



Department
for Culture
Media & Sport

Nuisance Calls Action Plan

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Foreword by Ed Vaizey

Minister for Culture, Communications and Creative Industries



It's cheaper and easier than ever to market goods and services to consumers via the internet or through direct marketing phone calls. The UK has a very strong online economy and UK consumers buy more online than consumers anywhere else in the world.

This represents a great business opportunity and the direct marketing industry generates billions of pounds in sales with tens of thousands of people employed in the UK in direct marketing. But there is also a growing problem with nuisance calls. Ofcom research last year showed that four out of five adults with a landline experienced a nuisance call during the research period. In February 2013, complaints about nuisance calls reached a record level of over 10,000 in a month.

We already have clear rules and regulations in place to govern direct marketing activities. But the high level of nuisance calls means we need to take further action. Our primary concern is consumer protection, but it is also essential for the direct marketing industry that it puts its house in order – nuisance calls are damaging the reputation of the whole industry.

In our strategy paper, *Connectivity, Content and Consumers: Britain's digital platform for growth*, that was published in July 2013, we said we would set out more detailed plans for tackling nuisance calls.

This Action Plan summarises the progress we have made over the past 18 months, the work we have in hand and our future plans. We have:

- improved consumer information,
- made it easier to complain, and
- seen regulators step up their enforcement work and issue significant penalties to companies that have broken the rules.

We are enabling information sharing to help regulators in their enforcement work. The Telephone Preference Service has also launched an accreditation scheme to help improve best practice. Looking ahead, I am pleased to see the progress being made to improve call tracing, and we will be consulting on lowering the threshold before monetary penalties can be issued by the Information Commissioner's Office.

There has also been welcome parliamentary interest in this work. We have seen a select committee inquiry, an inquiry by the All Party Parliamentary Group on nuisance calls and a Backbench debate in the House of Commons. Parliamentary scrutiny has highlighted the menace of nuisance calls, but also shown that legislation alone will not tackle the problem effectively. This is why I have been working closely with regulators, consumer group representatives, communication providers and MPs to find collective solutions that can make a real difference.

There is more work to be done. This Action Plan sets out the efforts we are making to tackle nuisance calls. There is no single magic bullet that will rid us of nuisance calls, but I remain determined that we continue to tackle the problem and I am convinced that we can make progress.

Ed Vaizey MP

Minister for Culture, Communications and Creative Industries

30 March 2014

Executive Summary

Nuisance calls are a scourge. At best they irritate consumers and at worst they can cause anxiety and fear. They undermine the reputation of the legitimate direct marketing industry.

The regulators – the Information Commissioner’s Office (ICO) and Ofcom – have powers under existing legislation to tackle nuisance calls. This Action Plan reviews recent progress in tackling nuisance calls and sets out our plans for making enforcement action taken by the regulators more effective. It also reviews some of the actions taken by the private sector – organisations involved in direct marketing and communications providers who have made tools available to consumers to help them manage their own calls more effectively.

Actions Planned

We will:

- enable Ofcom to more easily share information with the ICO, by a Statutory Instrument which we will bring into force by 1 October 2014.
- consult on proposals to lower the legal threshold for consumer harm later this year. This will enable the ICO to take enforcement action against more organisations breaching the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR).
- consider the recommendations of a task force being convened by Which? to review issues concerning consent and lead generation.

Actions already taken

We have been working with regulators and other stakeholders and in a relatively short period of time introduced and have in place measures that are helping to protect consumers more effectively from nuisance calls. These include:

- in 2010, we increased Ofcom’s monetary penalty powers from £50,000 to £2 million.
- in 2011 we enabled the Information Commissioners’ Office (ICO) to issue monetary penalties of up to £500,000 under the PECR.
- since January 2012, monetary penalties totalling £2.54 million have been issued by regulators and action against other organisations is also likely in the near future.
- the ICO now “names and shames” persistent offenders on its website, which helps to alert consumers about their conduct.
- improved information and signposting and revision of the ICO’s guidance in December 2013.
- the Telephone Preference Service’s “TPS assured” voluntary accreditation scheme for calling companies was launched in October 2013, enabling audits to be conducted and an approved logo to be displayed offering greater reassurance to consumers.

Furthermore, the Joint Action Plan published by the ICO and Ofcom in July 2013, sets out their future plans to tackle nuisance calls. Ofcom and ICO are reviewing the Telephone Preference Service in light of concerns that it may not be working as effectively as when it was initially introduced in 1999. We will consider the findings to determine whether further action is necessary.

Parliamentary Scrutiny

The All Party Parliamentary Group (APPG) on nuisance calls published its report in October 2013 and the Culture Media and Sport (CMS) Committee published its report on nuisance calls on 5 December 2013. We welcome both pieces of work as important contributions to collective efforts to address the issue of nuisance calls.

Some of the recommendations of the APPG are already incorporated in our Action Plan and we have provided a detailed response to the CMS Committee report concurrently with the publication of this Action Plan.

Ministerial Engagement

The Minister for Culture, Communications and the Creative Industries, Ed Vaizey, has held a series of roundtables with the industry, consumer groups including Which?, the regulators ICO and Ofcom and interested MPs. These will continue as part of ongoing efforts to develop effective solutions to tackle nuisance calls.

Introduction

What are nuisance calls?

The term “nuisance calls” can be applied to a range of different types of calls. However, for most consumers it primarily relates to calls made by telemarketing organisations seeking to sell a product or a service.

For the vast majority of consumers nuisance calls are an annoyance or irritation. However, for some consumers, particularly the vulnerable and elderly, nuisance calls can cause real fear and anxiety.

It is important to note that unless a consumer has signed up with the Telephone Preference Service (TPS)¹ – the UK’s national ‘do not call’ register – there is nothing to prevent organisations making marketing calls to them. Once a number is registered, it should not be called without the consumer’s specific consent. Sometimes this consent can be given inadvertently when, for example, making on-line purchases or completing questionnaires.

What makes the calls a nuisance for consumers is that the calls are unrequested and unwanted. This is especially the case where consumers have signed up to the TPS, or have advised particular callers that they do not wish to be contacted again and they continue to receive calls from companies.

Current Legislation

The Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”) as amended, regulates calls made for marketing purposes including:

- unsolicited direct marketing “live” calls; and
- automated recorded marketing message calls.

Under this legislation, the Information Commissioner’s Office (ICO), is responsible for taking enforcement action in relation to both “live” unsolicited marketing and automated marketing recorded message calls. The PECR prohibits the making of unsolicited “live” direct marketing calls to a number that is registered with the TPS. The exception to this prohibition is where the person to whom the number is allocated has previously notified the caller that they do not object to such calls being made on that line by that caller. All recorded marketing message calls require prior consent. These regulations apply to calls made from within the UK or from outside the UK, on behalf of UK companies. A civil monetary penalty of up to £500,000 can be issued by the ICO for companies breaching the PECR.

Abandoned and silent calls are regulated by the Office of Communications (Ofcom) using its powers to combat persistent misuse of electronic communications networks and

¹ The TPS is a free service for consumers and more than 19.6 million numbers are currently registered with them.

services, under sections 128 to 131 of the Communications Act 2003. The maximum penalty that can be issued by Ofcom under these provisions is £2 million. A diagram illustrating how marketing calls are currently regulated is attached at **Annex A**.

The Challenge

Whilst there is a regulatory framework in place to protect consumers from receiving unwanted marketing calls, there are indications that some organisations are deliberately ignoring the rules. Ofcom research in May 2013 of 853 consumers showed that 82% of consumers participating in a study received a nuisance call on their landline telephone number in a four week period. It may not always be the case that organisations making such calls are deliberately ignoring the rules, because, as noted above, some consumers may have previously agreed to receive such calls.

The types of nuisance calls varies and Ofcom's research indicated that "live" marketing calls were 38%, silent calls 34% and recorded sales calls 14%. In addition, the research also found that calls about Payment Protection Insurance (PPI) claims made up 22% of all received nuisance calls where participants were able to provide a description of the product or service. Further details about the full range of research findings can be viewed by visiting Ofcom's website².

Following discussions with key industry and consumer group representatives, it appears that there are several key factors that have made the issue of nuisance calls particularly acute over the past few years:

- **The expansion of the data industry**, where through the internet and other means, the collection and sale of data has become a lucrative growth industry.
- **The reduction in the cost of making calls** and the development of new technology that enables organisations to make a large number of "live" unsolicited direct marketing calls or automated recorded message calls at little cost.
- **Wider use of technology that enables the calling line identification (CLI) functionality to be readily 'spoofed'**, which is the practice of changing the telephone number that gets sent with the call, causing the telephone network to display a number to the consumer that is deliberately false or invalid, so that consumers do not know where the call came from. This practice also makes it more difficult to trace the caller in event that a complaint is received by regulators.
- **The global nature of the communications networks** means that calls can be routed through several countries before arriving in the UK, which makes them more difficult to trace quickly.

The scale of the problem can be seen from the very substantial number of complaints made to the ICO in the past year. In 2012-2013 the ICO received 150,365 complaints on their online reporting system and 120,310 between April and November 2013 and to date over 111,915 consumers have signed Which?'s online petition³. Whilst, not all complaints will be valid (for the reasons already outlined or where the call is not a marketing call, thereby falling outside the scope of the TPS and PECR), some complaints do involve calls where the caller has been advised to stop making further calls and such requests have been ignored by callers.

² <http://consumers.ofcom.org.uk/2013/05/ofcom-research-reveals-extent-of-nuisance-calls>.

³ <http://www.which.co.uk/campaigns/nuisance-calls-and-texts/#?intcmp=GNH.Campaigns.Stop-Nuisance-Calls-And-Texts>

Ofcom's complaints data indicates that in relation to abandoned and silent calls, larger well known organisations have improved compliance. As far as Ofcom can determine, complaints are now typically generated by a large number of smaller organisations.

Nuisance calls are similarly problematic in other countries, so the UK is not alone in facing these challenges.

No silver bullet

The range of underlying issues means that there is no silver bullet or simple solution that can be applied to alleviate the problem. Therefore, a range of options are being considered and pursued for reform, both legislative and non-legislative, which we believe will help to make an impact on the volume of nuisance calls and the associated harm to consumers.

Action to date

Enforcement

In 2010, we increased the monetary penalty, which Ofcom could impose upon organisations for making abandoned and silent calls, from £50,000 to £2 million. In 2011, the ICO was provided with the powers to issue monetary penalties up to £500,000 for serious non-compliance with the PECR.

Since January 2012, the ICO has issued monetary penalties under the PECR totalling £975,000 to six companies. Ofcom has issued monetary penalties totalling £1.56 million to three companies, which included £750,000 on two occasions and £60,000 on the third occasion. In addition, the ICO is currently investigating 15 companies with a view to taking enforcement action in the near future. Further details about the companies specifically penalised by both the ICO and Ofcom are provided at **Annex B**.

Additionally, as part of the work to send a very clear signal to organisations breaking the law, the ICO has since October 2012 "named and shamed" persistent offenders on its website at: www.ico.org.uk/enforcement/action/calls. This is a welcome initiative, as it helps to put the spotlight firmly on organisations that breach the rules and alerts both consumers and regulators to their conduct.

Other action taken by regulators

Engagement

In March 2013, Ofcom and the ICO underlined their commitment to taking enforcement action by sending a joint letter to around 170 organisations across the call centre industry. This letter emphasised the importance of complying with the measures in place to protect consumers from harm.

In addition to formal enforcement work, Ofcom and the ICO also takes informal enforcement action, the result of which can be that companies about whom they may have concerns, are brought into compliance more quickly without having to pursue formal action. The ICO has engaged with over 20 organisations responsible for making nuisance calls, holding them to account through compliance meetings and then monitoring their performance over a period of 3 months. As a result of this process, the ICO has recorded substantial reductions in complaints for some organisations⁴. For example, from Quarter 1 to Quarter 4 in 2012-2013, the ICO recorded a reduction in marketing complaints against The Claims Guys Ltd of 77%, We Fight Any Claim Ltd of 52%, British Gas of 59%, Scottish Power of 30% and Talk Talk of 75%.

⁴This information was made available on the ICO's website, but is no longer available due to the pages being updated.

The ICO continues to monitor companies and publish outcomes on a quarterly basis. Further details about the ICO and Ofcom action are set out at:

<http://stakeholders.ofcom.org.uk/consultations/silent-calls/joint-action-plan>.

http://www.ico.org.uk/news/latest_news/2013/ICO-and-Ofcom-draw-up-joint-action-plan-to-tackle-nuisance-calls-31072013

In 2013 Ofcom took informal enforcement action against 25 organisations following consumer complaints. As a result, complaints linked to the telephone numbers used by 16 of those organisations have stopped and complaints in relation to five have fallen significantly and four case are still on-going.

ICO and Ofcom Joint Action Plan

On 31 July 2013, the ICO and Ofcom published a Joint Action Plan for taking action against organisations that generate nuisance calls or messages. The plan represents a formal commitment from both organisations to work in partnership on a series of initiatives covering a range of areas. It summarises key work undertaken by the ICO and Ofcom in the first half of 2013 to address the issue of nuisance calls and set out important priorities for the ICO and Ofcom in further work, including:

- ongoing targeted enforcement against non-compliant organisations;
- improving call and message tracing processes to track down those responsible for making nuisance calls;
- an assessment of the impact of the Telephone Preference Service (TPS) on the level of unsolicited "live" sales and marketing calls, to understand how well the TPS is currently working for consumers. Ofcom and ICO expect to publish findings of their research in June 2014.
- publication by the ICO of revised industry guidance which includes detailed advice on appropriate methods of consent, the limitations of indirect third-party consent, time limits, and the need for records of consent to be kept. (This was published on 9 September 2013).

The ICO and Ofcom published an update on progress on this programme of work on 3 March 2014, which set out the progress made in the priority areas identified in the July 2013 plan:

http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/JAP_update.pdf?utm_source=updates&utm_medium=email&utm_campaign=ico-jap-update-mar14

Complaints to Ofcom about silent and abandoned calls have fallen since Ofcom embarked on its joint action plan, after reaching a peak of 3,900 in April 2013, complaints fell to 3,447 by July 2013 before declining further to 2,507 in January 2014. Similarly, complaints about nuisance calls to the ICO and the Telephone Preference Service (TPS) also appear to have fallen since early 2013. The plan also sets out the priority areas for 2014 and specific projects in the coming months include publishing easy-read and video guides on how consumers can protect themselves, further diary-based research to assess the incidence of nuisance calls and joint research with the ICO to assess the impact of the Telephone Preference Service on the level of live telesales. A further update on their work will be published by the end of this year.

The ICO also collaborates with Ofcom and a number of other regulators, consumer groups and organisations and industry under Operation LINDEN. The aim of this multi-agency group is to take a cross-sector look at the trade in personal information and

identify areas for intervention through joint, coordinated action to reduce the harm to consumers and restore public confidence. This has led to improved information-sharing, enabling a better understanding of current and emerging threats, the drivers and enablers and identifying greater opportunities for coordinated enforcement and disruption activity and industry compliance through prevention and education programmes. It is anticipated that this approach will drive good practice and industry standards to achieve better compliance around lead generation and direct marketing.

SMS Global System for Mobile Communications Association (GSMA) spam text reporting service

Whilst the focus of this Action Plan is nuisance calls, it is relevant to note that substantial progress has been made in tackling nuisance text messages. When an SMS spam message is received by a subscriber it can be easily reported by using short code "7726". The spam report is captured by the GSMA spam reporting service, run by Cloudmark, and is added to its database. The service helps operators understand both the amount of spam entering and leaving their networks, as well as the level of spam within their networks. Mobile operators can access detailed reports on spam content, senders and reporters and can use this information to take action against abusive traffic, without impacting legitimate users and content. Operators are also able to disconnect SIM cards, if it is felt to be warranted. **It is estimated that about 500 SIM cards are being disconnected each week.**

This system and the commitment of the mobile operators to introduce it appears to have greatly improved the mobile operators' efficiency in identifying and blocking senders of unwanted SMS messages and is an invaluable tool for enforcement purposes. On 20 March 2014, the GSMA announced that EE, O2, Three, Vodafone and the Information Commissioner's Office (ICO) are working together through this service to tackle text messages and the next step will include considering ways to extend the service to also cover nuisance calls.

Improving Industry Best Practice

As well as taking action against those who break the law, there has been work underway to develop best practice methods in the marketing industry. **The TPS launched an accreditation service called TPS Assured⁵ on 31st October 2013.** This enables calling organisations that make outbound sales and marketing calls to have an audit to help ensure that they are abiding by the PECR, persistent misuse requirements under the Communications Act 2003 and the Direct Marketing Association's (DMA) Code of Practice. Once accredited, companies can display the TPS Assured logo, which offers greater reassurance to consumers that the calling company is a "reputable caller" and compliant with the required regulations and codes of practice at the time of audit. Organisations representing call centres and calling organisations may also wish to strengthen their requirements for outbound marketing calls, as this would also help to further prevent and reduce unsolicited marketing calls being received by consumers.

⁵ <http://tpsassured.co.uk/>

Improving Consumer Information

It became apparent to DCMS that there was confusion and uncertainty among consumers about whom to contact when making a complaint about receiving unsolicited calls and texts, particularly as the regulatory landscape involves several organisations. Therefore, a significant amount of work has been undertaken, particularly over the last 18 months, which has made it easier for consumers to take action. **There is now a series of consumer guides for each of the different types of nuisance calls and messages on Ofcom's website:**

<http://consumers.ofcom.org.uk/2012/10/tackling-nuisance-calls-and-messages>

The guides have been viewed more than 250,000 times since being introduced in October 2012 and were revised following consultation with consumer groups in December 2013. The ICO, Ofcom and TPS websites also signpost the correct place to make a complaint about nuisance calls and texts at:

<http://www.ico.org.uk/complaints/marketing>

<http://consumers.ofcom.org.uk/tell-us/telecoms/privacy/>

<http://www.tpsonline.org.uk/tps/index.html>

The two regulators, the ICO and Ofcom, have substantially improved consistency on their websites, so that consumers can more easily determine where to make a complaint. In addition, **we welcome and appreciate the ICO, Ofcom and Which? working in close collaboration to create a consumer complaints tool that was successfully launched at the end of July 2013.** This helps direct consumers that arrive at Which?'s website to the right place to complain about the different types of nuisance calls and texts. To date, Which? has received over 25,000 enquiries from consumers who have read the advice pages, and of these about half have been directed to either the ICO or Ofcom: <http://www.which.co.uk/campaigns/nuisance-calls-and-texts/#?intcmp=GNH.Campaigns.Stop-Nuisance-Calls-And-Texts>.

We also welcome BT's Nuisance Call Advice Line (NCAL) service, along with other major fixed-line call providers that provide similar effective services, which provides consumers with advice and support about how to manage and report nuisance calls. In addition, BT undertook a trial for vulnerable consumers who wish to report nuisance calls, but do not have internet access, by registering complaints on their behalf through the Which? nuisance calls complaints portal. This trial ran until the end of November 2013 and as it was assessed to be successful, it has been incorporated on a permanent basis into BT's NCAL services.

Further action being taken

Legislation

Enabling Information Sharing between Ofcom and ICO by October 2014

Ofcom in the course of its regulatory activity may obtain information about companies, which might also be useful for the ICO in relation to breaches of the PECR. However, information disclosure restrictions in s393 of the Communications Act prevent Ofcom from sharing this information with any person not listed in that section (including the Information Commissioner) without the consent of the company or companies concerned. Section 393 allows the Secretary of State to specify additional persons with whom Ofcom can share information, and also to specify particular functions of those persons in relation to which Ofcom can share information. We intend to lay a Statutory Instrument tomorrow (aiming to come into force by 1 October 2014), which specifies the Information Commissioner, and his functions under the PECR to enable Ofcom to pass regulatory information to the Information Commissioner without the consent of the regulated company. That information may assist him to carry out more effectively the enforcement functions in the PECR.

The SI will also enable Ofcom to disclose information regarding telecoms companies to the Insolvency Service in relation to "company phoenixing", which is when a company enters insolvency and the same directors then set up a similar company under a new name. Knowing that Ofcom may disclose information about telecoms companies which "phoenix" should help to act as a deterrent to directors in the future and help reduce the frequency of such business activities. Also, it will allow Ofcom to share Information with the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR) in relation to their regulation of the UK payment systems.

Amending the Legal Threshold for ICO enforcement action

Currently, the ICO can only issue monetary penalties for non-compliance with PECR against persons where it considers the contravention of the requirements of PECR to be serious and of a kind likely to cause "substantial damage or substantial distress". This means that for cases which are not likely to cause substantial damage or distress the ICO's scope for action is limited. The ICO considers that if it had powers to issue penalties, where a contravention was likely to cause 'nuisance, annoyance, inconvenience or anxiety', then it could take action more easily and against more companies and thereby regulate more effectively. **We will be consulting on making a change to the Privacy and Electronic Communications Regulations (EC Directive) Regulations 2003 ("PECR") to lower the threshold to remove the need to prove substantial damage or substantial distress.** Following the consultation we will look to implement reforms as soon as parliamentary time allows.

Notification of no objection and consent:

One of the key issues that has been raised in discussions is that consumers are often unaware that they have given notification to a company that they do not object to that company calling them for marketing purposes (for ease of reference we refer to this as "notification") and that this is despite the consumer being registered with the TPS. Such notification can be given, for example when making on-line purchases or when completing questionnaires and can be secured in a number of ways e.g. a pre-ticked box agreeing to receive such calls.

The ICO considers that the organisation making the marketing call must have been notified by the consumer that they do not object to that organisation calling them. An organisation must therefore be very careful when relying on indirect (third party) consent, which was originally given to another organisation. The person must have intended for their notification to be passed on to the organisation doing the marketing. However, despite this requirement, there is an issue about whether consumers are aware that their actions are interpreted as notification, that they do not object to being contacted by a third party (or parties), and that this notification overrides TPS registration.

Under the Data Protection Act 1998 (DPA), organisations need to tell people if they plan to pass their personal data on to anyone else, and are likely to need their consent to do so. As with notification for the purposes of the PECR, there is an issue about whether consumers are aware when they have indicated their consent to having their personal data passed to a third party.

We welcome the fact that the ICO has updated its guidance⁶ on this issue so that it is clearer for companies on what is and is not acceptable under the rules. The main points in the guidance relate to:

- the requirement for organisations to have consent before making automated marketing calls, making live marketing calls to consumers registered with the TPS, or when passing consumer details on.
- organisations needing to be able to demonstrate that consent was knowingly given, is clear and specific.
- clear records of consent are kept.

Organisations must carry out rigorous checks before relying on indirect consent (ie consent originally given to a third party). According to the guidance indirect consent is unlikely to be valid for calls, texts or emails, particularly if it is generic or non-specific. Neither the DPA nor the PECR bans the use of marketing lists, but organisations need to take steps to ensure a list is compiled accurately and reflects the consumer's wishes. Bought-in call lists should be screened against the TPS, and the ICO's view that it will be difficult to use bought-in lists for text, email, or automated call campaigns as these require very specific consent for marketing.

One possible course of action suggested by Which? in relation to notification and consent included placing a time limit of one year for consent obtained through third parties and clarifying and improving the wording concerning notification and consent in relation to the opt out⁷. This also featured with other measures to better enable consumers to give and withdraw their consent to receive marketing communications, in the Private Member's Bill promoted by Mike Crockart MP on 1 November 2013.

⁶ http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Privacy_and_electronic_Practical_application/direct-marketing-guidance.pdf

⁷ As advocated through Mike Crockart MP's Private Members Bill, which was due for second reading on 29 November, but was not debated due to insufficient time.

Although, the CMS Select Committee rejected having an expiry date on consent, given the updated ICO guidance, **we have asked Which? to convene a Task Force to review consent and lead generation issues, which will report to Government later this year and we hope it will commence work in these two areas as soon as possible.**

Any potential reform will need to take account of a proposed EU Data Protection Regulation, which is currently being negotiated. The European Commission published two legislative proposals for data protection on 25th January 2012. The proposals contain a draft Regulation (setting out a general EU framework for data protection) and a draft Directive (covering processing in the area of police and judicial co-operation). Proposals include considering whether consent should be required to be explicitly obtained by the organisation making the unsolicited "live" marketing call, or on whose behalf the call is made. This could be beneficial for consumers and lead to fewer nuisance calls for consumers, but conversely it could have a major impact upon organisations carrying out legitimate direct marketing.

Non-Legislative

Call Tracing:

As well as allowing consumers to successfully identify and return calls, valid Calling Line Identification (CLI) also allows any nuisance calls to be reported accurately and more readily investigated. Currently, Ofcom's statement of policy on persistent misuse of an electronic communications network or electronic communications service states that people using automated calling systems or 'predictive diallers' to make marketing calls, which is how most calls are made, should include a phone number which identifies the caller's CLI. Similarly, the Direct Marketing Association's (DMA) code of practice requires that CLI should be provided for all calls. This is something we think organisations could easily do voluntarily. **To this end, with our support, Which? will be writing to a number of trade associations to ask them to adopt the same standard as the DMA requires of its members, to require their members to send a CLI when making marketing calls.**

We note the Select Committee's recommendations on CLI (recommendations 11 and 13) are similar to those put forward by Alun Cairns MP in his 10 Minute Rule Bill on 6 November 2013: that providing a CLI should be compulsory for all marketing calls and no charge should be made by telecom operators. As we note below in response to the APPG report, we would prefer CLI to be free of charge but consider that it is a commercial decision for service providers as the cost of providing CLI falls on the service provider, rather than on the companies making marketing calls. Nevertheless, we will revisit this issue once we are able to consider whether voluntary action has resulted in improvements⁸.

In the meantime it is useful to note that in December 2013 Ofcom published information about the main services offered by phone companies that can help consumers protect themselves against nuisance calls and compare any charges that may apply including those relating to CLI information. In this regard, **we welcome TalkTalk's announcement of 15th January 2014 that it was making its additional services which are used to deal with nuisance calls available free of charge.** We hope that other service providers will follow suit with similar announcements, which will be warmly welcomed by consumers.

⁸ This can be accessed at <http://media.ofcom.org.uk/2013/12/10/services-that-can-help-tackle-nuisance-calls/> and <http://consumers.ofcom.org.uk/2013/12/phone-company-services-that-can-help-tackle-nuisance-calls/>

Ofcom's policy statement on persistent misuse states that the repeated forwarding of unauthentic or misleading CLI information will be regarded as persistent misuse in its own right. However, many companies deliberately ignore these rules and therefore **Ofcom is working with regulators and communication providers to explore technical options to make it more difficult to misuse CLI in this way, and to help identify companies that continue to do so.**

Much good work is already underway. **On 21 October 2013, Ofcom and the ICO announced that they would be joining forces with regulators from Australia, Canada and the USA to tackle the problem of number "spoofing",** as calls using spoofed numbers are made from all over the world and account for a significant and growing proportion of nuisance calls made to consumers in English-speaking countries. Ofcom and the ICO pledged to combine resources, share intelligence and work collaboratively with their international counterparts to find solutions. Assistance from the telecommunications industry in each of the four countries will also be sought as part of the initiative and this work complements Ofcom's ongoing work to improve call tracing processes as set out in its joint action plan with the ICO.

There are significant challenges in doing so due to technology and operational developments in the industry over the past 20 years, but again work is also underway. For example, **Ofcom has established a new Interconnect Working Group, chaired by the Office of the Telecoms Adjudicator,** involving companies which carry phone calls across their networks from the source to the destination. **This group will develop and test new cross-industry approaches to tackle nuisance calls via the commercial and operational processes that underpin the end to end delivery of calls across the multiple networks between caller and called parties.**

For calls coming from overseas, some operators provide any available CLI information to consumers. For BT customers, messages such as "International: withheld", "international", or "INTL" are displayed, which makes it difficult for consumers who wish to screen their calls either manually or using call filtering devices, to distinguish between known and welcome international callers and unknown calls. **BT is updating its telephone exchanges so that when the calling number is available, the full international CLI would be displayed for the consumer's benefit. BT expects to have completed the required exchange upgrades by June 2014.**

When making a complaint about a nuisance call, information from the consumer about any CLI that was displayed is useful, but it is possible to instigate a call trace without this, with the date and approximate time of the call usually being the minimum information being required. Therefore, consumers are encouraged to report complaints to the relevant regulator, even if they are unable to determine the CLI, as information received by the regulator will still help them to identify areas for investigation.

Ofcom requested the Network Interoperability Consultative Committee (NICC) to develop new industry standards for call tracing between networks, as well as revising the current rules on how CLIs are passed between networks and presented to consumers. **The call tracing standard was published in December 2013 and is expected to simplify and increase the likely success of the process as far as possible.** Ofcom is intending to write to call providers indicating their support for the standard and will be piloting the operation of the standard with industry starting early this year. The necessary complexity of the new process means that it will need to be tested carefully and modifications may be required. Work on the revising the guidelines on how CLI should be provided and displayed, addressing the technology and operational changes in the industry touched on earlier is expected to be completed

later this year and following the review process, final publication is likely to be during the first half of the year.

Also, Ofcom is planning to explore with industry the technical feasibility of a short code for reporting nuisance calls similar to the "7726" reporting system for texts. The short code reporting for SMS is easier to facilitate due to use of more modern systems in all mobile networks with broadly equivalent and standardised functionality. It is not as straightforward to translate this reporting system into fixed networks for voice calls, due to the wide variation in network systems and technologies in use.

Responding to the Payment Protection Insurance (PPI) Issue

Ofcom's research in May 2013 indicated that calls about PPI claims made up 22% of all nuisance calls received. The Claims Management Regulation (CMR) Unit in the Ministry of Justice (MoJ) has been working to respond to this issue. Between March 2013 and February 2014, the CMR Unit received 1,480 consumer complaints about unsolicited calls and texts related to mis-sold PPI claims and accident claims.

The main investigation challenge is identifying who is responsible for the calls and texts and building up sufficient evidence of abuses to take enforcement action. Claims management companies (CMCs) that buy data or leads from data and lead generating organisations are required to ensure that the seller is appropriately authorised, and thereby compliant with the Data Protection Act. CMCs which breach these requirements are subject to investigation and appropriate enforcement action, which can range from warnings to conditions (restrictions) being added to their authorisation and ultimately suspension or cancellation of their authorisation.

Financial incentives such as compensation for mis-sold PPI have increased the volumes of nuisance calls and messages, as did the practice of paying or receiving referral fees for personal injury claims, which the Government banned in April 2013. **The ban on referral fees in personal injury cases appears to be reducing the volume of marketing calls to potential clients**, as CMCs can no longer receive a fee for the referral of client details. **The CMR Unit is actively policing the ban on referral fees, in addition to a ban on CMCs offering financial rewards or similar benefits to potential claimants as an inducement to make a claim.**

The CMR Unit has put more resources into tackling the problem of unsolicited calls and text messages to ensure that it can move more quickly to investigate and take enforcement action where CMCs have broken the rules. There is now a dedicated team in place to conduct a targeted risk based audit programme and an expansion of the wider enforcement teams. Between January and December 2013, the CMR Unit audited 34 CMCs engaged in lead generation and issued warnings to CMCs whose marketing was non-compliant. The number of consumer complaints received by the CMR Unit in relation to unsolicited contacts has fallen considerably. Complaints about unsolicited calls fell by 45%, unsolicited texts by 61% and unsolicited emails by 89% between March 2013 and February 2014. Further work of the CMR Unit is detailed in the box opposite.

Also, we welcome the CMR unit's consultation (being published concurrently with this Action Plan) on the issuing of financial penalties to CMCs that make nuisance calls to consumers. The proposals will enable the CMR Unit to take action against CMCs that break their rules, including CMCs using information gathered by unlawful unsolicited calls and texts, as well as those CMCs that provide poor services and waste time and money for banks and individuals by making spurious or unsubstantiated claims. Penalties will be based on the turnover of the company and the nature of the offence, which for large claims firms could be up to 20% of their annual turnover. The consultation will run for four weeks and the measure is likely to become effective later this year.

Action on PPI Nuisance Calls

Coordinated action

The CMR Unit is working more closely with the ICO and Ofcom to detect and punish malpractice and raise standards, which includes actively sharing information and intelligence. The ICO has joined two CMR marketing audits and the CMR Unit is looking to expand this arrangement further to ensure it continues to benefit from the ICO's expertise in identifying and advising on more technical breaches of the PECR 2003.

The CMR Unit is also analysing intelligence from Ofcom in relation to breaches by CMCs of the TPS with a view to auditing and reviewing those CMCs' practices.

Education

The CMR Unit has produced comprehensive guidance reminding CMCs of their obligations in respect of direct marketing calls, text and email marketing and website advertisements. Guidance has also been produced for consumers, providing advice on what action to take when they receive unsolicited text messages and calls.

Stronger Conduct Rules

In July 2013 the CMR Unit introduced more robust Conduct Rules, requiring CMCs to agree contracts in writing and obtain a signed contract from consumers before taking any fees thereby tackling the main detriment seen from unsolicited calls. Further work is now underway to tighten the Conduct Rules further to help tackle more effectively the poor practices of some CMCs when presenting financial claims. The CMR Unit recently consulted on proposals to strengthen existing requirements to ensure that any data/leads CMCs receive through telemarketing are legally obtained and claims are properly substantiated.

Naming CMCs subject to recent enforcement action and under investigation

Since June 2013, the CMR Unit has been naming CMCs under investigation or subject to recent enforcement action on its website at: www.justice.gov.uk/claims-regulation/enforcement <<http://www.justice.gov.uk/claims-regulation/enforcement>>. This includes providing quarterly updates on the action the Unit is taking to deal with malpractice in the industry, in particular non-compliant marketing and mishandling of PPI claims. This is part of on-going work to raise industry standards and ensure consumers and businesses are better informed. During 2013, the CMR Unit stepped up enforcement action with 347 CMCs warned, suspended or cancelled, 194 investigated or audited, and 963 inspected.

Fining CMCs

Subject to Parliamentary approval, CMCs will, for the first time, face fines for poor conduct, such as gathering data without due diligence. The necessary primary legislation was included in the Financial Services (Banking Reform) Act 2013. The CMR Unit will be consulting on the details of the proposed financial penalties scheme and it is intended that the scheme will be place by the end of 2014.

Complaints handling by the Legal Ombudsman

The Ministry of Justice is aiming to bring consumer complaints against CMCs within the remit of the Legal Ombudsman by the end of 2014. This will allow consumers whose complaints are upheld, to benefit from the Legal Ombudsman's wider powers for redress, including the ability to award compensation. It will also enable the CMR Unit to dedicate more resources to tackling bad practice and work with the Legal Ombudsman to improve standards within the claims management industry.

PPI complaint numbers reducing

It also appears that PPI related complaints made to the ICO may have peaked and could be reducing in volume, which is welcome news for many consumers who receive these types of calls. According to the ICO, there was a 15% reduction in the number of PPI complaints between September 2012 and September 2013, which was in contrast to total complaints being reported to them that increased by 118%. Also, PPI made up 43.7% of complaints reported to the ICO in September 2012 that decreased to 17% by September 2013.

Consumer awareness through bills

During the CMS Committee evidence sessions into nuisance calls in September some Committee Members felt that consumers without internet access were disadvantaged by the present arrangements, as they were not properly aware of how to make complaints about nuisance calls. The idea of service providers sending details with paper bills was suggested. We agree that it is essential that consumers have easy access to information about nuisance calls enabling them to be aware of the steps that they can take to help protect themselves including whom to complain to. Ofcom, as well as the ICO, communication service providers and consumer organisations, provide advice for consumers about nuisance calls on their websites, as well as over the phone for those that do not have access to the internet (according to Ofcom around 20% of households do not have home internet access⁹) or would prefer to speak to someone about their experiences. Providing information with bills may have a limited impact, as not all consumers check their bills and there is already quite a lot of information on bills and enclosures for consideration and limited space, which could dilute the message and could also potentially be quite costly to implement¹⁰.

Recognising the concerns raised by the CMS Committee, Ofcom is carrying out research to better understand where consumers would look for advice about how to stop nuisance calls, and who to complain to about nuisance calls. It will also help Ofcom to better understand the needs of different consumers and any particular gaps so it can consider with other stakeholders how these can best be addressed. It plans to publish shortly the findings of the consumer research. Ofcom will be reviewing the information provided by different organisations about nuisance calls, both online and over the phone, and plans to work closely with stakeholders to promote greater consistency across each of these communication channels. Ofcom's aim would be to try and ensure that consumers receive similar advice about nuisance calls, irrespective of how or where consumers choose to access information.

⁹ http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/2013_UK_CMR.pdf

¹⁰ Previous estimate from Ofcom's experience of mandating details of Alternative Dispute Resolution (ADR), which was provided on paper bills was about £200,000.

Market solutions to the problem of nuisance calls

A range of call blocking services are available from telecom service providers usually for a charge, which can help consumers manage the calls they receive at an individual level and help shield themselves from nuisance calls.

This includes Call Barring services which allow consumers to block all calls from particular numbers they have specified, 'Caller Display' shows a consumer the number that is calling before they answer, allowing them to choose to ignore calls, for example from those that withhold their number and 'Anonymous Call Rejection' which automatically all blocks incoming calls that withhold their number. Also, products such as telephone handsets and plug in devices are commercially available, which can be configured to block particular types of calls that may be causing a problem, such as from withheld, unwanted or unrecognised numbers.

There have been calls for considering the scope to block nuisance calls more broadly at network level, rather than when the call reaches the consumers home, as this could enable consumers to block calls without needing to plug in an additional box or use a dedicated handset. It is possible that blocking calls at network level based upon on the CLI could increase the number of CLIs which are spoofed. In general, and notwithstanding that risk, we welcome initiatives that look to employ more sophisticated means of tackling nuisance calls. TalkTalk's announcement of October 2013, which enables nuisance calls to be blocked at network level for subscribers, is an example of steps communication providers are taking.

However, beyond technical challenges, network-based call blocking raises important legal issues that requires careful consideration to ensure any approach remains lawful. Call blocking is currently undertaken at the customer's request, who has direct control over the calls that are blocked and those that are allowed to get through. Network blocking of numbers, which are considered by the service provider to be "nuisance calls" and blocked across the network raises issues concerning compliance with underlying telecoms legislation derived from the EU framework. Communications providers will need to balance compliance with their obligations and with proper attempts to protect consumers' legitimate concerns. The technical and contractual options for tackling nuisance calls at a network level are something which Ofcom expects the new Interconnect Working Group to consider further.

Next steps

Commons Culture Media and Sport Committee

The inquiry into nuisance calls held in September by the Culture Media and Sport Committee was very helpful in further spotlighting nuisance calls. Its report was published on 5 December 2013, and we considered its recommendations carefully and have provided a detailed response concurrently with the publication of this Action Plan.

APPG report on nuisance calls

The recommendations in the APPG report are also a welcome further addition to understanding the issue of nuisance calls and how to combat them. Some of its recommendations (covering lowering the legal threshold, improving ICO guidance on third party consent and providing free CLI) have already been discussed in this Action Plan. The report also called for Ofcom to establish a fund to provide call blocking technology for vulnerable consumers. However, Ofcom cannot direct industry in this area and nor is it allowed to fund such an initiative. Its other recommendations covered:

- Reducing the requirement for TPS registration to take effect after 28 days: We consider that reducing this will create an unrealistic expectation for consumers that this will significantly reduce the level of nuisance calls. It is better to focus efforts on improving enforcement to better protect consumers after the 28 days.
- Introducing an accredited scheme for lead generating companies: We think that this may be worth considering further in the future, but current efforts must focus on improving enforcement.
- Having a short code to report calls: Ofcom plans to test this idea further with the industry working group. We will consider their findings before any decision is taken on this issue.
- Having a single portal for providing and distributing complaint information: in our view this is not possible at the moment due to complexities of how such a system could be set up and operated, but could be considered in the future. As noted in our strategy paper in July 2013 we will consider setting up a single regulator if other potential solutions prove unsuccessful.

Conclusion

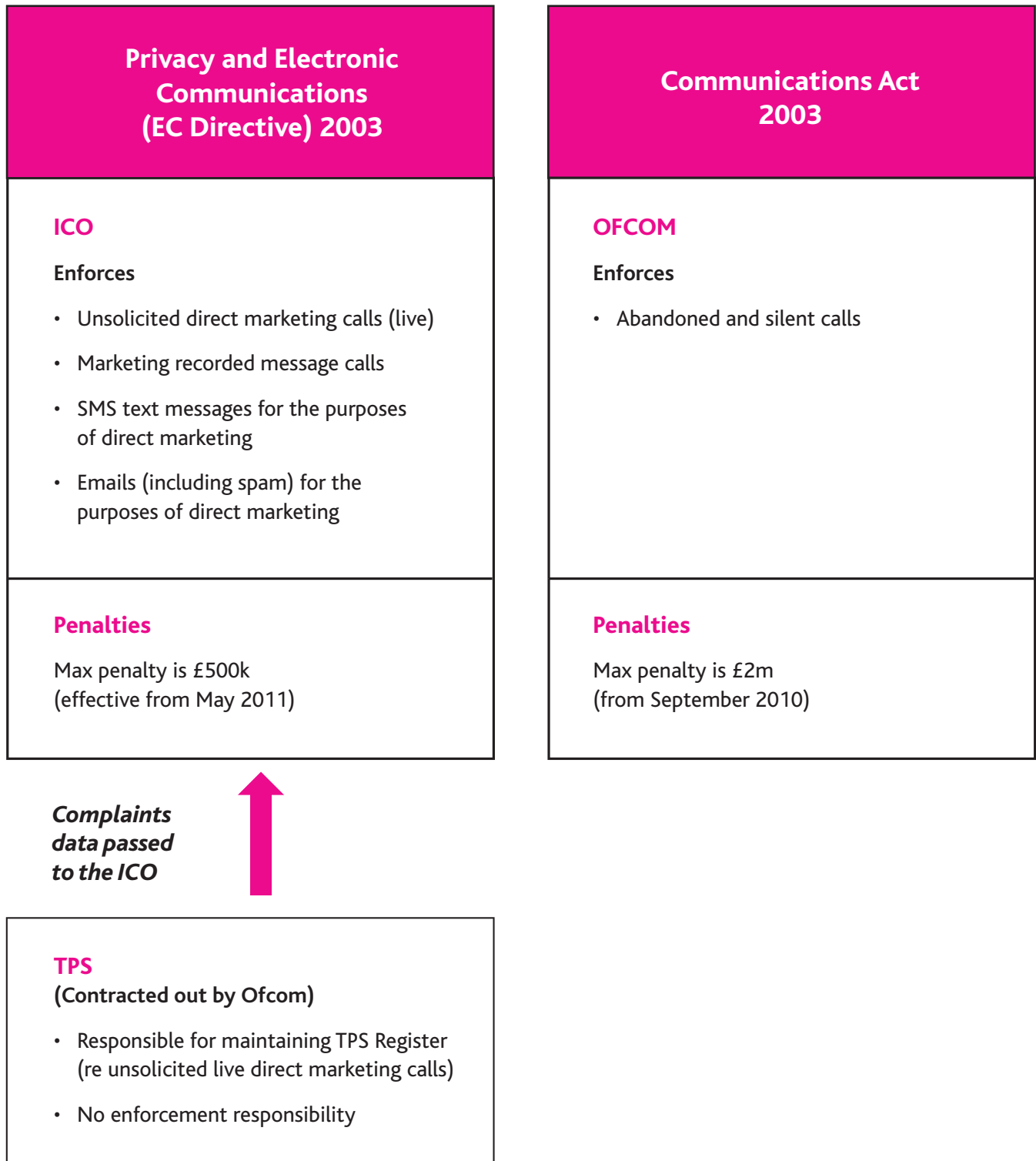
As this Action Plan notes, there has been good progress made in tackling nuisance calls but much remains to be done. DCMS will continue its role as the lead department, working with the Ministry of Justice, ICO and Ofcom in driving forward measures to tackle nuisance calls and we will review progress later this year to see whether further steps are needed and if so what they may be.

The Minister's regular meetings with regulators, industry, MPs and consumer group representatives, will continue so that all remain fully focused on this issue. We will also seek to raise awareness on the unintended potential impact on nuisance calls, as a result of policy decisions made by other Government Departments.

In summary some of our achievements to date include increased monetary penalty powers for the ICO and Ofcom, improved information and signposting for consumers, more effective enforcement of regulations and the naming and shaming of organisations by the ICO. Measures to be taken forward and introduced include enabling information sharing between Ofcom and the ICO, which will become effective by 1 October 2014, lowering the legal threshold for the ICO, considering issues around notification and consent and making progress on call tracing work by industry, which is on-going with initial results to emerge by later this year.

Annex A:

Diagram of how nuisance calls are regulated



Annex B:

Monetary penalties issued by the ICO since January 2012

Date	Company	Issue	Penalty
16 December 2013	First Financial (UK) Ltd	Sent thousands of unsolicited SMS messages relating to payday loans	£175,000
8 July 2013	Tameside Energy Services Ltd (Manchester)	Energy efficiency improvements company. Failed to carry out adequate checks on TPS registration	£45,000
18 June 2013	Nationwide Energy Services We Claim You Gain	Both companies part of Save Britain Ltd based in Swansea. Failed to make adequate checks whether recipients were TPS registered.	£125,000 (under appeal) £100,000 (under appeal)
28 Nov 2012	Tetrus Telecom Manchester	One company owned by two individuals. Sent millions unsolicited SMS text messages	£440,000 (under appeal)
18 Mar 2012	DM Bedroom Designs Ltd Glasgow	Manufactures, fitment and sellers of kitchens, bathrooms and bedrooms. Made unsolicited calls to TPS registered consumers,	£90,000

Monetary penalties issued by Ofcom since January 2012

Date	Company	Issue	Penalty
18 April 2013	TalkTalk	Making abandoned and silent calls	£750,000
6 Dec 2012	Npower	Making abandoned and silent calls	£60,000
19 April 2012	Homeserve	Making abandoned and silent calls	£750,000

(Source: information obtained from OFCOM and the ICO)

Annex C:

Organisations responsible for tackling various forms of nuisance calls.

- **The Information Commissioner's Office (ICO):** takes the lead in tackling unsolicited live marketing calls, recorded marketing message calls and marketing texts using its enforcement powers under the PECR and the Data Protection Act (DPA).

This includes calls from a charity/political party promoting the organisation's aims and ideals or appealing for funds as they must comply with the DPA and the PECR direct marketing rules.

Organisations conducting market research need to comply with the DPA and therefore they too fall under the ICO's remit.

- **Ofcom:** deals with abandoned and silent calls using its powers to tackle persistent misuse of electronic communications networks and services under sections 128-131 of the Communications Act 2003.
- **The Police:** deal with abusive and threatening calls and scams as they are criminal offences.
- **The Ministry of Justice (MoJ):** regulates claims management companies for example claims for compensation in relation to personal injury and mis-sold PPI and has issued guidance on advertising and marketing activities by these companies.
- **Office of Fair Trading (OFT):** To carry out debt collection, businesses must hold a consumer credit licence issued by the OFT. The OFT also provides Guidance on Consumer Credit Debt Collection (responsibility for Consumer Credit will transfer to the Financial Conduct Authority in April 2014).

A number of organisations and applicable legislation therefore must be considered when seeking to address the issue of nuisance calls.

