



Ofcom's Statement on Persistent Misuse: an interpretation by Qire

The long-awaited Ofcom statement on persistent misuse finally arrived on the 10th of September. Although it is fairly self-explanatory, we are providing our interpretation of its effect to help managers to comply with the latest rulings.

The areas covered by the Ofcom consultation were:

- Answering Machine Detection
- The definition of a campaign
- Information messages
- Repeat calls
- CLI
- Automated messages and outbound call steering
- Revenue-sharing numbers

We will look at each of these in turn:

Answering Machine Detection (AMD)

The area of contention here is the calculation of the abandoned call rates and the inclusion of AMD false positives (where the equipment thinks it has found an answering machine but the call is, in fact, answered by a person) in that calculation..

The calculation of the abandoned call rate is:

$$\text{abandoned_calls} / (\text{abandoned_calls} + \text{calls_passed_to_live_operator}) \times 100$$

where 'abandoned_calls' includes a reasoned estimate of AMD false positives

After stating that its intention is '*not to ban the use of AMD technology*', Ofcom goes on to say that '*it will be very difficult to use AMD technology without breaching the three per cent guideline*' – this is undoubtedly true for those call centres using predictive diallers.

However, if you use an AMD in assume-human mode, you will not make a silent call in the event of a false positive, provided that you have either a broadcast message or a live operator available on the line. In the case of predictive diallers this may be difficult or impossible, but achievable for automated calling systems and power diallers.

Do you *know* what the error rate actually is?

- If half your connected calls are detected as answering machines and you can keep your abandoned live call rate down to 2%, then your AMD must be providing less than 1% of false positives in order to comply.
- Even in progressive mode, you will not be safe unless you have AMD technology that delivers less than 3% false positives.

For users of predictive diallers, it looks as if you may have to forego the use of AMD technology.

There is also the question of how the false positives can be measured - by definition the equipment cannot do this itself.

- Ofcom have avoided setting an assumed rate of false positives, as this would be tantamount to outlawing AMD.
- However, if you are in the unfortunate position of being the subject of an investigation, they will expect you to provide either a reasoned estimate of the false positive rate, or the results of actual testing.



The definition of a campaign

A campaign now appears to be defined as a set of calls made for identifiable purposes with a single script to a single target audience.

- A series of debt collection calls *will* be treated as a campaign.
- A campaign *may* be carried out by more than one call centre.
- Where multiple campaigns are being conducted across one or more call centres, Ofcom may deem it appropriate to aggregate the data for all campaigns and/or all call centres together to calculate the abandoned call rate.

Since low volume campaigns are likely to have a higher rate of abandoned calls, the use of data aggregation may provide some help to call centres carrying out multiple campaigns. However you shouldn't count on this as '*Ofcom will consider the facts of each case on their own particular merits*'.

Information Messages

A recorded message must be played no less than two seconds *after the call has been picked up*.

The message must contain at least:

- The identity of the company on whose behalf the call is made
- Details of an 0800 or 0845 number that can be called to decline further *marketing* calls from the company

and must not contain any marketing content.

Ofcom has *not* exempted debt collection calls from the requirement to provide a company name, but it has accepted that the recipient of the call only has the right to decline further *marketing* calls. Our interpretation of this is that whilst a number must be provided, and the customer has the right not to receive future marketing calls, this does not prevent the caller from making further debt collection calls.

Repeat Calls

Following an abandoned call, any repeat calls to that number within 72 hours may only be made with the guaranteed presence of a live operator.

This means that a dialler *may* be used to make the call, but not in predictive mode.

Since any call identified by AMD *could* be a false positive, this rule will presumably be applied to any number positively identified by AMD technology.

CLI

The CLI presented with each outbound call must comply with the Ofcom Guide to Presentation Numbers.

This means that only geographic numbers and permitted non-geographic numbers may be used and outlaws the use of premium rate numbers.



Automated messages and outbound call steering

The use of IVM appears to have received a warmer response from Ofcom than straight automated messaging, and there is a recognition that the customer response to IVM has been generally favourable. The use of IVM in the contexts of hazard warnings, appointment reminders and debt collection are explicitly discussed in the Ofcom statement in a generally positive manner, and the self-regulation imposed by the IVMA is welcomed.

The use of automated messages to make **direct marketing** calls which do not consist of live speech is unlawful unless the called person has 'opted-in'. This is a provision of an EC Directive, and remains unchanged.

In the initial consultation document, Ofcom proposed treating the persistent use of automated non-marketing messages as misuse unless a clear public benefit could be demonstrated. This has been significantly revised, allowing individual benefits to be taken into account, although each case will be '*taken on its own merits*'.

The imposition of an opt-in requirement for non-marketing calls has been deemed unworkable, although users of automated messaging are encouraged to consider offering an opt-out as an option for new customers or at contract renewal.

Our interpretation of the paragraphs covering IVM is as follows:

For non-marketing call, as long as

- you are calling existing customers,
- you comply with the data protection rules - in particular fairness, privacy and security,
- you comply with the FSA regulations (if you are involved in debt collection),
- you can demonstrate either a public or individual benefit,
- you do not send an excessive number of messages to any individual over a short period,
- you use a supplier who is a member of the IVMA

you are unlikely to be subject to a charge of persistent misuse.

For direct marketing calls, it is clear that automated messaging is forbidden without an explicit opt-in from the recipient, but the status of direct marketing calls using IVM *with* the presence of live agents has not been explicitly stated. However, since the IVM would presumably be used to screen out non-qualifying individuals, it is likely that any call that was not passed to a live agent would be in breach of the 2003 Regulations.

Revenue-sharing numbers

Revenue-sharing is not, in itself, prohibited. However, any attempt to exploit such numbers where there is any trickery or deceit, or where the customer is duped into making a call to such a number, is misuse.

Qire can only welcome this ruling.



Call Centre Recommendations

- Ensure that every unanswered number is rung for at least 15 seconds.
- Always provide a permitted CLI .
- Do not attempt to dupe call recipients into dialling a revenue-sharing number.
- Provide a non-marketing message to abandoned calls (playable within 2 seconds of the call being picked up) that includes both your company name and a number where the recipient can opt out of any future marketing calls.
- If you are using a predictive dialler:
 - If you use AMD technology, make yourself aware of the false positive rate your equipment delivers.
 - Be extremely cautious if AMD is switched on. Ensure that you are not unwittingly breaching the abandoned call limit.
 - Do not recall any abandoned call – including any call identified by AMD - within 72 hours in predictive mode
 - Try to ensure that even your smallest campaign complies with the 3% abandoned call limit.
 - Consider using IVM which can treat AMD detected calls as if they had been answered by a human.
- Do not make direct marketing calls using automated messaging without an explicit opt-in from the recipient.
- If you are making non-marketing calls using IVM
 - Make sure that there is a justifiable benefit (either to the public or to the individual).
 - Comply with all data protection and privacy legislation.
 - Comply with the FSA regulations if they apply.
 - Do not recall any number excessively in a short time period.
 - Only use systems provided by a member of the IVMA.

This article has not been put together by legal experts, but by practitioners in the IVM business, and we are not necessarily correct in our interpretation. If you require legal clarification you should speak to your company solicitor. However, if you feel that anything we have said is incorrect, or want to register a different point of view, please email us at ofcomstatement@qire.co.uk – we welcome a discussion and will try to respond.