

21 September 2015

Mr John Stanton
Chief Executive Officer
Communications Alliance Limited
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Dear Mr Stanton

Review of the Handling of Life Threatening and Unwelcome Communications Code (C525:2010)

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to comment on the scheduled review of the Handling of Life Threatening and Unwelcome Communications Code (C525:2010) (the HLTUC Code).

We set out below our general comments and several specific issues for consideration in the scheduled review of the HLTUC Code.

General comments

Overview of new complaints

The TIO recorded and handled 138,946 new complaints from small business and individual consumers in 2013-14. This compares with 158,652 new complaints in 2012-13. In the first three quarters of 2014-15, we recorded more than 90,000 new complaints.

New complaints about life threatening or unwelcome communications form a small component of all TIO new complaints. Despite decreases in new complaints in recent years, we continue to record a steady number of complaints about life threatening or unwelcome communications each year.

We recorded between 550 and 600 issues in new complaints about unwelcome communications each year over the past four years. We also recorded around 25 issues in new complaints about life threatening communications each year over the same period. While the complaint numbers are comparatively small, the issues they raise cause significant distress to consumers. Consumers who contact us about these types of communications are often very concerned about their privacy or safety.

The appropriate and efficient handling of these types of complaints by providers is a key objective of the HLTUC Code. The Code is intended to provide consistency in the management and resolution of unwelcome communications and a quick response to life threatening situations. While the Code has helped address and resolve these types of complaints, the TIO continues to see some operational gaps and non-compliance issues with the Code that result in complaints being unnecessarily protracted before being resolved with the TIO's assistance.

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Operational gaps and non-compliance issues

In a recent analysis of a sample of 50 new complaints about life threatening or unwelcome communications recorded by the TIO in 2015, we identified a range of operational gaps and non-compliance issues. These issues presented as follows:

1. Some providers' processes did not differentiate between a life threatening communication and an unwelcome communication. In these instances, the definition of a 'pattern of unwelcome communications' was applied to complaints about life threatening communications. The consumers who received life threatening communications in these complaints were advised that nothing could be done to assist them, because these communications did not meet the definition of a 'pattern of unwelcome communications'.
2. In some complaints, consumers with complaints about life threatening or unwelcome communications were told that the provider could not assist because the calls were originating from unlisted numbers, or from 'private' or 'unknown' numbers. It is not clear if the providers carried out the requisite investigations or made attempts to trace the life threatening or unwelcome communications.
3. In a number of complaints about unwelcome communications, affected consumers were turned away by their providers because these communications did not meet the requirements in sub-clauses (a) (ten or more communications in a 24 hour period) or (b) (three or more communications spread over a period of more than 24 hours and less than 120 hours) of the definition of a 'pattern of unwelcome communications'. This is despite these communications clearly meeting the alternative requirements in sub-clause (c) of this definition (communications made at consistent and/or regular intervals).
4. Some providers referred consumers receiving unwelcome communications directly to the police, without attempting to resolve these complaints in line with clause 4.2.3 of the HLTUC Code. Some of these consumers experienced further frustration when the police referred them back to their service providers.
5. When discussing options to deal with life threatening or unwelcome communications, some providers advised consumers to disconnect their service or change their telephone number. However, when the consumer requested this, their service was not cancelled or disconnected, leaving the consumer exposed to further life threatening or unwelcome communications.
6. A number of consumers with complaints about unwelcome communications were not given clear information about the unwelcome communications process or how their complaints would be resolved by their providers. These consumers were also not kept updated about any investigations undertaken by the providers or the outcomes under this process.

In providing our comments on the specific issues below, we have had regard to the consumer complaints we receive about life threatening or unwelcome communications and the operational gaps and non-compliance issues identified above.

Specific issues for consideration

Definitions of 'life threatening' and 'unwelcome' communications

The two definitions of 'life threatening' and 'unwelcome' communications in the HLTUC Code remain relevant.

As highlighted above however, some providers' processes do not differentiate between a life threatening communication and an unwelcome communication, with both being addressed using the unwelcome communications process. The risk that this poses to consumers who receive life threatening communications includes actual harm eventuating or extreme distress that harm may occur.

The details in the boxed Notes to these two definitions contain important elements and could provide additional clarity to providers when dealing with these types of complaints. For this reason, we recommend that the details in the boxed Notes to these definitions are incorporated into the definitions of 'life threatening communications' and 'unwelcome communications'.

Definition of 'pattern of unwelcome communications'

As noted above, some providers did not provide assistance to their customers who complained about receiving unwelcome communications, because these communications did not meet the requirements in sub-clauses (a) or (b) of the definition of a 'pattern of unwelcome communications', even though these communications clearly met the alternative requirements in sub-clause (c) of this definition.

To avoid this narrow approach, we recommend the boxed Notes include additional guidance on circumstances when sub-clause (c) applies.

We also note that the definition of 'pattern of unwelcome communications' is subject to confirmation by the supplier's 'communications records' and that this latter definition includes a limitation that these records may not be readily available or reasonable to capture, store or retain. We recommend the definition of 'pattern of unwelcome communications' includes a consideration of evidence that may be provided by the consumer (for example, recordings of unwelcome communications) in the event that a provider's 'communications records' are incomplete or not readily available.

Separately, we recommend the limitation to the definition of 'communications records' in the HLTUC Code be reconsidered in light of providers' new data retention obligations under the recent amendments to the *Telecommunications (Interception and Access) Act 1979*. These new obligations require providers to retain for two years, information relating to the use of the providers' services, including information about subscribers to a service and the source, destination and timing of a communication. In addition, a timeframe for retention of such records could be included to make this definition consistent with the new data retention obligations.

Inability to take action in certain scenarios

The boxed Note to clause 4.2.7 states that suppliers may not be able to take action in certain scenarios when investigating an unwelcome communication complaint. We remain concerned that these scenarios are quite broad and may no longer be relevant in today's environment and advances in technology.

We recommend that these scenarios be re-examined in light of improvements in technology and capability of providers to trace and investigate unwelcome communications.

Clarity of processes for responding to life threatening or unwelcome communications

The flowcharts and supporting appendices in the HLTUC Code provide a level of clarity in the processes for responding to and handling life threatening or unwelcome communications.

However, the gaps and non-compliance issues we have identified in TIO complaints suggest that the processes in the HLTUC Code are not easily understood or properly implemented by providers and their front line staff. This could be because the processes outlined in Chapters 3 and 4 of the HLTUC Code are complex and are not set out in plain language.

We recommend consideration be given on setting out the processes for responding to life threatening or unwelcome communications in simpler and clearer language, so that these processes may be more easily understood and implemented by providers.

Over the top services and new technologies

Since the last revision of the HLTUC Code in 2009, there have been significant developments in the types of communications technologies and how consumers now interact and communicate with each other. Over the top applications such as WhatsApp with over 900 million active users globally and Facebook Messenger with over 700 million active users globally, are extremely popular communication tools. The popularity of these applications does come with the risk that they could be used for the purposes of life threatening or unwelcome communications.

The review of the HLTUC Code presents an opportunity to reconsider the scope of the HLTUC Code, in light of the growth in new types of communication tools and the fast changing nature of communications technologies. This consideration should also take into account the need to maintain technology neutrality in the HLTUC Code so as to future proof the Code.

Improved compliance and adherence to code obligations

As highlighted above, a common theme we identified in complaints about life threatening or unwelcome communications is non-compliance or inconsistent compliance by some providers with their obligations under the HLTUC Code. The lack of a monitoring or compliance regime within the HLTUC Code may account for this non-compliance.

The HLTUC Code plays an important role within the telecommunications industry's co-regulatory framework as it provides key protections for consumers experiencing life threatening or unwelcome communications. Enhanced monitoring and compliance arrangements within the HLTUC Code would ensure confidence in industry's commitment to these protections.

We recommend consideration be given to introducing robust monitoring and compliance arrangements within the HLTUC Code, to encourage improved adherence with Code obligations across all providers.

Further information

If you require further information, please do not hesitate to contact Shobini Mahendra, Manager – Policy, Research and Systemic Issues on 03 8600 8700.

Yours sincerely



David Brockman

Executive Director – Industry, Community and Government