

The Market Research Society (MRS) Submission

Statement of policy on the persistent misuse of an electronic communications network or electronic communications service

Preamble

With members in more than 70 countries, MRS is the world's largest association representing providers and users of market, social, and opinion research, and business intelligence.

MRS serves both individuals and organisations who identify with its core values of professionalism, excellence, and effectiveness.

It has a diverse membership of individual researchers within agencies, independent consultancies, client-side organisations, the public sector and the academic community – at all levels of seniority and in all job functions.

MRS Company Partners include agencies, suppliers, and buyers of all types and sizes who are committed throughout their organisations to supporting the core MRS values.

All individual members and Company Partners agree to self-regulatory compliance with the MRS Code of Conduct. Extensive advice to support this commitment is provided by MRS through its Codeline service and by publication of a wide range of specialist guidelines on best practice.

MRS offers various qualifications and membership grades, as well as training and professional development resources to support them. It is the official awarding body in the UK for professional qualifications in market research.

MRS is a major supplier of publications and information services, conferences and seminars, and many other meeting and networking opportunities for researchers.

MRS is “the voice of the profession” in its media relations and public affairs activities on behalf of professional research practitioners, and aims to achieve the most favourable climate of opinion and legislative environment for research.

Introduction

MRS welcomes the possibility offered by the Ofcom project to respond to the consultation on the Statement of policy on the persistent misuse of an electronic communications network or electronic communications service.

MRS confirms that no parts of this paper should be treated as confidential or unattributable.

Response to Consultation Questions

1 *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?*

1.1. MRS receives very few complaints about silent calls generated by research organisations and so cannot comment on the extent of concern about this issue amongst consumers.

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

2.1. Due to MRS' limited experience in this area (see 1.1) MRS is unable to comment on this issue.

3 *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?*

3.1. MRS believes that if the overall numbers of silent calls are reduced and additional information is supplied when they do occur then this will reduce the degree of anxiety, annoyance and inconvenience caused.

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

4.1. MRS has no view on additional procedures which could be adopted. MRS does however have a number of concerns about the proposed procedures as they are set out in the consultation document.

4.2. The consultation uses the following terms in a way that is confusing to many readers:

- Power Dialler

- Predictive Dialler
- Automated Calling System

4.3. These terms first appear in the following paragraph of the consultation document:

5.4 Power or predictive diallers offer the possibility of initiating calls to a sequence of numbers in accordance with stored instructions without the need for each individual number to be dialled in turn. They are widely used in call centres. Within a regulatory environment power diallers are more commonly known as automated calling systems with the additional qualification that the calls are made without human intervention. In this context, this means that the contents of the call do not involve an operator or live speech.

4.4. The definition of an automated calling system originates in the Privacy and Electronic Communications Regulations 1999:

19.4 For the purposes of this regulation, an automated calling system is a system which is capable of –
(a) automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
(b) transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called.

4.5. It is clear that an automated calling system is one where non live speech is transmitted following connection to a number dialled according to stored instructions. As such automated calling systems are a subset of the larger group of power or predictive diallers.

4.6. That relationship is inverted however in the following paragraph of the consultation document, where the generation of silent calls is discussed:

*5.13 Most silent calls are not generated with malicious or mischievous intent but are caused by **automated calling systems such as predictive or power diallers** (emphasis added) used by call centres (see the section Misuse of automatic calling systems above). The diallers are programmed to generate and attempt to connect calls. If there are not enough call centre agents available to handle a call it is abandoned if the*

call is answered by a live individual, that is, it is a 'live call'. The industry term for a live call terminated in this way is an abandoned call. A call may also be terminated after a predetermined period, say 15 seconds, because it has not been answered, perhaps because no one is there to take it. Within industry terminology such calls are not classified as abandoned calls.

- 4.7. Clearly it is incorrect to use the term automated calling system as a generic term for all diallers. Further, a silent call cannot be generated by an automated calling system, properly described, as the system supplies its own transmission without the need to transfer to a call centre agent.
- 4.8. It is also confusing to use the term *power or predictive diallers*. While it is true that diallers share certain characteristics, such as the ability to dial numbers in accordance with pre-programmed instructions, they do not all operate in the same way. Diallers in predictive mode operate in a fundamentally different way from all other forms of dialler. Such diallers dial numbers ahead of an agent being available, using software that estimates that by the time the call is connected an agent will be free to handle it.
- 4.9. MRS believes that silent calls can only generated by the use of diallers in predictive mode. Many research call centres use non-predictive diallers, which, for example, only dial a number according to stored instructions when a free agent is detected. These call centres do not and cannot generate silent calls and so do not contribute to the anxiety, annoyance and inconvenience that Ofcom is attempting to alleviate.
- 4.10. Given this confusion of terms, a further issue of concern is that the consultation document seems to indicate that all call centres must adopt new procedures, such as presenting outbound CLI, even if they are incapable of generating silent calls:

5.15 It is undeniable that even a single abandoned call may cause unnecessary annoyance, inconvenience or anxiety and properly managed call centres will strive to ensure that they do not generate more calls than their agents can handle. A persistent failure to do so will constitute an act of persistent misuse and may lead to the issue of a notification under section 128. However, in deciding whether to take enforcement action in a particular case Ofcom will be guided by a sense of administrative priority determined by the level of consumer detriment and the steps taken by call centre

operators to reduce the degree of concern that silent or abandoned calls cause. There are a number of procedures that call centres can adopt which, taken as a package, will act as mitigating factors in establishing the gravity of a particular act of misuse.

5.16 These procedures include ensuring that all of the following conditions apply:

- *the 'abandoned call' rate shall be no more than three per cent of 'live calls' on each individual campaign over any 24 hour period;*
- *in the event of an 'abandoned call', a very brief recorded information message is played within one second of the call being answered, which:*
 - *identifies the company on whose behalf the call was made;*
 - *identifies the intended purpose of the call (i.e. "an unsolicited sales call", "a call as part of debt recovery", etc)*
 - *offers the called person the possibility of declining to receive further calls from that company by contacting a no charge (0800) or Special Services basic rate (0845) number;*
 - *includes no marketing content and is not used as an opportunity to market to the called person;*
- *calls which are not answered should ring for a minimum of 15 seconds before being terminated;*
- *when an 'abandoned call' is made to a particular number, that number is not called again in the following 72 hours, unless a dedicated operator is available;*
- *for each outbound call a CLI number is presented to which a return call may be made which is not charged at a higher rate than the national call rate;*
- *either a recorded message or a live operator is available at the CLI number presented to inform called persons of the identity of the organisation that called them, the intended purpose of the 'abandoned call' and that the called person's number will be deleted from the organisation's database and added to its in-house*

suppression list at the called person's request if they leave their name and telephone number;

- *any call made by the called person to the contact number provided shall not be used as an opportunity to market to that person;*
- *records are kept that demonstrate compliance with the above procedures.*

4.11. MRS would like Ofcom to clarify that the above package of procedures are required to be adopted only by telephone users that have the capability to generate silent calls. This would mean that the procedures must only be adopted by call centres that use **diallers in predictive mode**. Call centres that use other forms of dialler that do not generate silent calls therefore should not be required to present CLI or provide a voice mail service to which allows members of the public to request to be added to an in-house suppression list.

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