

RadioCentre response to Ofcom's PRS Scope Review

Background

1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), its members consist of the overwhelming majority of UK Commercial Radio stations, who fund the organisation.
2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).
3. As Commercial Radio broadcasters, some RadioCentre members offer listener interaction and entertainment services – such as competitions, polls, requests & dedications, station communication and local information services – which may be delivered by a premium rate mechanic. In all cases, radio broadcasters act as 'information providers' in the premium rate value chain, although it is likely to appear to listeners and consumers as if the broadcaster is the service provider. Additionally, Commercial Radio provides an attractive advertising platform for a wide range of products and services, which includes premium rate services.

Premium Rate Services on radio

4. In the last two years, considerable attention has been paid by Ofcom, and others, specifically to broadcast PRS, suggesting a recognition that the expectations and regulatory requirements for this sector may differ from those for non-broadcast PRS. Ofcom has further acknowledged the distinction between PRS on radio and that on television. In considering the characteristics – and therefore the regulatory requirements – for PRS, we believe it is essential to acknowledge the distinctive sectors within the PRS market.
5. Unlike non-broadcast PRS, broadcast PRS:
 - is not core to our business. It supports a core business – which has high barriers to entry and depends on maintaining a good reputation in the long-term with consumers. This means that we are not dependent on PRS revenues, and we are strongly incentivised to ensure that our PRS activity does not have adverse effects on our core business.
 - is often an extension or continuation of long-established non-premium activity. Broadcasters have long encouraged interaction with their audiences. Radio listeners in particular have, for decades, become accustomed to phone-ins, competitions and other interactive features. This means that, when a premium rate is applied to these features, consumers enter into them with a relatively clear understanding of the nature of quality of the service they will receive.
 - forms part of a long-established relationship of trust. The reason that the television and radio PRS issues of that last couple of years have attracted so much attention has been because of their impact on that relationship of trust between audience and broadcaster. Those issues have also highlighted the strong incentives for broadcasters to conduct PRS in an honest and fair way. This also means that, if they have complaints, consumers can easily identify who to complain to, and can be confident that their complaints will be handled correctly.

- is already more heavily regulated. Whilst all PRS providers are subject to PhonepayPlus regulation, only broadcast providers are subject to further regulation under the terms of their Ofcom licences as well as the Ofcom Broadcasting Code. This means that consumers have additional avenues of complaint for broadcast PRS that are not available to them with non-broadcast PRS; and broadcasters have additional incentives to conduct PRS activity fairly in order to avoid sanction from their sector-specific regulator.
6. Furthermore, unlike television PRS, radio PRS:
- is relatively small. Commercial Radio is predominantly local. It operates in an industry dominated by the BBC. No individual PRS feature on radio is capable of commanding the reach or rate of response of a similar feature on, say, ITV. This means that the maximum harm to consumers that can be caused by a radio broadcaster's is limited. It also means that radio broadcasters cannot sustain regulations that impose onerous financial costs.
 - is rarely driven by profit maximisation. A consequence of the relatively small scale of radio PRS activity is that it can rarely be used to drive substantial levels of profit for radio broadcasters. Instead, PRS is generally used to cover the costs of production. This means that there are few incentives to act unfairly in order to maximise revenues, since such actions are inevitably limited in their effectiveness.
 - is more tightly controlled by the broadcaster. In television, the use of independent production companies is commonplace. Those companies assume all production functions, including the management of PRS. As Commercial Radio very rarely uses independent production companies, and produces virtually all content in-house, we have greater direct control over PRS activity and so can more easily ensure that compliance procedures are being followed.
 - forms part of a closer relationship with the listener. Although radio is a mass broadcast medium, its audio nature, style of delivery and method of use effectively makes it a one-to-one medium. Our listeners each feel they have a personal connection to the radio station they listen to, and they develop a relationship – founded in large part on trust – with their radio that we do not believe is the case with television. This relationship is at the heart of radio's enduring appeal. This means that we have a strong incentive not to disrupt or undermine that relationship by acting unfairly or dishonestly.
 - is audio. Unlike visual media, radio cannot constantly display 'call to action' messages – such as phone numbers or details of competition prizes – while other messages are being conveyed. 'Call to action' messages cannot, therefore, be permanently displayed as they can on TV, and excessive repetition of any message on radio undermines its impact. This means that we cannot offer the same level of persistence or pervasiveness in delivering 'call to action' with our PRS that television can.
7. In its consultation, Ofcom has explicitly acknowledged that not all PRS is the same and not all PRS shares the same characteristics. We believe it is important, therefore, that blanket regulations affecting all PRS activity are not imposed when more targeted regulation – focused on those activities more likely to result in consumer harm – is feasible.

The consultation

4.1 Do you agree with our analysis of the characteristics of the PRS supply side and the possible concerns related to these characteristics?

8. Whilst Ofcom has captured the basic technical characteristics of the PRS supply value chain, including its innate complexity, there are elements where our experience

varies from the situation set out, and additional factors that we believe should be considered.

9. In either of the value chains set out in Figures 11 and 12 of the consultation document, a radio broadcaster would be an Information Provider. It is important to note that the point made in 4.23 of the consultation document – that the low barriers to entry for Information Providers could incentivise opportunistic behaviour – only apply to companies whose sole purpose is to be IPs. It does not apply to broadcasters or other companies for whom being an IP is not core to their business. Whilst there may be low barriers to us acting as IPs, we are strongly disincentivised from opportunistic behaviour because we need to protect the reputations of our core businesses, and because we need to comply with an additional layer of sector-specific regulation for broadcasters.
10. It is also worth noting that faults or failures can occur anywhere along the value chain, not just with the Information Provider. If IPs take advantage of low barriers to entry, SPs can take advantage of low consumer visibility. Network operators are themselves not immune to failure, although we assume these would be much more likely to be technical system failures rather than the result of human intervention. This would suggest the need to have a regulatory system intelligent and sophisticated enough to be identify where a failing has occurred, and take appropriate targeted action.
11. Another relevant factor to consider is the varying nature of the relationship between Service Provider and Information Provider. Within radio PRS alone, it is possible to see the SP as a client of the IP; SP and IP in partnership; and IP as client of SP. In a radio station programme feature (such as a prize competition), the broadcaster (as IP) is a client of the SP, who is contracted to provide technical platform services. In a different feature, the SP and IP (broadcaster) might together devise and deliver a mechanic, in partnership (often with another non-broadcast IP). When the SP (and/or non-broadcast IP) runs the PRS activity and merely contracts with the broadcaster to act as an advertising platform, then the relationship is different again: the broadcaster is still an IP, but the SP is now the client. In this scenario, the broadcaster has no influence over the delivery of the PRS and may have little or no information about it, beyond what is offered in the advertisement. These varying relationships reflect differing scenarios with differing incentives for each party in each case. The Information Provider is as likely, depending on the scenario, to be the victim of opportunistic behaviour as he is to be the perpetrator of it. SP and IP may know very little about each other before they begin collaborating, and the current system of regulation works strongly in the SP's favour. The IP (broadcaster) is inherently the more reliable party because he has a public reputation to protect and is subject to regulation in the form of licence conditions and the Ofcom Code. Yet those same regulations place responsibility for the fair execution of PRS activity entirely on the IP – indeed, the broadcaster is liable for the failures of the SP and potentially even the network operators. This is a highly effective way of regulating broadcasting. Ofcom may wish to consider if it is an effective way of regulating PRS.
12. A feature of the supply value chain that is worth noting is the lacking of a simple refund mechanism. Although consumers may pay for PRS through their bill with their network operator, there is presently no option for money to be passed back along the value chain to the consumer in the event of a fault or error that requires them to be refunded. This tends to work strongly in favour of the network operator and service provider, and against the information provider who is usually responsible for issuing refunds. If, during the course of a radio competition, say, a serious fault with a network operator forces the competition to be aborted and all participants to be refunded, it will fall to the broadcaster (as IP) to issue the refunds. The broadcaster will have to refund the full cost of the consumer's transaction, but will

have no recourse to reclaim any of that cost from anyone else along the value chain. Nor will the broadcaster have the ability to issue refunds via the consumers' phone bills, meaning even greater expense for the broadcaster. It is clear from this that the incentives *against* opportunistic behaviour by the broadcaster-as-IP are substantially greater than for anyone else in the broadcast PRS value chain, and substantially greater than for a non-broadcast IP.

4.2 Do you agree with our analysis of the demand characteristics of PRS? Do you think there are additional characteristics which are not included in our analysis?

13. We agree with the analysis presented, but would add one other factor: PRS is a market of **frivolous goods**. We know of no premium rate service that may be considered in any way essential or necessary to a person in their lives. It is possible to never have purchased a premium rate service and still be a fully engaged member of society, with one's health and welfare needs met in full. This limits the harm caused to the financial cost of purchasing the service. It also suggests a lower need for consumer protection regulation than would be the case for essential services such as utilities or healthcare or banking. This has a particular bearing on the issue of price transparency. In markets for essential goods, it is essential that pricing information is present and accurate and regulatory intervention is clearly required if it is not. In markets for non-essential goods, it is essential that pricing information is accurate, but its presence and prominence is usually an issue for the market, not a regulator. As long as the consumer is aware that there is a price, and is not actually misled about what that price is, then he can still make a rational choice as to whether or not he wishes to make a purchase. Regulatory intervention is not required in these circumstances because the consumer did not have to purchase the service but chose to do so fully in the knowledge that he had incomplete price information. Any perceived harm arising from the price charged being higher than the consumer expected would be the result not of the behaviour of the supplier but of the choice freely made by the consumer knowing he had incomplete information.

4.3 Do you agree with our assessment of the potential consumer harm in a situation where PRS regulation is insufficient or ineffective?

14. In considering potential consumer harm – particularly harm that might necessitate regulatory intervention – we would argue that it is as important to consider the factors that mitigate or reduce the potential harm as much as those that may cause or exacerbate it. A sense of proportion is required. Whilst we support the view that unscrupulous or careless operators should not be able to get away with making large sums of money by mis-selling their services, we should also not lose sight of the fact that we are talking about a market of low-value transactions in non-essential services. The harm to any individual consumer is usually very small. As desirable as it might be to eliminate that harm entirely, finite regulatory resources should probably be focused on those harms that are substantial to individuals, or the result of deliberate action rather than just the nature of the market.

15. The potential harm caused by PRS being 'experience goods' is clearly not an issue for regulatory intervention. All content goods and services – from books and newspapers to theatre tickets to music downloads to a meal in a restaurant – are 'experience goods'. It is right that regulations exist to prevent retailers of those goods from misrepresenting them, but when a non-essential, low-price experience good that has been honestly sold fails to meet your expectations, it is not generally considered to be a 'harm'. Most consumers are content to put it down to experience, decide not to buy that product again, and move on.

16. We believe that the reputation, and even the long-term viability, of the PRS industry is a concern for the industry, not its regulator. As much as we support there being a

healthy, successful PRS sector, it is for the PRS industry – like any other industry – to ensure that consumer confidence in it is sustained at levels that can support the industry as a whole. If an industry fails to do that, it should not be the role of a regulator to save it. We do not believe that a decision by a consumer not to purchase a premium rate service can possibly be construed to be a harm to that consumer. Nor do we believe consumers would experience harm if they found themselves entirely unable to benefit from PRS. That is how markets are supposed to work.

4.4 Do you agree with our assessment of the potential and actual consumer harm in PRS?

17. There are a number of areas where we disagree with Ofcom's assessment of consumer harm in PRS. As we have already detailed, this is a market of non-essential, low-cost services. There may be circumstances in which it is clear to consumers that pricing information is incomplete – such as when a price for access from a BT landline is quoted, along with a statement that costs may vary and mobile costs are likely to be higher. Because the service in question is non-essential – indeed, is likely to be entirely frivolous – the consumer can easily and freely choose not to purchase it. The clear absence of complete price information may be a factor in that decision, either because the consumer is uncertain of the price he would pay or because he believes the price to be higher than it actually would be. Whatever the circumstances, we simply do not agree with Ofcom that the consumer has experienced any harm by not benefitting from the service on offer – not by any sensible or rational meaning of the word 'harm'. Alternatively, the consumer may, despite knowing that he lacks complete price information, decide to purchase the service. In these circumstances – where it is clear to the consumer that he lacks complete information about both the price and quality of the service but he nonetheless chooses to proceed with the purchase – the principle of *caveat emptor* surely applies.
18. Regulatory attention needs to be focused on those areas of real harm. These are where consumers are misled – intentionally or not – to the reasonable belief that the price of a service is less than it actually is, or the quality of the service is greater than it actually is. When this is the result of deliberately and intentionally false information being put out by the SP or IP, it already falls foul of the regulations – both the PhonepayPlus Code and the various advertising codes require pricing information to be accurate, as does the Unfair Commercial Practices Directive. The only circumstance in which we can imagine a consumer suffering real harm through incomplete pricing information is when the only price information given is, say, the cost from a BT landline, and there is no warning that costs from other networks are likely to be higher. A regulation that requires that additional warning would appear to us to be sufficient to alert the consumer to the potential harm and therefore make an informed decision as to whether or not to make a purchase.
19. We similarly have reservations about Ofcom's concerns over a consumer's means of redress – not because Ofcom's concerns are not real, but because we believe they apply only to non-broadcast PRS. For broadcast PRS we do not agree that the likelihood of consumer detriment is higher than for other communications services, nor that seeking redress is difficult since the consumer can easily identify and contact the broadcaster who is under a legal obligation to deal with the consumer's complaint.
20. Of the examples of consumer harm given in 4.67 of the consultation document, the first two would appear to be straightforward examples of theft, and a criminal prosecution is surely the correct course of action.

21. Much of the approach Ofcom appears keen to take seems to be focused on protecting consumers from themselves. Whether it is choosing to make a purchase despite having incomplete price information, or not bothering to check phone bills or not making the effort to complain, these are choices made by (a minority of) consumers that may lead them to experience (a small amount) of harm. Rather than regulation to ensure the industry behaves responsibly, there is a risk of developing a system of regulation that permits and perpetuates irresponsible behaviour by consumers.

We have not responded to questions 5.1-5.3 since they raise no new issues of relevance to Commercial Radio that are not covered in previous questions.

5.4 Do you agree with our analysis of the appropriateness of self-regulatory initiatives in the context of PRS?

5.5 Do you consider self-regulatory initiatives could be implemented for (certain) PRS? If so, please set out for which services, and what such an initiative would look like?

22. We would welcome the introduction of self-regulatory initiatives by the premium rate sector. In part, this is because such initiatives could be of direct benefit to broadcasters-as-IPs in helping them identify which IPs and SPs are trustworthy and reliable. There is a clear benefit to all SPs and IPs – including radio broadcasters – to consumers feeling they can use PRS with confidence. We imagine a register of reputable operators – such as that proposed in section 6 of the consultation document – could be administered on a self-regulatory basis.

6.1 Do you consider there is a consumer benefit requiring all OCPs to offer the same retail price to a PRS number?

6.2 If you do believe there is a consumer benefit, do you have suggestions as to how this option could be implemented?

6.3 Do you consider this option could have any negative side-effects? If so, which ones?

23. Ofcom describes price transparency as “the major problem today in the PRS market” but not all the evidence presented necessarily supports this view. Section 6.26 of the consultation document notes that 73% of those who chose not to use PRS did so because of lack of price transparency. This should be of concern to the PRS industry, but it is not a regulatory issue. It represents a market working as it should: demand for a product is suppressed because suppliers have provided inadequate information and failed to maintain consumer confidence. That is how markets regulate themselves. Those who have chosen not to use PRS have not been harmed by that choice.

24. Ofcom compares the option of a single retail price for PRS with the previously considered option to do the same for 0870. This analysis misses a key point: 0870 numbers are used by a wide range of companies for their customer service lines. It is difficult to avoid 0870 numbers entirely since it is likely that the majority of consumers would find they have to call an 0870 number to maintain their service from an essential utility provider, for example. Their necessity – the lack of a real choice to not use 0870 numbers – creates a clear logic for regulatory intervention that does not exist for PRS numbers.

25. We do not believe that a fixed retail price for PRS numbers would bring consumer benefits. It would not necessarily increase price transparency – the consultation document itself notes that there is a lack of consumer knowledge about the pricing for all non-geographic numbers, whether they are fixed or not (6.30 and 6.32).

Fixing the price would prevent OCP (and others in the value chain that influence PRS pricing) from reducing prices in order to obtain a competitive advantage.

6.4 Do you consider pre-call announcements (PCAs) would improve price transparency in the PRS market?

6.5 Do you consider Ofcom should carry out such a study [into PCAs]? If so, which aspects should such a study cover?

26. It is clear that PCAs could improve price transparency but we have concerns about the practicability of implementing them. It is not clear to us at what stage in the PRS value chain PCAs could be inserted and, therefore, who would bear the cost of them. Since it is understood that the regulatory requirement for radio PRS is that cost information is given with every on-air mention of the premium rate number, a PCA would only be of any benefit if it carried additional information such as pricing on different networks under different tariffs. Here the danger is that the PCA would become unduly long. Not only would consumers find this annoying and tedious, but it could affect the use of PRS for short, time-critical features like radio competitions with a 'dial-now-to-win' mechanic. These are all issues that could be address in a detailed study and such a study would clearly be worthwhile given the clearly stated consumer preference for PCAs.

6.6 Do you consider including BT's tariff and a maximum tariff for the PRS in PRS advertisements would improve price transparency in the market?

6.7 Do you consider the name of the OCP with the highest tariff should be included?

6.8 Do you consider there are any additional implications linked to this option, apart from the ones we have set out?

6.9 Could you provide us with an estimate of cost information regarding the collection and updating of tariff information (for SPs and OCPs)? Do you believe there are any costs involved under this option?

27. We strongly oppose this proposal. Not only would it provide little meaningful benefit to consumers in terms of price transparency, but any requirement for mandatory messaging in advertisements has an especially harmful effect for radio advertising.

28. Ofcom's proposal is that, rather than inform consumers that PRS cost vary by network and that mobile-originated costs are likely to be higher than the quoted BT price, PRS promotion should quote the highest price that the service might be charged at, possibly with the inclusion of the name of the OCP imposing that price. This strikes us as an impractical suggestion for the same reasons that Ofcom has recognised that it is impractical to publish all the prices for all tariffs under all OCPs. According to the consultation document (at 4.18) there are "a few hundred OCPs". Quoting the price of the highest-priced OCP for a particular PRS feature would still require obtaining price information from every OCP so that we could determine which was most expensive. That might be a different OCP from month to month, or from number to number. It is not clear to us how a radio broadcaster, as an IP, would go about this exercise.

29. Even if it were easy to determine which was the most expensive tariff on the most expensive OCP for any given PRS feature, we are not sure if this is useful information to consumers – and certainly not more useful than the current warnings provided. Consumers using an OCP other than BT or the most expensive one would not have a range of prices – which might be quite wide – but no way of knowing where in that range their own tariff on their own OCP might sit. The most expensive tariff on the

most expensive OCP might be a statistical aberration; if BT and OCPs covering 99% of consumers charged between 25p and 35p for a particular PRS call, but one tariff on one OCP charged 70p, then telling consumers that the cost will be between 25p and 70p borders on misleading. As Ofcom notes, there would also be a strong incentive for all OCPs to raise their prices to 70p.

30. Proposals for mandatory messages in advertising are rarely made with radio in mind. For visual media, mandatory messages are easy to accommodate. They can appear in scrolling text on a television screen, or in the small print of press or poster advertisements. They can be simultaneous with the promotional message in the advertisement. Audio advertisements are linear. Mandatory messages must be delivered before or after the promotional message. They take up time (which, as radio advertising is commonly priced by the second, incurs cost). Listeners find them annoying and repetition makes them even more so – and so listeners stop paying attention to them as soon as they hear them start. When they contain numerical information (such as pricing), they are difficult for listeners to take in, and so are particularly ineffective.

6.10 Do you agree with our proposal to expand the PhonepayPlus number checker?

6.11 Which criteria should be used regarding numbers to be included in the number checker?

6.12 What information should be included per number in the number checker?

31. There is clearly a tension between the requirement in the PhonepayPlus Code that the Service Provider be generally considered responsible for the conduct of PRS activity (despite being often hidden from public view) and the Ofcom requirement that the broadcaster be considered responsible for all broadcast PRS activity. Where consumers are able to identify a number on their bill as being a premium rate service run by a radio station, we are confident that they would have no difficulty in contacting that radio station and receiving a fair and friendly response to their concerns. If consumers are unable to identify a premium rate number at all, then a comprehensive database would clearly be beneficial. We will leave it to the PRS industry to comment on a more informed basis on the feasibility of expanding the PhonepayPlus database.

6.13 Do you agree PhonepayPlus should carry out an analysis into the benefits of requiring SPs/IPs to adopt a formal complaints procedure?

32. Ofcom already requires broadcasters to ensure that complaints are dealt with fairly and thoroughly, and this requirement has recently been reinforced by a RadioCentre voluntary Code of Conduct on Premium Radio Interaction (PRS). We make no distinction between PRS complaints and other complaints.

6.14 Do you consider that in light of developments in the PRS market, IPs should be targeted as a point of regulation, in addition to SPs or on their own? If so, what kind of rules should be applied to IPs and/or SPs?

33. Under new regulations introduced by Ofcom for television broadcasters, and proposed by Ofcom (and certain to be introduced) for radio broadcasters, it is the broadcaster-as-IP that is 'targeted' as the point of regulation for all broadcast PRS. We accept, as broadcasters, that we must be responsible for all of our content, including in its origination and production. However, as suggested earlier, we believe it is worth considering if this is an effective way of regulating broadcast PRS. It would seem arguable, at least, that the party identified, after regulatory investigation, as being the party at fault should bear the weight of regulatory

accountability. We have observed cases in the past where the broadcaster-as-IP has been at fault (by, for example, broadcasting inadequate pricing information), but PhonepayPlus has persisted in pursuing the Service Provider. A consumer might be equally baffled, under the new arrangements, were a Service Provider found to be at fault in delivering a broadcast PRS feature, but the broadcaster continued to be the focus of regulatory attention. Every person in the PRS value chain is covered by at least one layer of regulation. Targeting the party at fault would seem to be the fairest method of deploying that regulation.

6.15 Do you consider there are other options for a registration scheme/reputational database which have not been included in these studies?

6.16 Which is your preferred option, and what are the reasons for this?

6.17 Do you agree with our analysis that PhonepayPlus should run a registration scheme/reputational database?

34. We would favour a registration scheme for Service Providers. As broadcasters, we have little market knowledge of Service Providers and it can be difficult to establish whether or not any given company is reputable and can be depended on to be compliant. This is all the more critical now that broadcasters will be held liable for any failure in the broadcast PRS value chain, even if it is the fault of the Service Provider.

35. Past compliance track record is of limited value as information about a Service Provider. Such information would not capture subsequent action taken by the SP – which may even include changes in ownership or management – specifically to address past failures. SPs should instead be required to qualify for inclusion in a central register by guaranteeing that they have taken a range of steps determined by PhonepayPlus to secure compliant behaviour. These steps might include internal processes and procedures designed to identify and flag up faults as soon as they happen; the operation of 24-hour service lines to allow IPs to resolve issues that they may have identified; or the implementation of formal complaints procedures for consumers.

36. We are neutral as to who should operate the register. We have previously suggested that a PRS industry body might run it, as a form of self-regulation. However, we note the lack of interest by stakeholders in taking on this activity, and we have no objection to PhonepayPlus run the registration scheme.

6.18 Do you agree with the options identified regarding call barring facilities?

37. This seems to be an issue primarily for network operators, and we do not offer a view on this question.