

Communications Consumer Panel response to the DCMS Select Committee inquiry into nuisance calls

Introduction

The Communications Consumer Panel welcomes the opportunity to respond to this important inquiry into nuisance calls by the DCMS Select Committee.

The Panel is an independent body of eight experts who work to protect and promote people's interests in the communications sector. We were established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and small businesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of small businesses, which face many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively.

Following the alignment of the Advisory Committee for Older and Disabled People with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

Nuisance calls - including live marketing calls, silent calls, abandoned calls, and recorded marketing message calls - and texts from businesses can cause consumers irritation, anxiety and distress. There is also a risk that they adversely affect people's likelihood of engaging with commercial services by phone, which in turn could mean lost business for some firms. A reduction in people's trust in their communications service is bad both for consumers and businesses.

The Panel advised Government in 2010 that silent and abandoned calls continued to cause significant harm to consumers, and called on Government to raise the maximum penalty for persistent misuse of automated calling systems and services to £2 million. The Department of Business, Innovation and Skills (BIS) agreed with the Panel and gave Ofcom the powers to impose higher fines up to £2m. Last year, we welcomed Ofcom's exercise of its new powers to fine companies for making persistent silent or abandoned calls, and we called for continued close monitoring to stop others. However nuisance calls in various forms persisted throughout last year and into this year, and therefore remained an issue high on the Panel's

agenda for most of 2012/13, and our work plan for 2013/14 indicates our continued concern about this area.

As Ofcom and the Information Commissioner's Office (ICO) have highlighted, "recent technological developments have reduced the cost of making nuisance calls and sending spam texts and made it easier for organisations to hide their identity. Financial incentives such as referral fees for claims cases, and compensation for mis-selling of Payment Protection Insurance (PPI) have also driven the volumes of nuisance calls and messages upwards. This issue is a global one; there is a relative ease of access to personal data that lead generators and list brokers can readily collect and sell in the UK and overseas. This practice of selling data generates significant revenue and can raise complex challenges for national regulators." Current economic pressures along with, for example, people being contacted speculatively about pension 'liberation' schemes and PPI mis-selling make nuisance calls an issue that is unlikely to diminish or go away. If anything, it is likely to grow.

Part of the difficulty in stopping the flow of nuisance calls stems from the fact that this complex area has no single solution and is one that requires action from a number of regulators and public authorities, in addition to support from the industry. Ofcom is responsible for taking enforcement action against organisations that make abandoned and silent calls, using its powers under sections 128 to 131 of the Communications Act 2003 in relation to 'persistent misuse of networks or services'. The ICO is responsible for enforcing the Privacy and Electronic Communications (EC Directive) Regulations 2003 ('PECR'). These regulations prohibit organisations from making unsolicited sales and marketing calls to individuals and businesses who have registered their number with the Telephone Preference Service (TPS). PECR also prohibits organisations from making automated (recorded) marketing calls or sending unsolicited marketing emails or SMS text messages to individuals who have not consented to receiving such messages.

Whilst we understand the complexity of the issue we also understand the harm that these calls and texts cause to consumers. Although we welcome the work being undertaken in this area - and particularly the recent ICO/Ofcom joint action plan - we have been robust in urging further progress. This is particularly in respect of more collaboration and co-operation between relevant agencies and enabling action to reduce the incidence of unwanted calls leading to greater clarity for consumers, swifter and more robust action against offenders; and more and better use of technical aids (Caller Line Identifier (CLI) and call blocking) with no charge to consumers. We would also recommend measures to increase consumer-awareness of how to report issues, and wider publication of the existing guides as to how to deal with nuisance calls.

The Panel appreciates the Government's recent statement of legislative intent in *Connectivity, content and consumers: Britain's digital platform for growth*. We are extremely pleased to note that the Government has expressed its intention to keep this issue under review and to legislate if it cannot see clear progress - for example, to license call centres, and/or bring together functions to tackle nuisance calls and texts under a single regulator.

Levels of complaint

Ofcom's recent nuisance calls research¹ confirmed our concerns that nuisance calls are a widespread problem for the majority of consumers, with four in five (82%) of adults having experienced a nuisance call during the four-week research period. Consumers who experienced unwanted calls received around two per week on average. Calls about PPI made up the largest proportion of unwanted calls that could be identified. The research also highlighted that significantly higher levels of nuisance calls were experienced by older consumers, some of who may struggle to answer the phone, only to find an uninvited and unwelcome call. Of those calls received, 86% of the calls were found by participants to be annoying, 7% worrying, 3% distressing, 7% not a problem and 1% were considered useful. BT states that it receives more than 50,000 calls to its Nuisance Calls Advice Line each month.

Figure 1 below from Ofcom's May 2013 edition of its Telecoms Complaints Bulletin² shows the number of complaints made to the TPS about unwanted marketing calls. As the Committee will know, in order for a complaint to be recorded, the person concerned must have been registered with the TPS for at least 28 days which allows call centres time to obtain the latest version of the register and update their systems. The graph illustrates that the number of complaints made to the TPS alone about unwanted marketing calls has been approximately 6,500 or above every month except one since April 2012 - reaching a peak of 10,373 in February 2013. The TPS has suggested that the rise in complaints over the last year can partly be attributed to the increased telemarketing activity of companies dealing with PPI accident claims, energy comparison services, insulation grants and lifestyle surveys. A similar rise can be seen in Figure 2, in the level of complaints about silent or abandoned calls made to Ofcom since December 2012.

We currently do not have access to the number of complaints made to communications providers. Whilst we appreciate that the providers may not be willing to share this information publicly, we would hope that they are prepared to share their data with the relevant public authorities, so that the true extent of the problem - and consumers' reaction to it - can be more accurately assessed. We would urge that communications providers be given every encouragement to participate collaboratively in this way, to help reduce what is an industry-wide problem.

¹ <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/nuisance-calls-research/>

² http://stakeholders.ofcom.org.uk/binaries/enforcement/telecoms-complaints-bulletin/Telecoms_Complaints_may13.pdf

Figure 1. Consumer complaints to the Telephone Preference Service (TPS), April 2012 – April 2013

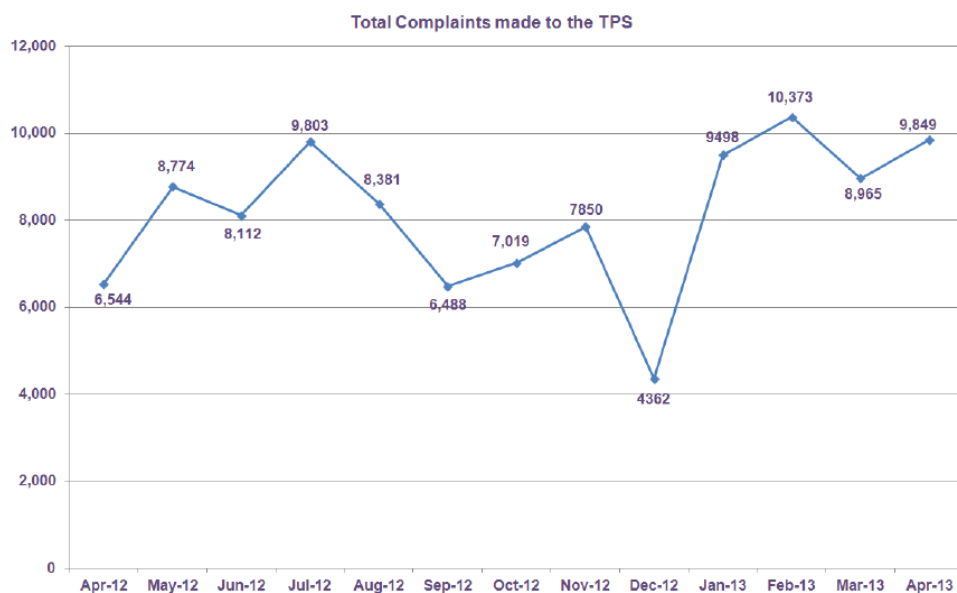
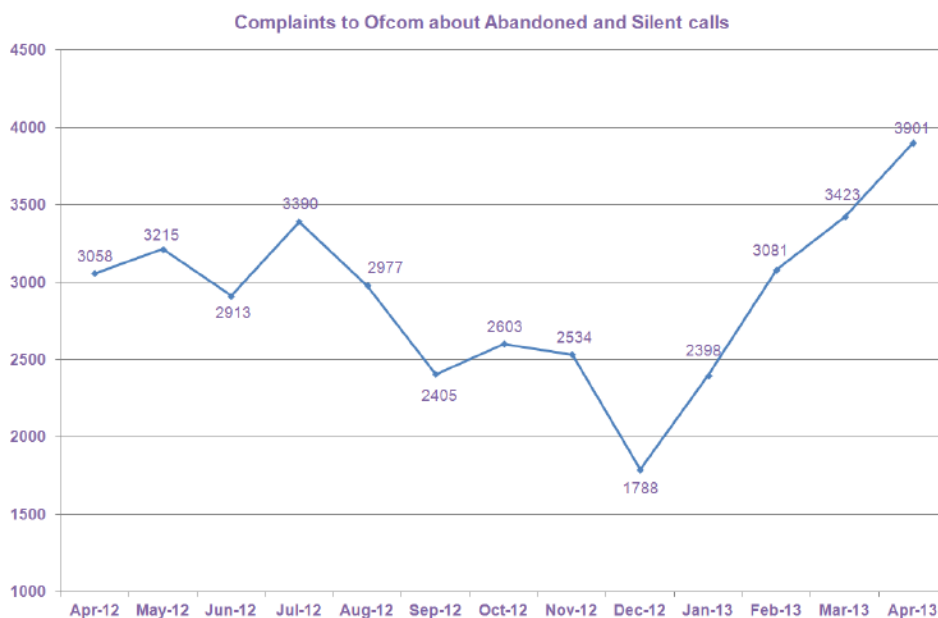


Figure 2. Consumer complaints to Ofcom about silent or abandoned calls, April 2012 – April 2013



It is also important to factor in the impact of nuisance calls on small businesses. This can be significant and disproportionate as some businesses that use virtual receptionist services can pay in the order of £1.50 per call. While time lost to dealing with such calls is a wasted resource for businesses generally, for a micro-business without an infrastructure, such calls can also have a direct financial impact.

Enforcement and collaboration between public authorities

As Ed Vaizey, Minister for Culture, Communications and Creative Industries has noted, there are a number of public authorities with a key role to play in addressing the problem of nuisance calls. There are some benefits to this approach - for example, interventions can be made at a number of places along the value chain. But there are also drawbacks, as no single authority is ultimately responsible, nor risks direct criticism, for failing to deal adequately with the problem. The potential for consumer confusion about reporting channels and sources of help is also high - itself leading to a loss of confidence and further detriment as people struggle to find support, or spend undue time and effort seeking assistance.

This complex and challenging area is thus further complicated by the boundaries of the remits of the public authorities involved. Close collaboration between the relevant parties is therefore vital to protect consumers. In its response to Ofcom's draft Annual Plan³, the Panel expressed its significant concerns about nuisance calls and scams. While appreciating the work that Ofcom was undertaking in these areas, often in collaboration with other public authorities, we suggested that work in the area of unsolicited marketing calls and texts needed to be defined more clearly and more widely in the final Plan. We also stressed that because multiple agencies are involved in seeking to address these issues, renewed efforts were required by all concerned to work in a collaborative manner, and to provide greater clarity for consumers about how to report such calls/texts and seek redress. The Panel also encouraged more emphasis on identifying where Ofcom would use its position and expertise to facilitate or encourage other stakeholders working in a given area, even if Ofcom itself was not taking or could not take direct action.

We were pleased that Ofcom recognised the points we made and, in response, broadened the reference to its work in this area⁴. Instead of focusing solely on silent calls, Ofcom amended its Plan to explicitly state that it was taking a wider range of actions to tackle nuisance calls and messages as a whole, and outlined the key elements of its five-point action plan⁵.

We have also welcomed Ofcom's efforts with others, including the ICO, to improve compliance. A good recent example of this shared commitment to taking action was underlined by a joint letter in March 2013 to approximately 170 organisations across the call centre industry emphasising the importance of complying with the legal and regulatory measures in place to protect consumers from harm and reminding industry of the sanctions that may apply should they fail to do so. The recently announced Ofcom/ICO joint action plan rightly acknowledges that while enforcement work remains central for those bodies, it is not sufficient on its own

³ <http://www.communicationsconsumerpanel.org.uk/downloads/Ofcom-annual-plan-response-2013-14.pdf>

⁴ <http://www.communicationsconsumerpanel.org.uk/downloads/13.04.17---Jo-Connell---Ofcom-Draft-Annual-Plan---reply-to-22-Feb-letter.pdf>

⁵ <http://media.ofcom.org.uk/2013/01/08/action-plan-to-tackle-nuisance-calls/>

to address the underlying causes and needs to be complemented by a range of other work.

The six priority areas in the joint action plan are:

- **Ongoing targeted enforcement against non-compliant organisations**, to stop organisations generating nuisance calls and messages.
- **Working with communications providers to improve the tracing of nuisance calls and messages** to facilitate further enforcement action.
- **Effective coordinated action**, to share intelligence and expertise to better understand the nature of the problem and facilitate enforcement and other action to reduce consumer harm. This includes a joint ICO and Ofcom review of the effectiveness of individuals registering with the TPS.
- **Revised ICO guidance on consent**, to help clarify the practices that are acceptable and areas where the ICO will look to take enforcement action to reduce consumer harm.
- **Updated consumer guides** to help ensure that they are as clear as possible and that consumers readily understand which organisation to complain to and how to protect themselves from nuisance calls and messages.
- **New proposals for tackling nuisance calls**, to consider a holistic package of new technical and non-technical measures that would tackle the root causes of nuisance calls.

In line with this co-ordinated approach, we are encouraged by the ICO's strategic threat assessment (Operation Linden) that the Panel has advised on, and which appears to have benefitted from a multi-agency approach - and also its work with the GSMA, the trade association for the UK and international Mobile Network Operators (MNOs), to improve the tracing of unsolicited marketing texts. This has led to the introduction of an agreement that formalises information sharing between the MNOs and the ICO and the sharing of intelligence from the new electronic reporting system for spam reports which went live across the MNOs at the end of June. We were pleased to see the ICO's recently imposed penalties as a result of intelligence about companies failing to carry out adequate checks to see whether the people they were calling had registered with the TPS. The industry working group chaired by the Direct Marketing Association is also focussing on the issue of nuisance calls.

Currently, regulators generally require complaints before they undertake legal action; and need to be able to identify those companies who are allegedly in breach of the regulations. However if a consumer is not able to identify the number from which a call originates, both the raising of a complaint and enforcement action become more problematic, if not impossible. The withholding or spoofing of numbers, or the international location of a call centre all make the lack of a number more likely.

Sharing of Intelligence

We are conscious that regulatory action is often predicated on the volume of complaints received. Yet we know from the Which? study⁶ that consumers tend to adopt a range of tactics to deal with nuisance calls, but not many report such calls to the statutory agency. In other words, the absence of a complaint does not mean the absence of a problem. So we welcome that a stated objective is to share intelligence.

Ofcom's recent research found that a wide range of sectors generate unwanted calls. PPI claims accounted for the largest proportion of unwanted calls (22%) where the product or service could be identified. However other notable sectors generating large volumes of unwanted calls included energy, insurance, pensions and home improvements. In most cases, it was difficult for consumers to identify the organisation calling them. Furthermore, the research suggests that there are a large number of different organisations generating such calls. We are therefore pleased to note that Ofcom has written to the Ministry of Justice to draw attention to the extent to which PPI claims appear to be driving nuisance calls.

The recent Ofcom research found that for 75% of silent calls and 61% of abandoned calls, the telephone number of the caller was not provided. This meant that, in the majority of cases, it was not possible for consumers to easily identify who had made the call and so have the chance to opt out of receiving future calls. We welcome the fact that Ofcom is currently investigating suspected abandoned and silent calls made by companies in the PPI/claims management sector and considering enforcement action against organisations that fail to provide consumers with the information they need to identify or contact the caller after receiving an abandoned or silent call.

We welcome the Government's expressed intention to legislate to enable Ofcom more easily to share information with the ICO and the Insolvency Service about companies undertaking such activities and to explore other options with regulators to remove barriers to enforcement - such as the ability of nuisance callers to conceal the telephone number which they are calling from, and the scope to lower the legal threshold that needs to be met before ICO can take action.

The coordinated effort between regulatory bodies to tackle nuisance calls must continue as a matter of urgency, while in parallel thinking strategically about longer term solutions so that the problem can be better resolved. More generally, we are encouraged by the recent greater priority given to enforcement and hope that that priority will mean faster processing and swifter action where appropriate. Some early visible outcomes will be very helpful for all stakeholders.

The Telephone Preference Service

The TPS is a free service for consumers and enables them to opt out of receiving unsolicited live sales or marketing calls. It is a legal requirement that all organisations do not make such calls to numbers registered on the TPS, unless they

⁶ <http://press.which.co.uk/whichpressreleases/help-for-consumers-to-complain-about-nuisance-calls/>

have the individual's prior consent. As noted in Claire Milne's recent LSE policy brief 'Nuisance Calls: A Case for Concerted Action'⁷ for "live 'cold' telemarketing calls to be legal, calling lists must have been checked against the TPS register and opted-out numbers removed from the list. Callers must also remove called numbers from their lists on request. All calling lists must have been correctly sourced, in accordance with data protection rules and with customers' consent to whatever handling of their personal data has taken place."

The Panel welcomes the forthcoming assessment by the ICO and Ofcom of the impact of the TPS on the level of unsolicited live sales and marketing calls, to evaluate how well the TPS is currently working for consumers and inform future work in this area. We would urge early completion of this work.

The TPS also takes complaints if a consumer continues to receive calls, despite being registered with the TPS. We would question whether there is a risk of dilution of the consumer voice as a result of this process. We note that complaints handled by the TPS and Corporate TPS are included in a regular report sent to the ICO, which enables them to identify trends in complaints being made and which supports their own investigations. It would therefore perhaps be useful for these complaints to go direct to the ICO in the first place. It might also help encourage consumers to report these calls and texts more often, if there was one well-publicised means of doing so. We would recommend such a move be considered. It may also be of benefit for DCMS to consider whether it is appropriate to move the maintenance of the register itself to the ICO.

Consumer awareness of the use of online personal data

We welcome the Government's intention to consider whether there is scope to improve clarity around the securing of consumer consent. As the Committee may know, in 2011 the Panel published quantitative and qualitative research into people's attitudes to supplying personal data online and made related recommendations in a report entitled *Online Personal Data: the Consumer Perspective*⁸.

In summary, the Panel considered that consumers will only be genuinely empowered if they have:

- information to allow them to make an informed decision about the implications of releasing their data;
- control over the use of their data;
- reassurance that companies will always minimise the amount of data that they collect, store it securely, retain it for no longer than is necessary and consider whether to check with consumers after a set period of time whether they still wish their data to be retained; and

⁷ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-8-Nuisance-Calls.pdf>

⁸ <http://www.communicationsconsumerpanel.org.uk/online-personal-data/online-personal-data-1>

- confidence that companies will follow the rules and manage personal data responsibly, and that if they do not, they will face robust enforcement action.

The Panel considers that companies should improve consumers' awareness of how their data are collected and used, and provide straightforward information for consumers.

The issue of consent is key - both in respect of the granting of consent to be contacted or otherwise, and the proving of such if there is a dispute. We support the notion of a consistent and universal standard of consent which could be communicated so that consumers at least know where they stand when ticking a box online (or not). We strongly recommend that this be given consideration. Furthermore, it does seem to us that on the issue of who should be required to prove consent had been given, the onus should fall on companies, rather than expecting the consumer to do so.

As Ofcom and the ICO have noted, consumers may inadvertently opt in to receive marketing communications. This may be due to unclear wording on forms and documents; or a lack of understanding in respect of what "opting-in" amounts to and its possible consequences - that is, unwanted calls. Furthermore, there is currently no expiry date on a consumer's agreement to "opt-in." So once someone has opted in (even unwittingly) they have effectively done so permanently. As well as making consumers aware of this fact, one suggestion may be for companies to confirm the "opt-in" status with consumers periodically - for example, a minimum of annually. Such issues raise enforcement challenges for the ICO and can lead to consumer harm. We are pleased to note that the ICO is currently reviewing all of its guidance on direct marketing under PECR and the Data Protection Act 1998, and aims to publish fully revised and updated guidance in early September 2013.

The Panel welcomed the formation in July 2013 of the All-Party Parliamentary Group on Nuisance Calls. We note that Mike Crockart's Private Member's Bill is due to receive its Second Reading on the 1st November 2013 - The Communication (Unsolicited Telephone Calls and Texts) Bill - and that it is intended to address two key issues. Firstly, how consent to being contacted for marketing purposes is given and used and, secondly, giving regulators more tools to enforce the law.

Claims management

We recognise that in a number of areas related to nuisance calls and texts, Ofcom does not have direct regulatory responsibility. Looking at the situation more broadly, we note and welcome the comments by other public authorities with a role to play - such as those by Chief Financial Ombudsman, Natalie Ceeney, who said that consumers should not be misled into thinking that they need to use claims management firms; and that banks need to deal effectively with such claims to prevent claims being rejected without sufficient justification. This is an example of a useful intervention at another point in the value chain. We also support her call for claims firms to be more stringently regulated.

Claims management companies are subject to regulation by the Claims Management Regulator within the Ministry of Justice. From 1 April 2013 referral fees have been banned in personal injury cases which we hope will have a positive effect on reducing the number of speculative calls. We welcome the Government's stated intention to explore whether there is scope to improve practice in call centres, for example, by tightening procedures around call lists.

We note that Ofcom has facilitated the sharing of complaints made to the TPS about claims management companies with the Claims Management Regulation Unit. We hope that this proves to be a useful aid to enforcement work by the Unit. We note that the ICO is also working with a number of regulatory partners such as the Insurance Fraud Bureau and the Claims Management Regulation Unit to tackle a trade in people's personal data relating to claims management companies and other organisations.

We hope that the Ministry of Justice will make greater use of spot checks into claims management companies' due diligence in establishing the legality of leads provided by introducers and their relationship with the call centres they employ. If the current situation does not improve as a result of the softer measures currently proposed, we would strongly recommend that consideration be given to the licensing of call centres.

While some claims management activity is legitimate, Citizens Advice has found evidence of systemic bad practice. We will not list the detail here but in its recent report *The Claims Pests*⁹, Citizens Advice calls for a number of actions, inter alia, a complete ban on cold calling; and in the longer term recommends:

- A full review of claims management regulation, to ensure effectiveness
- Consideration of a wider range of regulatory tools and powers, including the power to impose financial penalties.
- Action on updating data protection laws, to prevent use of consumers' details for indiscriminate, unsolicited marketing approaches.

We would strongly encourage the relevant authorities to respond to the report's recommendations identifying which actions could bring about the most benefit, who the lead authority will be and the timescales in which short, medium and long term actions will be undertaken.

Technical issues

We are aware that there are complex technical issues that compound the problem of nuisance calls. We do appreciate the work that has been undertaken to date by the Direct Marketing Association and industry and would encourage further collaborative action.

CLI technology is a key feature in helping to protect consumers and one of the few defences available directly to the consumer. While there are challenges around the display of accurate CLI information - particularly given the use of Voice Over

⁹ http://www.citizensadvice.org.uk/index/policy/policy_publications/er_legal/the_claims_pests.htm

Internet Protocol (VOIP) made by some companies and the 'spoof' CLI applications that are now available, CLI does remain a key tool. The Panel welcomes BT's agreement to display full incoming international numbers as routine and we would encourage industry to push ahead swiftly and deliver this as soon as possible.

Currently, caller display is not provided free of charge as the default option by all providers. As it is the service provided by telephone companies, and paid for by consumers, that is being abused, it seems logical for one of the main available defence mechanisms to be freely available for all consumers. It is a matter of surprise and concern for the Panel that this is not already the case - and we strongly encourage for it to be so. People cannot make an informed decision about whether to answer a call if they cannot see immediately whether a number is displayed - and if so, what that number is. The Panel welcomes the provision of equipment such as the BT6500 handset which can block certain categories of call, for example international, withheld number, no caller ID or payphone and specific numbers chosen by the caller. However for such equipment to function effectively, the line needs to have caller display enabled.

We believe that there is also a case for services such as anonymous caller rejection to be offered free of charge to customers experiencing nuisance, silent or malicious calls. We are aware that some of these are currently charged for - in some cases at approximately £4 a month. This level of outlay is not insignificant and it is unfair for people to have to pay to address a problem which has its roots outside their control. It is the equivalent of internet service providers charging for email spam filters. Blocking such calls would bring relief to many consumers. Given the expertise that industry has developed in these areas, it would also be of significant benefit if industry could improve the call tracing processes and consider potential solutions to the problem caused by calls of this nature made via VOIP. We are aware that Ofcom is working with industry on some of these areas and we would urge even more focus and ask that industry do more, sooner rather than later.

Communications with consumers

The Panel was pleased to advise on the consumer guides published by Ofcom in October 2012 on preventing and complaining about nuisance calls and messages. By end June 2013, the guides have been viewed on the Ofcom website over 159,000 times. We are pleased to note that Ofcom has undertaken to review the guides in discussion with consumer groups and, where appropriate, update them by end 2013.

We also believe that there is much to be gained by a common set of guidelines, agreed between and shared by consumer-facing bodies - industry, public authorities and NGOs. While there is much useful information available currently, we would welcome reassurance that this is being consistently promoted across the relevant companies and agencies - and that consumers are being given the best advice possible. Trying to locate information on providers' websites is not always as easy as it should be, and appears to yield results of varying quality. Whilst many of the other actions that are being undertaken may require some time to come to fruition, this should be a relatively swift process.

Conclusions

From the evidence to date, nuisance calls and texts are not a problem that can be solved by technical means alone. Neither is tracing the perpetrators an easy task, given the variety of methods being employed and the easily transferable means of entry to the network. The Panel has encouraged Ofcom and the relevant authorities to work together to not only better identify the level of the issue but also to explore approaches which have been used to good effect internationally and to consider whether further legal instruments are required in discussion with Government.

In summary, while we welcome the work to date in this area, we would like to see it go further and more quickly. We would like to see greater collaboration leading to greater clarity for consumers; more swift and robust action against offenders; and more and better use of technical aids (CLI and call blocking) free to consumers.

I hope these comments are helpful. Let me stress again that the Panel sees this as a major issue for consumers and citizens. Should the Committee wish, we would be very happy to discuss matters in more detail if that would be useful.