

Introduction

We would like to thank Ofcom for this opportunity to present our opinions and thoughts on its proposals. We are greatly encouraged by the Unbundled Tariff idea and see this as the way to address confusion amongst callers and users of these numbers alike.

Whilst there is much justified criticism over the length of time it has taken to get this far, the regulator has evidently put much energy into this project. The size of the consultation document is testament to the complexity of the task.

We believe that our response is considered and objective, based on what we know and understand. We appreciate that there are technical limitations that may come to bear, and will be happy to reconsider any part of our response in their light. We also look forward to further positive engagement with Ofcom as the project continues.

About fairtelecoms

The Fair Telecoms Campaign ([fairtelecoms](#)) aims to focus on issues that affect consumers. Our objective is to create a fair relationship between consumers and providers in a regulated competitive market.

It was founded by Dave Lindsay and David Hickson, two long-term campaigners. We have contributed extensively to the discussion in the forum at [SayNoTo0870.com](#) and been closely engaged in campaigning against public sector use of 084 numbers, notably by NHS GPs and bodies.

It's probably not surprising, therefore, that the widespread misuse of "covert-premium" 084 and 087 numbers is of great concern. We believe that reform is necessary and that this should be aimed at making transparent the commercial relationship that exists between callers and the Service Providers they connect with.

Response layout

Our response is divided into two main sections:

- [Questions](#) – We have answered the questions covering points on which we feel qualified to express an informed opinion.
- [Making the Unbundled Tariff work for 084 numbers](#) – Here we present our thoughts on the very particular issues raised by the novel inclusion of this range within the scope of regulation on the role of Service Providers.

Questions

Part A – NGCS market assessment and summary of approach

Section 4 – Summary of concerns

Q4.1 *Do you agree that the analysis set out in Section 4 and the supporting annexes which draws on our initial assessment in the December 2010 review, stakeholder comments and the further research undertaken in 2011, appropriately characterises the market, the market failures and the effects on consumers? If not please set out your alternative views.*

We believe that in addition to the three failures summarised in paragraph 4.4, it is the case that some Service Providers lack awareness, such as:

- being of the belief that callers will not generally pay more than they would to ring a geographic number. They may quote one provider's call rates with the thinking that they are the norm;
- not having an appreciation for the fact that they benefit from calls; and/or
- thinking that they can opt not to receive revenue payments directly so as not to benefit.

Some communication providers have played their part in marketing NGCS numbers in such a way as to imply the above. This may have the effect of attracting custom from competitors who do not make such claims.

The Unbundled Tariff will also help make Service Providers aware that they are charging callers and that callers will pay more.

Section 5 – Equality impact assessment

Q5.1 *Do you have any comments on our Equality Impact Assessment? In particular do you agree with our view that our proposals for changes to non-geographic numbers are likely to have an overall positive impact on the equality groups identified in Annex 15?*

Yes.

It is certainly the case at the moment that mobile-only households pay the biggest Access Charges. Others may be on BT Basic and therefore pay extra to ring NGCSs.

The need for Service Providers to declare their Service Charges should cause them to think about whether they can justify them. Where these are important enquiry lines used by people on low incomes, then hopefully pressure will be brought to bear on them such that they will move away from these numbers.

There always remains the question of what level Access Charges mobile OCPs will go for. If these are way above that of "normal" calls, those being to landlines, 03 numbers and other mobiles, then low socio-economic groups will continue to pay heavy premiums where Service Providers continue to use 084 and 087 numbers.

Part B – the Revenue-sharing ranges

Section 9 – Remedies to address market failures

Q9.1 *Do you have any comments on our assessment, and in particular the additional evidence (gathered since the December 2010 Consultation) which we have used to support our assessment, on our provisional conclusion that the unbundled tariff should be applied to the revenue-sharing NGC number ranges?*

fairtelecoms thoroughly supports the Unbundled Tariff and the removal of the NTS Condition on BT. Unbundling as a totally new concept should be given time to establish itself, and once it has done, it should provide for much more effective competition than any other measure.

We believe that the Unbundled Tariff will address the three market failures that Ofcom has identified. It will also clear the waters with Service Providers; as we noted in our answer to Q4.1, they lack awareness too.

Maximum prices are certainly not a favoured option because OCPs will be likely to tend towards them.

Section 10 – Design of the Unbundled Tariff

The Access Charge

Q10.1 *Do you agree with our proposal that the AC should be allowed to vary between tariff packages but that OCPs should be subject to a tariff principle permitting only one AC for non-geographic calls? If not please explain why.*

Yes.

Consumers have an appreciation that call rates vary between tariff packages, so Access Charges should be no different. In order for the Unbundled Tariff to be effective, the Access Charge should be the same for all 084, 087, 09 and 118 non-geographic number prefixes on any particular package.

We see the suggestion that OCPs should cover themselves against “bad debts” by imposing additional charges on those who do pay their bills as fundamentally unsound and unfair.

If any specific provision needs to be made to cover particular “bad debt” risks with certain types of number, then this can only fairly be achieved by an imposition on the revenue obtainable from those numbers. If this causes the relevant specific Service Charges to have to be increased, so as to compensate for a claw-back by the OCP, then so be it.

Inflated Access Charges across a wider range, specifically affecting the end cost of other services does not provide a fair or proportionate approach.

Q10.2 Do you agree with our proposed structure for the AC, in particular that:

- (i) that the AC should be a pence per minute charge only, but can be subject to a minimum one minute call charge;
- (ii) that the AC should not vary by time of day; and
- (iii) that the AC can be included as part of call bundles/inclusive call minutes provided that inclusion does not differentiate by number range? If not please explain why.

We see simplification as being the vital issue here.

- (i) Yes. We are inclined to suggest that if there is a minimum period of call charge then it must apply across the tariff. Mixed pence per call (as in call connection or call set-up charge) and pence per minute Access Charges should not be allowed.
- (ii) Yes. We cannot see any justification for Access Charge time of day variation. We believe that time of day variation is on its way out now that network capacity is nothing like the issue that it once was. Time of day variations are probably nothing more than a marketing tool for discounting.
- (iii) Yes, Access Charges should be allowed to be included in packages/bundles. Just as Access Charges should not vary by number range, their inclusiveness should not be allowed to vary by range.

Where a package only provides inclusive services at certain times of day, an inclusive Access Charge would obviously apply on the same basis. Following a time of day variation in respect of being inclusive in a package, along with other services, should not be regarded as a case of the Access Charge varying by time of day, as this is otherwise prohibited.

Q10.3 Do you agree with our proposal not to impose a cap on the AC in the first instance? If not please explain why.

Yes. The Unbundled Tariff system should be given time to establish itself, and certainly should not have any limit on Access Charges in the first instance. A cap on Access Charges should only be introduced if the market is not working effectively and where a better remedy is not available.

The Service Charge

Q10.4 Do you agree with our proposed approach for the structure of the SC? In particular that: (i) bespoke SCs should be prohibited; (ii) that no further restrictions on the SC structure should be required (e.g. allowing ppm and ppc SCs, no restriction of ToD charging subject to ability of billing systems to pass through the charges) If not, please explain why and provide evidence if possible.

- (i) Yes. Bespoke Service Charges should not be allowed as they will have the potential to create confusion.
- (ii) Yes, but only if the Service Charge can be fully and clearly declared. Consumers are familiar with ToD variations, particularly with fixed line services. Consideration will have to be given as to what wording Service Providers will use as the more different rates and charges apply and at different times, the more complex it becomes.

Q10.5 Do you agree with our proposals to impose maximum SC caps for the purposes of protecting the identity of the number ranges? Do you agree that the caps should apply to the 084, 087 and 09 ranges and that they should be set exclusive of VAT in the Numbering Plan? If not please explain why and provide evidence to support your position if possible.

Yes.

At the present time there is a general association in consumers' minds between the prefixes and their premium. Not having any limit would mean that the "low-priced" prefix of 084 will become a haven to high Service Charges.

The issue of VAT rate changes cannot be seen separately from that of inflationary rate changes. Both pose an equal threat to a nice simple system, and we feel that simplicity is the key issue here.

For this reason, all VAT inclusive values must be nice round numbers irrespective of its rate.

Q10.6 Do you agree with our proposed cap of 5.833p for the 084 range and 10.83p for the 087 range? If not please explain why.

Yes. The starting point should be no less than the status quo.

The key point about the break point between PRS and non-PRS is the issue of whether the number is being used for the provision of telecoms services or for contact using a telecoms service. It is arguable as to which of these caps represents that break.

Q10.7 Do you agree that the number of SC price points should be restricted? Do you agree that that restriction should be somewhere between 60 and 100, and where within that range do you consider would be optimal? Do you have any comments in relation to how Ofcom should decide where in that 60 to 100 range the maximum number of SC price points available should be set?

Rather than imposing a specific restriction the objective must be to keep the list as short as possible. Setting a limit can work against this objective.

Q10.8 Do you agree with Ofcom's proposed approach to agree the relevant SC price points with industry rather than specifying them as part of the Numbering Plan? Do you have a particular preference for which SC price points are necessary within the different number ranges? What criteria would you propose for the selection of price points?

We believe that Ofcom should set up its industry-led group with representatives from Ofcom and the consumer interest engaged, invite them to discuss and present initial proposals and then subject these to a brief public consultation before Ofcom grants its approval. This group should continue to maintain the list, with Ofcom approving changes, engaging in public consultation whenever anything radical is proposed.

On the subject of price points, the option of a zero Service Charge, as referred to at 10.371, cannot be acceptable. (*continued ...*)

If the option for a zero Service Charge were to be permitted, regardless of the extent to which it is used, this could be exploited by suggesting or implying that calls to 084 / 087 numbers do not necessarily cause a premium to be incurred. There are currently very many examples of exceptional cases being used to misrepresent the costs involved in calling these ranges. To open up a new opportunity for such misrepresentation would be to deny the vital objective of simplification and transparency.

The objective of the 03 range being “the only non-geographic range which is charged at geographic rates” is fundamental. The ease of migration to 034 and 037 equivalent numbers provides all necessary support for those who wish to “retain” their 084 / 087 number without levying a Service Charge. It should also be noted that it is blocks of numbers that are assigned to a particular Service Charge level. A decision to retain existing numbers but move to a different Service Charge level would be effective for all users with numbers in the block.

Whilst the Access Charge need not necessarily equate with the rate for geographic calls, the option of a zero Service Charge would essentially deny the clarity offered by the proposal to retain the existing status of the 03 range. Absolute confirmation of its unique role as the only non-geographic range which is cost-neutral in respect of the relationship between the caller and the Service Provider is vital to ensure its (long overdue) wide public acceptance.

Section 11 – The 0845 and 0870 ranges

Q11.1 *Do you agree with Ofcom’s assessment that an unbundled tariff should also apply to the 0845 and 0870 ranges? If not please explain why.*

It is inconceivable that anything presented as “simplification” could leave the existing mess in place. The answer must be “Yes”.

Simplification is given as the reason for the preference to have the 03 range as the only geographically rated non-geographic number range. This is a very strong and valid argument.

It is unfortunate that this consultation, as presented, has not been able to address the likely impact of Article 21 of the Consumer Rights Directive (CRD). This will have a significant bearing on this particular issue, as many existing users of 0845, 0844 (and indeed some 0871/2/3) numbers will fall within the provisions which will be enacted from it.

Without an assessment of the impact of the CRD it has not been possible to establish that the overwhelming majority of present 0845 users would need to be on a range whereby, through compulsion or choice, they would not apply a Service Charge. If this had been established, there would be a strong argument for changing the 0845 range to be geographic rate only, so as to prevent a high volume of number changes. At the present time however there is no evidence to support such a proposal.

For the time being therefore it is best to press ahead with the assumption that the simpler option is the best; the 03 range should be the only geographically rated non-geographic number range.

If, at some early future point, it were to be shown that a significant majority of current 0845 users do not wish to apply a Service Charge, or will be prohibited from doing so, then the situation could change. This would enable it to be argued that those who do must be required to migrate to a new range (perhaps on 0844) with a suitable level of Service Charge. A very strong argument would however have to be presented so as to justify the resultant damage to clarity, i.e.:

- having more than one non-geographic range to which geographic rates applied; and
- having a geographic-rated range that was very similar to ranges on which Service Charges applied (i.e. 0845 vs 0844/3)

There can be no option other than the Unbundled Tariff for ranges which are not charged at the geographic rate.

Section 12 – Implementation

Customer bills

Q12.1 *Do you agree with our proposal not to mandate the presentation of disaggregated AC and SC charges on customers' bills?*

Do you agree with our view that it should be up to OCPs to decide the best way to present these charges to their customers on bills OCPs but that we require that at a minimum, the OCPs should include the customer's AC on the bill they receive?

YES - given that by "include" one means "present clearly".

Wholesale issues

Q12.2 *Do you agree with the requirement for a central SC database. If so what would be your preferred approach – public sector or private sector provision?*

If you do not agree with the need for the database what approach for the dissemination and verification of SC would you prefer and why. Are there any other issues with respect to the database you would wish to raise?

Yes - Funded by the industry, but under specifications issued or controlled by Ofcom.

A clear and simple on-line lookup facility is an imperative feature.

Telco telephone enquiry services should offer access to this information for customers who do not have ready internet access, as part of their customer service offering, in the same way that they advise other charges.

It would be very helpful if telcos could adopt a ready mechanism for simply addressing misrepresentation of Service Charges by Service Providers. This need not be a full blown complaints resolution procedure which would require a formal evidence-based process.

We propose a simple informal mechanism by which TCPs could advise their customers of perhaps accidental errors or oversights, in response to reports from OCPs, as raised by their customers.

Q12.3 Do you agree with the need for reformation of the existing processes for number range building and tariff change notification?

If so, what do you consider to be the key characteristic of a revised set of processes?

Do you consider that there is a need for regulatory intervention in their establishment, if so why and on what basis should Ofcom intervene.

Yes.

A fair and balanced process, which ensures that the interests of all parties are properly reflected.

The process will require continual engagement and oversight from Ofcom reflecting its principle statutory duties. Some form of independent consumer representation (purely in the role of oversight) would also be beneficial. Appropriate user representation, probably from PhonepayPlus - in its representative, rather than self regulatory, role would also be valuable.

Ofcom should be strongly engaged in establishing the constitution of this body.

Q12.4 Do you consider that there is a need for additional regulatory intervention in the area of end-users' access to non-geographic numbers, in addition to General Condition 20? If so why and what form should such an obligation take?

Once the body has been formed and established its starting point - i.e. proposals for creating the structure that will apply at the initial implementation of the Unbundled Tariff, it must then give consideration to the principles that it will follow in established (further) new ranges. As with all such considerations, Ofcom must remain engaged and if it sees the need for regulatory intervention (potentially subject to appropriate public consultation) then it must so act.

Communicating with consumers

Q12.5 What steps / actions do you consider need to be undertaken to ensure changes to the structure and operations of non-geographic numbers are successfully communicated to consumers?

YES!

Ofcom should engage widely with all consumer representative bodies and other interested parties to discuss what it needs to communicate. It should secure engagement and both take and give advice, to ensure the most effective communications by all parties.

Price publication requirements

Q12.6 Do you agree that we would need to specify the AC as a key charge?

The relevant GCs do not appear to specify what is and is not a "key charge". There is however no reason whatsoever for this important item to be excluded from such a specification.

Q12.7 Do you agree with our provisional view that the requirement for SPs to advertise their SCs could be implemented through a condition on SPs that is enforced through an industry Code of Practice and the ASA? Are there any other options (beyond the two outlined) which Ofcom should be considering? What do you consider is the best approach for securing industry commitment and developing a Code of Practice?

There is no imperative need to revise the current arrangements with PhonepayPlus to cover users of PRS.

(See separate notes "[Making the Unbundled Tariff work for 084 numbers](#)".)

Other implementation issues

Q12.9 We would welcome stakeholder views on our proposed approach for applying the unbundled tariff to payphones. Do you agree that it is appropriate to allow payphones to set a minimum fee for non-geographic calls?

There are strong arguments for having special "Payphone only" NGC number ranges with special lower Service Charges being offered to permit telephone access to services at a reasonable cost, given that a high Access Charge must be levied.

If individual (or blocks of) "geographic rate" 03 numbers could be assigned as "Payphone only", then this could help address some of the problems related to fitting the Unbundled Tariff to the payphone situation.

Q12.10 Do you consider there is a need to exempt business to business telephony contracts from some of the constraints of the unbundling regime? If so what exemptions do you consider appropriate and why are they necessary (please give examples of the conflicts you would identify if exemptions are not provided). To which contracts should the exemptions apply and why?

The consultation fails to layout any basis for one to respond with potential objections to the (un-stated) exemptions that are apparently being sought.

Timing

Q12.11 Do you agree with our proposal that implementation should take place 18 months from the date of the final statement?

It must be noted that this action is long overdue, so any delay will extend the detriment that is currently being suffered.

It is also noted that the proposals are comprehensive and radical and so it is vital that they are correctly implemented. It is also imperative that any unintended effects are spotted early and necessary corrective action is taken where possible. There may be issues on which potential reaction must be sought and understood before the final course can be set. This is not to propose a "phased implementation", but recognition that final determinations on some aspects may require a brief pause for reflection whilst the process is underway.

When the final timetable is set, this must include appropriate flexibility. The potential for postponement is inherent in any schedule of this sort, so there is always this element of flexibility.

Part C – Freephone and 116

Section 16 – Assessment of options

Q16.1 *Do you agree with our assessment of the options for the 080 range? In particular, do you agree with our preferred option of making 080 genuinely free to caller? If not, please explain why.*

Is this not a “no brainer”.

Making the Unbundled Tariff work for 084 numbers

There are two distinct purposes to be achieved by the Unbundled Tariff, in respect of Service Providers, and these are:

- to ensure the maximum clarity for those cases where a “Service Charge” is to remain in effect. Where a “Service Charge” is applicable, it is vital that the nature and value of this charge is clear to all parties; and
- to remove potential confusion in cases where a “Service Charge” cannot be justified by a Service Provider. Many current users of 084 / 087 numbers will wish, or need, to migrate to other ranges, notably 03, when faced with the prospect of declaring a “Service Charge”.

There must be no doubt that calls to 084 and 087 numbers are **not** charged at “the basic rate” before the provisions of Article 21 of the Consumer Rights Directive (CRD) are enacted.

Assuming that implementation of the Unbundled Tariff is completed within 18 months (from January 2013) it will neatly coincide with the implementation of the required enactment of the CRD provisions.

During this period there will be a sizeable migration of current users of 084 and 087 numbers to other ranges; primarily to 03. Every effort must be made to ensure that this necessary transition is completed as swiftly as possible; however there will undoubtedly be some who will seek to hang on until the last possible moment.

Telephone service providers will have a big role to play. They need to be ready to address both the technical and, more importantly, the commercial aspects of this transition.

Ensuring that the Service Charge is declared

The key element of transparency delivered by the Unbundled Tariff is the declaration of the Service Charge. In addition to contributing to advice of the cost of the call, this declaration performs a most important function. The simple presence of a Service Charge makes it plain that the organisation being called levies a charge on those who call it.

Although this will not essentially alter the situation that exists at present, existing users of 084 numbers appear to show a marked reluctance to admit that this situation exists. It may be reasonable to assume, therefore, that many will be reluctant to shift from this position. Retaining a 084 number will cause a significant change to their relationship with their callers; a potentially ugly, dark secret will be brought out into the light of day.

For those currently subject to PhonepayPlus regulations, the existing mechanism will remain in place. There will be a significant change to the form of the cost declaration, although this will require only a modest change to the words and perhaps the monetary amount.

The major new “enforcement” issue arises with those not currently subject to PhonepayPlus regulation, i.e. current users of 084 numbers.

The distinct groups that need to be considered separately

Current 084 users may be seen as falling into three groups:

Group 1

Many current users of 084 numbers are to be covered by the provisions of Article 21 of the Consumer Rights Directive and will therefore have to change to another number range, before the relevant statutory provisions come into force.

The same applies to some current users of 087 (and even 09) numbers, however they would otherwise be covered by the revised PhonepayPlus regulations, so they are in a slightly different position.

Group 2

Some current users of 084 numbers will find themselves unable to justify the (exposed) imposition of a Service Charge. They will therefore move away from this range before the duty to declare the Service Charge is imposed; on implementation of the Unbundled Tariff.

It is possible that such decisions may be affected by their perception of the rigour of whatever enforcement mechanism is to be engaged to ensure compliance with the general requirement to declare the Service Charge. Although this Group is defined as being those to whom the enforcement mechanism will never apply, it is important that there be an expectation of effective enforcement, so as to ensure membership of this Group.

Group 3

There will be some current users of 084 numbers who may be content to declare their Service Charge. Careful consideration could however change this position.

Why would a current user of a 084 number be ready to declare a Service Charge?

There are other cases, however the following comments relate to those who intend to (continue to) use a 084 number for contact with a call centre. This can only be for purposes which will fall outside the terms of the relevant enactment of the provisions of the CRD.

The typical cost of handling a five minute call to a contact centre would be said to be around £5. Given that the Service Charge for a 084 number will not exceed 7ppm, one is dealing with the imposition of a charge of no more than 35p for a five minute call (29p excluding VAT). This must be set against a cost of perhaps £5.

This charge is in addition to the Access Charge imposed by the caller's own telephone company, which is itself likely to be greater than the charge for an equivalent call to a geographic rate number. In some cases the Access Charge is likely to be greater than the Service Charge (certainly in the case of the lower rated 084 ranges).

If a caller is to be asked to pay for use of a contact centre facility, it would surely be seen as absurd for this charge to represent less than perhaps 6% of the cost. Where collection of this fee is in association with a charge (of perhaps equal or greater value) levied by a third party, i.e. the telco Access Charge, it is made even more absurd.

We must recognise that we come to this wholly new situation (for 084 users) from a most messy and undesirable current position. The origin of the subsidy obtained from 084 numbers was that it came at little or no additional cost to callers. This was when the overwhelming majority of calls were subject to the direct or indirect effects of the NTS Condition on BT; but this is no longer true.

We also recognise that some of the present opposition to calling 084 numbers arises from an excessive estimate of the cost. It is however foolish to assume that this opposition will in any way dissolve when callers recognise that the significant element of this additional cost (albeit less than they may have believed) is clearly shown to be a charge to the benefit of the person they are calling.

Ignoring those cases which will be covered by the CRD, we are talking about a Service Provider advising that they impose a petty fee (of up to 35p for a five minute call, in many cases as little as 10p) for telephone access, e.g.

- HMRC on those enquiring about their tax
- JobCentre Plus on jobseekers
- A NHS GP on a patient booking an appointment
- The Scout Association on potential volunteers
- Age UK on those seeking its assistance
- Apple UK on Mac users with non-contractual support queries
- Next on “mail order” customers
- BAA on those enquiring about facilities at Heathrow

These examples have been picked out simply to illustrate cases where a well known organisation imposes a charge, but nonetheless incurs a considerable cost in handling each call. This is not profiteering on the part of the Service Provider; it is simply imposing a proportionately tiny charge which may have a proportionately major effect on the caller.

Unless the Access Charge is great (as many are at present), that effect is unlikely to be major in financial terms; it is simply likely to be seen as insulting. Even where the organisation called is a charity which the caller may be happy to support, the use of a 084 number does not enable the caller to even approach meeting the costs incurred in handling their call.

Businesses and telcos may be reluctant to have to change their present arrangements; however these have developed out of a wholly unacceptable situation. Ofcom has finally decided that the bullet has to be bitten.

Anyone intending to continue using a 084 number has to face the reality of telling their callers that they impose a Service Charge. If this represents perhaps less than 6% of the cost of handling their call (and is perhaps exceeded by a consequential third party charge) then they must nonetheless find some way of justifying this.

It is our firm belief that if Service Providers address this issue afresh and properly – without being misguided by their telephone service providers – then there will be very few who will opt to impose a petty Service Charge. They will either take the small step of migrating to a geographic rate number (03 if they require the benefit of a non-geographic number; with the 034 equivalent as a convenient option) or take the larger step of switching to a PRS number which will enable them to impose a Service Charge that is truly proportionate to the cost of the service which the caller is accessing.

Summary of the changed situation

Whilst the existence of a charge to the benefit of the called party has been clearly recognised in the case of PRS, there has never been such clarity in respect of 084 numbers. BT's perverse inclusion of 0845 numbers in call plans and Service Providers' repeated denials of any benefit from "revenue sharing" has contributed to this position.

We face a wholly new situation for 084 users. It is our belief that there will be some who will be content to declare their Service Charge (at the relatively low level applicable to this range), but they will represent a very small proportion of those who are currently using numbers from these ranges.

Given that Ofcom is serious about its intention to see the Unbundled Tariff work for 084 numbers, it must find an effective way of ensuring that obligation to declare the Service Charge is clearly recognised. This applies to those who expect to see clear regulations with which they can readily comply, and to recognise a risk of penalty in the event of breach.

It also applies to those who must be caused to set aside any consideration of an option to continue to use a 084 number whilst continuing to fail to advise callers of the Service Charge which is currently being paid (within a bundled charge).

Methods of enforcement

Consultation question 12.7 invites comments on a provisional view about how declarations of Service Charges may be enforced. Given that PRS providers are already covered by the PhonepayPlus Code, it may be assumed that this question refers to other cases, i.e. 084 users. We address here the three groups of 084 users described above.

Summary of the situation for each Group

For Group 1 (those to be covered by CRD) it is imperative that whatever Ofcom does within the scope of its own regulatory powers, BIS is provided with clear definitions around which to form its measures. There can be no opportunity for doubt or debate about what is not charged at the "basic rate".

Those in Group 2 (who cannot justify imposition of a Service Charge) are moving in the same direction as 1, without explicit regulatory pressure. They nonetheless need their decision to be seen, in part, as being required in order to avoid an unacceptable regulatory obligation.

Group 3 (those who wish to continue using 084 numbers) must see a clear and specific duty to comply with regulatory obligations, and the potential for enforcement action to be taken against those who fail to comply.

The nature of what is needed is distinct for the three groups. Ofcom is only required to ensure that effective definitions are in place to cover Group 1. The actual enforcement mechanisms need only be sufficient and appropriate to cover Group 3, however they must be seen as posing a threat to those who may be wavering on the edge of Group 2.

Ofcom's direct role in achieving compliance

The most effective and straightforward way of achieving compliance with any reasonable requirement is for it to become accepted practice by those to whom it applies. Once those covered by any regulation start weighing up the risks and implications of being found to be in breach, the objective of the measure can be said to have failed. This is most particularly true for an organisation that openly imposes and enforces regulation with a "light touch".

Ofcom will need to declare the terms of the operation of the Unbundled Tariff in General Conditions, the National Telephone Numbering Plan and other formal instruments. It must however also ensure that the basis for the declaration of the Service Charge is universally accepted as the proper way for any business to proceed.

This will obviously apply to PRS providers through the PhonepayPlus code, but it will be essential to ensure that the principle of Service Charge declaration is universal.

Ofcom's own powers of regulation in this area (albeit devolved) only cover providers of telecoms services. At the present time it cannot be seen that users of 084 numbers, with a Service Charge of up to 7ppm, can be so described. The option of extending the definition of PRS providers even further than it was (perhaps improperly) extended to encompass users of 087 numbers cannot be considered seriously, at the present time.

One may wish to consider the possibility that the extent of migration from the 084 ranges will be found to be so great that those who remain (perhaps ISPs and providers of specialised telecoms facilities, e.g. automated telephone ticket booking lines) could be found to fairly described as providers of Premium Rate Services. For the time being however, it would not be appropriate to prepare PhonepayPlus for the role of recruiting and regulating all current users of 0844/3 and 0845 numbers.

Going beyond the ASA

The only general regulation required in respect of users is the obligation to declare the Service Charge. As the ASA now has pseudo-regulatory powers covering most declarations of price, it is natural to think of it as being the body to undertake "light touch" enforcement.

As stated above however, this is only part of the story. To achieve acceptance as standard practice, one has to look much further than the potential risk of a slap on the wrist for those who fail to comply. The standard of declaring a Service Charge (in cases where it applies) needs to be adopted widely for the Unbundled Tariff to work for 084 numbers.

Use of the Ofcom-defined Service Charge declaration statement must be adopted as a standard by the many agencies which enforce good practice by those who may be using 084 numbers. It will be for each to apply this in whatever manner is appropriate to its particular function.

Some groups and specific examples are suggested below.

Where the body has a specific responsibility for a particular market or group of callers, it may be appropriate for that body to specify additional relevant provisions, notwithstanding whatever may be the provisions of the enactment of the CRD.

This could include absolute prohibition of use of numbers to which a Service Charge applies by some or all of those who fall within its jurisdiction, or such prohibition could be restricted to lines used for specific purposes. Further specific regulation could be applied, e.g. prohibition of call queuing, or limits on queuing time, or other service specifications that may be seen as appropriate only to cases where a Service Charge is applied.

We refer, in particular, but not exclusively, to the following:

Covering specific areas

- **The Cabinet Office** (covering all central government and other public sector bodies). This must also extend to the Governments of the Nations. The Cabinet Office may have a central role in issuing specific guidance to reflect cross-departmental policy and general guidance on how specific requirements may or should be formulated for particular cases. A statement of general Government policy on use of Service Charges by Departments and public sector bodies must emerge, either to establish a context for Ofcom's intended policy and action, or at least in reaction to it.
- **All statutory sectoral regulators** (including Ofcom as the regulator of providers in its sectors).
- **Self-regulatory bodies** covering industry sectors where there is use of inbound calling services.

In general

- **The Committee on Advertising Practice**, as setting policy for the ASA. It is quite feasible for Ofcom to be seen as the source for a precise definition of what is necessary to achieve an acceptable standard in respect of statements of telephone call charges.
- **The Trading Standards Institute**, as a source of common policy for trading standards bodies. Although the nature of this organisation is somewhat obtuse, it should be fully engaged in all of Ofcom's work on this topic. It has previously produced useful guidance on call cost declarations for 084 calls.
- **The Office of Fair Trading**. This body will obviously have an important role in supporting BIS with the enactment of the CRD provisions. It too must have a serious engagement in the process of determining how both a formal and informal structure of standards for the declaration of telephone call charges is maintained.

It is perfectly proper for these bodies to be actively (if proportionately) engaged in the implementation of this aspect of the Unbundled Tariff. They exist to serve the interests of those who engage with the subjects of their governance by telephone, mostly as customers or in some other way.

Ofcom's only duty to protect specific consumer interests relates to those in a consumer relationship with a provider of communications services. Declaration of the Service Charge is relevant to interests of consumers in respect of other relationships.

The exception - Citizens Advice

Given the important functions which have been granted to this body, it would be seen as having an important role in relation to this matter. This is however highly problematic because, as a long standing user of 084 telephone numbers, Citizens Advice presents one of the most notable examples of the current bad practice, which it is hoped that the Unbundled Tariff will address.

It may be unusual to focus on a particular illustration of a problem in a consultation response when general policy issues are being discussed. We do however note that other consultation respondents find it useful to highlight specific cases, by way of illustration.

Citizens Advice now operates the Consumer Direct service. It does so unashamedly on a 0845 number, benefitting from subsidy of the costs of providing the service at the expense of service users. It fails to provide any clear indication to callers of the existence of the (bundled) Service Charge which they pay when calling this number.

Citizens Advice provides its own advice to citizens, largely through its member bureaux, using national and local 0844 telephone numbers. These are all of type g6, causing it to benefit from the highest level of Service Charge available, short of being defined as a provider of a Premium Rate Service. It fails to provide any clear indication to its callers of the existence of the (bundled) Service Charge they pay when calling its numbers.

Behind the new national 0844 numbers are secret 03 numbers that are advised to mobile callers, after they have called the 0844 number, for use as an alternative by re-dialling. Although calls from landlines to these 03 numbers are blocked, the numbers are deliberately not published and care is taken to prevent them from being disseminated. Mobile callers are therefore required to pay charges which Citizens Advice attacks in relation to calls to other bodies, only being offered the opportunity to use a "non-premium" alternative for a subsequent call.

Citizens Advice thereby shows a lack of transparency and openness and what may be described as aggressive cost saving at the expense of service users. Whilst some may see this behaviour as being inappropriate for a body of this type, it cannot be said to be anything worse than "sharp practice". It may even be of comfort to those seeking assistance with consumer problems to know that they are engaged with a body which is well familiar with the tricks and misrepresentations which those they are complaining about get up to!

A more disturbing aspect in this regard is that Citizens Advice will shortly take over the role presently being fulfilled by Consumer Focus, as the statutory advocate of the consumer interest. It is therefore of relevance to look at the positions it has taken, and presumably will continue to hold, on the issue of 084 telephone numbers in general. One can only guess as to how far these positions are influenced by its own persistent use of these numbers.

Citizens Advice has indicated a clear and specific policy position on use of 0845 numbers by DWP and HMRC. It has advocated their retention for all enquiry lines, in direct opposition to suggestions that it is inappropriate for these bodies to impose an undeclared Service Charge on callers.

In its response to the 2010 Ofcom consultation on Simplifying Non-Geographic numbers, Citizens Advice indicated opposition to the Unbundled Tariff. It clearly stated the view that the only issue with 084 numbers was the cost of calling from mobile phones (this nonsense is repeated widely across its published information). It gave a number of specific consumer examples, but failed to make any reference to its own use of 0844 numbers, either as a Service Provider or in respect of the views of those who used its services.

In preference to the transparency provided by the Service Charge element of the Unbundled Tariff, this consultation response strongly advocated the alternative of Service Providers only being required to declare the maximum aggregated call charge that could be incurred. In presenting this view it failed to address the obvious consideration that if only a maximum charge is advised, then this will readily become the “standard” charge.

On consideration of all of the above, the fair telecoms campaign must express extreme disappointment that Citizens Advice will inevitably play some part in “assisting” Ofcom with the establishment and implementation of the Unbundled Tariff. Although acting in the role of a consumer advocate (a position that will shortly have national statutory status), all of its actions and statements on the issue of 084 telephone numbers are seen to protect its own position as a user of these numbers.

It cannot be said that any of the views expressed by Citizens Advice are not genuinely held and believed to be advancing the interests of those it represents. Furthermore, one cannot say that the misrepresentations of fact and omissions (e.g. of the existence of the “bundled” Service Charge) are deliberate, rather than arising from innocent ignorance. Knowledge of its particular situation cannot but leave a cloud of doubt.

Unless serious measures are put in place to remove the conflict of interest which this body must suffer when engaging in this particular matter, it cannot be seen as being able to perform any function of consumer advocacy in relation to 084 telephone numbers. on the contrary It is indeed seen to be well placed to represent the interests of Service Providers who have long been engaged in trying to justify and disguise improper use of 084 numbers.