

Consultation on Silent Calls "enforcement action" - Response

Summary of response

This Statement of Policy is little more than a formal presentation of the improper and ineffective policy that Ofcom has been following for the last two years, in disregard of its previous Statement.

I must repeat again the request made in a complaint submission on 1 December 2003 that the, now previous, Statement of Policy be implemented in the public interest. Some drafting errors in that Statement have come to light; these must be corrected.

All of the revisions to the Statement for which Ofcom seeks consent through this consultation should be removed.

- ABANDONED CALLS THAT RESULT IN AN INFORMATIVE MESSAGE ARE NOT SILENT CALLS
- ANY PATTERN OF BEHAVIOUR THAT INCLUDES MAKING SILENT CALLS MUST BE SEEN AS "PERSISTENT MISUSE"
- NO FURTHER DETAILED SPECIFICATION NEED BE PROVIDED COVERING THE CIRCUMSTANCES UNDER WHICH ACTIVITY INCLUDING ABANDONED CALLS WILL LEAD TO ACTION BY OFCOM
- OFCOM MUST USE THE POWERS IT HAS TO CAUSE THOSE FOUND TO BE PRACTISING PERSISTENT MISUSE TO BRING THEIR MISUSE TO AN END IN ACCORDANCE WITH THE ACT
- OFCOM CONTINUES TO FAIL IN ITS DUTY BY AUTHORISING COMPANIES TO MAKE "ACCEPTABLE SILENT CALLS" UNDER THE TERMS OF THIS REVISED POLICY
- FOLLOWING THIS CONSULTATION OFCOM WILL PRESENT ITS PLANS FOR ACTION.

OFCOM HAS ALREADY OBTAINED EVIDENCE OF A PATTERN OF BEHAVIOUR INCLUDING MAKING SILENT CALLS BY A NUMBER OF COMPANIES.

THE ACTION TAKEN IN RESPECT OF THESE COMPANIES WILL CLEARLY DEMONSTRATE WHETHER OFCOM HAS A POLICY OF "ACCEPTABLE SILENT CALLS" OR "NO SILENT CALLS"

The Informative Message brings a natural process of self-regulation to the issue of abandoned calls making the proposed revisions to the Statement unnecessary.

Presenting measures proposed to apply to all abandoned calls as if they only applied to Silent Calls misleads those responding to the consultation. Any attempt to misinterpret responses, e.g. treating demands for 0% Silent Calls as if these were for 0% abandoned calls, will be seen as an abuse of the consultation process.

Aiming to set a policy position intended to simply balance the interests of call centres against those of citizens would be a grossly misguided and foolish way to approach this issue. Any reference to such a simple balance in future statements on this issue by Ofcom will indicate a persistent failure to properly understand the relevant issues.

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Summarised responses to consultation questions

Q1 Do you agree that consumers are concerned by silent calls and that Ofcom is right to take enforcement action against the companies that make them?

Citizens are concerned about Silent Calls. There is no evidence that citizens are any more concerned about Abandoned Calls that do not result in silence, than other ineffective telephone calls that Ofcom does not treat as "persistent misuse".

What is called "enforcement action", authorising **Ofcom-approved "Acceptable Silent Calls"** and threatening financial penalties and operational restrictions on UK call centres, is the **wrong** way to respond to the concern about Silent Calls.

The concern caused by Silent Calls from a company that completed only 50% of its answered calls that day is exactly the same as if that call had been made in compliance with the "enforcement action" taken by Ofcom under its revised policy.

The enforcement powers granted to Ofcom are for the purpose of causing those found to be practising persistent misuse to **bring their misuse to end**.

Q2 Do you agree with Ofcom's proposed approach to taking enforcement action, guided by a sense of administrative priority?

The so-called "proposed approach" has already been seen in action taken having regard to the revised Statement of Policy. This action is exactly that taken previously; nothing has changed. "A sense of administrative priority" is seen to mean failing to cause those found to be making Silent Calls to end their misuse.

Ofcom's approach must be transparent, using the powers as defined in the Act.

Q3 Do you agree that the range of procedures proposed in the statement will be effective in reducing the degree of anxiety, annoyance and inconvenience caused by silent calls?

Available evidence suggests that **no company has adopted these procedures in the two months since they were announced as "requirements"**. Not even those subject to enforcement action by Ofcom have been required to do so.

The tougher stated position in the previous version of the statement was not seen to have any effect, because Ofcom chose not to implement it. As Ofcom has shown that it does not intend to enforce these "new" requirements, and says so in its Statement of Policy, it is most likely that the new weaker policy will **continue to be ineffective**.

Q4 Are there any additional procedures which call centres could adopt to reduce the degree of anxiety, annoyance and inconvenience caused by silent calls?

This question appears to be seeking further reasons why making Silent Calls should be regarded as acceptable. Following this consultation, Ofcom may then wish to claim that it has reduced the level of nuisance caused by Silent Calls to the very minimum.

Ofcom has no regulatory duty or powers to control the procedures followed by call centres or any other user of telecommunications services.

Ofcom's statutory duty requires it to use its powers by identifying cases of persistent misuse, issuing Notifications and ensuring that the misuse is "brought to an end". **The relevant powers do not allow Ofcom to "reduce the degree" of anything.**

David Hickson