

## Operation LINDEN Unsolicited Marketing Communications Strategy Meeting

Fundraising Regulator: Bank and Angel rooms, 49-51 East Road, London N1 6AH  
24 January 2018, 10:00am-1:00pm

### Attending:

- **Chair:** Andy Curry, ASIT Group Manager (Enforcement), ICO
- David Clancy, ASIT Team Manager (Enforcement), ICO
- Natasha Longson, ASIT Team Manager (Enforcement), ICO
- Adam Stevens, Intelligence and Research Group Manager (Operations), ICO
- Stephanie Braley, Lead Intelligence Officer (Operations), ICO
- Gerald Oppenheim, Fundraising Regulator (FR)
- Sarah Fox, Fundraising Regulator (FR)
- Daisy Houghton, Fundraising Regulator (FR)
- Greg Williams, MOJ CMRU
- Ian Angus, Gambling Commission (GC)
- Michelle Goddard, Market Research Society (MRS)
- David Clark (DMA Contact Centre Council Member)
- John Mitchison, Direct Marketing Association (DMA)
- Arthur Cummings, Direct Marketing Association (DMA)
- Adrian Ball, OFCOM
- Susan Young, BT
- Ian Woodham, BT
- Emily Whitehall, National Trading Standards Intelligence Team
- George Kidd, Direct Marketing Commission (DMC)
- Colum McGuire, Which?
- John Hodge, Phone-paid Services Authority (PSA)
- David Levitt, Phone-paid Services Authority (PSA)
- Mark Lovett, Buckinghamshire and Surrey Trading Standards
- Rachel Norton, Solicitors Regulation Authority (SRA)
- Alan Tonge, Insolvency Service
- Michael Vowles, Insolvency Service
- Rob Baker, TPS Protect

### Apologies:

- Adam Gillett, (Which?)
- Paul Sadler, National Trading Standards Intelligence Team
- Phil Jones & Eric Bash, OFCOM
- Suzanne Gordon, Solicitors Regulation Authority (SRA)
- Debrah Harding, Market Research Society (MRS)
- Siobhan Woolmer, Gambling Commission (GC)
- Stephen Sullivan, (Channel Doctors / DMA Contact Centre Council Member)
- Matthew Davidson, Charity Commission
- Richard Clarke, National Trading Standards Scams Team (NTSST)
- Simon Winter, Insurance Fraud Bureau (IFB)

## **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.

## **ICO updates (Andy Curry & Adam Stevens)**

### **Enforcement**

- 25 Civil Monetary Penalties & 10 Enforcement Notices YTD for PECR contraventions
- Total Penalty Amount £2,980,500
- Last year there were 23 CMPs for £1,923,000

### **MP breakdown:**

- Email – 4 x total £370,500
- Live – 6 x total £385,000
- Auto – 6 x total £1,680,000
- SMS – 9 x total £545,000

AC advised auto calls attract higher penalties due to the mass volume of calls made.

### **Of the 25 monetary penalties:**

- 15 companies paid or are paying
- 5 not yet due
- 1 appeal
- 4 liquidated and being pursued for recovery (referred to the insolvency service)

### **Financial Recovery Unit**

- Insolvency Practitioners appointed on all cases
- Referrals made to Insolvency Service
- Seven directors disqualified for a total of 56 years
- Increasing case for Director's liability.

### **Op CARNIC**

- Investigation into spoof automated calls
- Automated calling network primarily promoting PI claims.
- Assisted by CMRU officers.

## Intelligence

### Concerns reported in 2017/18:

- Q1: 30,844 (-34% / -16,116)
- Q2: 28,931 (-23% / -8,808)
- Q3: 24,927 (-35% / -13,552)
- Jan 17-18 (to 22<sup>nd</sup>): 4,780 (-61% / -7,422)

### Concerns in 2017:

Between 1 January and 31 December 2017, a total of 127,623 concerns were submitted directly to the ICO online reporting tool; 57,447 automated calls, 56,855 live calls and 13,321 SMS spam messages.

For the same period in 2016, a total of 153,525 concerns were submitted directly to the ICO online reporting tool; 71,192 automated calls, 63,636 live calls and 18,697 SMS spam messages.

This is a decrease of approximately 17% overall since 2016. All contact types have also decreased by between 11-29% overall.

AS advised the decrease in numbers could be for a number of reasons including; successful enforcement action and media coverage, enforcement action by other regulators and the increase in call blocking technology.

GK (DMC) queried if the ICO attempt to classify whether concerns received are genuine. AS advised that the category selection within our line reporting tool prompts individuals to report scam concerns to Action Fraud as well. DC confirmed, advising fraudulent calls are classified immediately and referred on as necessary.

### Key trends:

Accident claims continue to top ICO tables for live and automated calls, with Gambling concerns leading for SMS messages and increasing in volume for the fourth consecutive month.

October also saw a complaint related to housing claims, specifically damp or disrepair. This was the first time a complaint of this nature has made the top 50 (#43 for live calls).

We have yet to see the anticipated increase in PPI concerns following the launch of the FCA campaign, with volumes actually decreasing month on month and considerably lower than in previous years. It is likely these concerns will increase closer to the deadline (29 August 2019) with organisations capitalising on increased awareness and media attention.

## Activity & Action updates (all)

### CMRU

GW advised that preparations for the transition of the regulation of CMCs to the Financial Conduct Authority are ongoing, and that the proposed CMC cold calling ban appeared to receive widespread support from MPs at a recent House of Commons debate.

#### Enforcement

Oct – Dec 17 - Issued a financial penalty of £198,000 for making unsolicited telemarketing calls to individuals registered on the Telephone Preference Service without sufficient consent, and conducting insufficient due diligence on data.

Progressed formal investigations into 21 authorised CMCs. Audited 23 CMCs engaged in direct marketing and issued comprehensive written advice. Issued 12 warnings to authorised CMCs engaged in non-compliant direct marketing.

#### Prevention

Sept-Dec 17 - Continued with pro-active projects on due diligence, data suppliers and electronic marketing.

#### Intelligence

Sept-Dec 17 - Continued to work closely with the ICO, Ofcom, the SRA and the Advertising Standards Authority to assist with investigations. Joint audits of CMCs carried out with the ICO.

#### Communication

Sept-Dec 17 - Publication of the fines against CMCs / cancellation of authorisation listed above. Issued a bulletin reminding businesses about their obligations under the forthcoming GDPR and the need to ensure their data processing meets the required standard.

### Market Research Society (MRS)

- Focus is on GDPR awareness for members to encourage compliance.
- Published series of short in-brief Guides on core topics (taking into account EU guidance).
- Also developing formal data protection guidance for the sector, through consultation with ICO. This will include separate guidance on Public Interest Research.
- Programme of webinars and masterclass events on different data protection topics leading up to and after GDPR implementation date.
- Less active on nuisance calls as minimal number of complaints/queries from members of the public in this area.

## **DMA - TPS**

- Advised they were seeing a downward trend mirroring the ICO.
- 20,000 fewer complaints than in 2016.
- Seeing a good response to ICO enforcement.
- Frequent complaints related to grid energy, trading online, call prevention services, accident claims and PPI and computer scams.
- Advised in the last few months they have started to see an increase in calls about smart meters, even though these do not relate to marketing.

## **DMA**

- Focus is on GDPR; post-Christmas surge.
- Running a number of events; an 'ask us anything' style webinar on the 29/1, hosting 'Data Protection 2018' on the 23/2 (with Elizabeth Denham speaking).
- Producing key topic guidance documents; profiling, legitimate interest, consent etc. Some in partnership with the ICO. Aim to publish these documents throughout the remainder of January and second half of February.

## **Insolvency Service (IS)**

### **Statistics for 01/04/17 – 31/12/17:**

- 871 directors disqualified
- Average period of disqualification 5.7 years

## **WHICH?**

- Seen reduced public activity re: nuisance calls.
- Ongoing work surrounding director level accountability with the aim of publishing a report going forwards.
- Have been actively working in Scotland to raise awareness and provide advice.
- As a result of Which's nuisance calls campaign, the Scottish Government held a summit on tackling nuisance calls in June 2016 which resolved to set up a Nuisance Calls Commission, chaired by the Cabinet Secretary Keith Brown MSP, resulting in a Nuisance Calls Action Plan.
- September 2017: Which carried out a number of Nuisance Calls Roadshows across Scotland, educating consumers on how to reduce nuisance calls and to take action.
- The Government's Nuisance Calls Action Plan was launched on 11 September 2017 at the Which Nuisance Calls Roadshow in Glasgow.

## **Gambling Commission**

- Working closely with the ICO to help prepare the gambling sector for GDPR (ICO delivered a workshop at GC's Raising Standards Conference in November)

- Ongoing joint work with ICO to raise awareness of PECR requirements. Concerned that gambling sector remains at the top of the SMS complaints table.
- Likely that many complaints are associated with companies and/or affiliates based offshore and beyond the direct jurisdictional reach of the ICO. GC very keen to provide backstop support to the ICO in these instances.
- GC will be consulting on proposed changes to its Licence conditions and codes of practice (LCCP). Proposals will include a new code provision which broadly mirrors the requirements of PECR re unsolicited e-marketing communications. [[Consultation published](#) on 25 January and closes on 22 April].

## DMA Council

- Focus is on GDPR, raising awareness and working with the ICO to produce guidance.
- Upcoming events as previously mentioned by the DMA (above).

## NTS - Intelligence Team

### Memex:

- 17 logs have been recorded on memex detailing scam/nuisance calls in England and Wales from period 20/07/2017 – 19/01/2018.
- The South West submitted the largest number of logs, majority relate to financial services such as debt collection or PPI reclaim.

Region	Number of logs submitted:
East Midlands	3
London	2
North West	3
South West	4
Wales	3
Yorkshire and The Humber	2
<b>Total</b>	<b>17</b>

### IDB:

- 47 logs have been submitted to IDB regarding scam/nuisance calls in England and Wales from period 20/07/2017 – 19/01/2018.
- Central England submitted the largest number of logs, with the majority detailing cold calls to consumers in relation to home improvement works – particularly roofing.

Region	Number of logs submitted
Central England	22
East of England	15
South East England	7
East Midlands	1
South West England	2
<b>Total</b>	<b>47</b>

### Trading Standards operational action towards nuisance calls:

- Suffolk Trading Standards continue to fit truecall devices, which are free of charge to elderly and vulnerable residents.
- Trading Standards are members of Friends Against Scams – national campaign to help the elderly and vulnerable recognise the hallmarks of scams and prevent them.
- Unaware of any other operational action being carried out by Trading Standards departments around country.

### Fundraising Regulator

- Focus is on smaller fundraising charities, GDPR and working on 'short sharp' guidance to be run past the ICO.
- Code of Fundraising Practice has been updated to be Data Protection Bill/GDPR ready on 25 May, subject to any changes made to the bill.
- Upcoming NCVO charity regulation conference on the 5 February, focus on GDPR.
- Key area of focus; the increasing popularity of online fundraising platforms (e.g. Just Giving). There is a need to improve advice and guidance, however this can be difficult especially for smaller or non-named charities as they all take very different approaches.

### Complaints (01/04/17 – 31/12/17):

- 781 complaints received
- 800 complaints resolved
- 10% increase on previous year
- Forecast a 30% increase in January, due to increased accessibility
- Common themes; poor complaint handlers.
- Not experiencing much resistance or need to formally refer
- Approach taken is to push back to charity unless non-responsive. 46% of complaints out of remit.

AC queried if the complaint figures were in line with expectations. SF (FR) advised that up until now there were no expectations, however, they expect complaints to continue to rise in the short term before dropping again later on.

GK (DMC) asked about the approach in relation to criminal/scam calls. SF confirmed these would still be referred back to the charity for initial local resolution, though if there were

outstanding concerns about the charity itself, these could be picked up and investigated.

## **BT**

- Live person calls and scams account for the majority of calls
- BT's webpages link off to websites operated by Which and the TPS enabling customers to seek further information where required. Recently seen an increase in activity on these pages.

## **OFCOM**

- 2016 and 2017 both saw continued decrease in complaints (the comparable start date being 2014)
- New approach differs from traditional enforcement and focuses on the providers to whom we allocated blocks of numbers
- New data handling allows us to match providers with our complaints
- We've seen complaints for individual providers drop by up to 90% in a matter of weeks
- Strategic group is working on blocking, including protected numbers
- ICO-OFCOM joint action plan is due to publish an update in February.

## **SRA**

### **Enforcement**

Our investigations into solicitors and firms often includes establishing how the solicitor obtained instructions from the client. We have concerns about cold-calling, the use of third-party referral organisations and the passing on of personal information. This is apparent in two projects we currently have ongoing:

Holiday sickness claims – we are investigating around 25 firms looking at whether the firm has been properly instructed, and whether the claim is appropriate. This includes where the firm obtained their clients' instructions from. We have discovered the use of third party arrangements in these.

Housing disrepair – we have had complaints about concerns with a number of housing disrepair firms and how they obtained tenants' information. We have been working with the CMR to establish whether cold-calling or claims management companies may have been used in these cases.

Planned next steps: Regulatory action will be undertaken as appropriate following investigation.

### **Prevention**



6 Sept 2017 - In September a warning notice was issued regarding holiday sickness claims and also the link with claims management companies. The notice can be found here:

<http://www.sra.org.uk/solicitors/code-of-conduct/guidance/warning-notice/Holiday-sickness-claims--Warning-notice.page>

There has been a reduction in the number of complaints about this type of claim, however this may be seasonal. There has also been significant press coverage about holiday sickness claims, including the prosecution of two couples for fraudulent claims.

### Intelligence

Recent stats-our data captures the type of concerns that are raised about a firm or an individual. In the six months 01.07.17 to 31.12.17 the following case types were noted and lead to cases being created for investigation see table below.

Concern – 01.07.17-31.12.17 (six months)	Number of assessments	Number of conduct matters opened
Cold calling or other improper marketing	75	65
Compromise of independence or professional judgement	15	10
Failure to inform of arrangement or interest	6	5
Improper arrangement	17	13
Inappropriate referral	2	2
Prohibited referral fee	8	7
<b>Grand Total</b>	<b>123</b>	<b>102</b>

- Total number of complaints received year to Nov 17 – 1999
- Number of cases opened in year to Nov 17 – 547
- Number of cases closed in year to Nov 17 – 391
- Number of cases referred to the Tribunal in the year to Nov 17 – 166
- Number of Solicitors struck off the roll in year to Nov 17 – 58

Planned next steps: ongoing investigations.

### Communication

Ongoing - Our investigations team have close contact with the Claims Management Regulator and frequent meetings. There is an MoU in place with this organisation for data sharing.

We also have close working relationships with other regulators, such as OISC (Office of the Immigration Commissioner) and the Legal Ombudsman.

Key concerns about solicitor behaviour are issued as warning notices which are published on our website and circulated to relevant press organisations in a press release.

Planned next steps: Ongoing activity.

## PSA

- Seen a move away from affiliate marketing, organisations not happy with the limited control.
- Advertising heavily via YouTube and android apps.
- Increase targeting towards children's apps (Pepper Pig), with children often accidentally signing up to subscription services.
- Increase in SMS messages 'seen' as unsolicited text messages.
- Have taken informal enforcement action and seen a reduction in complaints.
- Currently working on additional guidance.

## DMC

- Focus; commercial regulation, affiliate marketing, distinction between lead generation and use offshore to manage calls.
- Move away from gambling, now trying to raise standards through 'soft' enforcement and currently working on an affiliate checklist.

AC advised to discuss further with NL who leads on affiliate marketing within the ICO.

## **TPS Protect overview (Rob Baker)**

### **TSP Protect:**

A mobile app which enables users to block, identify and report incoming nuisance calls (iOS & Android).

RB advised the UK app is updated every 2 hours, does not currently include SMS messages and uses manual scam allocation. RB further clarified that blocked numbers and their classification could be appealed on the website and that transparency was critical.

### **App Features:**

- Identifies scam calls as suspected scam.
- Gives telemarketers a trust score from 1-5.
- TPS registration.
- A number lookup tool.
- Complaint filing – file complaints which are passed to the ICO, Ofcom and Action Fraud for enforcement.
- Quick report – easy two-step process to quickly report offenders.
- Premium features include custom settings to set their lowest trust score of numbers their willing to receive calls from and to block categories such as PPI and accident claims. Premium features currently cost 99p per month.

Copies of TPS Protect slides handed out at the meeting and further information can be obtained via [www.TPSProtect.org.uk](http://www.TPSProtect.org.uk) or by contacting [support@tpsprotect.org.uk](mailto:support@tpsprotect.org.uk).

## **Fundraising Preference Service update (Daisy Houghton)**

### **Since launch in July 2016 – end of December 2017:**

- Hoping suppressions will start to increase alongside marketing campaign.
- Potential issues: charities with suppressions but not set up on the portal & charities set up, but not downloading the suppression in 28 days, despite a weekly reminder.
- Next steps are to tackle charities not collecting their suppressions. This will include sending them a hard copy letter and referring them to the ICO/Charity Commission if no action is taken. Confirmed that this portal only applied to charities.
- Confirmed the complaint route is also an option.

GO (FR) confirmed that whilst there were some private systems which can send encrypted suppression requests, payment is required to unlock these and charities have no obligation to respond. GO confirmed the FR is currently liaising with the ICO regarding this matter.

## **Financial Recovery Unit & Directors Liability update (Andy Curry)**

- AC confirmed we are keen to progress on the issue of Director's Liability
- The unit will be working closing with various regulatory partners including the Insolvency Service and recruitment is ongoing.
- AC advised of the need to be prepared for GDPR; particularly in terms of expanding penalties which would need to be both enforceable and recoverable.

## **Operation HIDA update (Natasha Longson)**

### **Operation HIDA:**

Questionnaires were sent to 1,182 organisation in order to identify data flows and relationships to further our overall understanding and to identify opportunities for compliance and enforcement activity.

### **We have:**

- Opened investigations into 26 organisations so far.
- Of that 2 have ceased trading
- 1 has been placed on monitoring



Information Commissioner's Office

- 12 are under investigation
- 5 have been identified in cross investigations
- We have issued 1 CMP of £80k

The operation is an ongoing priority case and as the investigation progresses, further updates will be provided.

### **International Enforcement update (Adam Stevens)**

The annual UCENet event was held in Toronto in October, attended by AS (as well as John Hodge from the Phone-paid Services Authority).

ICO presented on their complaints trends and enforcement activity, as well as on a panel with the Canadian CRTC, PSA and Spamhaus discussing findings from the first UCENet Sweep, completed last year.

The Sweep focused on affiliate marketing, with ten agencies from six countries participating, including the Phone-paid Services Authority, Gambling Commission, Claims Management Regulation Unit and ICO in the UK. In total 902 websites were reviewed and 6,536 consumer complaints were examined. The aim of the exercise was to develop agencies' understanding of affiliate marketing practices and to identify intervention points where necessary.

### **AOB**

AC thanked GO (FR) for hosting the meeting, confirmed there was no other business and thanked everyone for attending.