# Table of contents

## Introduction from Co-Chairs Mike Crockart MP and Alun Cairns MP

Summary of our Recommendations

### The Report

1. Defining nuisance calls and texts
2. The scale of the problem
3. The economics of nuisance calls and texts
4. Enforcement action
5. Technological solutions
6. Consumer awareness and empowerment

Conclusions and Recommendations

Summary of written evidence received to the July 2013 ‘Call for Evidence’

Summary of the six oral sessions held in October 2013

Transcripts of the six oral sessions

Members of the All Party Parliamentary Group
Introduction

People are fed up receiving calls and texts trying to sell solar panels; to claim compensation for payment protection policies; to see whether you have had an accident; asking you to buy financial services; or simply to complete a survey - to see what they can try to sell you at a later stage. The situation needs to change.

In July 2013, we formed an All Party Group made up of MPs from all parties and all parts of the UK to investigate what we could do to improve the situation. To better understand the problem, the group held an Inquiry in October 2013 supported by consumer groups and many others from both regulators and the wider industry.

We are grateful for all those who took time to respond with their views and personal experiences, as well as options for policy changes to help resolve the problem. We received almost 100 responses to our call for written evidence, including from many constituents, and we heard oral evidence from 15 organisations.

We are also grateful to Which? for providing administrative support to the Inquiry; they have been a key driving force in the need for change. We wanted to make sure the interests of the consumer were at the centre of this Inquiry.

Current legislation, regulation and guidelines do not provide sufficient protection for our constituents. The complaint process is cumbersome and complicated, the TPS opt-out unreliable and there is widespread abuse.

We are pleased that the industry, regulators and Government are all keen to engage positively with the issue. We believe that with sufficient will from all involved, we can make huge progress towards ridding people of nuisance calls and texts.

This Report sets out our findings and our recommendations for action. Some of them could be implemented now via the Private Members’ Bills we have introduced in this session of Parliament - the Communications (Unsolicited Telephone Calls and Texts) Bill and The Unsolicited Telephone Calls (Caller Line Identification) Bill.

Now it is up to industry, regulators and the Government to rise to our challenge.

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Co-Chairs of the All Party Parliamentary Group on Nuisance Calls

Alun Cairns MP
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Summary of our Recommendations

Improving compliance

- Tightening rules around third party consent
- TPS lists are updated and checked in real-time.
- An accreditation scheme to help clean up the lead generation industry.
- A requirement for persistent offenders to have their data management systems audited.

Making reporting easier and more effective

- Caller line identification should be provided free of charge.
- Every marketing call should carry valid caller line identification.
- Providing a short code to report nuisance calls to fixed line numbers.
- Establishing a single point for collection of all intelligence data related to nuisance calls.

Protecting and empowering consumers

- Telecoms companies block numbers known to be making nuisance calls.
- Telecoms companies pilot network level solutions to block nuisance calls.
- Ofcom bring forward a strategy to protect vulnerable consumers.
- Stricter rules around obtaining consumer consent.
- Setting limits around the trade in personal data.

Improving the regulators’ capacity to take action

- Establishing a new co-regulatory body for nuisance calls and texts.
- Lowering the threshold for the ICO to take enforcement action.
- Improving international co-operation.
Our Report

1. Defining nuisance calls and texts

1.1 Nuisance means different things to different people. The term ‘nuisance call’ can variously be used to capture a wide range of types of calls: from silent calls to ‘live’ marketing calls, harassment calls to financial scams.

1.2 By their very definition, nuisance calls are a problem for consumers. They interrupt family meal times, are wearily received by people after a hard day’s work or often demand elderly or vulnerable people answer the phone when it is an effort to do so. For some they are a mere irritation. For others, they can cause significant harm or distress and even mean people feel intimidated answering their phone.

1.3 Not all nuisance calls are illegal. And consumers may sometimes term legitimate contact a ‘nuisance’, for example if the call comes at an awkward time of day. The Inquiry heard reports of people complaining about the nuisance of a call made by a telecommunications provider to organize an appointment to connect a requested broadband service, for example. Nuisance is very often in the eye of the beholder.

1.4 For the purposes of this report, the Inquiry is focused on marketing calls - whether silent or live, over fixed or mobile - that are made and received without the consumers’ consent. We also consider the problem of nuisance spam texts although the consent mechanism differs. Marketing calls operate on an ‘opt-out’ basis: until you explicitly say you do not wish to receive marketing calls, companies engaged in direct marketing are legally able to contact you by telephone. In contrast, marketing texts operate on an ‘opt-in’ basis: they can only legally be sent if a consumer states they are happy to get them.

1.5 Our definitions follow those used by the main regulators - Ofcom and the Information Commissioner’s Office - that deal with silent and live marketing calls respectively. The regulatory framework for nuisance calls is complex. This is partly because the current structure has emerged through historical accident rather than design.

1.6 Ofcom regulates silent and abandoned calls under sections 128 to 130 of the Communications Act 2003 dealing with “persistent misuse”. Regulations state that, when using automatic dialer equipment, no more than 3% of answered call attempts should be abandoned because no ‘live agent’ is available at the call centre. When this does happen, a recorded message must be played. In addition, all outbound calls made by automatic dialer equipment must carry a valid Caller Line Identification.

1.7 The Information Commissioner’s Office is responsible for enforcing data protection regulations, including the privacy and electronic communications regulations (PCER). Under PCER, ICO is responsible for enforcement for live calls, including recorded calls, and spam texts. The key provisions under PECR require that marketing texts are illegal unless the recipient has opted in to receiving them. Live marketing calls, on the other hand, are opt-out. The Telephone Preference Service (TPS) holds a list of registered numbers that have opted out from receiving unsolicited marketing calls. Any company wishing to make such calls must screen their calling lists against the TPS register and remove any opted out numbers. Licensees pay the TPS an annual licence fee to gain access to the TPS registers. There are currently around 250 licencees. These fees cover the cost of running the scheme.
1.8 Alongside the two main regulators, a number of other organisations with or without regulatory powers have an interest. Claims management companies, responsible for the vast share of calls, are regulated by the Claims Management Regulator. The Office of Fair Trading regulates debt management companies. The National Fraud Authority and police have a role to play where nuisance calls pertain to fraud or scams or other forms of illegal activity. Phone Pay Plus regulates premium rate phone numbers and services in the UK.

2. The scale of the problem

2.1 The Inquiry made a number of attempts to come to a final assessment of the scale of the problem. But the vast array of inconsistent data that makes this very difficult. The regulators receive around 6,000 complaints a month about nuisance calls: Ofcom reports they receive about 3,000 relating to silent calls; since setting up their online reporting tool in March 2012, the Information Commissioner’s Office have received around 240,000 complaints about unsolicited calls and texts.

2.2 There is no evidence that the problem is decreasing. ICO, Ofcom and TPS all report an overall growth in the number of complaints over the past three years.

![Figure 1: Nuisance call complaints received by Ofcom and TPS since July 2010](image)

Milne, 2013 - based on Ofcom and TPS data

2.3 Complaints data alone fails to tell us the full story. As part of their ‘Calling Time’ campaign, Which? set up a web portal to direct consumer complaints to the relevant regulator. Data from this shows that only around half the people who use the portal go on to make a full complaint to the regulators. That the number of nuisance calls received far exceeds the level of official complaints is supported by BT’s estimates that they receive around 50,000 calls a month to their Nuisance Call Bureau. This is also the case with nuisance texts: technology company Pinesoft estimate that around 8.7m nuisance texts are sent through the network each day.
2.4 Ofcom’s Omnibus survey is generally considered to be the most accurate estimate of the number of nuisance calls people receive. This estimates that consumers who experienced unwanted calls received around two per week on average, with four in five participants receiving at least one nuisance call during the four-week research period. Around a quarter (26%) of people recalled receiving over 10 calls in a four week period. However one calculates it, the number of unwanted calls annually is almost certainly over one billion.

2.5 This data is reliant on people recalling nuisance call activity over the last month and so it is still subject to inaccuracies. However it does illustrate that there is a significant skew in the distribution of nuisance calls across the population. While some people do not recall receiving any nuisance calls at all, others report being in receipt of X or more a week. People who get a high number of nuisance calls tend to be elderly. A recent trial of call blocking technology by Trading Standards in Angus, Scotland, found that around 40% of phone calls received by elderly and vulnerable residents are nuisance calls. This is in part because of the timing of nuisance calls: 78% are made between 8am and 6pm when most people are at work. However, the committee has heard some disturbing evidence that elderly or vulnerable people are increasingly being targeted by callers: for example, trueCall reported one elderly individual who had purchased multiple insurance policies for household items, along with several subscriptions to the same companies - sometimes household names - for various services.

2.6 The problem of protecting vulnerable consumers is the most pressing since it is here that consumer detriment is most significant. Whatever actions are taken to address the problem of nuisance calls over the longer term, this issue must be dealt with using whatever available means now.

2.7 The difficulty in coming up with an agreed figure is not merely academic. It reveals two problems that go to the heart of the nuisance calls problem.

2.8 First, it suggests a lack of coherence around nuisance calls information and data. Data is being generated then collected or discarded over a wide number of organisations. It is not effectively shared or centrally stored. For example, the Inquiry was surprised to learn that BT does not share data generated by its nuisance calls service with the regulator. They suggested the information would be of little use as it also related to harassment or other types of calls that fall outside the official definitions. We are not convinced by this argument: it seems unlikely that harassment calls generate 50,000 complaints a month. Similarly, trueCall reported that they had not been able to interest the regulators in the data generated through use of their call blocking products.

2.9 Second, the discrepancy between the number of initial reports received by consumer facing organisations such as Which? or BT and the final number of complaints received by the regulators suggests that not all consumers receiving nuisance calls follow through the reporting structure. This could be for a number of reasons but most likely it is because either the complaints mechanisms are too onerous (the most rational action on receiving a nuisance call is perhaps to hang up the phone and not allow it to take up any more of your time), or because the complainant lacks the necessary information to make a complaint (i.e. name of company or telephone number). The importance of caller line identity (CLI) in being able to make a complaint is huge.

2.10 The result is that we are only seeing part of the picture at any one time. Streamlining and coordinating the available intelligence related to nuisance calls should be a fundamental starting point in the attempt to tackle this problem, and absolutely essential for any intelligence-led interventions.
3. The economics of nuisance calls and texts

3.1 The direct marketing industry undoubtedly contributes financially to the UK economy: call centres alone employ over 1 million people across the UK. Direct marketing techniques are used by a huge number of companies from a wide range of sectors to generate business. At its best, direct marketing can be informative and useful to consumers - helping them to find the best deal and the most suitable product for their needs.

3.2 Nuisance calls on the other hand cause such a high level of irritation that it is easy to forget there is a market behind them. They are made to generate sales - and their continued existence means we can only assume they are at times successful.

3.3 Although the claims management industry has consistently been responsible for the largest share of complaints, nuisance calls originate from a wide cross-section of industries. For live calls, the top topics of communication are PPI reclaim, accident claims and energy. For automated calls they are debt management, PPI reclaim and energy. However, other areas include: research and surveys (so called ‘sugging’ where the caller pretends to be from a legitimate market research organization), those related to Government grants such as for loft insulation, insurance, telecoms and more.

3.4 We heard evidence that an outbound ‘live’ marketing call can be made for as little as 20p, and that this figure drops to just 1p when using automatic dialer equipment. If the average PPI claim is around £2,700, with claims management companies receiving on average around 25% of this, the economics are clear: a single win can cover 3,125 live calls or 62,500 automated calls.

3.5 This also helps to explain the market in lead generation. Although we do not know the underlying figures, it seems reasonable to assume that a significant proportion of calls are made by lead generation companies: companies that work to collect data on potential leads for other companies who then make the final sales call. The Inquiry heard evidence that the low cost involved in making marketing calls meant that there was no economic driver to undertake any initial targeting or research: calls are so cheap that it is economically effective to simply dial telephone numbers in sequence.

3.6 The value of a possible ‘lead’, that is personal data relating to a prospective customer, also in part lies behind the growth in market comparison sites. These sites capture information that can then be traded on to related firms to make further contact about specific products. Many of these sites operate on a legitimate basis, securing the required consent and can usefully match targeted product information to consumers. However, there are also reports of websites that capture information on a less than legitimate basis - masquerading as quizzes, competitions or market research and then selling information on without the consumer’s knowledge or consent.

3.7 The value chain in the trade of data can explain why legitimate companies - sometimes household names - make nuisance calls. Many rely on data companies to purchase leads that are then transferred to their call centres for contact. Although these data companies are expected to have checked their information against TPS opt-out lists, some do not. If the receiving company do not undertake due diligence either to check the compliance of the data they receive or to run the information against TPS lists themselves, nuisance calls are often the result.
3.8 A number of data companies were invited to give evidence to the Inquiry but did not take up this opportunity. As with other forms of direct marketing, we recognise the economic contribution of lead generation and data capture firms. But we feel there are significant problems with this industry: first with the reported levels of disregard for data protection regulations, and secondly with a regulatory framework that does not sufficiently limit the scale and breadth of trade in data to adequately protect consumers.

3.9 Representatives from both the telecoms industry - fixed and mobile - and direct marketing industry were at pains to stress that nuisance calls were damaging to their businesses, insofar as they were an irritation or source of distress for their customers. Where telecoms companies are concerned, the Inquiry made efforts to understand the economic impact of nuisance calls on these businesses.

3.10 Surprisingly, no company admitted to costing the impact on their business - despite clearly investing heavily in mechanisms and initiatives to deal with nuisance calls, such as the BT Nuisance Call Bureau. Generally, witnesses estimated that the nuisance calls resulted in a net loss to telecoms companies. Call termination rates have fallen in the past few years and, while origination costs have not fallen quite so fast, nuisance callers tend to buy packages at wholesale rates rather than use the services of the large operators.

3.11 But the lack of proper cost benefit analysis has serious impacts for making policy in this area: it is extremely difficult for policy makers to judge whether a policy to limit nuisance calls that imposes a cost on businesses is proportionate.

3.12 While we can describe the cost to wider society of nuisance calls, for example in causing distress or annoyance or undermining trust in the telephone, and attribute costs to complaints handling and enforcement action, it is more difficult for people within telecoms companies to make the business case to invest in preventative measures as they are unable make the claim that it will save their businesses money in the long run.

3.13 For instance, the Inquiry discussed the possibility of introducing a mechanism to report a nuisance call to a landline by dialing a short code similar to the 7726 spam reporting service for mobile phones, along with various network solutions to block calls before they are received by consumers. But it was difficult to secure wide spread agreement that these proposals had merit without being able to match the cost of introducing such mechanisms against the savings that might be achieved.

3.14 We should note that where an industry wide technological solution has been introduced - the GSMA 7726 spam reporting service that enables consumers to quickly and easily report spam texts and underpins the mobile industry’s action to tackle spam texts - it is currently offered free of charge by the technology developer, CloudMark. It clearly has value to the networks in terms of providing a service that benefits their customers - but the lack of willingness to pay indicates that such initiatives are thought of as ancillary services and, importantly, suggests that networks do not feel solving the problem of nuisance calls, and protecting their customers as a result, is necessarily their responsibility.

3.15 This is particularly true of BT who regard their position as being a special one laid out by regulation which prevents them blocking use of the network. This requires further work to establish whether this is the case and if so to identify a change to legislation, or to clarify BT’s powers to enforce contract conditions around the fair use of telecoms networks. This is not to undermine the good work networks currently do, and the time and effort they have devoted to this issue particularly over the last few years. But it does provide a barrier for rapid forward progress.
3.16 Who is responsible for solving the problem of nuisance calls is a tricky question: is it the regulators, Government, telecoms companies, the direct marketing industry - or someone else? Disappointingly for those who require simple answers, this is one occasion where the answer really is ‘all of the above’. Such collective responsibility has its merits - but also provides complications when looking to take swift action. We turn to the issue of responsibility and leadership in the next section.

4. **Enforcement Action**

4.1 The Inquiry acknowledges that efforts to tackle nuisance calls at the regulatory level have been stepped up recently. In September 2010, the maximum fine Ofcom can impose for persistent misuse increased from £50,000 to £2m. Since May 2011, the Information Commissioner’s Office has been given powers to fine up to £500,000 for breaches of PECR. To date, Ofcom has taken action against 12 companies. After raising the maximum level of fine, the average fine has increased from around £35,000 to £520,000. Since gaining its powers, the Information Commissioner has imposed fines totaling £800,000 with major examples including: two penalties totaling £440,000 to the joint directors of Tetrus telecoms for issuing unsolicited text messages en masse - overturned on appeal in October 2013; a fine of £90,000 for DM Design Bedroom Ltd for ignoring TPS; and two fines - of £125,000 and £100,000 on two companies that failed to carry out adequate checks on whether people they were calling were TPS registered.

4.2 These fines are intended to act as a deterrent to other would be offenders. The Information Commissioner claims some level of success: a spike in complaints follows the initial imposition of a fine as, possibly, people react to news coverage and are motivated to complain. After this, the level of complaints decreases. Although it is not clear whether this is due to a reduction in the number of nuisance calls and texts, or consumer apathy setting in once more.

4.3 The Inquiry heard worrying evidence that some elements of ICO’s enforcement activity served to increase the number of nuisance calls and texts. For example, CloudMark reported that a warning that a crackdown on nuisance texts was imminent spurred an increase in this kind of activity, presumably as companies attempted to make the most of the window they had before enforcement activity became a pressing threat.

4.4 Regardless, the number of enforcement actions seems woefully low when set against the number of complaints. This is largely because (i) the level of evidence required to take enforcement action is very high, (ii) a large number of complaints relate to companies that are difficult to trace, and (iii) the regulators resources do not match the scale of the problem.

**Level of evidence required**

4.5 Under current regulations, ICO must prove substantial damage to take enforcement action. Ofcom is only required to demonstrate “nuisance and annoyance”. This creates a difficulty for ICO: nuisance calls are often just that, a nuisance. And the damage, detriment or distress is spread widely over a large population.

4.6 A recent successful appeal against the Information Commission further complicates the position. The appeal, relating to the £440,000 fine referenced above, claimed that the threshold for enforcement action had not been met. There are complexities to this case -
for example, it is not clear if the appeal was successful because the majority of texts which informed the Information Commissioner’s case were sent prior to it being granted increased enforcement powers. However, it raises questions about the legal certainty of future enforcement action.

4.7 Added to this, the process of collecting evidence can be time consuming. The need for due process limits the ability of the regulator to move quickly - and the requirement to exhaust all avenues to gain compliance before issuing penalties can result in perverse outcomes, as the reports of increases in illegal activity during this period suggest.

4.8 Evidence collection is also hampered by the need for absolute confidentiality. The Inquiry found a high level of frustration with the inability of bodies engaged in formal or self regulatory activity to legally share data with one another. While secondary legislation will shortly be put forward to enable Ofcom and ICO to share intelligence, there remain other legal barriers to data sharing in place that hamper enforcement activity.

**Ability to trace companies**

4.9 There are real challenges in tracing nuisance callers. We have previously referred to the importance of caller line identity (CLI) in making complaints - providing CLI is a fundamental part of enabling and empowering consumers to both be able to filter out potential nuisance calls and make complaints. We address concerns at recent moves to charge for this service later in the report.

4.10 Recent research quoted by Brooksmead Consulting states that around 48% of nuisance calls did not come with a dial-able caller ID. Of these, 26% were from international call centres, 11% from call centres which withheld their number, 6% from call centres where the caller’s number wasn’t available (i.e. because they were using Voice-over internet protocol (VOIP) numbers), while 4% came with a caller ID that was invalid. Fake or spoof CLIs is a growing problem. The Inquiry even heard reports of some people receiving nuisance calls where the CLI is the recipient’s own telephone number. A similar problem exists with nuisance texts: often spam texts are sent via pre-paid SIM cards that are simply discarded. Since pre-paid SIMs are not registered, the culprits are extremely difficult to trace.

4.11 Industry is taking forward action to tackle these issues. BT has recently announced that from this Autumn, customers who require it will be able to see the CLI of overseas callers. This service will be extended to all BT customers from Autumn 2014. Meanwhile action is being taken to improve tracing of calls. The telecoms industry standard group, NICC, is working to agree a call tracing process that will require communications providers to trace calls back through networks to origination.

4.12 However, there are concerns that the speed of enforcement action will make call tracing efforts redundant. Companies that regularly breach PECR are known to quickly change name and telephone number to evade penalty. More robust call tracing mechanisms will need to be matched by quicker regulatory action to really see the benefits.

4.13 Similarly, call-tracing will also rely on international co-operation if offenders operating outside the UK are to be caught. That is why we welcome the work Ofcom is now doing with international partners to address CLI spoofing.
Resources

4.14 Neither Ofcom nor ICO were set up as consumer facing complaint handling bodies. As such they do not have the resources to deal with the full range of complaints they receive. Their focus is on ongoing targeted enforcement action aimed at tackling the very worse offenders, as outlined in the joint action plan.

4.15 Where resources are limited it is clearly right to focus enforcement activity on those causing the most harm. But the main offenders account for only about half of nuisance calls complained about. Beyond this there is a long tail of organisations that generate a small number of complaints. As they never reach the ranks of the top offenders, these companies are likely to be left untouched and able to carry on causing a low level nuisance.

4.16 The absence of a consumer complaints handling function matters. If consumers complain but get no response or see no action taken against the company they have complained about they will very quickly come to doubt the efficacy of complaining. Disillusionment and apathy will likely only increase.

Self and co-regulatory action

4.17 As a complement to formal regulation, self and co-regulation can be more rapid and agile, operating outside some of the constraints that formal regulators are necessarily bound by. There is limited self or co-regulatory activity taking place in the nuisance calls space.

4.18 Around 19.6m numbers are registered with the TPS - out of X million numbers active today. Although it receives consumer complaints, TPS has no enforcement powers. It does contact the complained about organisation where possible and ask them to respond as to why the call was made. But this information, along with the detail of the consumer’s complaint, is simply passed on to the relevant regulator.

4.19 Overall, the effectiveness of TPS was questioned. There is evidence that registering with TPS reduces the number of nuisance calls received, but on average, people signed up to the TPS still receive more calls than the rest of the population. Recent Which? research suggested that people signed up with TPS received on average 10 nuisance calls a month: double that of people not signed up.

4.20 In order for a complaint to be recorded with the TPS, your number must have been registered for at least 28 days. This is to allow time for marketers to update their lists. But it also means that during this 28 day period, people can still receive nuisance calls despite having opted-out of doing so. Evidence to the Inquiry suggested that this was not enough. Some also queried whether the TPS model was too blunt an instrument, effectively operating as an all or nothing opt-out rather than offering ways to nuance consent. For example, opting out of marketing calls related to some industries but remaining open to receiving calls from others.

4.21 Ofcom is due to conduct research on the effectiveness of the TPS. The group is skeptical at how robust this research will be. The methodology is based on people not currently registered with the TPS being signed up to understand what impact this has. However, the size of the population not currently registered on the TPS is small - and not likely to be in receipt of a high number of nuisance calls. The research will also be
conducted over a relatively short period of time, when evidence suggests there are different peaks in nuisance calls activity which this research will therefore miss.

4.22 The Group remains open to considering the Ofcom research. However, it feels like there is a weight of evidence already available to suggest that the TPS is routinely being ignored, and that there are clear options for reform.

4.23 The Direct Marketing Association is the trade association for the direct marketing industry. It has around 1000 members and by its own estimation covers about 10% of direct marketing activity conducted in the UK. It has a Code of Practice that includes provisions relating to marketing calls and texts that go further than the law. For example, under the DMA Code all marketing calls must carry a valid CLI, not just those made with automatic dialer equipment.

4.24 The DMA’s Code of Practice is enforced by the Direct Marketing Commission. Evidence of enforcement activity is sparse but this is mainly because the DMA is a self-selecting group who are legitimate players in the direct marketing industry. In 2010, the DMA expelled an organization that was found by the DMC to have breached the Code by not complying with the legal requirements relating to TPS.

4.25 Alongside this, the Inquiry heard some evidence of a move toward telecom providers taking direct action. Both TalkTalk and BT suggested they could block numbers making nuisance calls if given assurances from Ofcom that they were able to do so without risk of penalty. Specifically, they wanted a definition of nuisance based on the volume of calls. TalkTalk are currently piloting an initiative to block numbers from which a high volume of calls originate. They referred to a customer in receipt of around 60 calls a week from one telephone number. In their view, this clearly constituted a ‘nuisance’ and suggested they would be willing on this basis to block calls from this number made to their customers. BT was more wary about such an approach arguing that their Universal Service Obligations restricted their ability to do so.

4.26 We suggest that network providers own terms and conditions should enable them to take action where customers are clearly breaching nuisance call regulations. However, we recognise that this is only of use in taking action against marketers who are also network customers. In order to protect their customers from calls originating outside their networks, we understand the desire for greater certainty and direction from the regulator on which basis more pro-active steps can reasonably.

4.27 Despite the above activity, the Group believes there is clearly a gap in providing a regulatory system that serves consumers well. The DMA Code is a useful document, but only applies to a small percentage of the companies engaged in direct marketing. The TPS provides a necessary service, but its current set up - dictated by the contract under which it is funded - is limited and restrictive. Recent initiatives by telecoms providers suggest the possibility of more responsive action, but there remains uncertainty over its legality.

4.28 Rather than a focus on the rights or wrongs of the current formal regulatory structure, attention needs to be directed at the lower level - and identifying self or co-regulatory solutions that can be agile and respond quickly to the majority of consumer complaints, leaving the regulators to deal with the very worst offenders.
5. Technological Solutions

5.1 No matter how nimble the framework, regulatory action can’t solve the problem alone. Technology also has a role to play. A range of technological solutions have been developed to help try to combat the problem of nuisance calls. These can be divided into individual and network level solutions.

5.2 At the individual level, several products have been developed that can demonstrate effectiveness. The advantage of such products is that they can respond to individual need by either blocking calls, or only allowing specified numbers to call. A recent research exercise conducted by Trading Standards across three councils in Scotland showed that the most up to date call blocking technologies at an individual level are able to block 100% of nuisance calls. This technology can be particularly valuable in protecting vulnerable residents, operating with lists of accepted numbers and safe codes to allow approved callers to make sure no nuisance calls can get through.

5.3 However, these technologies have a cost. BT’s 6500 phone is priced at around £65. trueCall’s most recent call blocking product is around £100. While this is not prohibitively expensive, such amounts can nonetheless be out of reach for many, particularly vulnerable or elderly consumers. These options often rely on CLI being available. A move by network operators to charge for this service will create an ongoing cost for anyone wishing to take action to block nuisance calls. Against the context of protecting vulnerable consumers, this is simply unacceptable.

5.4 The inquiry also heard evidence of the potential of network level solutions that could potentially be more effective and cheaper than individual level technology. This would operate on the same basis as the current individual offerings, but block at scale. However, we also noted skepticism from the network operators that effective network level blocking was possible. They suggested that technology providers did not understand the complexity of their networks. It was difficult to get to the bottom of this issue during the course of one short Inquiry. However, it is concerning that little progress appears to be being made - and clear that some intervention, either from the regulator or government, is needed to drive discussions and action forward.

5.5 There are a number of ways mobile operators look to tackle the problem of nuisance texts. The key technique is using the 7726 short-code reporting mechanism. Although this does not help the consumer who has already received the spam text, it does help to prevent other nuisance texts being issued. On receiving a spam report, mobile network operators are able to disconnect the SIM card from the network - around 500 SIM cards are disconnected every week in this way, and the Inquiry heard evidence that the time lag between receiving a report and disconnecting a SIM can be as little as 30 minutes.

5.6 Until recently data generated through this service was not shared across the networks or with the Information Commissioner’s Office. Since signing an MOU through the global mobile trade body, the GSM Association, enhanced intelligence sharing has been enabled and a range of tools made available to analyse the data generated from around 10 - 15k reports received each week.

5.7 Overall, the Group believes technological solutions have much to recommend them particularly as short-term fixes to an urgent problem. However, it is important that they work in tandem with, not in place of, regulation. Offering technology as the sole solution will simply lead us into an arms race. Second, if they are to work together, the regulatory system must be able to move with increased speed. Otherwise the failure to keep pace will undermine regulation’s effectiveness such that it becomes redundant.
6. Consumer Awareness and Empowerment

6.1 Finally, it is crucial that consumers are aware and empowered to be able to stop nuisance calls. The Inquiry was almost overwhelmed by descriptions of the range of complaint tools and guidance offered to consumers. From helplines to web portals, almost every company that gave evidence suggested they offered some form of guidance, advice and route to complain about nuisance calls. While none of these interventions are unwelcome, the Group was concerned that the overall landscape is messy and can therefore increase confusion for consumers. There is a need for consistency in advice and guidance, and - no matter where your initial point of access - a central complaints function operated by an entity empowered to take action.

6.2 The Group was also concerned that certain features of the current regulatory framework can prove to be disempowering for consumers. Consent provides the dividing line between legitimate and nuisance marketing calls. But regulations, guidance and practice around consent can serve to disempower and confuse consumers.

6.3 We heard numerous reports of people receiving what they would call nuisance calls only to be told by the caller that they had given consent to be called, despite having no recollection of doing so. This cannot be right. But at present, PECR puts the burden of proof on the consumer to show consent was not provided. The Group believes it should be expected that any company making a call should be able to state when and where consent was given - and to have this information on hand.

6.4 The vast array of options for opting in or out of marketing no doubt results in people giving consent when they didn’t intend to. Directions such as “do not tick the box if you do not want to receive further marketing” can only leave consumers feeling confused - particularly since every company is likely to use different wording and there is no uniformity in opting in or out to first or third party marketing.

6.5 We also have concerns at the looseness of the definition of “third party” or “named partners”. Such is the lack of transparency over the scale of data trading that acceptance of third party marketing can on occasion seem more like an opt-in to receiving marketing material from everything and everyone.

6.6 We are aware that discussions at the European Commission on the revision of data protection regulations, including provisions on consent, are ongoing. The APPG believes that, although it may be tempting to wait for the results an agreement may not be reached and therefore do not see why the UK could not lead the way in this area, by seeking to make changes and bring forward best practice wherever we can to improve the situation for constituents.

6.7 Cleaning up the confusion around consent would help put further measures to prevent nuisance calls on a firmer footing. We believe there are steps that could be taken now - without waiting for direction from the Commission - that could serve to improve the situation. These, and other recommendations, are outlined in the final section.
Conclusion and Recommendations

Our Conclusion

This report has found that the problem of nuisance calls is multi-faceted and that current trends indicate nuisance calls and texts are on the increase. Added to this there is the looming threat of nuisance calls being made to mobile phones - more and more likely as the associated costs fall. The group concludes that the current situation is untenable: constituents are not well-served by the existing regulatory structure nor by the wide spread of shared but weak responsibility which has ultimately resulted in no-one taking overall control.

The issue is undoubtedly complex. And we appreciate the commitment in terms of time and effort that the Minister, regulators and commercial companies have invested in attempting to make progress. But the continued growth of nuisance calls suggests that a step-change is needed. We require a specific, targeted push across several fronts - enforcement, awareness, and technological solutions - to begin to reduce nuisance calls and limit consumer detriment and distress.

We argue for strategic action that will work to improve compliance, make it easier to report nuisance calls, do more to protect consumers particularly the most vulnerable, and improve the regulators’ capacity to take action.

Our recommendations

Improving compliance

The Information Commissioner highlights a ‘long tail’ of companies that generate a low number of complaints, perhaps because their data systems are not robust or because of a lack of understanding of current requirements. Whatever the reason, we should look to take steps to improve compliance across those organisations that can be moved to act responsibly. The measures we suggest below will help to do this, as well as strengthen the current opt-out system - the TPS - so that consumers can use and rely on it with greater certainty.

We recommend:

- **Tightening rules around third party consent** in particular being absolutely clear that TPS registration over-rides third party consent. The Group was concerned to hear that some uncertainty around this was being used as a loophole by some marketing companies. We also recommend that any company making a direct marketing call for which consent has been secured should be able to provide details of when and where this consent was given.

- **TPS lists are updated and checked in real-time.** Currently, there is a 28 day waiting period between signing up to TPS and your opt-out decision being binding
on companies. This is intended to allow time for companies to download the TPS list and check against their data. We see no reason why with the advance of digital technologies, this cannot be done in real time. Constituents should have the assurance that the moment they sign up to TPS, they have opted out.

- **An accreditation scheme to help clean up the lead generation industry.** This report has touched on the problems created by some lead generation companies. As long as the market is there for their product, disreputable companies will continue to exist. But companies using these services should be interested in buying quality data. An accreditation scheme would give responsible lead generation companies a competitive advantage, indicating the data they gather and sell can enable targeted, welcomed marketing rather than result in unwanted nuisance calls. We recommend the DMA take this forward with relevant stakeholders as concerted industry action.

- **A requirement for persistent offenders to have their data management systems audited.** We heard reports from companies fined for making nuisance calls that the route cause of these breaches was ‘a rogue employee’. We are sympathetic that mistakes can happen. However, there is clear evidence from ICO that a large number of companies make frequent ‘mistakes’, albeit not of the scale that places them in the top ten offenders. We suggest that these companies be required to undergo an audit of their data management systems to help ensure future compliance. TPS Assured may provide a relevant model.

**Making reporting easier and more effective**

A large majority of constituents do not complain when they have received a nuisance call. This does not mean those calls did not cause irritation or even distress. Rather it indicates that the current reporting system is too onerous. This leaves us with frustrated constituents who sometimes feel that the only option is not to answer their landline and with an intelligence gap that enables offenders to escape enforcement action. We suggest more should be done to improve the complaints process for constituents.

We recommend:

- **Caller line identification should be provided free of charge.** Being able to see who is calling you is fundamental to consumer protection in this area. It is also core to being able to report nuisance calls. Without the CLI or company name it is extremely difficult for the regulators to take further action. We were concerned at industry moves to charge for this service and heard no evidence to suggest there is reason to do so, apart from in the pursuit of greater profit from their customers.

- **Every marketing call should carry valid caller line identification.** Currently this requirement only applies to calls made by automatic dialler equipment. We see no reason why this should not be extended, and no good reason why any legitimate company would not agree. We are calling on those industries that engage in direct marketing to lead the way and agree to comply with the relevant provisions within the Direct Marketing Association’s Code of Practice. They should also commit to attaching the CLI to an answering machine that states clearly which company called and for what purpose. It should have an option to press a button to be removed from the company’s database and opt out of further calls.
• Providing a short code to report nuisance calls to fixed line numbers. This would mirror the 7726 short code for reporting spam texts and make it considerably easier for consumers to report nuisance calls. We recognise that this may have a cost. However we understand the basic technology to be in place. Short codes are already used in the fixed line environment: for example, the short-code 1471 is used across all the networks to enable the consumer to identify the last caller. BT’s Caller Refuse and Call Tracing services also display underlying technology that could be used to facilitate storing nuisance callers’ numbers in a database in order that they could be blocked network wide\(^1\). We understand there may be capacity issues with scaling this up, however, it illustrates that such interventions are possible and should dictate the scale of our ambition in this area.

• Establishing a single point for collection of all intelligence data related to nuisance calls. The group heard a range of evidence on whether there was a need for a single regulator. While this may be helpful, we do not think it should be a priority. What is crucial is ensuring the vast amount of data generated via the different reporting mechanisms is collected - and interrogated - in one place. Without this, it will be impossible to spot trends and enable strategic and preventative action.

Protecting and empowering consumers

While we acknowledge the work that telecommunications companies have done to protect their customers so far, we think there are further steps they could take to reduce the number of calls people receive. This means taking a duty of care to customers, particularly vulnerable customers, to the heart of their business model and being more proactive in preventing nuisance calls in the first place. We also believe there are further actions Government could take to empower people to retain control of their personal data.

We recommend:

• Telecoms companies block numbers known to be making nuisance calls. We heard from TalkTalk that they were piloting a scheme to do exactly this. However, other providers were more reticent. Our understanding is that assurance could be given via a statement from Ofcom that this action is allowed under the terms of operators’ licences. We recommend this statement be issued at the earliest opportunity.

• Telecoms companies pilot network level solutions to block nuisance calls. We heard from a range of companies developing technology that aims to block nuisance calls at the network level, before they reach consumers. Given the potential of these solutions to help solve the nuisance calls problem, we were surprised to note the apparent lack of engagement and communication between network operators and providers of call blocking technology. It is not for this group to recommend one solution above others. However, we believe some level of intervention is required to move this agenda forward and encourage network operators to look seriously at implementing network level solutions. As a first step,

\(^1\) BT’s ‘Choose to refuse’ service allows you to dial 14258** to put the caller-ID of the last caller onto a personal ‘block list’. The Call Tracing service enables you to dial 1477 to request that call details of the last caller are put on the tracing database.
we recommend Ofcom conduct a brief analysis to assess the cost-benefit. Government should then use this as a basis to facilitate discussions between the major players with a view to piloting call blocking technology at the network level as soon as possible.

- **Ofcom bring forward a strategy to protect vulnerable consumers.** We heard evidence on the level of detriment and harm vulnerable consumers may experience at the hands of nuisance callers. The elderly, people suffering from dementia and others with debilitating conditions are each more at risk - not just from scams but also from bad practice conducted by legitimate companies. The group thinks there is a strong case for special protections to be introduced, analogous to those that exist in other utility markets. Ofcom’s consumer policy objectives state that where a consumer “is systematically more likely to be vulnerable to harm than others, this should be taken into account in the formulation and implementation of consumer policy”. We recommend Ofcom develop as a matter of priority a strategy for helping vulnerable consumers. This should include a model for funding call-blocking technology for the most vulnerable - people suffering from dementia or other cognitive impairments for example. We heard evidence of a police service that had gained access to what scammers have called a ‘suckers list’. This could form a basis for action.

- **Stricter rules around obtaining consumer consent.** The Group believes there is scope to tighten rules around consumer consent. It is crucial that consumers give consent only when and where they intend to do so. To that end, we suggest companies demonstrate their willingness to promote best practice and join a campaign to use plain English and clear ‘opt-in’ statements to secure both first and third party consent. If industry does not prove pro-active in this space, the Government should seek the ability to issue directions that ensure terminology is clear.

- **Setting limits around the trade in personal data.** There are a number of options, but so little is known of the personal data trade, it is difficult to understand what the associated business impacts will be. The group recommends as a first step the Government commission a short, sharp review into trade of personal data. This review would consider what personal data is collected, and for what purpose; when and where this data is traded and what this means for consumers; and how consent is sought and consumers informed on the use of personal data. We recognise the European Commission is currently working on a review of the EU Data Protection regulations but it’s not clear that these will be agreed. And in the meantime there is no reason that the UK cannot lead the way in this area.

**Improving the regulators’ capacity to take action**

The Inquiry heard a range of evidence on whether the current regulatory structure is fit for purpose. Our chief concerns are whether there is capacity in the current model to deal with the large number of complaints and to take action across the range of offenders. We recognise that ICO and Ofcom have stepped up enforcement activity against the most prolific offenders in the past few months. However, we think there is scope to create a regulatory environment which facilitates a more agile response to a complex and ever-changing problem.
We recommend:

- **Establishing a new co-regulatory body for nuisance calls and texts.** This body would have responsibility for dealing with consumer complaints and limited enforcement powers, for example to require audits of offenders. It would serve to take action against minor level transgressions, leaving Ofcom and ICO to tackle serial offenders particularly those engaging in illegal activity and to lead on strategic action around CLI spoofing and areas where international co-operation is required. We understand that the DMA and DMC have previously developed a proposal along these lines. We do not wish to dictate whether this co-regulation function should be performed by an existing or new entity, however, we suggest it should be funded by industry - and should be implemented at lowest possible cost. With this in mind, the DMA proposal may have merit and we urge the DCMS to review it as a matter of urgency.

- **Lowering the threshold for the ICO to take enforcement action.** We need to clarify the terms under which ICO can take enforcement action as a matter of urgency. There is wide spread consensus that the Information Commissioner should only have to prove ‘nuisance’ rather than substantial distress. The need for clarity on this point is all the more pressing given the recent Tetrus appeal judgement against the Information Commissioner.

- **Improving international co-operation.** Without real international co-operation, UK consumers will continue to be targeted by nuisance callers. We welcome the latest announcement that Ofcom and ICO will work with their US and Canadian counterparts to take forward action on CLI spoofing. We hope regulators from other jurisdictions will join these efforts. The Government should look to facilitate and improve such relationships at the highest level. Without these efforts, the UK can do all it wants to clean up its act - but nuisance calls will remain.
The APPG inquiry’s ‘call for evidence’ in July 2013 led to 88 written submissions (of which seven asked to be anonymous). This was received from 20 organisations and 68 individual constituents. These are listed below:

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<td>David and Hazel Flatman</td>
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<td>Douglas Hill</td>
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Margaret and Gordon Jamieson
Mary Ballantyne
Mary Robertson
Mary Bell
Maureen Noon
May Jones
*Mobile Broadband Group
Mr and Mrs Rudge
Mr and Mrs Loughton
Mr W. Field
Mrs A. Core
Mrs D. Holloway
Mrs D.M. Lopez
Mrs E.A. Herriott
Mrs J. Spencer
Mrs M. Sutherland
Noreen Hickey
Norma Hansen
*Ofcom
Peter Allan
Phil Wheeler
Philip Duncan
PhonePayPlus*
*Pinesoft
Richard Stevenson
Robert Smith
Robert Dobe
Rose Dowds
Ruth Brown
*StepChange Debt Charity
*TalkTalk
*Telephone Preference Service
*Trading Standards Institute
*trueCall
William Sutherland
William Prest
William Morrison
*Which?
Plus 7 submissions who asked to remain anonymous

* = submission from an organisation
Oral evidence

The Group’s inquiry held six oral sessions with 15 organisations in October 2013.

These were:

8 October 2013       BT and Virgin
9 October 2013       Ofcom, Information Commissioner and Claims Management Regulator*
9 October 2013       Telephone Preference Service and Direct Marketing Commission*
10 October 2013      Which?, Consumer Forum on Communications* and Citizens Advice
10 October 2013      Pinesoft, trueCall, CPR and CloudMark
10 October 2013      Direct Marketing Association

*=did not also submit written evidence

In addition, on 30 October 2013, the Group met the DCMS Minister, the Hon. Ed Vaizey MP, to formally present their report to him and discuss its recommendations.

The Report was formally launched at an All Party Group meeting held on 31 October 2013.
Mike Crockart: All right, thank you all very much for coming today to the first evidence session of the All Party Parliamentary Group on nuisance calls. This is something that I and others on this side of the table have been campaigning on for a significant amount of time, in some cases for almost two years now. And it's great to get to this stage of feeling like we are beginning to make progress and to take evidence from lots of different people about how, what the problem is, the extent of it, what the potential solutions are and looking particularly at the regulatory regimes. So that's really what today is about. Now for the purposes of transcription I'll introduce myself, I'm Mike Crockart, Liberal Democratic member for Edinburgh West and one of the Co Chairs of the All Party Parliamentary Group. But if I can hand over to yourselves and ask you to introduce who you are and then perhaps we can start with a general question relating to how big the problem is you feel. Perhaps I can ask you to kick off?

Hamish MacLeod: OK my name is Hamish MacLeod and I Chair the Mobile Broadband Group. On the mobile side up to now the most problems we've encountered are around unsolicited text messaging, on the uninitiated, unsolicited calling side, the problem hasn't been quite so great. Although as the price of calling into a mobile phone decreases, we are starting to see a little bit more on the calling side as well.

Mike Crockart: Warren Buckley, Managing Director of Customer Service at BT. I think there's no doubt we share the concern about this environment. Inevitably we of course want all of our customers to feel safe using their telephones, we are after all providing it so we want people to feel safe using it. Probably for the last two to three years we've been working across the industry and with relevant authorities to try and find the way to solving this problem, both in terms of dealing with appropriate calls that people don't want to receive, that are made within the law, but more particularly I think with calls which are made outside of the law. We really see three things, which we can touch on a little bit later, that are key. One really is informing and educating customers, the second is really empowering customers and the third is working with the relevant authorities around regulation. It's worth saying to give a sense of scale, one of the things that we provide is something we call the nuisance call advice line, which is called by both BT customers and customers right across the industry, where we offer advice. You know that team itself receives about 50,000 calls a month and I think on the basis that by the time somebody has reached the point where they're calling that, they're
certainly feeling that they’re being troubled by nuisance calls. That 50,000 gives an indication of the number of people who, who are impacted by this.

Mike Crockart: Thank you

Alexandra Birtles: I’m Alex Birtles, I’m from TalkTalk and to echo what Warren and Hamish have said I think it’s an issue that increasing; we’re seeing consumers who are really struggling with it. I think it’s fair to say the issue has escalated and I think it’s an area where we will feel certainly for our customers there’s a more of a proactive role that we can take in supporting them. So we’ve recently launched a new nuisance call reporting service for our customers, which I’m sure we’ll go into a lot more detail about and we’re also in the process of completely re-doing our consumer advice and guidance on it. I think it’s something that certainly we know from speaking to our customers and hearing from them that they are really struggling with and they obviously feel quite powerless in terms of where to turn to for support and the help that’s available for them.

Mike Crockart: You’ve kind of skirted around the question; what is the scale of the problem? Are we at the stage, and it seems to be, with reports that have come out recently, that the majority of calls that are being made are now nuisance calls or unwanted?

Warren Buckley: We wouldn’t say it is the majority, I mean the best research that I’ve seen has been done very well by Which? which I’m sure is one of the organisations you’ll talk to. They’ve suggested I think that one in ten calls are nuisance call environment, that many people are receiving between ten and twenty calls a day, at the most extreme. One of the challenges of course is there are some people who are not receiving any calls at all, I’m sure this is the same for text messages. There are other people who are really receiving a lot of calls and so, I mean certainly I don’t think we’ve got access to direct information because clearly calls made across our network we just see as calls, we’re required to carry those calls. I know there are many millions of calls made which are genuine calls and I’m sure that’s the case for right across the industry, but that is not suggesting that this isn’t a significant problem. So the fact that it’s not the majority of calls doesn’t mean it’s not a very significant problem. We believe it is.

Mike Weir: Mike Weir, I’m the SNP MP for Angus. Just for Warren and Alex, I mean both of you said you had a nuisance calls line within your organisations, do you keep any records of the demographics of the people who are receiving nuisance calls? In my experience in my area, it seems to be a disproportionate amount of nuisance calls received by elderly people. Now maybe that’s just because they happen to be in during the day when the nuisance calls are made. It will be interesting to know from you, your side of things, of the people contacting you what the demographic breakdown is and how these give us some idea of how these calls are being targeted.

Mike Crockart: Before you answer that can I come in on this as well saying perhaps for the average user it’s not the majority of calls, but for the elderly user who’s perhaps not using the phone that much, but who is during the day I would actually say that it probably is the majority of calls. We’ve done in the last month a little survey just putting call blocking units into two older constituents’ houses who reported that they were being plagued by nuisance calls. And we’ll call them Mrs M, 65% of her incoming calls were nuisance calls, now that’s going to a house where the wife is partially deaf, the husband suffers from dementia. Now that was 31 nuisance calls in 41 days, now that seems to me like a dilemma, a major problem for the industry.

Warren Buckley: I don’t think we’re denying that we see this as a major problem, I mean it’s worth saying of course that all of us want to keep our customer safe in answering the calls and particularly for vulnerable and older customers, many of whom perhaps use the fixed phone perhaps more than the general population and therefore they want to feel confident about it. We don’t keep a specific demographic, that’s something I could look to do, if we felt that that was something that was helpful. Clearly we have to
get permission, I mean that’s the nature of any of these; we’d have to be clear that we’re capturing that.

**Mike Weir:** But surely these people are contacting you already because they’re fed up to the back teeth of receiving these calls.

**Warren Buckley:** Of course.

**Mike Weir:** You know it would be useful if both of you could keep that and could try and get that information

**Alexandra Birtles:** Absolutely, it’s just that it’s subject to data protection so we would have to get their security and consent to do that.

**Warren Buckley:** We can certainly try and do that. However what I would I say is, the nuisance call advice line sits directly in my team and I’ve spent quite a lot of time listening to calls with them. I would entirely agree with the fact that a significant proportion, and we could look at the exact proportions, are vulnerable, are elderly customers and it is leaving them in a situation where they don’t feel safe to use the phone and that’s why we think, we agree that action needs to be taken.

**Alun Cairns:** Thank you, my name’s Alun Cairns, I’m Co-Chairman of the All Party Group. Can I ask you both, particularly TalkTalk and BT, how long has your nuisance call advice line been up and running?

**Warren Buckley:** Our nuisance call advice line has always been there, so it’s something we’ve had running, well certainly for at least ten years if not quite a lot longer than that. It’s worth me saying that obviously the type of calls that we receive into it has changed quite a lot. So traditionally that service was something that we made available a long time ago and often will be harassment cases and those types. What’s happened now is, if you like, the harassment side of things where people needed advice round that, issues where we might work with the police has diminished. That’s good. But actually the number of nuisance calls that we’re getting reported has significant increased.

**Alun Cairns:** How many reports a month does that number receive?

**Warren Buckley:** 50,000 a month.

**Alun Cairns:** 50,000 a month, I’d like to think I’m quite interested in the subject and I didn’t even realise that BT had a nuisance call advice line.....

**Laughter**

**Alun Cairns:** So how well advertised is that?

**Warren Buckley:** Well we advertise it, we have something called BT Update which I just brought one example of, which goes out with all of the bills and we include information around that.

**Alun Cairns:** What proportion of your bills are through the post?

**Warren Buckley:** About 40% of all of our bills are through the post

**Alun Cairns:** And so the majority wouldn’t get that then?

**Warren Buckley:** Well what I would say is the majority of people who would still get it are the vulnerable and the elderly customers because the majority don’t tend to have broadband. The other thing is we make a lot of information online; we issue booklets about kind of the service as well. I’ve also, because this has been a keen interest of the media over the last few years, taken part in two TV shows, where we’ve talked about the nuisance call advice line and what people can do about fraud and nuisance calls. So from our point of view we’re very keen, I mean to be honest if there are better ways in which we can advertise this and you identify those, we’d be happy to do so. This is not a limited service; we want as many people to be aware of it as possible.

**Mike Crockart:** Well I’m going to bring Mike in a moment, but just to put you on the spot, you’ve said that this is how you tell people about your nuisance advice calling, well, the front is BT Sport, pages two and three are various bits and pieces about smart talk, unlimited WiFi, BT Cloud, BT Sport pages four and five, BT Sport pages six and seven, BT Infinity pages eight and nine. Various bits and pieces about watching the apprentice on page 10 and 11, 12 and 13 you know an app about smart
talk. General stuff about Braille on page 14, 15 is the advert for the BT phone. No mention that I can see of an advice line.

Warren Buckley: So well I did say I brought an example with me as opposed to one that I’d written three months ago.

Mike Crockart: Can I suggest it’s not a great example?

Laughter

Warren Buckley: To be fair I brought that one because it’s something we talk about in terms of our new nuisance phone, because I thought it was something we might talk about, but I could have brought one that had nuisance calls in it. We’re not putting any limiting factor on people calling us, it’s a free phone number, we’re very happy to take as many calls, we take calls not just from our own customers but right across the industry. It is I would suggest reasonably widely known. If you identify through this process ways in which we can make it more available, I’m more than happy to take that on board.

Mike Crockart: Well can I make a suggestion that you put it on your phone bill. I think that’s a really obvious way to do it.

Warren Buckley: Well interestingly, I think it is on the back of a bill, though I don’t have a phone bill, but I will check that. But, actually you know by the very nature of things, we have to put certain information on the phone bill and so for example I have to put information, or we all do, about how to contact us, about regulatory information. I will certainly look at this in terms of the nuisance call advice line. The key thing I’m saying is I don’t want to limit the number of people who contact me, and I want to make it available.

Alun Cairns: In terms of numbers, how many does TalkTalk get? How long has your nuisance call line been up and running?

Alexandra Birtles: So it’s actually currently something we’ve been trying for the last couple of months, so it’s new, it hasn’t fully launched yet. We’re just ahead of a full launch, it’s actually a service that we’ve been running online, and we’re now looking to take that into our call centres as well to test the process. What we offer effectively is a way for customers to report a telephone number that they think has been nuisance calling them and we then have an abuse team who deal with cases of online abusive, like spam, hacking and things like that and the team can do an investigation into that specific telephone number and will then give advice back to the customer, in terms of what type of nuisance call we think that to be and what the recommended steps are. So actually one of the things we see with a lot of the nuisance calling, so we’ve been trialling this for a couple of months now. We’ve had about 1,500 reports, so it’s quite low. But it’s been in pilot.

Alun Cairns: How do you communicate it?

Alexandra Birtles: So it’s in our customer information on our website, a help section at the moment is how we’ve been working it. Nuisance calling is one of the most popular things that customers search for in terms of help on our website and they find it there, it’s quite a simple form that they fill in, they just literally enter a telephone number and their details and then that goes into the abuse team. And everybody who reports something gets a personalised one to one response.

Alun Cairns: They enter the telephone number that’s been the nuisance call? What about the cases where there’s no caller ID?

Alexandra Birtles: At the moment they would just report that us. In terms of where there’s been no caller ID I’d have to check actually what happens in those instances. We offer a free service on all of our phones to show every customer who calls them shows a telephone line identifier.

Alun Cairns: I’m sure we’ll come back to that later

Mike Crockart: We are definitely coming back to that

Alexandra Birtles: Yeah I’ll have to check exactly what happens in those incidents

Mike Weir: Just both for Warren and Alex, what advice is given to customers? Because the problem is most customers, they’re told go to the TPS, which frankly
doesn’t do the job half the time. Now Alex you talked about identifying numbers that are apparently nuisance numbers, is any effort made to block these numbers specifically? And Warren the same thing, because what is needed seems to be a way of automatically blocking numbers that are clearly nuisance caller numbers. Rather than leaving it to the individual and the Telephone Preference Service, it seems there’s numerous ways to get round. I’m a member of that, I’ve got one of your blocking phones, and I still get numerous phone calls. It’s got to the stage where there’s times of the day I don’t even bother to answer the phone, I think anybody who is really trying to get in touch with me will leave a message on the answering machine, because there are so many around meal times particularly is a time when you get umpteen of these calls.

Alexandra Birtles: So that’s actually what we’re looking to do with the service, is effectively and this is where we’ve been trialling this and we’re now in the stages where we think there’s a real consumer demand for this. We think it’s something our customers have said to us, “could you block these numbers from calling us?” And so we’re now looking at the process where we’re going to go out and discuss with the ICO and the regulators, legally we’re comfortable with it, actually numbers that are reported into our abuse team and we see that they are clearly nuisance calling. So we’re seeing cases where some customers are getting 64 calls in 7 days was one I saw the other day, which is you know extremely excessive from a company that’s trying to generate marketing leads effectively to sell on. Actually we would take the decision to block that from calling any customers on our network, so we would effectively block their number at a network level. And that’s a service that we’re hoping to rollout. One of the things that we’ve found as we’ve been going through this and I think this is where we would really welcome and we’re hoping to see some more clarity around, is exactly what constitutes a nuisance call, because I think you know we also see cases being reported where actually it’s an individual harassment case. So it’s a private number, it’s somebody calling somebody actually for malicious purposes on a one to one individual basis. You do have cases where also it’s to do with third party consent, so at some point somebody has ticked or pre ticked a box, you get into issues of consent. So I think that’s the thing that we are trying to look at is how we can offer a service that you know is effective, doesn’t incorrectly block, but actually protects our customers, but that is the service we’re intending to launch and rollout.

Mike Weir: Warren?

Warren Buckley: Yes let me just add to that quickly, I mean in terms of specifically the advice we give to customers who are in doubt with this, we would suggest TPS and also and the Mail Preference Service restriction. We understand the limits of it, but that’s what we have today, so that’s the first thing we would suggest. The second thing we would suggest is we would give people advice about how they can monitor the calls that they’re receiving. We would look at for example if somebody is particularly plagued then there are various service such as choose to refuse or various other aspects of people that could offer services. And for example if somebody just is being particularly plagued by a number, we would offer them choose to refuse so they can specifically block one number and we’d offer that for a period free for three months which is normally enough to kind of stop people calling. We’d give people advice around not answering calls that they don’t recognise from that point of view, not giving information. Sometimes, particularly this is true of some of our more elderly customers, we would talk through the whole process around making sure that when they’re signing up to anything at all that they make sure that they don’t tick and they actually check whether it’s been pre-ticked because some companies have the pre-tick, some leave it you have to choose. So there’s a range of advice. To give you an idea, the average call that we receive where we talk to somebody on that line is about 20 minutes, so it’s a fairly considerable conversation in terms of the advice that we’d actually offer around that. I mean just quickly touching on what Alex says, I think the approach we’ve taken up to now is having giving advice to customers is
then to start to try to empower them to deal with this, because at the moment it is a little bit of a challenge for all of the telecoms companies, in terms of just how far we can go to actually blocking calls, at a network level. Under our telecoms licence we are required to take a call that we receive into the network and take it through to its intended destination. We can report calls that we believe are nuisance calls, depending upon which part of the regulation and that’s another part I’m sure we’ll come to, but which part of the regulation we can choose to report either to the ICO or Ofcom and we can then work with them as Alex says, in terms of actually block those in much the same ways we would with, with abuse on email and spam.

Mike Weir: Given the level of calls you get at your nuisance line, 50,000 a month, presumably you’re able to show patterns of particular numbers that are causing difficulty and do you take action to specifically seek to block, permission to block

Warren Buckley: So, let’s be clear, we can report those to the ICO and Ofcom and we absolutely do that. We work, as I know TalkTalk do, we work with Which? and we’ve linked up so people can report online. And to be fair, Sky do exactly the same, I mean I think as a whole industry we’re trying to tackle this, so you can report those. The key is that I can’t take the action at the moment under the current regulation to block a number. That doesn’t mean I wouldn’t like to, I can promise you, I get plagued by it as much as everyone else does, but at the moment we can report it in and then we can take action from that point of view, but we can’t choose to. It’s worth saying as well, and you’ve already touched on it, one of the biggest problems is the number of times where the caller identity is not available and all commercial organisations should be transmitting their ID. And in addition one of the things reported overseas calls as well, which we’re trying to take action on at the moment. But at the moment it’s about collating the information and then reporting it to the relevant authority and then working with them.

Julian Huppert: Thanks very much, Julian Huppert, Liberal Democrat. Firstly I’ve tried searching for TalkTalk nuisance calls and BT nuisance calls, the BT site comes up with a list of things you can do to, just ask marketers to stop calling you, to stop unwanted texts, text the speech calls and use the Which? portal. And certainly the first half of that doesn’t mention anything about this nuisance helpline. Searching for it doesn’t find it either. The TalkTalk line also doesn’t give the information for either of you. The thing I really wanted to ask about though was, at the other end, how clear a picture do you have of who was making these calls, why? How many of them are domestic, overseas, because presumably they are profitable, what control is there on who is making the calls and whether we can have sort of economic levers to adjust that?

Alun Cairns: So can I just add to the question, profitable to the people making the calls.

Julian Huppert: Yeah, sorry, they may or may not be profitable to you

Warren Buckley: No I understand, maybe I could start? I think that broadly speaking the companies calling fall into two categories, the first category is people who are making calls within the law and effectively therefore you become a question of how much that is a nuisance and, and whether they fully have consent to make the calls. But at least from their point of view they’re making calls genuinely believing they’re making them within the law, the marketing guidelines etc. There is then a problem where people are effectively just completely ignoring the law and ignoring regulation and one of the problems there is that you’ve got a large number of companies overseas who are effectively making mass numbers of calls, often under survey. I’m sure you’ve had those kinds of calls, many of customers certainly have. What they’re then doing is actually just trying to just capture information, which they then sell back into the UK, often posing as
genuinely got consent and companies. One of the things that we think is very important is that companies should be able to be very clear in the fact that they’ve checked that they have consent and where they’ve got the information is from. So certainly the key, I think for the companies that are making those genuinely, no company spends money unless it believes they’re getting returns and I’m sure they are. I think there is a much bigger problem, which is these companies who quite frankly have no interest in what the law is, they’re just abusing the law and then collecting information and then selling it back into multiple parties into the UK. One of the questions we would ask is, is everyone doing enough to make sure that the information that they receive and then use, has been sourced from a valid place?

Julian Huppert: You described the sort of people who believe they’re genuine as being domestic and the ones that don’t care as being all overseas, is that a true separation? Are there a significant number of companies, organisations, in the UK who are deliberately flouting the rules?

Warren Buckley: I understand the question, it’s quite a difficult one to answer, I’m not sure I’m in the best position to answer. I don’t know how it’s come about, I just don’t personally know but I know when you talk to Which? they’ve done a little bit more research around that specific area. I’m just trying to make those two generalisations. I mean I think actually in terms of the situation in the law in the UK action can be taken; we think it should be taken more quickly, which is one of the challenges around this space. But we do think that the growing problem is companies calling from overseas.

Alun Cairns: You said growing, what proportion would fall into category two of those ignoring the law?

Warren Buckley: I’m afraid I don’t know, that’s the word, I’m slightly nervous of being….

Alun Cairns: On what basis therefore are you saying it’s a growing problem then?

Warren Buckley: Well because certainly in the reports that we’re receiving through the nuisance call advice line, we’re seeing many more people reporting through that and from the online facility, where they’re indicating the fact that the call seems to have come from abroad and they haven’t got a call line identity. The majority of calls made in the UK have a call line identity, from that point of view are genuine calls, and people can often tell that a call is being made from overseas. So I’m just purely going from what we’ve seen in the nuisance call advice line. We haven’t done any first party research on it.

Helen Goodman: Well my questions are kind of linked to Julian’s questions. Could you just remind me what the rules are at the moment on marketing calls?

Alexandra Birtles: Customers need to give consent to receive marketing calls and at the moment and I think one of the changes that the ICO has been calling for and that Which? supports, and actually I think TalkTalk does as well, is that at the moment it’s often you have to prove that you have consent, you don’t have…sorry…. a company has to prove that they, ICO has to prove that they’re guilty, as opposed to a company proving that they do have consent, which I think is quite an important distinction. If you opt into the Telephone Preference Services, one of the of the broader consumer issues that happens is you assume by opting into the Telephone Preference Services all marketing calls will stop, which actually isn’t the case if you have given a company consent, those calls will still happen. And I think that is one of the consumer understanding issues around the TPS, which then leads to some of the views about the effectiveness of it even if you opt in.

Helen Goodman: I thought that there were rules, not relating to the process, but relating to how many calls companies could make or how long they could wait, or the pickup time. I thought there were so rules on that as well.

Warren Buckley: This is one of the challenges is that there is are a number of different aspects of regulation that apply in different situations. So as Alex’s already said from the consent point of view you have to have given your consent or not, have withdrawn your
consent, so it’s kind of slightly confusing there and in addition the TPS isn’t a blank all do not contact. There are then a set of rules....

**Helen Goodman:** But not withdrawn is a totally different thing

**Warren Buckley:** Well because it depends upon the default and the way you’ve signed up, we agree this is confusing. We totally agree with that. Then in how calls are made, there’s a set of rules around how those calls are made, so for example if there are companies making calls and, generally if you’re going to do volumes of calls you tend to use a dialler, so it’s a computerised system that is taking the numbers and calling time after time. There are a set of rules around how those calls need to be made, first of all for example, you can only make a certain number of calls to the same number to keep trying, over a certain period of time. Secondly you have to have somebody who is available, because what happens is, they call, they connect, and then they connect it through to an agent to actually talk to you. There are rules around the number where you can miss those and they’re very strict. There are a number of calls, where silent calls for example have to be restricted. So that’s a different set of regulations and still valid and one of the challenges here is all of these different pieces of regulation effectively come together to protect the consumer, but then the responsibilities in terms of the enforcement of those different aspects of regulation, some falls with the ICO and some falls with Ofcom. We know they’re both working hard to try and enforce, but it is, we think, a confusing situation, certainly for us as companies it’s sometimes confusing to know who we should work with, so inevitably we end up working with both.

**Helen Goodman:** So these dial up rules about time and so on, these are the ones that are overseen by Ofcom?

**Alexandra Birtles:** They are yes.

**Warren Buckley:** They are.

**Helen Goodman:** Now I thought that TalkTalk had be fined by Ofcom by breaching these rules, that’s right isn’t it?

**Alexandra Birtles:** That is correct, so we received a fine from Ofcom earlier this year, actually relating to activity that took place back in 2011. Probably just worth giving a little bit of context here, TalkTalk demerged in 2011, we were a company that grew through a lot of acquisition, we bought a lot of companies, and we then inherited a lot of different suppliers. We had two suppliers back in 2011 that we discovered had disgruntled rogue employees who were actually personally, vindictively conducting silent calls. And as soon we discovered that we sacked the two companies effectively for doing that on our behalf under our name. Ofcom conducted an investigation, so from the event that took place in 2011, the fine was received in April of this year.

**Helen Goodman:** So TalkTalk far from being in one reducing these was in fact perpetrating these calls?

**Alexandra Birtles:** We had a specific incident back in 2011, with a couple of rogue employees, across two different agents, that we sacked immediately and we ceased working with, we no longer work with those companies and since then we’ve absolutely in line with all of the guidelines.

**Helen Goodman:** And what did you learn from that then?

**Alexandra Birtles:** We’ve ceased all cold calling. We used to call customers to acquire them, so that would be where for example we bought third party data, that’s something we no longer do at all. We have as I said stopped working with those suppliers. We have incredibly strong internal compliance guidelines around all of the companies we work with, in fact actually you know you were talking about the Ofcom rules around abandoned calls, Ofcom set a threshold of 3% for marketing calls being made. Our internal guidelines are actually stronger than that, we say 2% and actually we track week on week at less than 1%. And actually it’s been about consolidating the partners that we work with and holding them too much higher standards.

**Helen Goodman:** OK, now Warren said that he was concerned that a large number of these people breaking the rules were overseas. Would you infer from that maybe it
would be a good idea to take some stronger action at the EU level, rather than just trying to do things domestically?
Warren Buckley: I mean a lot of these calls are not made within the EU, in my experience, again I have to say this is my experience and what I’ve read, rather than first party research. A lot of these calls are made outside of the EU. There are organisations that all of the UK telecoms are part of, that we work with overseas in terms of trying to enforce this. We actually think the key point that needs to be enforced; either whether it’s in the UK or overseas is that the number is always displayed. So at the moment one of the problems, well two problems that you’ve got, first of all is a lot of people restricting the numbers and secondly increasingly there’s a problem were people can effectively spoof the number, so effectively it looks like they put another number in front, but it’s not really the number they’re calling from. We think one of the key things are there groups who are working on this, is that all organisations making these calls, whether from overseas or from the UK should have to make their number display, now under the marketing laws that’s already the case in the UK, we think it needs enforcement, I think this is something that we all strongly feel about, because then it allows us to put tools in front of our customers and potentially if the regulation changes, for us to take action to take that. But the key is you do need to number calling displayed.
Helen Goodman: Is it the rule to do that in any of the other European countries?
Warren Buckley: Actually I don’t know that.
Helen Goodman: Because I mean one’s got to be, you know practical about these things, it is difficult to get international rules covering the whole world from Kenya to Kazakhstan, but to do something at European level is kind of practical, feasible, option I guess.
Warren Buckley: Yes I mean there is an organisation, maybe I can just mention it in case it’s useful, but there is an organisation called NICC which is an international organisation, a technical standards body, which actually works with technical standards around the world. They would be in a better position to talk about action and work that’s being done internationally to try and help with this.
Mike Crockart: OK we’ve moved onto CLI which is something I know that Alun is particularly interested in so.
Alun Cairns: Yes caller ID, Warren, you’ve made a great play on how numbers need to be displayed and how that should be a requirement here in the UK. Can you explain the charging structure whereby you recently announced that in some circumstances you charge £21 a year, in order for the customer to see the caller ID, which I interpret as charging a consumer to make a complaint about a nuisance call?
Warren Buckley: I’m grateful for the question because I think there’s been quite a lot of confusion around this, so let me try and explain exactly what is happening. We absolutely agree that it’s important for customers to be able to choose whether they want to have caller display on their phones or not. This is a great way both just in knowing who’s calling you, but also to fend against nuisance calls. One of the problems that we were concerned about was that we had a legacy position at BT that was confusing for customers. So we essentially have caller display available to customers in three different ways. We had one which was around something called BT privacy with caller display, which is where customers could have caller display and would automatic register with the Telephone Preference Service and the Mail Preference Service around that piece and that service was free. One of the challenges though of that free service was that it some restrictions around it, so for example, although it was free, if you didn’t make a certain number of calls a month you then got charge £2 and what we’ve seen is, is that a large number of customers have reduced the amount of fixed calls that they’re making and therefore we were seeing quite a lot more customers who were getting this £2 fee. And effectively one was free, we felt that was confusing, we felt that was something that was coming across as effectively as a hidden charge and I dealt with a number of customers around that. So that was one category. The second category was customers who were on
a set of legacy charges, that effectively going back many years people had had services with us for a long time and they were set on a whole range of different charges that we’d made on caller display and advanced features across that. And then the third piece was that customers were paying £3.30 a month for a feature of caller display and that was effectively where they hadn’t signed up to the caller display with BT privacy. So we just looked at all of that and said this is really confusing for customers, how do we make this less confusing as we go forward? So what we have done, and we are writing out to all of our customers, either in their bills or directly on email for customers who receive electronic bills. And also we’ve made a point of making this very aware, we talked to lots of newspapers and media, we want to be to be really transparent around this and we’re creating what we believe is a much less confusing situation. So from January of next year we move to a position where if you want caller display you can have caller display for free, so long as you’re under contract with us and that’s the case with lots of our different services, BT Smart Talk, a number of different services, it’s within the contract, you get that free, that will stay on that basis. If however you don’t want a permanent contract with BT and you want to just pay on a month to month also then they’d be a charge of £1.75, which is less than the £2 that we were charging for the not making calls and is significantly less than the £3.30. So what we’ve tried to do is to remove the confusion, make it very clear that if you have a contract with us you get caller display for free, if you’re on a month by month basis there’s a £1.75 charge.

Alun Cairns: Right that clarifies the position, but it doesn’t necessarily make it right. Can I come back and suggest that when the caller display technology was developed, I mean it’s probably going back 20 years or more, it would have been probably seen as a premium feature. So I can understand that the £3.30 charge that you’re talking about for a premium feature and it would have been nice and that’s the natural product cycle, if people want something new then they pay for it at that stage. But nowadays caller display is pretty standard and I would suggest there’s absolutely no additional cost in providing caller display to BT to every customer, so therefore I would suggest that to charge for caller display is completely unacceptable in any way, shape or form. Mobile operators and I’ll return to Hamish in a moment, they don’t charge for caller display. I’m not sure of any other mainstream operator that charges for caller display and, and for someone who happens to be outside of contract, so the sorts of customers, the vulnerable ones, the more vulnerable customers we were talking about earlier, elderly, older people who tend to be at home more, may well be outside of contract, because they won’t switch contracts year in, year out. That’s the standard pattern of demographic patterns and therefore they will be the ones that will end up paying the £1.75. And telling me it’s a little bit cheaper than £3.30 as it was, I still think is unacceptable.

Warren Buckley: OK, I entirely understand. I mean I think the difficulty with comparing BT to other companies is that we all operate different elements at different pricing. So unless you laid all of the pricing out and looked at the comparison, it would be hard to know ultimately

Alun Cairns: But wasn’t that the debate in the energy market and it is to legislation to force lower charges to be made?

Warren Buckley: Well to be fair I think we have an incredibly competitive, we have a very competitive communications market in the UK.

Alun Cairns: The point I’m making is that confused pricing leads to politicians to force solutions on providers. We don’t want to get to that position surely?

Warren Buckley: No, I entirely understand, but we are absolutely trying to make this more transparent and less confusing, I understand. So call display does cost us to deliver, that is something we’re asked to deliver. We’re investing broadly across the feature, so we’re investing heavily in the phones, the nuisance call services; we’re investing in nuisance call advice line and a nuisance call bureau. So we are investing to try and support this service. What we are saying though is that it is genuinely to the benefit of all
our customers to talk to us once a year and review their contract and be under contract, because we’re able to make, just like most businesses we’re able to make a range of special services available to customers who are in contract with us.

Alun Cairns: Can you tell me how your costs, how does it cost BT then the network?
Warren Buckley: So, it does cost us like any business
Alun Cairns: How? Because it’s there, it’s there in the infrastructure. How does it cost you an additional charge for one customer to have caller ID and for another customer not to have caller ID?
Warren Buckley: Because the mechanism, it’s not just there within the network, the mechanisms that I need to put in place, the services that I need to put in place, the processes I need to go through to switch something on and off, all of these environments cost any business money.
Alun Cairns: But they’re there already.
Warren Buckley: No. So they’re in the network but that doesn’t mean this is free to run.
Alun Cairns: Explain why. Where is there a running cost in the implementation of an electronic switch effectively? Where is there an additional cost to the tune of £21 a year, for an electric switch to be switched on for a customer?
Warren Buckley: So for any of the services when you’re running a very large network, all of them cost money in order to provide them. All of them cost energy. Energy is one of the biggest costs that any telecommunications have, because we have to....
Mike Crockart: Oh I’m sorry come on. You’re saying it’s going to cost you to have to use more energy to pass the CLI along?
Warren Buckley: No the point I’m trying to make is no network, no set of millions of parts of the network that we have is free to run, and none of it is free to run. So ultimately I’m a business and I have to make a return on the costs that I invest, in order to meet my shareholders, whether that’s my shareholders, my customers or my staff, we have to by the very nature of it make a return on.
Alun Cairns: But I would then respond: when it’s premium product, when people want it early on, that’s the natural product cycle, if someone demands something new, something innovative, people can expect to pay for it. But when it’s the norm people expect and I still don’t accept your argument that there is an additional cost. Two people living in semi detached houses, one wants caller ID one doesn’t, or one wants caller ID and the other one who has got to pay for it for £21 a year. Is that equitable? Is that feasible and is that fair?
Warren Buckley: We’re not saying that anyone needs to pay, we are making this very clear a large number of people who were previously paying for a service, no longer need to pay for that service, because they simply need to be in contract with us. And large numbers of our customers are in contract with us and we talk to them each year and they benefit from being in a contract with us. Customers who want a premium service, effectively be able to pay month to month and have the flexibility to change any of their services, we’ve actually put in a charge that was less than it was before £1.70
Alun Cairns: But you haven’t answered the point, the natural demographics of older people who are more susceptible to receiving nuisance calls are likely to be the ones outside of your contracts who will end up paying £21 in order to get their caller ID, to make a complaint to you, that they’re receiving nuisance calls.
Warren Buckley: So I understand your point you’re making, but actually many of our elderly customers are exactly the people who contact us every year, they do shop around; they do make sure they’re on the best deal. We are going out of our way because we think it’s the right thing to do, to really communicate to all of our customers about the changes we’re making here. We do believe it creates a less confusing situation, we do believe that effectively it removes the charge for large numbers of our customers and we
are doing this because we think it is important that customers can make an informed choice.

**Alun Cairns:** Can I ask Hamish from the Mobile Group, do you charge for CLI?

**Hamish MacLeod:** No.

**Mike Weir:** Do you have any plans to charge for caller ID?

**Hamish MacLeod:** Well, I well they wouldn’t be, if we did they wouldn’t tell me, but no, I can’t....

**Alun Cairns:** Is there an extra cost in providing caller ID? What about all that energy is used?

**Hamish MacLeod:** As far as I know it’s just part of the GSM Standard when that came in sort of 1991 and it’s just always been there, I’m not aware of it ever being an issue. Well in analogue days it probably may not have been there but....

**Alun Cairns:** But that would have been seen as a premium product at the time and OK. TalkTalk do you charge for caller ID?

**Alexandra Birtles:** No we don’t charge for caller ID.

**Alun Cairns:** How many other operators, mainstream operators charge for CLI?

**Warren Buckley:** I can talk for BT, as I said before you would have to look at all of the different prices, so you’ve talked about vulnerable customers and elderly customers, you know many of them call 0845 and 087 numbers, all of the networks operate costs for those differently. So you’ve got to, when you’re looking at the overall pricing that anybody, any business is offering to its customer base, you have to look at all of the different prices. We do believe that we’re offering something free for customers that are in contract with us, many of our customers are in contract, and we’ve given them the chance to do that. We’re making it really easy for them to make that decision, and for a large number of our customers, they’ll go from paying over £3 a month to paying potentially nothing at all.

**Mike Crockart:** All right I’m going to let Mike come in and Helen come in, but I think you’re getting the impression this is not going down well.

**Warren Buckley:** I do understand that yes.

**Mike Weir:** Coming through your conversation what you’re basically saying is this is something that encourages people to take out long term contracts with you, there’s no real cost involved with it as far as I can see. And given that the TPS relies on people putting the numbers back to them and you can only get that with caller ID, isn’t about time that BT accepted this should be part of the normal contract? Part of the normal service and there shouldn’t be an additional cost for it, because if you’re saying that I have a month to month contract, I have to pay extra for it, whereas if I take out a two year contract, one year contract for us, I won’t have to pay for it. But if it’s a question of an electronic switch, I can’t see anything other than administrative cost being involved and if everybody had it, there would be no administrative cost.

**Warren Buckley:** I do entirely understand your point around the cost, what I can say is I’m not going to reveal the breakout of the specific cost to us on caller display because that would be commercially sensitive information, I can’t do that. But what I can tell you is that there is a cost to us to apply this and I appreciate your point that it was a premium service that has changed and therefore what we want to do is to make it really easy for customers to decide to get the best service they can with BT. And that means that if they’re in contract they won’t get charged, the truth is that if you’re in contract with any business, not just a telecommunications business, you get a better deal than if you’re not in contract.

**Mike Weir:** Yes but this whole business of nuisance calls, it’s one of the main problems that your customers, particularly elderly customers are suffering and you have solution that could deal with much of this and you just go you have to pay £3 a month for it. That seems to me utterly ridiculous for a company of your size, for something that should be standard, its standard on mobile phones, now why can it not be standard? And especially since the only way a customer can deal with TPS effectively when the first thing TPS will ask is, “well what’s the number that’s been
calling you?” And if you don’t have caller identification you cannot give that information and you can’t get anywhere with the TPS.

Warren Buckley: To be fair TPS will be function in terms of your number being registered, it will be Ofcom or the ICO who deal…..

Mike Weir: No if you’ve made a complaint, I’m sorry that’s not right, you have to register with TPS, but if you get a nuisance call and you phone up TPS, the first thing they ask you, what is the number that called you? Because they need that number to trace it and if you don’t have CLI you, you cannot give them that number and the thing goes nowhere. So it’s an essential part of dealing with nuisance calls

Warren Buckley: So the TPS will do the same as us, which is they’ll report it either to the ICO or Ofcom and they’re the people that we then work with tracing it

Alun Cairns: They report what to ICO?

Warren Buckley: They report the caller display number, I think

Alun Cairns: But they won’t have it

Mike Weir: Yes, but only if you can get it, that’s the whole point.

Warren Buckley: So there are three things that we’re doing around trying to help with this, in terms of empowering customers, the first is we’re investing in our network and we’re upgrading over 7,000 exchanges to be able to…….

Mike Crockart: We don’t need a general sales pitch here, we need the specifics of caller ID, which is what we’re trying to get to here

Warren Buckley: No I understand that and that’s exactly what I was answering, with respect and I’ve come because I’m the guy in our business who directly deals with customers. So you know I fully understand the points you’re making and I fully understand that it’s your constituents who are my customers, that I am personally talking to day in, day out about this problem. So from our point of view we believe there are three aspects to this and if you give me a second I will genuinely, it’s not a general sales pitch, I will try and answer the point. So there were three things around this. The first is, that it’s important to us that we make caller display available to customers as easily as we can. We believe we’re doing that, I entirely understand the points you’re making, well I’m simply going to say the same position, which is we believe we’re making that very clear to customers in how they can get that. The second piece around that is that we’re upgrading all of our exchanges so that when we are given the number from overseas, it transmits all the way through at the moment, so we’re upgrading over 7,000 exchanges so that they all transmit the number that comes overseas. The third thing that we’ve done significantly is invested in our new phone, the 6500 and the 4400, to try and make sure that, and we’re making those available to our customers on a discounted rate, so effectively not only when they can see the caller display coming through because they’re in contract with us for free, but actually they can take action on it by setting up their phone to reject the calls or to put the calls to an answerphone. We believe the combination of those things really does help customers.

Mike Crockart: But that phone will only work if they’re on the contract with you?

Warren Buckley: No, it will always work if they have caller display turned on. What we’re saying to customers is you have a choice on the basis that you have it turned on.

Mike Crockart: But they need to be in a contract though

Warren Buckley: Yes.

Mike Crockart: A long term contract with you to get the caller ID to allow that phone to actually work.

Warren Buckley: I mean let me just clarify that point, what we’re asking customers to do is a 12 month contract, we don’t do 2 year contracts in this, it’s a 12, or 18 months, we do a 12 month contract, it’s a relatively short contract, we’re asking people to commit with that 12 months, we’ll make these available to them, they have access to the fact that we’re upgrading the exchanges, and they also have access to discounted 6500 and
4400 phones which clearly, we believe, up to now are reducing up to 80% of nuisance calls, and in the future nearer 98%.

Alun Cairns: Is that another example of where people have to pay for those then?

Warren Buckley: Let’s be clear, what we’ve done is we’ve made sure that those phones not only include all of the advance features that you’d expect from any modern phone, but also include the technology that we’ve developed to help people deal with nuisance calls. Those phones, even just bought in a shop, are no more expensive than any other phones from Panasonic, and in addition, where our customers buy them we actually discount them.

Alun Cairns: But if someone knocked my door on an ongoing basis, on a persistent basis, I wouldn’t need to pay to answer it to see who it was, would I? I’ve got to pay to effectively stop them.

Warren Buckley: But with respect we are trying to deal with a problem of nuisance calls that we have not created. So this is not us who are making these nuisance calls and then making money out of. The fact is there are people making nuisance calls, we are I believe, we are trying to do the best thing for our customers by investing in technology, making it as straightforward as we can for people to deal with this, and investing in the advice services that we’re offering to people. So we believe we’re doing the right thing, working with organisations, working obviously with parliament to try and deal with this significant problem, and we believe we’re making it as straightforward as we can for our customers.

Helen Goodman: When you were describing the costs of giving people caller display, basically you had two kinds of costs, you had a cost that related to the technology and the energy, and then you had a cost that was related to the admin, so wouldn’t it be cheaper for you just to give it to everybody and it would be better, really, to charge everybody across the board £2 a year extra rather than saying to the most vulnerable people, you need to pay £21 if you need it. Does it cost £2 to actually do the technology bit? Why, why don’t you just do it like that? Why don’t you just wrap it up with the whole thing?

Warren Buckley: Because we genuinely believe that it is right that customers have a choice in terms of the services that they take with BT, and we make as many different services available to customers and it’s not for us to decide for the customers what they choose and don’t choose to have. And what we’re saying is that, I mean, many customers don’t have phones that allow them to see the caller display.

Helen Goodman: Well before you go into that, how much cheaper would it be per person to give it to everybody than it is doing this switching on and off thing?

Warren Buckley: I don’t know the answer to that actually.

Helen Goodman: OK, well I think that would be worth finding out. Because then I think you’d be able to make a more rational decision yourselves about the package you’re offering to people.

Warren Buckley: Well I will certainly have a look at that because you’ve asked, and I will certainly have a look from that point of view. It’s worth me saying, and this is not meant to be a sales pitch, but you know, we are genuinely trying to make this more straightforward for our customers within contract, you can have this caller display service, and what it does mean is, for large numbers of our customers, they will be paying significantly less than they’ve been paying us in the past.

Julian Huppert: I actually wanted to move us slightly on from the issue of the charging to the content of the information when people do get that, because as I understand it there used to be quite a strong approach of saying the numbers were unavailable when they were unavailable or untrusted, and that that’s become less and less common and now it’s more often to have, either obviously fake numbers being presented or people’s own home phone numbers being presented, which is clearly, clearly not right. And that doesn’t help with that if something’s misleading, but it also
means that anybody who’s trying to filter out anonymous calls, who’s using whatever technique, can’t do it. Can you all try and make sure that the...we go back to the stages where if there is a faked number that comes up as unavailable?

Warren Buckley: It’s worth clarifying this situation. For the majority of people in the UK and businesses have to transmit their caller line identity, there are certain ones that have agreement not to but the vast majority of people have to transmit their caller identity and that comes through. The second problem is a problem with international calls, and that’s why we’re upgrading the exchanges, so even when the caller identity has come through the exchange has not been capable of transmitting it, so we’re upgrading the exchanges so that they’re all capable of doing that, and that will happen by the end of next year, and we’re just getting there, it is just a matter of the time it takes to upgrade 7,000 exchanges, that will happen. And the minute that we upgrade an exchange, and all start this month actually, then effectively the CLI will come through. The third problem, and I think it’s the most significant problem, is where people have either chosen to withhold their CLI, or increasingly, and I do think this is still relatively small but is growing, either they’ve restricted their CLI, and to be honest if you’ve restricted your CLI it would rather suggest you’ve done it for, for a specific and probably nefarious reason, but secondly, where people are starting, where they’re using Voice over IP based switches they’re able to put an ID then. One of the things I have very recently seen, and we are investigating at the moment through the Nuisance Call Bureau that I mentioned before, is let’s say they were calling my home telephone number, the number that would be transmitted is my home telephone number, which makes it very hard. So they’re areas that we’re currently investigating and and that’s fairly recent but I have a concern over it, and the spoofing. So I think the real focus going forwards is about, 1) enforcing the fact that people always have to display the number, and it’s important that we do enforce that and we track that, and the second problem is dealing with this problem. I think they’re both quite intractable issues to actually deal with because by the very natures, they’re putting a lot of money in to try to avoid the law in these situations. Certainly in my experience a lot of that has been from overseas, hence why I think it is worth potentially working with the NICC to try and deal with that. But in the UK where it’s found, the regulation is very clear on this and there needs to be strong enforcement on it.

Mike Crockart: OK, can I move this onto the regulatory regime as it stands at the moment and whether that is effective and fit for purpose, because we’ve already heard that BT have got a Nuisance Call Advice Line, TalkTalk are setting up their own advice line, Which? have set up a portal to try to ensure that complaints get to the right area, it feels like it’s very confused. We are having three regulators coming to speak to us tomorrow. What’s your collective, or individual views, about the regulatory regime, whether it needs to be updated? Can I start with you Hamish?

Hamish MacLeod: Well, we mostly deal with the ICO actually on the spam text messages, and what we have recently done with the ICO is to sign a non disclosure agreement by which we can do intelligence sharing of the newly installed GSMA, a spam reporting system platform. Just to take a step back, for many years we’ve offered a service of 7726 whereby if you get an unsolicited spam you can forward it to your operator, and the operator is then able to essentially cut off that sim card if it’s found to have been sending out messages unlawfully. With the new platform we’re able to sort of centralise all the data from all the networks on the text messages being submitted into the 7726, and then the ICO is going to have access to that intelligence. And he is already starting to see actually the 7726 being used for calls as well, although it’s not intended for calls they, most of us tend to use it for calls. And I think we have a very good working relationship with the ICO, they have brought some successful prosecutions last year, issued some quite large fines, and I think they’re quite hopeful that the intelligence that they will garner from the platform will be very useful. One suggestion that they have made is the threshold that they have to meet for partaking in prosecution is lower, and then we’re very happy to support that.
Mike Crockart: So effectively because you’re only really dealing with the ICO it’s a relatively easy process for you because you’re only dealing with the one regulator.

Hamish MacLeod: Yes. I think, as I said, calls will start to come into play a bit more and we will be dealing with Ofcom.

Mike Crockart: But from your customers’ perspective though...

Hamish MacLeod: Well they’ve got their 7726 to text into.

Mike Crockart: Yes, how well is that advertised? Because I have to admit that it’s only since I became involved in campaigning about this that I actually found out about that.

Hamish MacLeod: Yes, well we’re getting about 10 to 15,000 text messages in per week, which obviously it’s not every single unlawful text but I think it’s probably a sufficient number to pick up on all the unlawful text messages that are going about. I mean I received one myself about two weeks ago and I just happened to be speaking to the ICO later that day, and he already knew about this particular message that I received, so the information gets transmitted quite quickly.

Alun Cairns: What is the threshold which you will act in terms of seeking to block the sim?

Hamish MacLeod: Well if it’s from an anonymous prepaid phone, it’s pretty unlikely that they’ve made any attempt to abide by the law at all and those will get disconnected. Where it’s coming out of a contract phone, usually when it’s a contract, the text message will have been transmitted by an aggregator, who’s the sort of specialist intermediary who’s got the plumbing to send into all networks. With that you do have to go back to the aggregator who then goes back to his customer to then check whether he’s been sending these things out with consent. So the threshold will be checking that.

Mike Crockart: So it’s very much based on the contract type of the sim?

Hamish MacLeod: Well I think so, yes.

Alun Cairns: So what is the threshold on each then? So will you, if it’s a prepay, how many? The point I’m trying to get to is how many complaints you have to receive before you then think, well this...

Hamish MacLeod: .....Oh, you’d only have to have one.

Alun Cairns: One is sufficient in that, and on the others you would need what, hundreds, thousands?

Hamish MacLeod: Well I don’t think it’s a numerical thing really, it’s you get the reports in and you check have they got the necessary consents to do this. Now if they are, as we were discussing earlier, they can still be a nuisance even if they are sending out the texts lawfully, so one of the benefits of the platform is that we will be able to collate this information and aggregate it, and feed back to the company that’s sending these text messages. So that we can say, look, you may think you’re doing it lawfully but you’re still annoying your potential customers, we suggest you amend your methods or approaches.

Alun Cairns: And how long is the turnaround from receiving one or hundreds, or whatever the case the threshold might be depending on the circumstances. How long is it before an action takes place? Because reporting it is convenient but there’s no feedback as to when...

Hamish MacLeod: Well where we’re going to cut off the sim which is done unlawfully, the aspiration is to do it very quickly, I mean within 30 minutes, 60 minutes.

Alun Cairns: Oh right OK, so that’s good.

Hamish MacLeod: With the other type it takes a bit longer to actually check what’s been going on in the background.

Alun Cairns: But at least the investigation starts promptly, this is what I’m getting at.

Hamish MacLeod: Yes.
Mike Crockart: Alexandra, same question to you, I mean the regulatory regime and the powers that you and, the many regulators have, what’s your view on, is it a great difference?

Alexandra Birtles: We deal with both the ICO and Ofcom on the different elements. I think actually, I think it’s good that yourselves and the government and the select committee are all looking at this, because I think that it’s what makes it easier for me to run my business isn’t really the right thing, it’s actually about what’s better and confusing for consumers. I think the reason why you have lots of different people offering information is because consumers go to whoever they think is a trusted party, so I think actually, as opposed to thinking of it as duplication, I think it’s the right thing that all of the telecoms providers offer information. I think the thing you want is consistency across them, and as a consumer you might go to TalkTalk because actually as a telephone provider you think we’re responsible for it, you might go to BT because BT are, in a lot of people’s mind the telephone provider, you might go to Which? because you, as a consumer you go to Which? You think they’re trusted on this, or indeed you might go to your local MP. So I think consistency of information is really important across touch points. I think one of the things that we’re really keen to look at is about common definitions around what actually you do in different scenarios because nuisance calling, and there’s more, we’ve been looking into this through the trial, it is a very broad term that means different things to different people. And I think there’s still not necessarily a common consensus around the different types. One of the reasons, to be honest, why we offer the service for our customers is because, depending on what type of call you’re getting, there are different actions, and that’s what we’re trying to signpost them towards. I think it’s fair to say then that probably is a case for some simplification and what the outcome exactly is, I think needs to be decided at the end of having gone through the process. I don’t think we have necessarily the answer to that. But I can see that the reason why customers come to us and if I look at the, you know, as I’ve said, we’ve been redoing all of our guidance at the moment, there are a lot of different cases of types of nuisance calling and you would go to different people in each of those scenarios, and I think that’s where consumers are struggling, is they don’t really understand who’s responsible for what.

Mike Crockart: Now Hamish has outlined that, as a mobile operator, once nuisance gets to a certain level, depending on the contract type, that they can act straightaway or certainly within 30 minutes. Earlier on you talked about being able to move in and block a number on a network level, what circumstances would you be doing that?

Alexandra Birtles: So this is, as I said, something we’ve been trialling, it’s something we actually want to look to launch, we think there is an appetite for it, we think it’ll be a good thing for our customers actually, it’s something that comes up consistently from them, and it’s something that we think we could do something about. So we’re now at the point actually where we’re going to go and engage with the ICO and the regulator on this. And I think one of the things was, we need to agree what the level and the threshold is there. So you know, from looking at it from our experiences and examining some of the calls that have been coming in through the trial, we’ve seen cases where people are receiving, if people are receiving more than ten calls in a week from a number we think that constitutes a nuisance in terms of blocking, we would have to look upwards of that. I mean the cases we’re seeing are really where they’re very extreme cases. You see people receiving 64 calls in a week, that was the last one I looked at, and I think for anybody to argue that that doesn’t seem extreme, I think we would be very comfortable with blocking that. I think the point, as long as we’re transparent about what we’re doing, there’s a means of redress, there’s a feedback loop, I think that we would feel very comfortable with blocking calls that go over, say, I think at the moment we’ve been piloting for sales and marketing PPI calls, more than 30 calls within 7 days. But we would quite like to see actually some commonly agreed standards around that so that there is a consensus.

Mike Crockart: But you’re acting when the nuisance gets to that level?
Alexandra Birtles: Yes, in pilot stage at the moment.

Mike Crockart: OK, and then you would take the number that’s making those calls and block it across the network.

Alexandra Birtles: We would block that across the network.

Mike Crockart: The evidence that BT have given, well today but also in the select committee, you take a very different view. You seem to say that, you know, you’re in charge of the plumbing and whatever anybody puts in at one end you’ll deliver at the other.

Warren Buckley: So there’s a couple of things here, I mean the first thing that’s worth saying is that from our point of view we entirely agree that if we could agree a set of definitions, and agree a framework, almost certainly with Ofcom under which we could block numbers against a definition, we would like to do that. The challenge for us within that is we work within a slightly different regulatory environment than the other communication providers. So having been the British Telecom that’s always delivered service over time we still have a set of regulatory conditions which drive competition in the marketplace, which we fully support, that have certain requirements on us, called the Universal Service Obligation, which is something that we would need to work through with Ofcom, but that does not mean that we would not like to be able to agree a definition on which we could block numbers. What I was explaining at the select committee is at the moment if somebody comes to us and says we want to be able to buy a service from you, and buy access to your network and make telephone calls across it, we don’t have anything beyond normal contractual credit control, etc, as long as they meet all the normal business requirements we cannot refuse service. So it’s not that I wouldn’t like to sometimes do so, we cannot refuse service, we have to accept service on that basis. And understandably, if you look at the fact that obviously this regulation’s been in, put in place to encourage competition, you can understand why somebody like BT is not allowed to therefore refuse service. So it would need a change in regulation and specific definitions in terms of how that worked. However, certainly on the same basis, if we could block nuisance calls we would block nuisance calls. As I said earlier, we want people to feel safe using their phones.

Mike Crockart: So have you put together anything for ICO or Ofcom in the form of a proposal of what such a regulatory change would look like?

Warren Buckley: So we’ve had lengthy conversations, both individually as BT but also as part of the Nuisance Call Industry Forum, which is a joint body that’s been set up by all of the communication providers, or fixed communication providers, to try and work with the ICO and Ofcom around this piece. So we do believe there needs to be change in regulation, we have made recommendations about how some of that could change; we’ve also conducted a number of trials. I mean when I talked with the select committee, what we think is particularly important, is the ability to trace calls. We’ve already talked about the fact that actually there are calls which are made within the law and there are calls where people are avoiding the law, actually to some extent where calls are made within the law, the law does a reasonable job already of managing that situation. We would like to see action taken much faster collectively around that, but that’s something I think both the ICO and Ofcom are working on, but the other aspect is, that where effectively calls are made outside of the law you need to be able to trace. So we’ve been conducting, again as an industry and working with Ofcom in particular, to try and work through how we can more effectively trace those calls back, because unless you can identify who’s making the calls actually I wouldn’t know how to block it anyway. I mean by the very nature of blocking it I have to know where the calls are being made from.

Mike Weir: Could I clarify, because I’m not sure about this, you were talking about obviously BT owning the network. Given that other companies feed into that network, presumably the calls are being made, they’re not just coming out of BT, they’re coming through a specific company, is BT able to block these calls or does the company need to do it? For example, I’ll use TalkTalk because nobody’s like them, if
TalkTalk are coming over your network, TalkTalk presumably could block these numbers, but if TalkTalk weren’t prepared to do it, could BT do it within the infrastructure of the network?

Warren Buckley: So it’s worth saying, BT doesn’t have the only network in the UK, we have the largest of the networks in the UK but we don’t have the only network in the UK.

Mike Weir: By far though the largest and the one that most people use.

Warren Buckley: In addition the way in which calls are made across the network varies, so if you take TalkTalk and Sky for example, they both have their own telephone call system effectively that sits on top of our network, so it does go through our exchanges and our pipes and those things, but TalkTalk and Sky manage their own voice network as it were, and we have our own voice network. There are other companies out there who choose to buy a voice service from BT, in fact specifically they would buy that from BT Wholesale, and they would buy that on that basis.

Mike Weir: Yes, I understand that, my point is that, if you find one of these companies, if they found nuisance calls was coming through one of these companies who buy in through your voice system, would it have to be the company that blocks the call coming through the system they buy in from you, or could you unilaterally block specific calls coming in through that system or would you have to block that company all together from the system?

Alexandra Birtles: I would imagine that would have to be agreed with the companies who wholesale from you.

Warren Buckley: Yes it would. So I can’t, this is one of the difficulties. It is genuinely complicated both from a technical and a regulatory point of view. So if, let’s say communication provider A is buying a voice service from me, and they’re effectively buying a service that says I will hand to them all of the calls that are made through to number ranges that they own, it would be a pretty significant decision for me as the wholesaler to make a decision to restrict the calls that are going through. So in that situation we would go to Ofcom, Ofcom can carry out an investigation, they have the tracing ability which we would support, and then they could take action. And if Ofcom have taken action I can then enforce that action. But this is why I do think it needs...

Mike Weir: So let me be clear because I’m not a technical person but it’s technically possible to do it for you? If Ofcom said to you X, Y, Z numbers are all nuisance calls, it would be possible for you to block that in your system even though it’s coming through a third party?

Warren Buckley: I’d need to take away and I’m not being avoiding. I would rather take it away than kind of given an inaccurate answer if that’s OK.

Mike Weir: Could you do that?

Warren Buckley: Yes, I’m very happy to do that.

Helen Goodman: I’m also a bit puzzled by this, my understanding of the Universal Service Obligation was that you had to give me, wherever I was, a telephone so that I could make and receive calls, not so that anybody in the entire country could ring me, that’s right, isn’t it?

Warren Buckley: But in this, that is correct, but what it says is, I have to do that to anybody and any business, so I can’t go to a business and say, I won’t give you service. So if there’s somebody who wants to make calls to you, whether nuisance calls, illegally, or legally in that situation, I can’t go and say I’ll withdraw service from you, because that applies, so I can’t withdraw service from somebody.

Helen Goodman: Because it’s asymmetrical.

Warren Buckley: Indeed that, exactly that.

Helen Goodman: OK. That’s helpful, but what about these foreign ones, because you’re not under any obligation to people making nuisance calls from abroad, are you?

Warren Buckley: No, I’m not, but in that situation the vast majority of those calls, they are by their nature, a huge number of them don’t carry a CLI, so I wouldn’t even know what to block. I’d have to block any call that was being made where I didn’t have a
number, a caller display, a caller line identity that was coming through. And there are many networks around the world that still don’t support caller line identity, so you could have somebody validly calling me at home, of a friend who’s abroad from a place that doesn’t support the display and the number, and I would just have to block everything, which I don’t think would be sustainable.

Alexandra Birtles: I think just to add to that, I mean that is certainly what we’re talking about. The system that we’ve been trying to move into launch is not going to fix the problem on its own. We do have an issue with some numbers outside of the UK. So actually where, because a lot of foreign companies don’t adhere to the numbering that we have in the UK, we just can’t see what the number is, so there’s no number to block, and that is an issue for us.

Warren Buckley: It’s worth saying genuinely if it was as straight forward as...look, if I could press a switch I’d press a switch, and all I need is to agree either the regulatory or the legal environment. We do think there are changes that can be made from a regulatory point of view but we think to solving this problem is quite a broad range of different pieces that actually need to be tackled with this, not just one.

Alun Cairns: Can I therefore say, we agree CLI is key in terms of making progress in this debate. If caller ID was pretty universal where very few companies, only very few commercial organisations were permitted to withhold their number, would we agree that that would be a positive step in the first place? So therefore caller ID would be the norm, and if a caller, if a number, was withheld a presumption can be made that it’s either from one of these organisations that’s allowed to be restricted, so that might be a domestic violence group, it might be the police, it might be people that have had Ofcom agreement to withhold their number, or that it is coming from overseas, so then that will at least have limited the sources from where those that call could come from, and it’s up to the consumer then to make a choice of whether they answer it or not.

Warren Buckley: I think that at the moment, and this includes the mobile network, anyone can choose to restrict their number. So I receive many calls at present from mobiles.

Alun Cairns: Well that’s the point I’m making, I’m trying to change the culture, whereas withholding the number, dialling 1471, if we go on a domestic basis, that, when caller ID first came out, isn’t that awful?

Warren Buckley: There goes the view.

Alexandra Birtles: It’s technically....

Alun Cairns: It was unusual for someone to withhold a number, it’s now become the norm for people to withhold numbers, so I’m talking about reverting it to caller ID is automatic unless there’s prescribed reasons of why it should be withheld, and someone can make a choice then whether they answer a phone, if the number’s withheld or it, because they can choose, it’s either the police or whoever has permission to withhold it, or it’s a call from overseas. And if there’s a pattern receiving calls from overseas then a consumer might choose to deny the call.

Alexandra Birtles: I think I’d probably approach it from a slightly different way, which is about enforcement action against companies who are behaving illegally.

Alun Cairns: Well we’re doing that anyway, or we should be doing that anyway.

Alexandra Birtles: I think that the ICO are calling for some of the thresholds to be lowered, which we support. I think there is a case around speed of enforcement. But I think tackling the companies who are doing it rather than stopping consumers from withholding their number for, the ability to withhold their number, so individual customers who might want to do it for a number of different reasons; I would probably focus on the company.

Mike Crockart: Well you say for a number of different reasons, what would those reasons be?
Alexandra Birtles: Well you have people who maybe are in, I would say for example could be in high profile jobs and don’t want their number, would like their numbers to be withheld, you know, there’s a number of reasons that maybe aren’t around, you know, actually needing the police and people who don’t want to have their number published.

Alun Cairns: Well, the point I’m making is commercial organisations, not the personal organisations.

Alexandra Birtles: Right, sorry OK.

Alun Cairns: I mean I think there’s a big differentiation because any individual should be able to withhold their private call. Because what Warren said earlier that basically they fall under two categories, making calls within the law and those that are ignoring the law. And I’m trying to effectively allow us to differentiate between the two.

Alexandra Birtles: Apologies, that’s my misunderstanding.

Warren Buckley: I think this is something we do a lot, and actually for example, there is various kind of good advice out there already. I think genuinely we would certainly believe that anybody, any commercial business that is making calls should display its telephone number and it should be an accurate telephone number.

Alexandra Birtles: Absolutely.

Warren Buckley: That is easy to know that’s the business, or to trace back easily.

Alun Cairns: Right, should that fall within the law?

Warren Buckley: I think we would be supportive, that it would help regulation, it would drive that through, and we see no reason, within some of the restrictions that you already referred to. The Samaritans and kind of various others on that basis. I meant to be honest, I think from that point of view, there are already, as I say, guidelines that, the DMA for example has a guideline, for any organisation, to do that. I think enforcement action around that and making that a requirement. I also think that where people, for example, are spoofing the number that we’re talking at before, the key here is that it has to be a genuine CLI, so not just a CLI. I think probably the regulation needs to be carefully put together, more your world than mine, but I think to make sure that it does say it has to be a genuine CLI that is traceable back to the calling party.

Alexandra Birtles: And I would agree with that, so apologies, I misunderstood the differentiation between businesses and consumers.

Mike Crockart: Would you support going a stage further, as has been done in some other countries, where the CLI has to be a real CLI which, if called, will give a recorded message saying who it was that called you, and giving the option to opt out from any further contact from that company? Because as, as I understand it I think that’s the situation in America.

Warren Buckley: Actually funnily enough I haven’t looked at America; it certainly is the situation in a couple of European countries which I have looked at. So I think genuinely you should know who has called you. So I can only talk from a BT point of view, if we make outbound calls we always transmit, we always transmit the same, either one or other CLI, it’s always one of two CLIs, and secondly you can call back and it tells you kind of who called you. Consent is a slightly more complicated environment, and the only reason I say that is because, as you’re probably aware, there’s a lot of review from an EU point of view on consent and therefore actually we’re waiting to see how that finalises in terms of what the position should be on consent, because I think we’ll all have to apply to that. That would certainly help across the EU, certainly from that point of view. That we’d have a consistent approach to consent.

Alun Cairns: Can I turn to the mobile operators, because it’s far more difficult in mobile operators to differentiate between commercial and domestic, because effectively it’s individual.

Hamish MacLeod: Because of the 07 number, are you meaning?

Alun Cairns: Well the number that you would make the caller ID, forcing the caller ID to be displayed.
Hamish MacLeod: Well there are four initiatives up and running on this side of this, there’s two by the NICC to formalise how CLI is done, and I think we’re due a draft document on that to comment on quite soon. I think the second one is a call tracing scheme which will work across the whole industry, and I think BT Wholesale are going to lead across industry group...
Warren Buckley: Correct.
Hamish MacLeod: ...to implement the call tracing thing. But the fourth area which we always come back to, is what’s going to happen overseas? And particularly with Voice over IP services because you’d have this ability to be able to change the CLI, and that I believe involves discussions with the Internet Engineering task Force to get rules changed.
Alun Cairns: But we can only act within the areas in which we have a competence. Build up a confidence overseas, and therefore I’m trying to restrict it so that people can make a judgement: that must be from overseas. Or it’s a prescribed or withheld organisation that has agreement from Ofcom to withhold their number.
Hamish MacLeod: Yes, well, and, and Helen was mentioning Europe too, because I think the right to withhold is part of the European package.
Helen Goodman: The stuff on privacy and personal data and landlines.
Hamish MacLeod: Yes.
Alexandra Birtles: Yes
Warren Buckley: Yes.
Mike Crockart: OK, if I can move on, since we’ve got about 35 minutes left now, to solutions and broadly kind of divide that into short term and long term, because I think that Alun and I have got proposals on the table, you know, that are certainly short term fixes that would help some of the problems as it stands at the moment. So I’d be interested to get your views those. Some of them have already come up during the course of the conversation. But if we turn to consent first, because that’s the one that we were just dealing with. I mean what do each of your groups, companies, look to do in terms of consent? Is it clear language? Is it opting in or is it opting out? I mean what choices do, do you make as companies?
Warren Buckley: In terms of us making calls, talking to BT? So, from our point of view, we very much believe in opting in, so whether you sign up through one of our contact centres, either on an inbound call or an outbound call, whether you sign up through BT.com and online, we always ask you to make an express consent, and if you don’t, in fact you can’t complete an order without saying one way or another, so we’re very clear on whether you’ve given consent to us or not.
Mike Crockart: What stage do you talk about having completed an order?
Warren Buckley: So that would be before the order is placed. As we’re going through, whether online or in a conversation in a contact centre, there’s an initial conversation that takes place - do you want to buy or not buy - and there’s a whole set of questions around that, and again online potentially, and with live chat as well. There’s then a process of collecting sufficient information in order for the order to progress. And then there’s a last stage which is effectively, if you imagine online, but it’s the same in the contact centre, you know, just an agent doing it, I’m going to press the button and I’m going to say that, yes, that order is now going to go through and we’re going to deliver that service for you. At that point, either through the contact centre or online, you have to, we ask the question, whether you consent for information or not. We don’t pre tick the box, either box, we just ask a very straightforward consent question.
Mike Crockart: I went online this morning and placed an order to have my own phone switched over to BT, I’m not going to go through with it, but at no point during that process, and I went right through to place your order, I’ve now received four emails from you this morning saying, we look forward to, here’s your security stuff, just a reminder we need the MAC number, at no point was I asked.
Warren Buckley: That’s at the last stage. If it helps I can show you the screen, but if at that last point as you go through, if you didn’t tick the box that you consent....

Mike Crockart: Where’s the box?

Warren Buckley: Honestly, there is, I’m not denying what you’ve been through this morning, but I know the order journey, there is a box, if you didn’t tick the box to say you consent we would default you to not consent. So you would have to have made ....

Mike Crockart: Believe me, I went online to place the order this morning to look for the consent box.

Warren Buckley: Well I will have a look, but what I can tell you is this, because I, to be fair, I haven’t looked at this before this morning, but perhaps understandably I did look at it before I went to the select committee, and that was only a couple of weeks ago. Literally just before you press the button there is a box but if you didn’t tick the box then we would assume that you haven’t given consent. And we actually think that’s best practice, we don’t think you should assume consent. So I will check that but, unless something very strange happened in the last two weeks, to be clear you, in that situation, have not given us consent to contact you from a marketing point of view, so the only messages you would then receive from BT are services messages.

Mike Crockart: So it’s an opt in. Is it the same for TalkTalk and generally across mobile operators?

Alexandra Birtles: We actually do pre-tick, we have done for a while, and that but it’s very engaged, you know, it’s a very upfront decision part through the process and I’d be very happy to send you screenshots of how that looks. That’s not to say it’s not something that we wouldn’t change at some point. The thing that we have, we are introducing actually at the end of this month is, is a granular layer of how you’d like to be contacted, so actually up until now it has been quite black and white, so it’s either been I want to receive marketing or I don’t want to receive marketing. So what we’re introducing from the end of this month is channel preferences for our customers, so some customers actually are OK with receiving emails, but they don’t want to be called, or they’re happy with text messages. And so we will be introducing that from the end of this month, and at any time customers can call us and revoke that, or they can do it online.

Mike Crockart: OK, and what about mobile operators?

Hamish MacLeod: Well I’m afraid I don’t know the answer to that question. I think they will comply with the law as far as their marketing practices are concerned. And now, how they do that, I just don’t know. I would have to go back and check.

Mike Weir: That’s all very well, but I mean do you have in your boxes a line about passing it on to other people, and do you trade in that information, because all of you have large numbers, large banks of telephone numbers, do you trade in that?

Alexandra Birtles: Absolutely not. We don’t sell any data to third parties

Warren Buckley: And neither do we.

Alexandra Birtles: And we don’t take data from 3rd parties either or give it away either

Warren Buckley: Well I mean we don’t sell any of our customer data to anybody.

Mike Weir: What about mobile operators?

Hamish MacLeod: Not personal data, no.

Mike Weir: But telephone numbers?

Hamish MacLeod: So no, the stuff is large, aggregated anonymous bits of data....not for marketing purposes at all.

Alun Cairns: So no nuisance call would not emanate from any sale of data that you would pass on?

Hamish MacLeod: Not legitimately, no. I mean there has been a case of a rogue employee who was prosecuted obviously, but, not legitimately.

Mike Crockart: But none of you presumably then, given that you don’t sell on the data, would have any problem with there being a standard, plain language opt in?

Alexandra Birtles: No.
Warren Buckley: No.
Hamish MacLeod: No.
Mike Crockart: And since you’re not selling the information on you wouldn’t have a problem with that consent lapsing after a year because, it obviously wouldn’t relate to your ongoing relationship with your customers, it would be third party marketing.
Warren Buckley: I think this is a more difficult one, if I’m honest. So you know, as I said, there’s a whole set of stuff coming through the EU, which will come through on, from this point of view we think in the next two years. What I will say is, I deal with our customers a lot, and I talk to our customers many times a day, and what I find is I get contacts from customers who say, I don’t want you to contact us anymore, and I take them off the consent list. I get people who say, why haven’t you told me about this, why didn’t you write to me about BT Sport and the deal on that? And I’ll go back and say, well because I haven’t got marketing consent from you. They say: well I would have wanted you to tell me about this. So I do think there is an issue with this, whatever approach we take on consent in the future, and I do think it would be helpful if there was a more standard approach to it and plain language. I think we need to communicate it very clearly, because I’m slightly betwixt and between a set of customers I’ll happily take off and a set of customers who I don’t have permission to contact who then tell me they wanted me to contact them. That’s a difficult situation and a balance to be in. So I think what would help us, if it was more standardised, and everyone knew the way it worked, then we could all make a personal choice in the middle of that.
Hamish MacLeod: I think there’s just one sort of element which I’d offer as food for thought. Customers don’t mind well targeted, relevant advertising, and when the cookie legislation came into force a couple of years back some EU regimes took a very, very hard line about the way cookie law was implemented. The UK took a much more pragmatic line, which was all about transparency and control and made it basically more practical to have well targeted advertising. So what I wouldn’t like to see is something that was so draconian that it actually made well targeted advertising more difficult, because then that drives people into the arms of the people who are going to, you know, basically just ignore the law. So don’t make it too difficult for the good guys and, and therefore drive us into the hands of the illegal.
Mike Crockart: Are there other particular regulatory changes that you think would help? You’ve talked a little bit about the level of detriment, and that was mentioned before, I take it you would support the ICO’s call for a level of detriment to be brought down to nuisance rather than serious distress?
Warren Buckley: We would.
Hamish MacLeod: Yes.
Alexandra Birtles: Yes we would as well.
Warren Buckley: I think even with the term nuisance, Alex referred to this earlier, I think it needs a stronger definition. One person’s nuisance, another’s distress, and we think the problem is, these are words that are subjective as opposed to very clear definitions. Because I think then for people who want to do the right thing, if you know specifically this is the definition, as Alex was saying earlier, when the 3% was hit in terms of the silence calls on diallers, a lot of reputable companies said, actually we do the same, we want to be under that, but at least we know what it is now. So I think the more specific the rules and the regulation can be, rather than just words, I think is very helpful. And then I think it takes all of us in this industry, whatever part of it we’re in, we can then take action to communicate, collect information and pass it through to the right regulator.
Alun Cairns: Well that brings me on to the next question then. Two regulators, do you agree that that’s confusing to a consumer?
Warren Buckley: We do. It’s worth my saying that actually I think both the ICO and Ofcom have engaged hugely with us, certainly in terms of trying to deal with this situation. I do think there is a problem where a lot of the regulation that is in place was
put in place to tackle other problems, and over time as this problem has risen people have then tried to reapply that regulation to deal with this problem. And I therefore actually think that some of the regulation is absolutely fine at the moment, I think that what we need to be more, is more specific, more defined in terms of this problem. From our point of view I think it would help to know, even if it was who was the lead regulator, because at the moment we just work with both all of the time.

Alun Cairns: Right, but that’s from your point of view. I’m more interested, with a great respect in the consumer.

Warren Buckley: Consumers’ point of view. No, I understand.

Alun Cairns: The consumer has a call that they didn’t want to answer, or it might have been silent, or it might be someone trying to conduct a survey and they want to make a complaint. Is it confusing that they’ve got to go to more than one?

Alexandra Birtles: I think what we see is that they come to us; they don’t naturally think about who’s the regulator actually.

Mike Crockart: But do they come to you out of choice or is it because they don’t know where else to go?

Alexandra Birtles: Potentially a bit of both, and I think, actually some of the consumer groups that you’re going to be hearing from are probably better placed to talk on this. But what we actually see is consumers coming to us because they’re their telecoms provider, so they kind of think we’re the help point for it. And I think, the thing that we really want to see is much clearer consent, much clearer consensus around definitions of what exactly different categories of nuisance calls are. And then I think it’s absolutely fair to say there is a problem with the number of different bodies.

Alun Cairns: Yeah, OK, but the point I’m making from the consumer point of view is they’re not interested in the definition. As far as they’re concerned they’ve already defined it as being a nuisance call. And they just want to act on it.

Warren Buckley: Yes.

Alexandra Birtles: And then there are a lot of different parties depending on who it is, and even outside of just Ofcom and the ICO, if you’re saying, for example that you think it’s a financial services body, you could end up going to the Financial Service Ombudsman. You might even go to the police actually because it’s an individual harassment case. So I think there’s actually, if you map out the landscape, a number of different parties.

Alun Cairns: Right, would it simplify the system if one was the lead, was primarily responsible and then had lead responsibility to pass it on, say to the police or to the FCA, or to whoever it might be?

Warren Buckley: Yes, I think it would.

Alexandra Birtles: Yes

Warren Buckley: So to be clear, I want to set down the scene as I don’t think it’s about either of them doing a bad job, I think the circumstances have changed. It’s not my job to defend them, but genuinely I think they have both tried to work hard in this space. I think it would help to have one to work with from this point of view. I think it also clear that when we, when thinking about that, I think it’s worth thinking ahead because I think none of us knew that this was going to become as big a problem. We’re certainly seeing, as Hamish has talked about, the work the mobile industry is doing on text, I think we’re seeing the same, certainly on fraudulent emails and hacking and all of these are in customers’ minds, when I’m talking to them, they all fall into this same category of, somebody is communicating with me, either on the telephone or on my mobile, or through email, and I don’t want them to and it’s a nuisance. And I think, as we go forwards, it’s important we don’t just close one route, I think we need to see something that looks across all.

Alun Cairns: Right and how do we make it easy for people to complain? I mean 7226 is quite straightforward, although I think there’s a lot of need to communicate that a lot better because I question how many people would know about it, but how do
we make it easier for your customers, to make a complaint about having received a nuisance call?
Warren Buckley: It was said earlier, we got the Nuisance Call Advice Line, I'm already going to take away to look at how easy that is to find, and I said that earlier, and I will do that, and we will look particularly on the searching for it, I'll have a look at some search engine optimisation, if that isn't good enough we can improve that so they find it. I think the second thing is anyone, when you call into 150, which is probably the number for us that is best known in terms of people contacting us, you can report that into any of those environments. So the Nuisance Call Advice Line is a very specific service for advice but any of my contact centre personnel can take the details on an internal form and we report that in. And actually probably on balance that's where we get a lot of this different pieces of information. But I think you've given us a challenge, which I think we can look at with the nuisance call industry forum to how we could advertise this more clearly.
Mike Crockart: Sorry, can I just pin down what you mean by that? If somebody phones 150 saying I've had a nuisance call from this number, what would the operator would do with that information?
Warren Buckley: So they can take the information and they have a form that they can fill in internally that would go into the central team that collates this. Or if, for example, somebody specifically asking you for advice then we would, they would either give them the information for the Nuisance Call Advice Line or they would transfer the call through, if that's what they wanted, or they'd give information to the right part of the website.
Mike Crockart: Right, following it down the route then, what does the central team do with that?
Warren Buckley: So the Nuisance Call Advice Line collates all of the different information we receive, and then that goes into a more specialist team called the Nuisance Call Bureau who specifically work with the courts, with the police, with Ofcom and the ICO. They collate information, if we start to see trends in that could be, as Alex said, that could be harassment, could be straightforwardly harassment, it could be abuse, it could be nuisance calls as we've been talking about here, they then know who to go to and they would work with our regulatory team and our legal team.
Mike Crockart: OK but it ultimately makes it through to the regulator or other bodies that are interested in it.
Warren Buckley: Yes.
Mike Crockart: Surely then it's in your interests to limit that and automate it as much as you possibly could, so you know, the 7726 ultimately makes it through to the ICO now. Through your memorandums.
Warren Buckley: Yes. Evidence.
Mike Crockart: Surely it would be in BT's interest to do something similar in an automated way.
Warren Buckley: It's always a little bit of a balance here because I don't have something like a text messaging environment, I don't run a mobile network, so from our point of view you can report it just with a very simple form online, that's very straightforward but not everyone either is comfortable using the internet or has access to the internet. One of the things I have to be very careful on any of my telephone services, not to put too many automated, press one for this service, because people don't like it, so I've been trying to take them out, not put them in. On the Nuisance Call Advice Line we do offer a couple of options, either to talk to somebody or to report. So there's already a facility on that now, and I'll make sure we make their telephone number available to you, that you can call up and you can just report a telephone number through that. And some people use the automated service and some people want to talk to somebody for advice. But if I'm honest, I don't want to add too many access points for this.
Alun Cairns: I don't think people want to be or have to be proactive and dial 150 and then follow it through, and then listen to several options and then get to the nuisance line and option. And I think the sort of solution we're looking for is the
7726, whereby we dial 1471 to find out what number’s called, and 1571 I think is it, for the answerphone service and so on. So if I just received a nuisance call on my phone I want to be able to press a sequence of numbers that would automatically report it, and would then take it away from me, otherwise I’ve got to write the number down, and I’ve got to research, go on the website to find out your nuisance call number, fill in a form and send it off. All when I’m busy, and that’s when I don’t like nuisance calls because I’m too busy. As a consumer would be, I don’t want to go through that hassle.

Warren Buckley: So the difficulty with that is first of all it isn’t unfortunately straightforward just to create a prefix like that, it is something that we’ve looked at, but the more important issue with this is, who decides what then should happen with that information? So actually ...

Mike Weir: But that’s a problem that is already there for the 7726.

Warren Buckley: No, let me give an example. A couple of weeks ago the Inland Revenue rang me about something, very validly, it was fine, but the Inland Revenue rang about something, but actually if I didn’t want them to call me because of some other reason, do I get to block that environment or not? Do I get to report it?

Mike Weir: You could report it, that’s it.

Alun Cairns: Well that doesn’t happen, you get to report it, and mobile operators look at the trend in numbers, and they said themselves, if it’s a contract, the number, if the texts are coming from a contract they will investigate it. If it’s from a prepaid sim then it’s easy to block it, just on one complaint. Is that sort of system, if it’s from HMRC, well granted, we can presume that they’re not breaking the law, or we can certainly investigate to see whether they’re breaking the law or not.

Warren Buckley: I think the difficulty is, is that we don’t currently have a facility that would allow for us to do that.

Alun Cairns: But it’s possible, isn’t it?

Warren Buckley: I’m not sure technically it is possible but I’m happy to look at it. So if you take 1471.....

Mike Weir: I’m sorry, as an IT developer I can tell you where to do it, because at the moment you do 1471, you hear the number, there’s the point at which to do it. If you do 1571 and you hear your voicemail it then gives you options of, do you want to delete it, do you want to hear it again, do you want to save it or do you want to report it.

Warren Buckley: From our point of view first of all I would have to set up a whole new service that sits between, behind the 1471, I would secondly have to work out where I’m going to hold that data, and I’d have to create a database that would be scaled in order to actually hold all of that information. I’d have to create a computer system that would collate all of the right info. I’m not saying it’s not possible. What I’m saying, to be fair, my role in the company and my area of knowledge is customer services and dealing with our customers, I’m not an engineer.

Alun Cairns: Could we not argue this could be the premium service that we talked about that may become the norm in several years’ time?

Warren Buckley: I’m not suggesting we can’t do it, and I’m not suggesting that we won’t do it, what I am more genuinely offering is to take away and to look at it, and purely on the basis I’m neither an engineer nor a computer technologist, I’m a customer service guy.....

Alun Cairns: But I would say, with great respect, you probably expected this question today.

Warren Buckley: We have looked at it before, and hence why I was able to give some kind of answer to it, and so far from what we’ve seen, is it’s extremely difficult for us to do. You’ve asked me to look at it again, I come here on the basis of, expecting to have various points that you would ask us to look at, and I’ve said I’ll take that away.
**Julian Huppert:** What is the cost involved in the 7726?

**Hamish MacLeod:** I haven’t been told actually but it will be, I mean for the amount of money, but it won’t be huge amounts.

**Alun Cairns:** Could you let us know? That’d be great. What about TalkTalk?

**Alexandra Birtles:** Actually, to my knowledge, isn’t something we’ve looked at yet. We’re just starting, as I said, the trial of this service where customers can report to us, but it’s obviously not an automated service where you just dial something after the number, you do have to proactively give us the number. But then we conduct effectively an investigation of the kind you’re talking about. It’s absolutely something that I will take away and talk to the abuse and the network teams about.

**Alun Cairns:** Can we agree the principle is pretty straightforward, that if I dial 1471 and then I’m given an option, and then I report it. If you get one, just one number that’s only been reported once, well granted that maybe that doesn’t warrant an investigation. But if you’ve had hundreds of thousands in a particular time that that could warrant an investigation, and then could lead to sort of action, reporting it to the regulators, because obviously it’s the regulator’s responsibility. But I would say that you have an obligation as the service providers to be able to pass the information on to the regulators in terms of investigating.

**Warren Buckley:** I need to be a little bit careful there because obligation, in our world at least, is a legal and regulatory requirement, certainly for somebody like BT. So I am absolutely happy to take it away and look at it further, I can’t agree unfortunately that we have an obligation around this environment. I have an obligation to serve my customers and to do my best to do that, and we are trying to do that in a range of different ways. You’ve asked a very reasonable question which I’m very happy to take away.

**Mike Crockart:** OK, final area I think, unless others have other ideas. I get quite frustrated by all of the chat around this and the round tables that they have in the DCMS, and I am always the one at the end that is saying, this is all just tinkering, this is all just short term fixes, it is not a solution. Now this afternoon we are meeting Ed Vaizey MP with a group of companies who say they have an ultimate solution, or they have multiple ultimate solutions, as you would expect with five companies there. Have you had, as, as an industry, discussions with these types of companies who say that for £200,000 you could create a database and put it within the infrastructure and do real time checking online where people have expressed a preference, and not allow that call to go through?

**Warren Buckley:** I don’t know who the companies are, but to my knowledge there’s only one company I know we’ve spoken to, and for anyone to suggest that there is an easy solution and they know how to do it, without access to actually the knowledge of the BT network, I find slightly strange because no one has a better knowledge of our network than us. And it’s a network which has been developed up over 140 years so it is, by its very nature, quite a complex and large network. The only company that I’ve had conversations with in this space is a company trueCall, who do have a product which works pretty well in terms of blocking that environment, but it’s not at a network level, it’s at a device level, not dissimilar to some of what we’ve done on the nuisance call phone. But I’m not aware of anybody who really has a detailed enough understanding to make a proposal that they could solve this for £200,000. After you’ve met them I’m sure we could meet with them through the nuisance call industry forum, but there are other areas where I’ve worked on similar type of situations where commercial businesses have come to me and talked to me about it from around the world, this isn’t one. So it would have perhaps been be helpful if they’d approached us.

**Mike Crockart:** I’m quite surprised at your answer to be honest, because I’ve only been involved in this sort of thing for 18 months since we started our campaign just over 18 months ago, and I’ve had companies queuing at my door to tell me what the
solution is. Now I can’t believe that they haven’t been queuing at your door to tell you exactly the same thing.

Warren Buckley: Well, with the exception of the company I’ve named, and I named it very specifically because I wanted to be transparent about it, I have not had anyone else who has approached me. And one of the natures of my job is that mine is a very easy email address to find, my customers find it on regular occasions and write to me directly, so to be honest I’ve got no reason to believe that any commercial organisation couldn’t have done the same.

Mike Crockart: OK, I suggest you’ll be getting some contact very shortly then.

TalkTalk? Have you had any sort of look at a long term solution?

Alexandra Birtles: Currently the approach we’re taking is to look within our teams within our own network and what we can do ourselves by our team who run the network, build the network, know it incredibly well what we can do. So that’s what we’ve been trying to do, that’s been the focus. That’s not to say we wouldn’t be happy to talk to external providers but we’ve been looking at what we can do ourselves.

Mike Crockart: OK. Now the mobile side of things, I mean to be honest you’re ahead of the game here really because of the premium rate services that you already have a register where people sign up to say we are willing to receive premium rate texts, or you know, apps or games. You know, we’ve tried to get PhonepayPlus?

Hamish MacLeod: PhonepayPlus is pan-industry actually, the premium rate regulator.

Mike Crockart: My question is if we can do it for services where people are having to opt in to pay for it, why can that infrastructure design not be used for others to be able to express a preference about whether they want any marketing calls?

Hamish MacLeod: I didn’t quite grasp the question.

Mike Crockart: Well, at the moment, before anyone receives a premium rate service on a mobile they have to sign up to receive it.

Hamish MacLeod: No, that’s to make it.

Warren Buckley: I think this is the Plus 18 service.

Hamish MacLeod: On the child protection type stuff?

Mike Crockart: Well, no, to receive texts to your mobile, which you’re going to get charged £5 for, you have to sign up for it.

Hamish MacLeod: Yes.

Mike Crockart: You’re not, as an industry, going to say, we’re going to happily send premium rate stuff down mobile numbers and you’re just going to have to suck it up and pay for it - you have to sign up for these services.

Hamish MacLeod: Correct, but I think, as I say, we’re sort of new to the cold calling business, I mean I think we will suffer in this.

Mike Crockart: Because what I’m doing here is trying to look at what could potentially be a long term solution. What is the structure that needs to be put in place to allow people to manage their consent, to manage their data? And you know, I’m suggesting that this is a model that’s working, that manages contact with people in a specific area. So why is it so difficult to widen that out and say, we could use the same structures basically for people to sign up and say, “I don’t want marketing calls”, in exactly the same way? The sheer absence of them being on there means that they’re not going to get premium rate texts.

Hamish MacLeod: I think when you’re dealing with people who are not really interested in what the law is though; you’re looking to technical solutions to eliminate unwanted calls. So there are two categories. And the blocking of unwanted calls will rely on there being accurate CLI because you do have to consider all sorts of different things when you’re blocking inaccurately, over blocking of incoming calls and the safety and all sorts of reasons. So I can’t see that to deal with this, in a long term way, other than through enforcement, and technically it’s going to have to be an accurate CLI type of solution.
Warren Buckley: We don’t have a mobile network so I can’t directly refer to that, but I think it is the difference between an open and a closed approach, and I’m, by the way, not suggesting that one is right or wrong but just to try and understand. I think if you assume that the premium environment like that in text messages is a closed environment, which says, I am not willing to receive these kind of calls unless I have given permission to do so, whereas the traditional telecoms environment for voice is an open environment that says, anybody can call me and I will indicate if I don’t want to be called by somebody. And effectively what we’ve all been trying to do gradually is put in place services that allow people to choose who they don’t want to call them, and CLI we were talking about earlier and some of the matters around that, the telecoms model is traditionally that open model. So you can call me, and actually we give all sorts of environment - telephone directories, online, etc where I can find somebody’s telephone number and then call them, and I guess, people choosing ex directory was one of the earliest versions of where somebody says, yes, but I don’t want myself available on that. So it’s quite a significant change if we’re to move to that. We have tried to do some of that with the nuisance call phone, from the point of view of saying you can choose, if you want to really restrict you can set up and say, these are the numbers who can call me and anyone who’s not in this, either reject or send to the voicemail automatically, and we’ve tried to do some of that. But it is done a device basis, and that’s largely because of the whole telecoms basis, pretty much worldwide, is on this more open basis. So I think, I understand your question, but I think we at the moment telecoms works very differently.

Mike Crockart: I don’t think it is different what I’m proposing because it is still an open system but it’s making it easier to make it clear who you don’t want calls from.

Warren Buckley: OK, I mean I think part of the difficulty there, and Hamish referred to this, is, that where people are staying within the current law, and we’ve talked about how we define and restrict the law and make that much clearer, then I think there is the opportunity to enforce that if people are not adhering to that, and if we make consent environment easier then that should work on that basis. But actually, and I think the Which? report would suggest this as well, although that is a problem the much bigger problem is where people are effectively ignoring the law. And I think we all have to look, even if we restrict and tighten up the law and the regulation,collectively, particularly around this point around CLI and particularly working internationally as well. And I appreciate, as you already indicated, that there’s some restrictions in terms of just the various remit at Parliament. But that is still a big problem.

Mike Crockart: But surely that is the biggest argument for why we need a network solution, because as long as you have people willing to step outside the regulatory framework, and the onus is on the consumer to manage through their device in their house, then the problem is never going to go away because there will also be people who will be out with the regulatory framework, whereas if you put a network solution in place, if the consumer has said, I don’t want marketing calls then it’s the network that stops them.

Warren Buckley: I do understand, although I think what we’d effectively be saying to consumers, which we’ve already done on the device, which I do understand your point on the network, they wouldn’t really be saying, I don’t want to take marketing calls, what they would have to say is, “I don’t want to take any calls where I don’t either know that CLI”, and I already have, either network or in the phone indicated I know it, or there isn’t one. And the one concern I would have in the middle of this, which doesn’t mean we shouldn’t do it but it means we should think about it carefully, is there are lots of occasions where people do receive calls that they want to receive where there is no caller line identity, and there’s no caller line identity for a good reason. And so I understand your point but I just think we’d have to think it through, we’d have to communicate really clearly in terms of that, because it is a very big switch. It doesn’t mean it’s not the right thing to do, and I’m not suggesting that, but it is a fairly significant change in the way that we, not just telcos, that we’ve traditionally worked across this environment.
Alexandra Birtles: I think some of this is tangled up in consent as well, so I think you've touched on third party and the expiry of that, actually when we as a company did used to call non customers to acquire them, which, as I've said, we stopped doing, actually some of the issues that we've certainly seen in that space is around customers who have, you know, consented to giving their information to third parties, don't have any memory, are then called by somebody who's maybe quite removed from where they originally gave that consent, causes confusion, I think that's a real issue. Or indeed actually where they've given consent but they've maybe forgotten they've given consent. Really consumers, you know, responsible companies should be able, and you should be able to withdraw that consent really easily. So I think that's really important. And then I think you've got an issue of actually some companies who are maybe deemed to be making unsolicited calls but actually do technically have consent. I think there's a question about the strength of the consent, the validity of the consent, and I think that's a big issue and I'm pleased it's being looked at in regards to European regulation. I think the other thing then is companies who are acting outside of that, either because they're completely flouting it or they're not respecting consumers' rights to withdraw their consent or change their consent. And I think that's where you need to see stronger and speedier enforcement action. I think lowering the threshold there, particularly for the ICO, will be really important.

Warren Buckley: Can I just build on that just slightly, because I think it's spot on? One area that I think, it's not actually, to be fair, genuinely within our environment to deal with, but I do think it is, a lot of these disreputable companies, who are making these survey calls to collect information have a market to sell it to, and one of the areas I think that we do have to look at here is, who is buying it, because actually, this is the point that is being more generally, when I was talking about the select committee, if you do take action against the people who are buying information that they can't confirm is being genuinely captured, then you cut that off. Because at the moment these companies who are being paid to produce this information aren't then the people making the sales calls, they're just collating it for others to make sales calls. One would wonder who they are selling it to.

Alexandra Birtles: And interestingly one of the examples I gave of a company that we have deemed was excessive - where we can hopefully we get to a place where we can get some common kind of frameworks and levels of thresholds - this company we thought was absolutely breaching out with in excess of 65 calls to customers in a week, was a company that was conducting surveys to generate leads for charities. I think that is quite an interesting point about who in the background is buying the data that a lot of these nuisance calls are coming from.

Mike Crockart: And that's one that's included within my Bill. OK. Perfect timing, thank you very much for coming in, and we shall make sure you get a copy of our report when it gets to the end, thank you.

Alun Cairns: Thanks for your time.
Mike Crockart: Right 10 o’clock, we might as well kick off. Welcome gentlemen and ladies to the second evidence session of All Party Parliamentary Group on Nuisance Calls’ inquiry into nuisance calls. We had the telecoms operators in yesterday giving evidence, we have further sessions today and tomorrow with consumer groups and the DMA and people like that. It’s been very useful so far and I know that from the meetings that we’ve had with both of you in the past, you have strong views on these things, often quite helpful views, so it would be good to get those on record today. Can I start with just a very general question and if you can introduce yourselves for the purposes of the transcription. How great a problem is this? Because it seems that in the last few years this has risen up in many people’s agendas, some of the statistics that have come out from surveys from, from Which? for example are quite frightening and I know that the two of you have done a great deal of work. I don’t know about Claims Management Regulator, you must have information that you can share with us as well, but how big a problem is this?

Simon Entwistle: My name’s Simon Entwistle from the Information Commissioners Office; I’m Director of Operations there. The problem seemed to take off around the beginning of 2012. There have always been people who have made calls in breach of the Telephone Preference Service Guidelines, in other words call people who have been signed up to the Telephone Preference Service. But the level of, numbers of around 5,000 people, complaints in a month now for reasons that I might come onto later, people do make mistakes when they’re making marketing calls and there’s always a core, I’d say around 50% of the complaints who are about people who aren’t particularly serious offenders in this regard, but they’re people who make mistakes trying to market. But the, the number of complaints to the Telephone Preference Service took off at the beginning of 2012, now the number of complaints to the ICO didn’t at that time, there was no commensurate increase in the numbers to the ICO. But the TPS I think to their credit and I know you’ll be taking evidence off them separately, were very keen to raise that and they really pushed the ICO as well, to take more note of the fact that more people were going to them, even if they weren’t going to the ICO. Now since then we’ve seen a huge increase in all types of calls that are dealt with by the ICO, that’s automated calls, that’s live voice calls and that’s in spam texts. Now, around the same time as that the ICO were given some additional powers to issue civil monetary penalties against organisations who
were in, essentially serious breach of the PECR Regulations, in other words sending lots of these texts out to people who hadn’t consented, telephoning people who were signed up to the TPS and doing the same thing with automated calls. We sort of measure the problem as far as we can in terms of complaints to us and I’ve got some, some information here that’s pretty well hot off the press, because it includes September’s figures. They show, the problem as far as we’re concerned peaked around the time that we were issuing our civil monetary penalties against these spam texters, the spam texts and also the further monetary penalties would be issued against people sending live calls, and that this last month, the month of August complaints were the lowest level since October 2012. So I think what we would say is that the problem isn’t getting any, any worse if you like. We can’t say that they are fewer calls or fewer texts because we haven’t got a definitive measure of how many are being sent, our measure is of how many people come to us with complaints about those issues and that has reduced. Overall the same story is true of the number of complaints to the Telephone Preference Service last month that was back down to the levels it was at the beginning of 2012. Now it’s been steadily coming down in terms of the numbers of complaints over the past 18 months, as we’ve been taking concerted effort. That’s not me saying this isn’t a problem anymore, clearly it remains a problem, it’s just maybe a little bit of reassurance that the action we are taking is at least seemingly keeping a lid on the issue, certainly as far as the work that, of the areas that the ICO regulates.

Mike Crockart: Can I just put some numbers on that? Because you say it’s reached its lowest point since October 2012, what numbers are we talking about, in the last month that you have?

Simon Entwistle: We’re talking now about, about, about 12,370 total concerns reported to the ICO, so still problem, but it reached a high of 20, well it was actually, in April it was 27,000 and in March it was even more than that.

Mike Weir: Can I ask according to your written evidence Ofcom were receiving 3,000 complaints a month and you the ICO received 240,000 complaints since March 2012. But when we had BT in yesterday, now if I picked them up correctly, they said they were receiving 50,000 calls per month now on the nuisance line and TalkTalk and, and who were trialling one, were 1,000 a month. Now these figures don’t seem to add up and I just wonder if, if it’s got to the stage where people feel there is no point in reporting it to TPS or ICO because nothing seems to happen?

Simon Entwistle: The calls that are reported as nuisance calls to the BT are any sort of nuisance call, whereas the calls that can come to us have to be breaches, or potential breaches of the Privacy and Electronic Communications Regulations. So people will contact BT because they’ve been receiving calls while they’re being chased for a debt they owe, nuisance calls from nuisance calls as in someone who’s harassing them, that sort of thing. We, at a roundtable meeting that we had chaired by Ed Vaizey, we suggested to BT that we could use that information that they’d got to help us to see which of those. And their view was that information wasn’t of any use to us, we haven’t been able to get it, because it essentially was around these other types of nuisance calls that aren’t around direct marketing. And I guess that’s one of the things to emphasise here, we’re only looking at the ICO as a regulator at direct marketing calls, there are a huge number of calls that, that go to people that aren’t covered by the regulations. For example I did a phone in, on Radio Solway the other week and there was an elderly lady who had been significantly troubled by calls and the night before she’d had 29 calls, and when show outlined the type of calls she’d had, it was hard to see how any of them were potentially of the breaches of the Privacy and Electronic Communications Regulations. So there is a big difference between a call that someone would consider to be a nuisance, a pest, an annoyance, and calls that actually break the regulations which as a regulator we’re, we, we act against.

Mike Crockart: Can we bring in Ofcom to see whether this matches your experience?
Claudio Pollack: Yes, Claudio Pollack, I am Group Director of Content Consumer External Affairs at Ofcom. You asked a question about the scale of the harm, how big a problem this is and you bring in the issue of complaints, what complaints are telling us. We find that complaints are very useful for some purposes, so people complain to different organisations around different things. So people complain to their provider about a particular type of problem, most of the complaints to Ofcom come through the web form rather than the call centre and that is very specific in directing people to Ofcom on silent and abandoned calls and directing people if they come in through the website directly to the ICO, if it is about unwanted nuisance marketing calls. So directing people to the correct place explains some of the differences, people will be navigated to the right place for that complaint. And so the question of the scale and how it’s happened, just very briefly the different types of nuisance or unwanted calls because you have recorded marketing calls which are unflawed unless you’ve expressly concentrated to those, they are an opt in. You’ve got live marketing calls, which is where you have to opt out through the Telephone Preference Service, but if you’ve opted out you have this complicated issue of you can consent back in to particular providers, which I know you’re looking at, at some depth. You’ve got text messages and then you’ve got this issue of the silent and abandoned calls which has typically been where these large call centres are using equipment to generate lots of calls and they’re not being used responsibly and as a result calls get abandoned and you get silence or recorded message. Those are the types and I think the evidence shows that across the piece, unwanted calls that people find a nuisance has increased quite dramatically recently. The nature of the problem which we can come back to and what the answer might be to that, has changed quite substantially as well. The things that we were trying to tackle a few years ago are not the same problems that we have now, on the evidence with any type of issue, complaints will never been a good indicator of the scale of the harm. They can tell you a little bit about whether it’s getting better or worse, because actually people have to go through quite some effort, in order to complain.

Mike Weir: But you see, is that not the point? It seems to me that what this shows is a vast number of people are concerned about it

Claudio Pollack: Absolutely.

Mike Weir: Will they go to the telecom provider where they’re then told they have to go onto somebody else and is it this type or that type? And this is where the problem is, people give up and say this is too much hassle.

Claudio Pollack: I agree and the thing I wanted to come onto is if and what we need to do as a regulator is understand the scale of the harm, is it getting better? Is it getting worse? And what is causing it? And what are the solutions that we can collectively employ that will make it better? We get a lot from complaints in terms of identifying certain issues. I was just going to come onto the market research that we’ve done, because I think that is the best indicator that we have of the scale of the problem. In the past, when we were less worried about some aspects, we had an omnibus question in a survey which said have you had the following type of call in the last six months. We found that to be quite unreliable because people’s recall of what they had and whether it was six months or not is quite poor, we’ve moved to two months on that one, it’s a nice snapshot but it doesn’t do that much. The important thing that we did was create a completely new methodology which is where we got 800 people to keep a diary, over the course of a month, and they had the job of making sure that they answered every call that they got and noting down in the diary as much information as they could gleam from that and that was an enormous. We haven’t got the time series on that one yet, but when we repeat we’ll know if it’s getting worse or it’s getting better. And we’ll also know if the actions that we’re focused on are succeeding in some respects, so has PPI mis-selling gone down? So what I was just going to give you is very briefly just to highlight some of that, because I really do think that’s the best, as a snapshot of the nature of harm, I think that’s the most reliable indicator because it doesn’t rely on people stepping forward.
Mike Crockart: OK can you refine it because we’ve got a lot to get through.

Claudio Pollack: I’ll be very brief, 82% taking part had got an unwanted call, the average was 8.4 over four week period, so 2 per week is the average, of course there’s a distribution there, so what you find is a quarter of people are getting 10 or more over the 4 week period and as you’d expect those 55 aged or over are getting more, and that’s mostly likely to be because they’re at home more during the day, so all those sorts of stats. Where they’re coming from things might have changed and we can come back to that, but where the call could be identified, the source of call 22% of them were PPI mis-selling and on the recorded messaging calls over half, just over half about were about PPI mis-selling, so this was at a peak and then other sectors, energy 10%, market research 10%, insurance 8%. I’ve got the mixtures, but we can provide that separately and it’s available obviously. And it will be very good as I say when we repeat that to understand more what is changing as a result of some of the collective actions that we’re taking.

Alun Cairns: Can I press further in terms of how often are you planning on repeating that exercise? And how many people were involved with it and how did the demographics look?

Claudio Pollack: So 800 people keeping the diary, the demographics are constructed in order to make sure that they are statistically significant as far as possible on the sub weighting, so it’s a research agency but permissions, in order to be able to get those cuts and to get the cuts in a way that includes statistical significance. So it’s a robust solid piece of research, I’m trying not to be critical, other organisations might do research that are based on inviting people onto their website to deliver information and so on, this is not self selecting.

Alun Cairns: How often are you going to repeat it?

Claudio Pollack: We’re going to repeat it once a year. Let me say what else we’re doing, because we’re going to carry on with the two month recall omnibus it gave us a really good sense of change, but also in that time we’re doing another piece of research alongside that, which is really important, which is about measuring the effectiveness of the TPS. That is going into the field right now and we’ll be able to report on that in the spring. And what that has is, we’re going for 1,000 people currently not registered for the TPS take the diary for a month, then half of those we will register them for the TPS, we’re not going to tell them whether they’ve been registered or not so the customer won’t know and then after a gap of two months, they’ll take the diary again. And that will tell us; I think reasonably accurately, whether going on the TPS helped, because there’s a lot of discussion about that. So there’s a lot of research going on. We’ll look into whether we can do it more regularly, but to be honest in terms of the pace and change there’s a proportionality issue here on spend and analysis and so on.

Alun Cairns: Can I just make a point that the different months will show different data, particularly in the run up to Christmas, I think November of last year was one of the peak months and I think January, February tended to be high months as well and I think that, that certainly was when it was drawn to my attention. And therefore just a once a year snapshot won’t tell us very much, other than very broad trends and if we’re going to make the data meaningful it needs far more, much more often than you’re talking about.

Claudio Pollack: I’ll take that away. I think the issue we have is this, for all the reasons I’ve given an expensive and resource attentive piece of work and for us it’s about using the resources that we have on the mix of task that we have to change so, I’ll take that away. I get the point, we’re very careful to try and select representative periods, but these are all very real challenges that we face.

Mike Crockart: You mentioned PPI there a lot in the significant number or proportion of the calls are relating to that, so it seems a fair point to bring in Claims Management Regulator.

Kevin Rousell: Yes I’m Kevin Rousell, Head of Claims Management Regulation Unit in the Ministry of Justice. PPI has been a dominant claim vehicle over the last year and a
half and that's been reflected in the demand it's created for leads. And as claims management companies (CMCs) generate their business a number of ways, one is by purchasing leads from lead generators, another by advertising in the press and other media. Obviously we're concerned with making sure that the claims management companies abide by all the relevant laws and regulations which concern marketing, we don't try and reproduce those requirements in our rules, and we just say you have to comply with the DMA Code of Practice, the PECR Regulations and so on. And where we're doing audits of CMCs across the country we will look at their marketing very closely to see if they are adhering to those regulations or not and we will take action against them where we find there's malpractice. Now we've seen in the PPI area - a surge in the last year, that's starting to drop off now, we've gone past the peak of PPI claims, there's still lots in the system and there will be for the next couple of years. In terms of new marketing, CMCs are looking for other things to do or starting to contract or consolidate. And also in personal injury - in that area of the market we've seen a dramatic decrease in the number of personal injury claims management companies, once the reforms were introduced by the government back in April. So I think the numbers have reduced by 30% since about April. Now that trend is continuing and I think we'll see less personal injury contacts come through. So the trends generates the demand and we're trying to make sure as far as we can that those companies are buying in data correctly, legally and where they're not - we take action against them. But where another regulator can take action more quickly or more forcefully, then we will work with Ofcom or ICO to make sure we share that information and get a better outcome.

Mike Crockart: My problem, well I have lots of problems with this, but the major one that I can see right now is that we've got two regulators sitting in the room that report to Ministry of Justice, we've got one that reports to Ministry for Communications, and yet every time that I've asked questions about operations of various ones, it ends up DCMS. Now that seems to me just by the foreshow of one minister saying, well all right I'll put my hand up, I'll take responsibility for this. Is that really an effective way of having a focus on what is obviously a major problem?

Simon Entwistle: Well far be it for us to criticise, but the minister…..

Mike Crockart: I'm not looking for criticism, but I am looking for comment

Simon Entwistle: The minister in particular is doing a great job in pulling this together, and he makes it very clear that we are reporting to him on this particular piece of work. The MOJ have an interest in it, particularly if there's an impact on any resource constraints because the MOJ fund us. But clearly it's not easy when you've got different reporting lines; you've made a perfectly reasonable point. Just to, something on what was said there, debt management, payday loans, that's a big upcoming area, you put the two together it's significantly more than PPI, we can break it down in to the different types of calls like calls, automated or text, but that debt management is a big deal and you can expect us to be, to be taking action shortly in that area of people, trying to sell payday loans via text.

Alun Cairns: Can I interrupt very briefly on that? Because in terms of what we were talking about the scale of the problem, what relationship and communication do you have with the network operators? Because we heard yesterday that when you give notice of an intention to act after a certain period or by a certain period, there's a huge peak immediately before that. So therefore when you're now saying we are giving notice about intending to act in a certain area, then that just focuses attention of the perpetrators, in terms of getting in before you act.

Simon Entwistle: You mean in terms of that type of business sending out more?

Mike Crockart: Their activity ramping up.

Simon Entwistle: Well it certainly is the case that when we issue a monetary penalty, you get more concerns registered with us about that area

Mike Crockart: No this is prior to that. This is you serving notice that you are looking at them and then they say, right OK, news on the wall they're coming for us
Alun Cairns: As of January next year you would be increasing your fine or monitoring or whatever activity that might be, then in December we absolutely hit a peak because people want to get in before then.

Simon Entwistle: Well, we’re reacting to an existing increase here, now that doesn’t mean to say that won’t happen, but if it’s a suggestion that we usually interpreted that more along the lines of people realise this is a concern area and they let us know more about, because as, as Claudio points out raising concerns is a

Mike Crockart: No this wasn’t a peak in the raising concerns; this is a peak in the activity.

Simon Entwistle: Where do we get the figures for the increase in activity?

Alun Cairns: Well, we were told yesterday by the network operators that they were raising it with you and that there was an open dialogue over it

Mike Crockart: This was mainly from I think Cloudmark so it was reporting via 7726.

Simon Entwistle: Oh we were aware

Huw Saunders: This was a particular....

Mike Crockart: Yes I can’t remember what it was

Huw Saunders: Yes, Tetrus.

Simon Entwistle: Well as far as we understood, our position of Tetrus was there was a reduction in the number of spam texts after we fined Tetrus.

Mike Crockart: After you fined yes, but the point was before you fined it, what we’re trying to get is the process that you have to go through of issuing the warning saying we’re now looking at you, you need to change your behaviour, gives them a free couple of months to go we better ramp it up quick before.

Simon Entwistle: I take that point, I’m not sure.

Mike Crockart: You know is there a need for change for a change in regulation that allows you to act before having to warn?

Steve Eckersley: My name’s Steve Eckersley, I’m Head of Enforcement at the Information Commission Office. Most of the complaints come on the back of a campaign, for obvious reasons, because you get the campaign, you get the transaction between the sender and the consumer and then that leads to a complaint. So very much we react and responded to an event that’s already taken place and from the figures we’ve seen and, and our relationship with the GSMA and Cloudmark, we haven’t seen any spike for that event. But what we can do, if we see a particular problem, we can issue an enforcement notice which compels an organisation to stop conducting their business that leads to the harm and distress as well as issuing a civil monetary penalty. Now when we issue a civil monetary penalty of course, the organisation has a statutory amount of, 28 days basically to respond and they put forward their representations and, and that is something we can’t ignore. So there is, there is an interim period, but we haven’t seen the figures spike

Simon Entwistle: It, does put us in a difficult position that’s news to me, but it puts us in a difficult position because part of our approach is to publicise the fact that we’re coming after an area and if that means it increases the activity, that’s obviously a flaw in, in our approach that we need to take into consideration. Because the one way of thinking about this was that it would be a deterrent for people to understand the ICO’s aware of that area and is taking action. So that is something that we’ll have to go and talk about because it definitely has been has been our approach, it’s part of disruption if you like to make it clear, a bit like TV licences you know we’re visiting your area. If actually it’s having the opposite effect, now that’s a concern. But we would like to be able to do that or think more quickly and that’s one of the reasons, one of the drivers behind our business case to DCMS to change the threshold, so it’s easier for us to issue a monetary penalty in the first place. One of the more recent developments is that we had to deal with an appeal in the information tribunal last week on the Tetrus case, but it was all about the legal interpretation of this substantial damage, substantial distress. Two days of legal argument as we tried to show that the thousands of texts that we were able to associate
with that organisation would be sufficient to allow us to fine them and we haven’t got the outcome yet. But you can see if that case goes against us obviously it’s not a full blown high court decision, it will have a huge impact. We’re doing our best to say what we always maintained, that that volume of calls amounts to substantial distress and substantial inconvenience. The other side are arguing that it doesn’t and it has to be shown on a basis of an individual call. Now another area that I’d just like to raise, bring to your attention is that despite us trying to get more information on individual calls that have caused substantial damage, we’ve not had a great deal of success, we’ve approached Which? because they said they’d got information about that and asked them to share it, obviously with the permission of the people who suffered the distress. But still we haven’t got a great deal there for us to go on to say, right well here’s a case where we’ve got two or three individuals, who received calls from this organisation and the distress that they were caused was substantial enough to have clearly go over that threshold. That’s been a challenge for us, so we’re still basing our civil monetary penalties on this, aggregating lots of information. And again one of the reasons we publicise an area is to get people to give us more information, so we can bundle it up and say we’ve got 1,000 concerns raised with us about a particular case and use that to indicate substantial damage and distress.

Mike Crockart: Can I ask the other two regulators about their view of the, the regime as it stands at the moment and having three regulators across two departments and whether that causes issues? Because I know that one of the things that we have in the Private Members’ Bill is this change to allow you to actually exchange information more, more effectively.

Kevin Rousell: Yes, shall, I go first because the Claims Management Regulators is probably a bit different from these two organisations. We were set up to regulate the CMC activities across a number of claim areas. And they happened to be using direct marketing, lead generation, to obtain claims at the moment. But there is a big shift towards advertising, more advertising these days than anything else. So they’re in this market at the moment, but they may shift onto other things in due course. So I don’t think there’s an overlap between us as regulators in that sense, but we need to make sure that we work together and I found it initially quite a challenge, but now it’s working really well. I think now that everyone is committed to dealing with this problem and sharing information which is crucial to it and we get information from our audits, from our intelligence, we pass it on and we get it from Ofcom and ICO now, so that’s an important part of the equation for us.

Mike Crockart: Thank you.

Claudio Pollack: So I think two layers; one does it matter that there’s different ministries involved? I think that would come of its own, was there a need for ministerial coordination of regulators or the need for some kind of legislative change? And then we need to make sure that somebody takes ownership of that and, if there’s time and you’ve just mentioned one, some of the more radical solutions might be a legislative change and then it might become an issue or at least someone would need to take ownership. The question of having two main regulators covering what’s broadly understood as nuisance calls, I think there are a number of institutional models that could work differently, one of them is having a single regulator that’s responsible for policing backgrounds, call centres for want of a better phrase and there are other co-regulatory models that could have a number of advantages. My worry would be and if we can’t get a grip on this, those models will need to be considered at some point. My worry is that at this point in time it could be quite a distraction because there’s plenty more that could be done that would have more immediate impact. So I think it’s worth saying why that might make a difference and how far that could go. I don’t think it would make much of a difference in terms of the clarity of enforcement, because I think actually what we do and what the ICO does is quite clear. It’s quite clear because they look at breaches of marketing rules, we look at networks and
particularly issues around diallers and CLI etc. So there is a difference and we've never
tripped each other in thinking it should be us or you.
Simon Entwistle: No.
Claudio Pollack: We're going to improve the information sharing, I think that will help
a little bit, I don't think it will be game changing. The areas where I think it could make a
difference are not those, there's a little bit about clarity of consumers of where to go to,
but I think that, that can be exaggerated as well, I think where it could make
Mike Crockart: We're going to come onto that.
Claudio Pollack: Yeah OK. The areas where I think it could make a difference, if there
was a different co-regulatory solution, where there was somebody that could do this in a
more focused way and it could take its powers from one of us that could make a
difference, but there's a lot of analysis that needs to be done on that. And I do find it a
little bit odd if this is becoming like a regulated sector, that's quite a big change that
we'd need to look at, but if we move towards this being a regulated sector like energy or
telecoms, the fact is both of our efforts are funded by the state, whereas in telecoms it's
-funded from levies from the telecom sector. If there is a harmful activity you would think
that those responsible for providing the service ultimately should be paying for the efforts
required to police that service. So there are number of longer term things that needed to
be looked at, but I don't see an immediate obstacle to what we're doing around the
current framework for enforcement.
Andrew Stunell: Well I just wanted to come back to the scale point and I'm really
interested in the Ofcom figures and I look forward to looking at those in more detail.
But what you seem to be saying is you had 800 diary fillers in, they had an average of
2 calls a week, which is some like 2,000 calls to your team of 800. And if one
multiples that up to the number of calls going to all telephones in a week, you get a
very, very large number, I've had a quick go it looked like it might be 40 million, I
might have got a nought wrong somewhere, but there's very large number of calls that
are causing nuisance. And just I was away for my party conference, I came back I had
17 messages on my phone, 16 of them were discontinued, or recorded, or obviously of
the kind we've been talking about. So we're talking about a very, very large number
indeed and I just wonder whether you've got the capacity, any of the three of you
have got the capacity to respond effectively to what is an absolute deluge?
Steve Eckersley: Well that would be probably the ICO question to us because it would
probably be our capacity that, that type of call that you're talking about, the answer is no
we haven't got the capacity to deal with every single automated call, every single live call
that's made. We're really well short of that capacity, we've got a small team, we've got
six people dealing with this, we reported that back to DCMS the other week and we have
to focus on the worst offenders and the worst offenders only account for 10%, 15% of the
calls. When we do share information, obtain information from the Telephone Preference
Service and when we go through and analyse the information that they provide us with,
you find that sure there are some offenders, but there are 1,000, 2,000 organisations and
that's a lot of organisations who have got a relatively low number of calls made by them,
reported to the TPS and reported to us. We can't possibly in our current situation go after
those companies. Firstly because we just haven't got the resources and have to target on
the, the bigger ones. Secondly because there's no prospectus of us being able to
demonstrate substantial harm anyway, so we wouldn't be able to fight then, we could
definitely engage with them. And thirdly I think it's something that again was raised when
we talked to the DCMS select committee, how far do we as a regulator go in taking action
against this industry? I've got a seminar this afternoon run by government that's around
how a regulator like the ICO and like many others, is to take into consideration growth in
the economy when we're taking enforcement action and we're issuing guidance, because
the government wants us to make sure that our regulation and the guidance we produce
doesn't sort of stem your business. Now in this area clearly you've got the consumer
persuasive which is you know my own personal perspective I don't want the calls, but
there's also a huge number of organisations who make marketing calls in order to get, generate business and all those organisations every now and again will have complaints about them, despite whatever systems they've got set up in place. So I think what we'd like, from the government, is a little bit more clarity on how far do you want to pursue this? How many, what sort of steps do you want to take to stop this? Because I believe that it would go far beyond giving us some additional powers, that would help, but it wouldn't go all the way. It could require consumers to do more, we could put in place greater requirements on the telecom sector to be tighter and make it easier for them to trace calls and provide information to people. There's a balance to be struck there between you know privacy issues. But it's the ICO, Ofcom, we play a part in this, but how far do the government want to go? Give us the powers and we'll use them, subject to resources, but we can't decide and we have indeed got this tension between stemming your business and protecting the consumer, which is quite a challenge for us. I hope you can see that, it's not necessarily any sort of, us trying to be obstructive, in the similar way that we don't have any particular vested interest in being, having a split regulatory solution for this, we want the best solution and we'd be happy if there was a better model to, to work with that. Either by the work going to somewhere else or us taking on work, or being completely separate. We don’t mind but I think that challenge to the government on exactly the policy on this, how advanced is the business interest needs to be clarified before we can arrive, can arrive at a solution and effectively takes it to that point that the government wants.

Mike Crockart: OK, Claudio briefly and then Mike

Claudio Pollack: I know you’re tight on time, I think the question really was down to do you want to be able to say what I think our challenges are in enforcement and making a difference, because the research pointed to a big problem, there's no doubt about that. I don’t know where you’ve got your zeros wrong, but it does point to a big problem and I think the sum of what we are doing can and will have an impact, but the worry is the whack a mole issue, which is we push down one does another one just pop up? Do we have something that is sufficiently coherent in the round that means that the whole thing improves over a period of time? And I’m going to say three challenges that I think we face, firstly very briefly the background we will focus on silent and abandoned calls, typically from larger big brand players, we've got an increase in the fine maximum to £2 million, we use that and what we find now for those companies they've dropped out of the top complaints and those that we have fined, £1.5 million in the last, in the last year or so £1.5 million, how much they are doing these calls is very, very low. They’re not really the problem anymore, there’s a new problem which is what we’re seeing here and with this new problem the three things I point to are the clarity of the rules and the issues of consent come into that very, very clearly. So people know what they need to do to comply and consumers know what they've consented to or not consented to do and it doesn't seem that we’re there, clarity of the rules. The second one is around detection, so as enforcers, do we even know who’s causing the harm? Or is it too easy for the worst perpetrators to hide themselves, so that we are always chasing those that have just slipped up a little bit, rather than those that have really invading? And a lot of that is about the work that's been done on tracing and the veracity if you like of the call identification information that comes with the network, and Huw is there was time could tell you some of the work that we’re doing on that. So the second one is around detection and the third one is around deterrents. So another important change, as it looks from the research, we don’t know where the harm is coming from, because people are hiding themselves very well. But it looks like when we can identify it there is a very, very broad spread of companies that are causing the harm, that wasn’t the case before, so lots of companies each generating a small proportion of the harm and often companies that are sufficiently footloose that they don’t care enough about their reputation. And for the sorts of enforcement approaches that we take that is problematic, because deterrents rely on companies thinking they have a business case, they think shall we invest in compliance?
Well this is what it costs us to comply and here is the risk if we don’t, and if the risk is a relatively high probability that you will get a high fine and will be trashed in the newspapers which is what happened to, to HomeServe, Npower and TalkTalk when we fined them then that works. But if actually you’re doing, for example PPI work and you’re doing leads generation on behalf of someone else and then you’re going to disappear and you’re quite small, your equation doesn’t really work that well. And so the change that I point to there is the work, and you can ask them about this, that the DMA are doing around accreditation might help, but we need to move further from something where the incentive comes from the risk of being caught, because I don’t think that’s going to work for something that is, if you like ex anti where you have to have some sort of audit, that isn’t allowed for in the current legislation. So we need to see how far the current voluntary initiatives take us, but they might not take us far enough, so some kind of audit requirement that then is enforced against. So that would be my assessment of the answer to your question, can we do it? It’s not about the number of people that we’ve got or the resources or the legislation and how good that is, because it’s been effective in the problem that we’ve focused on, but the nature of the problem has changed and that’s the things that I think are worth more exploration.

Mike Weir: Yes, I just felt that you skimmed over the effect on the consumer in this, I fully understand and accept what you’re saying about business and the complexity, we all know it’s complex but for example Which have done good work in having a portal where somebody can go through and it goes to the right person, but I wonder if you’re not in with the idea of one regulator to tackle this, there must be ways you can work together to have an easier reporting process because at the moment the poor consumer is faced with having to go through TPS, the first thing they are ask is, what’s the number? And many, an area of big difficulty to know what the number is that’s called you and that’s a CLI issue. But there is an issue knowing which regulator to go to, which is the nature of it and even if the regulator were jointly to have some sort of portal or line that people could get in contact with, it seems to me they could make it easier for the consumer to actually make that complaint. Because it does seem we’re going right back to the beginning and there’s a huge discrepancy between the complaints that get as far as the telecom companies and get as far as the regulator. Now, to be frank, it doesn’t seem to me you can just dismiss it, ‘oh it might be malicious calls or, or people chasing debt’. There’s a huge discrepancy, it’s not just a few thousand and there is something wrong there, because we all know in our daily lives the number of these calls that we get and you know it’s a lot worse for elderly people that are in all day.

Mike Crockart: Can I add something to that before you answer, because my next question was going to be on the same sort of lines, which was, we’ve had a lot of discussions yesterday, both in the nuisance call enquiry session in the morning, but also in the afternoon we had a session with solutions providers, around making it easier to report and focusing really on the 7726 which is, it seems to be working quite well on the mobile side, and whether we could manage to introduce something like that on landlines. Now solutions providers say that should be relatively simple to do and telecoms providers saying that would be far too difficult to do. So would something like that potentially be the, the way to make it easier to report the calls? Because you are then approaching them at the time you get them?

Simon Entwistle: From the enforcement point of view, yes it would be great. The work that we get on the 7726, information that we get sent on that has really helped us because that can show a significant number of texts for example being sent from a particular number on a very tight timescale and that helps us with civil monetary penalties, so that’s been fantastic. I have to say the numbers of reported texts has reduced in recent months too, I’m not saying the problem has gone but it has reduced, similarly, which is something that I think we need to remember when we’re talking about the scale of the problem, whether it’s getting worse, staying the same or, or getting
better. So that will definitely help because we get that information and we can use that information to pool with ours, just two other points on what you said, our websites and the Which website are now pretty well identical in terms of how you click through to the right organisation and we've made those changes as a result of this whole initiative. There's still three websites, but when each one when you look at the issue of nuisance calls you'll have the same button, click this button and it will the ICO, click this button and it will go straight through to Ofcom. So we've done what we can there, but it doesn't answer the question there are still different regulators, but we have taken that point onboard and need help with Which?

**Mike Weir:** But there's still three websites. One website would make an awful lot more sense; this is the nuisance calls websites.

**Mike Crockart:** And how many telephone numbers are there? We heard yesterday from BT with the nuisance call bureau, TalkTalk are setting up their helpline number. It seems like TalkTalk are trying to put a good spin on it saying, it's good to have many touch points. I'd actually like to see one touch point and it be very, very clear to everybody who receives any type of nuisance call where they go

**Simon Entwistle:** I mean that's a fact you know what you've said is absolutely right; it's a case to make. Google's our touch point. You Google nuisance calls and you'll get us or Ofcom; go to whichever one you go to you'll go to the right place. Now it would be Google that people would get to your single regulator too, up to others to decide which is the best solution I guess and how it might improve, but I would say no matter what solution you come up with, whether it's a single regulator for this, there needs to be collaborative working across all sorts of different organisations. For example we've worked with the police, the Office of Fair Trading, we work with the Office of Fair Trading and so there are others that we work with and any regulator we still have to work with. So I think to repeat what I said to the DCMS select committee we're not trying to defend the status quo, if there's a solution that would work better we will do all we can to advise on potential benefits and pitfalls and other solutions being, that you've proposed to be implemented, but it needs to be done in a realisation that this isn't sort of isolated piece of work, that can reside in one area and doesn't need to involve any one else. It could be more focused I accept that.

**Claudio Pollack:** I'm going to pass onto Huw on the technical question because he's our expert. I wouldn't want to have given the impression that I'm focused on industry rather than consumers. On your issue around growth and government and it's very simple for Ofcom we have a single primary duty which is about consumers and citizens and everything we do is about consumer and citizen outcomes. The point I was trying to make is there is are a series of actions that are about stopping the problem, stopping the cause in the first place and that's what that answer was addressed at, is how do we stop it? There are a separate set of also very important questions which are about those consumers that are suffering harm, how can they report their issue to the relevant authorities? And I do think that's very important. I think we can have a debate about the extent to which a single point of contact is necessary and what I mean about that, this is an age old debate for us across a number of areas, which is that consumers and citizens always have organisations that they like to engage with, on issues across the piece, on an energy problem, on a rent problem. Some people will go to Citizen's Advice, some people will go to Google, and we had the same debate I sit on UKCCIS, UK Council for Child Internet Safety and the important point there is about not about having a single point, it's about making sure wherever consumers turn to, they get the information that they need, because they want to turn to different places and get directed immediately to where they need to go. And that's what we're focused on, now there might be alternative where there's a single regulator, that has consequences and so on, but what we've worked very, very hard to make sure that wherever they turn, the immediately get directed to the right place, whether they phone us, whether they go to our website. We've created a series of consumer advice leaflets, we've tried to disseminate through the media and we've now
commissioned a, essentially a summit of consumer organisations and invited them to work on our consumer information, to make sure that it’s as clear as it could be. This is, is a big part of our focus and effort and the next thing that we’re going to do is try and do some analysis of where consumers do go to and make sure there aren’t any gaps in them finding information. So there are different ways to skin this. I think we are doing good work in this area, there is more to do, whether it’s having a single point is a silver bullet. I’m personally not convinced, I think it’s a slightly more complicated interface that

Mike Weir: Nobody suggesting there’s a single bullet, I was trying to suggest that you would make it as easy as possible for consumers to take these issues up because, given the figures, there’s clearly a problem somewhere between the call received and the call and the act, how they are reaching both regulators I would suggest.

Claudio Pollack: Let me just address that one issue, so I think we’ve both got the same object, you’ve got to move on, OK.

Mike Crockart: Well I want to hear from Huw about the technical side of things and then we do actually need to deal with that particular technical issue after that.

Huw Saunders: OK Huw Saunders, Director of Network Infrastructure at Ofcom. Coming back on the point that was made about the ability to replicate the 7726 text based problem capture mechanism for voice calls. The simple answer is there is no simple answer, unfortunately. In the mobile environment you have the advantage that the systems are relative modern and they’re relatively uniform, in other words they share a common platform, so in effect implementing that particular technology is, is straightforward across all the networks, because they’re broadly the same. In the fixed environment you’ve got a very different situation with systems which are relatively modern, with certainly the newer market entrants like Sky and TalkTalk, but more than 50% of the overall fixed market served by systems that were designed 35 years ago. Implementing a regime of that nature on those platforms is not impossible, nothing ever is, the question is how easy to do it? How much is it going to cost? And indeed how long will it achieve, you know take to achieve that? Now there are ways of doing with so called adjunct platforms, in other words subsidiary platforms not the main system itself and we are happy to pursue that with, with industry, both with the solution providers and also with the communication providers. And as I said yesterday in the session with the solution providers we’re more than happy to facilitate those discussions via the new working group, that we’ll have an inaugural meeting in a couple of weeks time. But I think the point is it’s not straightforward to replicate that regime in a fixed environment, it will be much easier with some platforms than others, and indeed it may be disproportionately expensive with others.

Alun Cairns: To pursue that and then I’ll come onto CLI, do you think the industry get it? And do you think the industry know they need to come upon with some sort of automated solution?

Huw Saunders: I think there’s a realisation yes that they need to improve the ability to capture the problem. The willingness to actually then deploy something that works is going to be dependent about how much it costs and how long it takes to do it.

Alun Cairns: What sort of broad estimates are there of costs across networks?

Huw Saunders: I don’t think we’ve got to that level of detail yet.

Alun Cairns: So with every best will, with a fair wind behind us, when would you think it would be realistic to 1) to come up with the cost and then potentially implementation if there was, let’s even say there was legislation enforcing it?

Huw Saunders: I think we’d have to look it on a provider by provider basis, so it will vary depending upon you know the state of their platform; we’re certainly talking a couple of months. I think in terms of implementation again it will vary, some will be relatively straightforward, six to nine months would not be impossible, others it could take years, if indeed it was proportionate to expect them to do so.

Alun Cairns: OK but it certainly could become a differentiator for providers?
Huw Saunders: Oh absolutely.
Alun Cairns: and that’s something OK? Related to this, and as you were at the meeting yesterday of all of the solution providers, is the CLI, the caller ID is essential.
Huw Saunders: Absolutely.
Alun Cairns: Otherwise it doesn’t work. Some charge, some don’t, some are clarifying or so called clarifying their charging structure. How important is the CLI to you guys in terms of acting?
Claudio Pollack: Vital, essential.
Huw Saunders: Yes absolutely.
Claudio Pollack: Huw can take you some of the call tracing work that we’re doing when the CLI isn’t there, so that we go back by each provider to see if we can find the source, but it is, even when we get there, it will be second best and very imperfect. Both in terms of consumers being able to protect themselves, make a choice when answering and be able to report the issue in a way that always identification and our enforcement effort it is absolutely critical. So a couple of things, effort by Huw and the work that he is doing with others to get that to be more reliable, are absolutely pivotal, not straightforward and pivotal. And if you want me to comment on charging practices I’m delighted to do so as well.
Alun Cairns: Please do.
Claudio Pollack: So, for what I am about to say, for balance I would say that there has been a step change in the network providers and how much they’re working genuinely to assist us in the technical analysis, to make this area better. I say that for balance, there are a lot of individuals putting in a lot of work and generally when I get asked the questions are they pulling their weight? The answer is yes. I think given the current debate, given that the only way that consumers can be empowered to even imperfectly identify who’s calling them and to be able to report that it feels to me slightly misjudged perhaps to be changing charging practices. We’ve looked at this and there is already one of the other major network operations Virgin we believe that is already charging. I understand that Sky and TalkTalk do offer a free service. It feels odd for a company to say that they are committed to helping their customers to deal with the menace of nuisance calls and suddenly start to make money from charging people for a piece of information that they have been getting for years, that to some extent always them to protect themselves from this menace.
Alun Cairns: That is really helpful. Can I ask, does Ofcom hope that the network operators will have heard that
Claudio Pollack: Yes.
Alun Cairns: But taking it a step further does Ofcom have the powers to review the charging structure, over those operators?
Claudio Pollack: It’s extremely unlikely, we’ve been looking at this, that we would have the powers to direct them to charge differently for a particular component, so where the focus of our conversations have been. So BT’s line is one that we support, this is a competitive market if people don’t like it they can shop around, our focus on this has been making sure that when there is a price change of this nature those customers that are unhappy are able to exercise their choice, that they’re not locked into contracts that prevent them from moving and so on. BT’s other line which is the, ‘oh but they can carry on getting this information for free, if they agree to be locked in for a 12 month contract’, I don’t find satisfactory, because locking somebody in for 12 months isn’t offering, it’s a price that you’re paying and it’s the price of not being able to shop around for a period. So it’s unlikely that we have the powers, we will use our soft powers in drawing our attention, drawing consumer’s attentions to different practices, so that I hope consumers that care about this can then exercise choice on an informed basis.
Alun Cairns: Thank you that’s really helpful.
Steve Eckersley: Just two quick points on CLIs, when we can’t trace a number when the complaints come to us we put a notice to get the call trace, the number traced, around 80% of the response indicate that the CLI has been spoofed, it isn’t a true CLI. That’s a big problem for us and a big problem for the industry, so you might get a CLI but it’s not the right one. And the other thing just to mention on overseas calls, because that’s linked to CLIs too, is around 16% of the calls that result in a complaint to us are from overseas numbers, which limits our ability, well we haven’t got any ability to do much about them without liaising with overseas organisations. But we do and we are part of international groups looking at this problem, which is not confined to the UK. We had a visitor in our office yesterday from Singapore, he was sent 30 texts during the course of the morning. It’s a huge problem in the Far East, significantly worse, no great reassurance, than it is here.

Alun Cairns: Can I just tie you down on one issue, in terms of your investigation; talk me through the process where there is no CLI? And how cost, what I’m trying to get at how costly is that to a network operator?

Claudio Pollack: What, for the investigation?

Alun Cairns: Yes.

Kevin Rousell: I’m not sure of the cost actually; I don’t know whether Huw can answer that?

Huw Saunders: Part of the difficulty at the moment is that we’ve had no defined process for tracing calls through the multiple networks that are quite often involved in its delivery, so one of the things that we’ve been concentrating on is getting in a standardised process agreed across industry. That’s now just about there and we’re over the next month or so going to launch some trials of it. The reality is the operators have said they’ve got limited capacity to actually undertake this, this local trial because they cost, involved, essentially in many incidences I wouldn’t call it a manual process, but certainly they’ll be a lot of people involved.

Alun Cairns: Right well that’s precisely the point I want to get at, so if we were to encourage constituents and the public to make complaints, when they don’t have a CLI, that would be more onerous to the network operators?

Huw Saunders: Absolutely.

Alun Cairns: To someone like BT?

Huw Saunders: Yes.

Alun Cairns: And therefore that could well be a part of the solution in order to get them to back down on their charging of CLI. I mean it’s very reasonable.

Mike Crockart: For the transcript there were lots of raised eyebrows there.

Laughter

Huw Saunders: Can I make another point? And one of the fundamental issues that ICO touched on, which is the ability to, to spoof numbers. That is an issue, a fundamental issue, which is being addressed on an international basis now. A lot of the concerns arise from the most modern systems which is lies voice over IP, technology called SIP. SIP unfortunately allows the user to manipulate the CLI, they can put in a nonsense number, they can, they can appropriate somebody else’s, they can put in nothing and there is nothing in the standards process, there’s nothing in the regulatory process at the moment that prevents them from doing that. There is work now being launched under the auspices of the Internet Engineering Task Force, which is the ultimate international body that controls the internet standards to address this, to introduce a level of authorisation. It’s going to take nine months to deliver the standard. That standard will then have to be implemented by the various vendors that are actually providing systems the regulator itself will need to look at how authentication will work. It’s going to take a number of years, but there is work now going on, on an international basis and this week we are announcing with our counterparts in the USA and Canada that we we’re committed to work together to make these things happen.
Mike Weir: I’ll happily come back just to the question about the BT’s charging policy, we had a fairly robust exchange with them yesterday on this, but it seems to me that BT are effectively profiteering by trying to force people onto year long contracts if they want CLI. And many of those who are more vulnerable to them are probably on month to month contract. Does Ofcom have any power to look at this particular aspect? And if there’s evidence for example of more elderly people are on month to month, rather than annual contract, they’re receiving more calls, then it is, to put it mildly unjust of BT to be using this as a way to get people onto long term contracts and perhaps make more money.

Claudio Pollack: I wasn’t at the session yesterday, but I found their description in the report confusing in terms of what they were saying, because my understanding of the practice and the change is at the moment it is true that there is a confusing set of products right now and they are simplifying it, but it’s a levelling down, rather than levelling up, is the important point there.

Mike Weir: Well, no, the important point is it’s that nuisance calls are increasing problem. And we’re all agreed on that. This is one way, this is a fundamental way if you’re going to tackle it, you have to have the CLI to go to TPS and BT are now putting an additional charge on people who are their customers who won’t enter into a long term contracts. That is unfair surely?

Claudio Pollack: This is an important test, because my understanding of what they are doing is that for people who have had this BT privacy product for years, who are paying monthly without a lock in, they will need to now proactively contact BT and agree to be locked in for 12 months or pay £1.75 a month that they weren’t paying before. This will be a real test of consumer power in a competitive market. So if they are sufficiently informed, if we do our job at informing people of the choices that they have and the work that we are doing it to make customers have the ability to switch, will enough customers care enough to change provider over an issue such as this?

Mike Weir: But just Virgin and TalkTalk I think charge for it

Mike Crockart: No, just Virgin

Claudio Pollack: So after this charge of the four biggest providers two will offer a product where you can get this for free and two will not and we will see how it is appropriate for us to draw attention to that and to see whether it is an issue that some consumers will consider sufficiently substantial that they might vote with the feet.

Mike Crockart: Excuses of energy is not great of convincing consumers to switch. And in this incidence we’ve got the added complication of bundling. You know that BT just launched a new product of bundling the sport telly? Surely that will limit people’s willingness to switch?

Claudio Pollack: Yes, I hope you’re getting a sense at least of my concern; the simple answer to the earlier question is that I do not think that we have the power for additional charges, to set those at zero. I don’t think even if we do the analysis, I don’t think that is a power that is afforded to us through European Framework. That’s not a definitive position because I don’t want to foreclose our ability to consider this and there might be avenues that we could pursue, if it was the right thing to do, but my understanding is that we do not have that power.

Alun Cairns: You raised the question yourself about how you can raise awareness of the ability of people to switch in time for the new charging structure that’s introduced. In terms of raising that awareness what consideration would you give to still communicating to people that they can make a complaint about a nuisance call, even if they don’t have the telephone number?

Claudio Pollack: So, the piece of work that I alluded to before, which is working with consumer groups on consumer advice and on the challenges of information that we use already, is something that we would use to be very, very clear. And, and when they come to us for complaints it’s very, very clear, there are forms that attract you and draw you in regardless. We’ll be very clear on what the impact of that will be and I suspect you’re
right that a lot of people not being able to identify the caller are less likely to bother. I think that’s an issue we have.

Steve Eckersley: It certainly isn’t a bar to complain to the ICO, in fact we don’t require the telephone number it’s harder to track it down, but it doesn’t help, it helps us with the nature of the call and trends there, even if we don’t know who it is. And sometimes we ask for the time of the call and it can be linked to similar calls sometimes.

Mike Weir: But the point is most consumers will go first of all if they’re making a complaint probably to Telephone Preference Service and the first thing they ask is for the number and if you don’t have it it’s very difficult to get passed that point.

Steve Eckersley: With ours the web form is just a matter of reporting your concern, you don’t need to give the telephone number and that’s where you get directed to. You have to have signed up to the TPS obviously to make a PECR complaint, because if you’re not then anybody can call you, but we don’t require the telephone number.

Alun Cairns: Can we ask you to look at your complaints process

Claudio Pollack: We will.

Alun Cairns: To ensure that when the number isn’t held, that there is still an avenue that’s quite clear that people can complain, because I’m determined to drive that cost onto the network operators if they’re charging for it.

Steve Eckersley: It definitely isn’t a barrier, but I’ll look at it.

Mike Crockart: Right I’m afraid time has beaten us, I for one am, am disappointed to be honest that so much of time both yesterday and today, has had to be devoted to looking at this particular CLI issue and charging for CLI, because there are so many other issues that we needed to talk about. Can I ask, there are a number of things which I wanted to ask, which I haven’t had time, but can we direct particular questions to you and get you to submit further routine evidence if that’s, if that’s possible?

Claudio Pollack: Definitely.

Mike Crockart: Right well thank you very much for coming in today. That’s it.
Alun Cairns: Thank you very much, my name is Alun Cairns, I’m the Co Chairman of the All Party Group, and we’re very grateful that the Telephone Preference Service, and the Direct Marketing Commission are with us for this next evidence session. Can I ask you in the first instance to introduce yourselves for the record and the transcript?

George Kidd: I’ll start, I’m George Kidd, I’m the Chairman of the Direct Marketing Commission.

John Mitchison: My name’s John Mitchison, and I’m Head of the Telephone Preference Service.

Alun Cairns: Thank you very much, we’ve got some set questions, but the experience in the two sessions up to here, is that we tend to sort of follow the responses that we’ve received and, and I’m grateful to my colleagues for joining us. Can I start off and ask, ask you to introduce your organisations, the nature of the responsibility, and how you feel it operates, to begin with?

John Mitchison: OK, like I said, I’m the Head of the Telephone Preference Service, the Telephone Preference Service is an organisation which is a wholly owned subsidiary of the DMA. It was set up in order to run the contract from Ofcom, which is the Telephone Preference Service, essentially. Basically, anybody can register their telephone details on the TPS file, it’s a free service, and once their name has been registered for 28 days it’s then a legal requirement for any organisation making outbound calls to screen their numbers against the TPS list before making any calls. As well as that, we also deal with the complaints, so anybody who’s number is registered, if they receive a call that they think that they shouldn’t have received, they can make a complaint to us, either through our website or by speaking to us directly or filling in a form. Every complaint we receive is acted upon, we try and contact the company concerned in the first place and we remind them of their legal obligations and ask them to respond to questions about why they contacted the person that they shouldn’t have. We then pass all of that data to the Information Commissioner, who has the role of enforcing the legislation.

Alun Cairns: Can you tell me, to begin with, the volumes of complaints you get, and the way in which someone would make a complaint?

John Mitchison: Yes, the volume of complaints varies quite a lot. Until about September 2011 it never really went above 4,000 complaints a month. After September 2011 things started taking off, and peaked at around 10,000 complaints in February this year. It now seems to be following a seasonal trend back down again, there were about 7,000 complaints for the last couple of months, and in September it was just over 5,000. If somebody wants to make a complaint, the easiest way to do that is to go to our website and there’s a step by step process on the website where they answer questions about the
call and give us details, where they can, about the company that called them. And like I said, we will respond to that complaint with an email to confirm that we’ve taken all the information, or advise the consumer that they may have to direct their complaint elsewhere if it wasn’t relevant to the Telephone Preference Service. Then we give the company 14 days to respond, and after that all of the data, including the company’s responses, are sent to the Information Commissioner.

Mike Crockart: Could you tell us a bit about the details that you require from a consumer? One of the things that people said to me is that when you go on to the Telephone Preference Service they’ll ask for the details of the company number and that, it’s very difficult to get that from many people who are cold calling you. If you ask for their number or who they are they’ll hang up on you, or not give you the number, it’s very difficult, particularly for elderly people, to get this information, so what’s the minimum information you require to be able to take action?

John Mitchison: The minimum information that we would require is the company name and the date and time of the call, and I recognise that it is sometimes very difficult. Any legitimate company making outbound calls, and it’s in the Direct Marketing Association’s Code of Practice and it would be in anybody’s good practice guide, as soon as somebody was to answer you would introduce yourself. You would say hello, I’m calling from, the call is about, and have you got the time to take the call?

Mike Crockart: But that’s not what happens.

John Mitchison: No, and it’s those companies that are essentially bringing everything into disrepute. There are a large number of organisations that are taking advantage of short term financial opportunities, but they will be calling and they specifically don’t want people to know who they are. They’re trying to disguise their identity until they’ve got to a certain stage perhaps, or until they’ve got enough information from the consumer that they can use elsewhere. I’ll give you an example of somebody that’s just doing lead generation, they might phone up and say it’s not a sales call, we just want to ask you a few survey questions, and they’re already misleading people into thinking it’s some kind of survey.

Mike Crockart: Making these calls.

John Mitchison: They haven’t told you the name of the organisation, and if they do it might be a very generic name, so that it makes it difficult to actually track them down if you try and Google them or anything like that. Then they collect that data and they might sell it on to other companies, who might then make a further unsolicited call.

Alun Cairns: Can I pin you down in terms of what do you see as the definition then, of a nuisance call? And are we absolutely clear about what a nuisance call is?

John Mitchison: A nuisance call is one that’s breaching the legislation. If, you have a relationship with an organisation or, and then you’ve given them permission to call you, and they make a telephone call to you then that really shouldn’t be described as a nuisance telephone call. If a company is ignoring the Telephone Preference Service and making calls to people registered on that service, then I think that’s legitimate to call that a nuisance telephone call.

Mike Weir: But to be fair you only deal with, or rather TPS registration would only prevent live marketing calls?

John Mitchison: That’s right, yes.

Mike Weir: Yes, because in your evidence you’ve said quite clearly registering a landline or mobile telephone number will not prevent recorded messages, spam, SMS, silent or abandoned calls, or scams.

John Mitchison: Scams?

Mike Weir: We can put to one side, because nothing will necessarily prevent scams, but the others, do you think that the public generally think we don’t actually draw a distinction between all these types of things and live marketing calls? Do you think that registration with TPS should actually really prevent these types of calls too?
John Mitchison: I can certainly see the validity for having a central place for any kind of call. The difficulty is the legislation here. The legislation is quite clear about having to opt out of a live sales marketing call and opt into SMS messages and that kind of thing, so TPS is an opt out register, and therefore couldn’t have anything to do with the SMS or recorded messages.

Mike Crockart: But do you think the consumers who are signing up to TPS understand that sufficiently? And do you have any figures on the number of calls that you receive that are not actually falling within your strict definition or that might be regarded by the consumer, or is regarded by the consumer as in breach of the TPS or nuisance calls, to the effect that they shouldn’t be receiving had they, because they’ve signed up with your service?

John Mitchison: Yes. To go to the first bit, I think that consumers often are confused, and they think that TPS might cover all the kinds of problem calls that they’re getting. When they come to our website, if they want to make a complaint, and actually when they register as well, they might just not read it quite as well. It is made very clear, specifically the type of call that they’ve received, and if they say, for example, it was a silent call a little box pops up to say TPS only deals with live sales marketing calls and there’s a direct link to Ofcom’s complaint page. So we try and redirect them as best we can, and I think it’s probably at that stage that they realise how the nuisance calls are broken down between the three main services.

Mike Weir: But you must accept that some will get lost on the relay; there will be an attrition rate?

John Mitchison: Yes, I’m sure there is, once somebody realises they’re going to have to go somewhere else, even though we try and make it as simple as possible by popping that screen up in front of them, I suspect that there is some attrition.

Alun Cairns: In your experience, if you were writing new legislation and legislation didn’t exist at the moment, how would it be different to what it is now?

John Mitchison: I have to admit, nobody’s actually asked me that question before, normally its how do we get there from here? I do think that it should be an opt out service, and I think that it wouldn’t be unreasonable for anything relating to messages received on a telephone should be put together. They could, if we were starting again from scratch, I think that that’s probably the way that I would direct it, so that it was managed by one regulator, and any kind of problem call could be dealt with by that regulator, but you had to opt out of the various communications that were, that were available to you.

Alun Cairns: So can I tie it down a little bit more in terms of the survey calls? Would they be included by definition?

John Mitchison: Absolutely. That kind of survey call isn’t a survey in the correct sense of the word, that is a sales and marketing call, because the data being gathered is purely for sales and marketing. Although the person making the call may say, “I’m not trying to sell you anything”, they’re just trying to get around things by, by gathering data for, for sales and marketing, so yes, that would certainly be covered.

Alun Cairns: So it’s just subtle?

John Mitchison: Yes, exactly, yes. So I would want that to be covered in the same way. True market research by companies like, you know, Ipsos MORI or whatever, could be left alone, because there’s no direct sales and marketing included in that.

Alun Cairns: OK, thank you, can we turn for your perspective, and then maybe comment on what you’ve heard, and, and give us your points of view?

George Kidd: Yeah, I’m running out of ink already. Yes, the organisation’s responsibilities, numbers, issues, I think that’s where you’ve started. I feel like big brother’s little brother. The Direct Marketing Commission is an extension of the Direct Marketing Association. It is the regulatory arm of the Association; It is responsible for giving effect to the Association’s Code of Practice. It’s fundamentally responsible for the Code of Practice in relation to the Association’s members, and not the world at large.
That’s 1,000 companies, and that’s a heck of an association. It is 1,000 companies in the UK, so there is a boundary issue, and I have thoughts on that. Our principal responsibility is to deal with complaints, whether from the Association or from members or from the public. We deal with a small number in terms of lead complaints, and we know we deal with a large number in terms of impact, so we’re dealing with hundreds of complaints in a year, rather than thousands. We have, as all regulators do, a sort of triage arrangement or a proposition that if it’s a bilateral issue and it’s a dispute resolution matter, and it can be fixed by the member and the commercial partner or the member of the public they should do that, that’s their job and, they shouldn’t be in the membership if they can’t do that kind of thing. And what we should be looking for is those issues which are substantive in terms of behaviour, and potentially with an impact on the market at large. We take about ten adjudications a year and we find generally that nine out of ten things that come to us are minor in nature and can be resolved informally: because it’s ‘the deck chairs didn’t arrive’, or ‘I told Virgin to unsubscribe me and it didn’t work the first time, but it did work the second time’. But like many others, I think one in ten is the kind of ratio to expect between formal and informal cases. If we adjudicate we are largely in the business of using soft power rather than hard, we don’t impose fines, we can invite the association to take a firm and put them out of membership, suspend them or expel them, and we’ve done that three times in the last two years. And it’s largely a role revolved around either marketing or data, and I think John’s touched on the issue of a holistic approach, and I think it is very important to remember that a nuisance call is simply the product of data and some commercial value chain. And I say that, and I’ll come, if we get to it, to this issue of membership and what could be happening in this space with nuisance calls. By way of one example, and I cannot name individual companies here, we had a case where a couple of consumers had come to us with complaints, so I’ve put two or three people in my log. The company as a member had agreed that we could have access to the TPS data, the TPS data would tell us that there seemed to be over 1,000 complaints about the company in question, so they were decent enough to be open book with us. And we went through an investigation which was around the value chain of telemarketing, and the outcome, and I cross my fingers, because it’s recent, was a proposition that actually they hadn’t understood the law, or the changes in the way in which the law has been communicated by the ICO and the DMA, and needed to change procedures. This approach could get us to a place where perhaps 300 complaints a quarter can come down to about 15. I can get to a place with that case and with three others where you can reduce the complaint level by 50 to 90%. This works if you’re dealing with people who are willing to identify the problem and, and address it. There is a community that we’ve touched on, of people who are willing to identify a problem and address it. I think there is a lot more that could be done, and if you just take just these four companies with 1,000 plus complaints that could have been addressed or won’t resurface, then you can begin to see what, what that model can achieve.

Mike Crockart: Can I ask you, now when you’re saying you had a few complaints, TPS had 1,000 complaints, does that not raise the issue of how a consumer makes a complaint?
George Kidd: Yes.
Mike Crockart: This was raised with the other regulators this morning, should there not be a single portal for all complaints to go through, so everybody knows the true number of complaints? Because there seems to be a huge difference between the complaints, for example, received by a telecommunications company, then those that reach the regulator, and if they’re split between different regulators and getting lost in the process, that’s the big problem?
George Kidd: Yes, I think the answer’s “yes but no but yes”.
Mike Crockart: That’s a wonderful indistinct answer.
George Kidd: I’ve worked for the Cabinet Office on better regulation, I worked with the government on deregulation, I’ve been chief exec of a national regulatory organisation, and I sit on the board with two others and do this job. I’ve done regulation; it doesn’t mean I’m the guru at it. Consumers won’t go to one place; it’s not in the nature of the beast. I want to share it with TPS but...

Mike Crockart: But that’s one thing but you found 1,000 complaints there.

George Kidd: Yes.

Mike Crockart: Who’s to say that BT’s couldn’t use this call bureau?

George Kidd: Oh yes absolutely

Mike Crockart: Didn’t have another 1,000, TalkTalk have another 500, ICO have 10,000?

George Kidd: Absolutely and, and I think that will go as, you’ve got right to where I feel the, the issue is. One is it’s a fragmented approach, and not just a fragmented approach but a kind of siloed approach, particularly amongst statutory regulators, where Ofcom will turn around, with the best will in the world, and say if this isn’t a silent call as defined in my law, I’m stymied. “I can only do what the law gives me the power to do”. And that is the same as the Information Commissioner’s going to say that however appallingly fraudulent a, a piece of activity may be, they’re going to say, “well look, if it doesn’t meet the test we have in terms of a, a nuisance call as defined, then, then we can’t deal with it”. So, I think there is an issue about both, a kind of siloed approach versus a holistic approach to the problem as regulators, and an issue about the pooling of intelligence. I think we’ve been really bad at pooling that intelligence. But I think that’s different from saying, as Which or somebody might, if everybody just came to one portal we, the issue would be solved, quantified, if it was given to...

Mike Crockart: I’m not just saying it would be solved, but it may, get to the bottom of where the problem actually lies with the firm. What is the difficulty about transferring information? Is it people living in silos? Is it the Freedom of Information Act that doesn’t allow it? I mean what is the difficulty with information flowing between the various regulators? Because you know, if somebody starts down the wrong route, it doesn’t, when they go to you, press a button and it takes it to ICO, you’ve got some information, but can you do anything with it? And, and this is a difficulty that seems to me, with having different portals and different regulators. If it was brought together, then perhaps, once the information’s in the system, it would more likely to reach the appropriate person to deal with it.

George Kidd: I think we might both want to answer on this one. I’ll tell you where I’m at. The, the boring bit is that the stuff in statute about what can be shared and who it can be shared with. Currently Ofcom would say that within the Communications Act, it’s not a Freedom of Information matter, there is a limit to what the Telephone Preference Service can share with either party, and even though we are in the same building physically and in the same business, we’re a third party, and TPS cannot simply say to me these are the complaints we’ve had, help me, work with me on this. Now that’s a technical provision within the Communications Act, as interpreted.

Mike Crockart: Would a singular regulator deal with that problem, if we got rid of the plethora of four different regulators, had one single regulator?

George Kidd: Perhaps, in principle yes, but I do question whether one single regulator is the practical answer to, to the problem.

Alun Cairns: Can I come back to; can I ask you to give your interpretation then, of the restrictions, legislative restrictions in sharing information?

John Mitchison: Yeah, we at the Telephone Preference Service find it quite frustrating actually, we have a lot of information on companies that are obviously ignoring the legislation, and we’re very limited in what we can do with it. We can only share that information with Ofcom and the ICO. So as George said, I can’t sort of highlight a particular company that just, you know, comes up on our radar and say oh you know, you
might want to investigate this. And I know that, that’s a statute thing, it’s something in the Communications Act, I forget the actual passage.

Mike Crockart: But you seem to be suggesting that it was in the guidance or the interpretation of guidance. Now that presumably could be something that could be clarified tomorrow?

John Mitchison: I think no, the data that TPS can share with either the DMA or the DMC is restricted by the Communications Act. I can’t get round that in any way.

Alun Cairns: George mentioned earlier though that, in the example he quoted, that the company can give permission that information should be shared.

John Mitchison: That’s right, yes, if George was to become aware of a company that had a problem and contact them and say we want to investigate you, open up, give us permission to ask TPS for the number of complaints you’ve had, and that company said yes, then fine.

Alun Cairns: And it would be the details behind the complaints, or just the numbers?

John Mitchison: No, I could give them the details, but it would firstly involve George being aware of that organisation, or the DMC being aware of that organisation, and for that organisation to play ball.

Alun Cairns: Can I ask, George how many of your members, of the 1,000 members you talked about give permission for you to interrogate the data that the TPS hold?

George Kidd: It’s not a percentage of the 1,000. Out of deference to the DMA and its membership, I should make clear that by and large The TPS problem is not the result of actions by DMA members and their behaviour. The problem is other people in the value chain, if you look at the complaints at the TPS. It’s not populated by DMA members, which is one of the issues about coverage, if you like. I think we’ve asked members three times in living memory, and one said no and two said yes.

Alun Cairns: Tell me about the number of times, I want to try and work out the relationship between the two. How can I be confident that you’re regulating rather than being one of the defenders of your members?

George Kidd: That will go to our constitution or governance and our transparency, so I mean we have to report on our adjudications, we report on our complaints.

Alun Cairns: But you come from the members of the DMA?

George Kidd: Yes, but we’re not members of the DMA. The Commission has been separately appointed with a lay majority, I’m not in the direct marketing industry, I’m a non-exec who’s been brought in to do this as somebody with a regulatory and consumer protection background.

Alun Cairns: But what I’m trying to get at, you’re a member organisation, it’s affiliated to members

George Kidd: They’re all affiliated, yes.

Alun Cairns: It’s affiliated to a membership organisation?

George Kidd: Yes.

Alun Cairns: What confidence can we derive that you are independent in your own right and that it’s not?

George Kidd: I think I’m, one is the process which I’ve described, and governance and the other is it’s the proof of the pudding, look at what we’ve done and look at whether it makes a difference.

Alun Cairns: Have you ever done?

George Kidd: If we turn round three times in two years, and it didn’t happen in the eight years before that, and said to the DMA these people have got to go, they shouldn’t be in the membership. These actions have major commercial consequences for those companies if they were put out and the DMA.
Alun Cairns: How would the TPS describe that? Are you confident of, that they are regulators rather than champions?
John Mitchison: Yeah, I’m confident on that. All of the experience that I’ve had would lead me towards that, in fact you know, sometimes we, and the TPS would actually encourage the DMC to make these adjudications, because having an organisation in membership that could bring us into disrepute, bring the industry into disrepute or the association, is not good for anybody. So we would rather lose a member.
Mike Crockart: Yeah, you would encourage them but you can’t tell them, you can’t get them out?
John Mitchison: I can’t tell them to, because they are independent.
Mike Weir: You can’t get them out, because you’re painting quite a frustrating picture of you potentially knowing about 1,000 complaints, and then sitting on your hands and going go on, ask me about it, ask me about it, just ask me about that company, go on, it begins with C.
John Mitchison: Yeah, that is frustrating, but I mean the DMC also has other organisations to investigate which may not be telephone related so it’s not all that they do, I’m not constantly, you know, trying to slip them a note under the table and things.
George Kidd: If I may, can I make two points here which we may come on to, but I don’t want to lose because I think that they matter. One goes slightly to the question: what about just one regulator? I wasn’t defending regulators en masse, I worked with a guy who came up with the great phrase, ‘surely a quango can go?’, I’m not against better structure, and Ofcom, in a sense, was a product of that, although it’s interesting, if you look at the Ofcom structure, a few years on they’ve sort of inherited PhonepayPlus then created ADVOD and that contracted out broadcast advertising. Over a period of time you end up with a different plethora, rather than a single entity.
I see an issue if a single regulator is created by statute, which is what parliamentarians would or will kind of default to. I think it’s very hard to create statutory regulators that are in the, I hate the phrase, but the complaints factory business. State regulators are, and probably should be by nature, by structure, strategic. Ofcom, when it was set up, I remember Stephen Carter said ‘I’m not going to have a contact centre: I’m a strategic regulator, thinking about the big issues, about telecommunications and the structure, and BT and mobile and band-width and the spectrum, and I’m not going to be a factory for complaints.’ And, and it was structured that way, and the same way the Information Commissioner’s office, whilst they have to deal with complaints, it’s very much if a data protection registration, freedom of information, strategic intervention, the comments from Chris’ predecessor, about surveillance societies and sleepwalking into one. They’re not complaints factories. By and large statutory bodies, have statutory powers with due process to criminal sanctions, which don’t lend themselves to complaint handling, truth, be told. So there is an issue in that regard, if you go down that path, and what it does tie to with the boundary we have at the moment of DMA membership. In our evidence to the select committee, we saw a case here for what happens almost by default in every other space, which is a co regulatory approach. That is to say, taking what we do, as a small example of what the TPS could do, if they had the capacity and were allowed to, there’s no reason why an industry shouldn’t be taking a responsibility itself for addressing these complaints. Not alone and not instead of state bodies, individual or collective, but as a complement.
Mike Crockart: The danger with having just strategic regulators is we have lots of strategy but nothing practical ever happens with the consumer.
George Kidd: Exactly.
Mike Crockart: It’s finding that balance, and how we deal with consumer complaints which are escalating, and they come and speak to us about it en masse, and we’re trying to find a way of dealing with the problem. Now the problem is wider than your members, clearly there are a lot of people who are outside the law who are skating on thin ice, the breacher’s of the law who need to be dealt with who will not
probably be members of your association. So, it’s how we get there. And we’re all thinking of the strategy, but how do we implement that? Because it may have to be large criminal fines, it may have to be people out to prison as, well as dealing with the complaint from Mrs McGumphrey in Angus, who’s getting irritated at getting all these sudden calls or whatever.

George Kidd: Yes. My co regulator in point was, and I’ll give you an example which I think is a very good one, is to get beyond that it’s just the DMA and its membership. In Advertising Standards, there’s law, I mean principally the European Directive on misleading advertising. It was put into statute by UK regulation, but over a period of time and then formally, the ASA was recognised as, and I quote, the established means of dealing with complaints about advertising in the UK. They’re not statutory, they have no extensive powers to fine and bar, but they have a competence, a skill, ability and a capacity, the complaint factory point, to intervene at the first level when a problem arises with advertising. It’s a complement to what’s already there, whether it was the OFT back in the day, or the Trading Standards people now, or the Fraud Office, who could stand up and use the big fines and the big sticks when that was the right thing to do and that was all that was going to change behaviour. But by and large the ASA were able, because they were in that, I don’t like the phrase, complaints factory business, of dealing with the public and giving the assurance action was being taken. And I think that’s very important, because if you don’t deal with, now, hundreds of thousands of people who are complaining, however one aggregates up these numbers, hundreds of thousands of people, who are complaining. Two things happen; one is the legitimate industry saying “why should we worry about obeying the rules, because actually nobody’s getting pulled up for this…. I might as well join in because actually there’s no consequence for it”. And then on the public side of the fence, people are sitting there going well I complained and nothing’s happened here, you know, I might as well be shouting down a well. And that’s a lose: lose situation.

Mike Weir: That’s the situation.

George Kidd: So the capacity to deal with that volume beyond the boundaries of individual trade associations is, the conversation I’m starting to have with the ICO and Ofcom, which is to say what we need, potentially in this space, as a complement, not as a replacement to technology and all the other things, is that kind of ASA equivalent that would deal, at the first instance, with that mass of complaints and, and bring the people who are prepared to come into compliance into compliance. My suggestion is we can I get rid of 40-50% or more of these complaints by being proactive and responsive, rather than waiting for state intervention. It sends a message to the industry, it says I’d better behave, because actually I’ll be the next one to be named and shamed, and it sends out a message to the complainants that something’s being done about it. And it allows the statutory regulators to focus on the real mischief that John’s described. That is what we’ve been exploring and putting on the table. We’ve not heard anything but yes, we’d love to do it, and we see two challenges, I’m not going to say barriers. The one you touched on is, could it be us or could it be somebody else? It doesn’t matter who it is, but could the data be shared so the job can be done? And the second is, it’s going to cost money to do the job. Is the money in the system for the job to be done? It doesn’t have to come from the public purse, there’s already a mechanic in place, and so the question is, is it a complement to what’s already happening? We think it is. Should it go beyond any marketing body’s membership? It must.

Alun Cairns: OK, Can I ask what proportion of complaints that you deal with are from DMC members, or DMA members, which of them are these?

John Mitchison: I actually don’t have that figure, sadly. I did recently draw up a report of the number of complaints of all of the companies that we receive complaints from. And in the top 50 I think there were 4 DMA members in the top 50, so it’s, it’s not a huge amount, but if you, I can provide that information to you, I could update it and provide it to you.
Alun Cairns: That would certainly be helpful.

George Kidd: And I think that’ll be two in the next couple of months, because of the action taken.

Mike Weir: So, what proportion? I mean you say you’ve got 1,000 members, that’s out of how many companies that are actually engaged in direct marketing?

George Kidd: Who’s engaged in direct marketing? I think everybody in the country today would say they’re engaged in direct marketing and that kind of one to one relationship, so every supermarket, every bank, as a percentage of the industry at large it’s single digits. I mean as a percentage of the key practitioners, sometimes in the actual function of the telephone activity, and certainly in, in the processing of data there’s going to be a much more significant number.

John Mitchison: And I think that’s another thing that’s come up generally.

Mike Weir: Do DMA members tend to be bigger players, or?

George Kidd: I couldn’t, I’d like to get back with a reflected answer, rather than just pick a number out of the blue.

Mike Weir: So how do you get to the point where you cover a greater proportion of the marketplace?

George Kidd: I think it’s a simplistic answer, it’s not about the DMA membership, it’s about recognising there are multiple motivators, but I think this is principally about what goes to the Information Commissioner’s office. Then the Information Commissioner’s office can say we want a body, let’s just make it us, for the purpose of the conversation. A body which has a capacity to handle the complaints, do the triage and, where necessary, adjudicate. That body becomes the established means of dealing with complaints about nuisance calls. It doesn’t matter if it’s a DMA member or not. Anybody that’s complaining about, because the data can released, gets passed across to that body, and that industry funded based body, as the ASA does with advertising, tries, wherever it can, to bring resolution, get people to repent, change their practice, stop doing things that stimulate complaints. And also triage-out those who you just think these are crooks, where behaviour iss wilful, there’s no reckless, there’s no accident here, this is conscious wilful behaviour. And they ought to go back to the Information Commissioner, because that’s what the behaviour deserves.

Mike Weir: So basically what you’re saying is the level of complaints have got to such a level that the statutory regulators can’t deal with it effectively?

George Kidd: Yes.

Mike Weir: So we need the industry body to deal with the lower level stuff.

George Kidd: A co-regulatory partner, yes.

Mike Weir: Which isn’t being looked at at the moment?

George Kidd: Yes, it’s been talked about, it’s being looked at, but I want to make sure we’re looking at it creatively in terms of, I don’t just want, you know, “oh it’s all very difficult because of Section X, Y, Z of the Communications Act, if only it wasn’t there” you know.

Alun Cairns: So what are you saying then? Are you saying that at the moment that the ICO and Ofcom in particular have not got the capacity in order to respond in the way they should be?

George Kidd: I think I might answer a question with a question, because I don’t know what they said to you this morning.

John Mitchison: Yes, and we’ve talked about single regulators a lot, and I’ve thought about it, and if, and the obvious solution is to either give it to the ICO or, to Ofcom. But they receive enough complaints already, and they’re not solving the problem, by doing anything about the, the complaints they receive. So I can’t see that any one of the existing regulators would be able to solve the problem if we suddenly gave them all the complaints. You know, the ICO get all of the data that we collect, and they collect their own, and by their own admission they can only deal with the top offenders. On the graph of complaints against a company, there are a few companies that make a lot of calls
and generate a lot of complaints, but at the other end of the graph there’s an awful lot of companies that are clearly ignoring the legislation, but not registering huge volumes of complaints. But that probably accounts for more than half of the total number of complaints, so while they can concentrate on some big cases, which they’ll say themselves, probably take 12 months from the start of the investigation to actually getting anybody into court, there’s all these other little ones that could be dealt with in a different way.

George Kidd: Just if I may, on numbers, and they are ballpark, and they’re my calculations, nobody else’s, PhonepayPlus have one formal adjudication for about every 15 to 20 complaints. The ASA has one for every seven or eight. They’re overly responsive, in my opinion, to individual complaints but their average is “one to a single digit”. At the Direct Marketing Commission we have 300-400 complainants and run around 10 cases annually: a ratio of 1:30. By their own admission, and I don’t mean that critically, you know, the ICO talk about 200,000 complaints to their new contact, us, line. If they’ve had 3 or 4 formal cases, and they’ve talked about having 10 in the pipeline, you’re talking about 1 to every 20,000, and I struggle with what incrementally these bodies alone can do to deal with those numbers. From a state body point of view, Ofcom’s had their budget cut by 25% in the last 2 years; I don’t see the ICO getting more money, but more responsibilities. So you know, we need a, a partnership fix to this

Mike Weir: What actually is in the 20,000 that they’re not looking at? Because, much of the evidence that we’ve had about the tail end of the curve is the companies that in actual fact aren’t that bothered about getting caught at all, because they’re based using SIMS on mobiles and making calls, and then move on, set up another company, move on. Now that’s not really going to be, I mean that is the sort of companies that you want the ICO deal with, surely?

George Kidd: Yes it is.

John Mitchison: But not all of those companies down that end getting small numbers of complaints will be like that, some of them will be

Mike Weir: Well that’s my question, what does the 200,000 complaints that the ICO are not looking at, how would you read out, you know, you talked about 50 to 90% being able to be weeded out by an industry body. Well how would it do that?

George Kidd: You don’t know, because it’s a huge barrel of stuff you haven’t looked at. There aren’t simple answers. Partly, and it was in, the very first remarks, it’s about the value chain and data rather than about the actual call. So where do these people get my number? Why are they phoning me? It’s a survey, well there’s not a survey so they shouldn’t be doing it to start with! They say that they’re a named research outfit, but actually they’re not, they’re called Joe Shmoe. They sell the information on to another company in the data business who makes the call again saying they’re a consumer helpline or whatever and they now want to know have you been mis sold PPI? You say yes and, and you know, the economics of the chain starts to kick in, because now they can connect you straight through to a legal centre or a claims advisory business. So, partly it’s about data and the value chain. I’ve had two cases which are identical to that with companies saying they couldn’t and shouldn’t have relied on a first supplier telling me that all these people had opted in. They never were, and the firms should have known better. And, you do get reform, because whilst some are ‘fly by nights’, the majority of your 200,000, are serious businesses. They may not be in sectors you admire greatly, claims advisory and that kind of thing but, but they’re not going to be gone tomorrow and they won’t just throw their SIMS in the dustbin, they want to be around and they want to be doing business. So it’s why I think the majority are capable of engagement and capable of influence and capable of the exertion of some sort of soft power. I don’t think a co regulatory body needs to have big sticks.

Alun Cairns: So why aren’t these members of your organisations now, then?

George Kidd: Who knows!!
Alun Cairns: Because if they’ve got the will, as you say, I would have thought that it would be in their interests to join the DMA and then become part of you.
George Kidd: Well I would hope they would, but it’s not part of “me”. I’m the Commissioner not the DMA.
Alun Cairns: Well OK, let’s say on the changed law?
George Kidd: I mean there are hundreds of reasons why people join or don’t join clubs. A lot of people are in the business of saying, and taking PPI, for example, or personal injury, this is the business I’m in; I’m in the business of personal injury. Direct marketing is a tool towards pursuing my business, which is selling personal injury advice or insurance. So that is direct marketing as an instrument. The people who are in the direct marketing business per se, who are in the data business, going to the question I couldn’t put a number on, I would say a far, far higher percentage are in DMA membership because that’s, their business: collecting data, processing data, call finding, grading it, marketing it. So I think the people who are in data as a business and direct marketing as a business are going to be most probably in membership, the people who are using direct marketing will, will see membership t as an option rather than a necessity.
John Mitchison: A lot of the companies that we can never really trace down are organisations which are just collecting data. If you contacted the companies that are actually using the data and say, you know, the data you used didn’t have the correct permissions, and maybe they do try and turn things around and clean up their act, that will have a downstream effect on the ones that are collecting data. So we might not be able to find out who those organisations are, because they withhold their information, they withhold their CLI. But if all the other organisations that you speak to start being more careful about where they buy their data, those data collection organisations are nationally going to become smaller and smaller.
George Kidd: It’s a cliché, I’m guilty of them, but if today in farming you can follow a steak from the plate back to the field, I don’t think it’s acceptable to say to companies who are making 3 or 4 million calls a year, where did you get your data? And get the answer “Oh I can’t remember” or “oh we went to a bar and bought it off a bloke”.
Alun Cairns: Turning to TPS, can you talk me through the complaint structure? You get a complaint; can you tell me exactly what happens, how you interrogate it? How you identify the source, who you liaise with and what action you take ultimately?
John Mitchison: Yes, OK. A consumer makes a complaint to us, however they do that. They give us a certain amount of information; we log that in our database. We then have to try and trace the company. If all we’ve got is a company name, then
Alun Cairns: So would you expect caller ID, normally?
John Mitchison: It’s useful; we can’t expect it, because it’s sometimes withheld when we talk about rogue companies working on the edge of the industry. But if we’ve got a company name and a telephone number, that’s normally enough to be able to pretty much narrow it down, and we will send that complaint to that organisation. That organisation might then respond and say no, this wasn’t us, we don’t make outbound calls or something like that, and we might try again. But we do a little bit of research online, make a few telephone calls and try and track down the, the company making the calls. Now we’ve been doing TPS for long enough now that we know a lot of the companies and we recognise a lot of the names that are, that are coming up. We have a good database that we can work on when we’re given information from consumers. So once we’re pretty confident about where the complaint should go, we send that complaint to that organisation, and again we have contact details for the people who are either in the compliance teams, or the ones that actually handle the complaints, and then the data. They’ll be sent a form saying TPS has received a complaint from this person, you called them on this day, and maybe some other information in there as well. And they’ll be asked to respond as to why they contacted that person, and we also ask them to add that
telephone number to their own internal do not call list. So whatever happens, whatever the result is of the investigation, that person won’t be called again. Sometimes we get responses from people, sometimes they get back to us and give us all the details, in some cases organisations don’t correspond with us at all, or they might occasionally. They’ve got two weeks to come back to us and give us a good reason. After that two week period we transfer all of the data to the Information Commissioner. So then the Information Commissioner has got a full list of everybody that’s given us a complaint, the company that made the complaint to them, contact details for that company and the response that was given as to why the call was made. So they have pretty much everything that we’ve collected, and then they add that to their Investigations Department.

**Alun Cairns:** What about the silent calls, for example, would you receive a complaint about those?

**John Mitchison:** It’s possible, but at the point at which it’s identified as a silent call, which is pretty much up front, we’ll ask somebody what type of call they’re complaining about. If it says a silent call we’ll tell them that that’s where our remit ends and that they need to go to Ofcom directly.

**Alun Cairns:** So you don’t take the details in the same way as you do for the calls that you pass on to the ICO?

**John Mitchison:** That’s right, yes.

**Alun Cairns:** What, you don’t pass on?

**John Mitchison:** We don’t take any details, we just direct them on. And this is partly because of the contract that we from Ofcom. We used to collect more information under previous contracts, where our remit was a little bit wider, but recently, in the latest contract that we have from Ofcom, things have been tightened up, and so we’re only contracted to deal with the calls specifically related to TPS. We give advice on the other stuff to help people out, but we don’t collect the data.

**Alun Cairns:** Can I drill down then, to that complaint, is it typical that the company, the callers are saying well we weren’t selling, we were only surveying? And the caller will say they we’re trying to sell me whatever it might be? Is that a typical, because it would seem to me that that’s where we would get lots of the difference of opinions?

**John Mitchison:** Yes, in the case of a survey call, if the consumer said it was a survey, a sales call in the form of a survey, the company responding, if they did respond, they couldn’t legitimately say it was a survey because they’re not a market research organisation.

**Alun Cairns:** No I understand

**John Mitchison:** That wouldn’t fly.

**Alun Cairns:** I’m working on the basis the more likely typical situation, surely, would be that the complainant to you would say I’ve just been called and they’ve tried to sell me insurance?

**John Mitchison:** Right.

**Alun Cairns:** You then investigate it, and the calling company says no, we weren’t selling them insurance, we were just surveying their insurance needs, or we were just enquiring about

**John Mitchison:** OK.

**Alun Cairns:** Whatever it might be in order to get round the rules, is that a typical sort of complaint?

**John Mitchison:** No, a company wouldn’t normally respond with that kind of, with that kind of response. They would normally say to us that they had permission to call that person, or they didn’t know they were on TPS, or it was some kind of technical error, or something along those lines.

**Mike Weir:** A rogue employee?

**John Mitchison:** A rogue employee, maybe.

**Mike Weir:** Because we’ve heard that a few times.
John Mitchison: Have you?
Mike Weir: Yes, every time that they came up with a reason like TalkTalk had been fined, or one of the mobile operators had had some issues around data protection.
John Mitchison: Really?
Mike Weir: Both were rogue employees.
John Mitchison: All right, yes.
Mike Crockart: If a company comes back and says to you that we had permission to phone that person, does anyone investigate the nature of that permission?
John Mitchison: Well at that point our remit of investigation has ended, and that information goes to the ICO. When the ICO started investigating TPS complaints seriously, when they got their new powers at the beginning of 2012, one of the first things they kept coming back to us with was why are people complaining? All these companies say that they had permission to call these people. And it was almost like they didn’t realise, that’s of course what they’re going to say that, aren’t they?
Mike Weir: They would, wouldn’t they?
John Mitchison: But more recently they’ve started investigating this a lot, in a lot more detail, and they’ve started expecting companies to be responsible for the data that they collect. It’s no longer enough for a company to say ‘I bought that data and the person I bought it off told me that those people had given permission for a call’.
Alun Cairns: And that was the level of defence that was given previously?
John Mitchison: Yes, I don’t know precisely how the Investigations Department works at the ICO, but that’s how it came across to me.
Mike Crockart: I mean maybe a question for you, if your members are buying data from somebody, surely seems a ridiculous situation if you get a bunch of data, to say that’s all right, we’ve got all their permissions. And do they check these permissions? Can they check these permissions? It seems everything is taken on trust, and there’s no way of actually finding out whether it was a real permission.
George Kidd: I think that there’s a combination of trust and naiveté and, and a bit like the old American policy about gays in the military, you don’t ask, they don’t tell. I mean if I don’t ask you or tell people where you got the data, there’s an element of I won’t look if you won’t tell me, potentially there. The DMA Code, which we hang on this clause very significantly saying you’re responsible for your suppliers’ actions. There’s none of this it’s nothing to do with you, you bought it in good faith, you did know what you were doing. If you buy it and it’s, pardon my French, shonky, you chose that supplier of shonky data so they can’t, it’s not a defence in our Code just to say we didn’t know. We’ve gone further with some companies, but we haven’t had to deal with many member companies, I mean I keep coming back to that because that’s not what the membership profiles like. But to say those of you who are in the core business of data, haven’t got this excuse, you know, I didn’t know, I haven’t checked. Please, this is the business you’re in, so I think we’re pretty intolerant of people saying we just didn’t get it. You’re in this business, you know, if you’re an undertaker you kind of know what to do with the, the service you’re providing, you can’t not quite understand the business you’re in. So you’re responsible for your suppliers, and when we’ve called them up, we’ve had to change our supplier relationships when, on that company I alluded to went from 300 complaints a quarter to 17, now, we TPS check everything we get from our suppliers. We don’t assume that it’s OK; we don’t take the promise that it’s all been cleansed and opted in, as written.
Mike Crockart: But there is a difficulty here that the defence is often you gave your permission, because you may have bought something online, for example, and ticked a box. You may also at the same time be registered with TPS, so there’s a contradiction there, you don’t want these calls, but you haven’t un-ticked the box, perhaps, erroneously when you were buying something, that leaves an opening for
somebody to phone you. How do we get round this? Should it be the case, if you’re on TPS these boxes are, are irrelevant if you’re on TPS, you don’t need the box?

John Mitchison: If you genuinely don’t mind somebody getting in touch with you, let’s say you sign up for a mobile phone contract and you don’t mind if the provider gives you a call...

Mike Crockart: Yes, but there’s, there’s lots of people who don’t understand these boxes, ignore these boxes, or the box is already ticked and they don’t un-tick them.

John Mitchison: But it should only be that one company that you’re dealing with.

Mike Weir: Or trusted third parties.

Mike Crockart: On the box, the box that said can we pass it on to our....

John Mitchison: The trusted third party thing doesn’t override TPS.

George Kidd: You’re right.

John Mitchison: So if you’re registered on TPS, so let’s say you’re filling out a form with, with your mobile provider, and there are two boxes at the bottom and one of them says do you mind if we give you a call? And the other one says do you mind if we pass your details to trusted third parties? If you’re registered on TPS and you tick the trusted third parties box, those third parties still have to screen against TPS, and that’s in the

George Kidd: Quite clear.

John Mitchison: In the legislation. Only named companies are allowed to give you a call overriding TPS.

George Kidd: And that goes to my example where I had people in the industry saying they simply didn’t realise that.

Alun Cairns: Can I then clarify that if I bought an insurance policy two months ago and I forgot to tick the box or ticked the box, because it’s often a double negative, we generally seem to find. Do not tick the box if you do not want to and then you really don’t know what it means. I’ve done that in error, and I register for TPS today. The permission will still stand, doesn’t it?

John Mitchison: Well

Alun Cairns: To that other company? So the insurance company where I’ve ticked the box to say I’ll allow it?

John Mitchison: To the single company that you dealt with

Alun Cairns: Yes.

John Mitchison: They would be allowed to give you a call whether you were registered on TPS or not, because you gave your permission to that one company, that named company. Trusted third parties, after 28 days, because you have to allow 28 days for TPS to become effective, won’t be allowed to call you.

Alun Cairns: Right, OK. Do you think it’s, this is probably your area, Mike, but let me ask the question and then you can jump in. Do you think it’s reasonable that if a company calls, say one of your members calls, and they ask the person receiving the call responds by saying I’m sorry, I’m TPS registered, and they say well I’m sorry, I’ve got your permission to call, do you think it’s reasonable for that company to be able to refer back to which form or when that permission was given?

John Mitchison: Yes

Alun Cairns: But that isn’t the case now?

John Mitchison: I’m not sure

George Kidd: Well it would be a proper defence, I mean in the event that it went further.

Alun Cairns: Yes, but that’s in the event of a complaint, but I mean at that time, because it would filter out lots of complaints. It’s when you bought that car break down policy on the 1st July.

George Kidd: Well I have to say

Alun Cairns: That that’s where my permission is derived from?
John Mitchison:  It wouldn’t be, no, I don’t think that every company can do that making calls, I don’t think every company can do that at the moment, but it’s not impossible.
Mike Weir:  Well, at present no, but surely they should, they should be able to back up?
John Mitchison:  They should be able to; it would certainly be possible for them to do it.
Mike Weir:  Why they are saying they have permission to, to phone you?
John Mitchison:  And there’s actually an example of one organisation that we were working with quite a lot, because they were desperate to reduce the number of complaints that they received. And a lot of people were making complaints when they had actually genuinely given permission, but I think they’d just forgotten, or they just didn’t realise. So now that organisation, when they phone up they say hello, we are, and state the company name, and they say a while ago when you filled in a form you said it wouldn’t be a problem if we gave you a call, so I was just giving you a call about X and by giving that information up front and making the consumer know where they gave their permission, without even having to say where did you get my details? They’ve reduced the instances of their complaints hugely.
Mike Crockart:  But if we go back one step, why should it be impossible? If the only people who can phone you are ones you’ve given permission to, they presume they’re working off their computer screens, surely it’s not beyond the wit of these companies that have got Mike Weir’s telephone numbers, his address, his age, why he’d want a call and at the bottom you’re able to do this because he’s ticked the form or whatever. It seems straightforward to me.
John Mitchison:  It’s not impossible, and I know that there are organisations that do it; I just don’t think that all of them do it at the moment, because they don’t think it’s necessary, or it might add certain complications to their systems.
Mike Weir:  But we’re trying to develop a perfect world here where we’ve cut down the incidence of nuisance calls to vulnerable people
John Mitchison:  Then by putting that in, I wouldn’t complain about that.
George Kidd:  Yeah, in a perfect world yes, and you said it’s interesting the first example where technology is part of the fix, you know, rather than another act or another regulator, or whatever it is. It’s actually about empowering the consumer. So the point I’m making, is if you’re a caller, you feel more capable of making those judgements. I remember when I used to work with the DMA three or four years ago about the complaint levels and we’d work out the long tail. I don’t know all the names at the top of the complainant list today but T-Mobile, Orange, BT, British Gas, big insurance companies, they’re not there on those lists in the same way now because of that very thing. They value the customer relationship and the value of the customer, more than they value making dodgy calls.
Alun Cairns:  In view of that, we’re looking to reorganise it, we’ve got a Private Members Bill, a Ten Minute Rule Bill and, by the sound of it, a willing Minister, to try to introduce changes, would it be onerous on the DMA’s members that, so that for them to record that data of when permission was retained on the database?
George Kidd:  I suppose in principle, no.
Mike Weir:  But really what we’re talking about is information that’s being sold, because that information then has to be sold with that attached to it, as to where the information came from.
George Kidd:  And that goes to my steak on a plate, point. . You should be able to then tag it right the way through, and say “I know this came with these permissions”, yes.
Mike Crockart:  Would it be a problem then for a sunset clause, so to speak, on the permission? So if you bought a policy now instead of two months ago, or if you bought it ten years ago, why should that, that, the permission still be granted?
George Kidd: I don’t know. If it was inactive, there’s a point beyond which you think, well you can’t just keep phoning me out of the blue.

John Mitchison: If, let’s say in the case of your insurance, if that company gave you a call in two months, and you said no, I’m not interested, and then they called you again the next month and again the next month, obviously that’s no good. And at any point you could ask that organisation to remove you, or add you to their own do not call list, because you’re already on TPS.

George Kidd: That’s how you’d do it.

John Mitchison: And that should stop it. But if you’re suggesting that you gave your permission and then suddenly ten years later, out of the blue, you got a call.

Mike Weir: Well no, not necessarily, but insurance is a perfect example, they may not phone up in two months, but after five years, say, maybe they’ll try and increase his insurance, he’s five years older, or he’s got another kid or whatever, you might want, you know, that’s the sort of thing.

George Kidd: I mean, this is a personal view, not, not the DMC’s, but I think in principle yes and in practice no. I think that yes, you’re trying to create a perfect world, but you’re trying to over engineer the world. I’ve moved it now, but I had a very nice pension with Sun Life, I didn’t look at it for ten years, I was young, but they then need to phone me about some changes. I do not want to find their permission to do so has lapsed: I want the call. I lost all my BA Air Miles once because I had been inactive and they didn’t speak to me. I think you have to worry about over engineering a solution and having the unintended consequence in order to deal with the phone call you don’t want.

Mike Crockart: Yeah, in one of the things that I’ve got in my Private Members Bill is it’s very much talking about the expiry date of consent. But it’s the expiry date on consent to third party marketing, and to be honest I’m wondering whether it’s actually required there, because it’s bolting and, it’s double bolted because ultimately, if somebody’s registered on TPS then that’s third party.

John Mitchison: They shouldn’t get that call.

Mike Crockart: It doesn’t matter whether they give permission to third party marketing a year, ten years or two weeks ago, they still shouldn’t be phoned.

John Mitchison: Yes.

George Kidd: I think one of the questions with, which we have touched on that’s come up in other places, with technology as an aid, is technology also going to be a challenge in the other direction? If you use IP telephony calls are virtually free to make, and you’ve got the dialler technology. If mobile calls, the price of making or receiving calls to mobiles changes such that the economics make that look an attractive proposition, things, things shift again and the TPS registration figures for mobiles are growing, I think quite significantly, but they’re very low relative to a landline number.

Mike Crockart: Can I just do one really technical question, which is probably to TPS? Because this starting and expiry date for 3rd party, we were trying to deal with vague wording in the PECR, which dealt with consent being for the time being.

John Mitchison: Yes. I think in PECR they’re talking about the named consent. So for example, in the case of insurance, maybe you’re shopping around for insurance, you might give permission for one or two companies to give you a call. You go with the other company, 12 months later the one that you didn’t give your business to gives you a call and say, “oh we know you were looking for insurance 12 months ago, it’s probably due for renewal, do you want me to send you another quote?” That’s a year down the line, is that legitimate? It seems like it might be. If they then give you a call two years down the line again. During those calls you could say I don’t want to be called any more, and that would put an end to it.

Mike Crockart: The simple way round that is for them, at the time at which they’re quoting the first time round and they don’t get the business, for them to ask “may we phone you in a year?”
John Mitchison: Well exactly, and you can say yes or no.

Mike Weir: Because they need permission from you.

John Mitchison: There’s a simple get out there.

George Kidd: Which they should be able to act on, it’s a good point.

John Mitchison: Yeah. So I can’t see where the real value in the, specifically the expiry on the consent is, is to deal with calls that, where people are ignoring TPS.

Mike Crockart: They shouldn’t be making them anyway.

John Mitchison: So if we make it clear the rules on TPS, I don’t think you would really need that.

Mike Crockart: OK.

Alun Cairns: So why then would an organisation seek to encourage you with a pre ticked box to pass the information on to third party holders? I’m working on the presumption that they’re hoping you’re not TPS, and then you can sell that information on to carefully selected partners.

George Kidd: Yes, because they should have the technology.....

John Mitchison: ....To screen it and see whether they’re TPS.

George Kidd: Yes whether they’re TPS, and then see where it goes to after that.

John Mitchison: Yes, that’s true. In the ideal world, those companies would screen against TPS before making calls. There are organisations where they may be intentionally overlooking that third party consent rule, but that would be the

Alun Cairns: What evidence have we got for that? Because this is quite fundamental really, I think. I hadn’t appreciated that TPS overrides any third party passing on.

John Mitchison: Conversations with the ICO about the response to people’s complaints would suggest that there are companies selling on that data, not screening against TPS and saying well you gave your permission for third parties to give you a call. Consumers may not be fully aware of the details, so that’s how I believe that it’s happening, from conversations with the ICO.

Alun Cairns: But one possible way forward is identifying the source of the information, you may well clean that up? The source of when the permission was given, I mean.

John Mitchison: Yeah, but it all comes back to the companies actually making the call being responsible for their data. If they buy data from a company that’s given them the people that tick third parties, they should know that they need to screen that against TPS before, before calling.

John Mitchison: So if you make the end user responsible, it automatically starts to clean up.

George Kidd: The other thing that people need to look at goes to the collective, the holistic point, I don’t know what, I should, but I don’t know what the current profile of the, the top 15 or whatever on that TPS/ICO list, is people are doing it for monetary reasons, there’s a bell curve if you’re a good regulator, you’ve got to look at the nature of the market and what’s the dynamic of the market. If it’s rammed full of people who are trying to sell PPI claims, because that’s the business, and that business model started two years ago and will end in a year’s time, then you can begin to profile what it looks like and what behaviours that assessment tells you to expect. And if that’s right, then as a regulator or a set of regulators you’ve got to have that proportionate response. I don’t know if that makes sense. I’ll give you an example. When I was running the premium rate content regulator, we had mobile content, ringtones and logos, the Crazy Frog ringtone... you never forget it. You know that, as a market, went from zero pounds to a hundred million pounds a year in a year, it just suddenly existed as a market, and it disappeared just as quickly two years later. And what we found as a regulator, and it took me too long to work out, was in the beginning it was chaos and at the end it was chaos, because everybody at the back end was just slashing and burning - trying to make some money on the way out, because they could see the market was declining. Everybody on the way in
wanted a piece of the action, and weren’t sitting there looking at what the ICO rules were, or what the Ministry of Justice ordered and required them to do. They just had to get their share of the action, because this was the time to do it. So, regulators need to have that skill in looking at things to see the big picture. You can’t just look and say well you’ve made 17 calls and that’s one over the average, therefore I reprimand you. You’ve got to think “what’s the dynamic here, and how shall we deal with it?” And that goes to whether there’s one regulator or a partnership. We ought to be working smart, we ought to be working smart together.

Mike Crockart: All right. You mentioned the industry should take ownership of the problem, now.
George Kidd: Not just industry, it should complement, yes, sure.
Mike Weir: Which industry do you mean? Do you say that it’s the direct marketing industries issue, or is it telecoms industries issue? Because yesterday, we had mobile operators, BT and TalkTalk. We had TalkTalk saying, we understand that somebody’s abusing it, and then we will work out a network level discipline. In exactly the same way, mobile operators have taken the view that they can identify that, you know, through their 7726 spam SMS that a particular SIM is causing problems, it’s not a contract one, it’s a pay as you go one, and they will stop it. So they regard it as their problem, and you know, act to try to deal with it. BT made the argument that working in a different regulatory framework that effectively they were just the pipework. And it wasn’t up to them what was put in one end and came out the other. But they just had to, to pass it through, which was very much saying this is a direct marketing association’s problem. So which industry are we talking about, and do you think?
George Kidd: I think at the start of the question I was more confident in my answer than I am at the end.

Laughter
Mike Weir: I should have stopped a way back in the day.
George Kidd: Yes. I got pulled up at the Select Committee, when I suggested the answer to a question was “All of the above”. And when I say it was all of the above, I mean there’s no reason why a Telco shouldn’t protect their customers from nuisance, and there’s every reason, from a customer retention and value point of view why they should. BT has their own history or position on these things. I think I started out by saying yes, on the basis, but it may be wrong, but going to the numbers, that the substantive volume of, of complaints is about nuisance calls and it’s anchored in PECR and the law, it’s anchored in the ICO and it’s anchored in the Telephone Preference Service. Therefore that the proximity, and particular skill in the game, I’m probably going to go this far in speaking (on behalf of the DMA) for the direct marketing industry, is to say “we want this solved”. I mean as an industry they don’t want a situation in which there’s no public trust in direct marketing, and when the public are choosing to opt out rather than opt into things. So they don’t want standards slipping. That’s the reason that they created the Association and the Code of Practice. So I think there’s a natural relationship between the DMA and its regulatory arm and the TPS. But my hesitation was precisely because the Telco’s have exactly the same skin in the game.

Alun Cairns: Right, before we come to TPS for a response, let me play devil’s advocate. If I’m an insurance broker, and I’m ringing customers trying to sell them an insurance policy, and I might be pushing my luck in certain areas, should it be the FCA that looks after me or the, that I pursue it through, or should it be the, the TPS or the industry that we’re talking about?
George Kidd: I think we, with or without one regulator, I think it’s at the TPS end, because the next week it’s somebody from Kia trying to sell you a new car and the week after that it’s somebody trying to sell you an insurance policy, and the week after that it’s do you want home deliveries from Tesco? So and I think to say to all of the
individual industries, you’re going to have to each have your own scheme and approach to these things, doesn’t work. But I think you could say to all those industries, if you’re credible as trade bodies and you have trade bodies, none of you are in the business of hacking off your customers. You wouldn’t want to do it.

John Mitchison: There is an example of where we have worked with a particular other regulator; the MoJ for example, put the DMA code of practice in its guidance.

George Kidd: Yes, it was in the regulations, in the licence.

John Mitchison: In their licence conditions, that’s it.

Mike Weir: For claims management?

John Mitchison: Yes, so if you want a claims management licence, one of the conditions is you have to abide by the DMA’s Code of Practice. You don’t have to be a DMA member, but you have to be measurable by those standards.

George Kidd: That stops that co-regulatory stretch.

John Mitchison: The MOJ did that because it was a particular area of focus for nuisance calls with PPI and with accident claims as well. So if there was one particular industry then it might be sensible to approach them in that way. Hence the texts because it doesn’t cover texts.

George Kidd: Yes not texting.

George Kidd: But it’s a different, it’s an option we assume.

John Mitchison: Exactly, but hence we get the texts, wherever they are. Well even that would be covered by the DMA Code of Practice.

George Kidd: Whether you, there should be in an explanation page that says you opted in for those?

Mike Crockart: So marketing texts would be covered?

John Mitchison: Yes, the DMA Code of Practice would. Well I mean it, it’s the law, it doesn’t really have to be in any code, but if you’re receiving a text that you haven’t expressly given permission for a company to send you, then that’s breaking the law.

George Kidd: That’s an interesting example on the plus and minus side of my argument, which would be that’s exactly the, the Jamster Crazy Frog situation where everybody’s fighting and scrapping, and therefore you worry about their behaviours, and didn’t worry about the market share first, and the Ministry of Justice, and the TPS, and the DMC second, by a distance. But I, don’t think that means that kind of co-regulatory approach doesn’t work, I think you could argue that it’s actually all the more important if you have that industry barrier in front of the state body. When the industry body you can do something in, let’s say two months...when it might take a statutory body a year. After those two months I can actually start to talk about their reputation and their status and their behaviour in a very public way - subject to the outcome of the case. At the same time, if they choose to say we really don’t care what you do to us, and then we can send it up to the Ministry of Justice on, nearly on a plate.

Mike Crockart: But my question was, at that point, instead of waiting for the year to send it up to the Ministry of Justice, to get it dealt with by, a regulator, that surely is when the network has to be able to step in.

George Kidd: Of course.

Mike Crockart: Because you know, you’ve identified there are breaches going on, it’s going through a network, the network therefore has the ability to stop it.

George Kidd: To say I’m not taking, I’m not letting calls in from this number.

Mike Crockart: That’s why I don’t accept BT’s premise that “we’re a pipework”.

Mike Weir: You know, “we can’t stop the stuff that’s going through”.

George Kidd: I think the problem is similar to the terms of the E-Commerce Directive in that sense, that once you have knowledge you have a responsibility. But as long as you can say ‘well we’re a conduit, a pipe’. I can understand BT, who are neck deep in lawyers, saying you may very well have opted in to a call, you may want it and you may have whiplash, and you may have a valid claim, and now I’m standing in the way of a man receiving a call he wanted to receive. It’s not what we (BT) were set up to do.
John Mitchison: There are things that the operators can do, BT and others, to assist the regulators. Because at the moment, if you get a call where there’s no CLI presented, you’re effectively stuck, there’s nothing you can do, that’s tough. Whereas I know that operators, particularly BT, can actually do more to track down numbers and to trace the organisations making calls. And also seeing reports where they can watch the traffic coming in over their network, and they can see the calls coming in from overseas, which have obviously spoof CLIs. So I think that it’s not right for them to wash their hands of it completely. I don’t think they should be the ones regulating it, but they should be obliged to help out in certain situations by tracing calls and possibly blocking certain calls as well. When spam emails became a problem, soon after email was set up, nobody was trying to track down the people sending that spam, they looked at the operators like Microsoft and Yahoo, to put measures in place to stop that spam.

George Kidd: Can I just stay with that one for a second, for a quick point? It goes to the Advertising Standards Association model, and potentially the, the hidden strings of the soft power in non-statutory means. In theory, and sometimes in practice, in the event that the ASA says this is advertising behaviour is unacceptable the ASA can turn to its sponsors for action. They can turn to publishers and broadcasters, and say “actually, we just think that these people have been at it, and in an unconscionable way. We would love it if you could find it in your heart not to find any advertising space for them, or not allow them to take a Google ad” It’s the leverage; it’s the consequence of the misbehaviour. If, and it’s a big if, if we were to adjudicate in that sort of way, in that self-regulatory, co-regulatory fashion, and that message goes back to the networks, and they say “You know what…I don’t now need to dance on the head of a pin about this, I’ve had an independent lay body with authority tell me this isn’t on. I’m now going to track those numbers and I’m not having them”. You potentially that you start to get that same leverage based on regulatory skills and capabilities the state bodies can’t deploy.

Alun Cairns: CLI, caller ID, how important is that to you, in terms of tracing the complaints and following up and taking action?

John Mitchison: In tracing complaints the company name is more important, I have to say, but the, the next thing is the CLI, because obviously it’s not all of them, not all of them will present their company name at the outset. Any legitimate company would, so only bogus ones. Illegitimate companies are likely to either withhold their CLI or, or spoof it, present a, a false one. The DMA Code of Practice says that anybody making an outbound sales call needs to present a valid CLI, and I don’t see why, you know, that that shouldn’t be across the board. At the moment the legislation only says the CLI needs to be presented if you’re using an automated dialler, but that seems to be meaningless, it should account for all sales calls.

Alun Cairns: What about a network operator’s charging for CLIs, what’s your view on that?

John Mitchison: I don’t know why they would, or do you mean.....

Laughter

Alun Cairns: Carging the public, that’s right.

John Mitchison: Oh, you mean, charging somebody to see a CLI on their phone? Oh, I see what you mean, OK.

George Kidd: Not helpful.

John Mitchison: I mean I’m sure it’s a technicality. I mean the, the information is there, I’m sure it doesn’t actually cost

Mike Weir: Well it’s a £1.75 a month technicality.

John Mitchison: But you know what I mean. The fact that the phone isn’t showing it is a technicality, if they switch it on it’s not actually costing them any money, is it? That’s because they’re still operating on copper wire, isn’t it?

John Mitchison: Then I don’t know, I’m not sure I’m sort of in a position to make a value judgement.
Mike Weir: No, but for you, in a word?
John Mitchison: It is very helpful to us, and it’s certainly helpful to, to Ofcom with silent calls, of course, because they, they have no other information to go on.
Alun Cairns: Can we detect a cynicism as well, in terms of the charging structure?
John Mitchison: Yes.
Alun Cairns: Do you have anything to add?
George Kidd: No, I’m in the investigation regulation business, the more evidence, the better. And having suggested that, I don’t think we can cure the world, but we can make a contribution here. I don’t underestimate the challenge, I think, of the work we did with the DMA and the profile of people that were involved in at the time and the much smaller numbers involved. It was very different from the profile of the people who are appearing now. But, if technology helps the people who are sometimes up to mischief, it also helps the people who are trying to prevent them
John Mitchison: And for the record its worth noting that Virgin also charges, rather than just picking on one organisation.
Mike Weir: Yes, we don’t just pick on BT.
Mike Weir: Yes, Ofcom also gave evidence to the fact that they’re conducting a review of TPS. Do you have any advice, recommendations for them as to extra powers, or different processes, anything that would make your life easier?
John Mitchison: The problem that we have with Ofcom is that we operate a contract, a contract which is defined by the law which was set down in 1999 when things were a little bit different, so even if we wanted to do anything different, and we’ve often talked to Ofcom about expanding our remit a little bit, or helping out in a different way, or sharing data with other people, we’re closed down by this contract. I think the natural extension of, of TPS, if it was like a normal commercial organisation that was allowed to expand and grow organically, would be something like George’s model that was presented by the DMC. In that we would, naturally deal with more types of complaints in a more holistic approach, recognise silent calls as well as maybe recorded messages, and deal with each one of those companies ourselves. Unfortunately, we’re not allowed to do that, I think that’s where we are. Talking about the review that they’re doing on TPS, they’re specifically conducting some research at the moment to try and gauge the effectiveness of TPS, which I think is an incredibly difficult thing to do. There are 19.4 million telephone numbers registered on TPS, there are only 24 million landlines in the UK. Finding people that aren’t registered in order to do this research, there’s probably a reason why those people aren’t registered, and they might be one of the few people that really don’t receive many nuisance calls. I worry about how that research going to pan out.
Mike Weir: Right, so the pool that they are fishing in for that 1,000 is already quite small, and therefore not necessarily representative of the UK as a whole?
John Mitchison: Yes, I mean it’s sort of self-selected, isn’t it? If it’s just that small pocket of people that haven’t registered their numbers, you’ve got to ask yourself why they haven’t registered. Because if other research was to be believed, just about everybody is receiving nuisance calls. 60, 70% of all the landlines are already registered, there really aren’t that many people that don’t know about TPS, it doesn’t take long, you know, to Google it or ask anybody, so maybe those people just aren’t receiving them.
Mike Weir: Well there are new numbers being generated as new accounts are opened, then surely those would be reasonable ones to take as examples?
John Mitchison: Well, yes, possibly, but most of the telephone numbers are actually recycled if you move out of the area. And if, because there is actually a finite number of numbers that you can have in one particular STD code, so those people move out, cancel their contracts, those numbers are eventually put back into the pot.
Alun Cairns: Any further questions?
Mike Crockart: No.
Alun Cairns: OK, can I thank you both so very much for the evidence and for the open way in which you’ve answered them. There will be a verbatim transcript, we’ll send you a copy through the Chair, and we will publish a report, and obviously it will inform the legislation that Mike is, is bringing forward in terms of the Private Members Bill and, and my Ten Minute Rule Bill, it certainly will inform that. OK, thank you for your time.
George Kidd: Thank you.
John Mitchison: Thank you.
George Kidd: You’re welcome.
Mike Crockart: Thank you very much for coming along to what is the fourth evidence session of All Party Group on Nuisance Calls inquiry into, strangely, nuisance calls. We’ll just kick off straightaway because it’s quite a short session that we’ve got this morning and a lot of ground to cover. My name’s Mike Crockart, Lib Dem MP for Edinburgh West and one of the co-chairs of the All Party Group. Could I ask the panel to just introduce themselves, name, rank, serial number and company **for now**, just for the purposes of transcription.

Claire Milne: Hello, I’m Claire Milne. I have no rank and no company. You invited me here in my capacity as Chair of the Consumer Forum for Communications, which is an umbrella body that is supported by Ofcom and it consists of a lot of consumer organisations, including both those represented by my colleagues here today, and some others you’ll have heard from. It’s supported by Ofcom but it is an independent body. That’s a very, very part time job and I do a lot of other things in the rest of my time that I won’t bore you with right now.

Mike Crockart: Thank you. Nick.

Nick Waugh: I’m Nick Waugh, I’m a senior policy researcher for Citizens Advice.

Mike Crockart: OK.

Mark McLaren: Good morning, and I’m Mark McLaren from Which and I work in the campaigns and public affairs department at Which?, the consumer organisation.

Mike Crockart: OK, could we start off maybe by just trying to understand the scale of the problem? Because we’re in the fortunate position of, certainly Which and the Citizens Advice of having done a fair amount of research in this area. So could you just outline what that research has found, how big the problem is?

Mark McLaren: Shall I go first? We’ve found, as you’ve heard already from the evidence sessions earlier in the week, that it’s a huge problem and this was brought home to us when we launched our campaign, partly in response to the work we were doing with Claire Milne last year when we tried to bring this to the attention of the regulators. And since then it’s probably been our most popular campaign, nearly 100,000 supporters saying something needs to be done. The scale of the problem is huge. I suppose the most useful reference tool now we have is the Ofcom research that was done earlier this year and I noticed yesterday that Sir Andrew Stunell was trying to work out on the back of an envelope how many calls he thought it was, you came up with, I think, 40 million. We reckon actually it probably is at least 120 million, per month that is, so I’m talking about potentially 2 billion a year and, as I’m sure we’ll discuss, what that hides is that some people are getting a lot and, as you’ve heard from other witnesses, it’s focused on people...
at home who are elderly and they’re getting the most, 20% of that are getting 19 or 20 calls I think a month, so the problem is huge.

**Mike Crockart:** 120 million per month?

**Mark McLaren:** Yes.

**Mike Crockart:** And that, but that’s made up of marketing, silent, abandoned or, **under all categories?**

**Mark McLaren:** I think, I believe so, yes.

**Mike Crockart:** Right OK, thanks. Nick, do you want to add to that?

**Nick Waugh:** Well, Citizens Advice has commissioned some research. Recently we got Ipsos MORI to do a very large omnibus survey of the general population aged 18 and above and 72% reported that they’d received a cold call, text, or email in the last 12 months, which equates to roughly 30 million people, so it’s a vast swathe of the adult population that when asked said, yes I remember getting one of these in the past 12 months, which may actually mask a larger figure, some people might not realise, they don’t answer these calls. So it’s not the most accurate figure but it really gives you an indication of just how widespread the issue is.

**Mike Crockart:** And you’ve got, is there anything that you want to add to that?

**Claire Milne:** Well, I could just add a couple of points and agree with what’s been said. I hope that you’re all aware of the background briefing paper that I wrote a few months ago, which was published by the LSE, and which contains some graphs showing how complaints have risen to Ofcom and ICO, and I think those figures spoke for themselves - there’s been a very striking rise over the past couple of years or so. Of course, the big question is where are we going now, and that we don’t know, but I’m not hearing people say that there is any discernible falling off, so it might be continuing at the same level, it might even be getting worse. What we do expect is that it’s probably going to be more and more focused on mobile as well as fixed lines. And I’d just like to underline that I think my colleagues have already mentioned the most important surveys, which talk about the incidence on the whole population but we are particularly concerned, particularly some forum members, about the vulnerable groups, and the hard looks at vulnerable groups are complementary to the population wide surveys. And I hope you’re aware of the reports that have been published recently about vulnerable people in Angus and so on. A small sample but a very close study of them, showing how important call blocking is in their situation. And also there’s another one, which I believe either has been submitted to you in writing or will be, from StepChange, the debt charity......

**Mike Crockart:** Yes we do have that.

**Claire Milne:** .....who’ve looked at the effect on indebted people and are very concerned about that, as are some other debt charities.

**Mike Crockart:** I’m interested to hear that you’re saying you don’t see any evidence of it coming down because in the evidence session that we had with the regulators, they painted a different picture, albeit based on levels of complaints, which by any measure is not going to be a particularly good way of measuring what the level of activity is. But they’re basically saying that the level of complaints is coming down.

**Claire Milne:** It’s plateauing is it? Well, I’m pleased to hear that.

**Mike Crockart:** Well yes.

**Claire Milne:** That’s recent.

**Mike Crockart:** But does that match with what you’re finding in complaints coming to your organisations?

**Nick Waugh:** It’s hard for us to track it in the same way that Ofcom can because we don’t record nuisance calls complaints as nuisance calls complaints, because our system just isn’t set up to do that. We have to dig around to find evidence of it within our stats so we’ve not really been able to track whether it’s dropping or plateauing. But the sense we’ve had from the bureaux is not that it’s diminishing significantly, it’s not been noticeable by its absence.
Mike Crockart: OK, and Which, you’ve set up a website in response to the identified difficulty of people knowing where to complain. How has that website, that portal, gone and what’s the figures that are coming from that?

Mark McLaren: It’s gone well in the sense that what it was designed to do was to make it easier for consumers to know where to go because, as I’m sure we’ll discuss in later questions, there was a lack of clarity as to who’s responsible for what. And consumers probably don’t know. I mean with a text message they recognise that as unwanted or a spam text message. But phone calls, do they understand the distinction between a silent call, an abandoned one, a live marketing call? The language is very confusing and the legislative structure of it is very confusing. So our attempt was to step in and try and make it easier for people to be directed to the right place. So in effect it was a front end to the existing websites and reporting tools that the regulators had. The number of people who’ve been using it actually hasn’t been as high as perhaps we would have wanted. I think we’ve had 20,000, I think we are hoping for a lot more, but the other thing we were trying to do was to deliver something that ICO in particular were asking for, which was better evidence so they could take more enforcement action. What I think has become apparent, I think to everyone, even the regulatory sector was already aware of it, was that the evidence that people have isn’t often enough for the regulator to take action. And that brings us back to this debate about CLI and name of company, which consumers generally aren’t going to get. I think the other thing that perhaps we haven’t really probed in great detail, but we’ve done some market research, is to understand why people do or don’t complain. The rational thing with complaining is probably just to delete the text and hang up the phone call. So we’re asking consumers to do quite a lot really, to go onto a website, fill in details, so on and so forth. So that probably also explains why the numbers aren’t as high as we’d want.

Alun Cairns: Thank you. My name’s Alun Cairns and I’m Co Chairman of the APPG. Can I thank all three organisations for the work you’re doing in this, because it’s certain we’ve seen a lot more tension with the regulators since there’s been a lot of public pressure and I think all three organisations and others have been the key parts to bringing about that. In terms of the complaints process and the structure, I want to pursue it a bit further. There’s been some, your evidence calls for a simple process to point people into the right way. So the evidence you just said is that the portal maybe wasn’t as high as we might have thought it was going to be. But in fairness, it’s worth saying that there are many other portals with other organisations that would take in evidence in this way. But my question is, if we can get the structure absolutely right, bearing in mind the scale of the problem, is there the capacity to pursue the cases that we get through the right portal, whichever way that is?

Mark McLaren: Probably not. I mean, again I’m basing that partly on what I heard and have heard in the past, from what the regulators can and cannot do. For me it comes back to the quality of what it is people are complaining about. The purpose of our portal was to make it easier for people to make a complaint but also, very importantly, to provide the regulators with the evidence that they needed. And as we’ve come to realise, the evidence isn’t often there. And so it would be a concern if people thought that this was, rather than it being an individual complaint, if you like, it really is about something the regulators cannot individually resolve. What they want is the data to take the necessary enforcement action. And they’re not a complaints handling body in that respect, we do recognise that. And one of the key issues that’s come up, again, it’s been mentioned in previous sessions, is this issue around the level of distress that has to be proved. So what the ICO in particular were looking for, and are still looking for, as we’ve been hearing, is almost some individual, one or two examples, of people who can, as it were, be almost like a test case, because I don’t think they’re set up to be an individual complaints handling body. That’s not their role.
Alun Cairns: I’m playing devil’s advocate obviously to try and test where we’re going, so thanks for that. I accept that the data is important because it’s the trends in terms of where the numbers are coming from and if there’s a common theme that quite obviously that would hopefully encourage the ICO and Ofcom to take action. But we heard yesterday that there’s 1,000 members of the Direct Marketing Association. And I suspect there are so many more that are not members of the Direct Marketing Association. Even observing trends, can we really make significant progress with the appropriate legislation and the appropriate structures and portals and suchlike? Because I’m trying to correlate your lack of response to the portals.

Mark McLaren: Well, as we’ve gone through this process, learning so much about how this industry operates, we’ve come to understand how much we don’t know.

Laughter

Mark McLaren: And how many mysterious companies there are and the role that they play with lead generation and the selling on of leads. And the truth is we do not know enough about how that all operates. And if there’s something that could come out of this group, it is that that needs to be further inquired into by the government itself or the regulators, which they are doing to some extent because they have set up, as you have heard, various working groups. But I’m not quite sure where they’re going and what the real aim is, whether they actually have, well, leadership in effect.

Claire Milne: I wonder if I might come in there because this has been one of my favourite themes throughout this, from my point of view, long drawn out process. I first got into the area at the beginning of last year and, though I’m very pleased to see some progress, it does feel rather slow and one of the things I’ve been harping on about all along is how complicated it is and I wonder if I might take the opportunity to share with you gentlemen a little picture which shows my mental image of what’s going on.

Mike Crockart: OK.

Claire Milne: You don’t need to read the guff at the bottom, you can later if you want to. I think you’ve seen this but I have a spare copy if you’d like to have a look. It’s the picture that matters and please don’t share this further because the image of Mr Simpson is copyright, we shouldn’t be copying him.

Laughter

Claire Milne: But this is to be read starting at top left and it then goes, if you like, clockwise around the picture. So top left, we’ve got a call centre, which can be anywhere in the world, originating the calls, and the call centres of course are key players in this. Then immediately to the right we have the networks which carry the calls where there might or might not be call blocking of some description and that might be at the source or it might be at the customer’s end. Then we’ve got the customer, on whom of course there’s a big focus, Mr Simpson, whose picture goes from furious to relatively calm through a number of measures but, critically, what he is induced to do is to complain and that gives the regulator, who’s at the bottom there, the ammunition that he needs to undertake a bit of enforcement, which goes back to top left again, where the regulator can begin to dismantle some of the supports to this call centre operation. So those are, I see as the four key interest groups, if you like.

Alun Cairns: So the sort of conclusion that’s coming from the questions we’ve just had is that there’s not one silver bullet?

Claire Milne: There is not one silver bullet, absolutely.

Alun Cairns: And so complaints to a portal and the process will help but it won’t sort it?

Claire Milne: The thing which we are now waiting on to answer our lack of understanding of this, which is really quantitative - we don’t know what is going to be affected by which of the actions, to what extent - is Ofcom is now doing what they call a strategic study of causes of nuisance calls and they’re promising to come out with something, I believe, at the end of this month. So I’m waiting for that with great interest and I hope after that we’ll be able to answer your questions better, or Ofcom will.
Alun Cairns: Thank you.

Steve Brine: Steve Brine, MP of Winchester and a member of the group. Just following up on what you were saying, are you saying, and I'm relatively new to this stuff, are you saying then that there needs to be quite a bit more diagnostic work done really before we... would be in any position to do any legislation? Could you just touch on the point that Claire just mentioned, which has been occurring to me, that the destination of these callers could well be outside of UK jurisdiction anyway, so does that not create a massive elephant in the room?

Mark McLaren: It undoubtedly does. The argument that’s presented on that particular point is that the calls that are coming from overseas centres, or wherever they’re coming, are likely to have a UK based beneficiary.

Steve Brine: Right.

Mark McLaren: So the issue then is to track them down.

Steve Brine: OK.

Mark McLaren: Track down that person, that organisation or that company. Diagnostics? Yes without doubt. I suppose we’ve been trying to look at it from three points of view. First, making it easier for people to complain so they feel that they have done something to then deliver the better evidence to regulators. Secondly, we’ve been looking at the issues around consent, which I’m sure we’ll turn to later, with a Private Members’ Bill with Mike Crockart around how data is traded, how do people control their personal data and how it’s used and abused. Then the third leg of it is without doubt what the industry itself can do. And Network Solutions, as it seems to be now called, in particular fixed line but there’s obviously also issues in mobile as well as with text messages. And, as Claire was saying, the potential for increasing numbers of nuisance calls on mobiles as well.

Steve Brine: I suppose the key hindrance to people complaining is to think there’ll be any action if they do. Because in my experience of me personally having nuisance calls, is that you’re already annoyed enough that they’ve taken some of your time. The last thing you want then to do is take some more of your time complaining about them having taking your time. And because they tend to call at the kids’ teatime and if you’ve got two under fives at the table and you’ve just had that, the last thing you’re going to do is think, oh what I’m going to do now is stop teatime, go online and complain about this.

Mark McLaren: Absolutely.

Steve Brine: That’s the problem isn’t it?

Mark McLaren: Completely. You have to be a pretty dedicated citizen, or consumer, to jump over all those hurdles.

Alun Cairns: And sophisticated as well.

Mark McLaren: And sophisticated.

Claire Milne: One of the things that we’ve put forward for consideration, and I don’t know how seriously it’s being considered, is having a very quick and easy way, once you’ve received a nuisance call, of just indicating that was a nuisance call. Maybe dialling a quick 123 code, which I think would be a lot less of a burden.

Mark McLaren: I agree absolutely

Claire Milne: And, given modern networks, it should be possible, we think, for the networks to register which call it was and automatically have captured the details that are necessary for identifying the perpetrator, as far as that can be done.

Mike Crockart: That raises two questions then because the evidence that we found already, you know, from the telecoms providers, particularly BT, has been, this is exceptionally difficult to do. The evidence that I’m sure we’ll get this afternoon when we have solutions providers coming in, especially Cloudmark who do the 7726 from mobile operators, is actually, this is relatively easy to do. What experience do you have on where is the truth?

Claire Milne: Probably somewhere between.
Laughter
Claire Milne: As I said, I’ve been looking at this for getting on for two years now. I do have something of an industry background myself originally and I do my best to keep in touch with people in the industry and I don’t get consistent stories. I’m sure more can be done than BT is making out, perhaps other people are over optimistic, I don’t know. But this is why I feel that it’s very important for somebody like Ofcom to do a properly informed study and come up with a clear view that the public can then criticise and provide evidence for it.

Mike Crockart: The second question that that begs is, of course, to be able to do that, to be able to report automatically, you need a CLI and this is an issue that has come up in numerous sessions, especially regarding the move towards charging to actually receive the CLI. I wonder whether the three of you want to pass comment on that move?

Claire Milne: Yes. I have a few views on the CLI, I don’t know if the other two do. First to say that the automatic type of reporting that I just mentioned, just dialling 123, in principle you don’t need to have CLI display for that because the network already has all the information that is needed. So that’s an additional benefit of that sort of facility and I do believe that it could be provided, if not to everybody, at least to portions of the population - just because everybody can’t have it doesn’t mean some people shouldn’t.

Mike Crockart: So who were you thinking of there, of being able to give that to?

Claire Milne: Well, I believe that even if BT feels it can’t do it, there are some other providers who think they can provide it on a fixed line service.

Mike Crockart: If it had product differentiation on it?

Claire Milne: There could be some differentiation there, I don’t see any reason why Ofcom shouldn’t issue a code for this purpose, which then different providers could implement in the way they see best and they might consider some competition there. I have great difficulty in swallowing the line that BT is unable to do this. I think they may find it difficult, they might find it expensive, but still maybe they could do it in some exchanges, if not all. There would be some which are technically more adapted to it than others possibly and if, in some areas of the country it can be done, that would provide additional evidence for the regulators, which we were hearing ICO is asking for. So though it might feel not quite fair for the customer, it would be good for regulators. And as regards the provision of CLI that the customer can see, it is certainly in my view, as it is of the Consumer Panel who are among our participants, that in this day and age CLI should be a basic part of all packages, not charged for at a premium. And I think it’s probably, in today’s world, the minority of customers who don’t want that display, and they would opt out rather than the other way around.

Mike Crockart: Thank you for that clear statement, if we can just get quickly the two other views

Nick Waugh: I think, very briefly, I would agree with what you’re saying on that. I think the benefit of an automatic system for reporting nuisance calls is that, if the consumer doesn’t have to write down the number, it would then depend on CLIs being accurate. So yes I absolutely agree with Claire

Mark McLaren: Absolutely agree with everything Claire has said on the automated system, would be much better. As regards to the charging for CLI, our concern really was that BT, who obviously announced last week that they’re going to start charging, or rather they’re going to be charging more, because I think the point is that the contracts are a bit complex but you could potentially be charged for CLI now and they’re bringing in a fixed on-going charge unless you renew for a year from January. It just seemed to go against everything that they were telling the CMS Select Committee a month ago and they actually do have quite a good story to tell, with some of the things that they’ve been doing, so it just seemed a bit contrary to that. Also, I think most consumers, with the prevalence now of mobile phones, take it for granted that if a number can be shown on the screen it will be. So, God forbid if the mobile companies, or TalkTalk and Sky started to charge for CLI.
That would be really a very, very retrograde step. Because obviously, if there isn’t an automated system of recording or telling a regulatory body that the call was unwanted, the key thing they need is the CLI and, as you were hearing from the evidence from the TPS, the other thing is obviously the name of the company but, from the consumer’s point of view, the phone number is crucial. So it seems contrary to the ability of consumers to complain to charge a fee, even though, I suppose it’s a relatively small one. Just as an aside, I suspect what underlies it partly is that, something we see in other markets, we’ve seen it in insurance, airlines, I’m sure I could think of other examples, where the competition at the headline price is quite severe. Though I’d have to note, as Claire pointed out to me, BT are rising their prices by above inflation, their general phone prices I mean, but there’s a prevalence in some markets to shift charges onto ancillary services, like we see with airlines with paying for luggage, and this is something that clearly is perhaps now starting to happen more in the telecoms market where your phone call is whatever it is and then there’s all these add on services. It’s quite difficult for the regulators to tackle, as Ofcom I think were telling you yesterday.

Alun Cairns: The CLI obviously is key in this and your support and work on that is really welcomed and I hope we send quite a strong message to the telecom operators on Tuesday, and it’s worth noting that it’s not only BT that charge for CLI, Virgin have responsibility in this area as well. But I want to go back, Claire, to some of the points that you were making and whether Ofcom need to investigate the automatic sort of reporting system, this 123 or whatever sort of number that we pursue. Ofcom told us yesterday that there are different systems there and putting different layers on is easier with some operators or in some exchanges than it is in others, and there would naturally be a cost, all right? So I think we’ve got to take that and, if we go back to CLI, I think there was originally a cost for CLI because it was seen as a premium feature I think, and the argument we were trying to make to them is that it’s now mainstream and therefore there’s no reason to charge now but at the outset it might well have been. So again, just testing our own evidence, and if there is an additional cost to operators to introduce an automatic and automated process, what would your organisation’s view be if operators charged for an automatic reporting system?

Division bell rings. Laughter

Claire Milne: The other day, Helen Goodman put forward the view that any additional costs should be covered by the generality of customers. She came up with a figure of £2 a year, which was out of the air obviously, but I would be surprised if we’re talking about bigger costs than that, frankly. And I would very much go along with that: that we do have a competitive market, I think the costs are probably less than some players are making out, that this is a basic set of facilities that needs to be available to everybody and it’s completely counterproductive to load them onto people who are suffering - as we’ve been hearing, those are predominately older and vulnerable, which makes it doubly unfair.

Nick Waugh: And, in a way, essentially you would be having to pay to complain, which seems slightly anomalous.

Alun Cairns: Well, that’s the argument we’re trying to use with CLI, that people need to pay it in order to have the information in order to complain. I’m not saying I agree with it for a second, I’m just playing devil’s advocate and I think we need to explore the issues there. But in view of there’s a - let’s accept part of the argument that there’s a need for additional investment by telephone operators - is it reasonable, I mean, that they then recover their cost because it becomes a premium product? Although there’s no charge for 7726 of course. Not at the moment.

Mark McLaren: I think the Which view on this would be that in general the regulations should work on the principle of the polluter pays, not the consumer pays. But I recognise it rather depends, we don’t have the information do we, as to what the cost would be of implementing what we’d like to see. But in general I agree with Nick and
Claire that it would be a retrograde step, as with CLI, to charge consumers to, in effect, complain. So the polluter pays principle would seem the way forward. That would mean that presumably not the telephone companies themselves would pay but the people who are being complained about, in some way, shape or form, though I don’t know how it will happen.

Claire Milne: It would be excellent if we could get some of those fines properly hypothecated.

Alun Cairns: I’m certainly not defending the line of the telephone operators again, but BT described it a couple of days ago as they organise the plumbing and it’s other people that put the pollution into the pipe work.

Claire Milne: But they do plainly, as do all carriers, share responsibility for what they carry.

Alun Cairns: Absolutely.

Claire Milne: And I notice that they provide for that in their standard contracts - that there is a clause in there basically telling customers that they’ve got to behave themselves properly, which includes not sending nuisance calls, and I think this is quite normal in the world of carriage: that there are grounds for terminating a contract if the customer misbehaves.

Mike Crockart: Yes, the breaching the contract terms.

Claire Milne: Yes

Martin Vickers (MP for Cleethorpes): Martin Vickers....One of the problems of course is defining what evidence is clearly.

Division bell rings

Martin Vickers: Everyone will have their own slight variation on that. They could be unsolicited calls but do you feel that your research and talking to consumers and so on, is that they feel, yes if it’s being sold, you know, PPI or something like that, then they’ll probably all agree. What if, I don’t know, BT ring up and say we installed a new system last week, can you rate one to five the quality of the service and all of that sort of thing. Is that a nuisance call?

Mark McLaren: Well, I think what you’re probing there is the difference, I think, partly between first party and third party marketing. And the focus of our work has been on third party marketing. For example, Which as a consumer organisation producing our magazine, we want to communicate with our members who subscribe to the magazine. So there’s an assumption that if they subscribe to the magazine they’ll be interested to hear about other things that we do. So if you were BT in the example you’ve given and, and they were calling an existing customer, unless the customer had opted out, that would be that’s fine, that’s first party marketing.

Martin Vickers: What, in the eyes of the customer?

Mark McLaren: Yes, indeed the customer themselves, I think this is where some of the data is probably unclear. The evidence that we have just asks: was the call unwanted? But it doesn’t distinguish between whether it was unlawful or not. The ones we’re interested in really, I think we’re all interested in, are the ones that are unlawful. Unwanted and unlawful, and most of that category fall into the third party marketing. And you’ve got the two extremes of the PPI type examples and the debt collectors that StepChange are very worried about, right through to actually quite reputable, well indeed, reputable brands cold calling. And, you know, it was welcome news just before the summer I think it was, or perhaps in September, when a couple of the energy companies said they would stop doing that. So it’s widespread but you’re right, it’s quite difficult to define, it’s a self defining thing. But for us it’s, it’s got to be, obviously, a) an unwanted call and/or text but then b) unlawful.

Mobile phone rings

Steve Brine: Ah, here’s one.

Laughter

Steve Brine: It’s certainly unwanted!
Martin Vickers: I think it was Claire who mentioned earlier there’s targeting on the more vulnerable, the elderly or whatever. Of course it’s the role of, you know, organisations selling data, I don’t know, if you subscribe to Saga Magazine, you know, you’re probably regarded as a, well obviously regarded as over 50 anyway. Do you find that there is there deliberate targeting as a result of information being provided to call centres? And, what tightening of controls could be made there?

Claire Milne: Well, I don’t think we know for sure. There certainly are indications they’re targeting and I think my answer to your question about what is nuisance calls is that there’s an agreed core which are a nuisance and are illegal, and then you get a tailing off at both ends, into those that are not so bad because it’s first party and it’s a personal matter whether you are bothered by it or not. But then at the other end there are those that are worse than a nuisance, because they are deliberate targeting and they may well be scams and criminal. And yes, obviously there is some evidence of this happening.

Mike Crockart: So there’s a trade in the kind of suckers list.

Claire Milne: Yes, that’s right.

Mike Crockart: Where people have responded potentially to scams and then have been potentially caught.

Nick Waugh: We’ve seen quite a lot of nuisance calls happening after people have been looking online for payday loans and they’ve put in their details on something which usually turns out to be a disreputable credit broker’s website. And then they get a phone call a couple of days later saying, we know you were looking for a loan online, we’d like to offer you one. But then you have to pay an upfront fee and then of course that’s a scam and then it spirals out of control, people actually lose quite a lot of money through that. So that exchange of details is definitely going on, that’s the one place that we see it most.

Mark McLaren: I was just going to say that from a marketing industry’s point of view obviously the best result for them is to get their message out to the people who really want to hear it. So, you know, it’s targeting, they’ve got to get it to the right people. So they’re wasting their time and money by inundating everyone with stuff that’s not properly targeted. It’s led us into some of the work we’ve done with Mike Crockart on the Private Members’ Bill, to look at how the data is collected and whether or not consumers understand what they’re agreeing to. And what this is all to do with is the tick boxes, I mean particularly on online forms, as Nick says, but actually it’s in all forms, it’s not just telephone calls this is to do with. And whether people understand what is going to happen if they tick the box or say yes on the phone to receiving further information. You know, it varies between perhaps, ‘we’re going to send you some more information about our company’ right through to, if they’ve ticked the box for third party marketing, ‘we’re going to sell your details to whoever wants to buy it and they’re going to start inundating you with junk mail, phone calls, emails’. In the next issue of Which, something I can’t share with you now because it’s not yet published, but we’ve taken a look at the email opting in and opting out and people’s understanding of what they’re agreeing to and what happens, in the way Nick was describing, when you go onto a price comparison website. What then happens, if you are opted in or out of TPS, agree to third party marketing, what then happens? And not surprisingly, the majority of people are confused by the language, there’s those double negatives, it’s not clear. Sometimes the third party marketing, the agreement to third party marketing is hidden from view, so sometimes though you have the opportunity to opt out or opt in, it’s a bit hidden and confusing. And certainly the language between the agreement to having first party marketing and third party marketing is often in somewhat contradictory terms. ICO has done its best, I suspect, by producing guidance, which they’ve just reissued in September, to try and clarify how this should work and what companies should do. But I think all that we can say is it’s not working very well out there in the field, hence us trying to clarify it through legislation.

Mike Crockart: Yes, even in the evidence that we took from the telecoms providers, BT was an opt in, TalkTalk was an opt out. Although I’m still waiting for BT to contact me to show me where the opt-in actually was, since I went through the
process in the morning and completely missed it, despite the fact that the only point of going through the process was to look for whether it was an opt in or an opt out! So, I wait for that.

Laughter

Alun Cairns: The third party agreement. Can I go a bit further with you? I was quite surprised yesterday, bearing in mind I’m someone who’s had an interest in this for some time, to learn that TPS effectively overrides the third party agreement. Now, my anecdotal evidence or broad view or perception would be that I’m not sure that the third party organisations adhere to that. Is there any evidence that there is a certain breakdown or flouting of the regulations by those third party organisations?

Mark McLaren: Well, I was just going to say first of all that I think it’s perfectly understandable that wasn’t clear to you, despite all the work that we’ve done. I mean, that was perhaps where we started. The starting point for us was there is an opt out service. The TPS is there and yet people are getting called, so hold on, it’s not working, it doesn’t quite do what it says on the tin and it turns out there’s lots of reasons why that might be the case, the overseas calls point and so on. On the third party marketing point, we kind of saw that as a potential loophole in the way that you’re describing. And because people are still getting the calls and the opting out to TPS trumps the consent point, the only logical conclusion is that people who have been selling on the leads, the second purchaser of the lead or a subsequent one, are not checking the TPS register. But they should be, as TPS told you yesterday. And so, something is not going right in that can be the only conclusion.

Alun Cairns: So have you come up with that answer on the basis of what I believe to be the perception rather than any hard evidence? Is there any evidence out there, be it CAB, or even from Ofcom that they’ve done some work in this area?

Nick Waugh: We can’t prove it.

Claire Milne: I don’t think so. I’m trying to remember what the information was that Ofcom asked its panellists to supply - you know they had this big study earlier in the year with 800 people keeping detailed notes for a month of all the nuisance calls that they had. I don’t think that they asked people to say, had you supplied your details to this company? There may have been something to do with whether you’d ever had dealings with this company. But they are planning to repeat that research at intervals and, as far as I understand it at the moment, that is our best bet for monitoring over a period how the situation is changing, and that would certainly be an area where they could get more information from their panellists.

Alun Cairns: Do you have a view, or do you know, rather than have a view, that if, you mentioned that the third party agreement is in the small print or it’s not available, and could that agreement, the small print of it, in terms of passing it off as when you ticked your box, that you’re giving express consent to override the TPS trump, if that makes sense. There’s almost a couple of double negatives in that phrase. Could an agreement include that, so that then that might well be, if our perceptions are right, that the TPS isn’t being used but the express agreement allows it to override.

Mark McLaren: I don’t know the answer, but I’d be surprised if that was the case because that would just drive a coach and horses through the whole point of the TPS.

Alun Cairns: Yes, doesn’t it.

Mark McLaren: But certainly it’s a fact that people, I think quite rationally, don’t look at the detail of terms and conditions. A couple of years ago now there was an internet company that put a term and condition that you were going to sell your soul to the devil and, you know, just a handful of people on that particular day, it was an April Fool, it was on the 1st April, only a handful of people actually spotted that because it was very deep in the terms and conditions. And, as we know, the privacy policies of companies, probably any company, but at Which we did a survey of it, I forget if it was Apple or someone like that, their terms and conditions and privacy policy is longer than
Hamlet. You couldn’t possibly delve into it. But, coming back to the issue around consent, it’s why with Mike Crockart’s Private Members’ Bill, we’ve been trying to find some solutions to these sorts of problems. So one of them was to extend who the PECR regulations apply to, so it’s not just the marketing agencies but it’s the companies that are collecting the data and selling it to the marketing agencies. The expiry date issue is another aspect of it. And that’s really what we’ve been trying to do, to try and better control that process.

Alun Cairns: Do you think it’s reasonable that the caller should have to state where the consent was granted if a complaint is being made by the receiver of the call?

Mark McLaren: What we would like to see is that the burden of proof is reversed, so that when the regulatory bodies go to investigate, that they don’t have, as you heard yesterday and this is what we’ve heard before, the companies just saying, well, ‘we have consent’ and they just go, oh, OK. The burden of it should be reversed, that when ICO go into a company and say, right, we’ve had complaints about you, can you now prove to us that you ... checked your data against the TPS and so on and so forth?

Alun Cairns: I get that but I want to go back to maybe what we started at the very beginning, as have the regulators got the capacity to respond to all of these complaints? So therefore, would it not help the situation if the callers, the direct marketing organisations, if a receiver answered the call and said, I’m sorry, I’m TPS registered and then they say, oh well we’ve had your permission to call and then they explained when that was derived, where that was derived from.

Mark McLaren: Oh, I see.

Alun Cairns: Do you think that’s reasonable in terms of the databases they use?

Nick Waugh: I don’t see why it’s not actually ...

Alun Cairns: So then that can be withdrawn, do you understand?

Nick Waugh: Yes.

Claire Milne: Yes.

Alun Cairns: And it then takes the issue away from the regulator because you’re giving the caller an opportunity to respond in terms of that.

Mark McLaren: Yes. Well certainly, I mean, my own personal experience would be this, that you do - I’m sure it’s the same for all of us - that you wonder where did they get my name and address from? So I understand the point you’re making. I don’t know in practical terms how onerous that would be on the user lead generation industry. But as a principle, I understand the point you’re making and I agree with it.

Nick Waugh: I suspect it’s part of a package, I mean if you were introducing a slightly more explicit element to the consent that consumers are going to be contacted, which at the moment is absent. If consumers had a better understanding of what their details were going to be used for and by whom, then at the other end of that, I think having that, what you just mentioned, that would work quite nicely. But then by itself at the moment, yes it might be problematic, but that’s because there’s misconduct and loopholes and all sorts of issues in that market.

Claire Milne: And I think this goes back to what we were saying before about how we’re not going to fix this with any one measure. I do agree, consent is a very important area that we ought to get right. Not just because of nuisance callers but because of much broader implications with the internet......

Music is heard

Claire Milne: What’s going on?

Mike Crockart: It’s a nuisance call.

Laughter

Claire Milne: .......and information society more generally, but however right we can manage to get legislation and however much more power we can give to the enforcers - and I think you’re absolutely right, they don’t have sufficient capacity even to enforce
the rules that we’ve got at the moment - I think it’s still going to be a difficult area, if only because people’s preferences change. I mean, I might have given my consent to be called but this week I don’t want to be called now because I’m very busy. And for these reasons, among others, there are going to be some people who want an additional level of protection beyond these basics, which we’ve been talking about, that ought to be included in all packages, and that’s where the more sophisticated call filtering and blocking packages can help.

Sir Andrew Stunell: Well, I’m not specifically exploring this point, but my experience is that most callers are not very sophisticated. If you challenge them they say it’s a survey, we’re not selling, and usually they can’t spell my or say my name properly. Sorry, and for the record I’m Andrew Stunell, which is easily mis-spelt or it’s misspoken as well, especially if you come from the Far East, which many of these calls seem to do. So I think that maybe the bulk of the calls have come from pretty unsophisticated call centres, even if behind them there are some sophisticated people. The point I actually wanted to raise was really just picking up the point about financial scams and scams in general. I noticed that the CAB, you’ve made it clear that you’re getting an increasing number of those and I just wondered if you could just say something about your experience of that and what proportion of the complaints you’re dealing with are in that area.

Nick Waugh: It’s difficult for us to see upfront how many of our cases we get are actually scams. We tend to have to dig into them to look to see if they are actually scams because sometimes a consumer doesn’t know at the time. But when we look at the consumer service data, which is telephone calls rather than visits that we get, I think it’s about 20% of complaints about professional financial services are scams, or seem to us to be scams. And an awful lot of those are around credit brokers and they’re around payday lending. They’re very often around pension unlocking, which has been quite a well publicised issue, which is a straight up scam. It’s never OK really. It has increased dramatically in the last couple of years. I’m not too sure why that is. I think potentially one of the reasons is there’s greater demand for short term lending. You see, the payday lending market has boomed at the same time, underneath it, this kind of parasitic industry of scammers, they seize the opportunity of desperate people who are willing to pay, who will buy the argument that they should be paying upfront for a loan, which seems completely contradictory. But we do see some cases where people actually pay out more money to the scammers than they were actually seeking to borrow in the first place, which raises all sorts of questions about why they were trying to borrow money. And the financial capability and their general living cost as well, it’s just sometimes a very depressing area to look at because we get the case notes from each of these calls, so we see the circumstances of the people who phone, and sometimes they’re really quite dreadful, and sometimes it’s just somebody who thinks there’s an opportunity for a cheap loan and they fancied the money and they fell for it. But it can ruin people’s lives.

Sir Andrew Stunell: So, going back to the point made before, is there a kind of a directory of, I think we described it as suckers list.

Nick Waugh: There’s not there’s but we can’t prove it. I mean at an anecdotal level, my granddad used to get hundreds of letters in the post every week because years ago he sent off 20 quid - well, he said it was 20 quid, I suspect it was more - to somebody who claimed he’d won the lottery, the Canadian lottery or something. And it literally was hundreds every week from all around the world, so there clearly are lists that exist but nowadays they’re probably somewhat more sophisticated, digital and updated more quickly.

Sir Andrew Stunell: Is there a way of the regulatory system focusing on those real hard nut cases? I mean, if I get 16 calls from a Far Eastern call centre that can’t say my name, it’s a real nuisance but it’s obviously difficult to establish. But you’re
talking about things which have an immediate and dramatic effect and where the points which we heard in the previous evidence session about how can we establish the damage, isn’t that one of the key areas which we could focus on, to establish the damage?

Mark McLaren: I was just going to say that you’re talking here obviously about criminal behaviour and the relevant bodies have, I think, tried to get more coordinated and, for example, on our reporting tool, we try to put in a link in to say ‘is it a scam?’ And if it’s a scam there’s an initiative called Action Fraud, which is a joining up, I think, of the police, other services relating to the police but also, obviously very importantly, your local Trading Standards. So that’s when these sorts of organisations ought to step in. I mean, it’s a very small example, nothing on the scale of the payday lending, PPI type scams and the pension liberation one. But even in the TPS area, there are what look like scams on the internet, where people will charge you money to register you on the TPS, which is something you can do for free of charge. A bit like those websites where you pay money to get an American Visa waiver, which you could do yourself for just a few dollars, or submit your UK passport application. So, it’s so tricky for people who are not either internet savvy or are more easily led, not realising that these scams can be so incredibly sophisticated.

Mike Crockart: One of the difficulties that I see here is there are so many reasons for government and regulators to say it’s a big problem, we don’t know the size of the problem, we don’t know the details of the problem, we need to establish a working group, we need to do more research, there’s lots of reasons not to act, to wait for a European solution with regard to consent and the use of data. But surely there is an imperative to act for those who are vulnerable and unable to act for themselves. Now one of you mentioned about the trial in Angus which is using Trading Standards. Now I’ve done an Edinburgh West trial, very limited. I put call blocking software into two elderly residents, I raised it with the Prime Minister yesterday, Mrs Muffet, who’s partially deaf, so uses a text service on the phone, and whose husband suffers from dementia. A perfect case of those who need to be helped to protect themselves and, sure enough, 65% of the calls that she’s received in the last month were actually nuisance calls. Now there is an argument that some are making that the fines that are being levied in this area, some of that should be hypothecated to deal with vulnerable members of society and put in call blocking software which is available and works now, while we work out what the network solution is or for the legislation or wait for Europe to act. Is that something you would like to see for those that it will affect in Citizens Advice?

Nick Waugh: Yes, I think you’re right, in the short term that is the most effective thing you can do for those people and we would definitely support some of the fines being hypothecated to pay for that.

Sir Andrew Stunell: But you’d need the suckers list to do it.

Nick Waugh: Well, I mean, I’m not an expert on how the technology of the call blockers work but I’m informed that they are fairly effective. They don’t wipe out everything but they catch the bulk.

Mike Crockart: Andrew was meaning about knowing who to believe.

Claire Milne: And to find the people.

Nick Waugh: Or to catch them.

Claire Milne: I know in Scotland you have much better social services than we have and your staff have been identifying people.

Mark McLaren: If you can go that route, yes.

Claire Milne: English social services could identify at least a good proportion of the people who need help.

Nick Waugh: And many companies have vulnerable customer lists, you know, which they have to help.
Claire Milne: We could make a start and you’re absolutely right, Mike, there is no excuse for further delay - as I was saying, they seem to have delayed a lot already. 
Mark McLaren: I’m not sure if Which has a particular view on what you’ve described but I think it would be a very good idea. I was just reminded of what happened when digital TV switch off was coming, and eventually those people who were the most isolated, most vulnerable, probably tending to be the older ones who didn’t understand what was happening, and they weren’t going to be able to watch their telly any more. As I understand it, eventually set top boxes were provided, and I suppose what you’re outlining is something a bit similar to that and somebody will have to pay. So it’s either the government punting some money in, whether it’s hypothecated, I’m not sure how that would work because I’m sure the Treasury wouldn’t be too keen, but otherwise companies themselves might, because it would be a great cause related marketing campaign, to say we’re going to fund say 20,000 call blocking units.
Claire Milne: Absolutely, and if BT does go ahead with these charges that they’re proposing for CLI, then you might like to come out with: how much are they getting from that, and how much of it could be spared to spend on equipment for vulnerable people?
Mike Crockart: Well I’ll just need to highlight that comment when I send the copy of the transcripts to them and we shall see what they send back. It is ten o’clock, can I look at the Members and see whether they have any last questions, no? In which case, I’ll ask you if there’s any particular things that you wanted to bring up that we hadn’t asked about that you feel are burning issues?
Claire Milne: Well, just at the beginning, we were speaking about the scale of the phenomenon and how it’s changing, and I think it’s important to understand that what’s going on does depend on all sorts of outside factors. Like, for example, we had the rise in PPI which has led to a lot of nuisance calls, and we may see that die away now some action has been taken, but we don’t know what the next marketing phenomenon is going to be. And I think we do need some thought put into what are we actually trying to achieve - what level of nuisance calling is going to be tolerable - and to somehow tie in repeated measurements, such as the Ofcom panel survey, whatever we can get that gives us the best objective pictures, with an understanding of the broader environment that all this is happening in, before we can say we’re succeeding.
Mike Crockart: Yes, OK. In which case I’ll say thank you very much.
Steve Brine: Yes, thank you ...
Mark McLaren: Thank you for your time.
Nick Waugh: Thank you.
Martin Vickers: Very good.
Alun Cairns: Right ladies and gentlemen can I call this evidence session to order? This is our penultimate session on the evidence in collection to inform and advise the private members bill that Mike Crockart has got and the ten minute rule bill that I have, both aimed at playing a part in reducing nuisance calls. My name’s Alun Cairns and I’m the co-chairman of the All Party Parliament Group. I’m going to ask each of you to introduce yourself, just name, rank, telephone number and.....

Mike Crockart: We’ll call you.

Laughter

Alun Cairns: And then we’ve got some general set questions, but experience has showed us that we don’t generally pursue those, it will go wherever the evidence takes us. So if we start off here, if you introduce your organisation and a quick line in terms of what you do.

Lee Hare: My name’s Lee Hare and I’m one of the Management Team for CPR Global, the Call Prevention Registry, but also manufacturers of the CPR Call Blocker.

Andy Sandbrook: Andy Sandbrook, CPR Global Managing Director, Call Prevention Registry and the CPR Call Blocker.

Neil Cook: Neil Cook, Chief Technology Officer for Cloudmark, we make software that sits in operators’ networks to stop text spam and that sort of stuff and also provide a system called spam reporting service which allows collection of data about spam SMS.

Steve Smith: Steve Smith from trueCall, we manufacture the trueCall device and also I do a lot of research into nuisance calls.

Stephen Dakin: Steve Dakin, Mobile Preferencing Service, sort of the other end of stopping spam text, so we’re allowing users to express their preferences for the class of text and originators they’re interested in receiving them from. So that they can be blocked directly at the mobile network operators’ networks.

Alun Cairns: Thank you very much. The first question I’ll ask each organisation to respond briefly to it and then we’ll take it from there. Can you tell us what you understand by the term nuisance calls? And is the definition accurate enough?

Andy Sandbrook: The definition is accurate, nuisance calls is where marketing has changed, where people want to scam money out of people, to phone the more vulnerable person. The more vulnerable person would be someone who has retired, got excess cash and wants to talk to people.

Mike Crockart: That seems quite a narrow definition of nuisance calls.
Andy Sandbrook: Yeah, you caught me on the hop at the moment. Just mentioned that one and I’ll be with you from now on.

Alun Cairns: That’s OK, Neil?

Neil Cook: So I think that’s quite a narrow definition just the nuisance calls itself, obviously we look at, we look at spam and texts and spam actually includes a whole group of group of things which is fraud, phishing, all kinds of things as well as unsolicited marketing, which I think is what nuisance calls more refers to. So firstly I think it should be nuisance calls and messages at least, not just calls because on a mobile it’s mostly SMS text, not calls and as, as CPR have just referred to it’s not just nuisance stuff it’s fraudulent, a lot of the stuff is advanced fraud. They’re trying to get you to give them money for a service they’re not intending to provide you. So I think it’s quite a narrow definition, I think it would be worthwhile coming up with a better definition and for me it doesn’t cover all the areas that, that you’re looking as well.

Alun Cairns: OK thanks very much, Steve?

Steve Smith: I think it’s very much in the eye of the beholder, so nuisance calls maybe looking at marketing calls and calls from commercial organisations, a nuisance call is also a term that’s used for someone who receives a malicious phone call from a private individual, or maybe even someone dialling a wrong number is a nuisance call. So there’s a whole range, I know we’re focusing mainly on marketing calls and scam calls here, but what to me is a nuisance call might to you be a welcome call. It might be a perfectly legal call, but it might be a nuisance to me because I don’t want it. It might be that that call would have been welcome if had arrived half an hour ago, but because it’s arrived now and I’m doing something it’s a nuisance. So it makes it very, very difficult. It’s a very indeterminate term and because it’s in the eye of the beholder, the regulation that sort of says this is a bad call, this is a good call, is a very crude, black and white way of looking at the issue.

Alun Cairns: OK thanks. Stephen?

Stephen Dakin: Well I’d like to sit here and say it is calls and SMS, they’re both two routes of the same market and I really see what we would be covering is two broad sets of data, the first services that can clearly be described as malicious, so they’re phishing, purporting to be something they’re not, they’re telling you there’s a problem with your computer in order to try and get some money out of you. We’re all aware of this broad class; sell your pension back so that you can live your life in poverty. 99.99% of the time I won’t and it’s really far too broad and poorly focused the list that’s been purchased and farmed out from a call centre. And there is certainly anything that’s not following established best practice and the Telephone Preference Service is regularly getting ignored these days. It used to have a great success rate of stopping calls. For me, anything that’s not adhering to published preferences has to be considered to be nuisance.

Alun Cairns: OK thanks very much, can I come back to Neil? You talked about the nuisance calls definition needing to be broadened and you touched a little bit on mobile and you said that it tends to be through SMS, rather than through mobile calls yet. How has that changed over recent times? And what’s the direction of travel?

Neil Cook: We currently only track SMS. We don’t track calls; we’re actually going to start tracking calls from next year. But the mobile operators have talked to us and said that they’re concerned about nuisance calls and they’ve got sort of anecdotal evidence from their subscribers that say the nuisance calls on mobile are the increase, which is why they want us to start tracking it as well as SMS. So for us at the moment I’m not sure that nuisance calls on mobile is a huge problem, well at least not the same problem that is on the fixed side, but it’s certainly growing because the operators are telling us that it’s growing.

Alun Cairns: Is that a direct of travel? That’s what I’m getting at.

Neil Cook: Yeah direction of travel is on the increase.
Alun Cairns: OK so whatever policies that come in place they need to be able to address mobile as well as, as well as fixed line?
Neil Cook: I think so, I think we should look at nuisance calls across fixed and mobile and we should look at nuisance spam, SMS, but not just restricted to SMS obviously, mobile messaging in general. We’ve already got the problem on email, I think that’s already sorted because most people are using filtering, there’s no filtering in place on the mobile networks.
Mike Crockart: Can I just ask a general question because if the trend you think for nuisance calls on the mobile is on the up, what’s the trend more generally across the vast range of nuisance calls? Evidence from the regulators is that they said the complaints are going down and that’s kind of the best evidence that we have at the moment, about what the trends are. Does that fit with what you’re finding? Because you’re at the sharp end, you’re actually intercepting these, so perhaps you’ve got a better idea of what the trend is in the actual calls being made?
Neil Cook: We find that extrapolating purely from complaint data is dangerous. One thing is that you get fatigue, people complain and then they see that nothing happens, so they stop complaining. With our spam reporting service we find as soon as we get some media or some attention, press about it, we see a huge spike in complaints. Does that mean there was a lot more spam that month? No, it just means that people more aware of the fact that they can complain and how they can complain. So you have to be quite careful in looking at complaints purely as a way of saying oh the problem is solved, it could be that people are just getting bored of complaining because they don’t see anything being fixed, so that’s one thing. The second thing is, in our experience we’ve been in this industry for 13 years and we never see the problem go down, well very rarely, temporary spikes up and down, but overall the problem is on the increase. If you look at where we were five years ago no one was worried about SMS spam for example and it’s been gradually on the increase since then. So in our opinion that’s the general trend.
Alun Cairns: Can I ask, each of you have got various devices or operating systems that can play a part, what is your evidence or in terms of nuisance calls, in terms of the numbers is it growing? Do I assume because as Mike said the regulators seemed to say, well the complaints are going down, we’re trying to tease out is there an assumption to change?
Andy Sandbrook: Well we have the registry business and we have on a daily basis in excess of 500 people registering with us through the website to stop nuisance calls.
Alun Cairns: Is that growing? What would it have been say six month ago?
Andy Sandbrook: Six months ago it was roughly 300 to 400, so it’s increased in the last six months.
Steve Smith: I think the point was made earlier that looking at complaints is just a, one way. The best data that’s available at the moment is from omnibus research that Ofcom and the TPS have done over a number of years where they ask people, in an interview “how many nuisance calls did you get in the last month?” But that’s not very reliable either because you’re requiring people to recollect. Those measures are showing that there has been an increase. The latest Ofcom figures show I think seven point something nuisance calls per month, whereas the previous research asking a very similar question showed about six, five and a half, six per a month. So that would suggest there’s a trend upwards. The only way to measure it accurately is to actually monitor someone’s phone line, so that you’ve got data on which individual calls have come through, what the person has done with those calls, which ones were wanted, which ones weren’t. And nobody’s done an independent study like that.
Alun Cairns: OK Steve do you have any things around that?
Stephen Dakin: Nothing really other than personal, anecdotal evidence of a clear increase in text spam, probably driven off PPI and other well populated bits and a general move towards mobile nuisance calls.
Alun Cairns: Calls or spam, calls or texts, SMS?
Stephen Dakin: Well I mean the texts are clearly on the increase but there's definitely a move towards mobile nuisance calls. I don't remember getting any of those ten years ago and now I'm regularly phoned up by unknown numbers trying to sell me a variety of services, I have no interest in whatsoever. It could possibly be there's a lesser adherence to the Telephone Preference Service, because that number's always been registered under that, so it's hard to pin down what's at the root of it, just worse adherence. But it's certainly more of a problem at my end.

Neil Cook: We have seen a year to year increase in complaints in our spam reporting service, since it started about 18 months ago in the UK.

Steve Smith: We did some research on this a few years, sorry

Mike Crockart: I mean obviously I was going to come to you Steve because you know we've put two units in particularly vulnerable constituents homes that approached us in our constituency office in Edinburgh. So we've got data for the last month of what they have received, certainly in one case it's 65% of the calls that she'd received were nuisance calls. So you must have access to some of that data

Steve Smith: We've got lots of data and we've tried to interest the regulators in getting access to it, to analysis it and they haven't shown much interest, even though it's actually quite good actionable data, because it's got individual phone numbers, individual times and dates of calls and it spans probably about 5,000 people use that service. I think they feel that data from outside their organisation can't be trusted, we haven't done a full analysis of that because it's quite a, a large piece of work and no one's asked us to. We'd be very interested if, if that was something someone wanted a study on, to look over the last three or four years at the volumes. But of course what we're aware of is that our customer base of people who are particularly concerned about nuisance calls, now that might be 'disgusted of Tunbridge Wells' who if they get one a month is on their high horse, but actually some of them are people that get lots of calls and therefore are investing in the technology. So it doesn't give you that sort of regular spread, but if you look on a time period with one individual person over a period of time, you can spot trends and that work hasn't been done. I'll just quickly say that the driver for the increase in calls has been the reducing costs of telecoms and there's no indication that telecoms costs for the originator are going to get any higher in the future. On the contrary they're going to get cheaper and as the call costs get cheaper then the cost benefit analysis for the person doing the marketing gets greater. And if I can give you one quick example that is absolutely stunning to me, if someone phones you up to sell you double glazing from a call centre, a live person and you say, “no, not interested”, that will have cost a live call centre probably 20p, 25p to make that call to get that contact. If they used a recorded message, a robocall that would have cost them 1p. So if you look at the order of magnitude, the difference between the costs of that call and a recorded robocall, you can see that it's very, very cheap just to forget about targeting, let's, let's not worry about who we call, let's not even get a list, let's dial sequentially through the telephone number range and that is what we know is happening.

Alun Cairns: Right, you've got a range of options, but the network operator is pretty important to those plans. Tell us about any discussions you've had with a network operator. How seriously do they take it? Because it's been suggested earlier in this week that one operator said that they're just the plumbing, they just provide the pipe work and they're not the start or the end. Now I'm being a little bit flippant in terms of what they said, but I want to know how they've engaged with you and do they see it as a solution? Andy?

Lee Hare: Well we've contacted everybody and we haven't had any responses from them at all.

Alun Cairns: So they haven't engaged OK. Neil?

Neil Cook: We found the operators have got more responsive over the last couple of years, they've certainly signed up to do the spam reporting service, which has been very useful and has taken us a couple of years to get them to that point. So in terms of
actually finding out what the problem is we’ve got all the mobile operators in the UK using
the service and it’s still in the trial period, so they’re not actually prepared to pay for it,
so that’s a kind of interesting data point. But I think one of the problems is a lot of the
time they don’t know what the problem is, so if they have lots of people coming to them
every day and saying … doomsday scenario, what’s going on? And a lot of the time they
just don’t know. So they don’t know whether to probably believe it or not. Another thing
is then financial, they have to invest to put any kind of protection in place and they have
to see some kind of return on investment. So we’re also working with all the European
operators talking to them about putting our solutions for example in their networks to stop
text spam. And we find that the only way that they can really justify that internally is via
some kind of value proposition that shows a business case to them. If you just say your
customer is unhappy that’s generally not enough, I mean as much as people, individual
people in the organisations would like to do something about it and they say ‘I get loads of
spam texts’. You know most of these organisations they are financially driven, so they
need to see a show of monetary returns. So the only expectation to that I would say
would be obviously if you put some kind of draconian regulation in place, then they have
to do it. if you can persuade them there is a value to them to doing it, they can save
money or make money or whatever then, then that’s the best way.

Alun Cairns: Steve?

Steve Smith: Yeah I think I’d agree that with, two keys points there firstly that the
level of the interest two or three years ago was absolutely zero and they have the lock on
allowing this technology to go into the network. You can’t implement these sorts of
services without them agreeing. So it was the only reason we brought out a product as a
box, because we went to the market and said, “guys we’ve got this great technology to
stop nuisance calls”, they said “not interested”, “too new”, “unproven”. So the only way
we had control over our own destiny was to actually deliver that same technology and that
same IP in a box that we could sell direct to consumers. But the logical place for it is in
the network, absolutely. And we feel that now they’ve become more responsive, but
absolutely for them it’s got to pay. There doesn’t seem to be a sense of “we’ve got a big
problem with our consumers; we’ve got any duty of care to our consumers”. And if I can
just pick up on your question about plumbing, I agree that there is a sense that says
people can put whatever they like in the pipes, but I think society is changing in this
situation, in their views on this. The DCMS select committee is calling out the chief
executive of Twitter to answer questions about tweets that people have put through his
plumbing. The prime minister recently made comments about a bulletin board that
teenagers’ use, where one teenager committee suicide because of comments made that
were un moderated and he said, they should take responsibility for what goes through
their plumbing. So I think actually society is changing and saying the people who are
providing this plumbing actually do have a duty of care, particularly if there are solutions
available to make people safer and they choose not to make those available.

Alun Cairns: Stephen?

Stephen Dakin: Well we did about two complete laps of the whole value chain, we
got a fairly consistent story for the network operators, they like everyone else said it’s a
great idea but we think they should pay for it. We even had a, I suppose slightly
inevitable view expressed that actually this might be in our worst commercial interests,
because we are ultimately getting paid to carry this spam, so a reduction in it means a
reduction our network revenues. We have a sneaking suspicion that actually that
argument won’t hold up because the spam is probably being injected into their network so
cheaply they may well be losing money carrying it anyway, because I just don’t think
they’ve got as tight a view on it, as the people underneath who are actually profiting from
these services. So in principle it was felt to be a very good idea, they didn’t want to pay
for it and, and there are two costs here, there’s an operational cost, but most importantly
the one cost that cannot be deferred from the network operators is the cost of actually
implementing the technology, because it requires software changes to their systems, and
this is an inevitable truth that can’t be escaped from. All of that is a knock on cost for these guys.

**Alun Cairns:** Can I ask network level solution, it’s been suggested by some as the right thing, but there’s a huge risk in that because you effectively end up with a monopoly provider.

**Neil Cook:** Well there’s lots of operators so if each operator has a different solution then that’s typically the way that the market works in the end, most operators tend to choose different solutions from other operators so.

**Andy Sandbrook:** Can I just add that I feel that the operators would not want to stop nuisance calls, for the reason being is that the moment they do they’re cutting off this revenue, stream of revenue. So they’re going to fight all the time to ensure that there are people out their making those calls.

**Andrew Stunell:** Can I just follow that up then? We had some evidence from Ofcom to the effect that their survey showed 40 million calls a week, even at 1p that’s a fair amount of revenue. So I’m just exploring that point and on the other hand you’re saying maybe they’re running it at a loss, I mean what is actually your professional view about the cash flow here?

**Steve Smith:** I think you need to split things out, there’s an originating operator who gets the most money on a telephone, when a telephone call is made. So if you make a call to me it’s the operator you’re with. The terminating operator - the operator who looks after me - gets a much smaller amount of that. So the spammers tend to use the cheapest telephone services they can buy and that won’t be BT or Virgin, these will be small companies that you’ll never heard of, who inject calls into the network at wholesale rates or just above wholesale rates. They are the people who are making the money, the terminating operator BT say, or Virgin, or Sky, will only be getting a small amount of money for that delivering of that call. That’s our understanding, I can’t tell you the judgment one way or the other of whether the balance is and I don’t think BT, the operators are even clear where the balance is, but it’s not as straightforward as it looks on the surface.

**Stephen Dakin:** Well, if you look at text messages for instance, the cost of injecting a text message onto your own mobile network operator is effectively nothing, it’s one data package. Yet to inject it onto somebody else’s network you’re going to have to secure and pay them some money for handling it, they’ll be bidding interactions, even if it’s just a matter of matching numbers in, numbers out, between two networks at the end of the month. So there is a vast disparity here. But the reason I think that these measurements are actually more complex and that they probably haven’t been looked at in enough depth is, let me give you some work we did for, in another completely different industry, this is physical mail now and one of my customers wanted to introduce a solution to allow them to effectively identify undeliverable mail, i.e. cut down the stream of stuff that was going through them, thus reducing their marketing spend next month, because they were the middle man, they were carrying the mail. But at the moment this stuff was being lugged round internationally, found to be undeliverable in Italy, in Switzerland, in wherever and then dragged all the way back, on planes, before it got dumped in mail bags. So they wanted a nice technological solution that we provided them, to sit here and identify this stuff as dead and give enough information back that they could do database cleansing. When they actually did the analysis they found this was cost beneficial for them, because the marketing now became so much better targeted and gave a better bang for the buck that something they thought, well it will give us good green credentials, but we’ll actually lose money doing this, actually turned out to give them a positive cost benefit because the marketers are now getting better value for money for their marketing spend, which gives them a case for sitting here and spending more. Sometimes these arguments can get extraordinarily complex.

**Neil Cook:** I would agree that on the text messaging side most operators probably aren’t making money from spam, it’s coming from the networks because as Steve
says it’s coming, from prepaid SIM cards with very high rate or unlimited plans, so they’re
getting a fraction of a fraction of a penny for each message sent. Any messages, if there
was some cost for them to deliver that on the network, it just needs some sort of
infrastructure. Any messages as Steve said they go off network; they’re usually paying a
couple of pence to determinate those messages to another network. So if they all sent
each other spam in equal amounts then it might all come out in the wash, because they
get paid for the same amount of spam that’s come from another operator, that’s not
normally the case. The spammers will tend to go the cheapest place to send, which really
depends on who’s offering the best kind of deals at the moment. And so

**Mike Crockart:** it should be possible to create a business case for the big operators
certainly?

**Neil Cook:** Yes

**Mike Crockart:** To do something.

**Neil Cook:** We’ve heard anecdotally from some operators in the UK that they
think, even without doing a massive amount of analysis they think they’re losing hundreds
of thousands just from that. Also there’s a thing that we look at called grey routes

**Alun Cairns:** What’s it called sorry?

**Neil Cook:** Something called grey routes where a company, it could be a
legitimate coming in the UK, a bank or an airline or anyone else that sends large amounts
of text messages when you get a bank transfer or when your flight’s delayed, all those
kind of things. And they send messages to operators through their operators’ advertised
monetary routes and they have to pay 2p per message. Sometimes to get around the cost
they send them through international sort of slightly dodgy companies who don’t have
terminations rates. The operators aren’t getting paid for those and so the operators want
to charge for those as well. So one of the ways that we’re trying to persuade the
operators to put in a spam blocking solution is to say we can block grey traffic at the same
time and you’ll make better money when you do that so. So there are ways that you can
try to do this, but generally I think operators, even when they recognise they might be
losing money, you have to consider this is putting something in their networks which they
consider their networks to be very core, they try not to touch them at all. So getting
them to invest in something where every message or every call in the network would go
through the system, it’s a very big ask for them

**Alun Cairns:** Right.

**Neil Cook:** Because they have to be really sure that this something they want to
do and will be paid for.

**Alun Cairns:** Before you come in Steve, I want to make the point then, try and
summarise it a little bit that there’s an absolute reluctance from the network to bring
in some sort of network solution in order to do it. Therefore I was going to try and
move it on, how important is caller ID to you and your customers? And your
operations in terms of helping consumers stop nuisance calls.

**Stephen Dakin:** Yeah this point really does dovetail in quite nicely here because there
is a significant impediment to the network operators adopting solutions like this and
injecting them into their networks. But there is massive international repeatedness in
their networks; there are only so many global mobile network operators for instance. So
the export potential of this, if they can be encouraged to do this, you will probably find
the same solutions will spread their way across the world through the same points of
injection, to the same mobile network operators. So whilst it’s an initial barrier to entry
that actually becomes quite useful for thinking of trying to leverage the export
capabilities of some of these technologies.

**Andy Sandbrook:** Caller ID is very important and should be open to all the consumers,
so that they can identify the number that they’re receiving and make the choice of
whether they want to receive that call. When it’s withheld a lot of people get scared and
they don’t know who it is so they pick up the phone and that’s when it all happens. So it
should be clarified, clear.
Neil Cook: There is an alternative argument to that, I agree that caller ID shouldn’t be charged for, to get the fact that you have caller ID on your phone it shouldn’t be an extra charge. But I actually have my number withheld when I call people generally because I don’t want the opposite happening, I don’t want to call someone and they take my number and harvest it and sell it on. And because that’s clearly what happens in lots of cases. So there is a good case for having the withheld capability, so that for the inverse situation of marketing people calling me, when I’m calling people that might still my number.

Mike Crockart: Then that would be for individuals not for companies.

Neil Cook: Yes I agree, so absolutely the other way round should not be allowed, and companies shouldn’t be allowed to withhold like that

Stephen Dakin: If indeed you can draw this distinction because we exist in a world where you get companies buying prepaid mobile phones that are designed for the penniless consumers and using those injection of bulk....

Mike Crockart: routing calls through them

Steve Smith: I think we’re looking at two different things here, but on caller ID, they’re both important. I think we’re talking firstly of the delivery of caller ID to consumers, should they have to pay for that? Caller ID is the first generation of call blocking technology, it’s a fundamental element, if you don’t have caller ID as a consumer you have no information at all as to whether to answer the phone or not. So it’s the fundamental structure that other people build on, ourselves and CPR, and other products build on that and need that to be there. But when BT first made caller ID available, their privacy service free, they signed up 5 million of their customers in 18 months, now that’s nearly half their customers asked for that service when they made it free

Alun Cairns: There was a charge for it at the outset though wasn’t there?

Steve Smith: Oh sorry when they made it free, yes there was a charge when they brought it in at the end of the ‘90s and I can’t remember exactly the date, 2005 they put together a package called BT Privacy at Home, which was free caller ID and we will put you on TPS. Which they then channelled those through to TPS

Andrew Stunell: How much did they charge for that?

Laughter

Andrew Stunell: You have to wonder don’t you?

Steve Smith: All sorts of dirty tricks stories going on but we won’t go into that. But when they made that available 5 million signed up in 18 months, which is a phenomenal number as a proportion of their customer base, to take up a product.

Alun Cairns: That was when it free?

Steve Smith: That was when it was free

Lee Hare: Well let’s say bundled

Alun Cairns: Sorry?

Lee Hare: Nothing’s ever free

Alun Cairns: No but

Lee Hare: It was bundled

Steve Smith: Well the requirements on you were to make at least one call via a BT number each month, now so the costs to the consumer of maintaining that, even if they were using another operator for their outgoing calls would be pennies. So really it wasn’t really a cost to the consumer

Andrew Stunell: Quite nicely matched the cost of BT delivery I should think.

Laughter

Steve Smith: But that’s on the side, so we’re talking about the delivery of caller ID. Very important is on the injection of caller ID and what caller ID gets into the network, and on that side, yes, there are a lot of companies withholding their number, there’s lots of ability to spoof the caller ID and our view is that there are three measures that should be taken on this. Firstly companies should be obliged to send their caller ID, -
if they’re a commercial organisation making a marketing call why shouldn’t they? There is a legal obligation to do that already if they use a predictive dialler. So asking everyone who doesn’t use a predictive dialler making marketing calls to do it, can hardly be argued to be disproportionate. Secondly when you receive a call and you ring that caller ID back you should either get a live human or a message that tells you who was calling you, unambiguously, not the, ‘the PPI advice line’, which you could never track down as an organisation, as a generic thing, But unambiguously who it was that made the call and give you the opportunity to opt out of receiving further calls from that organisation. And thirdly and really, really important for the development of this industry, companies should be obliged to register their caller IDs that they use, along with their company name and details, on a central register that is available publically. So if I receive a caller ID from 0800 123456 I can go on the web and type 0800 123456 and unambiguously find out who it was who called me. At the moment I can

Mike Crockart: That’s called Google isn’t it?

Steve Smith: Well there are crowd source databases but those aren’t accurate.

Now if that information is then available publically and online consumers can then understand who it is who’s calling them and a virtuous circle is created, where if a company starts making nuisance calls and upsetting customers they are now revealed who they are and they will lose customers, ultimately in the long run. But I think those are the three measures that are needed; those could all be brought in by Ofcom very quickly without primary legislation. It can be done using their existing statement on nuisance calls. They have already implemented two of those features for people who use a predictive dialler without any primary legislation, the first two items. The Direct Marketing Association makes the third item an obligation on its members, so the industry are going to turn around and say this is disproportionate. All the bits are in place, it’s a quick and easy win I think and people, consumers would find it very good.

Alun Cairns: Anyone else with thoughts on that.

Neil Cook: That doesn’t help with spam texts of course, these are mostly coming from prepaid numbers which are just discarded and junked after they’re finished, so you’ve no idea who’s sent the text or the companies involved have got no interest in sending this stuff as people will block them.

Mike Crockart: But at least there is an industry willingness to do something at a network level, because when we had the, the operators in, it was quite striking the difference between mobile operators saying, ‘we look at the data that’s generated you know through 7726 or anything else and if we identify, especially a pay as you go contract then we’ll stop it and we will just block it’. Whereas on the landline side of things there seemed to be no willingness to take responsibility for what was going through the network and say, right well it’s quite clear you know that this number is generating nuisance calls, therefore we should intervene and stop it. So I accept what you’re saying but it’s probably more pressing on the landline side of things, where we need something to be put in place.

Neil Cook: What I would ask is in your investigations with those was it clear that they were legally allowed to do this? Because I spoke to an operator yesterday and they were concerned that they would not be allowed to just simply block calls in their network that they considered to be from nuisance callers or they created some black list. They thought that there would be legal implications for this and it could be that they don’t understand the regulations, but I was talking whether they had some security and he said that he thought that it was his understanding that regulation would be needed or at least some guidance from the regulatory authorities, that they would be allowed to do this because they were extremely concerned. It’s the same thing with actually SMS; a lot of them are concerned about blocking that.

Alun Cairns: I think we can obviously work to clarify that. But the issue is how do we overcome the spoofing then? So we can make a big fuss about caller ID, if I was
network operator that didn’t want to introduce it, I may say well what about the spoofs? It makes absolutely no difference.

Lee Hare: Call blocker technology can overcome spoof calls.

Alun Cairns: How do you mean?

Lee Hare: Well with call blocker technology you you’ve got the ability to block, I had a telephone call I’ve obviously got call blocker and I had a telephone call from a company that was based in I believe it was Scotland and, I had an 01269 area code, which and I live in a very small area right out in the sticks, I was able to just stop it.

Alun Cairns: Yeah but the point I’m talking about spoofing is that they just use another number and tell your machine or you system it’s a different number.

Lee Hare: Yeah unethical companies will go down that route, ethical companies obviously, I don’t think there’s going to be a problem with spoofing, and it’s only the unethical companies and a lot of legislation that will soon to be put into place, is not going to address all the companies that are not compliant.

Alun Cairns: No but the point is if we’re talking about those that flout the regulations and those that don’t, the ones that don’t flout the regulations are probably the responsible ones anyway, they probably abide by TPS, they probably stick to the rules and probably not the major problems

Lee Hare: I’d agree with that.

Alun Cairns: And they won’t be spoofing

Steve Smith: Can I pick up on that because the approach we take resolves the spoofing problem, we focus not on a list of people you want to block, because there’s millions of them and they’re changing their numbers all the time. We focus on the people you do want to speak to, because you know who they are, you know who they, you know what their caller IDS are, so when those people phone you the technology lets the call through. Anybody else is then intercepted and has to give their credentials before they’re allowed to get through. So if someone keeps spoofing and changing the number, they still have to go through that additional stage, they’re still initially intercepted

Alun Cairns: Tell me about that stage. What about the police station, the domestic violence organisation, the ones that genuinely want to withhold their number for good positive reasons?

Steve Smith: Sure, you can decide what level of protection you want, so at the level of the Angus Trial For example, the study in Scotland in Angus, they had it set to a very gentle level of protection which incepted each call that it didn’t recognise and said to the caller, “we only accept calls from friends and family members, if you’re a cold caller hang up, but if you’re friend or family member please press seven”. And that was enough to get rid of the nuisance call, 98% of the nuisance callers. The, the person from the doctor’s surgery, the person from FedEx, who withhold their number bizarrely, or the person from the BBC,

Alun Cairns: Parliament...

Steve Smith: Parliament withholds their number, those people they press seven because they’re an invited caller, they have a legitimate reason. However if you’re more concerned and want more protection you can ask anyone who’s calling, who isn’t on the recognised list to enter a code. So for example if you’ve got someone with dementia, where you only want trusted callers to get through, then anyone who is a trusted caller, but who is on a line that withholds their number, is then required to enter a code to get through. It may be just a two digit code. And again that was very effective in the Angus trials that, that was 100% effective, not a single unwanted call got through in that situation.

Neil Cook: The code is a shared secret.

Steve Smith: It’s a shared secret, yes.
Alun Cairns: My question would be, I mean turning the Angus Trial on its head. Not one unwanted call got through, but how many calls that were wanted didn’t get through?

Steve Smith: There were no reports about that happening. There was an entry interview and then there was an exit interview on the project that was carried out by Trading Standards. I didn’t see any report of any one saying calls that they didn’t want were blocked.

Andrew Stunell: But how do you know if somebody tried to call you if they didn’t get through in the first place? It’s a sort of unknown isn’t it?

Steve Smith: No, because it’s all logged, all the data is logged so it can be pulled back. For someone with dementia the message is different, the message says for example “Mary only accepts calls from friends and family members, if your call is important, please redial her son Bob on 077123456”. So what happens is the trusted callers won’t even get the message they’ll get through, anybody else will be able to contact them via the son or the daughter, or they can enter the code to break through so.

Neil Cook: So the first method, the verification method where they press seven, this sounds very much like Captcha Mechanism that’s used on websites, so you get some text and it says you have to enter and it’s slightly wavy text and you have to enter

Andrew Stunell: Yes that’s right.

Neil Cook: Just FYI that that gets defeated routinely in the internet world because they just employ cheap labour in India and Nigeria and places like that, because they send the captchas off to them and they just read it and type them in. I don’t see why you couldn’t do something like that to defeat that

Alun Cairns: I think we’re probably in a dynamic environment anyway aren’t we? Where new technology will come up with a solution and Then some more innovative technology will come up with a way to override.

Andrew Stunell: Just to pick up that point, there’s clearly some things we could do to reduce the flow, one of them might be to incentivise the providers that they’re actually losing and get them to really invest. But the point we’re now exploring is whether you get into, what I think we’ve described as an arms race where it gets progressively tougher and tougher and tougher. I mean how rapidly would that actually evolve? I mean you can frighten us off by just saying we’ll just have an arms race, but it would presumably be pretty effective most of the time, to introduce these kind of things, for quite a while or am I just too naive?

Steve Smith: I think it wouldn’t be effective, I think it would be effective initially, I think there would be changes, but the beauty of putting it in the network is that it’s completely dynamic and the data is available. When you’ve got a device like maybe a phone with call blocking built into it, that software can’t be updated remotely, our own product can be updated remotely with software and we do that regularly with new techniques for blocking calls as they emerge. But putting it in the network is by far the best place and yes it’s an arms race, but I think the techniques that are being developed are very, very effective at the moment. As I say in the Angus Trial on 2,500 nuisance calls, 98% of them were blocked successfully. So at the moment it’s effective and new techniques can be developed as required.

Neil Cook: Firstly I think yes it will be an arms race but saying that it’s going to be an arms race shouldn’t put us off doing it because if you’re not prepared to enter the war then you shouldn’t get into it and frankly then you’re just conceding ground to all the unscrupulous people that want to do this. So you have to accept going in that there’s not going to be a magic bullet, because frankly to your point what we see is if you to this at wide, wide scale the behaviour changes pretty quickly, because if you do this in Angus then no one’s changing their behaviour because the calls didn’t get through in Angus OK whatever. But if you do it on a national level their behaviour changes extremely quickly. We’ve seen spammers that change their name within days or even hours, it’s almost like they have a plan B waiting for, for someone to do something. So I dare say they do have a
plan B and a plan C and a plan D. So, yes they will be arms race, yes we have to be prepared to do that, that’s the way it goes, I don’t think you can just say we’re all going to do this one thing and then walk away and everything’s going to happen sort of thing.

Mike Crockart: But the aim surely is that plan B is going to cost a bit more and plan C is going to cost them a bit more?

Neil Cook: Yeah you want to drive the spammers or the bad guys, you want to momentarily make it harder for them so it’s like with email spam, these guys have to spend an incredible amount of money now to get the small amount of spam that gets through to stop them. We’re still in an arms race, but as far as people are concerned the levels have gone, end users the levels have got low enough that it’s not too much of a problem, that doesn’t mean that out there isn’t a full scale war that we’re involved in every day.

Steve Smith: And this is why it’s important what the minister was saying when we had the meeting earlier this week, that this is an open environment, so that not just one company supplies blocking technology for BT, another one does it Virgin, another one does it here, I think these need to be open interfaces, so that dynamically different companies, so if I’m a BT customer I could choose to buy nuisance call blocking software from three or four different vendors and that will keep them focused on finding new techniques and new technologies, because this is a completely new market. Five years ago nobody was doing this sort of thing, so we’re all learning and it will need to develop and giving that competition injecting that competition, into the structure will help keep the dynamism in the market.

Andrew Stunell: Sorry I don’t quite understand that, if you embed this in the system how can you do that? Is BT going to embed four or five systems and you choose which one to use?

Steve Smith: It’s very possible to do that, so that as a customer of a company, And the minister said at our last meeting, he didn’t like the idea of one of the people sitting round the table taking a big pay check from BT and watching the money in their back bank account rise and just sitting back on their laurels.

Lee Hare: But surely people have choice anyway because there’s not just BT.

Neil Cook: We have the regulations within the telecoms industry so people will always have a choice and if someone thinks that the nuisance call blocking with Virgin is better, they can move to Virgin if that’s what their problem is. So I don’t see that that’s necessarily a requirement to have every operator implement four or five different technologies on the network. Frankly I think the chances of us getting anything to happen in the industry are just zero if we say that, because getting them to put one thing in the network is hard enough let along four or five. So you do have competition, people can move operators, people do move operators

Mike Crockart: But the reliance on completion and this is something that I asked one of our other panels, the lines on competition, you know incentivising people to switch, That hasn’t happened in other markets, we still have in the energy market the vast majority of people are still with their original suppliers. And surely in telecoms they’re even less likelihood because the bundling with your broadband and your television and everything else, is it not going to be just so difficult to get people to switch suppliers?

Neil Cook: But are, are people not switching because it’s too hard or are they not switching because ultimately they don’t see it as a huge benefit? There’s not that much differentiation. I’ve been with the same electricity supplier for nine years, every year I look at uSwitch and I can see I can save maybe 50 quid here or there, but I don’t know after I’ve switched that the prices, they won’t be the other way around in a year’s time. People do change; I mean I changed my telephone provider because I got a damn site cheaper deal than BT. I’m not an expert in why people switch, but people can switch if they want to and if they see it’s enough of a problem. Certainly people change mobile
operators a lot, people change their SIM cards all the time, people switch networks all the
time so.

Mike Crockart: But is that not driven by the, the technology and the desire for a
new handset?

Neil Cook: It’s driven by cost, they see if they get their handset cheaper and get
cheaper message bundles usually and that sort of thing.

Andy Sandbrook: Or you put it back in the hands of the consumer, let them choose
whether they want to take the call or they don’t want to take the call. They’ve all got
different products

Mike Crockart: The problem we have with that is that, for some people you want
to be take that on board yourself at a network level, because of dementia sufferers or
things like that. Asking them to take it into their own hands, even to the extent of
pressing a button when they’ve received a call that they regard as a nuisance call, can
at times be a step too far.

Lee Hare: For what, are you talking about vulnerable adults now?

Mike Crockart: We need other solutions, yes

Lee Hare: Rather than general public, vulnerable adults. We do with our
products as well everybody suffers from different types of calls, you might suffer from
0843, or you might suffer from 0800, people tend to have certain areas that are a
problem. We offer that solution before they even had the product, so as a last resort you
press the button, obviously new companies start up every single day, you know, lots and
lots of them. So there is a preventative element as well and we’re in talks at the moment
with BT nuisance calls Intelligence Bureau to, to pre programme ours with numbers that
are proven scam companies. We lead the market, as well as the service; next to the TPS
we’ve got the largest service. People are happy with the service that we provide at the
Call Prevention Registry, they’re happy with the CPR blocker and there’s plenty of
evidence to back it up and it’s the empowerment, it’s how people, how people feel

Mike Crockart: Right

Lee Hare: It’s having the ability to do something is really important as well.

Alun Cairns: I think we’ve got to accept that technology will evolve and develop
and they’ll be a whole range of solutions and what suits today doesn’t suit tomorrow.
But the purpose of this is trying to gather the evidence and see what legislative and
regulatory changes we can introduce, to allow those technologies to compete and to
come up with some sort of solutions as well.

Steve Dakin: Can I make one easy request that almost certainly is going to require
regulatory changes, very possibility legislation, the traceability of the SIM card

Alun Cairns: Do you want to tell us a bit more?

Steve Dakin: I mean at the moment you can walk into a shop, pay your money and
get one, you can be using it for any purpose, absolutely any purpose at all. If you actually
had to give over some form of photo ID to demonstrate this person has got that, OK your
phone could still be stolen; you could still report it stolen. But if one person has reported
200 phones stolen in a two month period, all of which have been involved in mass
spamming activities, it’s a bit of a, it’s a bit steer.

Neil Cook: But then you have wholesale SIM card selling, you can buy SIM cards
on eBay for 99p.

Alun Cairns: I think the back appraisal on that would potentially be enormous

Lee Hare: Yeah.

Alun Cairns: In terms of the regulatory sort of tie in that follows it

Steve Smith: They have tried it in other countries, I think in Brazil recently they
tried to do it and they asked everybody who had a SIM card to register it, I think it was
Brazil, certainly South America they asked to register it, otherwise it would be turned off
Stephen Smith: Well it was Mexico and I think they had to reverse that, that was the policy and they didn’t do it in the end, the government went back because so for people registered, they were going to have to turn everyone’s phone off and didn’t want to do it.

Mike Crockart: Can I ask what your views of TPS, how effective or, or otherwise you it is.

Stephen Dakin: It’s a wing of the Direct Marketing Association isn’t it?

Mike Crockart: Well I mean what, if we’re talking about a share of the market place, then TPS has got the biggest share of the market place, so surely people have voted with their feet in saying that that’s, the one that’s going to help them the most.

Stephen Dakin: Well, my understanding of the TPS is they were established by the Direct Marketing Association to protect their members from having legislation put in place, to make them behave properly. So it was self regulation rather than having regulations imposed upon them. I haven’t found them to be the most friendly of organisations I have to say, I’ve got a nice solicitors letter back there suggesting that the Mobile Preference Service could get confused with the Mail Preference Service, they didn’t send me the copy that they sent to the Metropolitan Service either. We’ve had many discussions with them over the years; I suspect they’re more interested in protecting the interest of their members of the Direct Marketing Association, than anything else, that’s their primary goal.

Alun Cairns: Can I extend that then, what’s your attitude about the Direct Marketing Commission?

Stephen Dakin: I don’t really have one at the moment; I’m ill informed on the matter.

Alun Cairns: OK.

Neil Cook: We’ve found the DMA to be quite cooperative when we’ve presented them with the evidence from the spam reporting service etc, so we work with them and the ICO in terms of trying to figure out, you know bound the problem and those kind of things. So, that’s my opinion on the DMA, they do what they do. I think one of the problems is they represent legitimate companies, a lot of this I think is coming from people who don’t follow the regulations, who TPS is effectively an opt in service for someone who wants to make marketing calls. If you chose to ignore the TPS as someone who makes unsolicited calls, then you know the TPS can do nothing about it. So you know that’s the problem with all of those sorts of

Stephen Dakin: But this is a benefit of your arms race, it gives the regulators the biggest stick to beat somebody with because you’ve established best practice, then by not adhering to the TPS lists you have now stepped outside best practice, you can be given a big fine by a regulator. And that, that is the benefit of this arms race and putting these extra barriers in place.

Neil Cook: If we look at SMS spam there’s plenty of people who had a lot of the PPI stuff was coming from Tetrus they were outside the law and they were served that fine. I said this in the meeting on Tuesday, but when they were served their fines spam went up ten times in the next two months.

Andrew Stunell: What when they were served notice?

Neil Cook: Yes that’s right. I’ve got a graph that shows this.

Mike Crockart: But when we had the session with regulators and ICO were very surprised when we raised that with them, they didn’t seem to either know or recognise that, you know that spike in activity had happened after their activity.

Neil Cook: Right.

Mike Crockart: I found that quite surprising.

Neil Cook: Yes I am quite surprised as well, we do talk to the ICO, they’ve only just had access to the full system, so that was before they had access to the data, that live access to the data we give them

Mike Crockart: Because the follow on worry from that therefore is if we are heading towards, you know more notices of intent by ICO for the next thing which is
likely to be pay day reminder texts, are we about to see a massive spike in those sorts of texts if it follows the same trend?

Neil Cook: Well possibly, it depends on what they think they can get away with. I mean say pay day loan there’s already some action underway, we are going to crack down on pay day loans spam, apparently 19 of the 50 companies have exited the market. I’ve got some graphs here if you’re interested, the effect that had on pay day loan spam, this is actually not volumes this is percentage of complaints, but volumes have been steadily rising through the whole period. So this is percentage of complaints which were related to pay day loan spam and the various regulatory things which came into place and you can see it’s had no effect on it.

Mike Crockart: Right yeah, there’s no downwards trend here at all.

Neil Cook: Zero

Alun Cairns: It’s upward trend.

Neil Cook: This is percentage of total reports that we see in the UK that are to do with pay day loans spam

Mike Crockart: Right OK.

Neil Cook: And over that period, reports that we get overall are fairly consistent, rising slightly

Mike Crockart: OK because, the alternative would have been that other things are falling, therefore the proportion would be rising.

Neil Cook: No but the total overall, total if you look at 100% is gradually rising it’s not falling or changing.

Alun Cairns: But I would say even in this market here, the interventions in the market have not been aimed at reducing the spam or text

Neil Cook: No sure.

Alun Cairns: So we’re comparing apples and pears really.

Neil Cook: Well I do, yeah we have other data

Alun Cairns: I mean you can easily send it to us

Neil Cook: Yes, I will send it to you.

Alun Cairns: So, if we’re expecting to see a downward trend because there’s intervention in the market be it, to proactively seek to stop something

Neil Cook: That’s true but if you look at the Tetarus Telecoms one, then that didn’t have much effect, it lead to a rise and then the overall levels since then have been about the same.

Alun Cairns: Yeah but if you share that, because we’ve used that evidence earlier with us

Neil Cook: I can certainly do a graph for that.

Alun Cairns: That would be helpful.

Neil Cook: Good.

Alun Cairns: OK is there anything else that, that we want to pursue? Andrew?

Mike?

Mike Crockart: I wanted to ask Call Prevention Registry particularly about, about TPS because you haven’t said anything about that and effectively you have you have your own TPS

Andy Sandbrook: Yes we have

Mike Crockart: So that kind of indicates that you don’t think that the TPS are effective?

Andy Sandbrook: What we feel is with the TPS and this where we’ve been blocked by many times by the TPS, because they have the monopoly and they keep telling people that, we’re not regulated and the more we’ve looked into it, they say no we’re not regulated by Ofcom or the ICO. Ofcom and the ICO regulate every company in the UK, but what we feel is TPS should not just have the monopoly for the consumer to opt in to stop nuisance calls.
Mike Crockart: I'm drawing air over teeth there; I'm not even sure what's inferred from that.

Stephen Dakin: Well the problem there is that if I wish to be legitimate operator you’re making it harder for me if I have to query three separate databases to find out whether I am.

Mike Crockart: So increasing costs?

Stephen Dakin: Yeah but you’re making it easier for me to be accidently be incompliant.

Mike Crockart: Yes, oh sorry I checked those two, I forgot about that one.

Stephen Dakin: That one yeah and of course they’ll all being updated on different monthly cycles, so you know did I catch it right? You effectively end up with a situation where a consumer has to subscribe to that one that one and that one to make sure the message got through, so it would be a worse job for the consumer.

Stephen Dakin: Did you bid for the TPS sender when it was up last year out of interest?

Andy Sandbrook: No we weren’t invited.

Stephen Dakin: Oh I think that’s why they don’t like us because we did.

Stephen Dakin: And they wanted advanced technological solutions to enhance the capability of the TPS in blocking stuff, because at the moment let’s be honest it’s nothing more than a switch, give me everything, give me nothing with a bit of advanced baby stopper technology bolted on the side. Now we came up funnily enough with quite a few more elegant and sophisticated things that we could add, than just a give me everything, give me nothing and I can’t even remember what the criticism was now, but I’ve seen it in writing.

Neil Cook: Reporting

Stephen Dakin: Sorry?

Neil Cook: Reporting?

Stephen Dakin: Something irrelevant given that it would have been a completely technological solution, but I mean there should be one, but it should be put up for tender more regularly.

Alun Cairns: How, how long was the tender for?

Steve Smith: Five years.

Stephen Dakin: Yeah.

Alun Cairns: Five years, gosh technology changes so quickly in that time.

Stephen Dakin: Absolutely and they haven’t done anything it’s still just a list, you’re basically pedalling a list. So you know the two services are, you subscribe to us and we give you the data and you pass your numbers against it or you give us your list and we pass your numbers against our opt in, opt out database and that’s it. But there are so many other bits. Just for instance you could sit here and establish 30 categories in marketing and allow people to opt in, opt out of those individually. So that actually no I am looking for double glazing, you know you’ve then actually got a valuable source of data that could be sold to the marketers, so that some targeted marketing could take place, rather than the generic hurl it wide and cause everyone nuisance calls. There’s so much more that could be done, but as I say my view is that Direct Marketing Association are more interested in looking after their members, than the consumer in this particular instance. And sadly I think the TPS is sort of losing teeth, I’m noticing more spam calls coming through, it used to be very, very effective.

Neil Cook: That’s right; I’ve had nuisance calls from international numbers, which just comes up international and not even a number. So the TPS has no effect in those kind of cases.

Andy Sandbrook: Well we work very closely with Trading Standards and Trading Standards have noted us as the enhanced service to the TPS, just like BUPA are the NHS. If you get ill you go to the NHS, take your time, or if you want to get it done, sort, get yourself sorted quicker then you go to the BUPA and you pay the difference.
Mike Crockart: I’m not sure about that. One more question. When the operators were here we had a bit of a discussion around you know 7726 and implementing a landline equivalent short code, and the main argument against it seems to be around cost. Now I put the mobile operators on the spot and said, ‘right well how much does it cost for the 7726 service?’ And they said ‘hmm don’t know, I’ll, come back to you on that’. Now from your evidence that, the answer would seem to be, that they would come back and say, oh it’s very, it’s very cheap, it’s free.

Neil Cook: Well it’s a trial

Mike Crockart: Now because it’s a trial service at the moment. So I think probably I asked the question to the wrong person, so can I move the question to you to say what should that service cost? I mean feel free to take it away and come back to us.

Neil Cook: I I would rather not say in the room. I can tell you and talk to you privately about it, because obviously it’s negotiable as well. It’s not, it’s not free

Mike Crockart: Absolutely, but what we’re, what we were trying to get is you know is it a huge number?

Neil Cook: It’s not a huge number.

Mike Crockart: Is it a relatively small number? You know because if it’s a relatively small number then surely if that then feeds into the business model for landline operators to say, well it’s not going to cost us too much to do it and that’s going to cut our costs in terms of complaints

Neil Cook: Yeah to a mobile operator this is child change, let’s be clear.

Alun Cairns: Are there competitors in your fields to offer that service?

Neil Cook: Nobody else offers the spam reporting service, but the nice thing about it is that it’s a service to operators and to the regulator. It’s an information service which doesn’t stop anyone else coming along, we don’t have the monopoly, we don’t have any kind of government mandate to provide this service or, you know we’ve just come up with this service and, and mobile operators are generally find it valuable so.

Alun Cairns: But I would also suggest that in this climate, as there’s greater tension developing around the nuisance calls, spam, texts that it would be pretty unacceptable, or a pretty disastrous marketing move for an organisation to withdraw a service?

Neil Cook: Yeah I agree, yeah it would be.

Alun Cairns: And we need to send that message.

Stephen Dakin: The other element of cost you will get is not just cost of operating a service but of implementing it in the first place, because it will require changes to their networks and service

Neil Cook: I would say that it’s going to be more costly to implement it on a fixed-line than a mobile network, simply because it’s provided as an SMS short code which mobile operators do every day, it’s business as usual for them, they just route it to us and we handle everything else and that’s all part of the cost. So that’s quite trivial for them to implement in their networks. In a fixed line network it would be slightly less trivial, not that hard, but still, we haven’t really gone into how it would work in the mobile network because I don’t think this is the right forum to do that, but there would be slightly more cost for them to do it, but it’s not like a massive thing.

Alun Cairns: Ofcom communicated to us there will be a charge and it will be different for different operators depending on the legacy system that they’ve got in place, so I think we’ve got to work on a basis that Ofcom will have to apply somehow.

Neil Cook: Yeah, so there will be a cost to the operator to implement it in their network and then a cost to whoever’s providing the service like SRS as well. But the cost that we provide is not massive, I mean it depends on what you think of as massive, but it’s really not.

Alun Cairns: OK then, any further questions?

Mike Crockart: I think we’ve covered everything.
Alun Cairns: OK can I say thank you so much for the time you’ve given and for the information you shared before now and, and now it’s been really helpful. There will be a verbatim transcript of the session, we’ll send it to each of you to agree before publication, but everything that’s been said will be part of the report, when we publish that in a number of weeks before the legislation comes forward.

Alun Cairns: Thank you.
Oral Evidence Session 6: Direct Marketing Association
Thursday 10th October 2013 at 2 pm
Portcullis House, House of Commons, London, SW1A OAA

Members:
Mike Crockart MP
Alun Cairns MP

Witness:
Mike Lordan, Direct Marketing Association

Mike Crockart: Good afternoon and thank you for coming to what is the sixth evidence session of the All Party Group’s enquiry into nuisance calls. Believe me we are very happy to see you because this is the last session, so we have made it to the end of what has been quite a long week, but a very productive week. I'll introduce myself, my name is Mike Crockart, MP for Edinburgh West and one of the co-chairs of the All Party Group. If I could ask you first of all just to introduce yourself for the purposes of transcription. It’s going to be an awful lot easier for transcribing this one, but other sessions we’ve had six people sitting at opposite sides, so just say who you are and who you represent.

Mike Lordan: I’m Mike Lordan and I’m Chief of Operations of the Direct Marketing Association.

Mike Crockart: Thanks very much. I think if we can start really with just a general question to get your understanding of how big the problem is because in the various evidence sessions that we’ve had this week we’ve had conflicting views of what constitutes nuisance calls, how big the problem is and whether it’s getting worse or better. So if you could just kind of outline what you think the situation is.

Mike Lordan: I think it’s a big problem, very big problem. I do think there is an issue with the term, and we need some definition around that term: nuisance calls. If I give an example that one might get a call from a company who someone owes money to, they may not like that call and they may consider this to be a nuisance but it’s certainly not illegal. So there’s those calls, and I think, particularly recently the Which? survey, they didn’t differentiate enough in that area, neither did the Ofcom one actually, and I think there’s some need to do so. Having said that I think it’s a massive problem, I think it has been for a number of years, I think it’s only been taken seriously, as serious as it should probably in the last 2 years to 18 months. And whilst the peak seems, you know, to be coming down a bit, I’m not sure whether that’s just because people don’t report them any longer, some of these calls, I think that may well be some of it. And certainly in the last two years with what was initially the accident claims management issues, followed on by more recently the PPI claims, have been a major inconvenience, if not worse, to the general public.

Mike Crockart: Now of course you represent the DMA, which is the trade body for direct marketing.

Mike Lordan: Correct.

Mike Crockart: I mean what’s your feeling of how much of this problem lies at your industry’s door?

Mike Lordan: Well we represent the industry, we’d like to think, and we think we do, represent the, the part of the industry that wants to be compliant with both regulations and our code of practice, but certainly the industry that’s involved in direct marketing, if we use, you know, the PPI issues, they’re involved in direct marketing. So the use of direct marketing techniques are certainly part of this problem. Now you know,
we have many members from the large banks to BT, to small suppliers, and there’s a whole range from people who provide call centre services, and people who, you know use telemarketing techniques.

Alun Cairns: What would be a typical smaller supplier?

Mike Lordan: Our suppliers would go down on a consultancy level to a one man band actually. But they tend to be more the mid range. We have, as I say, the banks and other large companies and the large stores, Tesco and Sainsbury’s, Sainsbury’s would be members, but there’ll also be, perhaps if we break our membership down crudely at this, a further break to three constituencies which would be Tesco, Barclays Bank, who would tend to buy direct marketing services, perhaps in as a group one third. Second, they’re not quite the same size, but almost a third, a group that are called agencies, which tend to be the ad agencies or the people advising these clients on how to go about recruiting customers or retaining customers. And the third constituency being suppliers, who would be perhaps people who are involved in mailing houses or call centres who provide the services to do that end piece.

Mike Crockart: Now we’ve heard early on in the week from the Direct Marketing Commission that you represent about 1,000 companies.

Mike Lordan: Yes.

Mike Crockart: But that represents, you know, a quite small proportion of the companies engaged in direct marketing.

Mike Lordan: That’s correct. If you went back perhaps ten years it would have been quiet a large proportion of companies, not that there was 1,000 members then but the proportion would have been bigger, but these days, because of the nature of direct marketing, most companies are engaged in it in one form or another.

Mike Crockart: So what prevents those companies from joining your association? Do they not see that there’s a benefit to it, or?

Mike Lordan: I think there’s a number of things. Some companies who are doing direct marketing around the periphery, some of them don’t even realise they are doing direct marketing. Perhaps if they’re doing some work on SMS work, they may not see themselves as doing direct marketing, they may see themselves as being technology companies, so there would be that area. Other companies perhaps wouldn’t join because they wouldn’t want to abide by our code of practice, and others, just smaller companies may not want to join because of the fee, may be as simple as that, especially in this economic climate.

Alun Cairns: If I’m a plumbing company and I’m touting around services to repair boilers, or to service boilers, so I’ve got an assistant that sort of spends much of the day, or 50% of his or her day on the telephone trying to drum up business, would there be a means for me to join your organisation?

Mike Lordan: There would but it would probably be unlikely as that would fall almost definitely into the category where I think the company may not see themselves particularly as doing direct marketing, but they use the telephone as a means of drumming up business. So possibly not, unless they use, and this would be a more likely scenario, perhaps not a small plumbing company, but some of these smaller companies would outsource that to an agency. And that agency may well be a direct marketing. A member of the Direct Marketing Association.

Alun Cairns: So right, it’s a difficult question in terms of the measure, but with 1,000 members, what proportion of that, of the operators actually …?

Mike Lordan: Of the operators?

Alun Cairns: Of the callers?

Mike Lordan: Of the callers, it is a difficult question, and I would say, it is a guess to be quite honest, but I would say possibly about 20 to 25%. But that really is a guess, and we could perhaps try to do some research on that and get it, because most of the banks have stopped doing cold calling actually. But at the moment a lot of the problem ones are not members because most are the PPI companies. We changed our terms and
conditions on membership last year when we had a number of the PPI companies attempting to join us, I think, to get a bit of a badge of respectability, so we changed our terms and conditions so that if any PPI company does join us now they have to sign up to agree that all their, any TPS related data, they agree to release that to the Direct Marketing Commission.

Mike Crockart: Right. We agree that there’s a big problem
Mike Lordan: Indicates agreement
Mike Crockart: So can I start very broadly and just ask you a very open question, what do you think is the single greatest thing, because we’ve talked to lots of people and we’ve had lots of suggestions made to us and it’s clear that there’s not one single thing that is going to fix this. But from your perspective what would be the thing that would, you know, make the biggest step forward to try to deal with these calls?
Mike Lordan: More enforcement of the regulations.
Mike Crockart: I didn’t expect quite such a quick and straightforward answer there!

Laughter

Alun Cairns: OK, I notice from your paper, rogue companies who flout the rules are to blame for nuisance calls and texts. Rogue companies and more enforcement, so they’re sort of tied together I suppose, out of those companies, those high profile companies that have been fined of late, and there have been some significant fines, were they your members?
Mike Lordan: No.
Alun Cairns: Not at all?
Mike Lordan: No.
Alun Cairns: So TalkTalk?
Mike Lordan: No.
Alun Cairns: British Gas?
Mike Lordan: No.....well, one part of British Gas is, although they weren’t fined, from my knowledge for nuisance calls, for nuisance calls, they were fined for the silent call regs.
Alun Cairns: Are they a rogue company then?
Mike Lordan: I think they were behaving in a way they shouldn’t be behaving. I don’t think that British Gas are a rogue company but they were indulging in bad practice at the time.

Mike Crockart: Right, my, my difficulty with your answer is that it effectively puts all of the onus onto the regulator. And given the volume that we’re talking about, you know, we’ve had evidence this week of it being, you know, potentially hundreds of millions of texts, silent calls, recorded calls, per month. Now on that basis, a regulator, in your case mainly the ICO, with six members of staff, it’s simply not going to happen. You know, so the simply saying more regulation, more enforcement of the regulations is not going to be the answer, is it?
Mike Lordan: Not the only answer but you did ask me what I consider to be the biggest one.
Mike Crockart: Can I ask what you think the most likely one is, the most effective?
Mike Lordan: Well I think there’s a number of things that could happen. I think enforcement, giving the ICO some of the powers that they’ve recently asked for to lesser the burden of proof, to, make them work a bit faster because quite often the length of time before they announce these companies to the time it happens is a bit like shutting the stable door, so enabling the ICO to do more. I think that we need to use technology better, I think that the major telecoms companies need to be a lot more proactive in helping sort out these things such as spoof. I know some of that’s probably difficult when they’re coming from overseas, but I think there’s technology things that the operators could be doing more. I think that introducing more checks on companies, more audit checks on companies, would at least take a lot of the people out of the picture that are
currently. Most of the people who would sign up for the checks I think will think they are OK anyway because they wouldn’t be signing up to them, but I still think that would help. So I think there are a range of things that need to be done and to do.

**Mike Crockart:** Now I read something, I think it was in your evidence, about audit checks.

**Mike Lordan:** Yes, with the DMA and TPS.

**Mike Crockart:** TPS.

**Mike Lordan:** We are launching an audit service

**Mike Crockart:** Yes, this month.

**Mike Lordan:** At the end of this month, which will go a bit further than the current legislation.

**Mike Crockart:** Who you’re actually talking about auditing here, because, you know, are you talking about auditing your membership?

**Mike Lordan:** No, this will be open to any company.

**Mike Crockart:** Right OK.

**Mike Lordan:** There will be a fee. They’ll have to pay a fee.

**Mike Crockart:** The company will come to you to say ‘are we compliant’?

**Mike Lordan:** Yes. They’ll ask ‘We’d like you to do the audit’, and that audit will cover the Ofcom regulations, the PECA regulations in relation to telephone and the DMA code of practice in relation to telephony.

**Mike Crockart:** And therefore is the idea that what will come out of that will be some sort of stamp of approval or kite mark?

**Mike Lordan:** Precisely.

**Mike Crockart:** Saying we are a reputable company that will....

**Mike Lordan:** We are ‘TPS Approved’. Yes, a, a kite mark.

**Alun Cairns:** You said earlier more enforcement was the issue.

**Mike Lordan:** Indicates agreement

**Alun Cairns:** Can I ask you about the capacity of the regulators to deliver that? Because we said there are probably 4,000 or maybe more people involved in the field.

**Mike Lordan:** Yes, I think that could be done a number of ways. We did suggest this a couple of years ago to Ofcom, that one of the things at the moment, the people who pay for the licence for the Telephone Preference Service are the industry, so the people who buy that pay, I don’t think there’s a huge amount of significance on price on that, I think that in consultation that price could be put up to charge for more for the licence. And I see no reason, I’m sure there’s some technical legal reasons but I don’t see why they couldn’t be overcome, why some of the monies collected there couldn’t go to the ICO to enable them to get more people to do the enforcement.

**Alun Cairns:** But they would need to investigate every complaint? In order to follow, just think the process through. I receive a call, I’m TPS registered, I’m irritated by it, I then - I’m one of the few probably that makes the complaint - but there are still thousands per month that send it to Ofcom or to the ICO is generally in this case that we’d be talking about. They then need the capacity to interrogate it, to find out what organisation it is, they then do it for thousands of others to work out, is there a trend, and then they start to investigate or act on, on your members. Because the only way of doing it is call by call by call by call, to look for sufficient evidence, otherwise they won’t meet the thresholds. So we can adjust the threshold and clarify the definitions. And I’d like to think there’s probably a general will of support for that across every stakeholder. But the question has got to come to: investigating thousands of calls is quite onerous.

**Mike Lordan:** Well I think one of the things I know TPS does do, TPS produces a list on a monthly basis of the top offenders. Now even if we got to those top offenders, top list, top 50, although the tail I know is quite long

**Alun Cairns:** How do you identify those?
Mike Lordan: By the number of complaints to TPS. I am referring to TPS and not silent calls here, but they’re identified by the numbers that consumers have given us, so the names or telephone numbers, are given to TPS, so there’s a top 20 list published each month that goes to the ICO and Ofcom, and that easily could be a top 50 if it’s requested. And that’s the number of complaints against companies. Now one level of investigation does need to go beyond that because consumers could be wrongly giving out a false name, not the consumer normally but some of these companies don’t identify themselves. There was something a few years ago where a rogue company was trying to sell insurance, satellite insurance to Sky dishes, and they were identifying themselves as Sky, so there was a raft of complaints about Sky when it wasn’t Sky at all. But that’s the exception as opposed to the rule but that does have to be checked. And that can usually be checked, cross checked with the numbers. So there is a top 50, and I’m not saying that I would expect the ICO to get someone who was 293 on that list but I think it would be reasonable for more resource put in place. To get perhaps the top 50, which would come out and send a strong message to the industry more generally.

Alun Cairns: So in the top ten, let’s say, how many, let’s say the tenth, how many complaints will you broadly get in order to qualify to be in the top ten?

Mike Lordan: It does vary and I don’t look at all the TPS stats because the TPS is run slightly separately. That data is very easy to send to you, we collate it on a monthly basis, but I think it would normally be about 70 or 80 per company, and that’s the complaints that have been received by each company. Can go up to 100, it can be as few as 40, it was fewer a few years ago when I was far more involved in TPS, but that’s 40 people who’ve complained.

Mike Crockart: Which is the tip of the iceberg?

Mike Lordan: Exactly. Which is probably, if you say one in ten....

Mike Crockart: Now we heard the other day, when we had DMC and TPS in giving evidence, that of course even if some of your members appear in that top ten TPS can know that they’re there but can’t actually speak to DMC saying ‘you need to be doing something about this member’

Mike Lordan: *Indicates agreement*

Mike Crockart: I mean that is not an acceptable state of affairs, is it?

Mike Lordan: It isn’t, and we’ve tried asking Ofcom, if they will do something about it, and they just keep referring us to the Communications Act.

Mike Crockart: *Right, the Communications Act.*

Mike Lordan: Yes, but we’ve wanted to do that for some considerable time to protect the industry and of course to protect our association’s reputation because we would like, very much like to address these people before it’s addressed in public, and get them to change their ways.

Mike Crockart: So how does it work then if the ICO, in their top ten they have a DMA member, I mean do they act entirely separately or would the first port of call be to come to the DMC to say, one of your members is.....

Mike Lordan: No, they do actually act independently.

Mike Crockart *Right.*

Mike Lordan: We have got closer in the years with the ICO because one of the issues was when they started to recruit the people they’ve now got in the enforcement area they didn’t know much about the direct marketing industry, so we taught them a lot about the good side. So they would ask us more about things like data, how is data passed on, but they wouldn’t necessarily come to us and say ‘one of your members has been misbehaving’. Now if the DMC have complaints about one of the members they would investigate that and pass that information on to the ICO. We threw a member out a couple of years ago because they were breaching TPS and we passed that information on to the Information Commissioner.

Mike Crockart: OK. Do Ofcom come to DMC to say one of your members is making silent calls?
Mike Lordan: Never.
Mike Crockart: Right, so we could potentially at the moment have a situation where you’ve got a company that’s, you know, making loud marketing calls, it’s maybe got a dialler that’s making silent calls
Mike Lordan: Yes.
Mike Crockart: It’s managing to get into the top ten and because of the disparate system of reporting, making complaints, you could have TPS having received lots of complaints and be potentially looking at them, or contacting them, you could have ICO potentially investigating them and serving them a notice of intent, you could have Ofcom separately going, well you know, something’s going wrong here, and nobody’s talking to each other.
Mike Lordan: Correct. I do believe, my understanding is that Ofcom and the ICO are going through some memorandum of understanding at the moment. That’s, that’s my understanding.
Mike Crockart: Well it’s one of the things that’s included in my Private Members’ Bill to change the legislation and...
Mike Lordan: But it’s clearly a nonsense.
Mike Crockart: Yes.
Alun Cairns: In terms of the barrier between them, is that because of data protection reasons, or information sharing reasons, or is it legislation doesn’t allow for, or lack of a will?
Mike Lordan: My understanding, and I’m going on what I’m told by Ofcom on this, that it’s the Communications Act, it always seemed to lead back to there when I’ve asked Ofcom for permission to get TPS data to give to the DMC.
Mike Crockart: Yes. There’s a recommendation for our report anyway, for sure. Right, your basic stance is that in general your members are behaving but there’s lots of others out there that aren’t your members that are misbehaving.
Mike Lordan: Well that’s the general stance. I mean we’ve got a 1,000 members, if you said, ‘would I guarantee that all 1,000 of those members have never breached any of these regulations’, clearly I wouldn’t, but I would say that in general the fact that people sign up to our code of practice, we do compliance visits on them when they sign up to the code, especially if they’re involved in telephone. In general they’re far less likely to be involved in any of this, and, and people that are on the TPS, no DMA members have been yet.
Mike Crockart: So the question therefore is, how do we get to the stage where more companies engaged in direct marketing, maybe don’t have to sign up to be members of the DMA but certainly have to sign up to your code of practice? Because as I understand it, that’s what happened with the claims management firms?
Mike Lordan: Yes.
Mike Crockart: The Claims Management Regulator put it into their guidelines that if you’re going to be regulated then you have to sign up to the code of practice.
Mike Lordan: Yes. One of the things that we’re hoping that will happen is this TPS Assured, this audit scheme, will open it up to non members and the code of practice, the code of practice relating to telemarketing, anyway that part of it, not all of it because it covers many, many more disciplines, and that will be open to non members to sign up for that audit and we’re hoping they will do. But that won’t in of itself solve the problem, that will just be another one of the things, but I’m hopeful that we can talk to the ICO and Ofcom that we already have put this audit, and I’m hoping that they will recommend that other companies should sign, well especially some of those companies, those they feel that are making these calls and are not quite aware of all the regulations. I think they should be at the moment now, with the fuss over the last year, but I think there’s still some companies out there are a little naive and that if they get perhaps one or two complaints about the company over a number of months that they might recommend to
these companies that they sign up and have an audit so that they know the full process of both Ofcom, ICO and the DMA’s code of practice.

Mike Crockart: Right, but that would still be a voluntary system?
Mike Lordan: Yes.

Mike Crockart: Yes, is there an argument for a requirement to have an audit if you perhaps reach a certain level of complaints?
Mike Lordan: I think there could well be. I know at one of the early round tables, that I think you may have been at actually, that Ed Vaizey talked to us at one point about licensing companies who would make outbound calls. Now clearly that audit could form in someone else’s hands, probably not ours at that point, it would probably need to be one of the regulators, but that audit could form part of that licensing if we wanted to go to that route. 

Alun Cairns: Disclosure. Well one last question on where you were but it’ll lead into this hopefully. Are the complaints that are made to you and your investigation then after, and hopefully you’re auditing in order to be proactive, will your encouragement for auditing also extend to the reported offenders by the ICO and/or by Ofcom and the ICO? 
Mike Lordan: No. And we’ve been quite deliberate, we have had a lot of thought actually, if we’re auditing companies then we have said that we wouldn’t disclose that information because our view would be that not many companies would sign up for an audit if they believed they were doing illegal activities because the audit is pretty thorough.

Alun Cairns: But if they’re top of the list of the ICO would it not be sensible for you to audit them?
Mike Lordan: I think we might audit them, and we might point out, if they really genuinely believe that they weren’t aware that they were doing this, they thought they had permission to call, for example, then we would audit their data. We would ask them where they had consent, to show us evidence of where consent was gathered. Now if a company came to us as part of the audit to say, look, I’d like to be audited by you, if they’re knowingly breaking the law I suspect they wouldn’t, but if they were unknowingly we would hope to stop those practices, or they wouldn’t pass the audit. That’s in the first place, but then we would help them to get their processes in place that would enable them in the future to pass an audit.

Alun Cairns: I’m trying to sort of get my head around, who would you audit? Let’s go back before audit then, you get a complaint, and you can see a trend, so you think well hang on, this Joe Bloggs company, and there is probably a company, ‘Joe Bloggs’, sorry, this ‘Alun Cairns Callers’

Mike Crockart: It’s got a ring to it.

Laughter

Alun Cairns: ....that appeared and you’ve had a trend of complaints, so you think hang on, there might be something worth investigating here. So I’m not on your list maybe but I’m on the ICO’s list because people have gone onto the portal and worked out that’s the best place they need to complain to rather than the TPS. So do you then investigate me on that?
Mike Lordan: If people go straight to the ICO? We don’t get to see that data.

Alun Cairns: But would you like to be able to do that then? To investigate those if they’re members?
Mike Lordan: Well...yes, oh absolutely, one of our members.

Alun Cairns: So, but that’s the data isn’t shared then obviously.
Mike Lordan: Yes.

Alun Cairns: Fine, OK, that’s the first thing. Right, that sort of clarifies the reason I wanted to tie that down. Let’s move to the audit then, I want to sort of clarify this, on the auditing issue, will it be up to an organisation to come forward to you and say, will you please audit so we can have a kite mark?
Mike Lordan: Yes, at this point in time, yes, we’re launching the audit. We’re going to have people from the ICO.

Alun Cairns: So you won’t instigate an audit of potential offenders?

Mike Lordan: We haven’t got the wherewithal to do it.

Mike Crockart: But you could make it part of your code of practice for your members though, couldn’t you?

Mike Lordan: We could. We haven’t to be quite honest thought about that, making it part of the code of practice because it’s quite a big audit but we could, and we could do something at some point which we are talking about but I think it’s a long way from talking about it to being there. Perhaps we could do something with the ICO along these lines. But that’s a bit further ahead than we are right now.

Alun Cairns: OK, right, so stick with the complaints and then potentially the audit. A lot of the complaints focus around, and this is why I think the regulator has got a difficult challenge, will focus around the call centre, or the callers, believing they’ve got permission, and the receiver feeling, believing, because they’re registered with TPS that they shouldn’t be getting the call anyway. So there needs to be an investigation to find out which is true and which is not. Do you want to comment on that general situation before I come down to sourcing, to identifying the source of the permission.

Mike Lordan: Yes, I mean they’re linked actually. And one of the things that we would do is, at audit, we ask for 60 days dialler dumps. Sorry, if I’m talking technically please stop me.

Alun Cairns: No, that’s all right.

Mike Lordan: So we get the data from the previous 60 days. There are programmes with the people we’ve got that will go through all that data, but you do then random checks, and I can’t remember exactly how many records, but it would depend on the size of the file. Let’s say we picked 300 records, and honed that down to 200 records, we would then ask to see the original source of permission for that data. So they, anyone that’s selling data or buying, or buying data actually, should do this check automatically, where they can. If someone is buying data, let’s say 100,000 records, I wouldn’t expect them to check all 100,000, right, I would expect them to have a contract in place and then to do a check of that data, and ask to see the original source of that data in a number of examples, so I can show you when ‘Joe Bloggs’ gave me permission and it wasn’t 25 years ago, Joe Bloggs gave me permission to call on this subject in January, and this is the record, or this is the dump from the file where he did that online. So there should be evidence there to show the proof of that consent.

Alun Cairns: OK, so on that basis then, taking this as being far more proactive, I receive a call and I say ‘I’m sorry, I’m TPS registered’, and then they answer like, ‘ah, but you’ve given us permission, we’ve got your permission to call’, is it not unreasonable for me to be able to say, when was that permission granted and where?

Mike Lordan: Yes it is. Right now some companies couldn’t do that then, they would have to go offline to do that. Now, you can get that under the Data Protection Act but people probably don’t want to go there and won’t understand it, your average consumer wouldn’t understand that.

Alun Cairns: But maybe the more that we request it will probably mean it becomes more readily available.

Mike Lordan: Yes, I mean I think some of these systems that companies use are pretty monolithic, and I think it’s quite reasonable to expect someone to get back to you with that source of data. A lot of companies can already do it, so you gave us permission, because they have the last record in there already to show when it got permission, but a lot of them can’t at the moment. And it would be quite onerous for some companies to do it. But I think offline everyone should be able to do it, and ultimately with technology they should be able to do it online.

Alun Cairns: Anything in your code of practice relating to that?
Mike Lordan: No. We do say about consent, that you should always have consent. There’s areas, I think it forms part of our data, that you should be able to go back to give the person the original source of that data.

Alun Cairns: With sufficient lead in time, and we can argue what is sufficient, would you, your organisation, or your members, object to having to be able to identify at the time of the call where the source of the permission?

Mike Lordan: I think some of them would on the basis... I don’t think they would object to it as a matter of principle, but I think a lot of this is tied up with systems and IT systems, and some of them would have a problem getting there in a couple of months. But I think the principle of being able to identify the source of data is just a sound one, all of the major data companies do.

Alun Cairns: And you don’t feel that they have a sufficient lead in time, whatever that might be - 6 months, 12 months, whatever - to say that source needs to be provided at the time of the call?

Mike Lordan: Yes

Alun Cairns: It wouldn’t be too difficult? Because I think that would be a significant game changer.

Mike Lordan: Yes, I think, I think you know, certainly in areas where companies are buying data they should already be asking for that information. Now they won’t necessarily be able to get that online but companies should be able to go to the original source of that data.

Mike Crockart: When we took evidence from the DMC, George Kidd outlined a vision, if you like, of what he saw as maybe a potential different set up, different solution, where the regulators become much more strategic regulators, and the industry actually takes on far more of the upfront work, I think he termed it triage of complaints, you know, the day to day complaint handling because regulators, you know, just are not built to deal with that. Is that a vision that you would share?

Mike Lordan: Yes, I say yes with a slight reservation, but the only slight reservation is the funding of it. I think that some time ago George and I, when I was more involved directly with TPS, actually put such a proposal to Claudio Pollack at Ofcom, it then appeared to be out of Claudio’s remit and he thought it was more an ICO problem. So yes, I think it would be possible. The scale of the number of complaints would make it a challenge, but I think it is possible. Funding would be an issue, my model for that at the time was to increase the charge to the industry of the licence for TPS. And I think that perhaps could still be done although the way the regulation....I believe the legislation is worded currently, there’s something in there that you’ve got to make it as cheap as possible, so it would be going against that to some degree. But I think that, providing it wasn’t, I mean the price of the TPS file now is about a quarter of the price it was ten years ago, so I think that one could be sold to the industry, even on a consultation basis. So I think broadly it would work. I think there’s a lot in the detail still to go into but broadly I think that could work, and could work alongside an ASA type model.

Mike Crockart: Now you say made a proposal to Ofcom. Was that at the time of renewal of the TPS?

Mike Lordan: No, this was before. This was, I think it was 2009

Mike Crockart: Is that in the public domain, that proposal?

Mike Lordan: I believe it is. I made that proposal to Ofcom then, I think it’s in the...yes certainly DCMS have got the proposal because they asked me for it and I sent it to them. They were asking me for lots of information, I think it was before that. But I sent it to them fairly recently, not necessarily as part of this enquiry but I mentioned this model and, and the chap from DCMS who was looking at it said he was quite interested and I sent him all the papers.

Mike Crockart: I mean would you be able to send us a copy of it?

Mike Lordan: Yes.
Mike Crockart: Thank you. Because it is, you know, the only concrete proposal that anybody has actually talked about. There’s a lot of people talking about we need to do things differently but in terms of how...

Mike Lordan: It’s quite a long proposal and quite technical in some points and.....
Mike Crockart: I won’t promise to read it all.
Mike Lordan: And George can occasionally get a bit wordy.

Laughter
Mike Crockart: That would be good, thank you. He was very good, I don’t know what you mean. Right, next?

Alun Cairns: CLI. How important is that to you?
Mike Lordan: If you’d asked me that question two years ago I would have said vitally important, and I still think it’s important. I think the spoofing of CLIs is more of an issue than it was two years ago, but it’s always been an issue for us and we always thought that Ofcom should have gone further.

Alun Cairns: How many of your members withhold numbers?
Mike Lordan: If we know about it, none of them, because.....

Alun Cairns: Withhold their numbers, because I think the regulations require that they identify themselves at the time of the call. If they don’t withhold their number, is that right?
Mike Lordan: No, our code says that if you’re making a sales and marketing call you have to display a CLI whether you’re using the dialler or not.
Mike Crockart: OK, sales and marketing call.
Mike Lordan: Sales and marketing call.
Mike Crockart: Can we go on a slight tangent then and talk about sugging?
Mike Lordan: Yes.
Mike Crockart: I mean how many of, what proportion of your membership is engaged in marketing calls?
Mike Lordan: Proportion of members, very few.
Mike Crockart: OK, but is sugging proper marketing, I mean is it Ipsos MORI?
Mike Lordan: Ipsos MORI are not a member....we work fairly closely, I work fairly closely with the Market Research Society on this. We work a lot together to try to stop this sugging because I think sugging has been probably not quite as big as PPI but I would say this year sugging has probably been third on the list, if I put generically the things that are causing this problem, it’ll still be PPI, accident claims, and I’d probably put sugging third actually. Possibly I could be wrong on that but it’s certainly in the top five. I think it’s an issue and I think that there could be a case for putting CLIs on everything. You’d have to make exceptions for doctors, hospitals, so there’d have to be a few exceptions. And, you know, if people have got loans you have to be careful, we’ve looked at this quite closely, that someone in the household might not want someone to know that a bank has been calling them. So there’ll have to be..... I think there’d have to be a bit more wider consultation on it to find some of those companies where it would, might cause legitimate distress to consumers if someone else in the household knew who was calling them. But if I take that away. Nearly all the activities that our members would be involved in, I could see no reason why you would want to withhold CLI.

Mike Crockart: OK, you were saying that two years ago it was better.
Mike Lordan: Yes, two years ago there wasn’t the preponderance of, well the spoofing numbers, it’s become far more common of late, which is why I said two years ago I considered it to be far more important then.

Alun Cairns: But your members wouldn’t be spoofing?
Mike Lordan: Not to our knowledge. Some of them use false CLIs deliberately to give other numbers to phone back to, so if people collect it they can then phone back to an inbound call centre as opposed to the call centre that’s doing the outbound work. But
that’s kind of legitimate, I think we’d have to phrase it in a way of what would be legitimate.

Mike Crockart: Yes, I mean the kind of standard that I think we would like to see is that there’s a valid CLI that if phoned will take you to either a person or a recorded message that makes it quite clear who it was that was phoning, ie a company name.

Mike Lordan: Yes.

Mike Crockart: And gives you the option to opt out from any further calls.

Mike Lordan: Yes, and not a premium rate one.

Mike Crockart: Yes. Is that similar to, I mean do you have recommendations like that in your code of practice?

Mike Lordan: Yes, I’m pretty sure that’s in our code of practice, that you’ve always got to, they’ve always got to be able to give a, give a number. Sorry, I’m trying to think of the whole of the code off the top of my head, I’m pretty sure it’s in there, if not it’s not, there’s wording to that effect.

Mike Crockart: You can’t recite it?

Mike Lordan: There’s wording to that effect, it may not be exactly those words. But there’s wording to that effect, so that you’ve got to give them to be able to get back to them.

Mike Crockart: Good. I mean I think what we’re heading towards here is a subject which has been quite heated in many of the sessions because, you know, there seems to be a bit of a, perhaps not industry move, but signs that things might be changing towards a pricing structure that puts a price on passing the CLI through. So would you have a view on this?

Mike Lordan: I’m not particularly technical in that sense, I don’t know the technical details of how the networks work but I’d be surprised with modern technology that it can cost that much to produce CLIs. I mean there may be, there clearly would be - I know we had BT do a presentation to us - to explain the difficulty in collecting overseas CLIs, and that was about 18 months ago, and I know there’s some difficulties at a technical level that frankly I got lost in after a while.

Mike Crockart: Yes, but in BT’s evidence to us, they talked about the 7,000 exchanges that they’re upgrading to deal with those technical difficulties.

Mike Lordan: Yes, I certainly don’t believe it’s beyond the technical wit of these companies, or shouldn’t be, they should be able to do that at a reasonable cost.

Mike Crockart: But if you’ve got lots more people contacting TPS, you know, your regulatory arm, giving you iffy or perhaps reasonable company names but weren’t able to give you a number?

Mike Lordan: Yes we can’t always check. I mean you can do a lot of stuff on the web, you know, search on Google and there’s that American website that also caters for UK, ‘Who Called Me’, if you look that up, that website, often our complaints people look that up and you can quite often get clues as to who’s using what number because someone may have gone through the sales process, because this is what it’s all about, so if you follow the sales process through long enough you sometimes get a name, and that then gets posted on some of these websites, like ‘Who Calls Me’ website which, whilst it’s an American one, does UK stuff as well. So yes I think it’s perfectly possible to be able to start to do that.

Mike Crockart: It’s what sorry? If you don’t have a number?

Mike Lordan: It’s perfectly possible that the operator can get something.

Mike Crockart: But it’s more intensive.

Mike Lordan: Oh it’s much more intensives, yes. And you can’t get them all.

Alun Cairns: Can I change slightly to ask you about mobile?

Mike Lordan: Indicates agreement

Alun Cairns: Do you cover people who call mobile numbers? Are they your members?
Mike Lordan: Yes, I believe so.
Alun Cairns: Because I can’t believe I’ve had two in the last day, believe it or not. Calls, recorded messages on my mobile.
Mike Crockart: Name the company!
Mike Lordan: I believe one or two of them probably do but not that many to my knowledge. And I do see that becoming a bigger problem area because the number of mobiles registered on TPS is very small at the moment, and we’ve just started to notice an increase that looks like maybe the bottom of the hockey stick, because we have been waiting for that to explode for a number of years now. We’re still surprised, surprised from a TPS point of view, as how relatively few mobiles are registered, I think there’s only 2 million mobiles registered on TPS, and there’s something like 70 million mobiles in the country. That says to me that there are two things, 1) people don’t know they can register their mobile on TPS, and 34% people who are registered, I think only 34% of people in the last survey we did, did know they could, so it needs a bit of publicity. But it also says to me, to some degree, that it hasn’t yet become the problem that the landlines have, but possibly will.....
Alun Cairns: Well, I think, you know my anecdotal individual experience demonstrates it. So would your members, would they call mobiles? Do they abide by the code? Does the code apply equally the same way on mobiles as it does to landlines?
Mike Lordan: Oh yes, absolutely, the code applies to whether you’re calling mobiles
Alun Cairns: And your members, would they call mobiles?
Mike Lordan: I’m just thinking...we’ve got a group that look after telephones called the Contact Centre Council, and I’m not aware of any of them that call mobiles but I think some of them must call mobiles if they’ve been given mobile numbers. So some of them almost certainly do, but I haven’t got a complete knowledge of that.
Alun Cairns: Do you see any different issues in relation to calls to mobiles or not?
Mike Lordan: Yes, I think in some cases it’s more intrusive because you’re carrying them around all the time. So I think people, the public consider it to be generally more intrusive than calling landlines. The other side of it is that if you’ve got landline numbers you quite often do a lot of research about the areas that people are living in, by the STD codes, so you can do some research on those numbers and general marketing, marketing research, to give you a bit more information if we call those numbers, now that’s nearly impossible on mobiles.
Mike Crockart: The definition of nuisance calls? The public have got a very wide definition of what nuisance calls are, TPS really have got quite a narrow definition. Is there an argument for extending the TPS’s remit to at least be closer to where the public think they should be?
Mike Lordan: Yes, I mean I think there’s a strong argument for TPS collecting data on all calls, silent calls particularly. We did - again I am going back a few years now - we did ask Ofcom at that point. We did in the previous contract collect data on silent calls - we didn’t collect it to the same degree as we collected on the TPS - but we collected data on silent calls and passed that on to Ofcom each month but, under the current contract they narrowed the definition of what the TPS should be doing. But yes, I think it makes absolute sense that there’ll be one body that the public can go to, to complain, whether that’s TPS or somebody else, from a consumer point of view. I used to have to think about who to call for what calls and I’m in the industry. You know, you can call four different people for different, and it’s a great nonsense.
Mike Crockart: Well I’d be interested to know who the four are that you think, because you know, we’ve already heard from about six this week.
Mike Lordan: Well, you’ve got the Nuisance Call Bureau, although, you know, BT’s Nuisance Call Bureau do send calls to us, we get a lot of calls if it’s TPS related, so that
one should be covered off because we have lots of engagement with them, but again, for the public it’s just confusing.

Mike Crockart: So on the reporting side of things, I mean we’ve kind of skirted round it at various times but on the reporting side, I mean you would be as supportive as, you know, everybody else has been this week of simplifying the reporting, because there’s actually been quite a degree of agreement that they don’t necessarily think that there should be different regulators but there should certainly be less places to report to.

Mike Lordan: Absolutely, yes.

Mike Crockart: You know, like a kind of aggregator upfront that’s decides where they go.

Mike Lordan: Yes. I mean Ofcom some time ago they perhaps didn’t agree with it but now, at least in their quarterly report, they publish TPS complaints alongside some other regulator complaints, so that says that the next step is logical to me.

Mike Crockart: Right. And the DMC, under an Advertising Standards Authority model, would be kind of the perfect place? Well, TPS as the complaints recording and then DMC as the investigator?

Mike Lordan: Yes. I think so. Yes, I think it could do at first level.

Mike Crockart: That’s interesting.

Alun Cairns: If you had lots of complaints, you investigated and you found one organisation was flouting the rules, I mean you said earlier you would probably throw them out. Is that sufficient sanction? And would you ever, in some circumstances, get in touch with the Information Commissioner and say this company here has flouted the rules, you need to investigate and potentially fine?

Mike Lordan: Yes. Well we can go as far as the last part of the statement you made. But I think the DMC, when we, throughout this company, I think I mentioned it in the report the DMC sent all the stuff to the Information Commissioner’s Office.

Mike Crockart: OK. How many times has that happened?

Mike Lordan: Twice.

Mike Crockart: In how long?

Mike Lordan: About three years.

Mike Crockart: OK, so twice we’ve got to the stage of throwing somebody out?

Mike Lordan: Yes.

Mike Crockart: Is there a sliding scale of sanction below that?

Mike Lordan: It’s up to the DMC because they’re an independent body. It’s up to them to recommend to the DMA board what happens. And it would be very unusual for the DMA board to take a different view just because of the natural justice argument that they haven’t done the investigations. But yes, it’s a sliding scale on the, you know, OK, we’ll send the compliance people in and make sure you’ve got your processes right so there’s a slap on the wrist and you’re named on the website, if you continue with this behaviour you’ll get thrown out, but even that arguably, so they’re thrown out the club and it would do them a bit of damage from people who currently use them who would only use DMA members. But it’s probably not as much damage as it would be by the ICO taking some serious sanctions.

Mike Crockart: Do you have numbers of companies that have had the lower kind of slap on the wrist?

Mike Lordan: Yes, on telephones, not that many. It’s probably about, I think there’s a been a few cases in the last year or so, and they’ve been told to get their processes right, we send in our compliance department to help them because they say, and obviously once the Commissioner heard them, they believed that they had been doing it unknowingly and that they needed processes in place to protect consumers.

Mike Crockart: But would you be able to give us numbers?

Mike Lordan: I think I can ask the DMC to send you numbers.

Mike Crockart: OK, thank you. Right.
Alun Cairns: I’m pretty much done.
Mike Crockart: I think we are. The purpose of this one is not to be quite as wide ranging but to focus much more on, you know, what the Direct Marketing Association, that the direct marketing industry can do to kind of police itself. I mean do you think that there is anything else that you can do as it stands at the moment that is within your control?
Mike Lordan: I don’t think there’s anything. We’re launching the audit, I think your point earlier is well made one though, that, you know, how many people do we represent. And I don’t think that, whatever the DMA do by itself, I think it will help, and if we do anything by audit it may help other bodies to point non-DMA members at us to say you can get some help here. But the proportion of people who are going to become DMA members is probably always going to, or in the foreseeable future, always going to be too small to be a huge impact.
Mike Crockart: So potentially the biggest impact that you could have would be through extending your services to non members through the audit.
Mike Lordan: Yes.
Mike Crockart: If there were a regulatory way of pointing, you know, low level offenders to you.
Mike Lordan: Exactly.
Mike Crockart: Require them to do an audit, then that would hopefully help the situation.
Mike Lordan: Exactly, that would help.
Mike Crockart: Right. I think we’ve finished. Unless you have anything else that you have prepared that you wanted to add?
Mike Lordan: No, I think that’s all, thank you.
Alun Cairns: One final question, sorry...
Mike Crockart: Oh, like Columbo!
Alun Cairns: Just hopefully a just quick answer. Lead generation companies? Are they now members? Can they now join the DMA?
Mike Lordan: Yes, they can. And they always have been but it used to be far more in with old mail, when mail was the key. Some of the issues, I believe, of late, they’re not ones I think have hugely impacted TPS, but some of the older ones have gone into the lead generation and SMS and telephones, and actually, this may sound hard to believe, actually don’t recognise how different the law is in different areas and, you know, it’s our job to educate them.
Mike Crockart: OK, in which case I’ll say thank you very much.
Mike Lordan: Thank you.
Mike Crockart: Obviously this will be transcribed and we’ll get it to you to make sure that it’s correct. I think it’ll be far easier because it’s not going to be difficult to tell who is speaking at any given time, and so we’re not going to prescribing your voice to somebody else. But the aim is to get the report done and dusted and ready by 30th October. So that we are beating the DCI’s strategy by a day and beating the Private Members’ Bill by two days, so it will be a busy week.
Mike Lordan: Well we’re launching our TPS audit on the 31st and if you’d like to come along
Mike Crockart: Excellent.
Mike Lordan: Consider yourself invited.
Alun Cairns: Thank you very much.
Mike Crockart: Thank you
**TITLE**  All-Party Parliamentary Group on Nuisance Calls

**PURPOSE**  Established 3 July 2013 to increase awareness in Parliament of nuisance calls and other forms of unsolicited contact, and to promote policies to strengthen the powers of a single regulator whilst also promoting the idea of a single, simple point of contact for individuals wishing to register to protect their privacy from unwanted calls, texts and faxes.

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* = attended in person or sent representative to attend the oral sessions held 8-10 October 2013