

Update on the ICO and Ofcom Joint Action Plan for tackling nuisance calls and messages

In July 2013, the Information Commissioner's Office (ICO) and the Office of Communications (Ofcom) published a joint action plan for tackling nuisance calls and messages. This plan reflected our concerns at the level of consumer frustration and, in some instances, anxiety being caused by nuisance phone calls and messages.

The ICO and Ofcom remain committed to working together to tackle this issue and reduce consumer harm. Whilst this continues to be a challenging and complex issue to address, as highlighted by the recent Culture Media and Sport (CMS) Committee and All Party Parliamentary Group (APPG) Committee inquiries, we have been making good progress in the priority areas identified in July 2013. We have also refined the priority areas for 2014 as:

- Ongoing, targeted enforcement action;
- Improving the tracing of nuisance calls and assessing technical measures to help address nuisance calls;
- Working together and with Government, other regulators, industry and consumer groups to ensure effective coordinated action; and
- Improving consumer information on how to reduce and report complaints about nuisance calls and messages.

We will publish a further update on progress in relation to this work by the end of 2014.

Background

Evidence to date indicates that the level of nuisance calls reached a peak in early 2013. In particular, Ofcom's market research suggests that the incidence of nuisance calls fell between February and July 2013. Levels remained broadly stable in the months following, until a further decline occurred in January 2014.¹

Complaints about nuisance calls to the ICO, Telephone Preference Service (TPS) and Ofcom also peaked in early 2013 and appear to have had a downward trend (with fluctuations) since then, as set out at Annex B. Complaints to the ICO about spam texts declined over the course of 2013, having peaked in 2012.

A wide range of sectors generate unwanted calls. Ofcom's in-depth diary research in early 2013² found that Payment Protection Insurance (PPI) claims accounted for the largest proportion of unwanted calls (22%) where the product or service could be identified, but other notable sectors included energy, insurance, pensions and home improvements. This research is currently being repeated and we aim to publish the results in the second quarter of 2014. The ICO also gathers data on the sectors generating nuisance calls and messages from the complaints it receives. It has found that:

¹ See Annex A.

² <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

- The top three sectors driving complaints about live telesales calls are PPI claims, accident claims and energy / green energy issues.³ The top three sectors driving complaints about automated calls are PPI claims, debt management and energy/green energy issues. However there are signs that PPI-related complaints have peaked: between September 2012 and September 2013, complaints to the ICO about PPI fell by 15%.
- Payment Protection Insurance (PPI), debt management, payday loans and accident claims continue to be the main drivers of unsolicited spam texts (see Figure B.2 at Annex B).

Ofcom and the ICO have continued to work together, with other regulators, industry and consumer groups to tackle the widespread problem of nuisance calls and messages. We will continue to do so in 2014.

A). Targeted enforcement action

Ofcom and the ICO are taking targeted formal and informal enforcement activity to reduce harm caused by nuisance calls and messages.

ICO enforcement

The ICO's enforcement activity is focussed on those organisations that are contravening the Privacy and Electronic Communication Regulations 2003 (as amended) (PECR) by making live or automated telesales marketing calls or sending spam texts to consumers. It provides regular updates on its enforcement action in relation to marketing calls and texts on its website.⁴

In relation to spam texts, the ICO issued a civil monetary penalty of £175,000 against a payday loans company, First Financial (UK) Limited, for the mass sending of unsolicited SMS messages to consumers in December 2013. The penalty was issued after 4,031 complaints were made about messages sent from numbers which the ICO found to belong to First Financial (UK) Limited. The same company and the company secretary were prosecuted in October 2013 for a non-notification offence under the Data Protection Act 1998.

However, the ICO lost an appeal at the First Tier Tribunal (Information Rights) in its case against Tetrus Telecoms for sending unsolicited SMS text messages to consumers. It intends to appeal the decision to the Upper Tribunal.

In July 2013, the ICO submitted a business case to the Department for Culture, Media and Sport (DCMS), the government department with policy responsibility for PECR. In the business case the ICO set out the reasons why it believes the trigger for civil monetary penalties should be lowered from 'substantial damage or substantial distress' to a lower threshold. The ICO believes that the penalty regime under PECR must be broadened to create a stronger deterrent effect, across a wider range of organisations that are regularly breaching the provisions of PECR related to unsolicited calls and texts. Lowering the threshold is supported by Which? and other groups who represent consumer interests.

³ <http://ico.org.uk/enforcement/action/calls>

⁴ <http://ico.org.uk/enforcement/action>

The ICO has other regulatory tools to enforce compliance, and we have continued to use these and publicise the outcomes. Its enforcement action has ranged from agreeing an informal Undertaking with the political campaign group, Better Together, to an Enforcement Notice against Tameside Energy Services, and more prosecutions for non-notification offences under the Data Protection Act 1998.

Ofcom enforcement

Ofcom's enforcement action is focused on organisations that persistently misuse an electronic communications network or service, for example by making abandoned⁵ or silent⁶ calls, using its powers under sections 128 to 131 of the Communications Act 2003. Abandoned and silent calls can be caused by the use of automated dialler technology to maximise the amount of time that calling agents spend speaking to consumers. Ofcom has published a Statement of Policy on tackling abandoned and silent calls⁷ that sets out the steps it expects dialler users to take to avoid making abandoned or silent calls and, if such calls cannot be entirely avoided, to limit the consumer harm caused as a result. Where companies fail to comply, Ofcom can step in and take enforcement action.

Ofcom complaints data suggests that abandoned and silent calls are being made by a large number of organisations, each generating a relatively small number of complaints, amounting to a large aggregate. For example from July to December 2013, the top 10 most complained about telephone numbers only accounted for between 6% and 17% of total complaints a month.

Since July 2013, Ofcom has continued to focus resource on targeted enforcement action. In particular:

- In August 2013 Ofcom served a formal Notification on Redress Financial Management Limited, trading as Redress Claims, stating that Ofcom had reasonable grounds for believing that it had made an excessive number of abandoned calls⁸. This investigation is currently ongoing.
- Ofcom has also taken informal enforcement action to bring companies into compliance without pursuing formal action. In 2013, Ofcom took informal enforcement action against 25 organisations following consumer complaints. As a result, complaints linked to the telephone numbers used by 16 of those organisations have stopped following our actions and complaints in relation to six organisations have fallen significantly, while three cases are on-going.

There are a number of specific challenges in taking enforcement action against organisations making abandoned and silent calls. In particular, in some instances it can be difficult to identify the

⁵ This is a call where a connection is established but which is terminated by the person making the call when the consumer answering picks up the receiver. Ofcom expects that, in such circumstances, the consumer should hear a brief recorded information message from the organisation that is trying to call them providing the identity of the organisation and a means of contacting them to opt out of receiving further marketing calls from that organisation.

⁶ A silent call is a type of abandoned call, where a consumer receives a call but can hear nothing on answering the phone and has no means of establishing whether anyone is at the other end of the line.

⁷ <http://stakeholders.ofcom.org.uk/consultations/silent-calls/statement/>

⁸ http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_905/Redress_Non-Confidential_s11.pdf

organisations generating the calls because many choose to hide their identity by withholding their number⁹ or presenting invalid numbers.

Where a company withholds or hides behind an invalid telephone number it may be necessary to trace the call to identify the organisation that made it.¹⁰ Such calls are typically carried across several networks before reaching the person being called. Ofcom is working with industry to improve the call tracing process, as set out in the next section.

B). Tracing nuisance calls and messages

It is essential for Ofcom and the ICO to be able to identify the organisations behind nuisance calls and messages in order for appropriate enforcement action to be taken. Therefore a second critical area of work is tracing nuisance calls and messages.

Tracing spam texts

The ICO examines the content of the texts to see if they have any identifiers which may lead it to establish who the sender or initiator is. For example, the recent growth of texts linked to payday loans all identify websites which the subscriber is encouraged to visit. This provides a point from which the ICO can start to identify the initiator of the texts, which can be easy in some cases, but more challenging in others.

A second method of identifying those initiating spam texts is to search online to see if anyone has reported on the number, and whether they have responded and subsequently been contacted by an organisation. This information can identify a purchaser of a lead who may be able to identify the original source of the data. Again this may lead to the identity of the sender/initiator.

The ICO also uses information it receives from other regulators. For example, the Advertising Standards Authority receives large numbers of complaints about the content of texts and they will share this information when appropriate.

Tracing nuisance calls

As outlined in July 2013, there can be significant challenges when tracing nuisance calls. Ofcom has been working closely with industry to facilitate and improve call tracing and the following progress has been made within the UK:

- **Development of a new NICC¹¹ standard to improve call tracing processes.** Tracing a single call can involve many different operators, each with their own processes and ways of holding data. The NICC has developed a new standard intended to minimise the complexity and improve the chances of a successful trace. This was completed and published in

⁹ Ofcom has seen an increase in the proportion of complaints reported without a telephone number. In the first half of 2013, on average 11% of complaints a month were reported without a specific number, and in the second half of 2013 this proportion had increased to an average of 18% of complaints a month. The nuisance calls diary research that Ofcom published in May 2013 found that participants only reported the telephone number of the caller for 25% of silent calls and 39% of abandoned calls.

¹⁰ The increased use of VOIP technology is making this process easier for those wishing to misuse the network.

¹¹ This is the Network Interoperability Consultative Committee, the UK technical standards body for telecoms.

December 2013.¹² The standard was tested by Ofcom and industry during February 2014 and will be revised as necessary following the trial.

- **Updating NICC rules on how Calling Line Identification (CLI) data is passed between networks and then presented to customers.** Ofcom asked the NICC to update this because they are based on “legacy” PSTN¹³ signalling that predates the signalling systems used on more current voice solutions.¹⁴ This work will set out clear technical rules on how CLI should be included in network signalling messages and on how these messages should be treated during transition between networks. This is particularly important where different signalling systems are involved, to ensure Ofcom’s existing CLI guidelines on how networks operators handle CLI are always complied with.¹⁵ This will improve the consistency of CLI presented to consumers and ensure the necessary information is available for tracing all calls regardless of how they are made. Work on the revised CLI rules is expected to be completed early this year and following the review process, final publication is likely to be mid-2014. Ofcom will then consider whether Ofcom’s CLI guidelines should be updated to reflect the revised NICC rules.

Internationally, the Internet Engineering Task Force (IETF), the body responsible for standardising the SIP protocol (used as the signalling system for most interoperable Voice over Internet Protocol (VoIP) services), has set up a new group¹⁶ to address the particular difficulties that arise when trying to trace calls made using VoIP. A key reason for this is that there is no widely used mechanism to verify the source of a call, making it difficult to determine whether the CLI associated with a call is genuine or has been “spoofed”. Improvements here should make it easier to identify traffic with spoofed CLIs and opens up the potential to exclude such traffic in the future. However, the solution will need to be adopted widely on a global scale. Ofcom will monitor this work and, in conjunction with industry, investigate how and when the IETF’s recommendations can be implemented and their effectiveness.

In addition, the ICO and Ofcom are working with international regulators to tackle CLI spoofing as set out in the next section.

C). Effective coordinated action

The ICO, Ofcom, the Ministry of Justice’s Claims Management Regulation Unit and the National Crime Agency have continued to work closely together to tackle nuisance calls and messages, for example the ICO has recently conducted joint visits with the Claims Management Regulation Unit to claims management companies. In addition, as the consumer credit work of the Office of Fair Trading passes to the Financial Conduct Authority (FCA), the FCA will have a key role to play.

Key coordinated actions within the UK include the following:

¹² ND 1437 – see <http://www.niccstandards.org.uk/files/current/ND1437V1.1.1.pdf>

¹³ Public Switched Telephone Network.

¹⁴ Such as those specified by 3GPP for 3G services, and the Internet Engineering Task Force’s SIP, which is widely used for VoIP services.

¹⁵ <http://stakeholders.ofcom.org.uk/telecoms/policy/calling-line-id/caller-line-id/>

¹⁶ This group is referred to as the Secure Telephone Identity Revisited (STIR) group. For further information see <https://datatracker.ietf.org/wg/stir/charter/>.

- **Joint research to assess the impact of the TPS on the level of live telesales calls.** The research is being conducted in two phases. Phase 1, where participants completed a diary recording any unwanted calls they received over a four week period is now complete. Half the participants have been signed up to the TPS in advance of Phase 2 when both groups will again complete a diary recording unwanted calls. (To maintain integrity of the research results, none of them will know whether or not they have been signed up). We will publish a report on this in summer 2014. The results of the research will help inform future work in this area and will be shared with DCMS.
- **Lead generation -Operation Linden group**¹⁷ The ICO leads a multi-agency group of stakeholders (including regulators, consumer groups, trade associations and industry), with a focus on how lead generation activities generate nuisance calls and messages. The work of this group has helped improve information sharing about how personal information can be traded and current and future threats, as well as identify approaches to improve industry compliance through prevention and education.
- **Working closely with Government**, both directly and through a series of roundtable discussions on a range of nuisance calls issues.
- **Contributing to the CMS Committee and APPG inquiries** into nuisance calls. We have submitted evidence to these inquiries and written responses to their reports.¹⁸
- **Encouraging BT to present international CLI.** Until recently, BT customers have not been able to see calling numbers on international calls in order to be able to distinguish between known/welcome callers and unknown/unwelcome callers. However, BT is currently updating its equipment in its local exchanges so that, when present and not withheld, the full telephone number can be displayed on international calls as well as the word 'INTERNATIONAL' that is usually seen. This work programme started in December last year and is being rolled out across the UK. BT expects to have completed the required exchange upgrades by autumn 2014.
- **Regular meetings with the mobile network operators and their trade association, the Groupe Speciale Mobile Association (GSMA).** The ICO holds bi-monthly meetings with the mobile phone network operators and the GSMA to share complaints data captured when consumers report spam text to the number "7726". The mobile network operators (MNOs) have worked further help their customers easily report spam texts. The ICO, GSMA and MNOs operate under a Memorandum of Understanding, which enables intelligence to be shared, analysed and assessed. This intelligence corroborates and supports the ICO complaints data leading to joint investigation with the MNOs and other regulators aimed at identifying, targeting and disrupting the senders. This has led to successful civil proceedings and criminal prosecutions by the ICO. The ICO also have access to UK complaints data in 'real-time', which is bringing substantial benefits and spikes in complaints are dealt with dynamically.

¹⁷ The ICO prepared a strategic threat assessment focusing on the relationship between lead generation and unwanted marketing communications.

¹⁸ Ofcom's responses can be found on its website at:

http://stakeholders.ofcom.org.uk/binaries/consultations/ofcomresponses/Response_to_the_APPG_report.pdf
and

http://stakeholders.ofcom.org.uk/binaries/consultations/ofcomresponses/response_to_the_House_of_Commons_Culture_Media_and_Sport_Committee_Report_on_Nuisance_Calls.pdf

Internationally, the ICO and Ofcom have joined forces with regulators from Canada and the United States to tackle the problem of phone number ‘spoofing’.¹⁹ The regulators have pledged to combine resources, share intelligence and work collaboratively to find solutions to the problem of phone number spoofing. Assistance from the telecommunications industry in each of the countries will also be sought as part of the initiative. In November 2013 the ICO and Ofcom met with the US Federal Trade Commission (FTC) to discuss spoofing and how best to make joint progress on this issue. It was agreed that Ofcom and the ICO, alongside the FTC, the US Federal Communications Commission (FCC), Canadian Radio-Television Telecommunications Commission and Australian Communications and Media Authority would form a core group of ‘leaders’ to explore technical, regulatory and law enforcement approaches to caller ID spoofing.

D). ICO guidance on consent

The ICO published updated direct marketing guidance in October 2013. The guidance is aimed at organisations engaged in direct marketing and explains the legal requirements under the Data Protection Act (DPA) and PECR. The guidance covers the circumstances in which organisations are able to carry out marketing over the phone, by text, by email, by post or by fax.

The updated guidance provides practical examples about marketing activities to illustrate best practice, as well as how to comply with the law. It covers how organisations can legitimately obtain and use customer consent for the marketing of goods and services in various circumstances, and clarifies the ICO’s earlier position on the PECR and DPA legislation, particularly around the use of indirect third party consent.

E). Updated consumer guides on nuisance calls and messages

In October 2012 Ofcom launched a series of consumer guides on tackling nuisance calls and messages; these have since been viewed over 250,000 times. Ofcom recently worked with consumer groups and others to revise these guides and published updated versions in December 2013. A key change is the inclusion of a new “tips” guide for consumers on how to deal with nuisance calls and messages.²⁰

Also in December, Ofcom published a summary of the main services offered by key communications providers that can help consumers tackle nuisance calls, along with details of any charges that they apply.²¹ Ofcom will update this information as necessary.

In February 2014, Ofcom published a consumer guide on phone number scams, where the CLI on an incoming call is spoofed, sometimes to mimic the number of a real company or person who has nothing to do with the caller.²²

Ofcom is planning further work to improve the availability of consumer information about nuisance calls during 2014. For example, it is preparing a short video and easy read version of the consumer

¹⁹ <http://media.ofcom.org.uk/2013/10/21/ofcom-joins-international-taskforce-to-tackle-number-%E2%80%98spoofing%E2%80%99/>.

²⁰ <http://consumers.ofcom.org.uk/2013/12/protecting-yourself-from-nuisance-calls-and-messages/>

²¹ <http://media.ofcom.org.uk/2013/12/10/services-that-can-help-tackle-nuisance-calls/>

²² <http://consumers.ofcom.org.uk/2014/01/don%E2%80%99t-get-spoofed-by-phone-number-scams/>

guides to help make them more accessible to a wider audience. In addition, in light of new consumer research highlighting the importance of communications providers in providing consumer advice in this area, it will be working with communications providers to help ensure the advice they provide is accurate and consistent with the consumer guides. It has also set up a Roundtable to discuss and take forward consumer information issues with interested consumer groups.

In light of the above, for 2014 the previous priority area of updating the consumer guides will be broadened priority to 'improving consumer information on nuisance calls and messages'.

F). New proposals for tackling nuisance calls

Ofcom has been exploring possible technical and non-technical measures to help tackle nuisance calls. We prepared a report for Government on this in November 2013, and published details on measures considered as part of our contributions to the CMS Committee and APPG inquiries. The focus is now on assessing technical measures that may help address nuisance calls and this work will be taken forward through the industry groups set up on call tracing as outlined above.

Summary

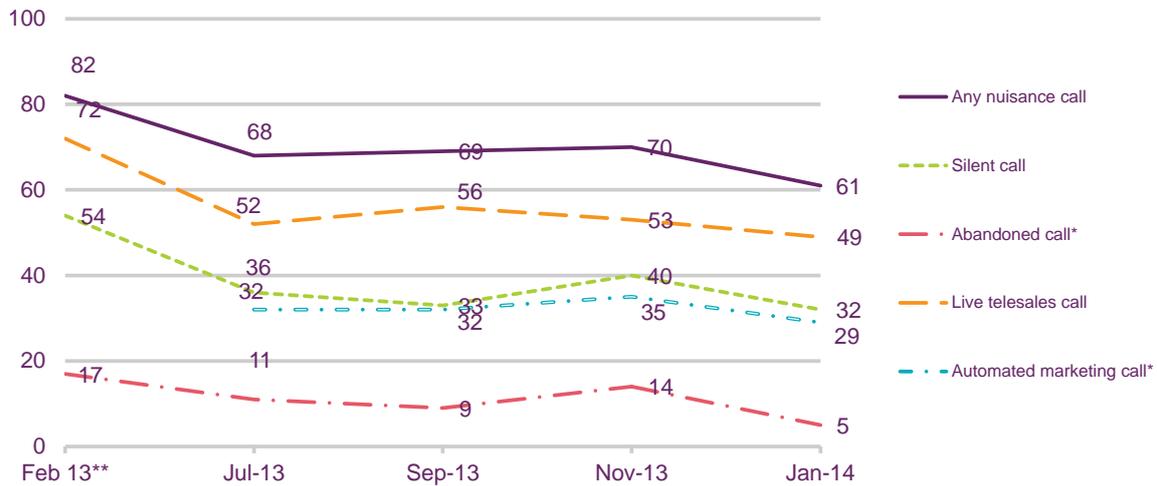
Tackling nuisance calls and messages remains a priority for both the ICO and Ofcom. Progress has been made in all the areas outlined in the joint action plan in July 2013, and some have been completed. However work in four of the priority areas is ongoing, particularly as complaint volumes remain high, albeit lower than in the first half of 2013. The focus of our work in 2014 will be:

- **Ongoing, targeted enforcement action** against non-compliant organisations to stop nuisance calls and messages;
- Working with communications providers to **improve the tracing of nuisance calls and assess technical measures to help address nuisance calls**;
- **Effective coordinated action** to share intelligence and facilitate enforcement and other action to reduce consumer harm; and
- **Improving consumer information on nuisance calls and messages.** This work will include preparation of a video guide, an easy read guide for people with learning disabilities, a review of consumer information provided by communications providers and work with consumer groups to consider other ways of improving availability of consumer information.

Annex A – Ofcom bi-monthly omnibus survey on nuisance calls received in the last four weeks

Figure A1 shows that consumers' reported experience of all nuisance calls on landlines in the previous four weeks fell from eight in ten (82%) in February 2013 to six in ten (61%) in January 2014.

Figure A.1: Unwanted calls received on a landline in the last four weeks



Source: Kantar Media face to face omnibus

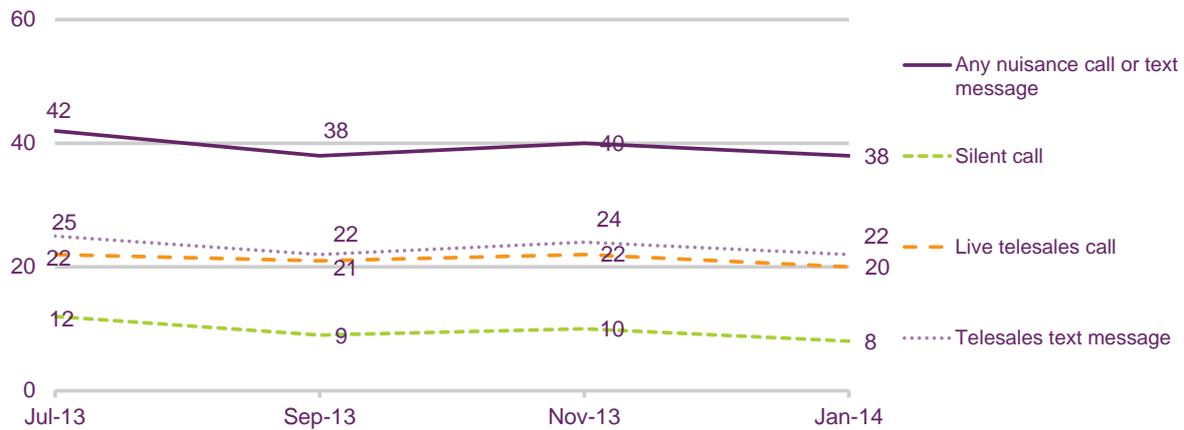
Base All with a landline phone (July 2013, 848); (Sept 2013, 896); (Nov 2013, 786); (Jan 2014, 848)

* These percentages are derived from a low base size- indicative only

** Data from pilot study: Source: GFK Random Location Omnibus; Base: All with a landline phone (1614),

Consumers' experience of nuisance calls on mobile phones is lower than their experience of these types of calls on a landline phone. In January 2014, one in five (22%) UK adults with a mobile phone received a marketing text message, and one in five (20%) received a live telesales call in the last four weeks.

Figure A.2: Unwanted calls received on a mobile phone in the last four weeks



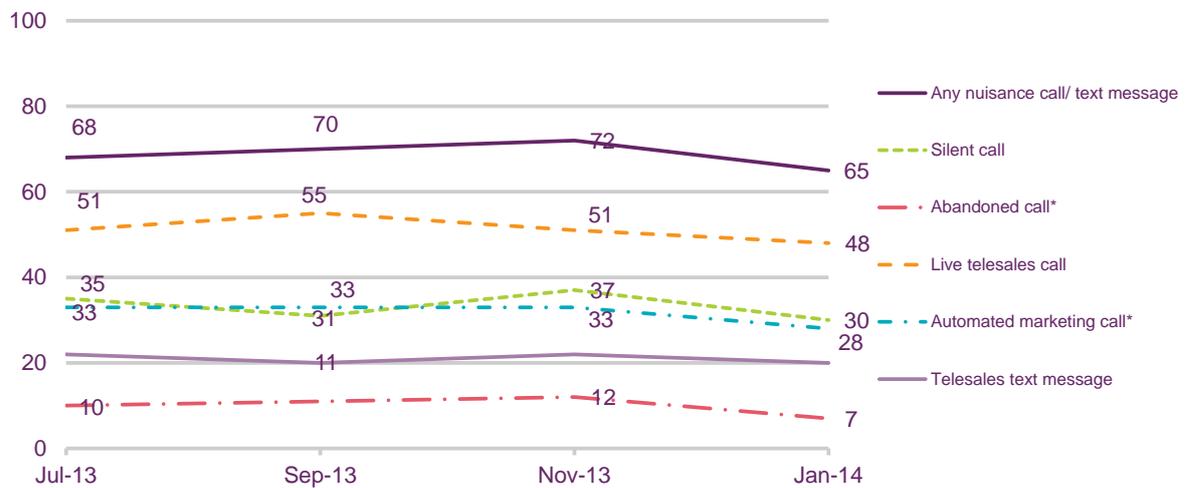
Source: Kantar Media face to face omnibus

Base: All with a mobile phone (July 2013, 895); (Sept 2013, 923); (Nov, 2013 838); (Jan 2014, 922)

NB: base size too low to calculate abandoned calls and automated marketing messages

Figure A3 shows consumers overall reported experience of receiving an unwanted call on their landline or mobile phone in the last four weeks. In January 2014, three in five (65%) UK adults with a landline or mobile phone received an unwanted call in the last four weeks.

Figure A.3: Unwanted calls received on a landline or mobile in the last four weeks



Source: Kantar Media face to face omnibus

Base All with a landline phone or mobile phone (July 2013, 1050); (Sept 2013, 1067); (Nov 2013, 960); (Jan 2014, 1038)

* These percentages are derived from a low base size- indicative only

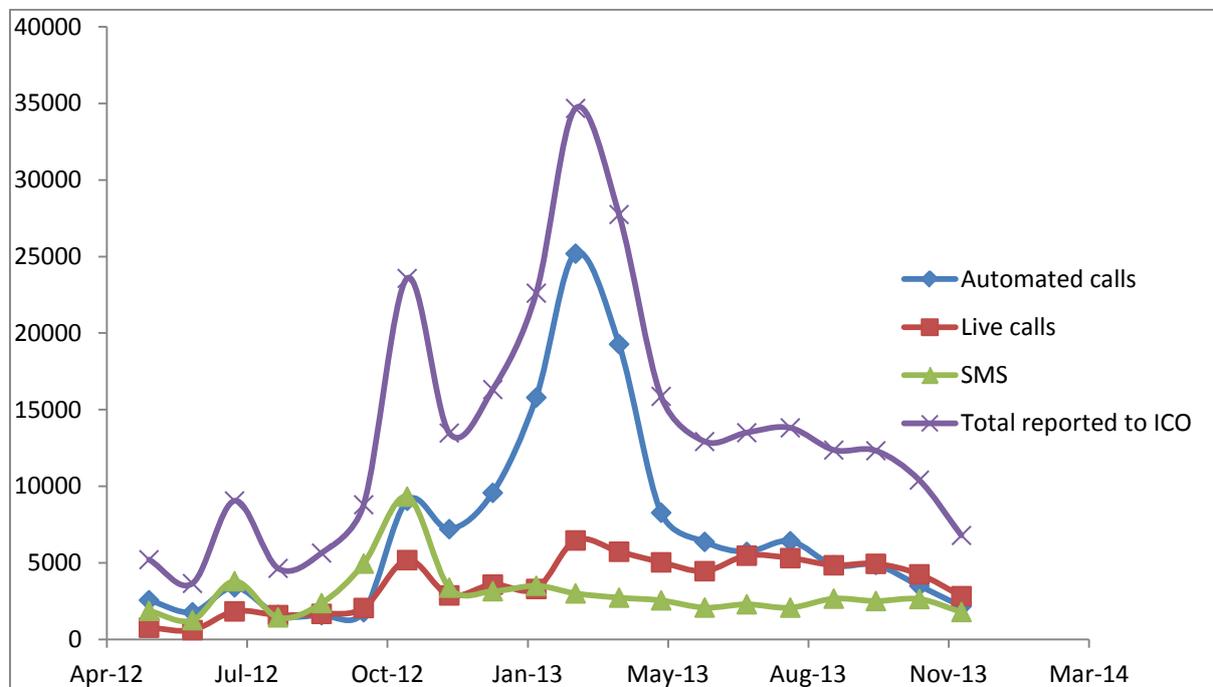
Annex B: Complaints about nuisance calls and messages

The ICO, TPS and Ofcom collect complaints data about nuisance calls and texts. This data is used to identify potential non-compliance, and can also be an indicator of the scale of the problem. This Annex sets out complaints data received, primarily for 2013.

Complaints to the ICO

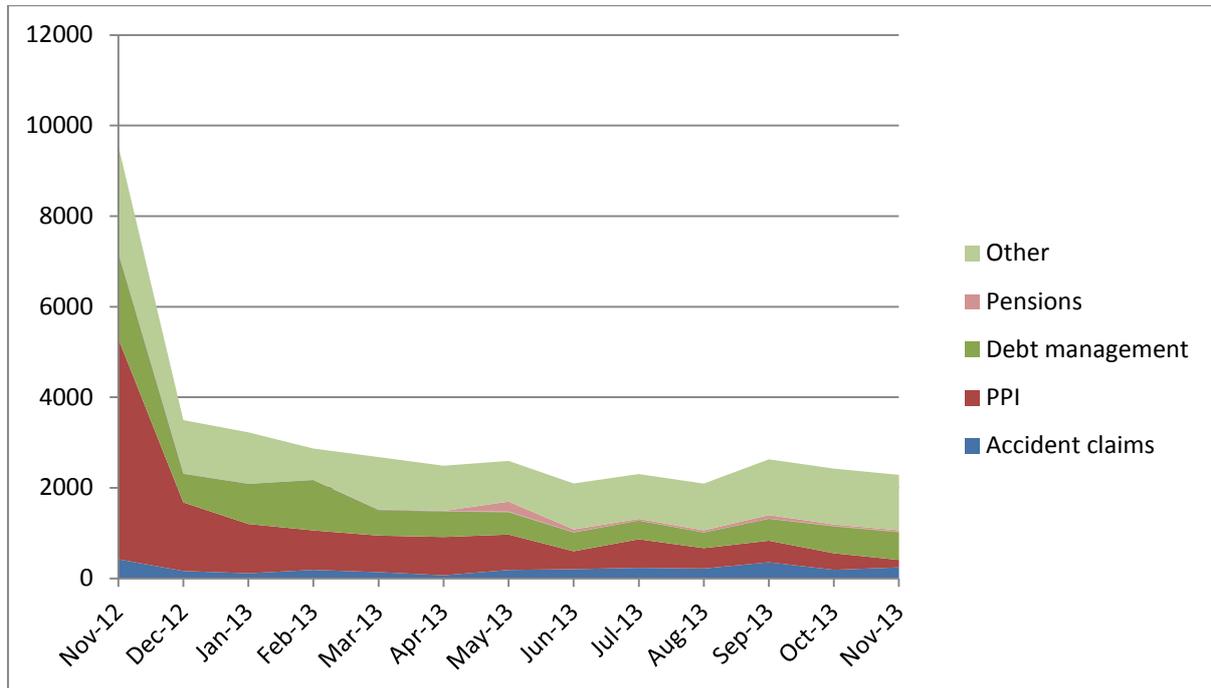
Complaints to the ICO about live and automated telesales calls peaked in March 2013 and have declined since then (Figure B.1). By December 2013, the levels of complaints were below December 2012.

Figure B.1: Complaints to the ICO about live and automated telesales calls and SMS, (April 2012 to December 2013)



Complaints to the ICO about spam text messages declined over 2013 as set out in Figure B.1 and trends in the extent to which key sectors generated texts can be seen in Figure B2.

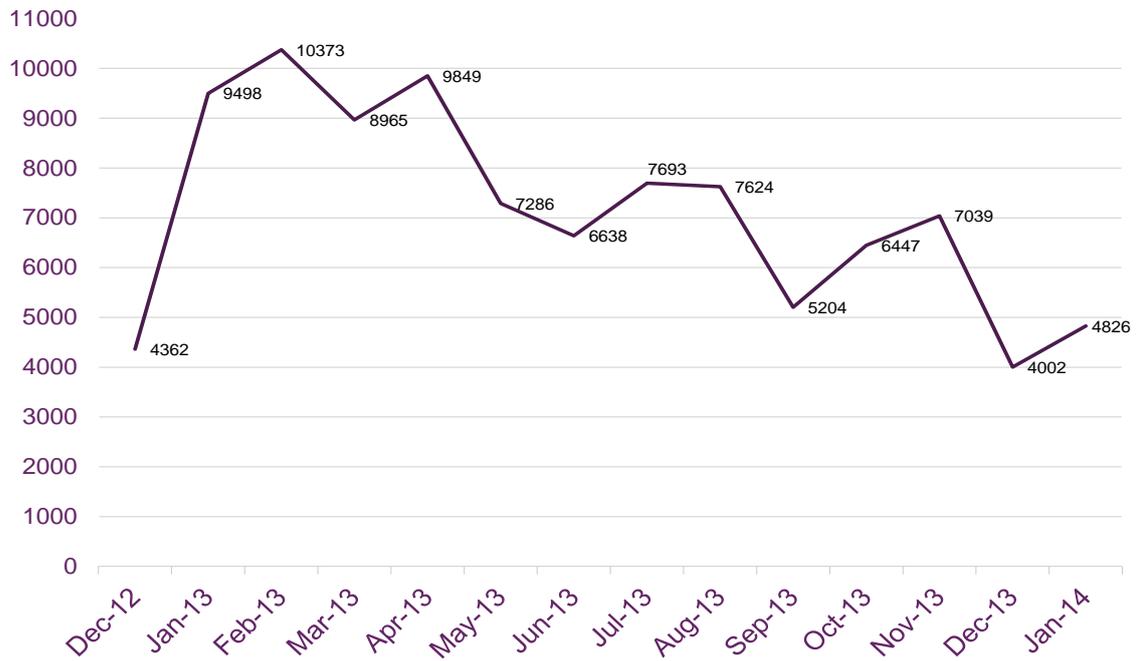
Figure B2: Complaints to the ICO about spam text messages, by subject, (November 2012 to November 2013)



Complaints to the TPS

The TPS maintains, on behalf of Ofcom, a register of persons who do not want to receive marketing calls. Complaints volumes for 2013 are set out in Figure B3. This shows that complaints peaked in February 2013 and have declined since then. The level in December 2013 was similar to that for December 2012 and rose slightly in January 2014.

Figure B3: Complaints to the Telephone Preference Service (TPS, December 2012 to January 2014)



Complaints to Ofcom

Complaints to Ofcom about abandoned and silent calls peaked in April 2013 but have declined since then, with fluctuations around a downward trend, as set out in Figure B4.

Figure B4: Complaints to Ofcom about abandoned and silent calls (Dec 2012 to Jan 2014)

