

Nuisance calls – a revised consumer agenda

The story so far

In [June 2012](#) and [February 2013](#), consumer representatives wrote group letters to regulators urging action against nuisance calls. During the past two years, individual consumer organisations have researched and campaigned in particular areas in relation to nuisance calls; [Which?](#), [Citizens Advice](#), [StepChange](#), [Trading Standards Institute](#) and [Fair Telecoms](#) have all achieved significant publicity. The issue remains a high priority for the [Communications Consumer Panel](#). In late 2013, two parliamentary enquiries - the All-Party Parliamentary Group ([APPG](#)) and the Communications, Media and Sport Committee ([CMSC](#)) - were held and reported; in early 2014, Ofcom and ICO issued an [updated action plan](#), and DCMS published the [government's action plan](#).

The action plans point to a lot of activity to combat nuisance calls. But Ofcom's diary research, [published in May 2014](#), and comparable with similar research carried out a year before, showed no change in the level of nuisance calling over the past year (though it did show some change in the make-up of nuisance calls¹, and provides other insights). Ofcom's research on the effectiveness of TPS registration, [published in July 2014](#), provided further useful data.

The situation now

With a new government in place, this updated note (a previous version was circulated in September 2014) may be helpful to consumer groups who are considering their agenda in this area.

- 1. People.** Ed Vaizey, the Minister who led the last government's work on nuisance calls, has retained his post. John Whittingdale, who chaired the Commons CMS Committee, including its enquiry into nuisance calls, has taken over at DCMS and Sajid Javid, who is said to strongly favour free markets, at BIS. The relevant civil servants now appear to be Chris Pook christopher.pook@bis.gsi.gov.uk (of the combined DCMS/BIS Digital Economy Unit), Jo Parry jo.parry@culture.gov.uk and Marie Southgate marie.southgate@culture.gov.uk. Mike Crockart, who as a LibDem MP founded the All Party Parliamentary Group on nuisance calls and has been a mainstay of continuing pressure for action, has lost his seat.
- 2. Consent.** At Government request, Which? chaired a stakeholder task force on reform of the rules on handling personal data for third-party marketing, which [reported](#) in December 2014. The Direct Marketing Association, Call Credit, the Customer Contact Association, the Ministry of Justice, the Communications Consumer Panel, the Information Commissioner's Office and Ofcom were all represented on the task force. Its somewhat limited [terms of reference](#) led to [recommendations](#) largely focused on promoting awareness and good business practice; Ed Vaizey picked up especially on making company board members accountable for compliance. Also worth noting in this context is the belated but welcome [ban on forced subject access requests](#) (thanks to StepChange for highlighting this). The Government undertook to seriously consider all the Task Force recommendations.

¹ Notably, a reduction in PPI nuisance calling, partly because the PPI market is past its peak, but also because the Claims Management Regulator has [focused on nuisance calls and texts](#); new rules will enable it to take action against authorised firms if they can't prove they had consent to call or text a consumer.

3. **CLI and call tracing.** The new industry [call tracing procedure](#) (summarised [here](#)), with Ofcom as hub, is now in place. Its capacity may be a few tens of calls per day, so it will doubtless be restricted to the most serious cases. BT has now implemented full CLI (calling line identity) display for international calls. But nuisance calls frequently carry no useful genuine CLI, and number faking (“spoofing”) is all too easy. In November 2014 Huw Saunders, Ofcom Director of Network Infrastructure, gave a [presentation](#) on Ofcom’s view of this to the industry body NICC. The NICC [industry requirements document on CLI](#) was republished in August 2014 after revision, but still leaves the important question of assessing the reliability of received CLIs to individual operators. Rules that reputable callers should display a useful CLI would help to warn consumers off answering calls with no valid CLI; networks could also do more to identify these. A numbers database with verified entries (an “official” version of whocallsme.com and the like) might also help, as might rules on calls of international origin presenting domestic CLIs.

In November 2014, the Government [announced](#) in a parliamentary debate that it would consult on secondary legislation to change the provisions in PECR that currently allow companies making marketing calls to withhold their CLI:

“I am therefore pleased to say that we are now satisfied that we can seek a derogation from the e-privacy directive to impose a requirement to provide CLI on any person making unsolicited calls for direct marketing purposes. The Government will therefore commit today to bring forward secondary legislation to amend the Privacy and Electronic Communications Regulations in the coming months, following an appropriate consultation.”

4. **Ofcom’s landline diary research.** Ofcom’s own summary of the 2014 research is: “The study also found that the number of research participants experiencing unwanted calls, and the average number received, remained broadly unchanged year on year. Four in five participants (84%) received at least one unwanted call during the four-week research period, while the average total number of unwanted calls received was 8.7 per person (or around two per week).”

Last year’s research led to the suggestion that it would be helpful, when the research was repeated, to ask diarists what if any precautions they took against nuisance calls. Here’s what the report says about this:

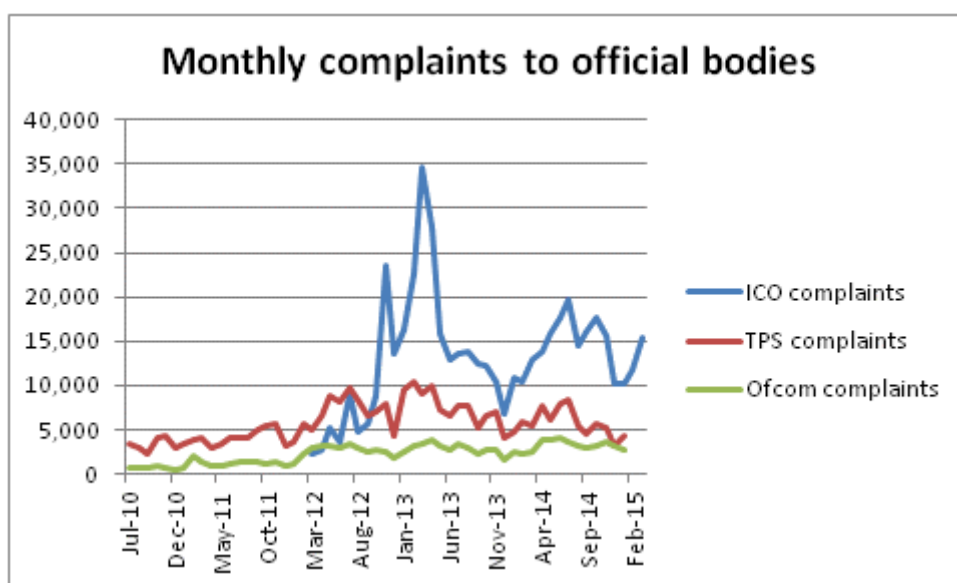
“There were generally no statistically significant differences in incidence of nuisance calls, overall or by type of call, amongst those who were more or less likely to opt out of receiving marketing information, to give out their landline number to companies/organisations, or to shop online. The only exceptions were:

- those who state they do not tend to opt out of receiving further marketing information were more likely to receive recorded sales calls (52% incidence versus 37% amongst all participants).
- those who claim to never give out their phone number, whilst on average were no less likely to receive nuisance calls, were less likely than those who sometimes or always give out their number to receive more than 20 calls over the 4 weeks (4% vs 13%).”

At the consumer information meeting on 12 June 2014, the market research people, asked if they had learned anything about the effectiveness of other precautions, said that they had asked diarists whether they were signed up to TPS or were ex-directory, but that **no significant differences had been found and so these results were not presented.**

The Panel research has been repeated and the latest results were published on 20 May 2015 at http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance_calls_research/nuisance-calls-2015/. The headline finding is “again no overall improvement”, though there are some detailed changes in the composition of calls and in recipients’ attitudes towards them. Recorded sales calls are significantly up (these are illegal without specific opt-in).

5. **Ofcom enforcement.** Ofcom’s 2013-4 [annual report](#) shows an increase in DCMS grant-in-aid for its work on nuisance calls (silent and abandoned calls being within its remit) from £656,000 in 2012-3 to £1,055,000 in 2013-4. Its [silent and abandoned calls enforcement page](#) rounds up recent action against suspected offenders and it now has a useful [webpage](#) summarising its position. The latest available complaints statistics (in early May 2015) are shown below².

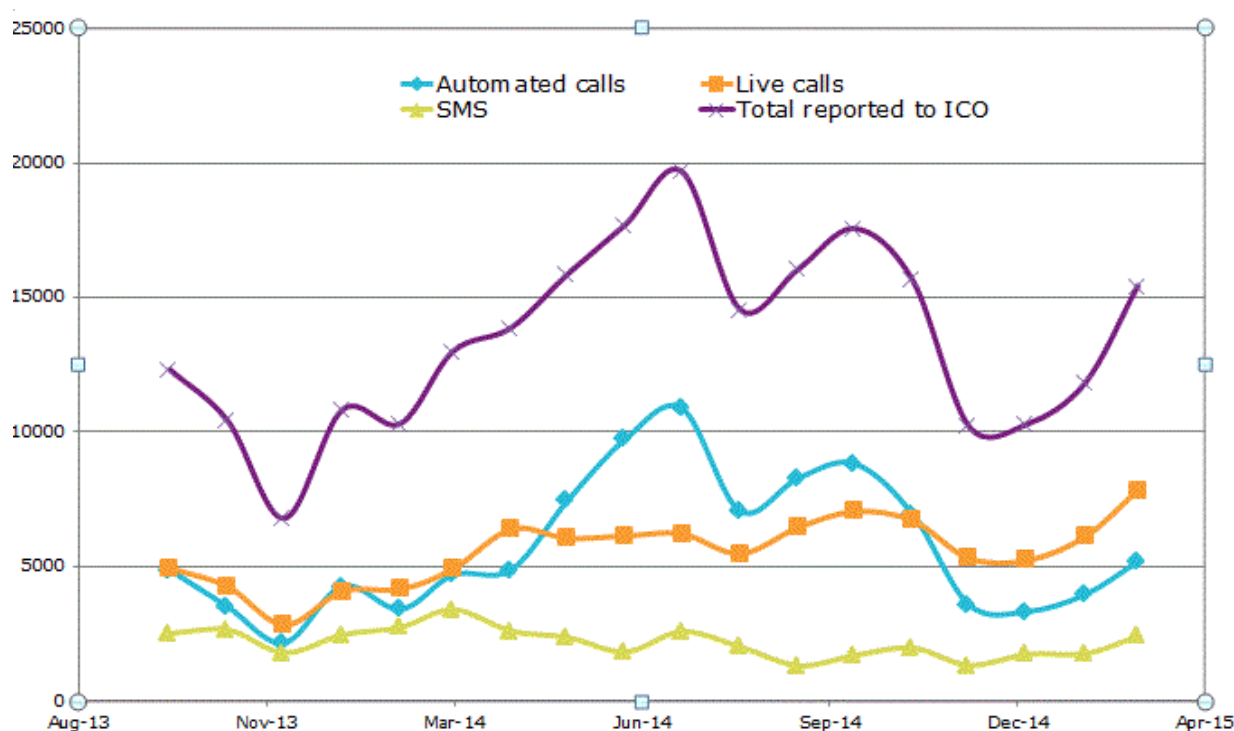


Some would say that the time has come for Ofcom to tighten up the rules on silent and abandoned calling – newer systems provide less excuse for this so called operational necessity. Ofcom is currently reviewing these rules, and has also commissioned research into the call centre industry.

6. **ICO enforcement.** Celebrating the announcement of its new powers (which mean it no longer has to show substantial damage or distress when proceeding against offenders) ICO has launched a dedicated [blog](#) on PECR enforcement. Unsolicited calls or texts figure large among recent [enforcement notices](#). Their own chart below shows automated calls and live calls vying for top complaints categories, with SMS complaints much lower. ICO’s 2015-2018 [plan](#) includes the relevant items shown in the table below.

² Discussions with ICO have confirmed that adding the three sets of figures together should give a reasonable idea of total official complaints (that is, there are no structural overlaps between the sets).

Actions to achieve objectives	Measures	Due dates
Improving compliance by issuing CMPs for serious breaches of the PECR, in particular those relating to nuisance calls, SPAM texts and cookies, in a proportionate and effective way.	<ul style="list-style-type: none"> • No of CMPs and enforcement notices • Report on compliance improvements • Fewer complaints to the Telephone Preference Service and the ICO about those we have taken action against 	Half yearly progress report in Oct 2015
Providing a simple mechanism that enables the public to report their DP and PECR concerns without using third party software.	<ul style="list-style-type: none"> • Develop reporting tool for DP concerns • Redevelop PECR concern reporting tool in-house 	<ul style="list-style-type: none"> • By March 2016 • By March 2016



In December 2014 a [second appeal](#) against an ICO penalty failed, a welcome development following the successful [Tetrus appeal](#) in October 2013.

Some would say that ICO should come down a lot harder on suspects, let alone confirmed miscreants – that its approach of coaxing companies back into compliance is far too lenient.

- 7. Statistics and management.** It's still hard to get a usable overview of complaints received about nuisance calls, let alone to understand the underlying picture of their real incidence or make international comparisons. ICO is pleased with its new powers and says they will help, but not by how much; its objective shown above of reducing complaints about *those companies against which it acts* seems modest, to say the least. The regulators naturally stress the action they are taking, with little about how many offenders they can pursue, or could pursue with more

resources. An objective picture of what's going on is surely basic to efforts to improve the situation. Incidentally, public awareness of all the various efforts and their effects is also low; the Ministerial Round Table which is supposed to be in overall control meets irregularly and without published meeting notes.

8. **Consumer advice.** There has been a big improvement in the presentation and consistency of online consumer advice. Ofcom's [full guide](#) has been rewritten, and supplemented by a video and an [easy-read guide](#); other websites tend to point to [Ofcom's page](#) as the best current resource for consumers. But a remaining problem is that the advice does not reflect the understanding that has been around for a while, and that is confirmed by Ofcom's recent research, that **most of the recommended precautions for reducing the incidence of nuisance calls make little difference!**

Anyway, even with Ofcom's points a fairly clear message emerges: **for most people, the ONLY measure that is likely to be effective short-term in reducing the incidence of nuisance calls is call filtering and blocking, whether in phones or plug-in boxes for people's homes, or as network services.** Important recommendations flow from this:

- **Amend online advice to clarify the likely effectiveness of each measure and for whom it may be helpful. Consider presenting advice as a series of questions, that people would work through so as to find what may be helpful for them.**
- **Provide a clear, up-to-date buyer's guide to all available call filtering and blocking services and equipment , including warnings of bogus claims.** (Note that BT, with its large market share for fixed lines, has a dominant position here too – a new [BT8500 call blocking phone](#) with improved filtering technology is now available).
- **Press for the “assessment of technical measures” that Ofcom and ICO said in March 2014 was a current priority.**

Ofcom's [short guide](#) was amended in summer 2014 to reflect some of these comments, but there is still plenty of room for improvement.

Ofcom has also looked at comms providers' websites to identify best practice in their advice to consumers on how to handle nuisance calls, and has been working with providers to raise their standards towards best practice (with particular reference to accessibility for disabled consumers).

9. **Vulnerability.** There seems to be no let-up in scams generally, including phone scams targeting older people. Rising future risks relating to [“pension liberation”](#) have also been highlighted. This points strongly to protecting those most at risk from talking to unknown callers. Call blockers can help here, as can simple answering machine screening.

In the [2015 Budget Statement](#) on page 100 we find:

2.289 Protecting vulnerable people from nuisance calls – The government will provide a £3.5 million package to explore ways of protecting vulnerable people from nuisance calls. This will include trialling the development and provision of innovative call blocking technology, research and a campaign to raise awareness of how to reduce and report nuisance calls.

A Ministerial meeting was held on 23 March 2015 to discuss how to take this forward, with representatives from government, industry and consumer groups. Both an official note from DCMS (including details of who was there) and unofficial notes of the meeting (contributed to by CFC attenders) are available. The stress was on using the £3.5m as seed funding to get the industry to put in much greater resources.

BSI has convened workshops to scope a new standard to protect those with vulnerabilities from financial fraud, for which unsolicited phone calls are a prime channel. The contact is Ian Shaw, ian.shaw@bsigroup.com.

10. Another cause of vulnerability is **problem debt**. **StepChange** have recently [highlighted](#) the damage caused by unsolicited marketing of payday loans, and called for a ban on this. StepChange also commissioned a report on how other countries tackle nuisance calls and has published the [main report](#), a [volume of country case studies](#), and its [own recommendations](#) in the light of the findings. Recommendations include:
 - a. Reversing the default position for live marketing calls (as in Germany), so that instead of having to join TPS to opt out of them, people would opt in if they wanted to receive the calls. (This commercial market research [report](#) suggests that there would be very few people opting in). [NB the report also found that TPS registrations are relatively low compared with several other countries, especially among mobile users, and there is a case for raising its profile – as recommended by the Which? Consent WG – but these two options do not sit together very comfortably].
 - b. Banning the sale over the phone of high-risk financial products, without a written contract (as in Norway, where there is a general ban of this kind relating to most products and services).
 - c. Regulators to relate penalties to the number of offences (as in the USA) without having to worry about putting an offender out of business.
11. **Complaining**. The Which? amalgamated complaints website helps here, but complaining is still hard work and it is not clear that we yet have the right level of ease for complainants and information flowing through to regulators. **Consumer groups should work with the regulators to get this right, including if appropriate pressing for a short code for complaints on fixed networks like 7726 on mobile networks.**
12. **Summary of actions for consumer groups to consider**
 - Follow up on Government consideration of the recommendations of the Consent Task Force that Which? chaired.
 - Follow up on £3.5m March 2015 budget allocation for protecting vulnerable people from phone scams; consider how the money would best be spent.
 - Review online consumer advice for helpfulness and accuracy in the light of the best available research on what works. Consider an interactive guide to suit advice to individuals.
 - Press for up-to-date buyers' guidance on call blocking and filtering equipment and services.

- Ask after the “technical measures” currently being explored by Ofcom’s technical industry group.
- Work with the regulators to get complaints procedures right, including if appropriate pressing for a short code for complaints on fixed networks like 7726 on mobile networks.
- Work towards a reversal of the “opt out” default for live marketing calls (which would effectively mean the end of the TPS); and/or get better publicity for the TPS for as long as it lasts, especially for mobile users and more vulnerable consumers.
- Continue to press for clearer complaints statistics, as well as research that will show how the situation is changing and what actions against nuisance calls can have what effect (in particular, what proportion of nuisance calls come from places beyond the reach of UK enforcement).
- Continue to press for more effective rules and enforcement by both ICO and Ofcom, possibly with penalties that can put offenders out of business.
- Consider the possibility of contracts made over the phone becoming valid only when confirmed in writing, at least for certain categories of product or service (which should include high risk financial services).
- Ask for notes of Ministerial co-ordination meetings to be produced in publishable form.

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