



## **MRS Policy Unit**

### **Submission to Ofcom Review of how we use our persistent misuse powers (February 2016)**

#### **Introduction: About MRS and the research market**

1. The Market Research Society (MRS) is the world's largest market and social research association. It's for everyone with professional equity in market, social and opinion research and in business intelligence, market analysis, customer insight and consultancy. We support best practice by setting and enforcing industry standards. MRS represents both large businesses and SMEs and we have a range of research suppliers included in our membership.
2. The UK is the second largest research market in the world (second to the US) and the UK research sector is recognised as leading the way in the development of creative and innovative research approaches. According to the Office for National Statistics' (ONS) Annual Business Survey<sup>1</sup> it is estimated that the total UK turnover of the c.3,000 enterprises involved in market research and opinion polling to be £4.2 billion in 2015. Further in 2012, MRS with PWC undertook an assessment of the size and impact of the UK research and evidence market, producing the MRS report *The Business of Evidence*<sup>2</sup>. One of the main findings from this report is the that the UK 'business of evidence' market is substantially larger than previously estimated, employing up to 59,000 people and generating £3billion in annual gross value added (GVA).

#### **About this response**

3. We have taken into account the rationales set out in the consultation document and focused on the proposed changes to the 2010 policy that are likely to have the greatest impact on the market and social research sector and in particular those businesses operating outbound call centres conducting telephone market and social research with UK consumers and citizens. Questions that we have addressed in our response are highlighted in bold.
4. We confirm that no parts of the response are confidential and that the information may be attributed to MRS.

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<sup>1</sup> Office of National Statistics (ONS), (2015) Annual Business Survey. Standard Industrial Classification (SIC) 73.2: Market research and opinion polling. <https://www.gov.uk/government/statistics/business-population-estimates-2015>

<sup>2</sup> See [www.mrs.org.uk/pdf/The\\_Business\\_of\\_Evidence\\_Final\\_08102012.pdf](http://www.mrs.org.uk/pdf/The_Business_of_Evidence_Final_08102012.pdf) for a copy of the full report.

## **Response: Overview**

5. Ofcom's policy on the exercise of its powers relating to persistent misuse of electronic communication networks and services, particularly nuisance telephone calls and texts ("Persistent Misuse Powers Policy"), should set out a proportionate, balanced and targeted regulatory regime that facilitates effective and efficient enforcement. The exercise of powers should seek to reduce existing levels of consumer harm whilst facilitating the activities of legitimate businesses such as market, opinion and social research which provide evidence and deliver insight to a range of stakeholders.
  
6. In order for research to have value for government, businesses and the public it must be representative of the views of all UK citizens. Conducting telephone research is one of the most efficient and cost-effective ways of ensuring a representative sample of the UK population, and as a result is widely used in government research. Telephone research is also one of the best methods for researching otherwise hard to reach segments of the UK population, another key target for many public sector research projects. Telephone research depends on the ability of researchers to use automated calling systems (ACS) rather than manual dialling in order to reach a sufficiently large segment of the population. Random digit dialled (RDD) samples are used to achieve representative random probability samples of the UK population, which can only be achieved through the use of automated dialling. Industry estimates are that 30% to 40% of RDD numbers are unobtainable and the use of automated diallers greatly facilitates the ability to efficiently and effectively reach 'live' telephone numbers and deliver research projects.
  
7. A **workable** Persistent Misuse Powers Policy is **critical** in ensuring that there is a facilitative framework for the proper use of automated calling systems by research callers. Assessments provided by key players in the research sector indicate there is a significant performance improvement with the use of automated calling systems. Although the financial impact on the conduct of telephone research depends upon the mix of work, overall the impact on consumer surveys of a change to manual dialling is estimated as much as 20% cost increase. This is a cost that would be passed on to clients; leading to research becoming cost prohibitive. A resultant loss of revenue for businesses will reduce employment in the sector and impact on telephone interviewers who will lose income.



8. If Ofcom were to change its current Policy and require research organisations to change to use manual dialling only, it would also lead to some significant, long-term economic and financial losses for telephone research:
  - Dramatic loss of efficiency and effectiveness resulting in increasing telephone research costs.
  - Increased recruitment and retention costs as increasing numbers of good telephone interviewers leave the sector due to increased administrative burdens caused through repetitive dialling activity.
  - Decreased interviewing strike rates (i.e. calls which successfully result in completed research interviews) as manual entry takes longer and requires changes to interviewer working patterns including the absorption of more breaks.
  - Significant increases in incorrectly dialled numbers, due to manual entry errors, with a concomitant increase in the reporting of nuisance phone calls. The use of dialling equipment in either automated or manual modes can result in silent and abandoned calls; changing the policy from automated to manual will not result in a decrease in silent or abandoned calls made in error.
  
9. it is **crucial** that any revised Policy allows businesses to use automated systems, which are well managed, for legitimate business purposes. In order for research to continue to provide robust and representative research results in a cost-effective manner – a corner stone for much social research, including research undertaken by Ofcom – researchers must be able to continue to use random diallers.
  
10. MRS recognises the clear annoyance and harm to consumers from unwanted calls and we fully support credible action being taken to reduce the level of nuisance calls. However it is also important to recognise that the adverse effects and consumer harm are largely occasioned by actions of **rogue unregulated businesses** such as those who make lifestyle survey calls from overseas based call centres and do not follow data protection or other legislative requirements. MRS is the regulator for the market research sector and receives and monitors any complaints about “market research” nuisance calls. These complaints are inevitably about companies engaged in the practice of **sugging** i.e. selling under the guise of market research related to the use of lifestyle questionnaires, a form of data collection for use in direct marketing. These type of exercises are confusing to the public, as they use a method of data collection traditionally associated with research (a questionnaire) for another purpose which is not clearly or conspicuously identified (direct marketing). These lifestyle surveys, which are not market research have been identified as an area of



concern by the Information Commissioners Office.<sup>3</sup> In seeking to address issues of consumer harm by use of the Persistent Misuse of Powers Policy Ofcom **must focus on areas of highest harm and ensure that it does not inadvertently stymy and inhibit the growth of legitimate market and social research businesses** which make a valuable contribution to the UK and global economy.

### **Response: Section 3 Examples of misuse: causes and harm**

**Q1: Should Ofcom's policy on persistent misuse continue to have as its main focus the tackling of silent and abandoned calls?**

**Q2: Have we identified the main causes and effects of silent and abandoned calls, and are there any others we should take into account?**

*Q3: Do you agree with the other forms of misuse we propose to include in the policy?*

*Q4: Is there any other evidence we should take into account in relation to the causes and effects of the other types of misuse identified (misuse of ACS, misuse of a CLI facility and breaches of the PECRs)?*

*Q5: Do you have any comments on:*

*a) the evidence of consumer harm from the forms of persistent misuse we propose to include in the policy (and on silent and abandoned calls in particular); and*

*b) our approach to estimating the consumer harm from those forms of misuse?*

*In all your responses, please state your reasons and provide evidence to support your views.*

11. We agree that Ofcom's Persistent Misuse Powers Policy should continue to focus on silent and abandoned calls. MRS members operate fully within the existing guidance and there is no evidence to suggest any misuse of calling systems by research contact centres.<sup>4</sup> Although silent and abandoned calls (as defined by Ofcom) cannot be completely eradicated (through use of either automated or manual dialling systems) appropriate steps are taken by MRS members in order to minimise any harm. Members are required to abide by existing MRS regulations (which were agreed with Ofcom) in this area and deploy robust quality management and oversight systems. As a result, MRS does not receive any complaints about silent or

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<sup>3</sup> ICO statistics indicate that in January 2016 lifestyle surveys accounted for the third highest specified reported topic of live nuisance calls see <https://ico.org.uk/action-weve-taken/nuisance-calls-and-messages/>

<sup>4</sup> For example one of our members noted that during 2015 they made 3.1m calls and recorded just 9,009 silent or abandoned calls – essentially 0.29% and in some months the drop rate was as low as 0.05%. In all instances consumers would see Caller Line Identification (CLI) and be able to contact the calling party



abandoned calls generated by research organisations and members similarly report that they rarely receive complaints regarding abandoned or silent calls.

12. We note the identification by Ofcom of the use of Answer Machine Detection (AMD) technologies as a key driver on high abandoned call rates. Research practitioner responses confirm that AMD is not generally used by accredited market and social research companies. A trial conducted by one of our large research corporate members in their contact centre found that the use of AMD made the calling centre less productive. During a trial in 2014 the business ran side-by-side surveys, one using AMD and the other standard predictive dialling. Both surveys had a mix of landline and mobile RDD sample, and 1000 surveys were completed on each. The findings were that using AMD made the telephone call centre 10% less productive. Analysis of this suggested a mix of reasons. Firstly, the time it took for a connected number to be sent to an interviewer increased because there was a pause on the line as the AMD system tried to establish whether it was connected to a real person or an answer machine.<sup>5</sup> Secondly, as a result of this number of connected calls that an interviewer dealt with dropped because they were waiting longer for calls to be connected to them.<sup>6</sup> Thirdly, this in turn dropped the number of "real people" the interviewer spoke to.<sup>7</sup> Finally the percentage of refusals increased possibly because of the additional time the AMD system took to connect the research participant to the interviewer.<sup>8</sup> The demonstrated lower productivity together with the potential for consumer harm or participant dissatisfaction (although no direct increase was seen in the level of consumer complaints) resulted in the decision not to introduce or use the technology.

13. MRS understands Ofcom's underlying intent to signal that silent calls will not be tolerated and a continued focus on silent and abandoned calls which can cause consumer harm is appropriate. However it is also important to highlight that silent calls cannot be completely eradicated in either automated or manual dialling, a range of human and/or inadvertent, unintentional technical difficulties contribute to silent calls. These include poor reception on the participants handset or line, especially if a mobile phone line is being called; limited hearing on the part of the participant; slowness from the participant to put the call to their ear or being otherwise

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<sup>5</sup> Without AMD around 20% of total interviewer time was spent waiting for a connected call to be sent to them. This increased to 27% of total interviewer time when using AMD

<sup>6</sup> Without AMD they received an average of 96 connected calls / hr. This dropped to 77 connected calls / hr with AMD.

<sup>7</sup> Without AMD in 58 calls / hr – the interview spoke to a "real person". This dropped to 49 calls / hr with AMD

<sup>8</sup> Without AMD 48% of connected calls turned into refusals. Using AMD, this proportion increased to 55%.



distracted; and natural lapses in concentration on the part of the interviewer which cannot be prevented and are simply part of human nature.

**Response: Section 4 Proposed Changes to the 2010 Policy**

***Q6: Do you agree with our provisional view that we need to make changes to the 2010 policy in order to address the causes and effects of persistent misuse in a more effective way?***

***Q7: Do our proposed changes target the right forms of persistent misuse and their causes and effects? If not, which forms, causes and effects should we target?***

14. MRS is of the view that the current policy largely works satisfactorily but can be usefully amended to extend the examples of the type of conduct that will be considered persistent misuse. Setting out that action may be taken for persistent misuse where callers make or send unsolicited calls or messages in breach of the Privacy and Electronic Communications Regulations 2003 (PECRS) allows for a co-ordinated enforcement approach to be developed between ICO and Ofcom in tackling these types of nuisance calls.

15. MRS is not satisfied that changes regarding the factors that Ofcom will take into account in assessing the harm caused by misuse and prioritising cases for action are sufficiently clear and targeted. One of the major reasons for consumer harm are the actions of "rogue businesses" based both in and out of the UK making calls to UK consumers. The regulatory approach needs to devise targeted solutions to deal with the actions of these types of businesses. In light of this MRS considers that in changing the mix of factors that they are likely to take into account in assessing harm Ofcom is setting the threshold for enforcement for persistent misuse at an ***unworkably high level***. MRS strongly recommends that this policy is reconsidered in light of the arguments that MRS has presented.

***Q8: Do you agree with our proposed definitions of (i) silent calls and (ii) abandoned calls?***

16. MRS generally agrees with the proposed definitions of silent calls and abandoned calls.

**Q9: Do you agree with the proposed policy on silent calls – that these should be Ofcom’s highest priority for enforcement action, however caused and in whatever number? Do you have any information that would help to quantify further the potential costs and benefits of the proposal?**

17. Silent calls are distinguished from abandoned calls by the lack of an information message being played. In light of the demonstrated level of consumer harm MRS agrees that these should represent a higher priority for enforcement. However we would caution that it is important to take into account intent of the person and/or organisation making the call, and whether any failures are due to systemic problems or one-off failures. This can be ascertained in the context of documented processes and policies aimed at minimising occurrence of calls or failures. MRS suggests that the policy should not apply to isolated or concentrated infrequent cases (caused by technical difficulties) where there is due process and systems have been set up to minimise these and in these examples instances of silent calls should not fall within enforcement priorities. MRS recommends the focus should be on those repeat offenders which demonstrate systemic problems and/or disregard for the Ofcom regulations.

**Q10: Do you agree with the proposed policy on abandoned calls:**

**a) that cases where a caller’s abandoned call rate is three per cent in any 24 hour period or more should represent a higher priority for enforcement and;**

**b) where we take enforcement action, we should take into account all abandoned calls a caller makes?**

**Q11: Do you have any information that would help to quantify further the potential costs and benefits of this proposal?**

18. An explicit statement in the regulatory policy that enforcement action can be taken in any cases where the caller makes more than three abandoned calls (over an unspecified period) is likely to expose legitimate businesses working to minimise consumer harm to the risk of enforcement action. Although enforcement priorities will take into account both the number and rate of abandoned calls made by businesses, such an approach by Ofcom is **disproportionate and excessive**; to place the entry point threshold for enforcement at this **unrealistic** level. MRS strongly recommends that this proposed statement is changed and replaced with a more proportionate approach.

19. The proposed Policy on abandoned calls needs to be clarified in order to provide greater certainty to businesses. We note that Ofcom has indicated it will interpret persistent misuse generally as "...a minimum of 3 instances of the conduct in question ... so that where a person engaged in activities or conduct that amount to misuse on three or more occasions, Ofcom may regard that as persistent misuse." (see para. 2.7 Draft Revised Statement of Policy). This is reflected in the Consultation Paper which indicates that Ofcom "may take enforcement action in any cases in where the caller makes more than 3 abandoned calls" (see para. 4.9 p.36) and that "where we take enforcement action, we will take into account all abandoned calls a caller makes, not just those on any days in which its ACR is three per cent or more" (para.4.69 p.49). **Greater clarity is essential** for this Policy, particularly what time periods are covered, whether it is per campaign or per call centre, and so on. A limit of 3 silent and/or abandoned calls per day does not relate to the size of the company and is **disproportionately punitive** on larger companies. The proposed enforcement approach would have a **devastating effect** on telephone research as it would leave accredited members open to enforcement action in running some of the projects that they currently undertake, particularly those using a RDD sample, essential for probability sampling projects which are the cornerstone of many government studies, as well as many market research projects such as customer satisfaction surveys. Such lowering of enforcement thresholds could have a huge impact on research businesses and their staff, with the distinct possibility that some of the work would go to market research companies based overseas many of which are unlikely to comply with UK regulatory requirements. Not only would this result in potentially increased numbers of nuisance calls from overseas, it would also dramatically reduce the telephone research sector (15% of all research) with the result that many research businesses could struggle with the potential for their staff and interviewers to lose their jobs.

*Q12: Do you have any comments on our proposed changes to the policy in relation to persistent misuse arising from:*

*a) misuse of ACS;*

*b) misuse of a CLI facility; and*

*c) breaches of the PECRs?*

***Q13: Do you agree with the way we propose to assess the harm from cases of persistent misuse and prioritise enforcement action? In particular, have we identified the right factors to take into account and do you agree with the way we propose to apply them?***



20. MRS considers that some of the changes to the factors to be considered in assessing harm and prioritising cases are useful. These include the time of day the misuse occurs and the existence of caller line identification. The MRS Code of Conduct (and MRS Regulations for the Use of Predictive Diallers) which are binding on Members take these factors into account. As highlighted in consultation document the MRS Code of Conduct provides clear guidance on hours during which telephone calls can be made i.e. 9 am to 9 pm Monday to Saturday and 10 am to 9 pm on Sundays (unless by appointment). Further, accredited members of MRS must abide by Rule 37 of the Code of Conduct which provides "Members must ensure that participants are able to check without difficulty the identity and bona fides of any individual and/or their employer conducting a project (including any sub-contractors)." More specifically members using predictive diallers are required to follow MRS Regulations and ensure that they use CLI.

21. Similarly the proposals regarding Caller Line Identification (CLI) as sensible and workable as failure to provide a CLI can aggravate harm caused by silent and abandoned calls. Ensuring that caller line identification is provided is a proportionate regulatory response. However we would suggest a clarification to the proposals on the playing of an information message on abandoned calls. We note the recommendation that the message should "contain the identity of the party on whose behalf the call was made (which will not necessarily be the same party that is making the call) (see para. 5:32 of the Draft Revised Statement of Policy). It is important to highlight that in research projects the identity of the party on whose behalf the call is being made should, in a research context, **be considered to apply to the research company initiating the call** rather than the research client on whose behalf the call may be made. Researchers have different levels of control in projects but in all instances reference to an accredited market research company should suffice. This is important as in some instances revealing the name of the client company could bias research design in both market and social research projects, undermining the robustness and reliability of any resulting research outputs. Furthermore there is considerable unjustifiable expense involved in seeking to develop alternative information message for different projects.

22. MRS is happy to engage with Ofcom on the issues raised in the consultation and would welcome a meeting to discuss the same and implications for the MRS regulations on use of predictive diallers.



23. For further information or clarification on this submission please contact Dr Michelle Goddard, Director of Policy and Standards, ([michelle.goddard@mrs.org.uk](mailto:michelle.goddard@mrs.org.uk) 020-7566-1882). This submission is made on behalf of The Market Research Society, 15 Northburgh Street, London EC1V 0JR. The Market Research Society is a company limited by guarantee, registered in England No. 518685.: