
Review of the Premium Rate Services Condition

Statement on extending the definition of Controlled Premium Rate Services to include all Information, Connection or Signposting Services

Statement

Publication Date: 19 December 2018

Contents

Section

1. Overview	1
2. Background and legal framework	4
3. The PRS Scope Review statement and summary of the analytical framework	10
4. Assessment of harm arising from '084' ICSS	15
5. Remedies to protect consumers	25
6. Implementation	32

Annex

A1. Annex 1: List of respondents to ICSS consultation	34
A2. Notification of a modification to the Premium Rate Services Condition under section 120A of the Act	35
A3. Legal basis for Ofcom's proposals	40

1. Overview

We have found that there is harm arising from Information, Connection or Signposting Services (ICSS) provided on '084' numbers ('084' ICSS), and that this harm is common across all ICSS. We have, therefore, decided to extend the definition of Controlled Premium Rate Services (Controlled PRS) in the Premium Rate Services Condition (the PRS Condition) to include all ICSS, irrespective of number or price point. The effect of this will be that all ICSS would meet the definition of Controlled PRS in the PRS Condition and all ICSS providers will be subject to regulation by the Phone-paid Services Authority (the PSA).

What we have decided – in brief

We consider there is evidence of substantial actual and potential harm arising from the way in which '084' ICSS are being used. We have found evidence of high levels of harm, particularly to vulnerable consumers, as well as reputational and operational harm to businesses and government departments, and risks to the PRS sector.

We consider that this risk, and these risks of harm, are likely to be common across all ICSS, irrespective of whether they are operating on '084', '087', '090' or any other number range.

We have decided to extend the PRS Condition to include all ICSS, irrespective of price point or number range. This will bring all forms of ICSS within the definition of Controlled PRS and make them subject to regulation by the PSA.

This overview is a simplified high-level summary only. The decisions we have made and our reasoning are set out in the full document.

Introduction

- 1.1 There is a range of interactive services that consumers can access via their landline and mobile phones, computers and digital TV. Where these services are charged for via the customer's telephone bill or pre-pay account, they are known as Premium Rate Services (PRS). They can include receiving a daily horoscope, following football scores, voting in television programmes, making charity text donations or downloading the latest ringtone. While these services are valued by those who use them, they can give rise to consumer harm.
- 1.2 Ofcom has overall responsibility to make sure that PRS are regulated appropriately and that consumers are protected from the harm that may arise from their mis-use. Ofcom sets the PRS Condition and providers within the scope of that Condition are regulated by the PSA in

accordance with its Code of Practice (the PSA Code).¹ The PSA Code establishes certain standards for the operation of such services in the UK. The PRS Condition only applies in respect of Controlled PRS, and so only a subset of PRS are subject to regulation by the PSA (and Ofcom's statutory backstop powers).

1.3 ICSS are a form of PRS. They are essentially services which:

- (1) provide advice or information about how to access or use public or commercial services; and/or
- (2) connect or direct consumers to specific contact numbers or helplines that they are seeking, usually at a higher charge than calling direct.

1.4 An example of how consumers may interact with ICSS in practice is set out below:

A consumer may be using an internet search engine to find a contact number for a particular organisation, such as a public organisation or a charity. In the search engine results, the consumer may find an ICSS number which is not related to the organisation they are trying to contact but which instead, when dialled, connects or forwards the consumer to the actual phone number of the organisation they are trying to contact.

In some cases, the company offering the service will also be offering a range of different services that the consumer may want, for example, the ability to record the call once they are put through to the organisation they are trying to contact. However, in other cases, the consumer may find that they are simply redirected to the organisation that they originally wanted to contact, but usually at a higher rate than if they had called directly. It is not always clear to the consumer that the number they have dialled is an ICSS number, and not the number of the organisation that they had originally wanted to contact.

1.5 Only ICSS operating on certain number ranges and at certain price points currently fall within the definition of Controlled PRS in the PRS Condition. The effect of this is that some ICSS are regulated by the PSA in accordance with the PSA Code, whereas some fall outside the scope of the PSA regulatory framework. Notably, most ICSS operating on the '087' and '09' number ranges fall within the definition of Controlled PRS, whereas ICSS operating on the '084' number range do not.

1.6 Over the last year, Ofcom, and others, have become increasingly concerned about ICSS providers misleading consumers into unknowingly using their services such as, for example, connecting to government departments and commercial helplines incurring significant, hidden charges which

¹ Ofcom approves the PSA Code under Section 121 of the Communications Act 2003. The current version of the Code of Practice is available here: https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Code-of-Practice/PSA_Code_of_Practice_14th_Digital.ashx?la=en

can cause financial and emotional detriment. As a result, we decided to conduct a review into whether the current regulatory arrangements for ICSS are sufficient to protect consumers.

- 1.7 Having reviewed the available information, we consulted in July this year on our proposal to modify the PRS Condition so that it applies to all ICSS, irrespective of the price point or number range. The effect of this proposal would be that all ICSS will be subject to regulation by the PSA.
- 1.8 We received responses to our July consultation from individuals and stakeholders, including ICSS and network providers, affected businesses, government departments and consumer groups. In the main, there was strong support from stakeholders, who agreed with our analysis of harm and our proposals to address it. A number of stakeholders, predominantly ICSS providers, did not support our proposals, with the main concern being the magnitude of access charges² and, in particular, that we had not considered the impact of access charges as part of our assessment of harm.
- 1.9 We are not looking to address the cost of ICSS as part of this review and, therefore, the level of access charges is not in scope. Our main concern is that consumers are not being provided with clear information about the nature of the service, and are unknowingly being charged a premium for connection to an organisation where otherwise, in most cases, the call would be charged at a lower rate or be free. The fact that the retail price is the sum of the access charge (set by the caller's phone provider) and the service charge (the charge of the service being called) does not substantively affect our assessment of this type of harm arising from '084' ICSS or, therefore, our conclusion that the PRS regulatory framework should be extended to include all ICSS.
- 1.10 We will continue to monitor the level of access charges, with a view to considering whether regulatory intervention may be needed in the future.

Decision

- 1.11 Based on our analysis and having taken account of the responses to the consultation, we have decided to confirm our consultation proposal to modify the PRS Condition so that it applies to all ICSS, irrespective of the price point or number range. We also confirm that the modified PRS Condition should have an implementation period of four weeks to enable those ICSS providers who may be caught by the modified PRS Condition to make any necessary changes to comply with the new requirements. These changes will, therefore, take effect on 16 January 2019.

² Access charges are those charges which are paid to the phone company which originates the call.

2. Background and legal framework

- 2.1 This section provides a background to PRS, explains the purpose of PRS regulation and describes how PRS are currently regulated in the UK. It also describes ICSS and explains how ICSS are currently regulated in the UK.

PRS regulation in the UK

What are PRS?

- 2.2 In general terms, PRS are a form of micro-payment for paid for content, goods and services charged to a consumer's bill for electronic communications services.³
- 2.3 They may be accessed by way of a conventional voice call, but may also be accessed in other ways, such as SMS, computers, mobile phone downloads or interactive digital TV. Common forms of PRS include TV voting lines, competitions, adult entertainment, chat lines, business information services, technical helplines, mobile phone ringtones and game downloads, horoscopes and directory enquiry services.
- 2.4 PRS vary in cost but tend to cost more than a normal phone call or text message. They usually operate on numbers beginning '09', '118', '087' or five or six digit mobile voice and text shortcodes usually beginning 6, 7 or 8.

Background to PRS regulation

- 2.5 PRS offer a convenient way to buy and enjoy content and services. Most PRS are for 'impulse' purchases and can be characterised by a relatively low expenditure. PRS are a simple means of purchasing a service because consumers can, for example, make the purchase using their telephone or mobile handset and need not provide any further authentication information. This means PRS is used by consumers as a simple payment mechanism for buying relatively low expenditure content and services.
- 2.6 However, there are also some characteristics of PRS that give rise to the potential for consumer harm. These may include:
- **Lack of information:** There can be a lack of information, particularly (but not solely) on price, provided at point of purchase. This can lead to consumers either being deterred from making calls because they expect the price to be higher than it is or, alternatively, to consumers making calls that they would not have made had accurate price information been available. In the former case, consumers may not benefit from services available to them, and in the latter financial harm could be incurred.
 - **Difficulty in getting redress:** The ability and incentive to seek redress are likely to be affected by the relatively limited value per transaction; the bill-supply separation, where

³ The statutory definition of PRS is set out in paragraph 2.10 below.

the supplier of the PRS does not bill the consumer directly – making it hard to find out who was the actual supplier; which can also mean that consumers are passed from one provider to another. The hassle involved can therefore outweigh the benefit to be gained and may likely deter consumers from pushing for redress.

- **Offensive or inappropriate content:** Consumers may be exposed to content which may be deemed offensive and/or inappropriate.

2.7 As a result, since PRS were introduced in the UK, they have been subject to specific regulatory provisions to target and prevent consumer harm in respect of those services which, based on their characteristics, could give rise to a particular type of risk and which may not otherwise be effectively covered by existing means of consumer protection.

The PRS regulatory framework

2.8 In general terms, the regulatory framework for PRS in the UK consists of a hierarchy with three components:

- a) The Act:** The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Communications Act 2003 (the Act). These provisions provide Ofcom with the power to set a PRS Condition that binds the persons to whom it applies, for the purposes of regulating the provision, content, promotion and marketing of PRS. The Act also sets out Ofcom's general statutory duties in sections 3 and 4, which it must act in accordance with when exercising its functions, including setting or modifying the PRS Condition. It further sets out in section 47 the tests which must be met by Ofcom when it is setting or modifying conditions (including the PRS condition).
- b) The PRS Condition:**⁴ The PRS Condition requires a person to whom the PRS Condition applies to comply with directions given by the PSA in accordance with the PSA Code for the purposes of enforcing the provisions of that Code.
- c) The PSA Code:**⁵ The PSA Code is approved by Ofcom under section 121 of the Act and outlines wide-ranging rules to protect consumers and sets the processes that the PSA applies when enforcing the Code.

Who is required to comply with the PRS Condition?

2.9 Section 120(1) of the Act provides that Ofcom has the power to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS.

2.10 A service is within the definition of PRS if:

⁴ The version of the PRS Condition used for the purposes of this document can be found in the Schedule to Annex 2 which sets out the relevant version of the PRS Condition together with the relevant modifications.

⁵ The current version of the PRS Code can be found at: https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Code-of-Practice/PSA_Code_of_Practice_14th_Digital.ashx?la=en&hash=49BE1A6A76303EEBCF254A692015059D4D4171A3 .

- a) it is a service falling within section 120(8) of the Act;
- b) there is a charge for the provision of the service;
- c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
- d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.⁶

2.11 A service falls within section 120(8) if its provision consists in:

- a) the provision of the contents of communications transmitted by means of an electronic communications network; or
- b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.

2.12 Ofcom may set conditions which apply either:

- a) generally to every person who provides a PRS (PRS Providers);
- b) to PRS Providers of a specified description; or
- c) to PRS Providers who provide a specified description of PRS.⁷

2.13 Ofcom has set a PRS Condition which applies to Communications Providers and Controlled PRS Providers in relation to the provision of Controlled PRS.⁸

2.14 Controlled PRS are defined in paragraph 2(g) of the PRS Condition as:

“...a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:

(i) the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;

(ii) the service is obtained other than through a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added

⁶ Section 120(7) of the Act.

⁷ Section 120(2) of the Act.

⁸ The definition of “Communication Provider” and “Controlled Premium Rate Service Provider” is set out in paragraph 2 of the PRS Condition.

tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);

(iii) the service is a Chatline Service;

(iv) the service is Internet Dialler Software operated; or

(v) the service is a Sexual Entertainment Service.

2.15 The definition of “PRS Number” is set out in paragraph 2(r) of the of the PRS Condition as a “Non-Geographic Number starting 087, 090, 091 or 118”.

2.16 Persons involved in the provision of Controlled PRS to whom the PRS Condition applies must comply with directions given in accordance with the PSA Code by the PSA for the purposes of enforcing the provisions of that Code.⁹ A failure to comply with a PSA direction may amount to a breach of the PRS Condition which may result in Ofcom taking enforcement action under the relevant procedures set out in the Act. Ofcom’s enforcement powers are sometimes known as statutory ‘backstop powers’. The PSA Code also applies in respect of the provision of PRS which are not Controlled PRS but compliance is voluntary.

ICSS regulation in the UK

What are ICSS?

2.17 ICSS are a form of PRS. They are essentially services which:

- a) provide advice or information about how to access or use public or commercial services; and/or
- b) connect or direct consumers to specific contact numbers or helplines that they are seeking, usually at a higher charge than calling directly.

2.18 ICSS are typically provided on ‘09’, ‘087’ and ‘084’ numbers.

2.19 ICSS are defined by the PSA for the purpose of the Special Conditions¹⁰ they have imposed in respect of providers of such services as:

“Premium Rate Services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.”¹¹

⁹ Paragraph 1 of the PRS Condition.

¹⁰ See paragraph 2.22 below for an explanation of the PSA Special Conditions.

¹¹ See: https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Guidance-and-compliance/Explore-our-guidance/Guidance-files/24_Notify-of-SC-for-ICSS.ashx?la=en&hash=D08ABDC0A6E424B60EB560E53FAE6A9925E3547B.

How are ICSS regulated?

2.20 Certain ICSS are within the definition of Controlled PRS and so are regulated by the PSA in accordance with the PRS Code, whereas others are not Controlled PRS and so fall outside of the scope of the PRS regulatory framework.

ICSS within the PRS regulatory framework

- 2.21 ICSS fall within the definition of Controlled PRS and so within scope of the PRS regulatory framework where the ICSS is a PRS which is obtained:
- a) through a PRS Number and the Service Charge¹² for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call (excluding VAT); or
 - b) other than through a PRS Number and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute (including VAT).
- 2.22 ICSS of this kind must be provided in accordance with the PSA Code, administered and enforced by the PSA. ICSS are considered by the PSA to give rise to increased potential for consumer harm and are therefore subject to Special Conditions imposed by the PSA under the PSA Code. Those Special Conditions impose stricter requirements on ICSS providers, including requirements to provide a link to where the official number for the organisation being called can be found and to announce the premium call charges at the start of the call. A breach of those Special Conditions is enforceable by the PSA as if it were a breach of the PSA Code, and so is likewise subject to Ofcom's statutory backstop powers.

ICSS outside of the PRS regulatory framework

- 2.23 ICSS which are not Controlled PRS fall outside of the scope of the PRS Condition. As above, ICSS will not be a Controlled PRS if they are obtained other than through a PRS number and the charge for the call is less than 10 pence per minute, as would be the case for a number starting '084', or where the service is obtained through a PRS number and the Service Charge for the call does not exceed 5.833 pence per minute or call.
- 2.24 The Advertising Standards Authority (ASA) has a role in regulating the promotion of these services in certain circumstances. The ASA would consider any breaches of the advertising standards rules and act to ban advertisements that are misleading, harmful, offensive or irresponsible. The ASA can sanction companies if they fail to respond, for example they operate a "wall of shame" which creates bad publicity for companies that do not comply, but they do not have the power to fine companies.¹³

¹² Service Charge is defined in paragraph 2(t) of the PRS Special Condition.

¹³ More information about the ASA can be found on their website here: <https://www.asa.org.uk/>

ICSS and Directory Enquiry services

- 2.25 Directory Enquiry (DQ) services are a form of PRS. They are retail services provided by telephone to consumers and businesses that give callers the telephone number of the particular individual, business or public service they are looking for. In the UK, these services are provided on the 118 number range.
- 2.26 As set out in paragraph 2.19 above, DQ services are explicitly excluded by the current ICSS definition which has been adopted by the PSA for the purpose of the Special Conditions it has imposed in relation to ICSS. This is on the basis that, while ICSS and DQ services share common characteristics insofar as their purpose is to provide information and advice to consumers, including signposting and connection services, there are some key differences between how consumers engage with DQ and ICSS.
- 2.27 In 2013 the PSA undertook a review (the PSA 2013 Review) of ICSS operating on PRS numbers.¹⁴ In the PSA 2013 Review, the PSA suggests the differences between DQ and ICSS were as follows:
- DQ services are normally used as an alternative to searching the internet, whereas ICSS are only accessible to consumers who are searching on the internet, most often for free information rather than a paid-for ICSS.
 - DQ services are clearly branded around the service being provided, whereas ICSS are marketed, especially at the SEM marketing stage, around the name of the organisation with which the ICSS implies association.
 - According to research conducted on behalf of the PSA¹⁵, 96% of consumers who called a DQ service were aware of the type of service on offer. By contrast 78% of consumers who had dialled an ICSS thought they had dialled the number of the organisation they were looking for, and not an ICSS.

¹⁴ The PSA 2013 Review is available here: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Consultation-PDFs/CD_ICSS_24_April_2013.pdf

¹⁵ See: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Research_Apr_2013_Information_Connection_Signposting.pdf

3. The PRS Scope Review statement and summary of the analytical framework

Introduction

- 3.1 As noted in section 2, ICSS that meet the definition of Controlled PRS in the PRS Condition are caught by the PRS regulatory regime and, therefore, are subject to regulation by the PSA. PRS that do not meet the definition of Controlled PRS fall outside the PSA regulatory regime.
- 3.2 This section sets out the factors that Ofcom may take account of when deciding whether or not to exercise our powers under section 120 of the Act to designate a service as a Controlled PRS.

The PRS Scope Review statement

- 3.3 Ofcom has discretion as to when and how to exercise our powers under section 120 of the Act to designate a service as a Controlled PRS. We exercise this discretion in light of our general duties and seek to make decisions which reflect the purpose of the legislative provisions and the address harms from which they seek to protect consumers.
- 3.4 To facilitate a consistent approach towards meeting these duties and addressing the relevant harm, Ofcom carried out a review of the way in which PRS are regulated. This included considering market developments including the rapid growth in the number and range of such services. This led to the development of an analytical framework (the PRS Analytical Framework), based on characteristics common to PRS and risks to which they may give rise. This was set out in the “The PRS Scope Review” statement (the PRS Scope Review) published by Ofcom in October 2009.¹⁶
- 3.5 The PRS Analytical Framework does not replace the statutory regime, nor add an extra layer of regulation. But, as we said in the PRS Scope Review:
- “When considering whether there is a need to amend the PRS Condition we intend to exercise our duties under the Act by applying an analytical framework...”¹⁷ and*
- “... [it] will help inform future Ofcom considerations on whether the scope of regulation should be widened or narrowed. This framework will help determine whether a particular service or service category carries sufficient risks of consumer harm to require inclusion in the regulatory regime.”¹⁸*
- 3.6 In particular, our general duties under section 3(1) of the Act are, in carrying out our functions (including making and modifying PRS conditions):

¹⁶ The PRS Scope Review is available here: https://www.ofcom.org.uk/_data/assets/pdf_file/0015/32901/prs.pdf

¹⁷ The PRS Scope Review, paragraph 1.10.

¹⁸ The PRS Scope Review, page 2.

“...to further the interests of citizens in relation to communications matters”; and

“...to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

3.7 In carrying out these duties Ofcom must have regard to:

“ the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”; and

“ any other principles appearing to OFCOM to represent the best regulatory practice.”

3.8 The PRS Analytical Framework was developed so that consumers’ interests in being protected from harm caused by PRS are furthered. The intention is that, through applying the framework, those interests are furthered in a transparent, proportionate and consistent way, where Ofcom intervention (by designation of a PRS as a Controlled PRS to which the PRS Condition applies) is only targeted at PRS in respect of which action is needed.

The PRS Analytical Framework

3.9 As set out in the PRS Scope Review, Ofcom developed the PRS Analytical Framework by first identifying supply and demand-side characteristics common to PRS, and the risks to consumers to which those characteristics may give rise (especially from services having a number of these characteristics).

3.10 Building on this higher-level analysis of characteristics and risks, we then identified a framework of nine specific characteristics of services which give rise, individually or in combination, to the identified types of harm.

Supply -side characteristics

3.11 The supply-side characteristics identified were:

- i) the consumer's originating CP ("OCP") is typically not the supplier of the PRS;
- ii) there is often a complex, fragmented value chain;
- iii) there are often large numbers of suppliers operating at different levels in the chain;
and
- iv) barriers to entry and exit are relatively low at the Information Provider ("IP") level of the value chain, so turnover of suppliers may be significant.

3.12 Ofcom noted three risks arising out of these characteristics:

- *"..... opportunistic behaviour towards consumers and other suppliers in the supply chain" incentivised by " the combination of the complex value chain, the high number and easy entry and exit of IPs, and rapid technological change, [which] may mean that some suppliers tend to be less concerned with maintaining a favourable reputation";*

- price differences for the same PRS sold by different OCPs, arising because *"...a consumer's OCP sets the retail price of a PRS rather than the supplier of the service"*, which in turn makes it difficult for service and information providers to communicate prices to consumers and which may incentivise OCPs to raise prices; and
- *"...the consumer may not be able to easily identify the supplier of the service in the event that problems arise. This raises concerns about their ability to seek effective redress."*¹⁹

Demand-side characteristics

3.13 The demand-side characteristics identified were:

- i) PRS are experience goods, "typically consumed upon purchase" and "...consumers are only able to ascertain the quality of a PRS at the point at which it is consumed";
- ii) there is likely a long and complex supply chain, in which consumers access and pay for PRS via their OCP but the service is supplied by a third-party service provider along with an IP, and in which the parties are not all visible to, or in commercial relationships with, one another;
- iii) consumers are billed by and pay their OCP's for PRS via their bill (or pay-as-you-go credit), so charges are only apparent after the event and if the consumer receives a sufficiently itemised bill;
- iv) although prices are higher than most ordinary telephone calls, a single PRS transaction is often low value compared to many other consumer purchases;
- v) PRS are typically impulse purchases with easy sales processes requiring little effort or authentication;
- vi) some PRS provide content that may be considered inappropriate by or offensive to a wider audience, including minors; and
- vii) a significant number of PRS, such as ring tones and games, are marketed to or may appeal to children, many of whom have their own mobile phone handsets and make up a significant part of the market for certain PRS.²⁰

3.14 In relation to these demand side characteristics, Ofcom noted seven risks:

- as consumers cannot gauge the quality of experience goods until after purchase, *"...if reputation is not very important PRS suppliers may have incentives to provide low quality or high price services"*;
- a complex supply chain, and especially separation of the billing and supplying parties may mean:

¹⁹ The PRS Scope Review, paragraph 3.8.

²⁰ The PRS Scope Review, paragraphs 3.9-3.16.

- *"If consumers are dissatisfied with any aspect of the service (e.g. promotion, quality of service, charge), they might therefore find it difficult to identify and contact the party who is responsible for the part of the service with which they are dissatisfied...";*
 - *"... suppliers can exploit the complexity of the supply chain to shift the responsibility to other SPs and/or IPs further down the supply chain and avoid responsibility for resolving consumer complaints..."; and*
 - *"This would affect a consumer's ability to obtain information or advice, to identify the right party to complain to, and ultimately to seek redress. In many cases, consumers may not be able to seek redress from their OCP, as it is not usually the direct provider of the PRS in issue".*
- the effect of the billing process is that at best, "...total charges for the service will only become apparent after the event," but the nature of some billing (non-itemised or available only electronically or at extra cost) and pay-as-you payments means....some consumers may never be fully aware of the charges incurred for a particular service. Since PRS prices vary by SP and also by OCP, often consumers do not know the price prior and even post purchase";
 - given the low transaction value, "...consumers may only invest a limited amount of time and effort to assess the purchase of a particular PRS and may not consider it worthwhile to shop around [and]...may not consider it worth the effort to make a complaint about an individual PRS if they were not satisfied [and]...may not be very likely to pursue it to its conclusion...";
 - impulse purchases with limited authentication processes mean, "...consumers can easily purchase a service without necessarily considering the implications," and in particular, "The simplicity of the sales process could result again in consumers not making the effort to check and understand the charges that they will face for a PRS when making such an impulse purchase...";
 - material that might be considered inappropriate or offensive to some audiences (such as adult material) may be accessed inadvertently or by minors; and
 - there is a particular risk for children who "are unlikely to use a credit card to make ... purchases," for whom, "...the payment mechanism for PRS may be attractive," and who "...may be more likely to enter into impulse purchases without being sufficiently well informed or capable of making informed decisions about the purchase of a PRS, and may be more susceptible to scams and misleading advertising."²¹

3.15 Based on these characteristics and risks, Ofcom devised a framework to be used to assess whether the definition of Controlled PRS in the PRS Condition remains appropriate (or should be narrowed or widened). The nine specific characteristics of PRS comprising the framework, which we identified as liable to give rise, individually or in combination, to the identified types of harm were:

- The consumer's OCP is not the actual supplier of the PRS.

²¹ The PRS Scope Review, paragraph 3.16.

- There is a complex, fragmented value chain, with large numbers of suppliers operating at different levels in the chain.
- Barriers to entry and exit are relatively low at the Information Provider level.
- Consumers are only able to ascertain the quality of the PRS at the point at which it is consumed.
- There is separation between the party billing the consumer and the party supplying the service.
- The price of the PRS is low (in absolute terms), potentially discouraging consumers from shopping around before buying and from seeking redress.
- The purchase process involves little or no authentication, encouraging consumers to purchase on impulse.
- The PRS is likely to involve inappropriate or offensive content.
- The PRS is likely to be marketed to children or likely to have a particular appeal to children.²²

3.16 As set out above, and in the PRS Scope Review, Ofcom applies this framework to particular PRS as part of our assessment of the harm, or likely harm, that service is liable to cause, as a consequence of its supply and demand-side characteristics, and of whether it should be a Controlled PRS. As also set out, our application of the framework is neither a ‘tick box’ exercise, nor an addition to or replacement of the relevant statutory provisions. Rather, it is part of a rounded assessment of the overall risk of a particular type of PRS causing harm and of how the relevant statutory provisions should apply to it.

3.17 What can be said, however, in line with what we said in the PRS Scope Review, is that, whilst possession of some or all the specific characteristics does not mean definitively that a type of PRS should be a Controlled PRS, possession of a number or combination of them gives rise to a prima facie case for regulation. Ofcom will consider the strength and implications of that prima facie case, together with other available evidence, in deciding whether the type of PRS concerned should be subject to regulation.

3.18 The outcome may, for example, be that whilst a type of PRS shares some or all the specific characteristics set out in the framework, there is other evidence which mitigates the risk of consumer harm that could arise and displaces the prima facie case for regulation. Alternatively, it may be that the strength of the prima facie case, in combination in some cases with other evidence, means the case for regulation holds. In some instances, that case may be stronger than others. The level of regulation could then be adapted to the level of risk of consumer harm by modifying the application of the Code.

3.19 By setting out clearly and applying this approach, Ofcom is able to identify, in a transparent and consistent way, PRS for which regulation is appropriate and to which a proportionate level of regulation can be applied.

²² The PRS Scope Review, page 5.

4. Assessment of harm arising from '084' ICSS

- 4.1 This section sets out the evidence we gathered for the purpose of our July consultation which we said showed there was evidence of harm arising from '084' ICSS.

Ofcom's approach to assessing harm

Assessment methodology

- 4.2 In order to determine the consumer harm, or likely consumer harm, that '084' ICSS are liable to cause, we completed the following in our July consultation:
- i) an assessment of '084' ICSS against Ofcom's PRS Analytical Framework,²³ to determine whether they have characteristics which could give rise to a level of consumer harm which may not be sufficiently addressed by existing regulation; and
 - ii) an assessment of the available evidence of the actual (and potential) harm caused by '084' ICSS.

Application of the PRS analytical framework to '084' ICSS

- 4.3 As set out in Section 3, the PRS Analytical Framework sets out a number of supply and demand side characteristics of regulated PRS which, in the past, have given rise to consumer harm. We therefore considered whether any, or all, of these characteristics apply to '084' ICSS in order to establish whether '084' ICSS has any of these characteristics which is likely to give rise to consumer harm.
- 4.4 Having done so, our provisional assessment was that many of the characteristics set out in the PRS Analytical Framework which are likely to cause consumer harm can be found in '084' ICSS. In particular:
- **The consumer's OCP is not the supplier of the PRS:** The supply and demand-side risks relating to the difficulty of pursuing complaints, and, on the demand side, of suppliers seeking to pass responsibility to others in the supply chain, are liable to arise. With '084' ICSS, as with regulated ICSS, this problem is compounded where consumers are unaware they have been connected via a third party ICSS provider and so complain to the organisation they have sought to contact.
 - **There is a complex and fragmented supply chain, with providers operating at different levels, as is the case with other PRS:** This results in few reputational incentives on ICSS providers to ensure that risks do not arise and consumers are protected from misleading practices. In particular, ICSS providers do not have enduring presences and relationships

²³ See Section 3 for an explanation of the PRS Analytical Framework.

with consumers in relevant markets such that they will protect consumers in order not to harm their reputations and to preserve those relationships.

- **Barriers to entry and exit are low are relatively low:** particularly in relation to third party connection services, where there only a modest investment is required to provide ICSS. This leads to risk on the supply-side, of opportunistic behaviour and, on the demand-side, of low-quality, high priced (relative to quality) services.
- **Consumers are only able to ascertain the quality of the PRS at the point at which it is consumed:** The quality of the service is generally only ascertained at the point of consumption. This characteristic feeds into the risks of opportunistic behaviour (on the supply-side) and low-quality, high priced (relative to quality) services (on the demand-side) offered by providers to whom reputation is not very important.
- **There is separation between the party which bills consumers (the OCP) and that supplying the service:** As above, this leads to a supply-side risk that consumers cannot identify providers where problems arise, and on the demand-side of suppliers seeking to shift responsibility for those problems. This places some limits on the supply-side risks of opportunistic behaviour and incentives to raise prices, and of consumers having difficulty identifying the relevant provider in case of problems.
- **'084' ICSS are also characterised by their low price (compared to other forms of regulated PRS):** These services have a Service Charge of up to 5.833 pence per minute/call and this puts them at the low end in terms of price for other forms of Controlled PRS.²⁴ This raises the demand-side risks of consumers investing only limited time and effort assessing their purchase and not shopping around, and considering it either not worth making, or not pursuing to any conclusion, complaints about services they are unhappy with. These risks are heightened with '084' ICSS, compared to Controlled PRS, since the sums involved are potentially less and the incentives to pursue concerns for individual consumers are, accordingly, very low. This means that consumers are less likely to pursue redress (even where they have suffered financial harm) and it creates an uneven playing field in the market.
- **There is an easy sales processes requiring little effort or authentication by consumers:** In the absence of an authentication process consumers can easily purchase a service without necessarily considering the implications. In the context of ICSS, for example, when carrying out an online search for an organisation they are trying to contact, consumers will be presented with a range of numbers which they believe are associated with that organisation. The simplicity of the sales process means consumers do not

²⁴ The National Telephone Numbering Plan which is available [here](#) sets out that calls to 084 numbers must not exceed:

- 5.833 pence per minute, exclusive of VAT, where the Service Charge comprises or includes a pence per minute rate; or
- 5.833 pence per call, exclusive of VAT, where the Service Charge is set exclusively at a pence per call rate.

always make the effort to check and understand the charges which they are likely to incur.

- **'084' ICSS, like regulated ICSS, are less likely to involve content which may be inappropriate for, or considered offensive by, certain consumers:** This is because ICSS are simply providing information and/or connection as opposed to providing content services.

4.5 In addition to the characteristics identified above, we also compared '084' ICSS against two alternative categories of PRS, 09 Services²⁵ and Premium SMS²⁶, to see whether they shared similar characteristics. The purposes of doing so is to inform Ofcom's assessment on whether '084' ICSS are liable to give rise to consumer harm on the basis they share characteristics with other forms of regulated PRS which have led to consumer harm in the past.

4.6 We found that '084' ICSS share most of the characteristics with these PRS. The table below sets out our findings:

²⁵ These are PRS provided on '09' numbers. These numbers are mainly used for competitions, TV voting, horoscopes, chat lines, adult lines, recorded information and professional advice services. Service Charges can be made in a range of formats with the simplest being a per minute charge between 7p and £3.60 per minute. Other prices may involve a fixed fee charged for the first 60 seconds of call, or part thereof, and a pence per minute duration applies following the first 60 seconds, with the maximum fee being £4.45 per call and £2.57 per minute; or a fixed call fee plus a per minute charge, such as 77 pence per call plus £1.55 per minute (with both charges starting from connection); or be a fixed charge, with a maximum single fee of £6.00 per call.

²⁶ Premium SMS are provided by PRS providers and carried over the mobile network by your mobile phone carrier. Premium SMS includes both SMS services where the premium rate charge is applied when the consumer sends a text message (SMS mobile origination services) and reverse-billed SMS which are typically subscription-based services which deliver content to mobile telephone handsets for a charge.

Characteristics	ICSS	09 Services	Premium SMS
1 Is OCP actual supplier of the PRS?	No. The service is provided by a third-party SP/merchant	No. The service is provided by a third-party SP/merchant	No. The service is provided by a third-party SP/merchant
2 Is the supply chain complex and fragmented?	Supply chain could involve a large number of parties.	Supply chain could involve a large number of parties.	Supply chain could involve a large number of parties.
3 Are barriers to entry and exit low?	Barriers to both entry and exit are low.	Barriers to both entry and exit are low	Barriers to both entry and exit are low.
4 Is service an experience good? ²⁷	Yes	Yes	Yes
5 Is there a separation between the party that bills consumers and the party that supplies the service?	Yes. The third-party SP/ merchant is providing the service but billed by OCP	Yes. The third-party SP/ merchant is providing the service but billed by OCP.	Yes. The third-party SP/merchant is providing the service but billed by OCP.
6 Low expenditure?	Call costs relatively low, but long calls / high volume of calls could lead to higher bills.	Call costs relatively low, but long calls / high volume of calls could lead to higher bills.	Likely to be low in most cases, although subscriptions could lead to higher bills.
7 Easy sales (low authentication) process?	Yes	Yes	Yes
8 Inappropriate/offensive content?	No	Sometimes for certain services.	Sometimes for certain services.
9 Appeal to children?	No.	Sometimes for certain services.	Sometimes for certain services.

²⁷ An experience good is a product or service where its characteristics such as quality and/or price are difficult to observe in advance of purchasing the product.

Source: Ofcom

Assessment of harm caused by '084' ICSS

Sources of evidence

- 4.7 We have informed our position of the actual (and potential) harm caused by '084' ICSS by analysing information gathered from a range of sources, including the following:
- a) Information from third parties, including Government departments, charities and commercial organisations, whose customers may have been misled and charged unexpectedly, or more than expected, when attempting to contact them.²⁸
 - b) the results of a PSA study into '084' ICSS that looked at how consumers respond to search results containing ICSS and how consumers respond to ICSS websites.²⁹
 - c) available consumer research into potential consumer harm arising from ICSS commissioned by the PSA.³⁰
- 4.8 We have also considered consumer complaints made to it and the PSA about '084' ICSS. However, we note that the number of consumer complaints relating to harm caused by '084' ICSS are small. In part, we consider this is likely to be due to the nature of the services being provided. Consumers may be unaware that they are being connected by an ICSS provider believing that they are making a direct call to the organisation whom they wish to contact. They are therefore more likely to complain about the cost of the call directly to the organisation they have sought to contact rather than the ICSS providers or the PSA.
- 4.9 Furthermore, consumer research into ICSS conducted by Jigsaw³¹ on behalf of the PSA suggests that consumers are unlikely to complain for three key reasons:
- i) consumers typically don't know who to complain to;
 - ii) consumers believe that it will be too much hassle to complain; and
 - iii) consumers may feel a "bit stupid" for having called the number.³²

²⁸ Evidence from third parties includes a range of commercial and public organisations who have either sought Ofcom out on this issue of their own accord or have responded to a letter sent by Ofcom in May 2018 calling for evidence of harm relating to 084 ICSS.

²⁹ Available at Annex D here: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Consultation-PDFs/CD_ICSS_24_April_2013.pdf

³⁰ Available here: <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Resources/Consumer-behaviour-and-ICSS-Exploring-how-consumers-respond-to-ICSS.ashx?la=en&hash=ACE521A3348ADED0F7346DA4459CD6FEBE38D316>

³¹ The Jigsaw research is available at Annex D to the 2013 PSA Consultation into ICSS which is available here: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Consultation-PDFs/CD_ICSS_24_April_2013.pdf

³² See page 27 of the Jigsaw research.

- 4.10 Therefore, we have focused our analysis on the information gathered from the sources listed at 4.7 above.

Approach to assessing evidence

- 4.11 As noted in section 2, in 2013 the PSA undertook a review (the PSA 2013 Review) of the risk of harm presented by ICSS operating on PRS numbers.³³ The PSA 2013 Review identified several concerns with the way in which ICSS were being provided that could lead to harm. Whilst the PSA 2013 Review was specifically considering the use of ICSS on '09' and '087' numbers, we consider that many of the risks which it identified are likely to be common across all forms of ICSS, including '084' ICSS.
- 4.12 The 2013 PSA Review resulted in ICSS operating on PRS numbers being subject to the PSA's prior permissions regime to address the harm identified.³⁴ The PSA identified four factors which it considered justify introducing these additional requirements. These were:
- a) The potential for serious consumer harm;
 - b) The risk to vulnerable consumers;
 - c) The risk to the general reputation of both public and commercial organisations; and
 - d) The secondary risk to the reputation of PRS as a whole.
- 4.13 As part of Ofcom's review of the evidence of harm caused by '084' ICSS, we therefore considered all evidence against these four key themes.

Assessment of evidence

- 4.14 Having assessed the information relating to harm, our provisional view was that there is evidence of substantial actual and potential harm arising from the way in which '084' ICSS are being used and this harm results in the following four key risks to citizens and consumers:
- a) the risk of consumers being misled into unknowingly using ICSS to connect to government and commercial helplines leading to financial harm, bill shock and emotional distress;
 - b) the risk of specific harm to vulnerable consumers as some ICSS providers target public service helplines that may be used by particularly vulnerable people;
 - c) the risk of harm to public bodies and businesses as consumers may blame them for any financial and emotional harm caused by ICSS providers who connect through to them;

³³ The PSA 2013 Review is available here: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Consultation-PDFs/CD_ICSS_24_April_2013.pdf

³⁴ This meant that providers would be required to apply for a prior permissions licence to operate ICSS services. See the PSA 2013 Review, Annex A. We note that under the current PSA which came into force on 12 July 2016, Special Conditions are applied to a number of services rather than 'prior permissions'. Special Conditions are discussed at paragraphs 2.19-2.22.

- d) the risk of harm to reputable PRS providers where consumer trust and confidence in PRS is undermined as a result of the harm caused by some ICSS providers.

4.15 In addition, we also considered that the risks of harm are likely to be common across all ICSS, irrespective of whether they are operating on '084', '087', '090' or any other number range. While we recognised that the maximum service charge for ICSS on '084' will be lower compared to ICSS obtained through '087' or '09' numbers, somewhat limiting the level of potential financial detriment caused to consumers, our provisional assessment was that financial detriment was not the only relevant consideration in terms of consumer harm arising from ICSS.

Consultation responses

- 4.16 We received 12 responses to our question on our assessment of harm. Nine respondents including BT, Department of Work and Pension (DWP), fair telecoms campaign, the Low Incomes Tax Reform Group (LITRG), University of Nottingham, PSA, ASA and Sky and two confidential respondents endorsed our assessment of harm. Caller Support Limited and Telecom2 Limited did not agree with our assessment of harm.
- 4.17 The PSA and the ASA provided further evidence of enforcement action, including evidence showing increasing levels of consumer complaints over the past 18 months to support our assessment of harm.
- 4.18 DWP identified specific examples of ICSS numbers and websites about which consumers had complained in relation to bill shock. However, it noted that some of these ICSS telephone numbers continued to be highlighted in recent customer complaints and reports to DWP teams.
- 4.19 BT supported our assessment of harm. However, it also noted that the PRS Analytical Framework predates the implementation of the Non Geographic Call Services (NGCS) regime introduced in July 2015. BT noted the PRS Analytical Framework assumes that the OCP controls the cost of the call in its entirety but that this was no longer the case in light of the unbundled tariff regime; the OCP only controls the access charge element of the call and not the service charge element of the call which is set by the Terminating Communications Provider (TCP). However, BT also noted that the access charge is generally higher than the cost for ICSS calls using '084' numbers and, that, therefore, this does not have any bearing on Ofcom's assessment.
- 4.20 Caller Support Limited, Numbers Plus Limited, Telecom2 Limited and one confidential respondent expressed concern that Ofcom had not considered the impact of access charges in our assessment of harm. They raised concerns about the unfairness of access charges and, specifically, the magnitude of the access charge which, it was argued, was the primary cause of excessive charges and not the service charge. Via-vox Limited t/a PowWowNow (Via-vox Limited) agreed the numbers are used in the ways described in the consultation but

also argued that the real consumer harm is caused by "*disproportionately high access charges, particularly from mobile providers.*"

- 4.21 Telecom2 Limited argued that there was no evidence of material numbers of consumers being misled into using ICSS. Furthermore, it commented that the risks to the reputation or operation of businesses and public companies had been exaggerated and that organisations were "*overly sensitive to potential damage to their reputations and tend to exaggerate the effects*" of ICSS. It argued that there was "*only a potential risk and not one that we believe is an actual risk*" to the reputation of PRS sector.
- 4.22 Caller Support Limited and Telecom2 Limited argued that ICSS benefit consumers by providing them with numbers which consumers may, otherwise, not be able to find.

Ofcom's assessment in light of consultation responses

Access charges

- 4.23 Of those respondents who did not agree, the main concern raised was in relation to the magnitude of access charges and, in particular, that we had not considered the impact of access charges.
- 4.24 We recognise that, especially in the case of '084' ICSS, the access charge can be a significant part of the total retail charge. However, we are not looking to address the cost of ICSS as part of this review and, therefore, the level of access charges is not in scope. Our main concern is that consumers are not being provided with clear information about the nature of the service, and are unknowingly being charged a premium for connection to an organisation where otherwise in most cases, the call would be charged at a lower rate or be free. The fact that the retail price is the sum of the access charge (set by the caller's phone provider) and the service charge (the charge of the service being called) does not substantively affect our assessment of this harm arising from '084' ICSS or, therefore, our conclusion that the PRS regulatory framework should be extended to include all ICSS.
- 4.25 We will continue to monitor the level of access charges with a view to considering whether regulatory intervention may be needed in the future.

Strength of evidence on which our assessment is based

- 4.26 We have considered the points raised by Telecom2 Limited relating to the strength of our evidence base and, in particular, that there was no evidence of material numbers of consumers being misled into using ICSS.
- 4.27 Our assessment of the evidence of harm, drew on a number of different sources, including:
- a) information from third parties, including Government departments, charities and commercial organisations, whose customers may have been misled and charged unexpectedly, or more than expected, when attempting to contact them.

- b) the results of a PSA study into '084' ICSS that looked at how consumers respond to search results containing ICSS and how consumers respond to ICSS websites.
- c) available consumer research into potential consumer harm arising from ICSS commissioned by the PSA.

4.28 Having considered the responses to our consultation and, in particular, that Telecom2 Limited did not provide any new substantive evidence which would lead us to change our provisional assessment, we remain of the view that there is evidence of actual and potential harm arising from ICSS operating on '084' numbers, sufficient to justifying regulatory intervention.

ICSS provide a valuable service

4.29 We note that some respondents have argued that ICSS benefit consumers by providing them with numbers which consumers may, otherwise, not be able to find. We are not making any judgement on the merits of ICSS and whether or not they are providing a valuable service to consumers. As we explain above, our concern is not ICSS in general, but rather the misleading nature of certain ICSS which give rise to actual and potential harm. This is caused by consumers being misled into using '084' ICSS either by 'passing off' or through poor price transparency.

4.30 We do not consider that our decision will impact on legitimate ICSS given, as we set out in our consultation document, we consider any additional burden to be proportionate and targeted on those ICSS which aim to mislead consumers into using them. In particular, we recognise that the PRS regulatory framework aims to be open, fair and robust, and is underpinned by a set of core values and behaviours, which includes striving to be fair, reasonable and well informed.

The impact of Ofcom's Non-Geographic Numbering Review on the PRS Analytical Framework

4.31 We have considered BT's response relating to the unbundled tariff structure which was introduced by the NGCS regime in 2015. We agree with BT that this has little impact on our assessment of harm. This is particularly the case with regards to '084' ICSS given the access charge is generally higher than the service charge and, therefore, will largely determine the overall retail charge paid by the consumer. Accordingly, it remains the case that there will be price differences for the same PRS, dependent on the consumer's OCP and the level of their access charge.

Our conclusions on harm arising from '084' ICSS

4.32 Having considered the views of respondents to our consultation on our assessment of harm and all the evidence set out in this section, we are satisfied that there is evidence of substantial actual and potential harm arising from the way in which '084' ICSS are being

used, and that this harm gives rise to the four key risks to citizens and consumers, as we set out in our consultation document, and identified in paragraph 4.14 above. In light of this, we are satisfied that there are sufficient grounds to justify regulatory intervention.

5. Remedies to protect consumers

Introduction

- 5.1 This section considers what intervention would be appropriate and proportionate, to protect consumers and citizens from the risks of harm we have identified arising from '084' ICSS.
- 5.2 In assessing the most appropriate remedy, we have taken account of:
- i) the harms we have identified arising from '084' ICSS, including the evidence that consumers are being misled into using these ICSS leading to financial and emotional harm, and the risks to vulnerable consumers; and
 - ii) the current regulatory framework for ICSS that meet the definition of Controlled PRS, i.e. ICSS operating on the 'PRS Numbers' which exceed the relevant cost threshold and the harms that this regulation aims to address.
 - iii) whether there remain any potential regulatory loopholes which may be exploited by ICSS providers seeking to evade PSA regulation through a possible migration to other numbers which sit outside the PSA's regulatory regime.

Ofcom's consultation proposal on remedies to protect consumers

- 5.3 Based on our assessment of harm arising from '084' ICSS, we proposed to modify the PRS Condition to extend the definition of Controlled PRS to include all ICSS, irrespective of the number through which they are obtained or the level of the service charge which applies. The effect of this proposal would be that all forms of ICSS would fall under the PRS regulatory framework thereby creating a common regulatory framework across all ICSS.
- 5.4 We considered this proposal to be the most appropriate course of action to address the actual and potential harm arising from ICSS as a common regulatory framework, and would:
- be easier for consumers to understand and would simplify the task of delivering better consumer education about the safe and appropriate use of ICSS;
 - enable ICSS providers to compete on a level playing field and promote a more competitive ICSS market; and
 - ensure that providers could not evade PSA regulation by simply migrating to other numbers which would not be captured by the PRS Condition.
- 5.5 We also noted this change would only impact PRS providers offering ICSS which are currently outside the definition of Controlled PRS, namely:

- ICSS which are not obtained via a PRS number³⁵, where the charge for or rate of the call does not exceed 10 pence per minute (including VAT);
- ICSS which are obtained via a PRS number, where the Service Charge for the call does not exceed 5.833 pence per minute or call (excluding VAT).

5.6 We considered this to be an appropriate way to address the harm associated with ICSS because we believed that:

- a) the risks associated with ICSS are common across all forms of ICSS, irrespective of the number through which they are obtained or the service charge which applies; and
- b) it is necessary to prevent providers attempting to evade the PRS regulatory framework by migrating to other numbers which may not be caught by our proposals if we simply extend the Controlled PRS definition to include '084' ICSS.

Definition of ICSS

5.7 Our proposed modification to the PRS Condition, set out at Annex 2, sets out a definition of ICSS as well as when a service will not be an ICSS. This stated that:

“Information, Connection or Signposting Service” means a service which provides:

(i) a connection to another person or service; or

(ii) information, advice or assistance relating to another person or service.

But a service is not an Information, Connection or Signposting Service where:

(i) it is a Directory Enquiry Facility; or

(ii) the provider of the service is, in accordance with a written agreement, acting on behalf of the person or service to whom the end-user is being connected, or in relation to which the information, advice or assistance is being provided.”

DQ services

5.8 DQ services are explicitly excluded by the current definition of ICSS adopted by the PSA in the ICSS Special Conditions. In our consultation document, we considered that such services should also be excluded from the definition of ICSS used for the purposes of the PRS Condition. We proposed this on account of some key differences with how consumers engage with DQ and ICSS which we considered materially affect the consumer experience and level of risk associated with each service.

³⁵ PRS Number is defined in the PRS Condition as 087, 090, 091 or 118. We note that the 118 number range is allocated to DQ services.

- 5.9 In particular, we noted that according to the PSA DQ Research, when consumers dial a DQ service, they generally understand the service that they are calling will provide them with the telephone number they are seeking.³⁶ However, this is not the case with ICSS, where consumers can be easily misled into believing that the number they are dialling is the actual helpline or number they are seeking, rather than a PRS number that is providing onward connection or signposting at a higher price.³⁷
- 5.10 On this basis we consider that it is appropriate to define and treat these two types of services differently for the purpose of how they are regulated. We have, therefore, excluded an ICSS which is a 'Directory Enquiry Facility' as defined in the proposed PRS Condition.³⁸

Acting on behalf of the person or service

- 5.11 In our consultation document, we also set out our assessment that where an ICSS is being provided with prior written agreement with the end organisation the consumer is searching for, this lessens the risk of consumer confusion and harm. Our provisional assessment was that where a third party is directly acting on behalf of the person or service the consumer is trying to contact then it:
- a) removes a key concern of Ofcom's which is that third parties are not being clear that they are a connection service and have no association with the person or service the customer is trying to contact. In this scenario, the ICSS provider does have an association with the person or service that the consumer is seeking; and
 - b) as there is a relationship between the ICSS provider and the person or service, there should be far reduced incentives to mislead consumers as this could directly affect their reputation. We would therefore expect that the person or service that has entered into an agreement with the ICSS provider to carry out proper due diligence and risk assessments before entering into any agreement for ICSS.
- 5.12 Given this, we did not consider it is appropriate to include those ICSS which are being provided with prior written agreement with the end organisation, within the PRS Condition. We also noted that a similar exemption is made by the PSA in the ICSS Special Conditions.

³⁶ According to the PSA DQ Research, 96% of the consumers who called a DQ service were aware of the service they offer.

³⁷ According to the PSA DQ Research, 78% of consumers who dialled an ICSS thought they had dialled the number of the organisation they were looking for.

³⁸ The text of the modification to the PRS Condition is set out at Annex 2. The PRS Condition gives 'Directory Enquiry Facility' the meaning given in the Schedule to the Notification published by Ofcom on 19 September 2017 under section 48(1) of the Act. The Notification referred to is available here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

Consultation responses

- 5.13 We received 14 responses to this question. Eleven respondents including the ASA, BT, Caller Support Limited, DWP, fair telecoms campaign, LITRG, University of Nottingham, PSA, Sky and two confidential respondents agreed with our proposals for reform.
- 5.14 The PSA stated that there would be “*significant benefits*” of the proposal, citing clarity and simplicity for both Communications Providers (CPs) and consumers, thus removing the confusion of different regimes for the same service provided. Caller Support Limited highlighted its “*broad preliminary*” support for our proposals and noted that it already complied with the PSA’s obligations. DWP fully supported our proposals and argued there is evidence of harm to vulnerable consumer groups, some of whom are the “*most vulnerable citizens in society*”. The LITRG described the current PRS regime as being “*very effective*” in enforcing the rules and addressing the harm arising from ICSS services in recent years. Sky, DWP and PSA supported our proposal to extend the PRS Condition to all ICSS on the basis it was important to ensure that no regulatory loopholes exist.
- 5.15 Three respondents, Numbers Plus Limited, Telecom2 Limited and Via-vox Limited, did not agree with our proposals for reform, with the main reason for this being access charges. Numbers Plus Limited believed that reform is required but that this should be about controlling and capping access charges rather than regulating '084' numbers which are “*low cost and not harmful to consumers*”. Via-vox Limited also argued that the real financial harm and bill shock is not from service charges but access charges. Telecom2 Limited argued that the proposed reform would not bring about the expected benefits and would increase service provider costs in terms of the PSA levy and maintaining compliance.
- 5.16 Caller Support Limited referred to regulatory overlap with the ASA and specifically, its enforcement actions relating to ICSS which pass off as being the company the calls are being forwarded to. Furthermore, it questioned why Ofcom had not set out why those powers are not sufficient.
- 5.17 BT questioned whether Ofcom could do more to limit the harm, using its numbering withdrawal powers or through instructing CPs to block traffic to specific numbers and to withhold revenue where there is reasonable evidence to suggest harm may occur due to evidence of previous misuse by the provider. BT also suggested that Ofcom could work with the PSA to ensure that any fines for breaches of the PSA code are supplemented by action taken by Ofcom using its backstop powers against SPs who deliberately and consistently cause harm to consumers. BT also argued that Ofcom should clarify that SPs that provide chargeable ICSS services are Level 2 providers under the PSA Code and that Ofcom should confirm with the PSA that the label of Level 2 provider (under the PSA’s Code) is “*always attached to the termination point using the telephone number that the customer has called to reach the ICSS*”.
- 5.18 One confidential respondent suggested organisations could adjust their voice announcement at the start of consumer calls to include full details of the freephone

telephone number together with information that it is free only if dialled direct and not through another number.

- 5.19 Similarly, LITRG and fair telecoms campaign suggested modifying the current PSA requirement for ICSS to announce their call charges before they commence charging consumers rather than after the commencement of charging for the service to allow consumers to hang up without being charged.
- 5.20 One confidential respondent suggested that the proposals put regulatory requirements on providers who may not know they are involved in the supply of an ICSS. It argued that an example of this was a Network Operator who would not know which services are ICSS unless they are told by the reseller (level 1 provider) or the ICSS provider (level 2 provider), yet they are obligated to pay the PSA levy on these services.
- 5.21 DWP said it would like to explore opportunities for a better and more consistent approach to call charges from phone service providers for ICSS, how regulations could be applied where internet search returns are for unrelated services to those searched and requirements for ICSS calls to include an accurate and identifiable Call Line Identifier that would enable organisations to clearly identify calls routed through ICSS.
- 5.22 One confidential respondent argued that Ofcom had not considered other measures to address this harm such as a prohibition on translating numbers without the B-number Subscriber's permission.
- 5.23 One confidential respondent commented that no cost-benefit analysis was included in the consultation and questioned whether one had been calculated as it was difficult to agree or disagree without knowing what the full impact will be.

Ofcom's assessment in light of consultation responses

Access charges

- 5.24 We set out our position with regards to access charges in paragraphs 4.23 to 4.25 and, in particular, that the level of access charges are not in scope of this review but that we will monitor the level of access charges with a view to considering whether regulatory intervention may be needed in the future.

Regulatory duplication

- 5.25 We have considered Caller Support Limited's comments regarding the fact that we did not set out why the ASA's powers are not sufficient. As we stated in our consultation document, we believe there is merit in establishing a common framework for ICSS and, based on our assessment of the harms identified, our provisional view was that these harms would be better addressed by bringing all ICSS under the PSA regulatory framework. A relevant factor in making our provisional view was that the PSA currently regulate those ICSS which fall within the PRS Condition and it has undertaken significant work to address harm arising

from these services in recent years. The ASA and PSA strongly supported our proposed remedy.

Complexity of the ICSS value chain

- 5.26 A number of respondents raised concern about the need for clarity with regards to where different providers sit in the value chain relating to ICSS so that they are able to comply with regulatory requirements. We agree that there needs to be clarity in this regard. The PSA regulates through the imposition of responsibilities on PRS providers and has defined three categories of providers (network operators, Level 1 providers (who form part of a PRS value chain) and level 2 providers (the end provider of the service)). These categories cover the entire PRS value chain and have been designed to provide clarity for PRS providers as to where they sit in the value chain. Accordingly, if there is any doubt, or need for additional clarity and/or guidance, we would suggest stakeholders may wish to raise this with the PSA as part of its implementation of these proposals.

Ofcom's powers

- 5.27 We have also considered BT's proposal that Ofcom could do more to limit the harm, using its numbering withdrawal powers or number blocking powers. Our view is that the PSA's enforcement powers provide a more targeted approach to dealing with non-compliant ICSS providers. In particular, the PSA is able to take direct enforcement action against ICSS providers whereas Ofcom's numbering powers are focused on those CPs who hold the numbers. We also note that the PSA has been effective to date in taking enforcement action, including imposing fines for breaches of the rules, against non-compliant ICSS providers. However, we will continue to monitor the effectiveness of PSA enforcement actions and whether, on a case by case basis, Ofcom's powers would provide an additional effective enforcement route to tackle the identified harm.

Prohibiting the translation of numbers without the B-number Subscriber's permission

- 5.28 We have noted an anonymous respondent's comments that we have not considered other measures to address this harm, such as a prohibition on translating numbers without the B-number Subscriber's permission. While this may be an alternative approach to dealing with problem ICSS, we consider such an approach could be disproportionate at the network level as it would be likely to give rise to additional cost and would be difficult to implement in practical terms. However, we will give further consideration to any potential measures that might help address this harm

Alternative approaches

- 5.29 We note DWP raised a number of alternative approaches that it considered could reduce the potential consumer harm arising from ICSS. These are as described in paragraph 5.21,

and which are largely beyond the scope of our review. Nevertheless, these may be considerations which DWP may wish to explore with the PSA as part of its implementation of these changes.

Cost benefit analysis

5.30 We do not agree with the suggestion that we did not consider the costs and benefits of our proposed approach. We set out the harms that consumers currently suffer as a result of '084' ICSS and the reasons why we consider consumers should be protected from those harms. We went on to consider likely regulatory compliance costs arising from our proposals at paragraphs 5.18 to 5.19 in our consultation document. We acknowledged that for those ICSS providers who will now be caught by the PRS regulatory framework, there may be certain costs involved, for example, to ensure compliance with the relevant rules and/or any reporting obligations. Our view remains, as set out at consultation, that any additional costs involved in complying with our proposals are proportionate in light of the benefits that a common regulatory framework for all ICSS will bring.

Our conclusions on remedies to protect consumers

- 5.31 Having considered the views of respondents to our consultation on our proposed remedies, we are satisfied that extending the definition of Controlled PRS in the PRS Condition to include all ICSS, irrespective of number or price point is an appropriate and proportionate remedy to address the consumer harms we have identified. We are, therefore, confirming our consultation proposal to implement this change.
- a) ICSS are already subject to the PRS Condition for the '09' and '087' number ranges, and we consider that bringing the '084' number range within the common regulatory framework will address the consumer harms we have identified, as well as the reputational and operational harm caused to businesses and government organisations, and the PRS sector more generally.
 - b) We consider that modifying the PRS Condition to apply to all ICSS will ensure positive outcomes for consumers in terms of protecting their financial and emotional well-being and improving consumer confidence in PRS, more generally. Further, the increased clarity of the common PRS regulatory framework will make it easier for consumers to understand the safe and appropriate use of ICSS.
 - c) We have considered the costs of bringing the '084' number range within the scope of the PRS Condition, and are satisfied that they are not unduly burdensome, when balanced against the harms to consumers, as outlined above, caused by ICSS misleading advertising, hidden charges and fraudulent practices.

The text of the modification to the PRS Condition is set out at Annex 2. We set out our assessment against Ofcom's statutory duties at Annex 3.

6. Implementation

Introduction

- 6.1 This section considers the implementation of our decision to extend the definition of Controlled PRS in the PRS Condition to include all ICSS, irrespective of number or price point.

Ofcom's consultation proposal on implementation

- 6.2 In our consultation, we proposed that the modified PRS Condition should have an implementation period of four weeks to enable those ICSS providers who may be caught by the modified PRS Condition to make any necessary changes to comply with the new requirements.
- 6.3 We noted that during this period, the PSA will notify the industry of how it intends to apply the PSA Code provisions to those ICSS which were not subject to PSA regulation previously. We said we understood that this notification will include any immediate requirements arising from the PSA Code of Practice (such as registration). We also said we understood that the PSA intends to consult on the current special conditions that apply to ICSS during Q1 2019, including on the definition of ICSS which should be caught by the special conditions regime.

Consultation responses

- 6.4 We received 11 responses to this question. Nine respondents agreed with our proposal of a four-week implementation period including BT, DWP, the fair telecoms campaign, LITRG, the PSA, Sky, Via-Vox Limited and a confidential respondent. University of Nottingham agreed an implementation period is necessary but did not believe that any changes would be onerous and suggested two weeks.
- 6.5 Number Plus Limited did not agree with our proposal and argued that a review of access charges was necessary. Telecom2 Limited also disagreed and said four weeks was not long enough given that service providers would need to seek compliance advice as well as redesign websites and other promotions.

Ofcom's assessment and decision in light of consultation responses

- 6.6 Having considered the responses received, we are confirming our proposal of a four-week implementation period. We do not agree with Telecom2 Limited's view that four weeks will not be long enough to implement the required changes. We do not consider that the required changes, such as compliance advice or any potential redesign of websites and other promotions, are likely to be onerous and require additional time to implement the changes. Indeed, we note that this was also the view from University of Nottingham who argued for a two-week implementation period.

6.7 In conclusion, we consider four weeks to be a reasonable period of time and one which provides an appropriate balance between addressing the identified harm in a timely manner and enabling those ICSS providers who may be caught by the modified PRS Condition to make any necessary changes to comply with the new requirements. These changes will, therefore, take effect on 16 January 2019.


A1. Annex 1: List of respondents to ICSS consultation

1. ASA
2. BT
3. Caller Support Limited
4. David Hickson, Fair Telecoms Campaign
5. DWP
6. Low Incomes Tax Reform Group (LITRG) (a Chartered Institute of Taxation initiative)
7. Nottingham University (commissioned by PSA to conduct research on ICSS)
8. Numbers Plus Limited
9. PSA
10. Sky
11. Telecom2 Limited
12. Via-vox Limited t/a PowWowNow
13. [REDACTED]
14. [REDACTED]

A2. Notification of a modification to the Premium Rate Services Condition under section 120A of the Act

- A2.1 Ofcom is modifying the PRS Condition. The modification is set out in the Schedule to this Notification.
- A2.2 Ofcom's reasons for making this modification, and the effect of the modification, are set out in this Statement.
- A2.3 Ofcom considers that the modification complies with the requirements of sections 47, 120 and 120A of the Act, insofar as they are applicable.
- A2.4 In making this modification, Ofcom has considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- A2.5 The modification shall enter into force on 16 January 2019.
- A2.6 A copy of this Notification and the accompanying Statement is being sent to the Secretary of State.
- A2.7 In this Notification:
- a) "**the Act**" means the Communications Act 2003;
 - b) "**Ofcom**" means the Office of Communications; and
 - c) "**PRS Condition**" means the condition set under section 120 of the Act by the Director General of Telecommunications on 23 December 2003 as amended from time to time.
- A2.8 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- A2.9 For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- A2.10 The Schedule to this Notification shall form part of this Notification.

Signed by



A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

19 December 2019

SCHEDULE

The modifications to the PRS Condition³⁹ are shown as follows:

- (a) the words marked in red text and highlighted indicate the insertions; and
 - (b) the words marked in strike-through and highlighted indicate the deletions.
1. The Communications Provider and Controlled Premium Rate Service Provider shall comply with:
 - (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
 - (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.
 2. In this Condition,
 - (a) “**Act**” means the Communications Act 2003;
 - (b) “**Approved Code**” means a code approved for the time being under section 121 of the Act;
 - (c) “**Communications Provider**” means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service; or
 - (iii) a person who:

³⁹ The latest version of the PRS Condition can be found here: <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>.

- (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;
- (d) **“Chatline Service”** means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) **“Controlled Premium Rate Service”** means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:
- (i) the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;
 - (ii) the service is obtained other than through a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);
 - (iii) the service is a Chatline Service;
 - (iv) the service is an Information, Connection or Signposting Service;
 - ~~(iv)~~ (v) the service is Internet Dialler Software operated; or

- ~~(v)~~(vi) the service is a Sexual Entertainment Service;
- (f) “**BT**” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;
- (g) “**Controlled Premium Rate Service Provider**” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (h) “**Dial-up Telephone Number**” means the telephone number used by an end user's computer that connects it to the Internet;
- ~~(i)~~ “**Directory Enquiry Facility**” has the meaning given in the Schedule to the Notification published by Ofcom on 19 September 2017 under section 48(1) of the Act.⁴⁰
- ~~(j)~~(j) “**Enforcement Authority**” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- ~~(k)~~(k) “**Facility**” includes reference to those things set out in section 120(14) of the Act;
- ~~(l)~~(l) “**International Call**” means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- ~~(m)~~ “**Information, Connection or Signposting Service**” means a service which provides:
- (i) a connection to another person or service; or
 - (ii) information, advice or assistance relating to another person or service.
- But a service is not an Information, Connection or Signposting Service where:
- (i) it is a Directory Enquiry Facility; or
 - (ii) the provider of the service is, in accordance with a written agreement, acting on behalf of the person or service to whom the end-user is being connected, or in relation to which the information, advice or assistance is being provided.

⁴⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf.

~~(h)~~(n) “**Internet Dialler Software**” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:

- (i) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number; or
- (ii) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent;

~~(m)~~(o) “**Internet Service Provider**” means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business;

~~(n)~~(p) “**National Telephone Numbering Plan**” means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;

~~(o)~~(q) “**Non-Geographic Number**” shall have the meaning ascribed to it in the National Telephone Numbering Plan;

~~(p)~~(r) “**Premium Rate Service**” shall have the meaning ascribed to it by section 120(7) of the Act;

~~(q)~~(s) “**Payment Mechanism**” is a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service;

~~(r)~~(t) “**PRS Number**” means a Non-Geographic Number starting 087, 090, 091 or 118;

~~(s)~~(u) “**Service Charge**” shall have the meaning ascribed to that term in the Definitions set out in the Schedule to the Notification issue by Ofcom on 19 September 2018 setting general conditions under sections 45 and 48(1) of the Act (as that Schedule may be modified from time to time); and

~~(t)~~(v) “**Sexual Entertainment Service**” means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature.

For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

A3. Legal basis for Ofcom's proposals

When modifying conditions, Ofcom is required to meet various tests set out in the Act. These tests, and Ofcom's assessment of how these are met in connection with its decision to modify the PRS Condition are set out in this Annex.

Section 3 – Ofcom's general duties

A3.1 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:

- a) to further the interests of citizens in relation to communications matters; and
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

A3.2 In addition, Ofcom must have regard in all cases to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- any other principles appearing to Ofcom to represent the best regulatory practice.

A3.3 In carrying out its principal duty, Ofcom must have regard to certain, specified objectives and considerations to the extent they are relevant. These include:

- the desirability of promoting competition in relevant markets (s.3(4)(b));
- the desirability of encouraging investment and innovation in relevant markets (s.3(4)(d));
- the vulnerability of those whose circumstances appear to Ofcom to put them in need of special protection (s.3(4)(h));
- the needs of persons with disabilities, of the elderly and of those on low incomes (s.3(4)(i));
- the opinions of consumers in relevant markets and of members of the public generally (s.3(4)(k)); and
- the interests of consumers in respect of choice, price, quality of service and value for money (s.3(5)).

A3.4 Ofcom considers that extending the definition of Controlled PRS in the PRS Condition to include all ICSS irrespective of the number on which it is provided on is in line with the principal duty. In particular:

- We consider that the modification will result in significant benefits to consumers and citizens as it is aimed at protecting them from the harm that is associated with ICSS by creating a common regulatory framework across all ICSS;
- We have had particular regard to the effect of ICSS on vulnerable consumers given that the evidence suggests that some ICSS providers are targeting public service helplines that may be used by particularly vulnerable people;

- We consider that the creation of a common regulatory framework will enable ICSS providers to compete on a level playing field and this should create a more competitive ICSS market.

Section 4 – European Union obligations

A3.5 Section 4 of the Act requires Ofcom in carrying out our functions under section 120 of the Act, to act in accordance with specified Community requirements. These include, for example, requirements in relation to the promotion of competition and of the interests of all EU citizens. Ofcom considers that the modification of the PRS Condition is in accordance with these requirements. For example, this modification will promote competition as set out in the preceding paragraph. There is no conflict between the modification and any of the Community requirements.

Section 47 – Test for modifying conditions

A3.6 As set out under section 47(1) of the Act, when modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- b) not unduly discriminatory against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) transparent in relation to what it is intended to achieve.

A3.7 We consider that the modification to the PRS Condition complies with the legal tests set out in section 47(2) because it is:

- **objectively justifiable:** as set out in Section 2, it is intended to address the consumer harm associated with ICSS which are not currently regulated as Controlled PRS;
- **not unduly discriminatory:** it applies a common regulatory framework across all ICSS providers, and thereby ensures a level playing field in the ICSS industry. In addition:
 - we consider that treating ICSS differently to other PRS that do not meet the definition of Controlled PRS is not unduly discriminatory given the level of actual and potential harm identified as arising from ICSS; and
 - as set out in Section 5, we consider that it is appropriate to treat ICSS differently to DQ Services because of our assessment of the key differences between how consumers engage with DQ services as opposed to ICSS.
- **proportionate:** Ofcom has identified that the extent of harm liable to arise from ICSS is likely to be similar across all ICSS, irrespective of number range or price point. We have, set

out in section 5 why we therefore consider it to be proportionate to apply a common regulatory framework across the ICSS industry, which we consider materially affects the consumer experience and level of risk associated with each service, taking account of the likely costs of complying with the modification;

- **transparent:** Ofcom has consulted on, published and applied the analytical framework, and has consulted on the modification which is set out in full in Annex 2 and explained in this document, the basis for, and effect of the modification.

A3.8 In addition to the above, we note that as set out in Section 4, we have applied the PRS Analytical Framework to ICSS operating on the 084 number range and, having done so, our assessment is that it has most of the characteristics identified as likely to cause harm which may not be sufficiently addressed by existing regulation. The PRS Analytical Framework was designed to ensure that Ofcom intervention is only targeted at PRS in respect of which action is needed and that consumer interests are furthered in a transparent, proportionate and consistent way.

Equality Impact Assessment

A3.9 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. We refer to groups of people with these protected characteristics as “equality groups”.

A3.10 We fulfil these obligations by carrying out an Equality Impact Assessment (“EIA”), which examines the potential impact our proposed policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.

A3.11 We have not considered it necessary to carry out separate EIAs in relation to our additional equality duties in Northern Ireland, regarding religious belief and political opinion. This is because we anticipate that the modification will not have a differential impact on any equality group in Northern Ireland compared to consumers in general.

A3.12 We consider that the modification set out in this document would have a positive impact on consumers and citizens in the UK as it is aimed at protecting them from the harm that is associated with ‘084’ ICSS by creating a common regulatory framework across all ICSS which will:

- a) be easier for consumers to understand and would simplify the task of delivering better consumer education about the safe and appropriate use of ICSS;
- b) enable ICSS providers to compete on a level playing field and promote a more competitive ICSS market; and

Header

- c) ensure that providers could not evade PSA regulation by simply migrating to other numbers which would not be captured by the PRS Condition.

A3.13 In addition, we consider this will help protect vulnerable consumers given that the evidence suggests that some ICSS providers are targeting public service helplines that may be used by particularly vulnerable people.