

**Overview:**

BT welcomes the opportunity to comment on the BIS consultation. BT supports any action that may help to prevent persistent misuse. However, whilst we consider some increase to the current maximum fine may be justified, this change needs to be done in conjunction with improved clarity of the regulations. This would provide companies with a better understanding of what is required and an improved opportunity to comply. Having considered all options BT is supportive of a fivefold increase to the maximum level of fine to £250k.

**Detailed comments:**

1. BT believes that the focus on increasing the fine in isolation cannot be undertaken without also adding greater clarity to compliance with the regulation. We take the issue of persistent misuse very seriously and BT supports actions that may help to prevent it. As a telecommunications provider, protecting our customers from receiving these types of calls is important to us to ensure customer security and satisfaction with our service. In addition, our Nuisance Calls Bureau would be more effective and efficient if persistent misuse is reduced.
2. We agree it is important that we all take responsibility to help reduce annoyance, harm and anxiety to customers. However, it is our view that increasing the level of the fine will not tackle those companies who continually abuse the regulations.
3. It is good to see that volumes of silent calls have been falling since 2005<sup>1</sup> however, a snapshot of the complaint cases relating to persistent misuse received by BT's Nuisance Call Bureau showed, that on average, half of those complaints received were from customers who had no idea of who had called them. Companies, who actively choose not to comply by not leaving a CLI or recorded message, are extremely difficult to trace and are likely to cause significantly more harm to customers. These misusers are often unchallenged leaving them to continue causing customer harm. Additional distress can be caused by these companies by calling at inappropriate times. We agree that companies not even trying to comply with Persistent Misuse Regulations should be viewed as grossly negligent as this represents irresponsible behaviour.
4. Greater clarity of the persistent misuse regulations is required before any increase is made to the maximum penalty. All regulations need to be clear and easy to understand allowing companies a better chance of complying.
  - Strengthening the regulation for companies already trying to comply will not significantly reduce the levels of consumer, annoyance and nuisance.
  - Best practice and a better understanding of the regulations are more suitable to help those companies (already trying to comply) to act in accordance with the current regulation.
  - Working with industry bodies such as the ICO and DMA to give companies a greater clarity of how to comply would provide Ofcom with an opportunity to put improved transparency around the regulations.

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<sup>1</sup> [www.dma.org.uk/](http://www.dma.org.uk/)

- When imposing penalties Ofcom will be able to reflect the different levels of seriousness of the various types of persistent misuse cases by making sure the fines are transparent.
5. BT is also concerned that effective regulation is needed as persistent misuse not only affects consumers but may also be responsible for bringing the marketing and call centre industries into disrepute. Continued bad practice has an impact on consumers, which encourages more customers to register with TPS. In turn, this prevents calls that may be of benefit to the customer being made from compliant companies.
  6. Media attention is of importance to BT; as it should be to any reputable company. Reputable companies are more likely to comply regardless of the level of the penalty due to the risks of unwanted media attention as this is likely to be important to them. We do not agree that a higher penalty alone will encourage compliance. However this is only likely to be of importance to those companies that care and are complying.
  7. We do agree that non-compliance can provide companies with an unfair advantage. However we do not agree that the level of harm caused by breach of the 'analogue licence conditions' exemplified within the consultation is comparable to that caused by silent or abandoned calls. A breach of the 'analogue licence conditions' is likely to be significantly more serious and cause greater harm and annoyance to a much wider audience than incidents of persistent misuse. Similarly, BT considers the comparisons made by BIS with Broadcast and PPP powers are not comparable to cases of persistent misuse. The cases referred to in the consultation relate to customers being encouraged and enticed to spend money often under false pretences, rather than relating solely to harm, annoyance or nuisance. BT believes therefore that such comparisons are not relevant to persistent misuse regulation.
  8. BT is not convinced that all the harm attributed to persistent misuse is due to silent or abandoned calls. A growing trend in automated marketing calls that fall under the PECR regulations enforced by the ICO have the potential to cause greater harm and are often linked to dubious marketing activities e.g. misselling of loans and bankruptcy advice, false competitions, offers of cash for gold etc.
  9. The level of penalty must be proportionate.
    - A higher fine will only be a greater deterrent or disincentive to persistent misuse if businesses can be traced. A fine at any level needs to be transparent and have clear criteria so it reflects the different levels of seriousness of various types of persistent misuse cases when imposing penalties. It also needs to be proportionate to the breach, including the harm caused and the intent to cause. As mentioned before breaches of broadcasting powers are not seen as comparable to persistent misuse.
    - A small business unaware of the regulation or trying to comply but needing additional guidance to do so faces unreasonable risk if the maximum level of fine is disproportionately high.

10. For the reasons above BT is only supportive of an increase of the maximum penalty for persistent misuse as part of a wider regulatory review and compliance awareness programme. This will provide industry with the necessary clarity and a better understanding of how to comply. If BIS were to decide to increase the level of the fines, BT believes that the increase should be the minimum increment proposed in the consultation, £250K. This represents a fivefold increase on the current maximum fine and is considered more proportionate for a breach of Persistent Misuse. Exploring, promoting and encouraging best practice amongst industry as well as working with Ofcom, the DMA and the ICO to look at ways in which this can be achieved and how we can improve the understanding of the existing regulations is likely to be more beneficial than a far higher maximum penalty.

### **Question 1**

*What are your views about the maximum penalty remaining at the current level of £50,000?*

11. We believe there is a case for an increase and therefore do not support the fine remaining at the current level of £50,000. However, we consider any increase must be done in conjunction with improved clarity and compliance with the regulation. Please see the main body of our response and specifically paragraphs 3 and 4.
12. We disagree, with the view that *'Call centres do not appear to be deterred from making silent and abandoned calls as the current maximum penalty of £50,000 is felt by some to be an insignificant amount, particularly when compared to the potential productivity gains, and this means that it may well remain a risk worth taking for many companies. This appears to be particularly the case in relation to those that make calls specifically for marketing purposes. The maximum penalty is seen to be apparently insignificant when compared to the substantial revenue that may be generated by calls of this nature'*. Any reputable company will be driven by the risk of negative PR rather than the size of the fine imposed. Please see our comments at paragraph 6.

### **Question 2**

*What are your views about the maximum penalty being increased to £250,000?*

13. We would be supportive of an increase to £250,000. Please see the main body of our response and specifically paragraphs 3, 4 and 5.
14. Our view relating to comparisons with other powers is included in paragraph 7.

### **Question 3**

*What are your views about the maximum penalty being increased to £500,000?*

15. A maximum penalty of £500,000 is disproportionate, will not in itself deter bad practice and is therefore not supported by BT. Please see the main body of our response and specifically paragraphs 3, 4 and 5.

**Question 4**

*What are your views about the maximum penalty being increased to £1 million?*

16. A maximum penalty of £1 million is disproportionate, will not in itself deter bad practice and is therefore not supported by BT. Please see the main body of our response and specifically paragraphs 3, 4, 5 and 6.

17. The government can show its commitment to minimising the problem of silent and abandoned calls by ensuring the existing regulations encourage compliance by being clear and easy to understand. Enforcement against those who then continue to offend will demonstrate bad practice will not be tolerated.

**Question 5**

*What are your views about the maximum penalty being increased to £2 million, which has been requested by Ofcom?*

18. A maximum penalty of £2million is disproportionate, will not in itself deter bad practice and is therefore not supported by BT. Please see the main body of our response and specifically Question 4 above.

**Question**

*Do you have any comments concerning the impact assessment, which we may find helpful when considering this issue further?*

19. All of our comments are included in the points above.

**Question**

*Do you feel this consultation document has been:*

Very helpful       Helpful       No change       Not very helpful

**Comments**

20. It has been helpful to be able to highlight the need for Ofcom to take action against those companies not complying and ask for clearer guidance on compliance of the regulation.

**Question**

*Please provide a rating score for the following aspects of our proposal on a scale of 1 to 5, with 5 being the highest grade including your overall approval of the proposals:*

	5	4	3	2	1
Right problems identified			X		
Range of options wide enough		X			
Preferred options well chosen	N/A				

***Comments:***

21. The consultation does not set out any option as preferred hence BT has marked this question as not applicable.

*Do you have any other comments that might aid the consultation process as a whole?*

22. We have no additional comments.