

## Operation LINDEN Unsolicited Marketing Communications Strategy Meeting

Phone-paid Services Authority: 25<sup>th</sup> Floor, 40 Bank Street, Canary Wharf, London, E14 5NR  
05 June 2018, 10am-12pm

### **Attending:**

**Chair:** Kerry Smith, Enforcement Acting Group Manager, ICO

- Wendy Broadhurst, ASIT Team Manager (Enforcement), ICO
- Stephanie Braley, Lead Intelligence Officer (Operations), ICO
- John Hodge, Phone-paid Services Authority (PSA)
- Siobhan Woolmer, Gambling Commission (GC)
- Phil Jones, Ofcom
- Eric Bash, Ofcom
- Julie Corney, Market Research Society (MRS)
- Gerald Oppenheim, Fundraising Regulator (FR)
- Sarah Fox, Fundraising Regulator (FR)
- Francesca Heanue, MOJ CMRU
- Antony Bolton, MOJ CMRU
- Claire Haines, Insurance Fraud Bureau
- Michael Warmington, Trading Standards (Regional Intelligence SE)
- Richard Clarke, National Trading Standards Scams Team (NTSST)
- Emily Rae Whitehall, National Trading Standards Intelligence Team
- Michael Sturrock - DMA
- Mike Lordan - DMA
- George Kidd, Direct Marketing Commission (DMC)
- Ian Woodham, BT
- Alan Tonge, Insolvency Service
- Iain MacGregor - Insolvency Service
- Arthur Cummings - DMA

### **Apologies:**

- Suzanne Gordon, Solicitors Regulation Authority (SRA)
- Rachel Norton, Solicitors Regulation Authority (SRA)
- Colum McGuire, Which?

### **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.

***The information contained within is correct as of the date of this meeting – 05/06/18.***

**Agenda:**

- **Introductions** - For those who have not previously attended **(All)**
  - **ICO updates** – Including reporting in the past year and recovery actions
  - **Activity and actions updates** - 5 minute update on relevant activity from each organisation, as well as proposed actions for the next quarter. **(All)**
  - **Ofcom** – Ideas for nuisance calls research
  - **GDPR update**
  - **Financial Guidance & Claims Bill**
  - **Financial Recovery Unit and directors' liability**
  - **Operation WICKLOW**
  - **International enforcement** – update
  - **AOB** (Inc. intelligence requirements)
- 

## ICO updates

### Enforcement

- Financial year 17/18, more monetary penalties than ever before issued for breaches of the Privacy and Electronic Communication Regulations against companies making or sending nuisance calls and messages.
- Twenty-six penalties were issued for £3,280,500. Half of these penalties were issued for unlawful live and automated marketing calls, including a penalty of £400,000 against Keurboom Communications for making nearly 100 million automated marketing calls.
- Ten Enforcement Notices were also issued
- Three separate search warrants executed over the course of the year, at locations in Nottingham, Stockport and Glasgow.

### CMP breakdown:

- Email: 4 - total £370,500
- Live: 6 - total £385,000
- Auto: 7 - total £1,980,000
- SMS: 9 - total £545,000

### **Of the 26 monetary penalties:**

- 17 companies paid or are paying
- 2 appeals
- 7 unpaid and recovery pursued

### **FY 2018/19:**

- 5 monetary penalties totalling £531,000

## **Intelligence**

### **FY 2017/18:**

#### **Concerns reported by type**

- Total – 107,365 (-35%)
- Auto – 40,991 (-50%)
- Live – 52,309 (-20%)
- SMS – 14,065 (-24%)

#### **Concerns reported by quarter**

- Q1: 30,844 (-34%)
- Q2: 28,931 (-23%)
- Q3: 24,927 (-35%)
- Q4: 22,663 (-47%)

In FY 17/18 there was a notable decrease in the number of automated concerns reported. Though the year on year decrease was a consistent trend throughout, the largest change (Q4) was due to an unexpected spike in January 2017 (17,000 concerns reported).

### **FY 2018/19 (April & May):**

#### **Concerns reported by type**

- Total – 15,967 (-18%)
- Auto – 6,027 (-18%)
- Live – 7,097 (-29%)
- SMS – 2,843 (+31%)

#### **Concerns reported Q1 to date**

- Q1: 15,967 (-18%)

### **Potential reasons for complaint level variation:**

- CMPs and other enforcement action receiving widespread and high profile media coverage, raising awareness of the ICO online reporting tool.
- Sustained, targeted and successful ASIT investigations and enforcement action, potentially preventing further breaches.
- Other regulatory action throughout the year by other agencies may have also contributed.
- Call blocking and SMS anti-spam technology may also play a part in reducing the impact of unsolicited marketing on individuals, with calls being intercepted by call blocking services.

### **Current trends:**

- April 2018 saw a year on year increase for the first time (+10%), likely the result of a dip in complaints during April of the previous year, rather than being indicative of a changing trend.
- Anticipate an increase in complaints following the recent implementation of GDPR and the increased public awareness of the ICO as a result.
- Accident claims still the highest reported call topic
- Gambling often the most reported topic within SMS messages but seen a recent decline.
- PPI complaints still far lower than in the last year (-50%), anticipate these will increase as the FCA deadline draws closer but likely to be erratic in the interim.
- ISP broadband scams remain prevalent.

## **Activity & Action updates**

### **Market Research Society (MRS)**

- Drop in 'sugging' complaints to the MRS hotline over the last three years. Potentially a positive sign though could also indicate callers are becoming wiser to reporting practices. (Sugging – data gathering under the guise of research).
- Focus on GDPR awareness, running guidance webinars etc.

### **Insurance Fraud Bureau (IFB)**

- The IFB are in the process of drafting the Strategic Threat Assessment (STA) 2018 which is to be published in September 2018.

## **NTS Scams Team (NTSST)**

### Enforcement - 6 Months

- Working with US and Canada, identified 200 plus bad actors around targeted scams against UK, EU and North American Customers.
- Engagement with UK mail providers to intercept and stop scam mail entering the UK mail stream. Stopped 3.7 million pieces of mail (November – March).
- Delivery of a friends against scams strategy with industry roll out. Aim of 1 million partners by the end of next year.
- Next steps: provision of an online e-learning tool and work with large scale corporations.

**RC** – also noticed an increase in subscription traps around health and beauty and subscription services through phone calls and affiliate marketing.

**SB** – ICO also seeing several SMS concerns surrounding offers for muscle supplements.

## **Gambling Commission (GC)**

- Gradual decline, though still seeing concerns.
- Recent closed consultation on the 22<sup>nd</sup> April, currently being reviewed and a response will be published by the end of July.
- Reflects new requirement to follow PECR.
- Upcoming meeting with the ICO to discuss complaints about the use of cookies and 'profitable users'.

## **DMA (Council)**

- GDPR focus.
- Record number taking up TPS membership.

## **DMA – TPS**

- Trends in line with ICO, overall reduction in complaint volumes year on year.
- Complaints not exceeding 5k per month.
- Voice detect and automated response, specific to accident claims appears to be a problem area.
- Currently seeing concerns relating to alleged Green Deals, PPI, Microsoft scams, TPS scams and crypto-currencies.

## **Ofcom**

- Complaints: volumes are 1/3 of ICO complaint volumes.
- 20% reduction last year and likely to be a 15-20% reduction this year.
- CSPs doing work to block and identify nuisance calls.

- No formal action or fines in past year as the focus is now on comms providers who are helped by new rules. Can now withdraw blocks of potentially misused numbers.
- Focus on impressing on CPS their responsibility to 'KY' users.
- Investigating SMS smishing - short term solution: MNOs holding workshops / Long term: considering how to make SMS secure.
- Concentrating on information connection signposting services so individuals understand call diversions of non-geographic numbers can be expensive – a window not currently covered by PSA or Ofcom.
- Looking to get the PSA to regulate all price points (not just premium).

## **Insolvency Service (IS)**

Year to date (30<sup>th</sup> April):

- 112 director disqualifications (Average 5.9 years)
- 15 fall into high tariff bracket (10+ years)
- 32 section 215 breaches (or similar) – no criminal referral
- 35 criminal referrals
- Live complaints: 4.5-5k complaints per year including renewable energy bonds, false claims of FCA register, Timeshare compensation (targeting the elderly), false selling of ad space, holiday deposits taken and miss-sold PPI.
- Last year there was a rise in crypto-currency however this is now declining.

## **DMC**

- Approximately 300 issues per year, 100 kept as membership issues (1/10).
- Most of traffic is around business marketing and consent.
- Senate: Guidance regarding affiliate marketing will be out this month (June) with a focus on responsible gambling.

## **Fundraising Regulator (FR)**

- Now have 2 years' worth of complaint data and can begin to analyse trends.
- 1,100 complaints last year with an average of 4 weeks resolve.
- Between Q3 to Q4 there was a 20% increase in complaints.
- There are a few complaints about data protection / data lists but charities can usually justify their data use.
- Guidance has been issued to help charities handle complaints.
- Some complaints re: Fundraising Preference Service have been flagged to ICO.

Fundraising Preference Service

- FPS launched – July to March (9 months)
- 16,000 suppressions registered
- 5,700 individuals / ¼ on behalf of registrations (family members)
- 1,200 charities affected (largely those in levy)
- Issued bitesize guidance in February which appears to have gone down well.



Information Commissioner's Office

- Currently working on the Code of Fundraising Practice - Consultation on a possible restructure at the end of July.

**SF** – Announced it was **GO's** last Operation LINDEN meeting.

**KS** – Thanked **GO** for being a long standing and valued partner and wished him well in the future.

## BT

- Call volumes increasing – an average of 13,000, with 14,000 in the last 3 months
- Main calls relate to scams calls.
- Have given further training to customer advisers in response.
- 100,000,000 nuisance calls have been prevented by BT Call Protect, which can make enforcement harder.

## PSA

- Calls volumes are down. In September 2016 there were approximately 1,000 calls a day, this year calls are down to 3-400 per day. Mostly due to MNO initiatives - there is now more friction between user and service.
- Noticed a move away from affiliate marketing to direct to buyer. I.e. the prevalence of Google / YouTube makes this easy to do, even targeting to children. MNOs have issued a new pin level which could possibly cause of reduction here.

## CMRU

- Issued warnings to 6 CMCs for non-compliant direct marketing practices.
- Audited 22 CMCs engaged in direct marketing to assess compliance.
- Continued proactive projects focussed on lead generation and data sales.
- Next steps: Continue to work with other regulators and share intelligence.
- Issued bulletin reminding CMCs to prepare for GDPR.
- Next steps: Currently updating advertising and marketing guidance to reflect GDPR and cold calling ban changes. Plan to publish end of June.

## NTS - Intelligence Team

- **Friends Against Scams (FAS)** - National Trading Standards to promote friends against scams programme, initially launched by the National Trading Standards Scams Team. This aims to protect and prevent people from becoming victims of scams by empowering communities to "Take a Stand against Scams".
- **NTS Strategic assessment** - Yearly strategic assessment looking at priority areas.

## SRA

- Case of Rashid, Begum & Adamsons Law was heard 20-21 February and 14 March, and related to a breach of LASPO re: referral fees (among other allegations).
- Mr Rashid to pay a fine of £5,000 together with £4,000 towards the costs of and incidental to the application and enquiry;
- Mr Begum to pay a fine of £5,000 together with £16,000 towards the costs of and incidental to the application and enquiry; and
- Adamsons Law Limited to pay a fine of £2,000 together with £4,000 towards the costs of and incidental to the application and enquiry.
- Next steps: This information is in the public domain and the fines imposed may serve to be a disincentive for similar actions.
- Holiday sickness claims: Since the Warning notice issued by the SRA in September 2017, further cases have come to light. Key concerns about solicitor behaviour are issued as warning notices which are published on our website and circulated to relevant press in a press release.
- In September a warning notice was issued regarding holiday sickness claims and also the link with claims management companies. The notice can be found below. There has been a reduction in the number of complaints about this type of claim, however this may be seasonal.

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

### Recent Statistics

- Total number of complaints received year to Nov 17 – 1,999
- 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

### **GDPR update (WB)**

- Currently there is no replacement to the existing PECR regulations though there are plans for an e-Privacy Directive / Regulation. We should hopefully see movement in the next year.
- In terms of interim arrangements, PECR is still active.
- Enforcement under PECR is dealt within in the draft Transitional Provision:
 

**Paragraph 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).”
- The maximum penalty for contraventions of the PECR is £500,000.
- ASIT have recently written out to comms providers to remind them of their obligations in terms of reporting security breaches under PECR



## **Financial Guidance & Claims Bill update (KS)**

- Received Royal Assent 10.05.2018
- Organisations will need to ensure they have specific consent to make calls regarding pension and claims management activities regardless of whether or not an individual is registered on the TPS.

## **Financial Recovery Unit & Directors Liability update (KS)**

- ICO FRU established in August 2017.
- Objectives include the recovery of outstanding penalties
- DCMS consultation on director's liability (for PECR) due to close end of August.

## **International Enforcement update (SB)**

- Next UCENET event will be held alongside the M3AAWG in New York in early October (Mobile, Messaging, Malware Anti-Abuse Working Group – pronounced 'Maawg'). For exact dates and location see the M3AAWG website.
- The agenda is still being decided.
- One topic will definitely be to discuss the UCENET Operational Plan for 2019 and beyond.
- Adam Stevens (ICO) is presenting on GDPR to M3AAWG in Munich on the 6<sup>th</sup> June, focusing on the link between spam enforcement globally and tighter rules around consent under GDPR.
- Currently no update on revisions to the e-Privacy Directive/Regulation.

## **Any Other Business (All)**

- **KS** thanked **JH (PSA)** for hosting the meeting and all of the LINDEN partners for attending.
- **KS** confirmed there was no other business and closed the meeting, advising the next meeting would be planned for September / October.