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Department for Business Innovation & Skills
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25 January 2010

Dear Mr Hussain

Response to the BIS consultation on raising the maximum penalty for the persistent misuse of an electronic communications network or service to tackle the problem of silent and abandoned calls to consumers

The Communications Consumer Panel was established by the Communications Act 2003 as an independent advisory body. Its role is to influence Ofcom, Government, the EU, and service and equipment providers, so that the communications interests of consumers and citizens are protected and promoted.

The Panel's remit, as set out in the Act, includes a duty to protect the interests of vulnerable consumers, including the elderly, people with low incomes, people with a disability or people living in rural areas.

The Panel welcomes the Department for Business Innovation and Skills' (BIS) intention to raise the maximum penalty to tackle the problem of silent or abandoned calls.

The Panel believes that silent and abandoned calls continue to cause significant harm to consumers. For this reason, we believe that the penalty threshold should be increased and are calling for the maximum penalty for persistent misuse of an electronic communications network or service to be raised to £2 million. We support the maximum level of increase to ensure that Ofcom is able to penalise the greatest number of offenders in a manner proportionate to their size.

Work still needs to be done to eliminate silent calls

The Panel agrees that work still needs to be done to eliminate silent calls, even though research shows that the number of silent calls has decreased in recent years. We continue to be concerned about silent calls for three reasons:

- Harm caused to consumers generally, and to vulnerable groups in particular, by receiving silent calls
- Lack of control or choice consumers have over whether to receive silent calls
- Potential that calls could increase as marketing to mobiles increases

Consumer harm

Although the number of silent calls has decreased since 2005, an Ofcom survey from June 2009 showed that over three quarters (77%) of adults questioned were very or fairly inconvenienced by silent calls and almost two thirds (61%) were very or fairly concerned by them. The Panel believes these levels of concern and inconvenience to be unacceptably high.

The Panel recognises that the anxiety caused by silent calls has decreased due to greater public awareness that most silent calls are caused by companies' automatic dialling equipment. The ability to find out information about the caller using 1471 or other caller line identity technology is also likely to have had an impact on anxiety levels. However, we still believe the proportion of people who feel anxious when they receive these calls (17%) is significant.¹

The Panel also believes inconvenience remains a major problem. Public awareness of the technological and non-malicious cause of most silent calls may have reduced anxiety but levels of annoyance and inconvenience are unlikely to decrease just because the recipient understands how the call was made.

Lack of control or choice

Public awareness of the cause of silent calls may be able to explain most calls away but there is still the potential that a silent call could be malicious or from a family member in peril. Finding out about the caller relies on awareness of caller line identity services and, to some extent, on having the technology to display such information, which cannot be assumed.

Even if a consumer is not caused immediate anxiety by a silent call, the onus is on them to find out whether the call is one to worry about or not. There are monetary and time costs to the consumer in investing in the appropriate technology and to calling a number they do not recognise to find out whether there was a genuine reason for the call. As silent calls are unsolicited and consumers have no choice in whether to receive them, the Panel believes that these costs are unacceptable.

Silent calls could potentially increase

Mobiles are becoming more vulnerable to unsolicited marketing, as prices for calling mobiles decrease and lists of mobile numbers become more available to companies. At the same time, consumers are less aware that services such as the Telephone Preference Service (TPS) register allows them to opt out of unsolicited marketing calls to their mobiles than they are for their landlines. According to a TPS survey from 2008, only 35% of those aware of the TPS were aware that it can be used for mobile phones.²

The increase in marketing to mobiles combined with a much lower awareness and take-up of opt-out services such as the TPS register means there will be an increased risk of silent calls to these phones. Consumers may receive silent calls when they had previously not received any or they could

¹ TPS Report on Unwelcome Calls 2008 (2 Apr 2009, p15) http://www.dma.org.uk/attachments/resources/4957_S4.pdf

² TPS 2008 (2 Apr 2009, p20)

receive them both on their landline and mobile, which would exacerbate the existing anxiety, inconvenience and annoyance caused by such calls.

Option 5: Increase the penalty to £2 million

The Panel supports Government proposals to give Ofcom the ability to fine companies up to £2 million. The Panel believes that consumers will only be protected from the harm caused by silent calls once the benefit to those companies and individuals making them is removed. Since those entities making silent calls can range from the very small to the very large, there needs to be a range of punitive opportunities open to Ofcom. We believe that there are two different types of incentive to change the behaviour of these entities: financial and reputational.

According to preliminary analysis stated in the consultation, call centres with fewer than 400 workers would be better off foregoing the efficiency gains of automatic dialling to comply with Ofcom's guidelines rather than risk a £2 million penalty. Increasing the maximum penalty to £2 million should therefore be a significant financial deterrent, as the majority of contact centres have less than 400 agent positions.

However, there is still a large number of companies with over 400 workers: DTI figures³ showed that, at the end of 2003, 229 (4.3%) UK contact centres had over 500 agent positions. There is therefore a significant portion of the contact centre market that might be better off paying the £2 million fine than lose the productivity benefits of automatic dialling.

Since there are still many companies with over 400 workers, the Panel would prefer that the penalty were based on a percentage of UK turnover rather than a fixed maximum; however, of the options proposed, we support a £2 million maximum. We note that, even where the financial benefit of allowing silent calls exceeds £2 million, the potential for negative publicity and reputational damage as a result of imposing a £2 million fine will also have a deterrent effect.

In sum, the Panel believes that the continued existence of silent calls causes significant harm to consumers and welcomes this move by Government to eliminate such persistent misuse of the network. We believe that the option to increase the maximum penalty available to Ofcom to £2 million represents the best available mechanism to achieve this, since, of all the alternatives, it would offer the greatest financial and reputational deterrent to offenders.

Yours sincerely



Anna Bradley
Chair, Communications Consumer Panel

³The UK Contact Centre Industry: A Study (DTI, 2004; p29) <http://www.berr.gov.uk/files/file32884.pdf>