



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofcom Premium Rate Services Scope Review

August 2009

Ofcom PRS Scope Review

About Consumer Focus

Consumer Focus welcomes the opportunity to respond to the Ofcom Premium Rate Services (PRS) scope review. This response is not confidential and we are happy for it to be published in full on your website.

Consumer Focus is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. We are the voice of the consumer, and work to secure a fair deal on their behalf. We were created through the merger of three consumer organisations – energywatch, Postwatch and the National Consumer Council (including the Welsh and Scottish Consumer Councils). Our approach allows for more joined-up consumer advocacy, with a single organisation speaking with a powerful voice and able to more readily bring cross-sector expertise to issues of concern.

The Consumer Focus Forward Work Programme to March 2010 sets out the work we will undertake to champion the rights of consumers, and includes a work project to scope consumer needs and the opportunities to influence improvements in the mobile phone sector. We are working with the Communications Consumer Panel to define a potential working partnership, and the work we are carrying out in the mobile phone sector is intended to inform and complement, rather than duplicate, Ofcom's 'Mobile Sector Assessment' and other work carried out by the regulator. Consumer Focus is in the process of formulating consumer priorities around which our advocacy and campaigning work will be focussed. This is being carried out on the basis of a consultation exercise we ran from April to June 2009 and the results of externally commissioned research into consumer priorities in the mobile phone sector.

Consumer Focus response to Ofcom PRS Scope Review: summary

- The PRS sector is a rapidly developing market, particularly in relation to mobile PRS, and a fresh approach is needed to reflect this
- Consumer detriment caused by a lack of price transparency in the PRS market is a primary issue of concern
- Other issues of concern for Consumer Focus include access to effective redress and the provision of clear and complete information about providers of PRS
- Consumer Focus does not believe that evidence supports a purely self-regulatory approach in the PRS sector at present
- Consumer Focus supports moves towards a registration scheme and reputational database that contains both Service Providers and Information Providers, and includes the names of company directors

Introduction

It is five years since Ofcom's last major consultation on PRS and Consumer Focus is pleased to see Ofcom taking the major changes that have occurred in the PRS market into account by undertaking this review. A well-functioning PRS market serves the interests of consumers as well as businesses providing or delivering services via PRS. Improving consumer protection around PRS through a range of measures, including effective regulation, will lead to a better consumer experience and greater interaction in the communications marketplace, benefitting both consumers and businesses.

With the rapid development of 3G technology, the content and delivery of PRS available to mobile phone consumers is growing increasingly innovative and sophisticated. However, the recent growth in mobile PRS along with the rise in complaints to PhonepayPlus that has accompanied it (more than 8,000 in 2007/08) indicates that the regulatory approach to PRS needs to adapt to this changing market.

Consumer Focus broadly agrees with the areas of consumer detriment identified by the PRS scope review in relation to PRS. The lack of price transparency in the PRS market, which has arisen partly from the increase in the number ranges used for PRS, is an issue on which Consumer Focus is particularly keen to ensure that consumers' voices are heard. In terms of mobile PRS, a lack of price transparency is more acute for pay-as-you-go (PAYG) mobile users than contract users; while contract customers can use regular statements to retrospectively monitor spending on PRS, few effective means of monitoring exist for PAYG users. Transparency is needed not just on the cost of PRS but also on the names and contact details of businesses supplying PRS, so that consumers have an effective means of making complaints if they are dissatisfied with the service they receive.

Responses to consultation questions

This response addresses each of the questions in the Premium Rate Service scope review consultation paper in turn.

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

As mentioned throughout this response, Consumer Focus is concerned about the rise in complaints that has accompanied rapid growth in the mobile PRS market. The consumer detriment that is evidenced by these complaints derives from specific characteristics of the supply side of the PRS market. For example, the disconnection between the supplier of PRS and the party that bills the consumer for use of the services (outlined in paragraph 4.7 of the consultation paper) is at least partly responsible for the lack of price transparency that exists around PRS. We will make further comments in this response about this consumer detriment and Ofcom's proposed remedies for tackling it.

Question 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?

Ofcom notes that reputational information may not be important to PRS suppliers because of the characteristics of PRS as experience goods. From the consumer perspective, it is vital that incentives that exist for suppliers to provide low quality, high priced services are addressed. This issue is linked to the proposal, discussed further on in this response, to set up a database that would give consumers and potential commercial partners access to reputational information about PRS providers before entering into transactions. Consumer Focus believes that thorough, transparent information is necessary to empower consumers wishing to engage in the PRS market.

Comments in the introduction to this response are related to issues around the visibility of PRS suppliers' billing and identity information addressed by this question. These are issues of concern for Consumer Focus and are discussed further in this response. We are particularly concerned that pay-as-you-go mobile customers face greater challenges in relation to the visibility of information, particularly as pay-as-you-go accounts for approximately 64 per cent of mobile subscriptions in the UK.¹ We would be interested in any further activities Ofcom has planned to assess the detriment facing pay-as-you-go users in relation to visibility of information (not necessarily restricted to the PRS sector).

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

Consumer Focus believes Ofcom has given a comprehensive assessment of potential consumer harm in relation to PRS, though one area to add to those covered in the consultation paper is around billing clarity. Consumers may lack information about the cost of the PRS as well as the details of the transaction that took place. For consumers who receive itemised bills, the details of the transaction may not be included, while those who do not receive itemised bills may experience difficulty locating this information elsewhere. Consumer confidence in the PRS market will be improved by ensuring that consumers are able to gain information about any transactions they have undertaken in a straightforward and accessible way.

¹ Ofcom report, *The Communications Market 2008*, p.320
<http://www.ofcom.org.uk/research/cm/cmr08/telecoms/telecoms.pdf>

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

Consumer Focus is in agreement with Ofcom's assessment of consumer harm in relation to PRS. We are particularly concerned about consumers' lack of access to clear and transparent PRS pricing information. As information in Figure 14 on page 31 of the consultation paper shows, the cost of PRS from mobile phones varies between services and mobile providers, but is consistently higher than from fixed lines. Consumer Focus believes that the lack of transparency around these charges is an issue which, despite regulatory steps having been taken to address consumers' lack of access to information about the cost of PRS from mobiles, is still a significant source of consumer harm.

Question 5.1: Do you agree with the application of the characteristics to the services?

This section illustrates the varied and complex nature of the PRS sector. The range of pricing levels and payment mechanisms, the discrepancies that exist around price transparency, billing information, other information about PRS suppliers, the wide variety of content and the complexity of the PRS supply chain all contribute to making it a sector containing unique challenges for consumer protection and empowerment. In contrast to this are the relatively straightforward outcomes set out by Ofcom that demonstrate the sector working in the best interest of consumers. These outcomes, stated in paragraphs 5.60 and 6.12 of the consultation paper, outline the belief that consumers:

- should be able to purchase PRS with confidence
- should know what price they will pay
- should understand the quality and facets of a service being offered
- should receive the service that they have purchased

Successful regulation of PRS should not allow the complexity of the sector to obscure pursuit of these outcomes.

Question 5.2: Do you agree with our assessment of potential harm for each of the services?

Consumer Focus agrees that, for each of the services outlined in the consultation paper, a thorough assessment has been made of the potential consumer harm.

In relation to the 'payforit' service, we agree that the service will lead to consumers being better informed and empowered about tariffs and terms and conditions of PRS. There are some questions around the 'payforit' service that are not addressed in the consultation paper, such as what information appears on consumers' bills following transactions made via 'payforit'. Also, is the information in a standard format? Does it contain all the information necessary to the consumer, such as the name of the service provider? Will it be easily recognisable?

Payforit provides a service to consumers that could potentially be made more useful if expanded to standardise the supply of other PRS information to consumers, such as how redress can be pursued and whether services being purchased involve one-off payments or entry into a subscription. Consumer Focus would encourage Ofcom to explore the possibility of these expanded functions with 'payforit', as well as addressing the questions mentioned above.

Question 5.3: Do you agree with our assessment of alternative means of protection for the new services in our analysis?

Consumer Focus agrees with aspects of Ofcom's comments about the alternative means of protection available to consumers. Points 5.52 – 5.54 indicate areas where there is a lack of clarity or potential barriers for consumers seeking to access redress when complaints are made. It would be helpful if Ofcom could provide a clearer assessment of the situation facing consumers who wish to access Alternative Dispute Resolution (ADR) in the examples given.

Consumer Focus would like to see greater clarity around Ofcom's policy position in relation to consumers seeking access to ADR following PRS transactions where content is provided by third parties, not the customer's Originating Communications Provider. Following this, an assessment of how consumer protection could be improved where consumers do not currently have access to alternative means of dispute resolution would be welcome.

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

Question 5.5: Have you considered self-regulatory initiatives that could be implemented for (certain) PRS? If so, please set out for which services, and what such an initiative would look like.

Based on the analysis presented by Ofcom, which finds that limited incentives exist for less reputable companies to take part in self-regulatory solutions, Consumer Focus is doubtful that a self-regulatory approach would be appropriate across the broad range of PRS. Concerns about volatility in the PRS market, particularly indicated by the rapid growth in mobile-specific PRS and the rise in consumer complaints about mobile PRS (detailed in Figure 7 on page 13 of the consultation paper), also suggest that caution should be taken when considering self-regulation.

We would support an intention which considered applying a broad range of regulatory approaches tailored to tackle the particular area of consumer detriment. We generally support Ofcom's intention to judge, on a case-by-case basis, whether there are individual issues of consumer detriment in the PRS sector that would be more effectively tackled through a range of measures including self- or co-regulatory approaches, provided case-by-case assessments can be made quickly and effectively and are backed by graduated enforcement mechanisms. In the context of our work on mobile, we will monitor company policies and practices linked to consumer detriment, and would welcome the opportunity to provide consumer-focused input to tackle these issues.

We note the recent registration of a new Code to regulate mobile premium services in Australia (Communications Alliance Code C637:2009). The Code includes new measures to ensure consumers are empowered and protected throughout the supply chain, with the provision of standardised information before sign-up, clear means of unsubscribing, requirements to issue clearer advertising, and a ban on advertising targeted at children under the age of 15. The measures are backed up by the regulator's power to pursue significant pecuniary penalties for industry non-compliance.

Consumer Focus is concerned to ensure that – in instances where regulatory intervention is warranted and where consumer harm is occurring or might develop – the regulators are armed with appropriate, enforceable regulatory powers to tackle problem practices and policies, and address these proactively, before they become systemic.

Question 6.1: Do you consider there is a consumer benefit requiring all Originating Communications Providers (OCP) to offer the same retail price to a PRS number?

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

Question 6.3: Do you consider this option to have negative side-effects? If so, what are they?

Consumer Focus has not undertaken detailed analysis of the consumer benefit of requiring all OCPs to offer a single retail price to a PRS number. However, we view the current situation in relation to price transparency as unacceptable and welcome attempts to seek constructive proposals to address this. Our impression is that the proposal benefits consumers by arming them with the right information to make an informed choice. This warrants further scrutiny, given Ofcom's finding that imposing enhanced price publication obligations for PRS numbers would not be effective in improving price transparency for consumers.

One negative side-effect of the proposal would be the likelihood that agreeing a single price point for a given PRS among all network providers would result in some raising their prices, meaning a tariff increase for the customers of that network. Consumer Focus would welcome further evidence-gathering work by Ofcom to study the extent to which this effect might be observed, as well as an assessment of whether it would outweigh the benefits of greater transparency brought about by requiring a single PRS price point.

Question 6.4: Do you consider that pre-call announcements (PCA) would improve price transparency in the PRS market?

Question 6.5: Do you believe that Ofcom should carry out such a study? If so, which aspects should such a study cover?

Consumer Focus believes that pre-call announcements would improve price transparency in the PRS market and acknowledges Ofcom's research identifying PCAs as consumers' preferred method of call-tariff communication, due to their directness and availability at the point of calling.

We believe there is scope for work to take place around a best practice approach to PCAs, to address consumer concerns such as those mentioned in paragraph 6.48. Messages that are overly long could be off-putting to consumers, while providing more information than necessary could detract from the central information (about the cost of the call) that is being provided.

Consumer Focus believes Ofcom should carry out a study into PCAs in the PRS market. We would be keen for this study to examine how the greatest benefit, in terms of price transparency for consumers, could be achieved. There should be clarity about how concerns relating to the cost and complexity of implementation the scheme could be addressed.

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

Question 6.7: Do you believe that the name of the Originating Communications Provider (OCP) with the highest tariff should be included?

Question 6.8: Are there any additional implications linked to this option, apart from the ones we have set out above?

Question 6.9: Could you provide us with an estimate of cost information regarding the collection and updating of tariff information (for Service Providers and Originating Communications Providers)? Do you believe there are there any other costs involved under this option?

Again, Consumer Focus welcomes constructive proposals being put forward by Ofcom to improve price transparency, though there are areas where we think this could be improved. For example, we do not think that the proposal to include a maximum tariff for the PRS in advertisements is an ideal solution and believe that the concerns expressed in paragraph 6.59, around the incentives that it would create for OCPs to raise their prices, are likely to be accurate. However, the incentive's full impact on consumers would have to be measured against the tariff differences that currently exist in the market; if the differences are small at present, the effect of this incentive to raise prices will not be felt as strongly and the benefit of the proposal to consumers will be greater.

By naming the OCP with the highest tariff, an incentive would be created on providers not to occupy this position. If operators were given the incentive to raise prices, it would be to just below the highest rate, rather than equal to it. However, another scenario is possible, whereby the OCP with the highest tariff is induced to lower it, so as not to be named as the highest rate charger. Both downward and upward pressure on prices could potentially be created by this proposal, indicating that a closer analysis of its effects might be beneficial.

Although Ofcom has ruled out a requirement on service providers to advertise all charges for a PRS, Consumer Focus believes further consideration of this option could be justified. Providing information on the charges levied by BT, the five main mobile operators and the Mobile Virtual Network Operators (MVNOs) would be an effective way of improving the price transparency of PRS.

We believe more thought could go into ways of presenting this information to improve feasibility, such as a small standard tabulated form. As the consultation paper points out, there would be costs for the service providers associated with the information-gathering that would be required, though this process would likely become quicker, more streamlined and cheaper if it was part of service providers' common practices.

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

Question 6.11: Which criteria should be used regarding numbers to be included in the number checker (eg, revenues, complaints over a number of weeks, etc)?

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

Consumer Focus has not carried out a detailed analysis of this proposal but agrees that the analysis carried out by Indepen and outlined in paragraph 6.69 of the consultation paper supports the economic case for expansion of the PhonepayPlus number checker. Our view is that, from a consumer perspective, moves to expand the number checker should be driven by an overall desire to improve transparency and facilitate an easy-to-use service to increase consumer empowerment.

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

Yes. In broad terms, consumers' low expectations of resolving problems with PRS providers directly are likely to be reflected in a lack of confidence in the PRS market more widely. Tackling this issue is key to improving consumers' experience of PRS and building positive consumer interaction with the sector more generally. As Ofcom mentions in the consultation paper, failing to give consumers effective means of redress when problems arise creates an incentive for some PRS providers to offer low quality services.

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

Consumer Focus views the disproportionate level of complaints about mobile PRS (90 per cent of complaints at the end of 2008 compared to 50 per cent of the PRS market) with concern. We agree that the different characteristics of the mobile PRS market should be reflected in more appropriate regulatory and problem-solving approaches.

We believe that regulation should be designed to target problems where they occur in the value-chain of PRS service delivery. Consumers should have access to a straightforward means of solving complaints without needing an understanding of each stage of the PRS service delivery process, while the role of the regulator should be to tackle issues causing consumer detriment swiftly and accurately through targeted, effective solutions.

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

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

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

Consumer Focus is keen for any registration scheme or reputational database to improve the functioning of the PRS market to the benefit of consumers by using increased transparency to drive up standards among PRS providers.

We agree that collecting accessible information on service providers (SPs) and information providers (IPs) would help suppliers make more informed decisions when selecting commercial partners. This would carry flow-on benefits for consumers in terms of the upward pressure it would create to improve standards within PRS companies in the communications marketplace. It would also have the empowering effect of giving consumers access to information about suppliers of PRS services that they may choose to engage with.

Of the options presented in the consultation paper for a reputational database, option F2 appears to offer the most comprehensive solution to the challenges being addressed. As noted in the report produced by Plum Consulting, unlike the other options presented, option F2 allows a Terminating Communications Provider (TCP) or service provider to seek information on the reputation of an individual representing an information provider with which a contract is being considered. This would guard against a scenario in which an individual is involved in multiple breaches while running more than one IP, because reputational information on that individual is not shared effectively.

For these reasons, Consumer Focus does not share Ofcom's view that option F1 should be implemented. Our view is that the high levels of consumer complaint around mobile PRS should prompt more comprehensive measures to be taken. Consumer Focus agrees, however, that PhonepayPlus would be well-placed to run the proposed registration scheme/reputational database because of the independence, experience and market understanding it could offer.

We note that PhonepayPlus has expressed an initial view on this issue in its discussion paper, published in June in preparation for the development work being undertaken to produce its 12th Code of Practice.² PhonepayPlus identifies benefits in establishing a registration scheme/reputational database incorporating SPs and IPs, in terms of the due diligence and risk management it would facilitate, as well as the value it would have in supporting enforcement of a new Code of Practice along the value-chain in the provision of PRS. The PhonepayPlus paper also comments on the benefits that could be gained from the inclusion of details of company directors in the database, which is one of the provisions of option F2, our preferred option of those presented in the consultation paper.

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

Consumer Focus agrees with the proposal to carry out analysis of the market for call-barring facilities and we are happy to submit more detailed comments regarding call-barring to future Ofcom work. We will continue to monitor Ofcom's work in PRS in the context of our work in the mobile phone and digital communications sectors.

² PhonepayPlus discussion paper, *Developing the next PhonepayPlus Code of Practice* (24 June 2009) p.20 <http://www.phonepayplus.org.uk/upload/Code12-GreenPaper-FINALv2-June2009.pdf>

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Published: August 2009

Edited by Denis Tingay, Consumer Focus

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