



Information Commissioner's Office

Operation LINDEN

Unsolicited Marketing Communications Strategy Meeting

Which? 2 Marylebone Road, London, NW1 4DF
13 February 2019, 9am-11:30am

Attending:

Chair: ICO: Andy Curry, Enforcement Group Manager

- ICO: Kerry Smith, Enforcement
- ICO: Rob Cole, Enforcement
- ICO: Stephanie Braley, Intelligence
- CMRU: Greg Williams, MOJ Claims Management Regulation Unit
- DMA: Arthur Cummings, Data and Marketing Association
- DMA: Mike Lordan, Data and Marketing Association
- DMC: George Kidd, Direct Marketing Commission
- FCA: Barbara Kubis-Labiak, Financial Conduct Authority
- FR: Sarah Fox, Fundraising Regulator
- FR: Priya Warner, Fundraising Regulator
- GC: Siobhan Woolmer, Gambling Commission
- IFB: Claire Haines, Insurance Fraud Bureau
- IS: Alan Tonge, Insolvency Service
- IS: Iain MacGregor
- MRS: Michelle Goddard, Market Research Society
- NTSIT: Emily Rae Whitehall, National Trading Standards Intelligence Team
- Ofcom: Gavin Daykin
- SRA: Christopher Hall, Solicitors Regulation Authority
- TPR: Paul Sweeney, The Pensions Regulator
- Which?: Adam Gillet

Apologies:

- DMA: Stephen Sullivan, Data and Marketing Association
- NTSST: Richard Clarke, National Trading Standards Scams Team
- PSA: John Hodge, Phone-paid Services Authority

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.



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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**)
- **Week of Action** – proposals for future proactive work
- **CPP Brexit Intel WG & E-Privacy update**
- **Financial Recovery Unit and directors' liability**
- **Operation HIDA update**
- **International enforcement** – UCENet Strategic Plan update
- **AOB** (Inc. intelligence requirements and next meeting / host)

ICO updates

Enforcement

- Excluding potential cases under a larger ICO operation, there are three notices of Intent for £240,000 currently in progress. A further three cases being drafted.
- So far in financial year 18/19 there have been 18 monetary penalties issued. During the previous financial year 26 were issued in total.
- 12 out of 18 of the current monetary penalties were against live calls.
- Overall performance remains similar to last year.
- Move towards more thematic rather than volume based analysis with key areas being those with potentially high detriment such as pensions, payday loans and life insurance - must have a marketing element rather than just being fraudulent in nature. The latter are referred to action fraud as appropriate.



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Intelligence

FY 2017/18:

Concerns reported by type: August 18 – January 19 (last six months)

Live – 35,165

Auto – 31,598

SMS – 7,019

Total – 73,782

Despite the dip over the Christmas period, the total number of concerns being submitted to the ICO is increasing. As with our last update the majority of concerns reported are still falling within the automated call category though the gap between them and live calls is becoming increasingly smaller.

Compared to the previous six month period the volume of complaints have increased by 37%. Compared to the same six months last year, volumes have also increased, this time by 46%. This rise is in line with the general year on year increase we are seeing, which becomes more established as they year progresses.

Complaints have tailed off slightly since the spike following the introduction of GDPR (+45%), though there was an increase after the cold call ban on CMCs introduced in September (+63%). It's possible we will see a similar rise in the pension's category post January, however, previously we have seen this issue 'piggy back' on other complaint types such as investment and banking calls so pension complaints as a category may not increase substantially. It should also be noted that with pension scams, the true fraudulent / nuisance nature of the call may not be discovered until much later at which point the individual likely has more pressing concerns than reporting the original call to the ICO. Pension are currently a key area of interest for the ICO's PDMIT team given the potential for harm and work is ongoing.

Also considering how social media and messaging apps could be used as new channels for nuisance messaging and how this could be reported and tracked going forward.

In terms of TPS data, this has remained fairly steady during 2018, especially when compared to ICO data trends following changes to legislation. Interestingly whilst the ICO has seen an upward trend overall, the reverse is true for the TPS data. This difference could be caused by changes in reporting behaviours, increased public awareness of the ICO or an increase in automated complaints, which fall outside the TPS remit.

**Current trends:**

- Shift towards callers using multiple CLIs in low volumes in order to avoid detection. New approach to be thematic rather than solely volume based to tackle this.
- Accident Claims: remains highest reported category by far and in January accounted for 30% of all complaints received. The majority of calls are automated (75%) and initial analysis indicates they are likely related to an ongoing ICO operation.
- Broadband: this category is consistently high and is predominantly made up of automated ISP scams. We have seen a sharp year on year increase in this category with concerns up 352%. Working with NFIB / Action Fraud.
- Debt management: rising topic - November saw the highest reported concerns in this topic since June 14. Though there was an expected decline over the Christmas period, complaint volumes are still much higher than usual. January was up 426% since the previous year. Complaints usually relate to automated calls from an unknown sender.
- Pensions: volumes remain relatively static so far, though we could see an increase in the coming months following a rise in public awareness of the ban.
- SMS: seeing a rise in payday loans which became the highest reported topic in January (+177%). Gambling concerns remain one of the highest reported SMS topics though complaints show a downward trend overall.

Activity & Action updates (ALL)**SRA**

- Current themes of interest - PI and RTA still constant and significant area of work.
- Continue to work with partners (IFB / FCA / CMRU).
- Cold calling not necessarily by solicitors but by their introducers.
- Engaging with other regulators re: Pension scams. The difficulty is that these scams don't always present themselves as such right away.
- Work on concerns relating to housing disrepair. Trying to identify solicitors involved.

Insurance Fraud Bureau (IFB)

- Holding an Intelligence forum on the 14 February on enabling activity - claims farming, data theft and data vishing. This forum is for members in the industry and the ICO and OFCOM have agreed to present.



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- Recently held a workshop relating to Google ad spoofing after RTCs where individuals are being directed to a marketing company not the insurer. This is due to the marketing company's website being placed at the top of the list of search results. Generic names are used to answer the phone leading to customers being encouraged to take out expensive credit hire where they may be challenged by the at fault insurer. They are careful not to mention the Insurer's name so they cannot be accused of impersonation. In contact with regulators including the FCA, SRA, CAB and action fraud. Also encouraging customers to submit SARs to the companies involved to identify fraudsters. Cease and desist letters to companies suspected of impersonation.
- Regularly receive referrals from our customers in relation to claims farming, data fishing and acting without instructions. We issue reports to the industry to share this intelligence and develop potential investigations to be passed to law enforcement and regulators.

Market Research Society (MRS)

- Code of conduct consultation – any comments please send views.

The 2019 draft edition of the MRS Code of Conduct

Revisions have been made to the existing MRS Code of Conduct to reflect evolving ethical best practice and significant changes in the data protection framework. The changes also seek to ensure that the Code keeps pace with the accelerated speed and progress of technological development and data use. It is important that practitioners can easily understand, access and use the MRS Code of Conduct and that it is also easily accessible to members of the public.

<https://www.mrs.org.uk/pdf/Draft%20MRS%20Code%20of%20Conduct%202019%20-converted.pdf>

CMRU

- Conducted audits of 15 authorised claims management companies engaged in direct marketing and / or data, and issued comprehensive advice where breaches were identified.
- Issued warnings to 4 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 to work closely with the ICO, Ofcom and the Advertising Standards Authority to assist with investigations.
- Current trends – payday loans up and PPI moving towards postal marketing
- Preparing information and cases ready for transition to FCA on 1 April 2019.



FCA

- CMCs registering for temporary permissions – need to register by end of March.
- Taking firms through authorisation process.
- Scottish CMCs not regulated before are being dealt with in the first application slot, with PI to follow after that.
- Working on new and existing MOUs.
- Working on CMRU transition and data migration.

DMA

TPS data

- Continue to see reduction year on year, even when accounting for seasonality. Possible main reason may be that automated calls, which are often the cause of current increases in volume, are not within TPS remit.
- There have been fewer cases reported where the caller is identifiable.
- Many spoof calls relating to AC companies and numbers.
- Still seeing complaints relating to 'TPS' or similar services – these have been referred on to action fraud.
- Continue to work with ICO and support cases and call action logs.
- Continue to clean the TPS register, 5 million defunct records removed.

Insolvency Service (IS)

- 4-5,000 complaints overall which whittle down to 500 per year relating to short term fraud to high end investment scams. Some cases have led to director disqualifications.
- Seeing a switch in concerns from PPI to life insurance.
- In recent months have seen an increasing number of company hijack cases relating to timeshares investments / land property or alternatively the setting up a company with deceased directors or those that are unaware of their involvement.

Which?

- Initial campaign focusing on Director level accountability – to work with ICO.
- Move to focus on scams and consumer issues more generally.
- Working to re-vamp online report tool for nuisance calls to become more user friendly and accurate – to work with ICO to better understand category content.
- Side publishing issues with HMRC recordings and the surge in BT complaints for awareness.
- TPS mobile clone – might promote again.
- Invited guests to come and talk about work – contact Adam if interested.



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DMC

- Complaints in the 100 not 1000s.
- People who join take data protection and direct marketing issues seriously.
- ASA/Committee on Advertising Practice code amendments published addressing data issues and legitimate interest as a basis for marketing – DMC invited to act as a new specialist advisory panel to ASA when dealing with any cases under these provisions.
- This move could allow DMC to contribute in cases that do not involve members of the DMA.

Direct Marketing Commission's latest Annual Report for 2018.

<https://www.dmcommission.com/news/2019/02/complaints-about-data-and-privacy-still-dominate-2018/>

NTS - Intelligence Team

- Working with Trading Standards around green energy and solar panel maintenance and looking into cold calls advertising / offering fake jobs with an upfront training fee.

Fundraising Regulator (FR)

- Reminded that new financial year for the FR is 1 of September.
- Year on year drop in concerns, though may be partially due to changes to their online form to remove non relevant cases or complaints suited to other regulators.
- January increase in complaints not as high as the previous year.
- 80-100 investigations in the upcoming year likely
- Themes are not often relevant to this group as they tend to focus on face to face marketing – often unintentional or not properly explained.
- No rise in social media targeting so far but may start to see going forward.
- Able to categorise own data due to much smaller volumes so accuracy is good.
- FPS has slowed down since initial launch (possibly due to GDPR). Concerns mainly relate to those who failed to action suppressions.
- Since July 2017 – working with the ICO to address Charities who received a notification but have not actioned.
- Planning to publish summaries of all investigations into complaints received from March 2019 onwards, which will name the organisations investigated.

GK (DMC): Enquired if any concerns relating to fake charities / scams

SF (FR): Not that have been complained about yet, though if it is clear the concern is not about a legitimate charity it would be referred to action fraud as it would fall outside the FR's remit.



Gambling Commission (GC)

- MTA data from December showed a 61% year on year decrease in overall 'gambling' complaints submitted to the ICO. In terms of SMS in particular, which makes up the majority of these concerns, this was a decrease of 73%.
- Potential cause of decline: introduction of licence condition with codes of practice.

TPR

- Generally seeing a reduction in cold calling and focusing more on serial scammers.
- Working on increasing usable intelligence feedback from investigations.
- Continue to work with other regulators and the police.
- Engagement with industry working groups ongoing.

Ofcom

- Continue to evaluate cases for enforcement through analysing Ofcom's complaints data and nuisance calls reports provided by the industry working group.
- Engaging informally with number range holders whose numbers are the subject of misuse, to encourage those holders to take action to stop the misuse of their numbers. Can now withdraw numbers where holders do not take effective steps to stop the harm being caused by misuse of their numbers.
- The new General Condition that came into force 1 October 2018, will provide a regulatory mandate to ensure both call blocking solutions and number authentication functionality are deployed in communication provider (CP) networks - currently meeting with the major CPs to clarify what steps they have taken to comply with these new requirements.
- Launching a new SMS SenderID Protection Registry which will allow participants to register and protect the message headers they use in SMS communications thus preventing other parties from using it (scams). This initiative will start with banks and Government agencies but will be widened to all merchants and other public sector bodies during the year.
- Annual Joint Action Plan (Ofcom and ICO) on strategy of dealing with nuisance calls to be published in March 2019.



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E-Privacy update (AC)

PECR – SI amendments

Various SI amendments proposed to cover CPC related provisions, as part of 'No Deal' or Withdrawal planning. Still no confirmation of e-Privacy Regulation progress, so still looking at autumn 2019 for more information and possibly May 2020 for introduction, though this is currently a best guess and is subject to change. The consultation for direct marketing is also now in draft.

Financial Recovery Unit & Directors' Liability update (KS)

- Reviewing current internal processes; if a CMP is not paid moving to formal recovery action
- Working with other regulatory partners
- Director's liability: can't be applied retrospectively.

Data Broking update (SB)

The ICO currently has an active work stream on data brokers in relation to direct marketing. The audits of the six data brokers, which include the three main CRAs, are still ongoing. These, as publicly reported, are: Axiom Ltd, Data Locator Group Ltd, Equifax, Experian, GB Group plc and, TransUnion (formerly Callcredit). While the ICO is not able to provide a detailed update at this time, it does intend to publish its findings in this area once this process is complete, which may also include additional guidance to industry as well as to the general public. The ICO is also currently considering its next steps once this particular phase of the data broker work stream is completed. Focus is on a way to keep our knowledge of this sector and its practices up to date and relevant.

International Enforcement update (SB)

UCENet

Background

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 hosted alongside the Messaging Mobile and Malware Anti-Abuse Working Group, and organisation of the event was led by the ICO and US FTC (Sara DePaul from their International Affairs Department).

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.



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Updated strategic plan

An outline of this strategic plan for 2019 to 2021 has been produced setting out three priority areas:

Priority 1: Intelligence and cooperation

Priority 2: Communications and engagement

Priority 3: Training and development

We are currently seeking engagement and views from members (or prospective members) of UCENet on this plan. Therefore if you would like a copy of the outline and/or to provide any input please contact the ICO.

Any Other Business (All)

- N/A
- Offers to host the next meeting in June/July requested.
- Survey to be shared relating to the continued usefulness and future of Linden.
- Goodbyes given to Sarah Fox (FR) as this was her last meeting.
- Session closed thanking participants for attending.