

WHITE PAPER

The Changing Face of UK Dialing

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The Changing Face of UK Dialing

Executive Summary

In the last two years, users of predictive dialer in the UK have experienced the introduction of new laws that have impacted their operations and they have also seen a dramatic rise in the number of registrations on the Telephone Preference Service (TPS). Now, predictive dialer users are waking up to the fact that the use of their systems is being more and more heavily scrutinized and that, for many, the changes will result in less productive dialing in order to stay legal.

Following the rise in pressure from the media, public, and government, Ofcom acted in October 2005 and issued a revised statement of policy for consultation. In this version, much more specific guidance for dialer users was given. Following consultation the final version of this document was released on the 1st of March, 2006.

It is important to understand that, while telemarketing has been the main focus of attention, the Communications Act applies to all users, including those involved in debt recovery, market research, or any other non-marketing activity. The main provisions are explained later in this document.

Background

A combination of factors has led to the present state of affairs. In December 2003, the Communications Act came into force, which introduced a new offence of 'Persistent Misuse of a Communications Network or Service'. Prior to this, there was little control over the use of predictive dialer, with the only regulatory requirement being that dialer needed to be tested before approval was given to connect them to the network.

This testing focused mainly on safety and general functionality and didn't specifically test the effectiveness of the predictive dialing itself. One item that was tested was the process used when a call needed to be abandoned because no agent was available; in this situation dialer were required to hold the call for a maximum of five seconds before dropping it. During this time no messages could be played. Only silence was allowed.

No specific guidelines were given as to the level of abandoned calls that was acceptable. It was, in theory, possible to be prosecuted for wayward use of a dialer but the relevant laws were always indirect and not related to the dialer itself. For example, existing harassment laws could be used. These were all criminal offences and, in practice, were difficult if not impossible to enforce.

When the old regulatory regime was changed and Ofcom was created, it was recognized that a non-criminal offence was needed. Rather than create a specific law for dialer, the Communication Act included the 'Persistent Misuse' offence. In the act, Ofcom was given the responsibility of creating a separate 'Statement of Policy' in which it would define how it would handle enforcement. Ofcom's first statement of policy was published in May 2004 and included provisions to cover predictive dialer. It did not, however, give any clear guidance as to acceptable levels of nuisance.

These legal changes occurred in parallel with a sharp rise in the use of predictive dialer, particularly for telemarketing. As a result, UK consumers have been receiving increasingly more calls, many of them 'silent'. This has created a backlash that has manifested itself in two ways.

Firstly, record numbers of people have been signaling that they do not want to receive marketing calls by signing up to the TPS. Secondly, the media has picked up on the 'silent call' issue and has been pressing Ofcom to act. It has also come to light that other legal changes now mean that the playing of recorded messages is no longer illegal, apart from for marketing purposes. A public campaign around this determined that it was now possible to play an 'Information Message' when abandoning a call instead of silence. This message must not carry any marketing content.

Ofcom's New Guidelines

Under the Communications Act, the Persistent Misuse offence is intended to cover those that cause unnecessary 'annoyance, inconvenience, or anxiety'. Many of the guidelines are intended to deal with the anxiety issues.

Anxiety is generally assumed to come from the silent calls. For example, when people answer a call and are met only by silence from a dialer, they may think that a burglar is calling to see if they are at home before attempting a break in. Or they may feel that they are being stalked.

In order to combat this, Ofcom has included one provision that requires the passing of Calling Line Identification (CLI) and another that requires the playing of an 'Information Message', giving details of who called and a contact telephone number, when a call is abandoned. Both of these give greater transparency and should allow people to see that the calls are commercial rather than malicious.

A further provision requires that calls be allowed to ring for at least 15 seconds before being hung up as unanswered. This is seen as being targeted more at annoyance and inconvenience rather than dealing with anxiety.

Two provisions cover the control of abandoned calls. Firstly, the level of abandoned calls must be kept below 3% of live calls in each campaign over a 24 hour period. Secondly, when a call to a particular number is abandoned, no further calls to that number can be made within 72 hours unless an agent is guaranteed to be available.

Finally, companies are required to keep records that allow them to demonstrate compliance with all the other provisions.

Prior to these guidelines, the most widely used code of practice was that instigated by the UK Direct Marketing Association. This has been in place for several years and is very close to Ofcom's guidance, with two primary exceptions: the information message is new, and the abandonment rate has been lowered from 5% in the DMA code to 3%.

Overall, the new guidance provides much greater visibility of who is calling, and states clearly what is considered to be acceptable. It is worth noting, however, that Ofcom considers all the above items to be mitigating circumstances rather than safe harbor provisions. A company meeting all the requirements could still be investigated and punished. Under the Communications Act, Ofcom has no real burden of proof. Their only concern is that the 'likely effect' of an activity would be to cause unnecessary anxiety, annoyance, or inconvenience. Sanctions are therefore based on probability rather than proof.

The Effect on Dialer Users

Given that the passing of CLI has not previously been compulsory, and the information message is a recent addition, dialer users have been able to operate in an environment of comparative anonymity. Consumers receiving abandoned calls had to go through a protracted process to find out the instigator, and companies have therefore been reasonably safe.

Under the new rules, that anonymity disappears and companies will have to ensure that they have responsible processes in place and that adherence to these processes can be tracked and verified. At the same time, the abandonment limit has been reduced which will impact dialer productivity, particularly for smaller users. In practice many users have actually been operating at well above the previous 5% guideline; those users will see an even greater impact.

If it catches a dialer breaking the rules, Ofcom has various sanctions and can impose fines. Following a Department of Trade and Industry consultation it has been announced that the maximum fine will be raised to £50,000. While this in itself is not an inconsiderable sum, in reality, it may not be the worst effect of being caught.

Ofcom will issue a bulletin whenever they open an investigation, which will name those being investigated. Anyone appearing in such a bulletin will immediately be the subject of media attention and speculation, whether or not they are doing anything wrong. Even if subsequently exonerated, the stain on a company's reputation will likely remain because the media, generally, do not put much effort into publicizing positive results of investigations.

How Can Technology Help?

Due to the changing regulatory environment, most dialer users will experience a reduction in productivity, unless changes are made to their dialing approach. It will be important for dialer users to maintain positive relations with their customers by minimizing the “nuisance” factor, while implementing processes that will ensure adherence to the new guidelines while minimizing any negative impact to productivity.

Increasingly, companies are turning to innovative technology that automate and centralize their call centers to decrease the error rate in areas of compliance, and improve operational and resource efficiency. They are improving revenues in telemarketing, mitigating charge-offs in collections and meeting their additional goals while responding automatically to change.

Austin Logistics is one such company that provides software and solutions that are perfectly matched to the evolving UK dialer environment, two of which are CallTech™ and OnQ™. The U.S. market, in which Austin Logistics has been very successful, requires a high degree of flexibility to handle sometimes state-by-state, and even local regulatory requirements. CallTech and OnQ both significantly improve productivity while simultaneously promoting responsible dialing and adherence to regulations in both telemarketing and collections environments.

CallTech and OnQ automate and centralize call strategy management to decrease the error rate in areas of compliance, increase revenues, and improve operational and resource efficiency through:

- Tightened adherence to government regulations – greater flexibility, accuracy and consistency in internalizing compliance and handling exceptions throughout the day
- Centralized dialer management across single or multiple dialer, regardless of the brand, reducing costly human error, and allowing more strategic use of each dialer manager’s time
- Intelligent recall strategies, based on customer specific data, allow regulatory and internal company rules on repeated calling to be managed automatically
- Analytics and optimization that determine the “Best-Time-to-Call” each customer, increasing right party contacts by 15-20% or more while reducing roll-rates, charge offs in collections and increasing sales in telemarketing
- Detailed monitoring and reporting that allows compliance to be clearly shown

Regulatory compliance can be achieved effectively across the organization using new technology. Contact us for additional information at complianceuk@austinlogistics.com.