



## Operation LINDEN

### Unsolicited Marketing Communications Strategy Meeting

FCA, 12 Endeavour Square, London, E20 1JN – 04/02/20 9:30am-12:30pm

#### Chair – ICO:

Dave Clancy	Information Commissioner's Office (ICO)
Stephen Flack	Information Commissioner's Office (ICO)
Stephanie Braley	Information Commissioner's Office (ICO)

#### Attendees:

Greg Williams	Financial Conduct Authority (FCA)
Alex Macauley	Financial Conduct Authority (FCA)
Barbara Kubis-Labiak	Financial Conduct Authority (FCA)
Rob Rupeta	Financial Conduct Authority (FCA)
Iain Macgregor	Office for Product Safety & Standards (OPSS)
Sarah Scott	Phone-paid Services Authority (PSA)
Jordan Hinds	Phone-paid Services Authority (PSA)
Ceri Lloyd	Solicitors Regulation Authority (SRA)
Siobhan Woolmer	Gambling Commission (GC)
Anisha Maxwell	The Pensions Regulator (TPR)
Catherine Orr	The Fundraising Regulator (FR)
Mike Lordan	Data and Marketing Association (DMA)
George Kidd	Direct Marketing Commission (DMC)
Renu Sharma	Insolvency Service (IS)
Stephen Sullivan	DMA Contact Centre Council Member
Stephen Sullivan	DMA Contact Centre Council Member
Madhu Bedhan	The Office of Communications (OFCOM)
Tamara Luther	The Office of Communications (OFCOM)

#### Apologies:

Christopher Hall	Solicitors Regulation Authority (SRA)
Adam Gillett	Which?
Julie Corney	Market Research Society (MRS)
Debrah Harding	Market Research Society (MRS)
Helen Kibbey	Charity Commission (CC)
Matt Davidson	Charity Commission (CC)
Alan Tonge	Insolvency Service (IS)

### 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)**
- **Office for Product Safety & Standards (OPSS)** – introduction & overview
- **Horizon Scanning** – discussion
- **International enforcement** – UCENet update
- **AOB** (Inc. intelligence requirements and next meeting / host & minutes)

## Information Commissioner's Office (ICO)

### Enforcement:

- The ICO's Privacy and Digital Marketing Investigations Team have conducted 37 investigations over the last 12 months. 30 of these cases are now closed.
- The closed cases were the result of companies liquidating, a lack of evidence being presented, or where activity took place outside of the UK causing difficulty in tracing numbers and identifying the organisations behind them.
- 7 cases remain under investigation with some likely to end in enforcement action. The ICO may look to issue penalties in the coming months.
- So far in financial year 2019/20 there have been six monetary penalties issued, totalling £700,000.
- The ICO also continues to lobby DCMS for the laws to be changed regarding the definition of a 'line' as a move from traditional copper line to VOIP connections needs to be accounted for.

### Intelligence:

- Over the last two years there has been significant legislative change. This was particularly true of the latter part of 2018 and early 2019 and is reflected in the rising level of complaints reported during this time.
- Year on year there's been little change in the volume of complaints reported to the ICO. Though in 2019 we actually saw a year on year increase of 4% (approx. 5,000 complaints).
- During 2019 a total of 129,354 complaints were submitted to the ICO, the majority of which were split relatively evenly between live and automated calls. SMS messages continue to be reported in much lower volumes but are generally consistent and unaffected by seasonality.
- Most concerns continue to relate to accident claims, with broadband and telecoms the next highest reported topic. As mentioned in the October meeting, we're seeing a shift in the latter, away from ISP scam calls to what appear to be genuine sales and service calls from providers.
- Barring our 'none of the above' category, there are 19 other reporting topics within the OLRT. However, each individual topic was responsible for less than 5% of the overall complaints received.
- Part of our focus will be on areas of low reporting but high potential detriment such as pensions and life insurance, to ensure these areas aren't overlooked, particularly where the elderly and vulnerable are affected.
- In December specifically we also saw a rise in payday loan concerns, particularly within the SMS category, with concerns up from 18 to 41 (128%). We anticipate this topic may continue to increase, particularly after April in response to rising overdraft interest rates.
- The ICO have also introduced an online reporting tool for email concerns, making complaint submission much easier. This has resulted in a large spike in concerns, and complaints have jumped from 100 to 1,000 per month and are currently subject to a new triage process.

## **Activity & Action updates (All attendees)**

### **Solicitors Regulation Authority (SRA)**

- Currently liaising with ICO Investigations Team regarding a number of firms linked to CMC's involved in cold calling and hot keys to solicitors. There are also matters relating to the theft and misuse of data which may well prove to show solicitors have breached SRA regulations.

## **Fundraising Regulator (FR)**

- The Fundraising Regulator received 238 incoming complaints between September 2019 – November 2019 (Q1).
- This represents a 27% increase on the same period last year.
- The Fundraising Preference Service has received nearly 32,000 suppression requests in total since it launched in 2017, completed by nearly 10,000 individuals. Nearly a third of these are requests made on behalf of vulnerable individuals.

## **Phone-Paid Services Authority (PSA)**

- PSA have approx. 150 cases at various stages of investigation.
- PSA are refocusing its enforcement and investigative approach to ensure cases which will have the greatest impact are addressed.
- PSA have seen a positive impact from its subs and consent to charge work but still see many people having unsolicited communications.
- PSA are also starting to see an increase in high price point services now rules on subscriptions are tighter and also an increase in scams relating to dropped calls or text messages, whereby the phone back number is premium rate.
- Working with Google Ad Words so that premium rate numbers will no longer be the first results shown.

## **Financial Conduct Authority (FCA)**

### Enforcement / prevention:

- The FCA is working through the applications for full FCA re-authorisation. 163 out of 810 firm applications have been approved, with 41 withdrawn following phone conversations to discuss concerns. Processing these applications is currently the main focus.
- 2 warning notices have been issued.

### Intelligence:

- The FCA continues to work closely with the ICO and SRA in relation to nuisance call activity relating to personal injury.

### Communication:

- The FCA is publishing a joint statement alongside the FSCS and ICO later in the week related to mis-sold SIPP activity. An increase in activity has been seen and there are concerns around conflicts of interest, GDPR and the misuse of data, and the value of CMCs.

## **Data & Marketing Association (DMA / TPS)**

- The DMA continues to see reduction in concerns year on year, even when accounting for seasonality. Possible reasons may again be that automated calls, which can often be the cause of increases in volume, are not within TPS remit. This may also be influenced by reporter apathy, complaint fatigue or an increasing reliance on call blocking technology.
- There have been fewer cases reported where the caller is identifiable, along with an increase in scam call activity.
- The DMA continue to work with ICO and support cases and call action logs.

## **Insolvency Service (IS)**

### Companies in Liquidation / Administration:

- Sifted-In Conduct Returns received YTD - 3,003
- Disqualification Actual YTD - 899
- Average Period of Disqualification - 5.4years (range 2-15 yrs.)
- High tariff disqualification in relation to insolvent companies' outcomes (over 10 years) - 49 (5.4%)

### Bankruptcies:

- Restrictions Actual YTD - 344
- Average Period of Restriction - 4.9 years

### Live Companies:

- Main objective is to wind up and push companies into liquidation
- Live Company Investigations Completed YTD - 106
- 3,003 complaints received, 337 vetted, 167 opened for investigation.
- 38 Companies Wound Up in the Public Interest

### Compliance:

- S216 Breach Rectifications without Criminal Referral - 257
- Criminal Referral Actual YTD - 177
- Non-Criminal Disclosures YTD - 52

## **Direct Marketing Commission (DMC)**

- The Direct Marketing Association (as was) has launched in new format as the Data and Marketing Association. The DMC will also complete a process of name change and amendments to Articles to reflect this.
- Cases received are in the hundreds per year, not thousands, and many relate to non-members and are therefore passed on to the correct bodies.
- MOU with ASA / CAP completed. DMC can now be used as an advisory body to give expert opinion on any complaints to the ASA on data and consent issues - DMC has not been called as yet.
- Push towards organisations using the legitimate interest argument rather than consent. DMC intends to use the six- and 24-month standard set out in DMA guidance for the valid use of consent, to apply equally to marketing based on legitimate interests. The DMC think it is right that there should be broad consistency in data timeframes and in relation to how data subjects can exercise a right to opt-out of marketing.

## **The Office of Communications (OFCOM)**

### Complaints data:

- OFCOM complaints data shows that in 2019 there were 27,869 complaints about nuisance calls which was a 13% reduction when compared to 2018 (32,019).
- The percentage of silent and abandoned calls without CLI has been decreasing since 2015, showing that guidelines on CLI data are having an effect.

### Joint Action Plan:

- We are due to publish our annual Joint Action Plan alongside ICO by the end of March.
- The plan will summarise what both organisations have been doing in the nuisance calls and scams space in 2019 and indicate our plans for the next year.

## **The Pension Regulator**

- Ongoing work in order to improve pensions data sharing between regulators.
- New Pensions Bill – this will give TPR more powers, however, more updates to follow at the next LINDEN meeting as this seems to have been pushed back due to Brexit and the general election.

## **Gambling commission**

- The Gambling Commission continues to work closely with the ICO in relation to gambling operators who may be potentially breaching their Licence Conditions and Codes of Practice (Digital Marketing).
- The Commission is also feeding into the ICO consultation on the direct marketing code of practice.

## **Office for Product Safety & Standards Introduction & Overview**

OPSS was set up in January 2018 (after the Grenfell disaster) with the aim of providing the UK with a regulatory body that was tasked with identifying consumer risks and managing responses to large-scale product recalls (i.e. Whirlpool). It was created and exists to deliver effective, trusted regulation for consumer products, which puts consumers first, and enables businesses to understand and meet their obligations. It will also enable the UK to meet the evolving challenges of product safety by responding to expanding international trade, the growth in online shopping and the increasing rate of product innovation (i.e. SMART homes/ devices, 3D printing (component parts), etc).

OPSS has approximately 400 staff based across 3 locations: London, Birmingham & Teddington, and leads on Government policy on product safety, metrology, hallmarking and market surveillance. OPSS is also responsible for product safety at our borders.

It is the UK Governments enforcement authority for a range of goods-based and standards-based regulations, such as reducing energy consumption and greenhouse gas emissions from products, minimising levels of hazardous substances in electrical products and batteries, maximising recycling of electrical products and batteries, reducing noise pollution from products, ensuring accuracy of electricity and gas meters, ensuring raw materials for products are sourced legally and do not contribute to environmental detriment or illegal or illicit practices, and ensuring compatibility and accuracy for the electric vehicle charging infrastructure.

Internationally, OPSS works with the Foreign and Commonwealth Office and the Department for international Development to support opportunities for UK trade.

The OPSS may be of interest to LINDEN as a lack of product safety etc. may result in claims behaviours and therefore prompt nuisance call activity.

## **Horizon Scanning (All attendees)**

With complaint volumes down across many regulators, it can be difficult to focus investigative attention and to identify the next big issue on the horizon. This segment has been added to the LINDEN agenda to pull and combine knowledge from relevant regulators to tackle this potential knowledge gap and plan future action.

The ICO has called for regulators to put forward their own ideas of future issues in this space. Ideas don't necessarily need to be evidence based at this point, just areas with the potential to develop that we can actively keep an eye on. The faster new activity can be responded to, the less lucrative this is for the bad actors involved.

## **International Enforcement update (Led by the ICO)**

### **Unsolicited Communications Enforcement Network (UCENet)**

Last year the Executive Committee agreed priorities for the network for the next three years. At the annual meeting in Montreal last October, leads were identified for each of these. The areas are set out below:

#### **Priority 1: Intelligence and cooperation**

*Cooperate to collect, analyse, exchange and disseminate intelligence and information to member countries, including exploration of innovative approaches and avenues to enable cooperation.*

#### **Priority 2: Communications and engagement**

*Promote UCENet, its activities and successes, the advantages of membership, and facilitate an understanding of respective jurisdictions and remits with the aim of strengthening cooperation and coordination.*

#### **Priority 3: Training and development (US FTC leading)**

*Provide or promote meaningful training for member organisations and identify and utilise member expertise, including best practice investigation and enforcement approaches and techniques.*



**Next steps**

The Executive Committee discussed next steps in late December, and plans were put in place for each of the leads to start to develop work plans within each area, identifying tangible and practical next steps.

If LINDEN participants would like to participate in any of the working groups – or just find out more, please get in touch with the ICO.

**Any Other Business  
(All attendees)**

- N/A.
- Offers to host the next meeting in Jun/Jul requested.
- Participants asked to provide an activity summary for the meeting minutes.
- Session closed thanking participants for attending and the FCA for hosting.