds would aid us in evaluating our compliance. Ofcom has recognised that its recent publicity and an increased focus on Silent Calling, plus the ease of raising a complaint, could have resulted in consumers complaining directly to it in the first instance rather than to ourselves. A sudden influx of complaints into our internal process would result in immediate action at our end but if we are unaware of the issue, then we would not be able to rectify it.