# Comms Council UK's response to DCMS' consultation 'Data: a new direction'

**About Comms Council UK**

Founded in 2004 (and formerly known as ITSPA) Comms Council UK is a UK, membership-led organisation that represents companies who provide or resell business and residential customers voice services over data networks (VoIP) as well as other "over the top" applications including instant messaging and video. The membership is a mixture of network operators, service providers, resellers, suppliers and consultants involved in a sector that is diversifying rapidly from just voice services to other innovative IP applications.

**Contact**

For more information, please contact:

Comms Council UK
team@commscouncil.uk
020 3397 3312
@commscounciluk

**Introduction**

Comms Council UK would also like to address comments we have seen that suggest telecommunications providers have some form of moral hazard in enjoying profits from nuisance calls. We reject this notion for two reasons:

Firstly, terminating operators, i.e. the called party's chosen provider, have their termination rates set by Ofcom to be no more than the Long-Run Incremental Cost. At approximately 0.03 pence per minute for fixed or 0.35ppm for mobile, for calls which are characterised by low answer seizure ratio (i.e. number made to number answered) and low average call duration (i.e. being terminated within a few seconds) point to a considerable use of network resources for very little revenue. What revenue is received has been engineered, by the regulator, to be no more than the incremental cost of providing the service, with no common cost recovery. Indeed, for traffic such as nuisance calls which is often not a 'usual' call profile, the terminating operator could suffer a loss.

Secondly, originating operators, i.e. the nuisance calling party's chosen provider, has very little incentive to accept traffic with the traditional characteristics of nuisance calls. We mentioned these in the preceding paragraph – high concurrent call attempts, low answer-seizure ratio, low average call duration, place significant stress on any reputable provider's network for little or no revenue. In our experience, all reputable providers place limits on the ability of their customers to stimulate traffic with these characteristics. We are aware of several cases of parties attempting to 'place' this traffic on our members' networks having their services terminated by said networks.

In other words, the reputable providers in this industry have little to no desire to either originate or terminate traffic from many nuisance sources; the persistence of the problem therefore belies its complexity. Calls originating abroad, or the risk of causing real consumer harm through inadvertently blocking genuine calls are two key examples of this complexity.

As we discuss below, we also note that Ofcom has not taken any enforcement action in relation to existing rules while also preparing to consult on a substantial proposal on the authentication of telephone numbers in calls. It would appear premature to consider any further intervention until the existing rules are enforced and the forthcoming project is consulted upon.

**Q2.4.11**

"*What are the benefits and risks of introducing a 'duty to report' on communication service providers? This duty would require communication service providers to inform the ICO when they have identified suspicious traffic transiting their networks. Currently, the ICO has to rely on receiving complaints from users before they can request relevant information from communication service providers. Please provide information on potential cost implications for the telecoms sector of any new reporting requirements.*"

The area of nuisance calls (be that an unwanted 'genuine call' such as a legitimate business accidentally calling someone on the do-not-call list, or spoofing) is incredibly difficult and complex. It is an area our members are committed to tackling; however, resources must be expended in a proportionate manner. We do not believe that adding an additional burden to the industry, which has at least 450 Public Electronic Communication Networks identified by Ofcom (and given there is no requirement to notify Ofcom that you are operating a network, the number could be considerably higher) would result in any change to consumer outcomes.

The vast majority, in our experience, of nuisance calls originate abroad – therefore there can be no benefit to notifying the ICO of suspicious traffic for which the ICO has no jurisdiction to enforce or investigate.

That is before we examine the practicalities of identifying 'suspicious traffic'. The interpretation of the signalling in the set of a telephone call is an automated process that is undertaken in milliseconds by reference to several points of data – individually a nuisance call is indistinguishable from a genuine call with any form of reliability.

For example, if you were to suspect a call with a corrupt header of being a nuisance call, you could as easily be talking about a call intended for a family member from a relative in a remote part of a developing nation. If you were to suspect a call with a presentation number allocated to a different country from the presentation number, you are likely to also include genuine calls, for example a call centre in Ireland legitimately performing lawful business on behalf of a UK business.

Taken in the round, patterns may emerge, but these are only indicative and not determinative. For example, nuisance calls are generally characterised by a large volume of simultaneous call attempts, with a low average call duration and low answer seizure ratio. In other words, lots of calls which are not answered, or when they are, would be a short duration because of the presence of voicemail, for instance.

Genuine use cases exhibit similar appointments; it is a known phenomenon in the industry that a weekday at 0830 sees traffic spikes as that is when doctors' surgeries open and can take appointments for the day – those lines are veritably hammered by the surgery's patients each morning.

Other legitimate use cases exist; automated systems for confirming appointments (such as those used in the restaurant industry) or for providing information about deliveries, such as those used by major postal and package services, would also look just like a traditional 'robocaller'. Unsurprisingly, that's because such services are using robocaller technology for a legitimate (and welcomed by consumers) use.

We fear that any form of duty to report would result in the ICO being overwhelmed by false positives; we do not consider that the ICO is resourced to handle the volume of complaints that networks would submit, not least as they would err on the side of caution to avoid potential sanction for a failure to report. We also do not believe it can be justified for the ICO to acquire the amount of resource required.

An alternative would be for the ICO to specify parameters which are reportable, by reference to metrics which can be algorithmically detected; there are two issues with that. Firstly, any nuisance calls traffic which falls outside those thresholds would become a de facto false-negative (with the opposing risk of reporting genuine traffic within them, as discussed above) and secondly, providing a reference point by which nuisance callers can modify their practice to avoid reporting.

Even then, if these issues could be overcome, with the volume of nuisance calls originating from abroad, of the actual 'positive' reports, many will not be able to be investigated or enforced by a UK body.

The current structure, where the ICO enquires of telecoms operators upon receipt of a complaint is, in our view, already the most efficient – the end user has confirmed that the call was a nuisance call and therefore the ICO is seeking relevant information from the provider. In other words, the complainant has

given the ICO the needle (or at least a very good indicator of its position), instead of the industry handing the ICO the haystack.

We also understand that timeframes in which some providers aggregate or destroy metadata about calls can limit the ICO's ability to engage in effective call tracing. Notwithstanding that this issue may be overcome by use of a retention order in the Investigatory Powers Act [2016], it may be worthwhile considering a 'duty to retain' where there is a reasonable suspicion, such as a call to 159.

Nothing here should prevent the ICO and industry agreeing a voluntary reporting process where network providers could report suspicious traffic if they believed it was in the public interest.

**Q2.4.12**
*Do you see a case for legislative measures to combat nuisance calls and text messages?*

Ofcom is planning to consult shortly on the implementation of a CLI assurance regime in the UK (following on from the implementation of the STIR/SHAKEN regime in North America). Any further intervention, prior to that work concluding, would appear premature.

However, the scope of that exercise does have several variants which could show promise in addressing certain fraud vectors – for example, CLI authentication could be leveraged to prevent calls masquerading as, say, HMRC, from being terminated. An absence of such CLI authentication could be a means by which consumers (and businesses) choose to reject calls, perhaps using a tool as envisaged in Q2.4.15.

**Q2.4.13**
*What, if any, other measures would help reduce the number of unsolicited direct marketing calls and text messages and fraudulent calls and text messages?*

With apologies for answering a question with a question, what legislative gap exists today? Or is this an issue with a lack of enforcement?
The UK already has specific legislation on the statute books, for example, the Privacy and Electronic Communications Regulations 2003 and, by way of Ofcom exercising its powers in the Communications Act 2003, General Condition of Entitlement ("GC") C6.6.

Incidentally, from the response by Ofcom to a Freedom of Information Act request, at the time of its response, Ofcom had taken no enforcement action (formal or informal) in relation to a breach of GC C6.6.

This is notable, given that GC C6.6 is one of the few measures in regulation or legislation that can have a meaningful effect on nuisance calls originated abroad.

SMS is a slightly different matter given that it is almost entirely unregulated and discussion about whether it should be included in the scope of measures such as GC C6.6 is valid. Ofcom is planning to consult on measures to mitigate spoofing through means of providing assurance of the validity of CLIs in signalling – we do not see a case for any further legislative (or regulatory) measures than that which is already under consideration.

**Q2.4.14**
*What are the benefits and risks of mandating communications providers to do more to block calls and text messages at source?*

As noted above, GC C6.6 exists already in relation to telephone calls, and we would suggest that part of a problem is a lack of enforcement of this existing regulation by Ofcom.

Thereafter, the benefits and risks of mandating more intervention is a well-rehearsed debate. At the point a person picks up a phone or sends a text, the network originating that call has no idea as to whether they are going to make a lawful call or an unlawful call (or text).

We hinted at the issues in the answer to Q2.4.11; a call with certain characteristics, such as a malformed CLI, could be a genuine call that has suffered at the part of a malfunctioning switch somewhere in the call path – which could be outside the UK if it is a genuine foreign call. Equally, a nefarious actor can spoof or mask elements of the signalling of a call or text to make it appear genuine.

There is also a fundamental difference between the attitudes of businesses and residential consumers receiving calls. The former, in our experience, places a considerably greater weight on receiving calls, even if that means receiving some nuisance calls than the latter. Of course, a family member whose relative is hiking a remote part of the economically-developing world is likely to be in a similar situation. Nuisance calls are, by definition, a nuisance – but the industry is caught between a rock and a hard place, because not receiving genuine calls that have been subject to a block due to a 'false-positive' is also a nuisance.

There is a very real risk that further intervention by Government or the regulator will result in an equal but opposite bout of consumer angst when genuine calls are missed.

**Q2.4.15**
*What are the benefits and risks of providing free of charge services that block, where technically feasible, incoming calls from numbers not on an 'allow list'? An 'allow list' is a list of approved numbers that a phone will only accept incoming calls from.*

The UK has one of the most competitive and vibrant communications markets in the world. If there was sufficient latent demand for such a service, we would firstly query why the market has not developed this already (other than those which are already native to some mobile handsets).

In any event, if one were offered, for the reasons outlined elsewhere, its user must be fully informed of the risks or benefits of blocking. For example, the telephone number of a phone box which a family member may use in an emergency is unlikely to be on such a list. Nor would a friend's mobile a family member may use in such an emergency too. Equally, an incoming call may be spoofed, and the use of such a tool may be counterproductive in giving a false sense of security.


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