

Public Meeting to consider the PLT Study Report Publication

3 August 2010 Riverside House

Although the meeting is not specifically intended to be a forum to consider PLT enforcement issues, we understand that this aspect is of particular concern to some stakeholders. In recognition of this we have decided to allocate part two of the meeting for open discussion on this aspect.

However it should be recognised that for legal reasons we may not be in a position to respond to some questions and it may not be considered appropriate to discuss individual cases.

This document contains a list of questions that may be asked and possible responses.

Q.

How many interference cases have been reported.

A.

The latest statistics for PLT interference are as follows:

For the 12 month period to July 2009 there were 144 cases reported

For the 12 months up to the end of June 2010 a total of 100 cases were reported.

This represents a dramatic **decrease of a third (32%)** in the complaints received by Ofcom over the past 12 months. This is particularly significant when viewed against the increased uptake of the technology with an estimated 1.8 million pairs currently in service.

All reports were made by radio amateurs and shortwave listeners. No other stakeholder group has reported that they have been affected (these figures represent reports and are not necessarily a proven PLT source).

Of these 244 cases 193 were referred to BT for resolution, 20 are diagnosed, 19 are awaiting the supply of replacement (19 Wi-Fi and one hard wired) 1 no course of action yet determined). There is one case outstanding.

Q.

What is Ofcom going to do to address the interference to aircraft communications as highlighted in the report?

A.

We have not received any complaints of interference to aircraft communications attributed to the use of PLT.

Has Ofcom tested the Comtrend or others for compliance with the EMC Regulations or EN55022, if so what were your results.

A.

Yes we commissioned independent tests on a Comtrend product as part of our investigation into whether a criminal offence has been committed under the EMC legislative regime. The contents of the resulting report are evidence that Ofcom obtained as part of this criminal investigation. As such, it is inappropriate that this be released.

Q.

The Comtrend (or other) manufacturers Declaration of Conformity refer to discredited or inappropriate standards. This is a breach of the EMC regulations compliance process what are Ofcom doing about this.

A.

Ofcom is responsible for enforcing EMC where there is a radio spectrum interference or management issue. It is not necessarily our regulatory responsibility to consider possible administrative failings. We are however aware of certain issues and have advised manufacturers that these should be addressed.

Q.

The PLT report makes certain recommendations for interference mitigation technologies to be introduced by PLT manufacturers. What is Ofcom doing to about this?

A.

Ofcom is making this study available so that it may inform the ongoing work of industry and standardisation groups in developing and commercialising PLT products.

Q.

Given the recommendations in the PLT report regarding interference mitigation techniques, why does Ofcom not force manufacturers to implement these techniques?

A.

The EU regulatory regime for EMC requires manufacturers carry out pre market assessment of their products. Market surveillance and enforcement is 'ex-post' that is after the apparatus is placed on the market. Ofcom cannot impose restrictions on manufacturers. We anticipate that some or all of the proposed mitigation techniques will be included in a new Harmonised Standard. Although not mandatory, we believe that manufacturers will adopt the new Harmonised Standard and as a result will employ the recommended mitigation techniques as standard.

Q.

The mitigation technologies referred to in the report, specifically adaptive notching will not help radio amateurs and shortwave listeners.

A.

This is new territory and it may well be the case, however the report suggests that by employing a combination of mitigation techniques the likelihood of interference is lowered.

Q.

What part is Ofcom playing in CEMELEEC standardisation work?

A.

Ofcom is not involved in the standardisation process, we believe that the formulating of Harmonised Standards is not an our responsibility and that this process is best carried out by industry and stakeholders.

Q.

What evidence would Ofcom require before taking legal action to stop PLT being placed on the market?

A.

In discharging its functions Ofcom applies the guidance Crown Prosecution Service, 'The Code for Crown Prosecutors'. This requires that we must be satisfied that there is sufficient evidence to Provide a realistic prospect of conviction and that bringing such action is in the public interest.

Q.

Ofcom has said that it does not have powers to force someone to stop using their PLT device even if it is causing harmful interference. What are Ofcom doing about this?

A.

We believe that our EMC legal powers do not give us the ability to immediately demand cessation of use of PLT if this were to give rise to a problem. The EMC regime is not intended to address 'in-use' interference issues.

The Wireless Telegraphy Act 2006 provides a mechanism for taking enforcement action to stop interference from specific classes of apparatus, for example a boiler thermostat or domestic appliance but does not include PLT.

Acknowledging this wider issue, we are currently considering our ability to make a statutory instrument under section 54 of the Wireless Telegraphy Act 2006 which might give us scope to demand cessation where there were threats to public health or safety. But it is doubtful if we could go much further than that within what is permitted by EU law and particularly the EU Treaty provisions on free movement of goods (Article 4 of the EMC Directive special measures).

However it remains the case that the use of such powers, should they be provided would not be 'automatic', it would be necessary to show that such action was evidence based, considered **proportionate and reasonable**. In many of the types of interference cases reported to Ofcom by radio amateurs and shortwave listeners **this is not always clear**. This is even more so where the apparatus is declared EMC compliant at the time it was placed on the market by the manufacturer.

When responding to complaints we strive to act in a fair, reasonable and non-discriminatory way. We are transparent when engaging with stakeholders in general and in particular issues. We are aware that this has, on occasions resulted in disquiet amongst a minority of stakeholders.

Q.

Does Ofcom accept this report and all of its findings?

A.

Does "accepting this report" mean that we condone and fully support all of their assumptions, simulations and working? . It is incredibly difficult to do that – to get right into the detail of everything they've done from the beginning would have taken an enormous amount of time. Essentially we would have had to shadow them from beginning to end and we could have done the work ourselves in that case!

The report has been reviewed and, while one can always challenge some assumptions on which they've based their work (e.g. on market growth), they have always backed up their assumptions with justifications. So, in that sense, I am confident that they have undertaken a well-researched piece of work.

Perhaps the most significant aspect is the interference prediction over the coming 10 years. This is probably on the high side, but given their approach to modelling this is understandable. Taking PA's results as an upper bound on future likely interference, and 0% as a lower bound (as the lowest possible bound), I think that interference will likely fall between the two bounds and, given observed interference to date, I think it will be closer to the lower than the upper.

Q.

In the light of this report is Ofcom now going to take enforcement action, if not why not?

A.

The EMC regime is grounded in EU free movement of goods rules; such that manufacturers should be able to market and sell electrical products in all Member States if they meet the key minimum (essential) requirements.

The UK EMC Regulations are a legal regime grounded in criminal law. This is different from other areas such as spectrum or broadcasting licensing where we have wider policy discretion.

For products that cause interference, including PLT, we need to consider whether there is a breach of the criminal law in relation to sale and marketing of a particular product by a manufacturer.

In the cases brought to our attention by radio amateurs and shortwave listeners we have not so far found that there is such a breach and we do not consider prosecution to be in the public interest.