



MRS Regulations for Use of Predictive Diallers

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MRS is the world's largest association for people and organisations that provide or use market, social and opinion research, business intelligence and customer insight.



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Introduction

These Regulations have been produced to aid MRS members in applying Sections 128 to 130 of the Communications Act 2003¹ which give the Office of Communications (Ofcom) powers to take action against persons or companies who persistently misuse electronic communications networks or services in any way that causes or is likely to cause unnecessary annoyance, inconvenience or anxiety.

The Regulations were initially produced by MRS following the publication by Ofcom of its revised [“Statement of policy on the persistent misuse of an electronic communications network or electronic communications service”](#) on 1 March 2006 and were further amended in light of subsequent revisions.

This version of the Regulations makes amendments to reflect the revised Ofcom statement of 20 December 2016 ([“Revised Statement of Policy 2016”](#)). The Revised Statement of Policy 2016 makes it clear that there is no minimum tolerance level for any type of misuse of electronic communication networks or services. All forms of misuse may cause harm to consumers and Ofcom will take enforcement action as appropriate.

It should be noted that within the Revised Statement of Policy 2016 a list of examples of ‘misuse’ have been given. Nine examples are given:

- misuse by making silent calls;
- misuse by making abandoned calls;
- misuse for dishonest gain such as scams;
- misuse of a calling line identification (CLI) facility;
- misuse of a network or service which is also a breach of the Privacy and Electronic Communications Regulations (PECRs);
- misuse resulting from use of technology;
- misuse of allocated telephone numbers;
- number-scanning and fax-scanning; and
- other forms of misuse such as repeated improper behaviour of call centre agents to call recipients.

¹ Communications Act 2003, Cross Heading: Persistent misuse of network or service is up to date with all changes known to be in force on or before 17 April 2020 – full text available at the end of this document

The Revised Statement of Policy 2016 has detailed the type of behaviour that is likely to be misuse of a CLI facility. This includes the withholding of CLIs by those making marketing calls, displaying a CLI which is not authentic or valid; displaying a CLI which is unreturnable such that when called the number does not connect to an agent or an automated message or displaying a CLI which is a controlled premium rate service number.

Ofcom's top enforcement priority in this area as identified in the Revised Statement of Policy 2016 is tackling silent calls and it is also concerned about tackling abandoned calls. In light of this these Regulations address in particular the issue of misuse by making silent or abandoned calls and display of a valid returnable CLI.

It is important to understand that although these Regulations provide advice on the implications of the Revised Statement of Policy it is not, and should not be regarded as, a legal document. The definitive text is the statement itself.

Furthermore, there are other pieces of legislation which regulate the use of telecommunications equipment. For example, PECR The Privacy and Electronic Communications (EC Directive) Regulations 2003. PECR have been amended a number of times. The more recent changes were made in 2018, to ban cold-calling of claims management services and to introduce director liability for serious breaches of the marketing rules; and in 2019 to ban cold-calling of pensions schemes in certain circumstances and to incorporate the GDPR definition of consent. Under PECR it is an offence to use automated calling systems to make unsolicited direct marketing calls which do not consist of live speech. An example of such a call is a recorded message, where no operator is present. It is recommended that the PECR are read in conjunction with these MRS Regulations and the Ofcom statement.

These Guidelines interpret the MRS Code of Conduct (revised 2019) and provide additional best practice guidance. Unless otherwise stated, Guidelines are not binding. Their aim is to promote professionalism in the conduct of research, insight and other data processing activities.

The general public and other interested parties are be entitled to complete assurance that every project is carried out in accordance with the MRS Code of Conduct and that their rights and privacy are respected.

Rules from the MRS Code of Conduct applicable in each section of this document are stated in bold. These rules are binding on MRS members and MRS Company Partners and breaches may result in disciplinary action. The guidance that follows the rules provides interpretation and additional best practice. Members and Company Partners are reminded that this document is designed to complement the MRS Code of Conduct and should not be consulted in isolation.

As specified in the MRS Code, it is the responsibility of the members to keep abreast of any legislation which could affect their professional activities and to ensure that all those involved in projects are aware of and agree to abide by the MRS Code of Conduct.

This material is provided for information only. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to specific issues.

The Principles of the MRS Code of Conduct

MRS Members shall:

1. Ensure that their professional activities can be understood in a transparent manner.
2. Be straightforward and honest in all professional and business relationships.
3. Be transparent as to the subject and purpose of data collection.
4. Ensure that their professional activities are not used to unfairly influence views and opinions of participants.
5. Respect the confidentiality of information collected in their professional activities.
6. Respect the rights and well-being of all individuals.
7. Ensure that individuals are not harmed or adversely affected by their professional activities.
8. Balance the needs of individuals, clients, and their professional activities.
9. Exercise independent professional judgement in the design, conduct and reporting of their professional activities.
10. Ensure that their professional activities are conducted by persons with appropriate training, qualifications and experience.
11. Protect the reputation and integrity of the profession.
12. Take responsibility for promoting and reinforcing the principles and rules of the MRS Code of Conduct

Definitions

- 1. For the purposes of these Regulations, predictive dialler shall mean any equipment capable of dialling a telephone number prior to a live operator being available to exclusively handle the call.
- 2. For the purposes of these Regulations, a live call is where a connection is established, and the call answered by a live individual.
- 3. For the purposes of these Regulations, an abandoned call is where in a live call, instead of being connected to a live operator or experiencing a silent call, the originator plays an information message or would do but for the call recipient disconnecting the call themselves.
- 4. For the purposes of these Regulations, a silent call is a call where the person called hears nothing on answering the phone and has no means of establishing whether anyone is at the other end.
- 5. For the purposes of these Regulations, a live operator is one where a person is present to talk with an individual who answers a call and does not include pre-recorded voice messages.
- 6. For the purposes of these regulations, the abandoned call rate is calculated according to the following formula

$$\frac{\text{Abandoned calls (x)}}{\text{Abandoned calls (x) + Live calls (y)}} * 100\%$$

Scope of the Regulations

These Regulations are issued to assist members adhere to rule 1 of the MRS Code of Conduct (revised 2019), that is:

1. Members must ensure that their professional activities conform to the national and international legislation relevant to a given project, including in particular the Data Protection Act 2018 in the UK, the EU General Data Protection Regulation 2016, and any amendments and superseding legislation that may be enacted. This also covers other applicable legislation inside and outside the UK.

In this context, the applicable legislation is the Communications Act 2003, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the EU General data Protection Regulation 2016 and the Data Protection Act 2018

Normative References

These Regulations should be read in conjunction with the MRS Code of Conduct and associated guidelines and regulations developed by MRS. Other existing rules which govern telephone research must be adhered to.

For more information about the Code of Conduct and the Regulations please contact the MRS Standards department (codeline@mrs.org.uk), or visit the MRS website www.mrs.org.uk/code.htm

The Regulations

1. Members must ensure their predictive diallers are adjusted to ensure a minimum ring time of 15 seconds for all calls before the call is terminated.
2. The predictive dialler must at all times be able to provide statistics on the rate of calls abandoned calculated per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over a 24 hour period (between midnight and midnight on a calendar day), and must include a reasoned estimate of Answer Machine Detection (AMD) false positives, where used.
3. All predictive dialler users including AMD users may exclude a reasoned estimate of calls abandoned to answer machines from the abandoned call rate.
4. Members must use their best efforts to ensure that no abandoned or silent calls are made by their predictive diallers

Records Management

5. Statistics which record compliance must be created daily across all call centres operating for a research organisation. Monitoring must be sufficient to identify any single call centre or predictive dialler which consistently generates more than 1% of abandoned calls in the UK.
6. Members must maintain an up to date archive of predictive dialler statistics which clearly demonstrate compliance with these Regulations. This must include a daily summary of:
 - a. The number of calls attempted
 - b. The number of abandoned calls generated by the dialling equipment.
7. Records of predictive dialler statistics (in summary form) which clearly demonstrate compliance with Regulation 2 must be retained for a minimum of 6 months and must be available for inspection by the regulator by all centres that use predictive diallers. The statistics can be stored in either electronic or manual format; and can be kept centrally or across call centres

Management Practices, Processes and Policies

8. Members must ensure that written procedures are available which detail the following:
 - a) How predictive diallers are set up or changed;
 - b) How abandoned and silent call generation is monitored;
 - c) How call complaints are monitored and handled including how abandoned and/or silent call complaints are dealt with;
 - d) Type and frequency of training provided to ensure dialling is managed by competent persons;
 - e) How quality of call handlers performance is monitored.

Caller Line Identification and Information Messages

9. Where predictive diallers are used members must provide relevant caller line identification (CLI) on all outbound calls.
10. The CLI presented must be returnable and connect to a live operator or recorded information message. In the event that a CLI connects to a recorded information message, members must ensure that this message includes the following:
 - a. Identity of the company on whose behalf the call was made;
 - b. Provide a reason for the call;
 - c. Offer the called person the opportunity to contact the company by contacting a basic rate number (i.e. a number which costs the same as a standard geographic call (such as 01, 02, or 03 numbers), a standard mobile rate or a number which is free to the caller such as 080 numbers);
 - d. Include no marketing content and is not used as an opportunity to market to the called person.
11. A return call to the CLI number presented must not be charged at a higher rate than the national call rate.
12. If a research organisation is engaged in a non-research project, any call made by the called person to the contact number provided must not be used as an opportunity to market to that person, without the caller's consent.
13. In the event of an abandoned call, a very brief recorded information message must be played no later than two seconds after the telephone has been picked up or within two seconds of the call being answered, which:
 - a. Identifies the company on whose behalf the call was made;
 - b. Offers the called person the possibility of declining to receive further calls from the company by contacting a basic rate number (i.e. a number which costs the same as a standard geographic call (such as 01, 02, or 03 numbers), a standard mobile rate or a number which is free to the caller such as 080 numbers);
 - c. Includes no marketing content and is not used as an opportunity to market to the called person.

“Within two seconds of the call being answered” means either:

- no later than two seconds after the telephone has been picked up; or
- no later than two seconds after an individual begins to speak (or “start of salutation”) whichever is more applicable to the technology deployed.

Repeat Calls

14. When an abandoned call has been made to a particular number, any repeat calls to that number in the following 72 hours must be made with the guaranteed presence a live operator.
15. When a call has been identified by AMD equipment as being picked up by an answer machine (including AMD false positives), any repeat calls to that specific number within the same 24 hour period may only be made with the guaranteed presence of a live operator.

Time (s) of Calls

16. Where predictive diallers are used, members must ensure that calls to UK household landline telephone numbers or to UK mobile telephone numbers are not made before 9 am Monday to Saturday, 10 am Sunday or after 9 pm on any day (unless by prior agreement.)

Communications Act 2003, Cross Heading: Persistent misuse of network or service

The Communications Act 2003 *Up to date with all changes known to be in force on or before 17 April 2020* is available [here](#). Below a summary of the main requirements on persistent misuse.

Persistent Misuse

- A person misuses an electronic communications network or electronic communications service if:
 - the effect (or the engaging conduct) of the use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety;
 - if the misuse is repeated on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour or practice or recklessness as to whether persons suffer annoyance, inconvenience or anxiety.

Notification

- If OFCOM identifies a persistent misuse, it might proceed with a **notification** in which it will specify the misuse and the period during which the person notified has an opportunity of making representations about the matters notified (one month or seven days in an urgent case).

Enforcement Notification

- When the period allowed for the making of the representations has expired, OFCOM may give the notified misuser an **enforcement notification** if none of the necessary steps to bring the misuse to an end and remedying the consequences have been taken.
- An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for securing that his misuse is brought to an end and is not repeated, and remedying the consequences of the notified misuse, as may be specified in the notification.

Penalties for persistent misuse

- OFCOM may impose a penalty on the notified misuser.
- OFCOM may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuse.
- The amount of a penalty can be up to £2,000,000 considering all steps taken to securing that the misuse is brought to an end and is not repeated and for remedying the consequences of the notified misuse



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