

Nuisance and Malicious Calls - ITSPA Best Practice Document

About ITSPA

Founded in 2004, ITSPA is a membership-led organisation that represents predominantly network operators, service providers, resellers and other businesses involved with the supply of next generation communications to business and residential consumers within the UK.

ITSPA helps act as the voice for the sector to key stakeholders; ensures that standards created by or imposed on industry are fair; leads on developments of best practice; campaigns on key issues that members face, promotes competition and self-regulation and serves as the leading networking forum for the UK VoIP and next generation communications industry with events throughout the year.

Members also receive complimentary subscription to the dispute resolution scheme CISAS; summaries of Ofcom (and other) consultation papers; regulatory briefing documents; Government monitoring and intelligence reports; updates from legal professionals; anti-fraud information; and the opportunity to collaborate with peers to promote career development.

Introduction

Nuisance, Silent and Abandoned Calls relate to so-called "Spam" marketing. Malicious Calls are calls with obscene or threatening content or are deliberately designed to cause harm, anxiety or offence. An extension of the latter is a deliberate denial of service attack on a call centre, colloquially referred to as a Spam over Internet Telephony (SPIT) attack.

Below is a detailed definition of each type, followed by guidance on how to deal with them and finally the annexes include sample letters and emails that you may wish to use to communicate with your customers.

Definition: Nuisance Calls

A Nuisance Call is one that is either unwanted or one that is in industry parlance "silent or abandoned" which means that a call centre is not following the regulations on live operators etc.

Nuisance Calls (Unwanted Calls)

The Privacy and Electronic Communications (EC Directive) Regulations 2003¹ (PECR), prohibits organisations from making unsolicited live or automated direct marketing calls to Subscribers (business or residential) who have registered their number with the Telephone Preference Service (TPS).

PECR also prohibits organisations from sending unsolicited direct marketing emails or text messages to individual subscribers who have not consented to receiving such messages and/or whom have previously explicitly told them they do not want them.

The Information Commissioner's Office (ICO) has powers to serve third party information notices on communications providers and to impose civil monetary penalties of up to £500,000 for the most serious breaches of PECR.

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¹ <http://www.legislation.gov.uk/ukxi/2003/2426/contents/made>

Nuisance Calls (Silent and Abandoned Calls)

An abandoned call is where a predictive dialler makes more outbound calls than the centre has agents for and the recipient gets dead air; or an abandoned call, which is where the ringing stops because the number of available agents has been used.

Silent or abandoned calls are an offence under Section 127 of the Communications Act 2003-. Ofcom has the power to take enforcement action in the event of persistent misuse of a public electronic communications network and has the power to fine up to £2m per offence. Section 127 offences also carry criminal liability.

Ofcom has published Guidance² which sets out how it expects call centres to behave in order to comply with the Act, which includes:

- Ensuring an abandoned call rate (including a reasoned estimate of false positives) of no more than 3 per cent of live calls per campaign or per call centre over any 24 hour period;
- Ensuring that people are not contacted within 72 hours of their receiving an abandoned call without the guaranteed presence of a live operator;
- Playing an automated message in the event of an abandoned call telling the person called on whose behalf the call was made and providing them with a number to dial to stop any future marketing calls from that organisation;
- Making valid and accurate calling-line identification (CLI) information available to call recipients so they can identify who rang them via caller display or by dialling 1471 in the event of a silent call; and
- Ensuring that where a call has been identified by dialler equipment as being picked up by an answer machine, any repeat calls to that specific number within the same 24 hour period are only made with the guaranteed presence of a live operator.

Definition: Malicious Calls

A malicious call is one that is deliberately intended to cause offence or annoyance. These are likely to be highly emotive due to their nature and therefore care is advised when handling complaints. This type of call is an offence under Section 127 of the Communications Act 2003.

² <http://stakeholders.ofcom.org.uk/consultations/silent-calls/statement/>.

Handling complaints - Nuisance Calls

As general advice, it is recommended that ITSPA members inform their customers, in a manner in keeping with their own branding and identity, of the following points;

1. Of the existence of the Telephone Preference Service, a link to it, and if subscribed already, how to complain to the TPS at <https://ico.org.uk/concerns/marketing>
2. If the call is silent or abandoned according to the definition herein, how to complain to Ofcom at <https://stakeholders.ofcom.org.uk/tell-us/webflow/silent-calls/>
3. Of any products and services that the ITSPA member can offer to assist the customer receiving these calls, but stressing the limitations of the Terminating Communications Provider in stopping these calls. This may include actions such as blocking specific callers from the network or displaying caller ID information where available.

A sample version of a letter which could be used is at Annex 1 to this Guide.

Where an ITSPA member has been identified by an End User as the network providing a service making nuisance calls, based on the caller ID information presented to them, a different approach needs to be taken. Often they identify this through public domain information such as Ofcom numbering allocations and mistakenly believe the Range Holder to be the entity that makes the call. In fact, this often turns out to be a case of CLI spoofing where a false Calling Line Identity is presented.

To test this assumption, the Communications Provider should carry out some basic checks of their call data to ensure that no calls to the complainant have originated on their network. It is also prudent at this stage to search for calls originating on the network presenting the suspected spoof CLI as this could lead to identifying the source of a current campaign.

Once certain the CLI has been spoofed correspondence should be sent to the complainant pointing out that the Communications Provider is an innocent party, and giving them suitable advice in how to stop the calls. As the Communications Provider is unlikely to provide any service to this End User there is little they can be expected to do beyond advising on the most suitable next steps. The most important of which is that they contact their own Communications Provider and ask them to establish from where the calls are actually originating.

If however an ITSPA Member becomes aware of one of its own customers breaking the prevailing regulation, to the ITSPA member should inform its customer and provide bespoke advice and guidance on compliance, simultaneously requesting that they cease calling the complainant immediately.

Members should also be aware that there are cases when a caller ID is not 'spoofed' in a way that means a third party's number has been selected, but where a network has supplied a telephone to a client in good faith, but that client has then used a second network with this valid originating number to place marketing calls. In these cases, the complaint often arrives at the range holder, although the range holder has not carried these calls, nor has any visibility of them. In these cases, it is important that the complaining party's terminating provider is involved to start the process of tracing the calls backwards as often the range holder is powerless to investigate any complaint to see if it has merit.

Finally, there have been instances of recipients of nuisance calls, returning an abusive call by calling back the number that was shown as calling them; it is possible that a user who does this could be connected to an innocent third party and would be committing an offence. Users should therefore be discouraged from calling back these numbers.

Handling complaints - Malicious Calls

Any caller receiving a threatening malicious call where the threat is real and immediate should be encouraged to dial 999. If the threat is not real and immediate they should be encouraged to call 101.

Thereafter, the issue can be treated in the manner best suited to the technical capabilities of the ITSPA Member's network. The best course of action is to change their number as opposed to trying to block calls. However, where this is not possible every effort should be made to prevent further calls reaching the customer.

It is important that ITSPA Members do not share information that is protected about the calling party without the relevant authority to do so. In most cases this means they must be in receipt of a request from the Police (a valid Regulation of Investigatory Powers Act (RIPA) request), or, if the situation requires it, by a voluntary disclosure to law enforcement.

If you decide to voluntarily disclose information with a view to following through with criminal proceedings, then you need to take the following steps:

- The complainant should be identified and verified to be the recipient of the calls/texts and permission be sought to share information relating to them with the Police;
- A crime reference number is needed as well as the police station at which it was recorded;
- Dates and times of the calls/texts etc. so that you can identify them in your records.

Once the information is collated, it can be provided to the Police through the voluntary disclosure mechanism. Initially you need to identify the Single Point of Contact (SPOC) for the force in question on the CDA system (https://cda.aql.com/login.php?login_redirect=%2F).

It is considered best to contact the SPOC with the crime reference number first and check to see they are happy to receive the voluntary disclosure; at which point they will provide an e-mail address with which to send it.

The complainant should be kept updated and be encouraged to make future contact with the Police as opposed to their telecommunications company regarding this matter as there is little more the Communications Provider can do beyond this stage.

Under no circumstances should the complainant have outgoing calls blocked, especially to 999/112.

Annex 1 – Terminating Communications Provider Draft Communication (Unwanted, Silent and Abandoned Calls)

Dear [Name]

Many thanks for your correspondence regarding Nuisance Calls.

We appreciate that this is frustrating for our customers. Unfortunately, the nature of these issues is that there is often little or nothing a telecommunications company can do to stop these calls completely, especially without risking blocking genuine calls to your number.

The only feasible way to approach these situations, in our experience, is to prevent the calls being made in the first place and we would recommend that you try the following methods:

- All consumers (or businesses) who do not want to receive direct marketing calls should sign up to the Telephone Preference Service – that should stop legitimate marketing companies in 28 days or so once the entry permeates their database. It is fair to say that most of the complaints that cross our desk are from callers that are neither genuine, legitimate nor honourable. Each individual number you have should be entered, including mobile numbers and non-geographic numbers.
- After 28 days, if these calls continue and there is a live operator, then remind the caller(s) that under Regulation 21(1)(a) and (b) of the Privacy and Electronic Communications Regulations 2003, any subscriber on the TPS Database cannot be cold called and in any event, you are now telling them directly to cease which also applies.
- If they still continue, make notes as to who is calling, the calling number, date and time, and complain to the Information Commissioner, pointing out that they have been told before and you are on the Telephone Preference Service.

If the calls are “silent or abandoned”, i.e. which breach any of the following criteria:

- Ensuring an abandoned call rate (including a reasoned estimate of false positives) of no more than 3 per cent of live calls per campaign or per call centre over any 24 hour period;
- Ensuring that people are not contacted within 72 hours of their receiving an abandoned call without the guaranteed presence of a live operator;

- Playing an automated message in the event of an abandoned call telling the person called on whose behalf the call was made and providing them with a number to dial to stop any future marketing calls from that organisation;
- Making valid and accurate calling-line identification ("CLI") information available to call recipients so they can identify who rang them via caller display or by dialling 1471 in the event of a silent call; and
- Ensuring that where a call has been identified by dialler equipment as being picked up by an answer machine, any repeat calls to that specific number within the same 24 hour period are only made with the guaranteed presence of a live operator.

then a complaint can be made to Ofcom via the Consumer Contact team on 020 7981 3040 (even if you are a business). Ofcom consider these in the round – they amalgamate all of the responses and complaints and then tackle the biggest offenders.

In all cases, I am sorry to say, the chances of successfully stopping nuisance calls in their entirety is small – especially as many of the calls originate outside the EU so there is little that can be done. Also, CLI spoofing (the practice of causing the telephone network to display a number on the recipient's caller ID display which is not that of the actual originating station) is used by some of the callers, which means even if we were able to implement technical measures (i.e. calling number black lists) you may find we have blocked genuine callers.

Yours sincerely,
[ITSPA Member]

Annex 2 – Originating Communications Provider Draft Communication

Dear [Name]

Many thanks for your [phone call/e-mail/letter] of [date] expressing concerns about calls received from [number]. [ITSPA Member], is a telecommunications network, providing telecommunications services to thousands of entities in the UK and abroad who in turn supply those services to other businesses and consumers alike. Let me first of all assure you that we are not making the calls to which you refer ourselves, however, we shall investigate and take appropriate action against any of our customers that are in breach of any legislation or regulation.

We would also, at this juncture, point out that there are documented cases of call centres making outbound calls and deliberately “spoofing” numbers allocated to [ITSPA Member] to give the impression they are connected to us; if this is the case, there is often little that can be done.

Whilst we are investigating, any call centre making outbound calls is required to first of all check that the number they are calling is not registered with the Telephone Preference Service (<http://www.tpsonline.org.uk/tps/index.html>) – this applies if the number is residential or business – and we would encourage you if you do not want to receive unsolicited marketing calls, you haven’t already, to register all your numbers (be that home, mobile, or a range of numbers in a business).

In addition to checking the Telephone Preference Service database, the same legislation also requires that call centres are also required to ensure that your number is removed upon request; if you answer such calls in the future, you may wish to quote Section 21 of the Privacy and Electronic Communications Regulations 2003 which relates.

If you wish to take your complaint further, then you have two options depending on the type of call you have received;

Option 1: So called “Silent and Abandoned Call”, which meets these criteria;

- A call centre not ensuring that people are not contacted within 72 hours of their receiving an abandoned call without the guaranteed presence of a live operator;
- A call centre not playing an automated message in the event of an abandoned call telling the person called on whose behalf the call was made and providing them with a number to dial to stop any future marketing calls from that organisation;

- A call centre not making valid and accurate calling-line identification ("CLI") information available to call recipients so they can identify who rang them via caller display or by dialling 1471 in the event of a silent call; and
- A call centre not ensuring that where a call has been identified by dialler equipment as being picked up by an answer machine, any repeat calls to that specific number within the same 24 hour period are only made with the guaranteed presence of a live operator.

If they are these types of calls then the Office of Communications ("Ofcom") is the body that will handle a complaint. Their Consumer Contact team can be reached on 020 7981 3040.

Option 2:

If you are receiving calls when you have registered with the Telephone Preference Service and/or have explicitly told the calling party to not call you, then the Information Commissioner is the body that will handle the complaint. They can be reached via 0303 123 1113.

In both cases, they co-operate with each other, so if you are unsure, then either body should take your complaint.

Yours sincerely,

[ITSPA Member]

Annex 3 – Initial Correspondence (Malicious Calls)

Dear [Name]

We are writing in response to your malicious/nuisance calls complaint and would like to make you aware of the following points. [Delete/add as appropriate]

- We only capture an incoming call if it has been connected (i.e. answered or connected to Voicemail)
- We have no network facility to block calls or texts from a specific number
- We can change your number. This is the easiest and quickest method of stopping malicious calls. Please call us in the usual way to action this.

If you wish for your enquiry to be processed, then in accordance with Regulation 15 of the Privacy and Electronic Communications (EC Directive) Regulations 2003, we are only permitted to release the data to the police. Unfortunately we are not able to provide you, as the customer, with any details relating to the number calling you. Therefore you need to make a formal complaint at your local police station or email fraud.alert@met.police.uk. It may be useful to complete the call record sheet enclosed to submit with your report.

Yours sincerely,

[ITSPA Member]

Sample Call Record Sheet

DATE	EXACT TIME	TYPE OF CALL/TEXT : malicious call, silent call, malicious text

Information for complainant: Guidance on what to do if you receive malicious or nuisances calls

- Keep calm
- Don't give out your mobile number: when you answer the phone, just say "Hello" rather than giving your name and number
- Hang up. You are in control of your telephone and therefore you are not obliged to speak to anyone
- Do not give out any personal information, such as your name and address or clarify your telephone number
- Let callers identify themselves first if their number is not displayed on your mobile phone and consider rejecting calls with an unrecognisable number or withheld number
- Tell the caller the call is being traced
- If, after following these general precautions, the phone rings again. Don't say anything when you answer it. A genuine caller will speak first
- If you have the phone number of the caller, you can contact the police and give them the details

Disclaimer

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