



Information Commissioner's Office

Operation LINDEN Unsolicited Marketing Communications Strategy Meeting

ICO: 1 Northumberland Av. Trafalgar Square, London, WC2N 5BW
23 October 2018, 10:30am-2pm

Attending:

Chair: ICO - Andy Curry, Enforcement Group Manager

- ICO: Kerry Smith, Enforcement
- ICO: Stephanie Braley, Intelligence
- ICO: James Rodriguez, Intelligence
- ICO: Sue Scott, Intelligence

- DMA: Mike Lordan, Direct Marketing Association
- DMA: John Mitchison, Direct Marketing Association
- DMA: Michael Sturrock, Direct Marketing Association
- DMC: George Kidd, Direct Marketing Commission
- FCA: Janan Akkad, Financial Conduct Authority
- FCA: Lis Brownbill, Financial Conduct Authority
- FR: Sarah Fox, Fundraising Regulator
- FR: Priya Warner, Fundraising Regulator
- GC: Siobhan Woolmer, Gambling Commission
- IS: Renu Sharma, Insolvency Service
- IS: Alan Tonge, Insolvency Service
- IFB: Claire Haines, Insurance Fraud Bureau
- MRS: Michelle Goddard, Market Research Society
- MRS: Debrah Harding, Market Research Society
- CMRU: Francesca Richards, MOJ Claims Management Regulation Unit
- CMRU: Greg Williams, MOJ Claims Management Regulation Unit
- NTSST: Richard Clarke, National Trading Standards Scams Team
- Ofcom: Madhu Bedhan
- Ofcom: Gavin Daykin
- PSA: Emma Bailey, Phone-paid Services Authority
- PSA: John Hodge, Phone-paid Services Authority
- SRA: Ceri Lloyd, Solicitors Regulation Authority
- TPR: Mark Littler, The Pensions Regulator
- TPR: Paul Sweeny, The Pensions Regulator
- BT: Ian Woodham, British Telecom

Apologies:

- Which: Adam Gillett & Colum McGuire
- NTSIT: Emily Whitehall
- DMA: Arthur Cummings

Aim of LINDEN

To capture and share intelligence effectively and identify, plan, deliver and promote coordinated activity to maximise enforcement opportunities against individuals and organisations responsible for breaching legislation associated with unsolicited marketing texts, live and automated calls and silent or abandoned calls. To protect the privacy and consumer rights of individuals and to improve compliance.

Agenda:

- **Introductions** - For those who have not previously attended **(All)**
- **ICO updates** – Including a wrap up of reporting; focusing on a six monthly update, recovery actions and what we have planned
- **Activity and actions updates** - 5 minute update on relevant activity from each organisation, as well as proposed actions for the next quarter. **(All)**
- **Ofcom** – Update on new powers
- **Week of Action** – proposals for future proactive work
- **GDPR update**
- **Financial Recovery Unit and directors' liability**
- **Operation WICKLOW and HIDA**
- **International enforcement** – update on recent UCENet event (New York)
- **AOB** (Inc. intelligence requirements and next meeting / host)

ICO updates

Enforcement

- So far in financial year 18/19 there have been 12 monetary penalties issued for breaches of the Privacy and Electronic Communications Regulations against companies making or sending nuisance calls and messages. This is just under half of those issued during 17/18.
- Of the 12 penalties, six related to live calls, four to emails and the remaining two were related to SMS messaging.
- No penalties have been issued against automated calls as yet this financial year. These calls tend to be mass volume with companies' quick to liquidate or involving

overseas elements, which can disrupt investigation.

- Four penalties have been paid, four appealed, two recovered and two await. This is a relatively high appeal rate compared to previous years though this is likely due to legislative changes (GDPR/DPA 2018).

Intelligence

FY 2018/19 (to end of September):

Concerns reported by type: April 18 – end of September 18

Live: 27,924 (29,571 = -1,647 / -6%)

Auto: 30,502 (23,582 = +6,920 / +29%)

SMS: 7,637 (6,622 = +1,015 / +15%)

Total: 66,063 (59,775 = +6,288 / +11%)

A slight increase in nuisance call and message complaints reported to the ICO up until the end of September. In line with this both auto and SMS concerns increased year on year for the same period. Whilst there was a small decline in live call concerns over this time, the comparative gap has been getting smaller as the year progresses and will likely continue to do so.

In recent months in particular, monthly increases have been substantial:

Q2 in isolation (Jul, Aug & Sept): +35% year on year

September year on year increase: +107%

This shows a reversal of the established trend of a yearly decrease, which was seen during the previous financial year. Its possible changes in legislation and increased media and public awareness of ICO and our work has contributed to this increase in reporting.

Monthly increase post GDPR: +45% (difference May to June 18)

Monthly increase post the CMC cold call ban: +63% (difference August to September 18).

As would be expected, most of September's increase was seen within the accident claims category, which accounted for 38% of all nuisance complaints reported to the ICO that month.

Current trends:

- Accident claims: as mentioned above, this topic has increased following changes to legislation and was mostly responsible for the overall increase in concerns seen in September. Many of these calls appeared to relate to the same company with reported names being variations on a similar themes. It is believed these calls relate to an ongoing ICO investigation and further analysis will be undertaken.
- PPI: these concerns also increased, up by 121%. We have not previously seen the increase expected with the PPI deadline on the horizon and whilst this is the largest number of concerns we have seen in this category so far this year, this is still a year on year decrease of 35% overall.
- Broadband: ISP broadband scam calls continue to be heavily featured within our top CLI tables and are referred to Action Fraud as appropriate. September saw the largest number of complaints submitted in this area since the categories inception and year on year this category has increased by 1845 concerns / 611%.
- Gambling: related SMS messages have historically been one of the highest reported topics for this contact type, though this position has been declining over the last six months. This is especially true following the completion of sporting events from over the summer. Most concerns related to online casinos and betting tips.
- Other SMS: we also continue to see a large amount of premium rate and subscription service messages which are referred to the PSA as these fall within their remit.

Activity & Action updates (ALL)

Market Research Society (MRS)

- Calls often made under the guise of marketing research, though recent numbers of complaints have declined.
- Current work focus is on GDPR.

DMA (TPS)

- Complaints showing a downward trend year on year overall, though there was a slight increase in September.
- Continue to make the TPS data more accurate by removing dead numbers and routinely reviewing process to ensure no false removals.
- Significant number of new licencing seen post GDPR.
- No spike seen in registrations.
- Continue to support ICO investigations.

Gambling Commission (GC)

- Appears in the top three of SMS complaints reported to the ICO.
- Work being done with the ICO on how to identify those responsible.
- Continued work around social responsibility co-division.

Ofcom

- Year on year complaint volumes are down, however there were increases seen amongst abandoned and silent calls in August and September.
- Have undergone a strategic rethink.
- Monthly analysis of complaints to identify numbers which cause harm and their range holders and to encourage them to stop misuse.
- Engaging with a strategic industry working group of 10 of the largest communications providers to develop and implement technical measures to block and divert nuisance calls at a network level. Over 500 million numbers blocked.
- Annual Joint Action Plan between Ofcom and ICO to be published in March 2019.
- Working with relevant police agencies to share intelligence and input into processes to tackle negative patterns of behaviour by fraudsters.

PSA

- Premium rate SMSs often confused with spam and are reported as nuisance messages which creates a cross over with this group.
- Adjudications against: Xplosion Ltd
- x3 Cases – x7 Services – Games, Video & Adult
- All involved billed SMS and clickjacking.
- Fines Totalling £1,040,000.
- Significant press interest in Xplosion which resulted in CEO appearing on Radio 4 "You & Yours" programme.
- Still working on the Direct Buy Initiative to prevent ad misplacement on YouTube Vids and Apps which may be attractive to children. Guidance to be issued, followed by enforcement where appropriate and proportionate.

Fundraising Regulator (FR)

- Financial year now starts from 1 September in order to link to when Charity levies are due. Due to complete a 16 month report.
- 1500 complaints received in 2017-18 for an average of 90 complaints per month, peaking in autumn 2017.
- 78 investigation decisions made – 81% upheld, 27% not registered or not eligible to pay levy.
- Recent drop in complaints following a move to signpost those out of remit elsewhere before they are submitted..

Fundraising Preference Service

- Few complaints received but may see a rise towards the end of the year.
- FPS Running for just over a year (July), received just over 21,000 suppressions from approx. 7000 individuals, 89% were submitted on behalf of someone else.
- 116 charities referred to the ICO.

Insurance Fraud Bureau (IFB)

- Three current operations that are either based on data vishing, claims farming, acting without instructions or all three.
- The IFB data vishing pilot is due to be reviewed at the end of November. The participating insurers provided data and the IFB have analysed this. There has been a decrease in calls month on month into insurer's claims centres, however, there has been a significant increase across the same period in calls direct to policy holders. The data has led to increase intelligence for the three data vishing operations. The hope is that the pilot will continue and be extended to other insurers.

Insolvency Service (IS)

- 4,365 cases and 578 disqualifications (5.7 yrs), 53 High tariff (10yr+).
- 45 disclosures to other regulators.
- Looking at: 101 actual investigations and 29 wound up in public interest.
- Usually see a fraudulent scam influx around now, working with TPR and trying to be administrator for scheme – 1 now accepted for investigation.
- Cases often involve high yield investments where people have been conned or short term fraud cases to get better credit (fake or inflated account). New direction to tackle as a linked network rather than just individual cases of short term fraud.

TPR

- Seeing cold calls offering pension reviews, often claiming to be the 'pension regulator' – instances referred to Action Fraud.
- Can take action against scheme itself if identified but not against the caller.
- 2 referrals made to ICO.
- Recent joint press release with the FCA including a TV advert to raise awareness.

CMRU

- Conducted audits of 23 authorised claims management companies engaged in direct marketing and / or data, and issued comprehensive advice where breaches were identified.

- Issued warnings to 7 authorised claims management companies for direct marketing breaches, mostly in relation to insufficient due diligence when accepting data from third parties and unfair processing of data for marketing purposes.
- Progressed formal investigations into 12 authorised claims management businesses engaged in non-compliant direct marketing.
- Continued proactive projects focussing on data suppliers and brokers, in addition to businesses engaged in electronic marketing to ensure compliance. Continued to work closely with the ICO, Ofcom and the Advertising Standards Authority to assist with investigations.
- Continued to share intelligence and work closely with the ICO, Ofcom and the Advertising Standards Authority to assist with investigations.
- Updated our Advertising and Marketing guidance to include changes on GDPR and the cold call ban.

BT

- 14k complaints per month post GDPR – 50% increase.
- Seeing a large amount of broadband scams, these were initially automated though there are also live calls advising of a 'fault on line'.
- Seeing a possible reduction in concerns relating to Microsoft issues.

FCA

- Pushing pension scam smart campaign to raise awareness – feedback good
- Working towards the upcoming pension cold calling ban will be really useful.
- Enforcement – seeing lots of issues of Phoenixing, working with ICO.
- Concerned there may be a possible shift to email / social media rather than calls in the future.

NTS Scams Team (NTSST)

- With EIRE law enforcement a number of Irish based companies and individuals have been found guilty of money laundering and POCA offences (some 3.8 million euros restrained).
- 87 million items of mail stopped
- Continued roll out of 'friends against scams' (147k people) and delivery of mail industry training regarding due diligence when dealing with 3rd party organisations. Continued engagement with UK based entities to deliver this message.
- Current work centred on health and beauty products and supplements being sold via the internet. The sales are often scams to entice victims and catch them in subscription traps. Seeking assistance of other UK law enforcement. Also working with US and Canadian counterparts to progress work.
- Continued publicity with media around our work. Also increased awareness of our work to central government and international law enforcement.
- Presenting at international conference in November USA.

SRA

- SPOC for CMRU and IFB re: firms claims industry.
- Following up referrals from Linden participants and other regulators re: CMCs and insurance claims. Working to improve these referrals (evidence req. etc.)
- Seeing more calls impersonate solicitors or which infer calling on their behalf.
- Possible breaches by solicitors for submitting the claims and DDs acting w/o consent (as a hidden 3rd party) for calls.
- PI still main priority.
- Holiday sickness concerns are down, with the issue possibly being dealt with.
- Concerns relating to housing associations (north) and housing disrepairs seem to be door to door not cold calling.

Ofcom: update on new powers

Ofcom's new General Conditions, which came into effect on 1 October 2018 and, of particular note, have strengthened CLI requirements (now Condition C6). The key changes are:

1. The condition has a broader scope and now applies to all providers of Publicly Available Telephone Services (PATS) and Public Electronic Communications Services over which PATS are provided. This ensures that responsibilities are placed on all providers who are involved in the transmission of a call even where they are not providers of public electronic networks.
2. The wording has been amended to make it clearer that CLI facilities must be provided unless the provider can demonstrate that it is not technically feasible or economically viable to do so and that, where they cannot provide, they must inform their customers that CLI facilities are not available.
3. Where CLI facilities are provided, providers must ensure that any CLI data includes a valid and dialable telephone number which uniquely identifies the caller (as far as technically feasible).
4. Providers are now prohibited from levying separate or additional charges for access to or use of standard CLI facilities.
5. There is a new requirement for CPs to take reasonable steps to identify calls on which invalid or non-dialable CLI data is provided and to block those calls (where technically feasible).
6. There is also a new provision which requires providers to respect the privacy choices of end-users when providing CLI facilities.

Ofcom has also amended its numbering rules (now Condition B1.18) to extend powers to withdraw telephone numbers when they are used inconsistently with condition B1, the Numbering Plan or otherwise misused.

Week of action

Proposal for Linden participants to consider more proactive work together on a joint 'week of action' or communications push.

Members were asked to email ideas to the ICO with the aim to review these in the New Year at the next Operation Linden meeting.

GDPR update re: PERC (AC)

- Transitional arrangements for PECR:
- No amendments required to references to section 55A DPA and enforcement powers for PECR.
- Enforcement under PECR is dealt with in the draft Transitional Provisions, at page 110 of the government amendments here - <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0104/18104.pdf>
- Para 58(1) of that schedule states:

"58 (1) The repeal of a provision of the 1998 Act does not affect its operation for the purposes of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("the PECR 2003") (see regulations 2, 31 and 31B of, and Schedule 1 to, those Regulations)."
- ICO PDMIT team will also continue to consider DP contraventions – old Principle 1.
- Rebadged advice and guidance for data subjects 'Your Data Matters'.
- Guidance on exemptions and international transfers updated.

Financial Recovery Unit & Directors Liability update (KS)

- FRU is responsible for pursuing and managing debt arising from unpaid CMPs.
- Some investigations are now reaching conclusion
- Cases referred to Insolvency Service where appropriate; 10 director disqualifications.
- Working with other partnership agencies where appropriate including the FCA and Trading Standards teams.
- Awaiting introduction of Director Liability for PECR breaches, statutory instrument to follow later this year allowing penalties to be lodged against individuals rather than organisations to tackle prolific offenders and issues of frequent phoenixing.

- DCMS director liability consultation is due to be published around the first week of June.
- ICO will engage in a related communications push at this time.

International Enforcement update (SB)

UCENet event

Steve Eckersley (Director of Investigations) and Adam Stevens (Head of Intelligence) attended the Unsolicited Communications Enforcement Network w/c 8 October 2018 in New York. This was led by the ICO and the US FTC and hosted alongside MAWG (the Messaging Mobile and Malware Anti-Abuse Working Group).

The ICO jointly presented a session with the US FTA and Dutch ACM on lead generation and data brokerage as well as providing country updates in relation to unsolicited marketing enforcement.

The Executive Committee (US FTC, UK ICO, Canadian CRTC, Australian ACMA, Korean KISA and New Zealand DIA) agreed priorities for the network for the next three years, and will be developing a new strategic plan for the network based on the event.

The strategic plan will focus on the creation of new working groups to further:

- Intelligence and information exchange;
- Communication and engagement;
- Training; and
- Identifying international enforcement cooperation opportunities.

The aim is to get broader engagement from organisations linked to this work, both from the regulatory/enforcement side and from the industry side. Opportunities will be created to chair working groups and to provide input as to the direction these should be taken in.

Any Other Business (All)

- N/A
- Offers to host the next meeting in Jan/Feb requested.
- Session closed thanking participants for attending.