



**Brookmead**  
**C o n s u l t i n g**

# **Response to Ofcom consultation on persistent misuse**

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## 1. Introduction

Brookmead Consulting have been working in the field of nuisance call control since 2004. We published the first Brookmead Report in 2005 in association with the Direct Marketing Association and Telephone Preference Service published as The Nuisance Call review. This report was the first full review of the nuisance call issue in the UK. The Brookmead research is quoted in this consultation paper.

Brookmead Consulting have been commissioned by The Telephone Preference Service to update the report.

## 2. General points

### Answer machine detect

We welcome Ofcom looking at answer machine detect. We believe that this accounts for large numbers of nuisance calls and is currently not factored into the calculations carried out by call centres.

Answer machine detect technology is imprecise. It relies on making the called party wait for around 2 seconds while the call is classified. Two seconds is an extremely long time when you have said hello and are waiting for a response, and some consumers may consider such a call to be a silent call.

AMD false positives, where the dialler classified the called party as being an answering machine when they are not, are extremely serious as they are not counted in the call centres abandoned call statistics

There is no agreement within the industry on the level of false positives that are generated and there is no independent published research that estimates this. We believe from discussions with those in the industry that 5% may be an appropriate initial 'rule of thumb' when considering this issue but it is likely that this could exceed 15% in some situations.

Note that 5% false positives is a proportion of all calls classified by a dialler as an answering machine. Answer machine detection rates are thought by some industry practitioners to amount to 20 – 40% of all dials, so false positives could represent an abandoned call rate of 1 – 2%.

This, however, is comparing apples with pears as the impact of a false positive is much worse than a normal abandoned call as it results in a silent call, where an abandoned call results in an informational message.

We understand Ofcom's approach that call centres should factor in an appropriate proportion of AMD false positives into their calculations, however determining what that figure should be is fraught with difficulty. The industry experts don't know the answer so pity the poor call centre manager who has to make an estimate. The test that Ofcom suggest to estimate false positives looks attractive, but in fact is too crude to give accurate results.

On balance we believe that AMD technology should be banned because the false positives generate silent calls, however if Ofcom were to take a more lenient view then we believe that they should put AMD on notice to prove itself by giving the manufacturers a period of time to show that they can accurately estimate false positives and factor these into the call centre's abandoned call rate.

### Self managing or Locked diallers

Call centre managers and company compliance officers would like to be able to buy diallers which were 'locked' - i.e. their software was configured to manage themselves to ensure that

they were always compliant. If all diallers were configured in this way it would benefit call centre managers, the consumer and the regulator.

We believe that there is a demand for this sort of product in the market place, but the way that the rules are set makes it almost impossible for such a configuration to be created.

Take for example a call centre that was dialling compliantly at the 3% level. At any time in the day they could hit a patch where a number of abandoned calls were made over a short period of time – maybe around lunch time or shift change time. The dialler will correct for these additional abandoned calls during the next hour of dialling.

The problem with self management is that a dialler never knows when calling is likely to finish during the day, so if it is to guarantee not exceeding 3% at any time it must set a threshold well below this.

We believe that if Ofcom allowed an average of 3% abandoned calls over a week, with no more than 5% on any individual day then dialler companies would be able to provide software that would self manage. Any excess abandoned calls in one day could be recovered on the next day – the dialler would not have to be micro managed by the call centre staff.

### **3. Response to specific consultation questions**

#### **Q1 Do you agree that the proposed changes make for a clearer set of rules that enable compliance to be achieved with a greater degree of certainty?**

We welcome the clarifications, but believe that there are still some areas that need to be addressed in more detail. We have worked with a group of dialler experts within the Direct Marketing Association to highlight these areas, and their response to this consultation gives the details.

We would welcome more transparency with regards to the enforcement procedures – it is not clear to us why, for example, the fine levied on CarPhone Warehouse was £35,000, while the fine levied on Bracken Bay Kitchens was £40,000. Given that Carphone Warehouse is an organisation an order of magnitude larger than Bracken Bay we would assume that Bracken Bay's offence was more serious, but this isn't clear as commercial confidentiality is still afforded the offenders in the penalty notices. Given that the companies have been found guilty of the offence we would have thought that they were not entitled to commercial confidentiality over, for example, the number of abandoned calls made.

The latest round of Ofcom's investigation identified diallers used for debt collection. We welcome the equal application of the dialler rules to all users, both collections and marketers, especially in the current constriction of consumer debt. The consumer's experience of a silent call is the same whatever its source.

#### **Q2. Do you agree with Ofcom's approach to determining whether the use of automated messages constitutes misuse?**

We strongly agree. Automated messages are inappropriate for marketing purposes.

#### **Q3. Do you believe that it is possible to define objective criteria for applying the public interest test.**

We believe that if an automated message application should only be allowed if it satisfies all the following criteria:-

- The consumer has opted in to receiving the calls
- The application is a service rather than a marketing application
- The calls present a returnable CLI, and if the called party rings the number they are told who called and why and are given the opportunity to opt out of further automated messages

- The recorded information message clearly states the name of the company that sent the message and gives the called party the opportunity to opt out of receiving further automated messages

We would exempt emergency service calls from a legitimate authority from these restrictions.

**Q4. Do you believe that outbound call steering should only be used with customers who have given their prior consent?**

We strongly agree. There are applications where it works for both the call centre and the customer in customer services applications, but is not appropriate for marketing applications.

**Q5. Do you agree with Ofcom's clarification that the exploitation of all types of revenue-sharing numbers represents a form of misuse?**

We agree.