



Conducting Telephone Research:

Guidance on impact of recent regulatory developments

March 2017

Background

1. This briefing note provides an update on domestic and international regulatory developments impacting on the conduct of telephone research. It sets out the implications of:
 - a. the revised Ofcom Statement of Policy on Persistent Misuse;
 - b. recent call blocking initiatives by telecommunications operators; and
 - c. ongoing restrictions on conducting telephone research in the US.

Ofcom rules for call centres have changed

2. Ofcom issued an amended Statement of Policy on Persistent Misuse which took effect from 1 March 2017.¹ The Statement sets out its general policy on the exercise of its enforcement powers if a person persistently misuses an electronic communications network or service and requires changes to the operation of call centres. The policy highlights the enforcement powers Ofcom possess, including, its ability to impose penalties of up to £2 million.
3. Research call centres need to understand the impact of the Ofcom rule changes and make operational changes. MRS has issued revised Regulations on Predictive Diallers to reflect the amended statement. These are available in the Standards section of the MRS website. The most significant change is that Ofcom is no longer providing a “safe harbour” for abandoned calls.²

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/96135/Persistent-Misuse-Policy-Statement.pdf

² Ofcom notes that calls may be either silent or abandoned but not both. They are distinguished by the lack of communications or messages directed to the recipient in the case of silent calls and the information message that is, or would be, played in an abandoned call. If agent is not available to take a call no later than two seconds after telephone picked up or no later than two seconds after individual begins to speak then the call is deemed to be abandoned and the information message must be played.



Ofcom Enforcement Priorities

4. Enforcement activities will be prioritised for cases liable to cause the greatest consumer harm. Although the top priority is to tackle silent calls Ofcom is also concerned to tackle abandoned (or dropped) calls.
5. MRS recognises that full compliance with a “zero tolerance” abandoned call policy poses considerable difficulties for those in the market research sector. Impacts cited include increased cost, diminishing viability of telephone research and possible migration of call centres overseas. In light of this it is useful to recognise that the likelihood of enforcement by Ofcom in a particular case will take into account several relevant factors:
 - a. Cases will be investigated by looking at use of networks or services over a six to 12 week period; and
 - b. Misuse is more likely to be regarded as persistent when it occurs either throughout or at different points during the period investigated; at a higher level than would be likely if it were due to accidental human error, isolated agent misbehaviour or one-off technical errors or it is repeated in a way that shows disregard for the risk of harm to consumers.
6. Ofcom will prioritise cases based on likely level of consumer harm and the focus is on investigating **persistent** misuse of a communications network not isolated incidents. Key factors in enforcement prioritisation include:
 - a. Abandoned call rate, even though there is no specific permissible abandoned call rate, the actual rate will be taken into account.
 - b. Level of repeated misuse to same number or recipient.
 - c. Other types of misuse such as making telephone calls at unsociable hours or misuse of Caller Line Identification (CLI) facilities including withholding a CLI.³

³ Misuse of CLI's is of increasing concern for Ofcom as CLI numbers serve several useful purposes for individuals allowing them to identify callers and decide whether to answer and to report calls to Ofcom and other regulators. Misuse of a CLI facility will also include withholding of CLI's for marketing calls, displaying non valid or unreturnable CLIs and displaying a controlled premium rate service number CLI.



- d. Length of time call rings i.e. calls ringing for less than 15 seconds or for extended periods.
- e. Adequacy of provision and content of information messages played in abandoned calls.
- f. Time taken to connect called person to a message.
- g. Evidence of effective management practices and processes.
- h. Proper record management including keeping at least 6 months of information about the types of calls in use, detailed records of calls and evidence of the accuracy of automated diallers.

Call centre risk mitigation strategies and approaches

- 7. Research organisations conducting telephone research using automated diallers need to consider their compliance in this area as part of an overall risk-based approach to compliance and identify and assess high risk areas in their telephone strategies. Risk-minimisation strategies should include:
 - a. CLI Compliance
 - i. Display of valid returnable CLI that is capable of receiving a return call which connects to either an agent or an automated message. CLI's must not be controlled premium rate service numbers.
 - b. Management of silent and abandoned calls
 - i. Make sure that agents do not hang up on live calls without saying anything.
 - ii. If using an abandoned call target this will need to be set at a minimum level. Best efforts need to be made to keep these calls to a minimum, and although there is no safe harbour, it is unlikely that a 1% call centre target for abandoned calls would be realistically pursued by Ofcom for persistent misuse.
 - iii. Repeat calls to a particular number (to which an abandoned call was made) within 72 hours must only be done with the guaranteed presence of an agent.
 - iv. Sufficient ring time must be built into calls. Although the Statement provides that calls must ring for a minimum 15 seconds this can be



- set to 20 or 25 seconds to facilitate the longer connection time to mobiles and calls to elderly or disabled individuals.
- v. Information messages played for abandoned calls must at least provide information about the organisation; provide an opportunity to opt out of the research and not contain marketing messages.
 - c. Compliance with MRS Predictive Dialler Regulations which incorporate Ofcom requirements in this area.

Call Blocking Technology in greater use

- 8. MRS has engaged with telecommunications service providers as they introduce new initiatives on telephone call blocking. We worked with BT on their new BT Call Protect service which allows BT customers to opt in to divert unwanted or nuisance calls to a “junk” voicemail and with Vodafone on their call blocking system. In both cases the objective was to understand whether the CLIs provided by MRS Company Partners were blocked or placed on the list of CLI’s for further investigation by the telecommunication companies. The overall results were encouraging for research companies as none of the CLIs provided by MRS were blocked.
- 9. Key steps to minimise the impact of call blocking on research projects include:
 - a. *Provision of a CLI* - For each outbound call, a CLI number should be presented to which a return call may be made (either a geographic or non-geographic number) which must connect to either an agent or automated message.
 - b. *Use review and appeal processes.* Callers whose number(s) have been listed on the BT Blacklist can ask their communications provider for a review of the BT decision to include their number on the Blacklist. MRS Standards team is happy to assist with this.
 - c. *Notify MRS of any unusual high volume telephone projects* - MRS has agreed a process with BT to flag any high volume telephone research projects undertaken by members. MRS members can inform us of any expected changes in calling patterns i.e. planned projects with higher than normal volume of calls and we will share this information with BT.
- 10. As a member of Operation Linden, a regulatory working group of regulators and other interested stakeholders on reducing the level of unwanted unsolicited calls,



MRS continues to work to ensure that the needs and importance of telephone research are considered in policy and regulatory approaches in this area.

Restrictions on Telephone Research in the US

11. Current restrictions on use of automated dialling systems have increased the liability risks for conducting telephone research in the US. The Telephone Consumer Protection Act (TCPA) requires express consent to call a cellphone using an Automated Telephone Dialling System (ATDS). In July 2015 the Federal Communications Commission (FCC) issued a ruling that expanded the definition of ATDS to include all technology that has the capacity to autodial even if it would require modification to do so. Although some recent rulings have set a precedent in favour of a more "common sense" interpretation of terms it has not been settled at a federal level and this area of the law remains unsettled. It is further complicated as in the US there is no clear distinction and one cannot differentiate cell phones from landlines by the phone number.
12. Research organisations may expose themselves to significant liability in making calls to recipients and must :-
 - a. Exercise extreme caution and gain a strong understanding of the TCPA to ensure compliance whenever calling the US.
 - b. Autodial mobile sample ONLY with express consent to autodial and be very careful about the digital telephony network specifics using. Note that even then this may not be entirely compliant as the cell phone number could have been transferred to someone else who has not given prior permission.
 - c. Comprehensively document steps taken to prevent TCPA breaches to demonstrate willingness to comply.
 - d. Keep a watching brief and liaise with US market research associations and legal advisers as more information becomes more available as a further ruling by the FCC is pending and until this has been issued the matter will not be settled.

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