



The PRS Scope Review

Consultation

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Section 1

Summary

- 1.1 Premium Rate Services ('PRS') offer a convenient way to buy and enjoy products spontaneously. They typically offer some form of content that is charged to a customer's phone bill or pre-pay account. Most PRS are for 'impulse' purchases and can be characterised by a relatively low expenditure. PRS are a simple means of purchasing a service because consumers can, for example, make the purchase using their telephone or mobile handset and need not provide any further authentication information. This makes PRS a good payment mechanism for buying relatively low expenditure content services or for participating in competitions or voting.
- 1.2 Consumers value PRS because of the simplicity of the payment mechanism and the attractiveness of the services that can be purchased using this method. However, some of the characteristics that make PRS so convenient for consumers can also give rise to consumer harm. As a result, it has always been recognised that separate provision should be made for the regulation of PRS. The current rules in place to regulate PRS are based on the definition of PRS in section 120 of the Communications Act 2003. The services are regulated by PhonepayPlus on a day-to-day basis, with Ofcom retaining overall responsibility for PRS.
- 1.3 However, the market for PRS has been the subject of significant change over the last ten years. We believe the three main relevant changes are:
 - i) An increase in mobile phone usage, which has led to a strong increase in mobile PRS usage, and in mobile PRS related complaints;
 - ii) An increase in the number of communication providers and number ranges on which PRS are being offered which has led to a more complex and fragmented market for consumers; and
 - iii) A lack of clarity in the market as to which services are captured by PRS regulation.
- 1.4 As a result of these changes, we need to ensure the current PRS regulatory regime meets the needs of consumers, affords an appropriate level of consumer protection and, at the same time, supports an innovative and changing PRS industry. This is the primary purpose of this PRS Scope Review, as defined in the Terms of Reference published in December 2006.
- 1.5 Based on analysis of the characteristics of PRS and an assessment of the evidence, we consider that in the absence of effective regulation:
 - i) Consumers may find themselves unable to make an informed decision prior to the purchase of a PRS;
 - ii) Consumers may be dissuaded from seeking redress when things do go wrong, and may lack an effective means of doing so; and
 - iii) Consumers may be exposed to offensive or inappropriate content.

- 1.6 It is vital that regulation is adaptable to changes in the market and the development of new services. By developing an analytical framework for examining PRS, we are able to look at the current regulatory framework and determine, taking into account responses to this consultation, whether it remains appropriate to new services as they emerge. We have applied the framework to a number of established and ‘new’ PRS to understand the extent to which they display those features that can give rise to potential consumer harm and, where available, we examine the evidence of real consumer harm. We use this analysis to examine whether the current regulatory framework requires modification; and whether self-regulatory initiatives might be an option for those services and in what circumstances this may be appropriate.
- 1.7 Our analysis of the evidence against the characteristics set out in this review suggests there are gaps in the regulatory framework that may need to be addressed, particularly in respect of price transparency, complaints procedures and empowering PRS suppliers to act responsibly. Based on evidence from market research and independent studies in respect of the types of consumer harm identified we propose the following specific actions:

Target area	Options
1. Facilitating consumers to make informed decisions	<ul style="list-style-type: none"> a. Carry out a study into the implications of introducing pre-call announcements for PRS; b. Require every PRS advertisement to contain, in addition to the BT price, the maximum price that may be charged by a communications provider, including the name of that provider.
2. Facilitating effective consumer redress	<ul style="list-style-type: none"> a. PhonepayPlus to expand their number checker so that consumers can more easily identify the service provider for services for which they have been charged; b. PhonepayPlus to carry out an analysis of the benefits of requiring PRS service providers and information providers to adopt a formal complaints procedure.
3. Empowering PRS suppliers to act responsibly	<ul style="list-style-type: none"> a. PhonepayPlus to introduce a registration scheme / reputational database in order for parties in the PRS supply chain to find out information about potential and current partners down the PRS supply chain; b. Carry out an analysis of the market for call barring facilities in order to assess the availability and functionality of call barring.

- 1.8 We are inviting comments on the analytical framework and on the options we suggest by 24 July 2009.

Section 2

Introduction

- 2.1 Since premium rate services (PRS) were introduced in the UK around 25 years ago, they have been subject to regulatory safeguards in order to ensure adequate consumer protection. PRS typically offer some form of content, product or service that is charged to users' phone bills. They typically offer information and entertainment services via fixed or mobile phone, fax, PC or interactive digital TV. Regulation of PRS is designed to ensure that consumers can use these services with confidence, and have access to effective redress where consumers encounter problems through the use of PRS¹. PRS regulation does this through trying to ensure services are advertised accurately with clear pricing, that the content meets acceptable standards² whilst protecting against fraudulent or unauthorised use, and through trying to ensure effective control of certain services to prevent access by minors.
- 2.2 The rationale for PRS regulation is to target and prevent consumer harm in respect of those services, which, based on their characteristics, could give rise to a particular type of risk and which may not otherwise be effectively covered by existing means of consumer protection.
- 2.3 In light of increasing convergence in the communications sector and the growth of PRS as a micro-payment mechanism, Ofcom considered in 2006 that the time was right for a first principles examination of the role, structure and application of regulation in this area. The aim of this review is to consider whether current PRS regulation meets the needs of consumers whilst supporting an innovative and changing PRS industry.
- 2.4 In December 2006, Ofcom published Terms of Reference for a 'first principles examination of the role, structure and application of regulation in this area' and described the issues it expected to address as part of the review of scope. These included³:
- The clarity of pricing in PRS and impact on consumer trust and confidence;
 - The mechanics of consumer redress in the PRS sector;
 - The ability of the current regulatory regime to adapt to new and emerging services;
 - The effective application of regulation across the PRS value chain;

¹ Examples are set out in section 2.7.

² Relevant legislation in this respect includes the Obscene Publications Act 1959, the Protection of Children Act 1978, the Criminal Justice and Immigration Act 2008, and the Public Order Act 1986. In addition, the Independent Mobile Classification Body (IMCB) set a [Classification Framework](#) for commercial mobile picture-based content providers to self-classify their own content as 18 where appropriate. Where the content is classified as "18" under the Classification Framework its access will be restricted by the mobile operators until customers have verified their age as 18 or over with their operator. The PhonepayPlus Code of Practice contains reference (paragraph 7.11.7) to the Internet Content Rating Association (ICRA) in respect of Sexual Entertainment Services. K;

³ The detailed terms of reference can be found at <http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/tor/>.

- The feasibility of a service provider registration scheme and its benefits for regulation; and
- Any overlap between PhonepayPlus⁴ role and that of other regulators and consumer protection bodies.

Background

- 2.5 The last two major consultations regarding PRS were published in 1999 and 2004. The 1999 publication by Oftel⁵ looked at PRS and the justification for specific PRS regulation. In this publication, Oftel set out that the main reason for PRS regulation was the risk of disconnection from a landline. In 2004 we published a report for the Department of Trade and Industry (DTI)⁶, which was aimed at increasing the effectiveness of the PRS regulation following the dialler scams in 2004.
- 2.6 Significant changes have since taken place in the telecoms market in general and in PRS services in particular. New services have emerged where content is purchased and billed through a consumer's phone bill or prepay credit, or where a new form of payment mechanism is being used. Some of these new services use mobile platforms. As such, they may share some of the characteristics of PRS, and may lead to consumer harm.
- 2.7 Based on consumers' experience with PRS (through market research and complaints), we believe consumer harm currently arises in PRS. Consumer harm could arise when consumers pay higher prices, services are of lower quality and/or there is less innovation in the market because of the impact of some demand and supply features. Additional examples of situations when consumers may suffer from harm include cases when consumers:
- Suffer from inconvenience and wasted time, where consumers may have to deal with an obstructive or circuitous complaints process;
 - Experience an invasion of privacy (e.g. unauthorised marketing, charging of a service without the consumer's permission);
 - Suffer from loss of reputation or dignity (e.g. enticement to do something unlawful, receiving unsolicited adult services);
 - Access or receive content they perceive to be offensive or indecent; and
 - Suffer from anxiety or distress (e.g. certain unsolicited calls with a specific type of content).
- 2.8 We need to understand whether these new services could create the same risks for consumers as more established PRS, and what form of service specific regulation, if any, is appropriate. These services are referred to in this document as "new" PRS.

⁴ PhonepayPlus is the body responsible for the day to day regulation of PRS in the UK. Through their Code of Practice they regulate services in their entirety: their content, promotion and overall operation. Further information can be found at <http://www.phonepayplus.org.uk/output/default.aspx>.

⁵ This publication can be found at

<http://www.ofcom.org.uk/static/archive/Oftel/publications/1999/consumer/prem0899.htm>.

⁶ This document can be found at

http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/ntsprsditi/prs_review.pdf.

- 2.9 Therefore, in establishing from a *policy* point of view, the circumstances which create a need for PRS regulation, we need a framework which takes the relevant market changes into account and can be used as a reference point when assessing new PRS. By analysing PRS according to a number of characteristics, the framework we develop needs to be sufficiently flexible and adaptable to accommodate future changes in technology. The aim of the framework is to enable us to:
- Discuss new services when they emerge and understand whether they share the characteristics of PRS, from a policy perspective, and could lead to consumer harm;
 - Assess the existing legal framework and consider whether it accurately reflects the nature of PRS and the risks associated with PRS, and consider its suitability for the regulation of PRS in its current form; and
 - Look at whether the current regulatory regime in place for those new PRS could provide sufficient protection for consumers or whether additional or a modified form of regulation is needed.
- 2.10 We welcome stakeholder responses on all these issues. It should be noted that whilst a number of stakeholders are interested to find out the extent to which Ofcom considers certain services to fall within the current definition of PRS in section 120 of the Communications Act 2003 (“the Act”), at this stage, we are engaging in a policy debate about the characteristics of services, including new PRS, and their potential to cause consumer harm and are inviting responses to this consultation on this basis.
- 2.11 Following our publication of this framework and after consultation with stakeholders, some preliminary proposals could include:
- Revisions to the PRS Condition⁷ and specifically Controlled PRS, which may extend, or, alternatively withdraw regulation of (a) particular service(s), based on, amongst others, considerations of proportionality;
 - Recommendations to PhonepayPlus to amend their Code which may include proposals for sector specific guidance; and
 - Considering potential recommendations from Ofcom to BERR for changes to the legislative framework for PRS regulation if in our view, taking into account responses to this consultation, the current regulatory framework is not sufficiently robust or effective.
- 2.12 The overlap between PhonepayPlus and Ofcom has already been addressed, in December 2007⁸ when Ofcom published the new Framework Agreement between PhonepayPlus and Ofcom. The objective of that new framework was to strengthen consumer protection and clarify the existing regulatory arrangements for PRS. Under the Framework Agreement PhonepayPlus carries out the day-to-day regulation of the PRS market on Ofcom’s behalf. As set out in the opening paragraph of the

⁷ The PRS Condition regulates the provision, content, promotion and marketing of PRS. The application of the Condition is limited to ‘controlled’ PRS, so that only those services which have the potential to give rise to particular consumer harm are subject to our enforcement powers. The PRS Condition, which has been modified following the statement on 0871, is included in Annex 9 to this document.

⁸ More information can be found at <http://www.ofcom.org.uk/media/news/2007/12/nr20071205>.

Framework Agreement⁹, the ultimate responsibility for the overview and regulation of PRS lies with Ofcom.

2.13 The remainder of this document addresses the issues set out above as follows:

- In section 3 we give an overview of market developments, the changes that have taken place in the market over the past 8 years and what, in our view, the implications of these changes are for PRS;
- Section 4 contains an analytical framework of PRS and sets out, by looking at the characteristics of PRS and their value chain, how these characteristics could result in negative outcomes for consumers;
- In section 5 we apply the analytical framework developed in section 4 to a number of established and new PRS. We assess, based on the relevant characteristics, whether these services have the potential to cause consumer harm. Where available, we include examples based on evidence from PhonepayPlus' complaints data and market research related to these services and analyse whether the current regulatory regime is sufficient or whether additional or a modified form of regulation may be required; and
- In section 6 we consider a number of options aimed at improving aspects of the current regulatory framework including price transparency, consumer redress and the costs and the benefits of introducing a registration scheme for PRS Service Providers ('SPs') and/or Information Providers ('IPs').

⁹ The Framework Agreement can be found at <http://www.ofcom.org.uk/consult/condocs/phonepayplus/formalframework.pdf>.

Section 3

Market developments

Introduction

- 3.1 In this section we set out the reasons why we believe a review of the scope of PRS regulation is needed at this time. We give an overview of relevant market developments from early 2000 onwards and examine their impact on the PRS market.
- 3.2 As set out in section 2, Oftel (together with ICSTIS who re-branded to become PhonepayPlus in 2007) and Ofcom have consulted on and recommended major changes¹⁰ to the PRS regulatory regime on two previous occasions, in 1999 and in 2004. In the 1999 consultation, the primary issue with charging customers for higher priced (compared to the price of regular calls) services accessed over their phone by billing them on their telephone accounts was considered to be the lack of customer control over expenditure and, consequently, the risk of possible disconnection of their landline in case bills would not be paid.
- 3.3 In 2004, Ofcom published a report ('the 2004 report') setting out the findings of a review of the regulation of PRS in the UK, at the request of DTI (now the Department for Business, Enterprise & Regulatory Reform – BERR). This report was triggered by growing concerns over 'rogue' internet diallers, and covered matters such as the role and effectiveness of ICSTIS, and the constraints imposed by relevant EU and UK legislation, as well as the specific dialler issues¹¹. However, it did not set out reasons whether and/or why PRS regulation is required.

Changes in the market since 1999

- 3.4 Since publication of the 2004 report, the telecommunications market has continued to evolve. We consider the main changes, relevant for PRS, to be in the following areas (for the avoidance of doubt we do not consider this to be an exhaustive list of changes that have taken place in the market):
- i) A significant increase in mobile phone ownership and usage;
 - ii) An increase in the number of communication providers (including mobile virtual network operators ('MVNOs')); and
 - iii) An increase in the number ranges used for PRS, including new Directory Inquiry (DQ) Services.

Below we discuss these changes, and their implications for PRS.

¹⁰ There have been other PRS related publications, for instance regarding Amendments to the Code, the PhonepayPlus Budget and the Framework Agreement between Ofcom and PhonepayPlus.

¹¹ Internet diallers are a type of software which may be downloaded inadvertently by internet subscribers and which then generate calls to premium rate numbers.

Increase in mobile phone ownership and usage

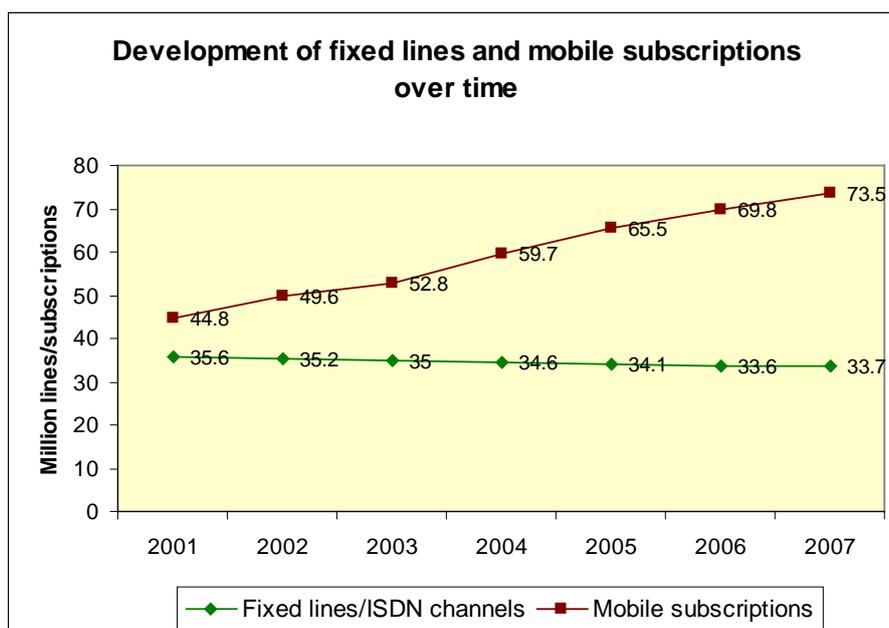
3.5 The most noticeable change has been the continued increase in mobile phone ownership and mobile traffic. This increase in mobile phone usage has had a significant impact on PRS, in particular in the following areas:

- a) An increase in mobile originated PRS traffic, where a consumer uses their mobile handset to call/text a PRS number/short code, and in mobile PRS services, which are PRS services specifically developed for mobile services and which only work on mobile devices, e.g. ringtone downloads;
- b) An increase in mobile ownership among children; and
- c) The types of PRS services generating complaints.

Below we first describe these changes in more detail before discussing their implications.

3.6 The increased penetration of mobile services is illustrated in Figure 1. From 2001 onwards the increase in the number of mobile subscriptions and the gradual decline or stabilisation in the number of fixed and ISDN access lines has continued.

Figure 1: Development of fixed lines and mobile subscriptions over time



Source: *The Communications Market Report 2008*¹².

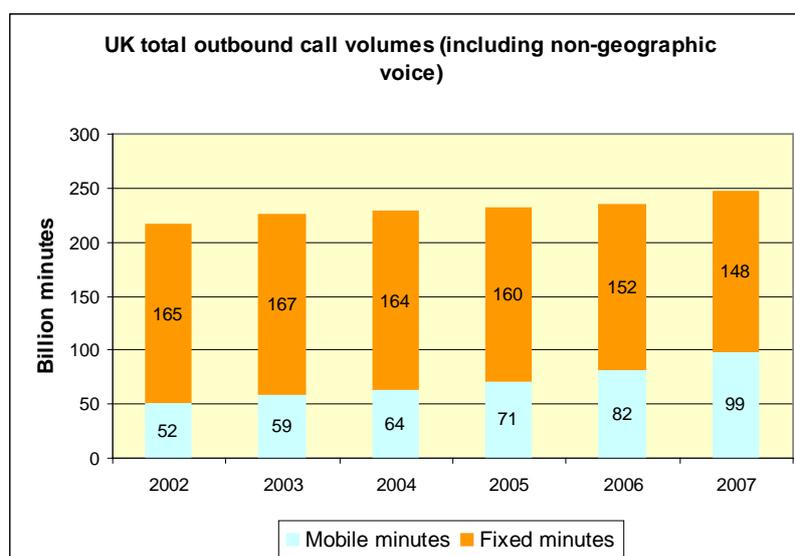
3.7 Research shows that mobile services are not only used when 'on the move'. Seventy percent¹³ of all customers who have a mobile phone and a fixed line use their mobile phone within the home, with mobile tariffs being the most important driver for this (inclusive bundles and mobile-to-mobile calls being cheaper than fixed-to-mobile calls).

¹² <http://www.ofcom.org.uk/research/cm/cmr08/telecoms/telecoms.pdf>.

¹³ Ibidem, section 5.1.3.

- 3.8 The number of mobile only households has steadily increased from 7% in 2002 to 11% in 2008¹⁴. Although 64% of mobile subscriptions are pay-as-you-go, the share of contract subscriptions has been steadily increasing over time, from 31% in 2003, to 36% in 2007¹⁵. This development is partly due to networks trying to migrate pay-as-you-go customers to monthly contracts by introducing low-value contracts, including SIM-only tariffs.
- 3.9 The same research¹⁶ shows that mobile tariffs have over time offered ever-increasing numbers of inclusive minutes and text messages. However, many types of calls, including so called special rate calls (starting with 0845, 0870 and 0871), PRS calls (starting with 09), personal numbers (starting with 070), and calls and SMS messages to mobile short codes¹⁷ (typically 4 or 5 digit numbers, starting with 5, 6 or 8 and only accessible from mobile phones) are not included in these baskets of inclusive minutes and texts.
- 3.10 A significant change in 2007 and 2008 has been the growth of 3G mobile modems, the so called 'dongles', which enable mobile users to access the internet by plugging a dongle in their laptop. In addition, prices for internet access on mobile phones and the launch of the iPhone have marked a change in usability of the internet via mobile devices as well as increasing the richness of the user experience in terms of images they can access on a mobile device.
- 3.11 The increase in the number of mobile subscriptions has led to a corresponding increase in mobile outgoing call volumes, as shown in Figure 2 below.

Figure 2: Development of outbound fixed and mobile call volumes



Source: *The Communications Market Report 2008*¹⁸.

¹⁴ Ibidem, section 5.1.3.

¹⁵ Ibidem, section 5.2.4.

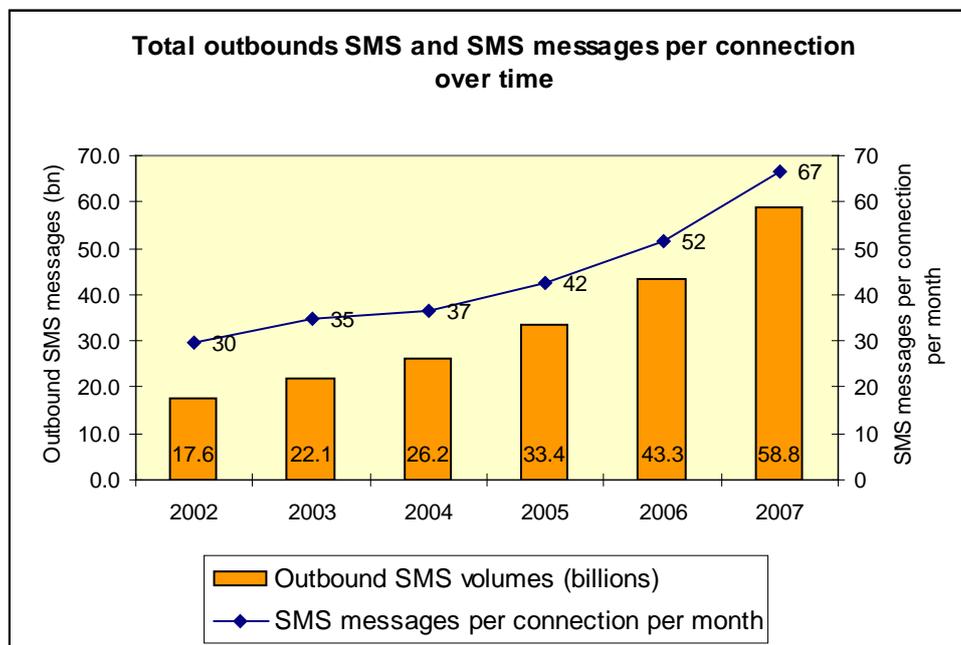
¹⁶ Ibidem, section 5.1.4.

¹⁷ Mobile short codes are collectively managed and provided by the mobile network operators. They have developed a Code of Practice setting out rules under the mobile short code scheme, which can be found at <http://www.short-codes.com/assets/Co-regulatoryCodeofPracticeforcommonshortcodes170206.pdf>.

¹⁸ Section 5.1.3.

3.12 Over the same time period, the total number of outbound SMS messages has increased significantly, as has the number of SMS messages sent per connection. As can be seen from Figure 3, from 2002 to 2007, the average number of SMS messages per month per mobile connection has more than doubled, from 30 in 2002 to 67 in 2007.

Figure 3: Development of outbound SMS messages over time

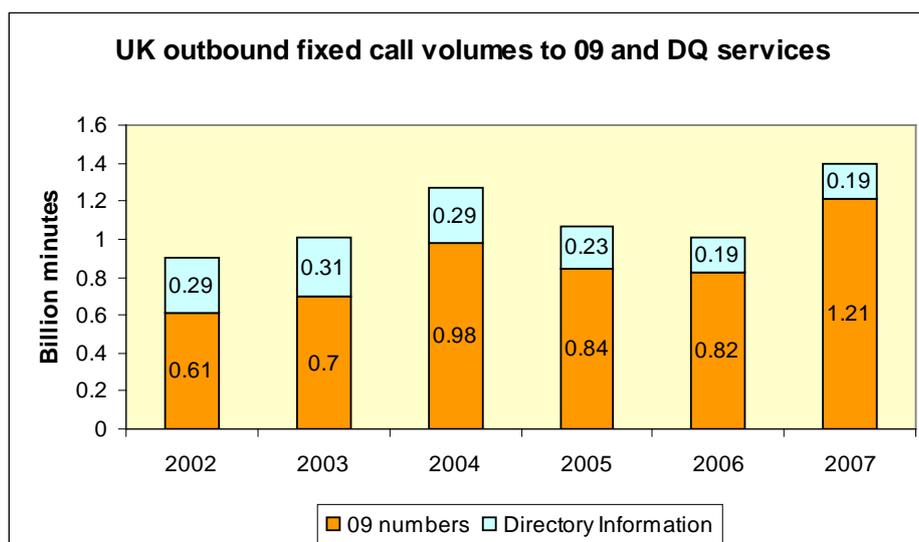


Source: Communications Market Report 2008¹⁹.

3.13 In order to assess whether this general growth in mobile ownership and usage is also reflected in an increase in PRS, or in the share of mobile originated PRS, we have analysed volume, outpayment, and revenue information from our own market research and from PhonepayPlus. Figure 4 provides an overview of the total development of minutes from fixed lines to 09 and Directory Information services from 2002 onwards.

Figure 4: UK outbound fixed call volumes to 09 and Directory Information services

¹⁹ Source: Communications Market report, section 5.1.7.



Source: Communications Market Report 2008

- 3.14 As can be seen from this table, total PRS volumes have fluctuated around the 1bn minutes mark from 2004 onwards.
- 3.15 Outpayment information provided by network operators to PhonepayPlus shows a strong increase in the share of mobile related out payments over the last year, and therefore in mobile PRS as can be seen in Figure 5 below.

Figure 5: PRS outpayment breakdown per operator type

Outpayments split per operator type	% 2006/7	% 2007/8
Fixed	64%	54%
Mobile	36%	46%
Total	100%	100%

Source: PhonepayPlus.

- 3.16 Whilst a part of 09 and Directory Information volumes will be generated by mobile devices, the main growth in mobile can be observed in mobile Premium SMS services. Information from PhonepayPlus shows that mobile Premium SMS services have grown in revenue from £96m in 2002 to £428m in 2007/8.
- 3.17 In parallel with the growth in mobile ownership and usage, as set out above, specific PRS have been developed for the mobile market. On fixed lines, as set out in a study commissioned by PhonepayPlus²⁰, PRS are primarily live or recorded voice information or content such as help or advice lines, chat lines and adult entertainment. Mobile devices are used for the same services as fixed lines, but in addition, are capable of receiving, storing and displaying text, images and video clips.
- 3.18 Examples include mobile phone personalisation services such as downloading ring tones, music, and wallpaper. Mobile gaming and participating in game shows and video services are other mobile specific PRS services. Mobile digital content can be easily accessed and purchased on the mobile network operators' ('MNOs') own portals or on third party websites.

²⁰ This research has been carried out by Analysys-Mason and can be found at http://www.phonepayplus.org.uk/pdfs_research/uk_phone_paid_services_market_200812.pdf.

- 3.19 Apart from the nature of the services, mobile also supports a greater range of payment mechanisms and pricing structures. Calls from landlines are typically charged based on a combination of duration (a tariff per minute) and a so called drop charge (a price per call). Mobile services can be billed in a similar way, but can also be billed per outgoing or incoming SMS message. Billing for incoming messages is called reverse billing and allows content providers to offer automatically renewable subscription services.
- 3.20 A new mobile payment mechanism called Payforit²¹ was introduced in 2006, allowing customers to buy digital content services and make other web transactions from mobile service providers' portals. Payforit allows a provider of digital content to contract with an accredited payment intermediary who in turn has contracts with all of the MNOs. The provider is then able to offer its services across all MNOs with the price being billed by the relevant MNO to its customer.
- 3.21 The growth in mobile originated PRS over the past years is also underpinned by the ICSTIS (now PhonepayPlus) Annual Reports. In 2000²², the report stated that:
- ‘The UK is now home to some 40 million mobile phone subscribers. With the delay in the arrival of WAP technology, ICSTIS is still to see any significant use of the premium rate mechanism for accessing Internet content on mobile phones. What ICSTIS has seen, however, are the first signs of premium rate service promotion by SMS.’
- 3.22 In 2004, the Internet dialler scams caused a significant degree of financial consumer harm and led to a huge number of complaints into ICSTIS. Information provided by ICSTIS indicates that the amounts involved in internet dialler complaints were typically between £50 and £100 per customer, although the sums were considerably greater in individual cases.
- 3.23 As well as the considerable increase in complaints in this category, 2004 was the first year where mobile PRS (such as games, ring tone downloads, online MP3 download and other SMS based services) started to generate substantial amounts of complaints to ICSTIS, as Figure 6 below shows.

Figure 6: Overview of complaints per service type

Types of service generating complaints	2004	2003
Online adult entertainment	39,341	4,575
Competition	4,500	6,070
Entertainment	3,418	3,676
Game	2,599	211
Ringtone / log download	2,204	908
Online MP3 download	1,713	0
Information	1,197	257
Other SMS based applications	675	669
International online	638	3
Fax	612	535

Source: ICSTIS Annual Report 2004-2005²³

²¹ More information on Payforit can be found at <http://www.payforituk.com/>.

²² This can be found at http://www.phonepayplus.org.uk/pdfs/Activity_2000.pdf.

²³ This can be found at <http://www.phonepayplus.org.uk/pdfs/ActivityReport0405.pdf>.

3.24 Over the last 3 years, the increase in mobile PRS revenues has led to a strong increase in the number of complaints related to mobile. Although total complaints declined in 2006/07, in 2007/08 mobile PRS generated almost 80% of total complaints into PhonepayPlus in 2007/8, as can be seen from Figure 7 below. This trend has continued in the period from April – December 2008, with mobile complaints into PhonepayPlus averaging around 2000 per month. Because of the high number of complaints, PhonepayPlus has put in place measures to address issues with mobile PRS services²⁴.

Figure 7: Development of complaints into PhonepayPlus per category

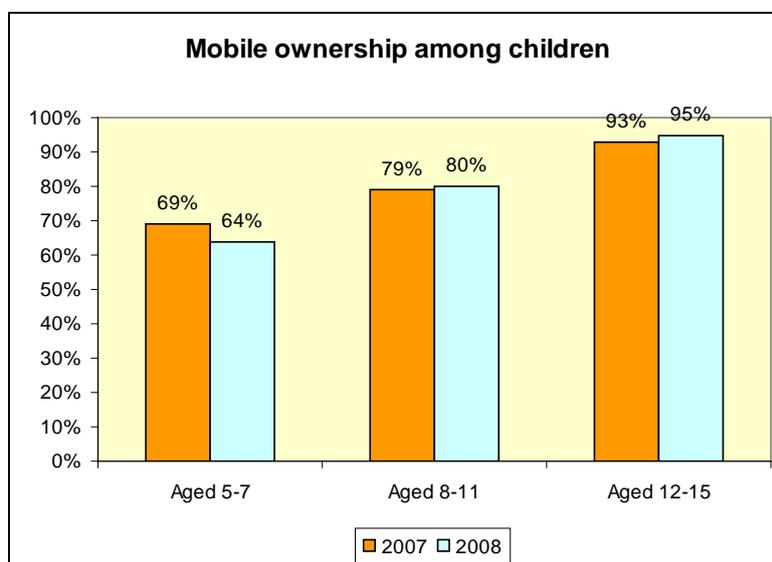
Complaints	2005/06	2006/7	2007/8
Mobile	8344	3853	8010
Landline	10413	4920	2208
DQ	61	57	41

Source: PhonepayPlus.

3.25 Related to the total increase in mobile ownership is mobile ownership among children. Media literacy research commissioned by Ofcom in 2008 shows that a majority of children over 8 years old own a mobile phone, as can be seen from Figure 8 below. Using a mobile phone to pay for certain services may be particularly attractive to children, who are not eligible to apply for or hold credit cards.

3.26 The study commissioned by PhonepayPlus gives an overview of the usage of PRS by age group²⁵. 47% of the 11-17 year age group reported to have used PRS over the past 6 months, which is very close to the average across all age groups. The 11-17 year age group has the highest proportion (14%) of respondents using premium rate game downloads to mobile and/or mobile internet gaming.

Figure 8: Mobile phone ownership among children



²⁴ The PhonepayPlus statement regarding the Mobile Review can be found at http://www.phonepayplus.org.uk/pdfs_consult/2009_Statement_on_Mobile_WhitePaper.pdf.

²⁵ As set out on page 11 of the Analysys-Mason study commissioned by PhonepayPlus.

Source: *Media literacy research 2008*²⁶.

- 3.27 The increase in mobile ownership and usage has a number of implications for PRS regulation.
- a) The primary issue regarding the risk of possible disconnection, as stated in the 1999 consultation, appears to be less of an issue for mobile users, especially since by the end of 2007 64% of mobile users²⁷ (approximately 48m) were on pay-as-you-go subscriptions (compared to 2.8m prepaid users by the end of 1998, according to information from Wireless Europe in 1999²⁸).
 - b) The fact that 64% of mobile users are pay-as-you-go customers gives rise to a different set of potential concerns. Pay-as-you-go customers are typically less aware as to how much they spend on a PRS. They do not receive a bill (although MNOs typically offer an online bill for their pay-as-you-go customers) and they are therefore generally less able to analyse their experience and learn from it.
 - c) In respect of advertising PRS tariffs, the tariff for PRS calls from a BT landline is typically stated in an advertisement for PRS. Tariff information for PRS calls from mobile networks in advertisements is only included in qualitative terms (“calls from mobiles may vary”, or “calls from mobile may cost considerably more”). An increase in mobile usage is therefore likely to have led to a decrease in overall price transparency in the PRS market (since BT’s market share has decreased and mobile PRS are not accessible to BT customers).
 - d) With the increase of mobile PRS services, the nature of PRS complaints have changed over time. As stated in the 1999 consultation, the type of PRS which caused problems then were ‘live’ services, especially chat lines. Currently, some 90% of complaints into PhonepayPlus are generated by mobile, and most of those complaints relate to mobile subscription and using the ‘STOP’ command, which is meant to instantly stop incoming PRS messages from the number the STOP-message is sent to but does not in all instances work.
 - e) Mobile operators offer call barring facilities to their customers to prevent them from accessing PRS, should consumers wish for this type of protection. The barring facilities offered differ between operators. All mobile operators offer call barring facilities to 09 numbers, some of them offering 09 barring facilities for different price bands. Mobile short codes were introduced in 2003. Although they are widely used for mobile PRS, most mobile operators do not offer call barring facilities for these short codes, although some are able to offer call barring for all incoming SMS messages, both PRS and non-PRS. In this respect, we believe that the level of protection available to customers has decreased over time since PRS are currently offered on various number ranges, not all of which can be barred by customers²⁹.
 - f) With the majority of children owning a mobile phone, specific issues regarding access to inappropriate and potentially offensive content to minors or children being targeted by services that are appealing to them could emerge. In addition,

²⁶ This can be found at

http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/ml_childrens08/.

²⁷ As stated in the Communications Market Report 2008 (page 320), which can be found at <http://www.ofcom.org.uk/research/cm/cmr08/telecoms/telecoms.pdf>.

²⁸ This information can be found at

http://www.telecomsportal.com/Assets_papers/Wireless/Intercar_prepaid.pdf.

²⁹ Further details can be found in sections 6.93 – 6.101.

children may be more easily misled as to the content and tariff, and terms and conditions of a service. Age verification and specific barring facilities could diminish the risk of these issues happening in certain circumstances.

The number of communication providers has increased

3.28 As shown in figure 9 below, the number of originating communication providers has increased over time³⁰. Regarding fixed line connections, BT's market share has continued to decrease over the past 5 years; the growth in other fixed providers is mainly in the wholesale line rental³¹, carrier pre-select³² and unbundled local loop³³ segments. This further diminishes the value to consumers of price messages for PRS which are linked to a BT price point.

Figure 9: Share of total UK fixed and mobile connections

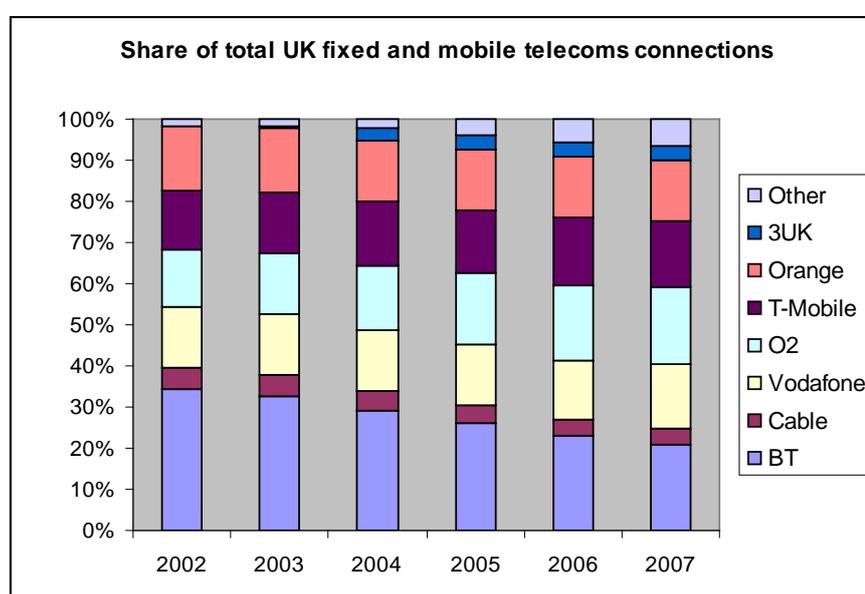


Figure 9: Includes estimates where Ofcom does not receive data from operators. 'Other' includes CPS, WLR, mobile ISP and MVNO subscribers in addition to fixed other licensed operators.

3.29 The mobile market has seen an increase in number of operators as well. In 2003, 3UK entered the market as the fifth mobile network operator. In addition, a number of MVNOs, such as Virgin, Fresh, Tesco and BT Mobile have entered the market. The combined growth in new fixed and mobile operators is reflected in the increase of share of the category 'other', from 1.6% in 2002 to almost 7% in 2007.

3.30 Since the consumer's communications provider (originating communications provider or OCP) determines the price for a PRS call from its network, the increase in the

³⁰ This information can be found in the Communications Market 2007, figure 5.20, http://www.ofcom.org.uk/research/cm/cmr08/cmr08_2.pdf.

³¹ Wholesale line rental is a regulated wholesale service provided by BT which allows other communications providers to offer telephone line access.

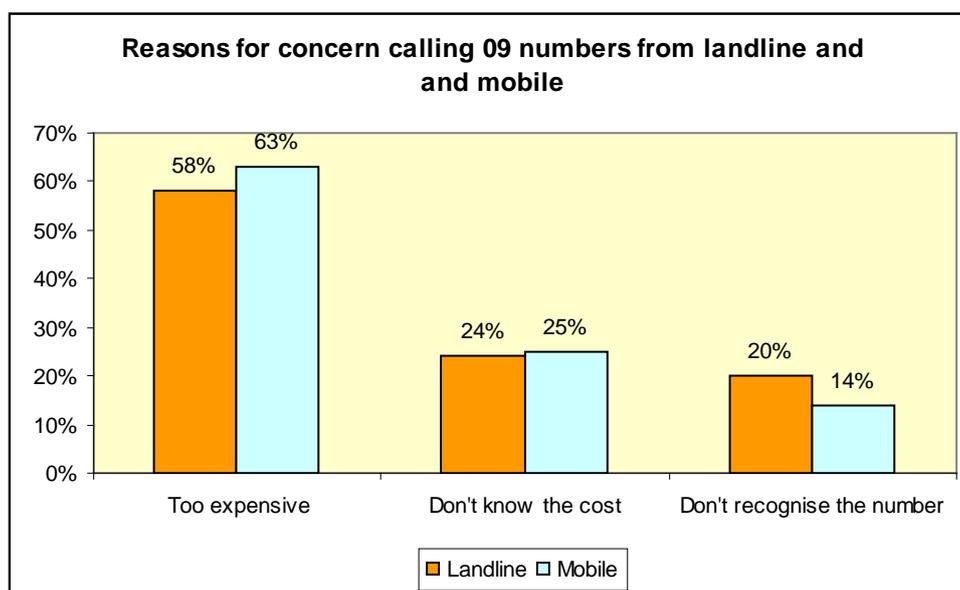
³² Carrier pre-select allows a retail customer to permanently select an alternative call provider rather than the default call provider, for either calls or specific call types.

³³ Unbundled local loop is the process by which the dominant provider's local loops are physically disconnected from its network and connected to another communications provider's network.

number of operators has led to an increase in the number of tariffs for the same PRS service. In addition, only BT's exact tariff to a PRS (and this is not the case for mobile short codes, since only mobile providers offer access to mobile short codes) is stated in advertising material. Since BT's share of the market has declined, fewer consumers will know the exact price of a PRS, and at the same time, because of the increase in number of OCPs, there is a greater variability in tariffs to the same PRS from different OCPs. We therefore consider price transparency has decreased over time.

- 3.31 Research regarding number and price transparency, commissioned by Ofcom in July 2008, showed that 76% cent of respondents think it is important to know the price of a call before dialling, and over a quarter think it is very important³⁴. Although there is some confusion around call costs in general – due to the vast range of different packages – the research showed that customers have a particular need for greater price transparency around the 08 / 09 number ranges.
- 3.32 The research also asked respondents about main reasons for concern about calling 09-numbers from landlines and mobiles. Their concern appeared to be overwhelmingly related to cost and cost is mentioned more frequently regarding calls from mobile compared to calls from a landline.
- 3.33 Lack of information about the cost of 09-numbers is mentioned by both landline and mobile respondents as second main concern. Figure 10 below gives an overview of the concerns set out above.

Figure 10: Main concerns when calling 09 numbers.



Source: *Futuresight Consumer Transparency in telephone numbering*

Increase in the number ranges used for PRS

- 3.34 Over time, there has been an increase in the number ranges used for PRS. In the 1999 consultation it was stated that by April 2001, all PRS numbers would start with 090. Currently, PRS can be found on many different number ranges:

³⁴ Futuresight Consumer transparency in telephone numbering.

- i) the 09 number range;
- ii) the 118 number range, which is used for directory information services;
- iii) mobile short codes, which are normally four or five digit numbers often starting with 5, 6 or 8, followed by a word. They can be used for mobile voice and SMS;
- iv) 070 prefixes, which are used for personal numbers also known as a 'find-me-anywhere' services. PhonepayPlus only regulates these numbers when they are not properly used as a personal number but as premium rate-style services and the cost of the call exceeds 10p per minute;³⁵ and
- v) 0871 numbers, which Ofcom recently decided to include as part of controlled PRS.

The increase in number ranges could lead to confusion among customers as to which number ranges are PRS and which tariffs belong to which number range, as indicated in Figure 9 above. As set out in more detail in section 6.30, internal Ofcom research showed that transparency is an issue across communications services. Furthermore, according to the Analysys Mason study commissioned by PhonepayPlus, on average, more than half of consumers say they have no trust at all or low trust in any given phone-paid service, and for most phone-paid services, between 15% and 25% of those not using the service state that lack of trust is one of the reasons for this. Accuracy of pricing information is the key factor that consumers most frequently say will help to improve trust.

Conclusion

- 3.35 As set out above, the telecoms market has changed significantly since Ofcom last consulted on the regulatory regime for PRS. We believe that because of these changes it is now appropriate to re-examine the basis and level of PRS regulation required:
- i) The original concern about running up high bills and the risk of disconnection of the landline has become less of an issue with increased mobile and especially prepaid usage. Increased mobile phone ownership among children also gives rise to specific issues about that group as potentially vulnerable consumers as well as raising specific issues about content they may be able to access and age verification;
 - ii) A general decrease in transparency can be observed in terms of PRS tariffs and the number ranges on which PRS can be provided; and
 - iii) A number of the new PRS number ranges cannot be barred by consumers.
- 3.36 In the next section, taking account of the market developments set out above, we look at the characteristics of PRS services and develop an analytical framework for PRS.

³⁵ Guidance on the acceptable use of personal numbers can be found at http://www.ofcom.org.uk/telecoms/ioi/numbers/num_070_guide#acc070.

Section 4

Analysis of PRS services

Introduction

- 4.1 The section sets out why we believe PRS regulation is required. PRS have been regulated since 1986 and the regulation of the services has evolved since that time to reflect the changing circumstances of the PRS industry, not least its continued growth and development (as outlined in Section 3).
- 4.2 We believe it is useful to have a good understanding of why regulation for PRS is appropriate and necessary. This is not only a matter of good policy but also helps to inform all stakeholders as to whether the current regulatory framework requires modification going forward, and if so, in which areas.
- 4.3 The current PRS regulatory framework is made up of three components:
- i) The Communications Act 2003 ('the Act'): the relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act³⁶.
 - ii) The PRS Condition (included in annex 9), which regulates the provision, content, promotion and marketing of PRS. The application of the Condition is limited to 'controlled' PRS, so that only those services which have the potential to give rise to particular consumer harm are subject to our enforcement powers.
 - iii) The PhonepayPlus Code of Practice³⁷: section 120 of the Act provides for approval by Ofcom of a code regulating the provision and contents of PRS. The current Code of Practice is the PhonepayPlus Code (amended) 11th Edition which was approved on 28 April 2008. The Code is supplemented by guidance in the form of Help Notes that are issued by PhonepayPlus from time to time.
- 4.4 Some features of PRS are likely to be important to explain why market failure may arise and lead to consumer harm. In sections 4.5 – 4.11 we discuss these features and how they could lead to consumer harm.
- 4.5 PRS could be seen as what economists call "experience goods". The main feature of this type of service is that the consumer only knows about the quality of the good as it is consumed and hence after it is purchased. Consumers, therefore, may lack information about the quality of the service they are purchasing. This may provide incentives for suppliers to behave opportunistically and exploit consumers' lack of information before purchase to charge high tariffs or deliver low quality, especially when consumers do not repeat purchases. The PRS industry is also one in which entry and exit can be fairly low cost and straightforward, so some suppliers might not be concerned about their trading reputation with consumers.
- 4.6 Typically, PRS are marketed to consumers as relatively easy and "impulse" purchases, such that consumers might not always undertake detailed scrutiny of the service being purchased. With the growth in ownership of mobile phones, the

³⁶ The Communications Act 2003 can be found at http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1.

³⁷ The Code of Practice can be found at <http://www.phonepayplus.org.uk/CodeOfPractice/default.asp>.

marketing of these services has become cheaper through the purchase and use of marketing lists which contain details of mobile phone users who have (according to the PRS supplier) opted in to receive further marketing promotions for similar good/services.

- 4.7 PRS are provided through a complex supply chain with a very large number of suppliers being active at different points in the supply chain. Crucially, it is very rarely the case that the supplier of the PRS is the party that bills the consumer for the purchase of the service. This has two important implications. First, because the retail price is set not by the PRS supplier but by the consumer's chosen telecommunication supplier, consumers typically cannot easily obtain precise pricing information. Second, when the consumer has a complaint, it is not always easy for them to identify who is responsible for the problem and how to obtain redress.
- 4.8 The supply side structure of the market and the nature of PRS can produce outcomes that are not always be in the interests of PRS consumers or the PRS industry generally. For example:
- Communication providers who offer consumers access to a PRS may not always provide them with sufficient information about the price of the service. In addition, the supply structure of the industry can make it difficult to communicate to consumers the price of a particular PRS, when the PRS supplier is not able to set a uniform price for that service;
 - The fact that PRS are experience goods may also mean that there is some scope for opportunistic behaviour by PRS suppliers:
 - At the extreme it has been possible for some PRS suppliers to act fraudulently. There have been a number of high profile PRS 'scams' (e.g. the use of Internet diallers to generate PRS calls from consumers' computers), which have undermined confidence in the industry;
 - More generally, it is possible that opportunistic behaviour by PRS suppliers leads to some PRS suppliers providing lower quality or higher price services. Although this could be to a supplier's short term benefit, it can be to the detriment of the overall industry, as discussed further below.
 - Because there is scope for consumers to be dissatisfied with a PRS, it is particularly important that redress mechanisms are effective. However, because the PRS supplier may not be very visible to the customer, it will not be straightforward for the consumer to know from whom and/ or how to seek redress.
- 4.9 Another way to look at PRS is to think of them as an aftermarket. This refers to any market where a customer who purchases one product or service (primary market) is likely to purchase a related, follow-on product from the same provider (aftermarket). Classical examples are the market for photocopiers and post sale photocopier maintenance services. Once a particular photocopier brand is purchased consumers in many cases have to purchase maintenance services from the same supplier. In terms of PRS, the primary market for consumers would be the subscription to their mobile or fixed communications provider. PRS could then be considered to be an aftermarket, in the sense that in order to buy PRS services consumers have to purchase them from their communications provider. Consumers may not be taking into account the cost of PRS services when subscribing to their communications provider(s). After entering into a contract with their communications providers,

consumers can only access PRS from their chosen fixed or mobile communications provider. In the event that consumers are reluctant to switch suppliers (e.g. because of inertia or switching costs), there could be incentives for communications providers to charge high prices for PRS. However, to the extent that there is competition in the primary market, communications providers are likely to dissipate any extra profits earned in the aftermarket in the primary market.

4.10 Because of the matters set out in section 4.8, over time it has been necessary to develop a PRS specific regulatory regime that limits the scope for opportunistic behaviour and supports the long-term growth and future of the industry while ensuring there are sufficient safeguards in place to protect consumers from harm.

4.11 As discussed in section 3, in the last few years, very significant changes have taken place in the PRS sector, requiring Ofcom to look at PRS regulation again:

- The number of communications providers has increased, meaning there can be significant differences in the price charged for the same PRS;
- An increase in the number ranges used to provide PRS, which can result in less clarity for consumers as to whether a service is labelled as PRS and can be charged accordingly; and
- The continued increase in mobile phone ownership and usage (including by children), which has been reflected in an increase in the use of PRS accessed from mobile phones and the development of specific mobile PRS.

4.12 These developments have provided benefits to consumers in the form of:

- An increasing ability to access PRS from fixed and mobile phones; and
- An increase in the range of PRS services offered.

At the same time, however, these developments have typically increased the complexity and fragmentation of the PRS industry and, hence, raise challenges to ensure the continuing effectiveness of PRS regulation.

4.13 As set out in section 2, the rationale for having specific PRS regulation is to target and prevent consumer harm in respect of those services, which, based on their characteristics, could give rise to a particular type of risk for consumers and which are not effectively covered by other existing means of consumer protection.

4.14 It is essential that in order to target consumer harm effectively, Ofcom has a clear analytical framework for assessing which services could give rise to a particular risk and are currently not effectively covered by other means of protection, and, based on that, determine what service specific regulation (if any) is required.

4.15 This section is organised as follows:

- i) We first describe the PRS supply chain, outlining the differences between the fixed and mobile supply chains. It is important to understand the supply-side characteristics of the market, particularly if they can give rise to potential opportunistic behaviour by suppliers and difficulties for consumers to seek and obtain redress;

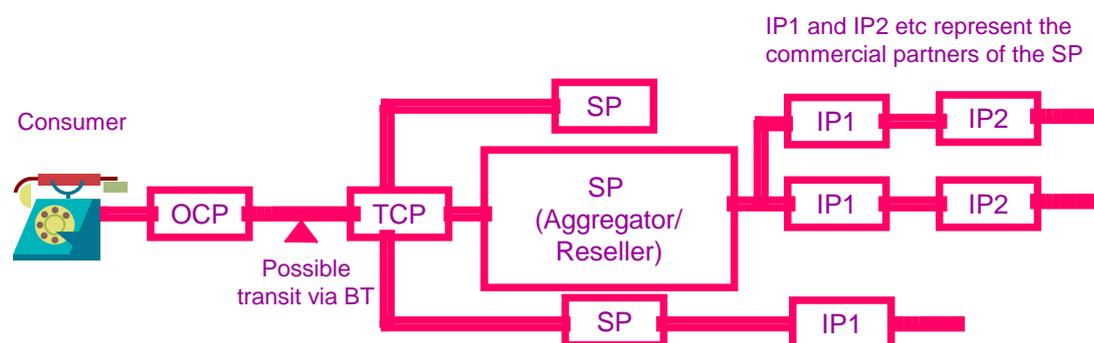
- ii) We then identify some demand side characteristics that are common to many PRS, which reflect, at least in part, the manner in which the services are supplied to consumers;
- iii) We subsequently look at the risks to consumers from those services that meet (a number of) the characteristics above; and
- iv) Finally, we consider whether, notwithstanding the PRS regulation in place, there may be still areas where consumer harm may emerge. This in turn identifies areas where the current regulatory framework may need some modification.

The PRS supply chain

4.16 There are typically a number of different parties involved in the supply of any particular PRS. Below we illustrate the supply chains of two different types of PRS, a 09 service³⁸ and a mobile short code service, to give an indication of the complexity of the supply chain.

4.17 Figure 11 illustrates the parties and relationships between the parties involved in the provision of a 09 PRS in the case of a call originating from a fixed line³⁹. The 09 service could be accessed either from a fixed or a mobile phone and the value chain would still look much the same:

Figure 11: The parties involved in the provision of a 09 PRS



4.18 The various parties identified in Figure 11 are as follows:

- *Originating Communications Provider (OCP)*: the OCP is the consumer’s communications provider offering the consumer access to the PRS. For many PRS a consumer accesses the service in the same way that he or she dials any other telephone number⁴⁰. The OCP has to have a connection between its network and the network of the Terminating Communications Provider (TCP) which is chosen by the PRS Service Provider (SP, see description below). However, the OCP will not necessarily have a direct commercial relationship with

³⁸Although the discussion here is of the 09 value chain, similar considerations apply in relation to the 0871 value chain. See paragraphs 3.3-3.5 of the report *Implications of Regulatory Changes in the 0871 Market* (17 April 2007) prepared by Analysys for PhonepayPlus, for a discussion of the 0871 value chain.

³⁹This should be viewed as a general representation rather than capturing all possible different variations on the 09 value chain.

⁴⁰PRS can also be accessed via the Internet and interactive TV can also use PRS.

the TCP but rather it could connect to the TCP through a transit communications provider such as BT. It is difficult to make precise estimates of the number of suppliers operating at each level of the value chain⁴¹, but there are likely to be a few hundred OCPs⁴². In practical terms, however, the top 10 OCPs by market share will provide service to the vast majority of residential consumers as can be seen from Figure 9 in Section 3 above.

- *Terminating Communications Provider (TCP)*: the TCP provides the necessary network facilities to terminate the call on behalf of the Service Provider (SP). It is the TCP that has the commercial relationship with the SP and with whom the revenue from the cost of the call is shared. Currently, there are a large number of TCPs that specialise solely in providing PRS termination services. It is the case, however, that a company operating as a TCP might also operate as a SP providing, for example, the service platform. According to information from PhonepayPlus, there are estimated to be around 60-70 TCPs actively involved in providing PRS services⁴³.
- *Service Provider (SP)*: the SP's role can cover a range of different functions, including the provision of the PRS content itself, the packaging and promotion of the service and the provision of the service platform. Often, however, the SP role is limited only to providing the service platform and packaging of the content. Again, it is common for suppliers to operate only at the SP level. As was highlighted in a report by Ofcom to the DTI on PRS⁴⁴, barriers to entry are relatively low requiring only modest investment in a technical interface with TCPs. There are estimated to be in excess of 3,000 SPs and Information Providers (IPs) (see immediately below).⁴⁵
- *Information provider (IP)*: the IP sits upstream of the SP in the value chain, although it may be the case that the same company acts as both the SP and IP. The role of the IP will typically be to act as a service promoter and/or as a content provider. Barriers to entry are low and are largely limited to creative content production costs and the costs involved in marketing a service. As noted above, there are estimated to be more than 3,000 IPs and SPs. There can also be other companies upstream of the IP to whom the IP contracts in order to support them in promoting and developing the content. These can include marketing agencies, IT suppliers, fulfilment agencies and contact centre providers for outsourced customer care management.

4.19 It is rare for a consumer's OCP to fulfil each of the roles in the value chain in providing a PRS. Based on an analysis of the PRS supply chain, it is far more likely that a PRS will be provided by a number of different suppliers combining together so that the consumer is able to access the service through their own OCP.

4.20 It is the OCP that is responsible for charging the consumer for the PRS. The OCP retains a small proportion of the money collected from their customer and then passes on the balance to the TCP (or very often to the transit operator that would

⁴¹ The UK does not have a licensing regime, so there is no central registration of suppliers operating in the telecommunications market.

⁴² The Regulation of Premium Rate Services- an Ofcom Report for DTI, 9 December 2004, paragraph 3.8.

⁴³ PhonepayPlus had 67 funding network operators (i.e. TCPs) in 2006/7 and 62 in 2007/8.

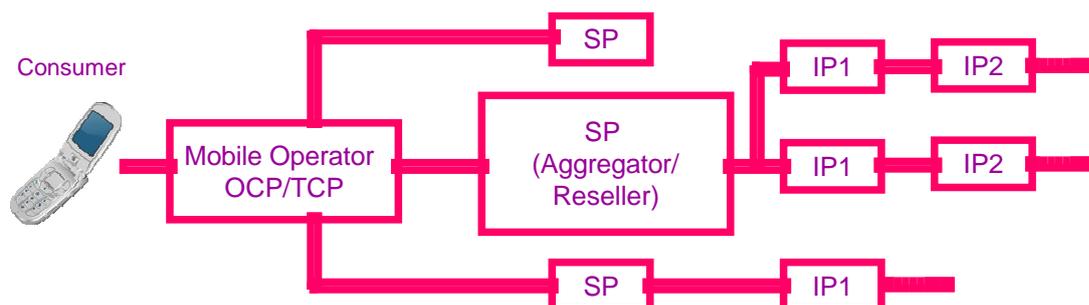
⁴⁴ *The Regulation of Premium Rate Services- an Ofcom Report for DTI*, 9 December 2004, paragraph 5.3.

⁴⁵ *Ibidem*, paragraph 3.8.

also retain a small proportion and then pass the remainder on to the TCP). Again a proportion is retained by the TCP with the remainder being passed on to the SP. The SP shares the balance with any other parties involved in the provision of the service, which often includes one or more IPs⁴⁶.

- 4.21 The situation is slightly different for PRS accessed through mobile short codes. As shown in Figure 12 below, the main significant difference from the 09 supply chains is that the mobile operator acts as both OCP and TCP.

Figure 12: The parties involved in the provision of a mobile PRS



- 4.22 Drawing out the key elements of the above the PRS supply chain can be characterised in the following way:
- The consumer's OCP is typically not the actual supplier of the PRS which is the SP;
 - There is generally a complex, fragmented value chain compared to making a standard voice call or sending a standard SMS;
 - There are large numbers of suppliers operating at different levels in the chain; and
 - Barriers to entry and exit are relatively low at the IP level, meaning there is the potential for significant turnover of suppliers in the market. By contrast barriers for SPs offering mobile PRS are higher than in the fixed line model because such SPs need to technically connect to each of the OCPs in order to provide a full service to their IP client.
- 4.23 In these circumstances, two particular concerns can arise. Firstly, the implication of the complex value chain and the high number and easy entry and exit of IPs, combined with rapid technological change means that suppliers tend to be less concerned with maintaining a favourable reputation. This can incentivise opportunistic behaviour towards consumers and other suppliers in the supply chain.
- 4.24 Secondly, the fact that a consumer's communications provider sets the retail price of a PRS rather than the supplier of the service gives rise to the possibility that the same PRS will be sold at different prices by different communications providers

⁴⁶ More information regarding the amounts retained and passed on by the players in the fixed and mobile PRS supply chains can be found in Figures 3.7 and 3.8 of the Analysys-Mason report, at http://www.phonepayplus.org.uk/pdfs_research/uk_phone_paid_services_market_200812.pdf.

(except for mobile short codes, where all mobile OCPs offer the same price for the same short code). This poses a challenge for SPs and IPs in their marketing to consumers in ensuring that each consumer is aware of the price that they will be charged for the service. In addition, as set out in section 4.9 above, communications providers may have an incentive to increase prices for PRS.

- 4.25 Similarly, the consumer may not be able to easily identify the supplier of the service in the event that problems arise. Examples of such problems are set out in paragraphs 4.62 – 4.71 below.

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?

The distinctive demand-side characteristics of PRS

- 4.26 On the demand side, there are some distinctive characteristics of PRS compared to other communications services. In this subsection we identify certain characteristics that are common to PRS, though this is not to suggest that each PRS will have the full set of the identified characteristics, e.g. not all PRS have an appeal to children. Please note that where we use the term PRS in the sections below, we do not refer to the PRS definition as set out in section 120 in the Act, but to a type of service with a common set of characteristics. We believe that by describing PRS services according to a set of characteristics, we develop the basis for a forward looking framework.
- 4.27 **Experience goods:** PRS can be seen as experience goods: consumers are only able to ascertain the quality of a PRS at the point at which it is consumed. Consumers may, therefore, not be able to make choices based on full information⁴⁷. Furthermore, if reputation is not very important PRS suppliers may have incentives to provide low quality or high price services as the consequences of doing so may not impact upon them - for example if consumers rarely repeatedly purchase a particular PRS and consumers are not aware which supplier is offering the PRS. . Services such as digital content, are typically “consumed upon purchase”, which means that they are exempt from some provisions of the Consumer Protection (Distance Selling) Regulations 2000 in respect of the right to cancel⁴⁸.
- 4.28 **Bill-supply separation:** Consumers access and pay for PRS via their fixed or mobile OCP but the service is likely to be supplied by a third party, an SP, along with an IP. Consumers may not always be aware of the identity of the SP and/or IP, and the identity of the SP and/or IP might not be visible to the OCP either, as the number of parties involved in the provision of a PRS can be extensive, and there are not always direct commercial relationships between all parties involved in the supply of a PRS. If consumers are dissatisfied with any aspect of the service (promotion, quality of service charge), they might encounter difficulty finding and contacting the party who is responsible for the part of the service with which they are dissatisfied⁴⁹. Furthermore, suppliers could exploit the complexity of the supply chain to shift the responsibility to other SPs and/or IPs further down the supply chain and avoid responsibility for resolving consumer complaints. This would affect a consumer’s ability to obtain information or advice, to identify the right party to complain to and

⁴⁷ Although consumers could be familiar with the price through repetitive use or based on information from third parties (e.g. friends, relatives, websites).

⁴⁸ Regulation 13 - Exception to the right to cancel; paragraph (1)(c).

⁴⁹ PhonepayPlus operates a PRS number checker, which can be used by consumers trying to identify the supplier of a PRS. In 2007-8 the number checker received over one million hits.

ultimately to seek redress. Consumers may not be able to seek redress from their OCP, as they are not usually the direct provider of the PRS in issue. This means that customers would not have access to Alternative Dispute Resolution schemes.

- 4.29 **Communications provider billed:** PRS are paid for via the consumer's OCP's bill (or via pay-as-you-go credit), which means that the total charges for the service will only become apparent after the event, and if the consumer receives an itemised bill that clearly identifies individual PRS. This is not the case for all consumers. Those consumers accessing a PRS through a pay-as-you-go mobile phone may find it even more difficult to identify charges for PRS. Similarly, the identification of charges for the service can be difficult for contract customers who do not receive a fully itemised bill which could require payment of extra charges or where there are barriers to overcome in order in accessing the bill, e.g. when the bill is only available electronically. Therefore, some consumers may never be fully aware of the charges incurred for a particular service. Since PRS prices vary by SP and also by OCP, often consumers do not know the price prior and even post purchase.
- 4.30 **Relatively low expenditure per transaction:** The services provided are often of relatively low expenditure for a single transaction. For example a call to a particular horoscope service may be charged at around 60 pence per minute and a call to a TV shopping channel may be charged at around £1.50 per call. Although these prices are higher than the price of most ordinary telephone calls, they are still relatively low compared to many other purchases that a consumer may make. Therefore, consumers may only invest a limited amount of time and effort to assess the purchase of a particular PRS and may not consider it worthwhile to "shop around" to identify the merits of different services, particularly if they use them infrequently. Equally, consumers may not consider it worth the effort to make a complaint about an individual PRS if they were not satisfied with the service. Should the consumer make a complaint, they may not be very likely to pursue it to its conclusion.
- 4.31 **Impulse purchase with an easy sales process:** Many PRS are marketed to promote impulse purchases by consumers, for example, mobile phone ring tones can be marketed as fun, "must have" services and similarly, television viewers are encouraged to take part by voting for a favourite act. Furthermore, consumers will find PRS a simple means of purchasing a service because of the absence of an authentication process. This makes it easy to purchase a service. For example, if a consumer had to use a credit card to vote on a TV programme, providing their credit card details, security code and billing details, they may not take the effort to do so. The simplicity of the sales process could result again in consumers not making the effort to check and understand the charges that they will face for a PRS when making such an impulse purchase.
- 4.32 **Inappropriate or offensive content:** Some services provide content that may be considered offensive to a wider audience, including minors. Consumers could inadvertently access content that they would find offensive. Similarly, children could gain access to content not deemed appropriate for their age, such as sexually explicit adult services.
- 4.33 **Appeal to children:** A significant segment, though certainly not all of the PRS presently offered, are marketed to or may appeal to children⁵⁰. Ring tones and

⁵⁰ PhonepayPlus commissioned market research for its recent review of mobile phone-paid services. In discussing that research it noted that: "children are more likely to use phone-paid services than adults in each socio-economic group" - Mobile phone-paid services and their Marketing, PhonepayPlus, July 2008, paragraph 3.2.

games, for example, are particularly popular with younger consumers. The high level of mobile ownership by children (as set out in section 3) has resulted in greater access to PRS and as a segment children now make up a significant part of consumers of the market for certain PRS⁵¹. Furthermore, children are unlikely to use a credit card to make certain purchases, which is why the payment mechanism for PRS may be attractive to them. Children may be more likely to enter into impulse purchases without being sufficiently well informed or capable of making informed decisions about the purchase of a PRS, and may be more susceptible to scams and misleading advertising. All of the issues outlined above about purchasing decisions would be exacerbated by these features.

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?

- 4.34 The next section examines how the combination of these characteristics could lead to consumer harm.

Consumer harm from insufficient or ineffective regulation

- 4.35 Consumer harm could arise when consumers pay higher prices, services are of lower quality and/or there is less innovation in the market because of the impact of some demand and supply features. This may arise because of market failure⁵² either on the demand or the supply side, but also if there is regulatory failure⁵³ – for example, it is particularly important that PRS users have access to an effective way of redress if things go wrong.
- 4.36 In addition, unchecked or unintentional access to all types of content may also cause harm in the form of inadvertent access to inappropriate or offensive content. Although this would also constitute an example of consumer harm, it is generally treated under a different legal standard (“harm and offence” and “taste and decency”).
- 4.37 If PRS specific regulation was not fully effective consumer harm may arise in a number of ways and for a number of reasons. As set out before, the retail price of each PRS may vary by OCP. The SP often has limited ability to communicate the precise price of its PRS. If SPs did not include sufficient price information in their advertising, PRS consumers would be unable to make a decision on the basis of price information.
- 4.38 As discussed further below, consumers may suffer from harm when they lack price information. They may be deterred from making calls if they expect the price to be higher than what it is or they may make the call when on the basis of price information they would have not made it – e.g. because the price which they discover only later was too high.

⁵¹ As set out in more detail on page 11 of the Analysys-Mason report commissioned by PhonepayPlus.

⁵² Market failure arises when the market left on its own devices will not lead to the best outcome for consumers and suppliers. This could be the case, for example, when some suppliers may have market power, when there is imperfect information or in the presence of externalities. In the case of PRS there is a concern that consumers may have to decide on the basis of incomplete information.

⁵³ Regulatory failure arises when public intervention is unwarranted, or even when appropriate, it is subject to errors that significantly reduce its benefits.

- 4.39 In addition, the limited price information available to consumers (except for BT consumers regarding fixed PRS) may provide incentives for all OCPs to raise their prices. This is discussed further below (and also in Annex 9). The incentive of each OCP to increase their price stems from the fact that consumers decide whether or not to purchase a PRS on the basis of their expected average price. This means that if an OCP increases its price, the average price for a particular PRS will only marginally increase. As consumers respond to the average price this will have a limited effect on the overall demand for PRS. For each OCP an increase in price will trigger only a small decrease in sales and, hence, it may be a very profitable action. However, when all OCPs act in a similar way the average price of PRS will increase.
- 4.40 Since PRS are experience goods, as set out before, consumers may also not have information about the precise quality of the service at the time of the purchase. This raises issues similar to the ones identified under lack of price information. For example, consumers may have not bought a PRS had they known what the quality was⁵⁴.
- 4.41 The lack of information is likely to have implications on both the demand and supply side.
- 4.42 On the demand side, because PRS are experience goods, PRS consumers may need to seek redress more often than for other type of communications services. However, the complexity of the value chain could make it difficult for consumers to identify the supplier of PRS and in particular who in the supply chain is responsible for the cause of complaint. Furthermore, even if there was a clear process to make a complaint – for example through other consumer protection mechanisms - the low expenditure per transaction and, therefore, the limited extent of harm per transaction could discourage consumers to seek redress. This does not mean that the total amount of harm will be limited; although level the harm could be small for each transaction on average, given the large number of PRS transactions, it may be substantial overall.
- 4.43 On the supply side, the combination of difficulties in redress and experience good could provide incentives for certain PRS suppliers to either provide low quality and/or high price services to consumers or, at the extreme, engage in scams and fraudulent services.
- 4.44 In addition, the combination of these effects may have important dynamic effects that could increase the potential for consumer harm in the long run. In the absence of specific PRS regulation, the inability of SPs to effectively communicate precise price information to consumers could provide incentives to some OCPs to increase their prices. If redress is costly and ineffective, consumers may be discouraged from using PRS. We consider this to be a concern. Market research by Fathom for PhonepayPlus asked consumers about the reasons for not purchasing PRS⁵⁵. It was found that 26% of those questioned chose not to use PRS because they did not trust them and a further 10% said that it was due to uncertainty about the costs of using PRS.
- 4.45 If PRS specific regulation was not fully effective, a “vicious circle” may arise. The risk is that in such a situation there could be incentives for SPs and IPs to engage in

⁵⁴ We abstract here from the fact that there may be factors that may mitigate the lack of information – e.g. friends the consumer trust may have suggested the service or consumers may have purchased from that provider before.

⁵⁵ Phone-paid Services: Today and Tomorrow, Fathom, 2007.

frauds or scams. Less extremely, OCPs may have incentives to increase prices in the absence of price information easily available to consumers. Lastly, because of the experience good nature of PRS, SPs and IPs may have incentives to provide lower quality services. As a result, low quality (in the extreme case, fraudsters) and high price suppliers may crowd out good quality SPs and IPs. As a consequence, consumers could become more and more reluctant to use PRS. This could lead to a vicious circle which would prevent both SPs and consumers from benefiting from a viable PRS sector.

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

The potential and current consumer harm with PRS regulation

4.46 We believe that the current PRS regulation has provided benefits to both consumers and suppliers. Examples of some of the PRS rules in place (through the PhonepayPlus Code of Practice) and how they mitigate the potential for consumer harm are set out below:

- The 30 day rule, where TCPs are required to withhold payment to SPs for 30 days significantly reduces the opportunity for SPs to engage in scams and fraud. Scams and fraud are likely to be detected by consumers or TCPs within a 30 day time period and this rule therefore acts as a deterrent for those providers inclined to engage in scams and fraud;
- Requirements on pricing information mean that consumers are informed to a certain extent about the price of a PRS; and
- The prior permission regime, where certain categories of services, which are deemed to have a potential for consumer harm, can only be provided with written prior permission from PhonepayPlus.

4.47 However, given the market developments examined in section 3, we also currently believe, subject to a consideration of the responses to this consultation, that there may be potential scope for adjusting the current PRS framework. The critical question for Ofcom, PhonepayPlus, consumers and the industry is whether there still is the potential for and /or evidence of consumer harm under the current regulatory framework. We examine this in the next sections. In section 6, we discuss a number of proposals to improve the current regulatory PRS framework, to be considered further in the light of responses to this consultation from stakeholders.

4.48 Figure 13 provides an overview of PRS complaints numbers into PhonepayPlus over the past three years.

Figure 13: Complaints to PhonepayPlus per main PRS category

	2005/6	2006/7	2007/8
Landline:			
complaints	10,413	4,920	2,208
% of total complaints	55.3	55.7	21.5
Mobile:			
complaints	8,344	3,853	8,010
% of total complaints	44.3	43.6	78.1
Directory Enquiries:			
complaints	61	57	41
% of total complaints	0.3	0.6	0.4
Total:	18,818	8,830	10,259

Source: 'A Question of Trust – PhonepayPlus Annual Report 2007-8'.

4.49 Based on PhonepayPlus data it is clear there are still a significant number of complaints regarding PRS. The overall number of complaints shows a significant decline from 2005/06 to 2006/07, but an increase from 2006/07 to 2007/8⁵⁶.

- Complaints in relation to landline services (excluding Directory Enquiries) have fallen in each of the last three years.
- Directory Enquiries attract very few complaints.
- It is the increase in complaints about mobile originated PRS over 2007/8 that is the most significant feature in the data presented in Figure 13. The number of mobile related complaints shows a strong decrease in 2006/7 following a high profile mobile PRS scam which led to mobile networks putting in place measures to tackle the issues and PhonepayPlus issuing new guidance. Over 2007/8, the mobile PRS market grew substantially compared to 2006/7, and the number of complaints increased significantly. We are concerned that in a rapidly growing mobile PRS market there is the potential for substantial consumer harm. Recognising this concern, PhonepayPlus published a review and statement entitled *Mobile phone-paid services and their Marketing* in July 2008 and January 2009 and put in place measures to tackle mobile related PRS issues.

⁵⁶ It is also important to recognise that the number of complaints received by PhonepayPlus could be a significant understatement of the actual number of problems encountered by consumers. A recent OFT report *Research on impact of mass marketed scams* (December 2006) noted that less than five per cent of victims of a scam had reported the problem to the relevant authorities.

Areas where there may be still consumer harm

4.50 Despite the presence of PRS regulation we believe that it is appropriate to examine whether there are still some areas of consumer harm. We focus on whether consumers may:

- i) lack sufficient (price) information;
- ii) not have sufficient incentives to seek redress and lack an effective means of redress; and
- iii) be exposed to offensive or inappropriate content.

i) Lack of complete price information

4.51 When consumers are not able to make informed purchase decisions it can result in consumer harm. For example, because the PRS is an experience good that is purchased remotely, the consumer might not be able to verify the precise features of the service at the time of purchase, making comparisons difficult. Furthermore, given that PRS can offer instant gratification, typically involve a relatively small expenditure compared to other purchases consumers make and that they provide an easy validation method of buying a service, the consumer may be less likely to carefully scrutinise the feature of the service they are purchasing.

4.52 There are a number of areas where consumers may lack important information at the point of sale. In this section we focus on the consumer harm that may arise from lack of or incomplete price information. Incomplete information other than price is discussed in the section on redress, in sections 4.62 – 4.71 below.

4.53 There are a number of potential issues concerning PRS consumers having to make choices under imperfect or incomplete price information. In practice most PRS advertisements only contain tariff information for calls from BT fixed line consumers, sometimes combined with a statement that calls on mobiles and other networks may vary. The tariff paid by consumers from non-BT OCPs can vary significantly from the advertised BT charge. This is particularly the case for calls from mobiles where tariffs are always higher than the advertised BT rate⁵⁷. An indication of the range of prices is given in Figure 14 below.

4.54 Consumers have two possible routes to find price information on each PRS. They can rely on the advertisement containing the PRS. However, as set out above, price information included in advertising is typically are limited to providing prices for calls for BT users and sometimes indicating that prices from other OCPs may vary. Alternatively, OCPs have an obligation to publish their tariffs including those for PRS. However, this is unlikely to be an effective way for consumers to obtain price information as it can be time consuming to go through OCPs' websites searching for PRS tariff information, especially in the light of the low expenditure involved in most PRS.

4.55 For each PRS the published tariff from non-BT OCPs can vary significantly from the advertised BT charge. An illustration of the possible range of prices is given in Figure 14 below.

⁵⁷ There may also be supplementary charging from reverse-billed SMS and some "hidden" data charges.

Figure 14: Prices for 09 PRS⁵⁸

	Horoscope (090658)	Weather (090666)	TV Phone-in (090161)	TV Shopping (090425)
BT	58.72ppm	146.80ppm	34.16ppc	146.91ppc
Virgin Media	58.72ppm	146.80ppm	34.25ppc	146.80ppc
TalkTalk	64.60ppm	161.49ppm	34.16ppc	146.81ppc
Orange	90ppm	170ppm	50ppc	170ppc
Vodafone	80ppm	185ppm	135ppm	185ppm
O2	80ppm	200ppm	50ppc	200ppm

Source: Tariff information on communications' providers websites

Note: ppm = pence per minute; ppc = pence per call

- 4.56 Figure 14 shows that there is only a limited amount of variation in the prices charged by the three fixed line operators represented (BT, Virgin Media and TalkTalk)⁵⁹. In most cases fixed OCPs tend to charge higher prices than the published BT rate, with the minor exception of TV shopping. Mobile OCPs, whose exact tariffs are not advertised by the SP, charge significantly higher rates than BT⁶⁰. The challenge to improve price transparency is one of the issues addressed by PhonepayPlus in its review and consultation on mobile phone-paid services⁶¹.
- 4.57 The variations in prices pose a challenge for the supplier of the PRS to communicate to each consumer the price that they will be charged for the service or at least sufficient information for them to be able to decide whether to go ahead with the purchase in an informed way. This is important from a commercial as well as a consumer perspective, as recent market research commissioned by Ofcom identified that 76% of those questioned thought that it was important to know the price of a call prior to the call being undertaken⁶².
- 4.58 The lack of price information is likely to lead to consumer harm. Consumers may suffer from harm when they lack price information. For example, as discussed in more detail below, they may be deterred from making calls if they expect the price to be higher than what it is, or, they may make the call when on the basis of price information they would have not made it – e.g. because they only discover later that the price was too high.
- 4.59 Assuming that consumers largely rely on the price information provided by the promotional message, only BT consumers have easy access to price information. Non-BT consumers do not know what the price of a PRS is (unless they actively

⁵⁸ Call set-up charges may apply for certain services charges per minute. Only per minute charge is shown here.

⁵⁹ Ofcom's analysis did identify, however, that at least one other fixed line operator charged very significantly different prices for PRS.

⁶⁰ In a market research report commissioned by PhonepayPlus (*Phone-paid Services: Today and Tomorrow*, Fathom, 2007) it was argued that the variations in PRS prices are likely to be an important factor in undermining consumer confidence and trust in PRS.

⁶¹ *Mobile phone-paid services and their Marketing*, PhonepayPlus, July 2008.

⁶² *Customer Transparency in Telephone Numbering*, Futuresight, July 2008.

search for it). In these circumstances they will decide whether or not to purchase the PRS on the basis of the price they expect to face.

4.60 There are three main circumstances when harm can arise.

- i) Consumers may decide not to purchase a PRS if they expect the price to be high. If this was incorrect – i.e. the price was not high – consumers suffer from harm because they might have benefited from purchasing the PRS service. The absence of price information and consumers' incorrect expectations mean that a beneficial transaction may not take place;
- ii) Harm can also arise when consumers decide to purchase a PRS only to find out (later) that, had they known the price, they would have not bought it. In this case the harm arises because the consumer does not get sufficient value out of the PRS in order to justify the price paid; and
- iii) Furthermore, uncertainty in the price of calling PRS numbers may also discourage consumers to make calls. This is the case if consumers are risk averse and therefore the risk, however small, of facing a high tariff may discourage them altogether from making the call. Again, this means that because of this uncertainty, a beneficial transaction may not take place.

4.61 In addition, the limited price information available to consumers (except for BT consumers) may provide incentives for all OCPs to raise their prices. The incentive of each OCP to increase their price stems from the fact that consumers decide whether or not to purchase a PRS on the basis of their expected average price. This means that if an OCP increases its price, the average price for a particular PRS (across the market) will only marginally increase. As consumers respond to the average price, this will only have a limited effect on the overall demand for PRS. For each OCP an increase in price will trigger only a small decrease in sales and, hence, it may be a very profitable action. However, when all OCPs act in a similar way the average price of PRS will increase, resulting in higher rates for consumers, which could exacerbate the harm identified in section 4.60 ii and iii.

ii) The consumer does not have an effective means of redress

4.62 Above we set out what the implications could be of incomplete price information. We believe the availability of easy and effective redress is particularly important for PRS for a number of reasons:

- Because of the nature of PRS service – e.g. relatively low expenditure per transaction, lack of information, impulse nature of buying decision, incentives for frauds etc. – it appears that the likelihood of consumer detriment is higher for PRS than for other communications services;
- PRS can be considered as experience goods whereby consumers may only know the quality of the service after the purchase. If dissatisfied they may want to complain;
- Consumers may not be aware that they have reasons for complaint – e.g. they may not know that they paid a high price or that they subscribed to services if they do not obtain a bill; and

- Consumers may have little incentive to complain given the low PRS expenditure transaction. If redress is not easy this further exacerbates the situation making it unlikely that consumers will seek redress, even if they have cause to do so.

4.63 Below we examine each of these in detail.

Possible ground for consumer complaints regarding PRS

- 4.64 We believe that because of the factors identified above it is likely that PRS consumers may be more likely on average to have reasons to seek redress than for other communications services.
- 4.65 With the exception of services bought through Payfort, the consumer is unlikely to go through any sort of validation process that reveals the charges for the service prior to making the purchase; the consumer simply dials the number and is connected to the PRS. It will often be the case that the consumer will only see the full charges for the service when they receive a bill from their communications provider, assuming that they do receive a fully itemised bill (and check it).
- 4.66 As a result, consumers may only dedicate a relatively low amount of time and effort to assess the charges for the service, although consumers are likely to adjust their behaviour over time if they have had negative experiences.
- 4.67 Indicative examples where consumer harm may emerge are described below:
- **The consumer is misled into purchasing a PRS:** there have been a number of “scams” involving PRS and these typically involve a consumer using a PRS without realising they are doing so. An example of this would be cards posted through letterboxes instructing the consumer to call a particular number (i.e. a PRS number). The card would be designed specifically to mislead the consumer into believing that there is a parcel waiting to be collected. Another example concerns Internet diallers that replace an end-user’s usual ISP connection and connect instead to a PRS number without the consumer knowing or having an opportunity to provide consent.
 - **The purchased service is not delivered to the consumer:** this could result from the fact that PRS are remotely purchased and the delivery of the service takes place after the purchase of the service. The consumer, therefore, purchases the service without being certain that the service will actually be delivered. Given the supply side structure of the industry, some providers could behave opportunistically by deliberately not delivering the service.
 - **The consumer may inadvertently take a subscription rather than a one-off service:** PhonepayPlus has undertaken an analysis of its own complaints data to try to ascertain the extent of this problem. Based on a sample of complaints received in its online system it found that 74% of the mobile related complaints concerned subscription issues and a further 18% related to “STOP” commands not working to end a PRS⁶³. PhonepayPlus also identified concerns about mobile subscription services as a key issue to be addressed in its review and consultation on mobile phone-paid services⁶⁴.

⁶³Ad hoc analysis undertaken by PhonepayPlus of complaints made during the period February – May 2008.

⁶⁴ Mobile phone-paid services and their Marketing, PhonepayPlus, July 2008.

- **The service quality is not as anticipated:** this can result simply because the consumer is not able to ascertain very much about the quality of the service until the service has actually been purchased and consumed, as PRS are experience goods and the consumer will typically be unable to assess the quality of the service in advance of payment. However, as set out above, given the supply side structure of the industry some providers may choose to offer poor quality services, as they will not be concerned about generating repeat purchases and consumer loyalty.
- **Consumers inadvertently “over-consume” a service:** PRS provide a simple authentication method for relatively low expenditure services that are marketed to promote impulse purchases. Given the combination of these characteristics and that a consumer will only find out how much they have spent on PRS once they receive their communications bill or when their pre-pay credit runs out, some consumers may become “addicted” to certain services (such as, for example, chat lines) and inadvertently spend more on PRS than they realise at the time. In extreme cases this could lead to consumers being unable to pay their bills.
- **Children are exploited as consumers:** ownership of a mobile is now very common amongst children and children are very open to using new types of technology in general, including mobile services, such as PRS. It does not follow, however, that children (and in particular younger children) will be capable of and sufficiently experienced to make an informed purchase decision. Children are likely to be more vulnerable than adults in relation to the concerns above. Although this is true for most services, some PRS have a strong appeal to children. This, combined with the impulse based character of PRS and an easy sales process, makes children particularly vulnerable.

Consumers are not able to identify that they have a cause for complaint

- 4.68 A consumer expects to get effective redress if there is a problem with a service. The conditions under which PRS are supplied can present particular problems for consumers seeking redress.
- 4.69 For a consumer to seek redress they first need to know that they have experienced a problem. As the communications provider charges for the service, some consumers will not have an accurate method for identifying the total charges for the service that they purchased. Some consumers do not receive itemised bills and prepay mobile customers typically do not receive a bill at all (although some mobile providers offer an online bill for their prepay customers) and can only make a judgement on the charges they paid based on how quickly their credit runs out. Additionally, it was found in research commissioned by Ofcom⁶⁵ that almost one third of consumers rarely or never check their bills. These consumers are likely to find it very difficult to determine whether the charges that were made for a particular PRS were in line with their expectations.

Is redress easy? Do consumers have incentives to complain?

- 4.70 Consumers are often unable to easily identify the supplier of the PRS in order to make a complaint about the service. Given that the party that bills for the service (the consumer’s communications provider) is unlikely to be the supplier of the PRS service (with the exception of on-portal mobile PRS), a consumer that believes that they have a legitimate complaint about the service may find it difficult to identify the

⁶⁵ Customer Transparency in Telephone Numbering, Futuresight, July 2008.

service provider. The communications provider might not know who the PRS provider is, as the OCP would have a contract with the TCP rather than with the PRS provider. Given the complexity of the supply chain there is also a danger that suppliers could choose to blame other parties in the chain and fail to take responsibility for addressing the consumer's concerns. This could make it very difficult and costly for the consumer to be able even to initiate a complaint⁶⁶.

- 4.71 Furthermore consumers' incentives to complain may be limited. The difficulty in initiating a complaint outlined above combined with the relatively low expenditure of the content can also mean that many consumers will not vigorously pursue a claim for a refund as they balance the time cost of doing this against the actual cost already foregone. Although the harm to a consumer from one incident might appear to be fairly low, it can, nevertheless, still result in a large aggregate loss to consumers. There are two elements to this aggregation: the individual consumer suffering from a number of incidents and then the harm across all affected consumers.

iii) Consumers are exposed to offensive or inappropriate content

- 4.72 There are other forms of potential consumer harm that do not fit within the two main categories set out above and are treated as content related categories, such as for instance harm, offence and decency standards referred to in footnote 2.
- Consumers are exposed to offensive or inappropriate content: there is some content that could be distributed by PRS that would be considered offensive or inappropriate to some adult consumers and they may be inadvertently exposed to this content or marketing for this content.
 - Children are exposed to inappropriate content: as already discussed, ownership of a mobile handset is very common for children, which means that they have a means to access content that would be entirely inappropriate for them, but which may be deemed acceptable for the adult population. Given that children are very open to adopting new technologies and experiencing new types of services, this increases the chances that they could get access to unacceptable content. To address these concerns the mobile operators put in place arrangements for Age Verification for all commercial content in order to try to minimize the risk of children accessing content only deemed suitable for those over 18 years of age.
- 4.73 If certain new services, which have the supply and demand side characteristics set out in sections 4.16 – 4.33 above would be subject to ineffective or insufficient PRS regulation, we believe the similar types of consumer harm could occur as set out above in sections 4.35 – 4.45, but possibly to a larger extent.

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

Conclusion

- 4.74 In this section we provided an overview of the characteristics of the PRS supply side and the demand characteristics of PRS services. Based on these characteristics, we

⁶⁶ PhoneyPayPlus operates a PRS number checker, which can assist consumers in identifying the supplier of a PRS. In 2007-8 the number checker received over one million hits.

assessed the potential for consumer harm and the actual harm under the current PRS regulatory framework.

4.75 We believe this analytical framework (supply side and demand characteristics, combined with an assessment of the potential for consumer harm) could be used for the following purposes:

- Discuss new services when they emerge and understand whether they are, from a policy perspective, PRS;
- Analyse whether and how the current regulatory framework could be strengthened or modified, if at all; and
- Assess the existing PRS regulatory framework and consider whether it sufficiently accurately reflects the nature of PRS and the risks that they might entail.

4.76 In section 5 we apply the analytical framework to a number of 'old' and 'new' PRS. We also assess whether there are alternative consumer protection measures in place for these services which could replace or complement PRS regulation.

4.77 In section 6 we discuss a number of proposals to improve the current regulatory framework.

4.78 In terms of assessing the existing PRS regulatory framework (the Act, the PRS Condition, and the PhonepayPlus Code of Practice) we intend to engage with stakeholders after publication of this review to discuss in more detail:

- Whether a characteristics based approach is a useful one to assess PRS;
- Whether we have captured the right characteristics and types of harm; and if so
- What the implications of this could be for the current PRS regulatory framework.

Depending on the outcome of this consultation, and post-consultation stakeholder engagement, this could result in further consultations.

Section 5

Application of the analytical framework to a number of PRS

5.1 Having set out what we believe is an analytical framework for PRS, we apply this framework to a number of 'old' and 'new' PRS services. The following services are included in our analysis:

- **Premium voice call from a mobile service to an 09 number offering horoscope services;**
- **Purchasing a ring tone subscription via reverse billed SMS messages** (incoming SMS messages are used to bill the customer);
- **Purchasing a game using Payforit:** as set out before in section 3.20, Payforit is a cross-operator WAP billing scheme developed by the UK mobile networks, governed by rules setting out how the scheme must be implemented. Merchants taking part in the scheme must operate through an 'Accredited Payment Intermediary' as their payment service provider. These intermediaries must ensure that on-screen payment pages are presented to the customer in the right format. These on-screen pages must, among other things, contain a description of the service being purchased, the identity of the merchant, the price of the service, any data charges that may apply, terms and conditions and payment success / failure;
- **Purchasing Champions League goals through a mobile provider's premium portal content:** this is typically content which is offered to a mobile provider's customer in a portal environment, as opposed to content and e-commerce provided on the open internet. The content can be developed in-house by a mobile provider or can be developed and presented by third parties on the provider's portal. Customers can freely move from a mobile provider's portal to the World Wide Web, and back. Examples of portals are Vodafone Live!, Orange World, O2 Active, Planet 3, Virgin Mobile Bites, and t-zones; and
- **08000 mumdad**⁶⁷: the 08000 mumdad service is a way to call mobiles using reverse charged billing (the charges are paid for by the receiving party). The service can be accessed in the United Kingdom by dialling the phone word 08000 mumdad or in digits, 08000 686 323. The service is aimed at children to call their parents or relatives in times of need. The receiving party hears a welcome and the caller's name and is asked whether they want to accept the call and the charges. The service is charged to the receiving party by way of reverse billed SMS messages.

5.2 For each of these services, we assess:

- i) The key elements of the supply chain;
- ii) The relevant demand characteristics;

⁶⁷ Information about 08000 mumdad can be found at www.08000mumdad.co.uk.

- iii) Whether we believe, based on the characteristics, there is the potential for consumer harm and if so, which type(s) of harm; and
- iv) Evidence of actual harm, where available.

5.3 Based on this assessment, we make some observations as to whether or not we believe these services could be considered, subject to a fuller consideration of the issues having taken account of responses to this consultation, to be PRS based on the supply and demand characteristics set out in the previous sections.

Key elements of the supply chain

5.4 For all services above, the OCP provides the consumer with access to the PRS. The OCP has either a direct commercial relationship with a TCP, but it could also connect via a transit communications provider to the TCP, where there is no direct commercial relationship between OCP and TCP. In certain cases, for instance mobile PRS, the OCP and the TCP can be one and the same party, as is set out in the description of the supply chain for a mobile PRS in section 4.21 above.

5.5 The TCP provides the network facilities to terminate the call on behalf of the SP. The TCP has the commercial relationship with the SP. In the examples above SPs can carry out different functions and without having a detailed description of the parties involved in the supply chain of each service, it is not possible to clearly describe the respective roles of SP and IPs (multiple IPs could be involved in providing the service). Below we set out which parties may be involved in the supply chain of each of the services above, and what their respective roles may be:

- For the 09 horoscope service, there will typically be an SP that specializes in providing the PRS termination service. An IP will provide the horoscope content of the service. A similar set-up will be used for the ring tone subscription; a mobile SP will terminate the PRS termination service, and an IP will provide the actual content, the ring tones in this example;
- Looking at Payforit, the Accredited Payment Intermediary could be considered to be the SP and the merchants selling their services will be IPs.
- In the example of receiving goals via a mobile provider's portal, there is typically an SP involved (which could be the mobile provider's in-house SP) who will obtain the goals from the IP, and who probably has a relationship with an organisation who has the rights to the football games; and
- For 08000 mumdad, the SP is the 08000 mumdad company, who provides the reverse call service. There is no IP involved in this case.

5.6 For all examples, except 08000 mumdad, the OCP is responsible for charging the consumer for the service. The OCP retains a small proportion of the money collected from their customer, and then passes on the balance to the TCP or transit provider⁶⁸. The TCP will retain a small portion and pass the remainder on to the SP. The SP shares the balance with any IPs involved in the supply of the service. In the case of 08000 mumdad, the situation is slightly different; the caller does not incur any

⁶⁸ The report commissioned by PhonepayPlus http://www.phonepayplus.org.uk/pdfs_research/uk_phone_paid_services_market_200812.pdf contains information regarding the flows of money between the parties in the supply chain in Figure 3.7 on page 19.

charges, but the cost of the call will appear on the bill of the receiving party and will be charged by the receiving party's OCP.

- 5.7 Describing the key elements of the supply chain for these five services shows the variety in terms of services offered, payment mechanisms, content and indicates the wide range of parties involved in offering PRs.

The relevant demand characteristics

- 5.8 In the sections below we discuss which of the demand characteristics apply to the services above. Based on these characteristics, and the combination of them, we assess whether we believe there is a potential for consumer harm, and if so, which types of harm.
- 5.9 All of the services set out above are experience goods and are remotely purchased, using an electronic communications network. This means that consumers cannot verify the quality of a service prior to the purchase, and are only able to identify the quality of the service at the point at which they consume the service.
- 5.10 All services are billed for by the consumer's OCP, but are provided by a combination of SPs and IPs. The portal provided service is billed by the customer's mobile OCP, and the content is made available through the OCP's own portal, and could either be provided by the mobile OCP's own SP or an independent third party. The slightly different setup for 08000 mumdad is already discussed above, although in this example, the service is billed and supplied by different parties as well.
- 5.11 Compared to other purchases a consumer could make, the expenditure per transaction for each of the services is relatively low, but may vary between OCPs. Some examples of prices for each of the services are shown below. Please note that these prices are by way of example only:
- We have seen examples of 09 horoscope services being charged from 60pence per minute (ppm) to 80ppm;
 - The price of ring tone subscriptions obviously varies depending on the number of ring tones that can be downloaded per time period, but could cost for instance £5 per month. This would only cover the price of the actual content, i.e. the ring tone, not the data charges a consumer face when browsing and downloading the content;
 - The same applies to purchasing a game via Payforit. Prices will vary depending on the type of game purchased. An example would be to download a game called 'Tetris' for £4.50. Additional data charges for browsing the internet may apply when purchasing games or ring tones;
 - The price of receiving a Champions League goals via a mobile provider's portal could be 50p per goal; and
 - For the service 08000 mumdad, the price of the service depends on the length of the call. A call connection charge of £1.50 is charged for setting up the call. Time related charges are £1.50 per minute, with a minimum of 2 minutes being charged. The minimum cost of a call using 0800 mumdad will therefore be £4.50. For this service, there is a maximum call length of 6 minutes, which translates in a price of £10.50.

- 5.12 Some of these services are likely to be marketed as impulse purchases, where consumers could feel compelled to buy them, for instance because they are interested to find out what the future may bring (horoscope services), they want to personalise their mobile device with the latest ring tone from their preferred band, they are a regular player of a certain game, and want to be able to do that whilst on the move as well, or are unable to watch an important football game and want to be informed about the scores and be able to see the goals. The sales process for these services is typically easy; there is no registration or authentication process required. Consumers only have to call a number, send an SMS message or click on a link on the internet, on their mobile device.
- 5.13 In terms of inappropriate or offensive content, the services set out above are unlikely to be inappropriate or offensive. Other PRS services, for instance adult services, could fall in this category, and consumers could inadvertently access offensive content if there is no or an insufficient level of access control.
- 5.14 Certain services may have an appeal to children. In our example, purchasing a game using Payforit could have a specific appeal to children. As set out in section 5.1 above, downloading games has the highest proportion of PRS users in the 11-17 year age group. Also the ring tone subscription service in our example will typically appeal to a younger audience. Although the 08000 mumdad service has a different type of appeal to children, it is developed for children who urgently need to call their parents or relatives, and are unable to use any other means of communication.
- 5.15 Figure 15 below provides an overview of the demand characteristics per service described above.

Figure 15: Demand characteristics per service

Demand characteristic	Mobile voice call to 09 horoscope service	Purchasing ring tones subscription	Purchasing a game using Payforit	Purchasing football goals on-portal	08000 mumdad
Experience good	✓	✓	✓	✓	✓
Remote purchase	✓	✓	✓	✓	✓
Bill-supply separation	✓	✓	✓	x	✓
Communications provider billed	✓	✓	✓	✓	✓ ¹
Relatively low expenditure per transaction ²	✓	✓	✓	✓	✓
Impulse purchase with low transaction costs	✓	✓	✓	✓	x
Inappropriate or offensive content	x	x	x	x	x
Appeal to	x	✓	✓	x	✓

children					
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- 1: Billed by the receiving party's OCP.
- 2: Perception of price level will be subjective. Assessment is carried out keeping in mind other expenditure by consumers (i.e. grocery bills, clothing, dinner, theatre etc.).

5.16 As set out in section 4.26 above not every PRS will necessarily have the full set of identified characteristics but this does not mean they cannot or should not be classified as PRS for regulatory purposes, provided the characteristics or range of characteristics and the potential for consumer harm they have, would justify such a classification

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

The potential for consumer harm

5.17 Below we describe, based on the supply chain and demand characteristics for each of the five services, whether we believe there is the potential for consumer harm. In the next section we describe whether we have seen instances of actual harm for these services.

Mobile voice call to 09 horoscope service

- 5.18 In the case of a mobile voice call to a 09 horoscope service, as explained before, the OCP sets the retail price. Advertisements only contain the price for a BT consumer and do not contain pricing information from other fixed or mobile OCPs. The consumer is likely to have imperfect pricing information for this service (unless they find out the exact tariff from their OCP prior to making the call).
- 5.19 Consumers will only find out about the quality of their horoscope service upon consumption (or probably even after that), and they will not be able to verify the quality of the service (unless they have previously used the same service and are familiar with its quality). Consumers may therefore be faced with either a higher price than they expected and/or a lower quality of the horoscope service.
- 5.20 Some consumers may become addicted to horoscope services, and combined with the lack of accurate pricing information, could end up over-consuming horoscope services, spending far more on the service than they intended to.
- 5.21 Based on this, consumers may be more likely to need to seek redress in relation to these types of services compared to other communications services. However, as described in the supply chain, there will typically at least be an OCP, an SP and an IP involved in the provision of this service, which could make it difficult for consumers to identify whom to contact.
- 5.22 In addition, since the expenditure on the horoscope is relatively low (and therefore the extent of financial harm may also be relatively low), consumers may be discouraged from seeking redress, and not pursue a complaint which means they are not compensated for any financial harm suffered by them (where there is such harm). Furthermore, a number of consumers, who either do not have a bill or do not verify their bill, will not even be aware of the actual price they paid for the service, and will therefore be unaware that they have a reason to complain. SPs and IPs could exploit these redress issues by deliberately offering low quality services, knowing that few consumers would in practice seek redress.

Purchasing a ring tone subscription

- 5.23 Since ring tone subscriptions are mainly offered on mobile short codes, all mobile providers will offer the same ring tone subscription for the same tariff. We therefore believe that pricing information here is less of an issue (albeit that data charges are generally not included in the total price). Harm in this example is more likely to arise when consumers are not aware they are entering into a subscription and think instead that they are purchasing a single ring tone. Terms and conditions of these services are not always clearly published or sufficiently carefully checked by consumers, and especially where consumers only receive a monthly bill after inadvertently entering into a subscription. In such circumstances, they could end up paying far more (a monthly subscription fee) than they expected (the price of one ring tone).
- 5.24 Another issue could arise when the consumer does not receive the ring tone(s) they ordered. This is an additional reason for consumers to seek redress. We consider the quality of service and redress issues to be similar to the ones described for the horoscope service.
- 5.25 As set out above, children are very open to use new mobile services and services such as ring tones are appealing to children. As set out in the Analysys Mason study commissioned by PhonepayPlus, 6% of all respondents have used premium rate SMS to download ring tones and music. The research shows that the heavy users of these services are children in the age group 11-17 years⁶⁹. However, children, and in particular younger children, will not always be capable of or experienced enough to make an informed decision, and may be driven, more so than adults, by impulse purchases. They could therefore be more vulnerable and pay less attention to tariff information and terms and conditions.

Purchasing a game using Payforit

- 5.26 Accredited Payment Intermediaries through which merchants must operate to sell their content using Payforit, must ensure that on-screen payment pages are presented to the customer in the right format and that those pages contain information such as a description of the service being purchased, the identity of the merchant, the price of the service, any data charges that may apply, terms and conditions and payment success / failure. However, the Payforit scheme rules do not apply to the advertising of the service, and differences between information in the advertising and the on-screen information can occur.
- 5.27 The information regarding price and terms and conditions is therefore likely to be more prominently displayed, and the likelihood of consumers being mis-informed about them, will be less (assuming the intermediaries comply with the Payforit rules). Similar to ring tone purchases, the price stated will typically exclude data charges.
- 5.28 Services purchased using Payforit are still experience goods, so there could be an issue in respect of the quality of the service. In addition, it is still possible services are not delivered to the consumer. However, it should be easier for consumers to identify whom to go to for redress, since the identity of the merchant should be included in the on-screen information.
- 5.29 As set out in section 5.25 above, children may be more vulnerable and may pay less attention to tariff information and terms and conditions than adults. However, we

⁶⁹ This information can be found on page 12 of their study.

believe that consumers in general, and therefore children as well, will be better informed about tariffs and terms and conditions when using Payforit.

Purchasing football goals on-portal

- 5.30 Since only the mobile OCP's customers have access to a mobile OCP's portal, there is only one price for a specific service. Depending on the clarity and availability of pricing information provided by the mobile OCP in question, consumers should be relatively well informed about the price of a service.
- 5.31 Similar to the Payforit example, issues could arise when the quality of the service is less than expected (in the case of football images because of a blurry image for instance), or when the customer doesn't receive the goals for the match in question. If these problems occur, we believe consumers will find it easier to seek redress, since it is their mobile OCP who offers the service.

08000 mumdad

- 5.32 As set out above, the party receiving the call will pay for it, instead of the originator of the call. The receiving party has to accept the call prior to connection and will be informed of the name of the person calling (if the caller mentions their name). We understand there is an option for the receiving party to be notified of the charges. If the receiving party does not accept the call, no charges will be incurred. Upon acceptance, and without listening to the price notification, the receiving party will have no information at all regarding the price of the service. Since this is a service aimed at children to contact their parents or relatives, the parents or relatives may be inclined not to listen to the tariff option once they hear their child's or relative's name, and instead will immediately want to talk to their child or relative.
- 5.33 Non-delivery of this service is less of an issue, since the receiving party will not get charged if the call is not connected. A service of lower quality than expected is also less likely than in the case of the other examples. Although 08000 mumdad is still an experience goods service, the quality of the service is mainly driven by the quality of the networks used by the caller and receiving party.
- 5.34 If the receiving party needs to seek redress, they will need to find out from the reverse billed SMS on their bill (if they have access to a bill) who is the supplier of the service (in this case 08000 mumdad). We understand that in the majority of cases, four mobile short code numbers are used to display information regarding 08000 mumdad on the bill. Without any additional information regarding these short codes, it is not straightforward for consumers to find redress, since they will have to find out who is the SP behind these short codes. If consumers have found out that 08000 mumdad provides the PRS, then they can find additional redress information on the 08000 mumdad website. In its terms and conditions⁷⁰, 08000 mumdad state that:
- “Should a serious complaint be unable to be resolved by the parties involved, the complaint may be referred to the Communications and Internet Services Adjudication Scheme ("CISAS") in accordance with CISAS's rules or the Executive of PhonePayPlus. ...”
- 5.35 In Figure 16 below we provide a summary of the types of potential consumer harm per service, as described above. Please note that we use scores ranging from 0 to 3 relative to the other services in our comparison to indicate our current assessment of

⁷⁰ These can be found at <http://www.08000mumdad.co.uk/main.php?type=sfoa>.

the potential for harm. The purpose of the scoring is therefore simply to indicate relativities. For instance, we consider the potential consumer harm related to lack of price transparency higher for a mobile 09 horoscope call than for Payforit; in this case the horoscope will score 3, where Payforit will score 1. Please note that these scores are indicative and for illustrative purposes only.

Figure 16: Indication of potential consumer harm per service

Potential for consumer harm related to:	Mobile voice call to 09 horoscope service	Purchasing ring tones subscription	Purchasing a game using Payforit	Purchasing football goals on-portal	08000 mumdad
Lack of price transparency	3	3	1	2	0/3 ¹
Lack of effective redress	3	3	1	1	1
Service quality not as anticipated	3	3	2	2	1
Inadvertently entering into subscription	0	3	1	1	0
Inadvertent over-consumption	3	3	1	1	0
Children exploited as consumers	1	3	1	1	0
Consumers exposed to inappropriate and offensive content	0	0	0	0	0

1: Depending on whether receiving party listens to the pricing information prior to accepting the call.

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

Evidence of actual harm

5.36 Below we give an overview of evidence of consumer harm, based on complaints data from PhonepayPlus, and/or results from market research. Because of the detailed services included in the comparison, it will not always be possible to get evidence of harm per specific service included in the analysis. Where the detailed level of information is not available (for instance for 09 horoscope services), we will assess a higher level category, for instance complaints / market research evidence in respect of premium voice calls to 09 numbers. Where available, we give an overview of quantitative information, and include a qualitative description of the types of problems encountered by consumers.

PhonepayPlus complaints data

Calls to 09 numbers

5.37 The trend in complaints to PhonepayPlus about calls to 09 numbers is downward. As can be seen in Figure 14 in section 4, PhonepayPlus received over 10,000 complaints regarding these services in 2005/6, and just over 2,000 in 2007/8.

Subscriptions billed via reverse billed SMS messages

5.38 Entering into a subscription to buy ring tones via reverse billed SMS messages is part of a specific mobile PRs service. As set out in Figure 14, PhonepayPlus received over 8,000 complaints regarding specific mobile PRs services in 2007/8. In their statement regarding the regulation of mobile phonepaid services and their marketing⁷¹ one of the issues the mobile review identified were services using a subscription billing method. The review indicated that over 50% of mobile related complaints had been about services using subscription billing. The main causes for complaints are set out below:

- Failure to provide pricing or other required information that informs the consumer they are purchasing a subscription;
- False or misleading implication that a product or service is free, when in fact it is dependent on the consumer signing up to a subscription; and
- The charging of a joining fee to the consumer without clearly informing them prior to the service being purchased.

5.39 In their statement PhonepayPlus decided to require providers offering subscription based services over £4.50⁷² per week to obtain Prior Permission from PhonepayPlus to offer these services. This Prior Permission would be granted subject to the provider complying with a set of conditions⁷³.

Buying services using Payforit

5.40 Although services using Payforit already provide the consumer with information prior to the purchase and confirmation information once they have purchased the service, PhonepayPlus have recently started to receive complaints regarding one particular service purchased using Payforit. Since January this year, around 200 complaints have been received. PhonepayPlus are currently investigating the nature of the issues that arise in relation to that particular service.

Purchasing mobile content on portal services

5.41 PhonepayPlus have received very few complaints about mobile content purchased through the MNOs' portals. This could either mean that there are very few issues with content provided via portals, or that if things do go wrong, consumers will contact their MNO who will deal with their complaint in a satisfactory way.

⁷¹ This statement can be found at

http://www.phonepayplus.org.uk/pdfs_consult/2009_Statement_on_Mobile_WhitePaper.pdf.

⁷² Excluding services offered using Payforit.

⁷³ The specified conditions can be found at

<http://www.phonepayplus.org.uk/output/news/supplementary-prior-permissions-subscriptions.aspx>.

08000 mumdad

5.42 PhonepayPlus have received complaints regarding 08000 mumdad over the past two years, as can be seen from Figure 17 below. As set out above, in the vast majority of cases, only one of the four short codes used for 08000 mumdad are shown on the bill. Most complaints concern the unexpectedly high cost of the service, followed by consumers claiming that the price of the service was not clearly stated upfront.

Figure 17: Complaints numbers regarding 08000 mumdad

	2007	2008	2009 (to 30 April)
Complaints regarding 08000 mumdad	58	455	216

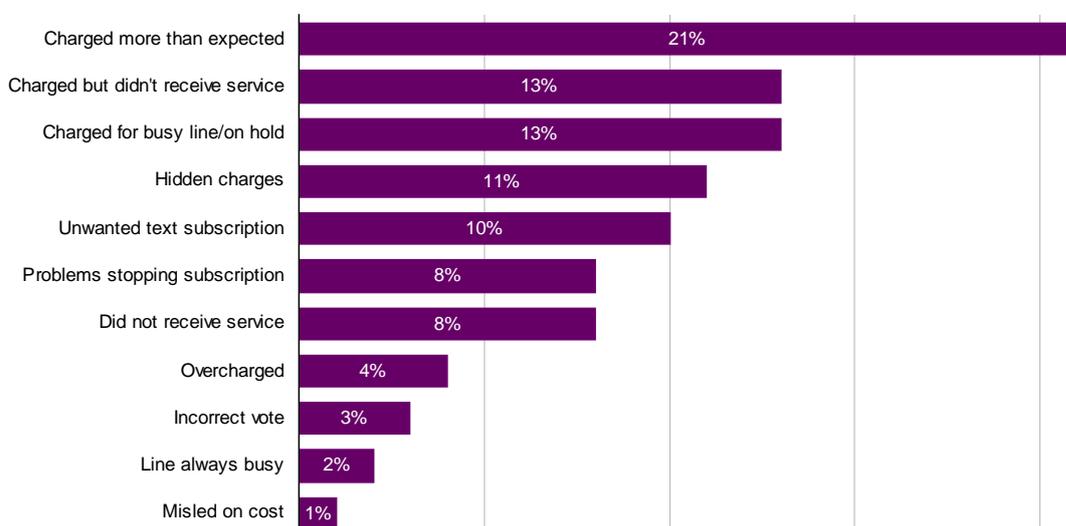
Source: PhonepayPlus

Evidence of harm based on consumer research

5.43 Ofcom’s consumer research (see Annex 7 for details) looked at the types of harm experienced by consumers when using legitimate PRS services (scams are not included here). Similar to complaints received by PhonepayPlus, the majority of the complaints related to mobile SMS and MMS services, followed by premium rate telephone calls (09 numbers) and participation TV issues.

5.44 Across all services, the main reasons for the complaint were consumers considering that they were being charged more than they expected, followed by not receiving the service and being charged for being put on hold, as can be seen in Figure 18 below.

Figure 18: Nature of problem with legitimate PRS



Source: Ofcom consumer research. Base: All PRS users who experienced a problem (U70/W52)

5.45 The consumer research included qualitative comments regarding the types of issues experienced by consumers for a number of PRS services. Although the base numbers are low, these qualitative comments, combined with the complaints information from PhonepayPlus, provide a useful indication of the types of harm. The qualitative comments for the services included in the consumer research, and in our list are summarised in Figure 19 below.

Figure 19: Summary of results of qualitative issues per service category

Service category	Qualitative comments regarding issues
Mobile services	<ul style="list-style-type: none"> • Charging and subscription services the most common issues; • Consumers not realising they had subscribed to a service; • Consumers experiencing difficulties stopping these subscriptions. • Consumers typically placed order and continued to receive premium texts, instantly taking credit away from pre-pay users. As soon as their account was topped up, the premium texts would use up new credit.
Premium rate phone calls	<ul style="list-style-type: none"> • Most issues related to charging problems including being kept on hold, overcharging and hidden charges.
Mobile portal services	<ul style="list-style-type: none"> • Issues related to overcharging and hidden costs.

Conclusion

5.46 In this section we have applied the analytical framework described in section 4 to a number of established and new services. As regards the supply chain characteristics, although the five services are very different, the supply chains and the parties involved in providing the service are very similar across all services.

5.47 According to our analysis, all five services contain the following demand characteristics:

- i) Experience good;
- ii) Remote purchase;
- iii) Communications provider billed; and
- iv) Relatively low expenditure per transaction.

Except for 08000 mumdad, we believe all services can be characterised as impulse purchases with low transaction costs. None of the services in our comparison would contain inappropriate or offensive content, and we believe ring tones and purchasing games using Payforit could have an appeal to children.

5.48 We consider that given the characteristics of and the supply side structure of the market there is the potential for negative outcomes for consumers for the services in our analysis. Complaints data and results from market research show that there is evidence of actual consumer harm for all services, albeit to different degrees. In particular the on portal services appear to generate few complaints (or complaints are dealt with by the mobile OCPs in a satisfactory way).

5.49 As set out in section 2, the rationale for PRS regulation is to target harm in respect of a number of services, which, based on their characteristics, could give rise to risks for consumers, and which are not sufficiently covered by other existing means of consumer protection.

- 5.50 There is an existing means of consumer protection through the Alternative Dispute Resolution ('ADR') schemes in respect of on portal PRS provided by the consumers' mobile provider. Under the current regulatory regime, OCPs have to comply with GC 14, which sets out requirements regarding complaint handling and dispute resolution⁷⁴. The OCP must produce a basic code of practice for domestic and small business customers, which should include details of the procedures for bringing an unresolved complaint to an alternative dispute resolution scheme (the 'Complaints Code of Practice').
- 5.51 ADR can be used by a consumer who has exhausted the complaints procedure with his OCP, but only in respect of services offered by their OCP. Regarding the services in our comparison, this means that where content is provided by a third party, the consumer will not be able to use an ADR, since the service is not provided by the OCP, only the access to the service. Where an OCP provides the content themselves, we consider a consumer will have access to an ADR in case of unresolved complaints.
- 5.52 In the case of on portal content services, the content will be provided by the consumer's mobile OCP, and we therefore believe consumers will have access to an ADR. It would therefore appear that there is an alternative means of consumer protection in place, which could address individual cases of harm. However, it is not always clear for consumers to find out whether they have purchased their content from their mobile OCP's portal, or off portal, outside their OCP's. Furthermore, anecdotal evidence shows that the distinction between on portal and off portal content is becoming less transparent. And even if consumers knew whether they had purchased their content on or off portal there may be disbenefit from having two different complaints and redress processes for on and off portal content purchases. On portal consumers would be directed to their own OCP, whereas off portal consumers would have to seek redress through the SP or ultimately through PhonepayPlus.
- 5.53 In the case of 08000 mumdad, as set out above, the terms and conditions of this service specify that consumers have access to ADR. However, there are other reverse charge call services which may not offer access to ADR. This could lead to consumer confusion as to which reverse charge call services the ADR process should be used for, and for which they should seek redress from the SP or ultimately PhonepayPlus.
- 5.54 As regards Payforit, the content is clearly offered by a third party, the merchants, through the Accredited Payment Intermediaries. We believe that consumers in this case would not have the opportunity to seek redress via ADR, and that the only routes open to them would be to seek redress via the merchants, or via PhonepayPlus, if they do not succeed in resolving the complaint.

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

- 5.55 In addition to existing measures, we are interested to hear your views on whether you consider self-regulatory initiatives could be developed to tackle harm regarding these new services and provide consumers with appropriate safeguards.

⁷⁴ Information can be found at [http://www.ofcom.org.uk/consult/condocs/nts_info/statement/statement page 43](http://www.ofcom.org.uk/consult/condocs/nts_info/statement/statement_page_43)).

5.56 In December 2008 we published a statement ‘Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation’⁷⁵ (‘the December 2008 statement’) setting out the approach we intend to adopt in the future to determine whether self- or co-regulation is likely to succeed in delivering our statutory duties in respect of consumers and citizens.

5.57 In this statement we use the following definitions:

Self regulation: Industry collectively administers a solution to address citizen or consumer issues, or other regulatory objectives, without formal oversight from government or regulator. There are no explicit ex ante legal backstops in relation to rules agreed by the scheme (although general obligations may still apply to providers in this area).

Co-regulation: Schemes that involve elements of self- and statutory regulation, with public authorities and industry collectively administering a solution to an identified issue. The split of responsibilities may vary, but typically government or regulators have legal backstop powers to secure desired objectives.

5.58 The statement refers to section 3(4)(c) of the Act which provides that, in performing our statutory duties, we must have regard to:

"the desirability of promoting and facilitating the development and use of effective forms of self-regulation."

Further, according to section 6(1) of the Act, Ofcom must:

"keep the carrying out of their functions under review, with a view to securing that regulation does not involve:

a) the imposition of burdens which are unnecessary; or

(b) the maintenance of burdens which have become unnecessary."

Section 6(2) of the Act provides that, in reviewing its functions under section 6, Ofcom has the duty:

"(a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and

(b) in the light of that, to consider to what extent it would be appropriate to remove or reduce the regulatory burdens imposed by Ofcom."

5.59 In the December 2008 statement we noted that we need to consider on a case-by-case basis whether self- and co regulation could be an effective option. We described a set of analytical steps we will follow when assessing the appropriateness of self- and co regulation, based on understanding the collective incentives of

⁷⁵ This document can be found at <http://www.ofcom.org.uk/consult/condocs/coregulation/statement/>.

industry to resolve an issue in a way that addresses the best interest of citizens and consumers. These are:

- i) Do the industry participants have a collective interest in solving the problem?
- ii) Would the likely industry solution correspond to the best interests of citizens and consumers?
- iii) Would individual companies have an incentive not to participate in any agreed scheme?
- iv) Are individual companies likely to “free-ride” on an industry solution?
- v) Can clear and straightforward objectives be established by industry?

5.60 We consider the following types of outcomes to be in the best interest of consumers:

- Consumers should be able to purchase PRS with confidence and, of course, the more this is the case the more vibrant and healthy will be the PRS market;
- Consumers should be confident when they purchase a service that they know (and can find out with relative ease) what price they are paying for that service and whether it is a one-off purchase or whether a subscription to the service is being purchased;
- To the greatest extent possible when purchasing a remote service, consumers should be able to understand the quality and facets of that service. The service should function in the way that it is represented to the consumer and as part of that, it should be possible for the consumer to terminate a service without unnecessary delay and complexity; and
- It is obvious, but worth stating that when a consumer purchases a PRS they should receive that service.

5.61 Below we give our assessment on the appropriateness of self regulatory initiatives for PRS against these steps.

5.62 As set out in sections 4.22 – 4.23, there is generally a complex, fragmented supply chain involved in providing PRS, with a large number of suppliers operating at different levels in the chain. SPs and IPs, who are generally not visible to the consumer, typically supply the service to the consumer, and this, combined with relatively low barriers of entry and exit, could make them less concerned with their reputation. We therefore believe that reputable SPs and IPs have a collective interest in solving PRS problems, but that less reputable SPs and IPs may have different incentives and could instead pursue a strategy of short term gain.

5.63 OCPs set the retail price of a PRS. Although it is in their interest for consumers to use PRS with confidence on an aggregate level, they may individually have an incentive to increase prices for PRS, as set out in section 4.24 above.

5.64 Based on this we believe that SPs, IPs and OCPs may not all have a collective interest in solving the problem. The reputable parties may be willing to take part in a self-regulatory scheme, but we believe the less reputable parties will have little or no incentive to do so.

- 5.65 Parties also may have incentives to cheat and “free-ride” on a self-regulatory solution. Since in self-regulatory schemes there are no formal penalties for non-compliance, individual companies could ‘on paper’ say they comply with all provisions, whilst in practice not do so. One of the good practice criteria when developing a co- or self-regulatory scheme is around enforcement measures, where the statement sets out that schemes may need to have sanctions that provide an incentive to comply. In addition, a solution where an independent party would investigate alleged breaches would avoid situations where industry members could be reluctant to take action against other industry members, because of certain commercial interests.
- 5.66 One other criterion is the presence of a system of redress where there is an independent appeals mechanism ensuring that complaints are resolved quickly and effectively, and where there is the possibility of escalation to an independent party. As set out above, the OCPs, SPs and IPs have different processes to deal with complaints, and under a self-regulatory scheme, there may not be an option to refer a complaint to such an independent party.
- 5.67 Based on the above analysis, we believe that there are three main factors that may impact the success of self-regulatory initiatives in the context of PRS:
- i) We consider that the collective interests of the industry and the public interest may not always be aligned with the private interest of all parties in the PRS supply chain and that less reputable parties will have limited or no incentives to join a self-regulatory scheme;
 - ii) For a self-regulatory initiative to be successful, it should be able to set penalties for non-compliance by an independent party that will not have a commercial interest in certain practices carried out by certain parties; and
 - iii) We believe a self-regulatory scheme should have a proper system of complaints resolution and redress.

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

Question 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.

- 5.68 In the section that follows we outline how the existing PRS regulatory regime might be developed in order to address some of the types of potential negative consumer outcomes outlined above. Ofcom’s challenge is to ensure that the set of PRS regulations strikes an appropriate balance between ensuring that consumers are sufficiently protected from harm and the desire to support a healthy, developing PRS industry which is needed to ensure consumers continue to benefit from attractive and innovative PRS.

Section 6

Proposals to improve current framework

Ofcom's and PhonepayPlus' approach to regulating PRS

The effectiveness of existing PRS regulation

- 6.1 We believe the current PRS regulatory regime is functioning well. The measures put in place as a result of the review of the regulation of PRS we carried out for DTI in 2004 have been effective⁷⁶. Especially the so called '30 day rule', where TCPs are to withhold making payments to their SPs for at least 30 days after calls have been made, has vastly reduced the potential for scams by giving PhonepayPlus more time to identify breaches and, where appropriate, issue directions to TCPs requiring them to withhold funds pending the outcome of an investigation. Since this rule came into place, we have seen very few scams, and there has been a drop in complaints regarding 09 numbers.
- 6.2 However, as set out in Section 4, whilst complaints regarding landline PRS and Directory Information have shown a downward trend over the past year, complaints regarding mobile PRS have shown a strong increase over the past year as revenues for mobile PRS have also increased. According to the PhonepayPlus Annual report 2007/8⁷⁷, the main reasons for mobile PRS complaints were disputes regarding subscriptions, unclear pricing or misleading promotion and unsolicited promotional texts.
- 6.3 PhonepayPlus have swiftly acted to address these issues and have consulted on and put in place appropriate measures within the existing regulatory framework.
- 6.4 However, we believe there may be scope for refining or adding to the existing regulatory framework to address issues around price transparency and consumer redress as discussed in section 4. In addition, we discuss a proposal aimed at providing PRS suppliers with reputational information regarding potential partners.
- 6.5 These proposals will be considered further in light of any responses received to this consultation. However, we have first set out below the regulatory principles that Ofcom must apply to its regulatory activities in this area and how those principles are currently applied to address consumer concerns

Applying Ofcom's regulatory principles to PRS

- 6.6 As set out in the Act⁷⁸, in performing our duties, we must have regard, in all cases to:
- The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - Any other principles appearing to us to represent the best regulatory practice.

⁷⁶ This report can be found at

http://www.ofcom.org.uk/telecoms/loi/nwbnd/prsindex/ntsprsditi/prs_review.pdf.

⁷⁷ The Annual report can be found at http://www.phonepayplus.org.uk/pdfs_news/PPP_AR07_08.pdf.

⁷⁸ Section 3(3) of the Communications Act 2003.

- 6.7 In applying these principles to PRS Ofcom and PhonepayPlus have developed a set of regulations that achieve an appropriate balance between these principles. The approach recognises the fact that different types of PRS present different levels of risk and hence regulation should reflect this:
- PhonepayPlus’ Code of Practice (the “Code”) must be complied with by providers of PRS in respect of controlled PRS (“CPRS”), as defined in Ofcom’s PRS Condition (included in Annex 9). However, insofar as a particular PRS is not within the definition of CPRS, the Code applies to a PRS, but compliance is voluntary;
 - The PhonepayPlus’ Code of Practice includes additional provisions that apply only to specific services that are believed to pose a greater risk of harm to consumers. This is underscored by the PhonepayPlus prior permission regime targeted at high risk services; and
 - PhonepayPlus has recently indicated how it will interpret the relevant provisions of its Code of Practice in relation to 0871-3 numbers. Their Statement of Application⁷⁹ recognises that the regulation of these services needs to vary in some ways in order to remain proportionate.
- 6.8 In addition, by imposing fines on suppliers who are found in breach of the Code of Practice and then using the fines and the general levy⁸⁰ (which is a general tax all SPs pay to PhonepayPlus for regulating PRS) to fund its operations, PhonepayPlus ensures that suppliers’ overall contributions differ to reflect the costs they impose on SPs. This “polluter pays” approach ensures that suppliers have the correct incentives to comply with the Code of Practice.
- 6.9 This is illustrated in the example below in Figure 20, where the difference is shown in contributions to the PhonepayPlus income between a fictional SP that only pays the levy, and the same fictional SP that pays the levy and has been fined for breaches in the previous year. (Please note that fines collected will not be used for the PhonepayPlus current year budget, but to offset the total cost of the next year’s budget).

Figure 20: Example of the impact of ‘polluter pays’ principle on contribution to PhonepayPlus income.

Service provider paying levy only	Service provider paying levy and fines
Levy2007/8: 0.34%	Levy 2007/8: 0.34%
PhonepayPlus income: £4m	PhonepayPlus income: £4m
SP revenue: £3m	SP revenue: £3m
SP levy: £10,200	SP levy: £10,200
SP fine: £0	SP fine: £40,000
SP contribution to	SP contribution to PhonepayPlus

⁷⁹ This Statement can be found at <http://www.phonepayplus.org.uk/upload/0871-Services-StatementOfApplication.pdf>.

⁸⁰ The levy is expressed as a percentage of the out payments TCPs pay to SPs.

PhonepayPlus income: 0.26%	income: 1.26%
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- 6.10 We believe that this approach to regulation achieves an appropriate balance in applying the regulatory principles, by being targeted and breach-driven (offenders pay more than non-offenders), proportionate (the amount of the fine will depend on the severity of the breach and the extent of consumer harm) and transparent (the PhonepayPlus Code of Practice sets out clear rules which apply to all suppliers of PRS).
- 6.11 We would apply these same regulatory principles to any future improvements to the existing regulatory framework.

Revising the existing regulatory approach

6.12 A helpful starting point in determining what refinements or additions could be made is to articulate the types of outcomes that we would like to see for PRS consumers and suppliers. In section 5.60 we gave an overview of the types of outcomes we would like to see in the context of PRS:

- Consumers should be able to purchase PRS with confidence and, of course, the more this is the case the more vibrant and healthy will be the PRS market, which is needed to ensure consumers continue to benefit from attractive and innovative services;
- Consumers should be confident when they purchase a service that they know (and can find out with relative ease) what price they are paying for that service and whether it is a one-off purchase or whether a subscription to the service is being purchased;
- To the greatest extent possible when purchasing a remote service, consumers should be able to understand the quality and facets of that service. The service should function in the way that it is represented to the consumer and as part of that, it should be possible for the consumer to terminate a service without unnecessary delay and complexity; and
- It is obvious but worth stating that when a consumer purchases a PRS they should receive that service.

6.13 These are the types of positive outcomes that may be expected in a well functioning market and what Ofcom would like to see achieved in the PRS market. In addition, since, even in a well functioning market, problems will arise, it is also essential that consumers have effective means to complain and seek redress.

6.14 The analytical approach developed in section 4 provides a basis for refining the existing PRS regulatory regime to support the delivery of these types of positive consumer outcomes in the PRS market. The analytical approach can be used to ensure that the regulatory regime is relevant to existing PRS and, as far as possible, is sufficiently flexible to take into account future advances in the PRS sector.

6.15 Although this approach focuses attention on particular types of potential negative outcomes for consumers, this allows us to be precise in targeting regulatory interventions to support positive consumer outcomes such as the ones mentioned in section 6.12 above. As discussed earlier, our aims in regulating PRS are to seek to

protect consumers from consumer harm. Facilitating the development of a robust and healthy PRS market along with well-functioning regulation and intervention where appropriate, is the best way to ensure this.

- 6.16 Based on the analytical approach set out in section 4, our approach to developing the existing PRS regulatory regime is to focus on three areas with targeted proposals:
- facilitating consumers to make informed purchase decisions;
 - facilitating effective consumer redress; and
 - enabling suppliers in the PRS market to act responsibly.
- 6.17 These issues are, of course, interrelated. Even if we were able to impose measures that facilitated consumers to make informed purchase decisions more often, there would still be occasions when consumers may have problems with PRS and hence they would still need access to effective redress. Conversely, the absence of an effective redress mechanism provides incentives for suppliers to behave opportunistically.

Facilitating consumers to make informed decisions

- 6.18 Consumers want to be able to purchase a service that meets their needs, knowing the price that they will pay for the service and what exactly it is that they will receive. To be able to do this, consumers need some basic, readily accessible and user-friendly information about the nature of a particular service to be able to decide whether to purchase one service in preference to another or indeed whether to make a purchase at all.

The need for price transparency

- 6.19 The price of a service is typically a key factor for a consumer in making a purchase decision. For the majority of consumers (i.e. those that take account of the price of a service when making a purchase) it is vital that they have clear pricing information.
- 6.20 The PhonepayPlus Code of Practice requires that consumers be given clear and accurate pricing information. Rule 5.7.1 in the Code states:
- ‘Service providers must ensure that all users of premium rate services are fully informed, clearly and straightforwardly, of the cost of using a service prior to incurring any charge.’
- 6.21 As already outlined, when a consumer calls a 09 number it is their own OCP that sets the retail price for the PRS rather than the supplier of the PRS. This makes it difficult for the supplier of the PRS to communicate the exact price that will be charged to each consumer and, as set out above, generally PRS prices are advertised for accessing them as a BT landline customer, with the additional information that calls from mobile phones and other fixed line networks may vary, or may cost considerably more (in the case of mobile calls to broadcasting PRS).
- 6.22 Recognising this, we have in place two General Conditions⁸¹ (‘GCs’) on Communication Providers that are designed to ensure price transparency. GC10

⁸¹ The General Conditions of Entitlement can be found at http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/.

places a transparency obligation on communications providers requiring them to inform consumers about their tariffs. GC 14 requires OCPs to publish tariff information about the tariffs that apply on their network for calls to any PRS number range.

- 6.23 In our recent review into pricing transparency for 0870 numbers, we decided to improve consumer transparency by strengthening transparency obligations imposed on OCPs regarding the price of calls to these numbers. There is an expectation from Ofcom and PhonepayPlus that consumers should be given clear and accurate information regarding the charges for PRS. That information needs to be presented in a way that is appropriate to the manner in which the service is consumed and there are a number of options that could be considered in this context. This could include the approach recently adopted for 0870 numbers; approaches related to the information provided to the consumer by SPs and IPs (rather than the OCP); and, approaches which impact the actual level of the charge that might be imposed by the OCP.

The problem

- 6.24 Evidence from Ofcom's market research⁸² and research commissioned by PhonepayPlus indicate that a lack of price transparency remains the major problem today in the PRS market, despite the current regulatory framework. As set out in section 4, this could lead to consumers being faced with higher prices than they expected after purchasing a PRS, or consumers not trusting the price for a PRS will accord with their expectations, and therefore refraining from using the service.
- 6.25 As part of the market research we looked at the pricing information given to consumers in promotional material for PRS. Approximately a third of consumers thought that current information given in promotions for PRS was of little use to them in calculating the price of a call. This finding is in line with the number of consumers who reported receiving higher than expected bills. When consumers were asked how their actual bill for using PRS compared with expectations, around a third said they had paid more than anticipated. This happened most commonly for those who were spending more on PRS: 52% of users spending more than £20 a year, compared with 28% who were spending less than £20 a year. Half reported that their bill was in line with expectations.
- 6.26 Additionally, as discussed above, 73% of those respondents in the market research that reported not using PRS in the last 12 months said that it was because they were worried that they might be overcharged⁸³. It is likely that a lack of price transparency or at least a lack of trust and confidence in the pricing of PRS is a factor contributing to this finding.
- 6.27 Research commissioned by PhonepayPlus in 2007⁸⁴ provided an overview of reasons why respondents would not use PRS. The main reason for not using PRS was no interest in the services offered (72% of male and 65% of female respondents). Additional reasons related to trust and lack of transparency (including percentage of male and female respondents per reason) are shown below:

⁸² This research is included in Annex 7.

⁸³ It should be noted that only 28% of this group said that they would use PRS even if they could be sure how much they would cost.

⁸⁴ This research can be found at

http://www.phonepayplus.org.uk/pdfs_research/Phone_paid_services_Fathom.pdf.

- Don't trust them: 33% of male and 22% of female respondents;
 - Can't afford them: 12% of male and 20% of female respondents; and
 - Don't know how much they cost: 11% of male and 9% of female respondents.
- 6.28 More recent research commissioned by PhonepayPlus⁸⁵ shows a similar picture. Again, the main reason for not using PRS is a lack of interest, cited by over 60% of respondents. Other reasons cited by respondents are:
- Too expensive: 40% of respondents;
 - Do not trust service: 20% of respondents; and
 - Bad publicity: 15% of respondents.
- 6.29 In terms of consumer trust, over 50% of consumers lack trust in phone-paid services, and less than 20% consider these services to be trusted or very trusted. More than 40% of consumers said that accurate pricing information would help improve trust in the market. Industry stakeholders also recognise the lack of price transparency has a significant negative impact on consumer perceptions of phone-paid services⁸⁶.

Consumer transparency across number ranges

- 6.30 Based on qualitative and quantitative internal Ofcom research in the context of a review of our long-term strategic approach to the numbering plan in the light of consumers' need for service and price transparency⁸⁷, we observed that transparency is a consumer issue across most communication services. Awareness of call charges and services associated with different numbers is limited; almost all consumers recognise landlines, mobiles and 0800 free phone numbers. 08x and 09x numbers are less frequently recognised.
- 6.31 In terms of availability of price information, as set in section 3 above, 76% of respondents thought it was important to know the price of a call before dialling, and over 25% thought it was very important. In respect of access to price information, this is seen as insufficient from fixed and mobile operators. 69% of respondents indicate that they would be more likely to look up prices if the information was available. However, at the same time, most respondents recognise that price information was available somewhere, but looking up the price of a call before dialling was considered not to be worth the effort.
- 6.32 Almost all respondents stated they had paid more for a call than expected, and almost always to non-regular numbers (07/08/09).
- 6.33 Most of our evidence regarding the lack of price transparency is based on market research and complaints data received by PhonepayPlus. We understand many SPs get questions and complaints from consumers who claim they ended up paying more than expected, and ask for refunds. In terms of getting a broader and more accurate view in respect of the size of the problem, we invite SPs to provide us with

⁸⁵ This report can be found at http://www.phonepayplus.org.uk/pdfs_research/UK_Phone_paid_services_market_200812.pdf.

⁸⁶ Ibid, section 5.2.

⁸⁷ As set out in the Ofcom Annual Plan 2009/10, <http://www.ofcom.org.uk/consult/condocs/draftap0910/draftap0910.pdf>, paragraph 5.56.

information on the total number of PRS related complaints they receive, and the share of complaints regarding PRS price transparency, and number and amounts of refunds issued to consumers.

Actions taken so far

- 6.34 We have already taken a number of actions designed to improve this situation. We conducted a number of investigations into compliance with GC14.2. That investigation revealed non-compliance by several communications providers with respect to their Codes of Practice for Premium Rate Services and NTS Calls. Since then, a number of OCPs have improved the PRS tariff information on their websites, for instance by providing their customers with PRS tariff look-up tables. We closed the investigation in December 2008 after receiving commitments from these communications providers that they would amend their codes to be compliant with GC14.2 but we stated that we would continue to monitor ongoing compliance⁸⁸.
- 6.35 Since first raising concern regarding price transparency during the pre-consultation phase of the review, the importance of this issue in terms of consumer trust and confidence in PRS has been recognised by industry stakeholders. The Association for Interactive Media and Entertainment (AIME, formerly NOC) has started an initiative to improve price transparency where PRS are used in participation television programmes. Broadcasters, communication providers and service providers have introduced a new on-screen tariff message and broadcasters comply with the changes in their license obligations, following the Ayre review⁸⁹.
- 6.36 Instead of the statement 'Calls from other networks may vary', broadcasters and the other parties in the value chain provide, in addition to the charge for the call from a BT line, the message 'calls from mobile networks may cost considerably more' which was one of the alternatives suggested in the statement on Participation TV⁹⁰.
- 6.37 AIME and other stakeholders have expressed a willingness to try and improve tariff information for non-broadcasting PRS as well and are looking into ways this could be achieved.
- 6.38 These actions have resulted in incremental improvements in respect of PRS price transparency, but as indicated by the market research referred to in sections 6.24 – 6.33, it is clear that there remains a problem for a significant proportion of consumers in determining the price and overall cost of using a PRS. As explained in Section 4, this situation leads to actual consumer harm and consumers refraining from using PRS, because of lack of trust in PRS services. Taking into account the low levels of trust and the fact that price transparency has decreased over time (as set out in section 2) we believe the current situation is unacceptable.

⁸⁸ For more details, see http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_compcases/cw_980/.

⁸⁹ The Ayre review published results of TV broadcasters' use of premium rate telephone services (PRS) in programmes. More details can be found at http://www.ofcom.org.uk/media/news/2007/07/nr_20070718.

⁹⁰ This statement can be found at <http://www.ofcom.org.uk/consult/condocs/participationtv/statement/>.

- 6.39 A number of industry stakeholders have urged Ofcom to set prices, or introduce maximum prices. Currently, only BT is bound by a tariff cap on PRS numbers on the 09 number range⁹¹.
- 6.40 Similar proposals were recently considered by Ofcom in relation to charges for 0870 calls, where there are price transparency issues with some similarities. In this case they were rejected as it was considered that it would be an intrusive regulatory intervention that placed restrictions on the pricing freedom of OCPs. In that case, Ofcom decided that the better remedy was to impose stronger price publication requirements on OCPs in relation to retail charges for 0870 calls with additional publication requirements where prices for such calls are higher than those for geographic calls. While similar options could be considered for 09 calls, we note that there are some important differences with this number range. First, the correspondingly higher average charge for calls to 09 numbers could create a more significant risk of material consumer harm. Second, while 0870 is a particularly recognisable number range with a single price point for any individual OCP, the 09 number range is characterised by multiple price points. Third, calls to 09 numbers tend to be impulse decisions, whereas consumers are more likely to make calls to numbers on the 0870 range. Given these features, we are doubtful whether, by itself, enhanced price publication obligations imposed on OCPs similar to those recently adopted in relation to 0870 would be effective in improving price transparency for consumers as regards 09 calls.
- 6.41 We would also note in this context that amendments to the European Framework on Electronics Communications Networks and Services are currently being discussed which, if enacted, could provide some further impetus in this area. In particular, the proposals state that national regulatory authorities such as Ofcom would be able to specify the maximum prices that can apply for specific number ranges for consumer protection purposes. The timing for approval of the revised European Framework remains uncertain and the current proposals, if adopted, are unlikely to come into force in national law until the end of 2010 at the earliest.
- 6.42 However, given concerns raised about tariff transparency, we would be interested in stakeholders' early views on an approach to this issue which involved the setting of maximum OCP tariffs for particular number ranges.

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

Question 6.2: If you do 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 could have any negative side-effects? If so, which ones?

Options

- 6.43 In this document, we believe we should consult on some more immediate options to improve the current situation.

⁹¹ This maximum tariff is set out in Ofcom's Numbering Plan and is founded in the Number Translation Services ("NTS") Call Origination Condition. Based on this Condition, BT has an obligation to originate PRS calls on regulated terms on behalf of TCPs.

6.44 Below we set out a number of options based on consumer research and internal analysis which we believe would improve PRS price transparency. We are interested to hear any suggestions consumers and industry stakeholders may have and invite all parties to come forward with suggestions.

Consumer research:

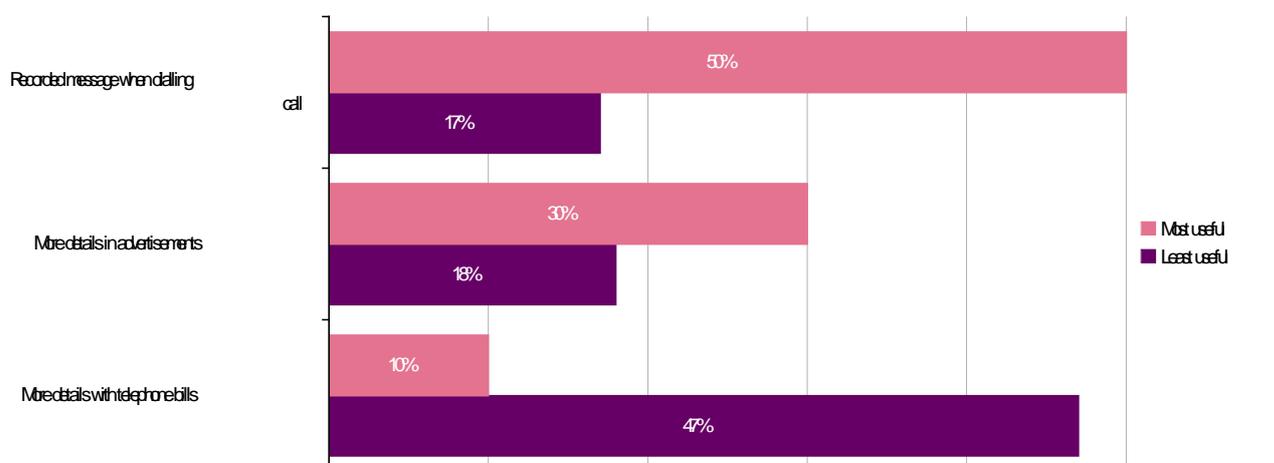
6.45 As part of our consumer research (attached in annex 7), three alternative methods of delivering pricing information were tested with respondents. Consumers were asked which of these methods would be most and least useful if they wanted to know the price of a PRS:

- if the advert for the premium rate service had more details about the price in it - for example the maximum price from a mobile phone;
- if when you call the number there is a recorded message explaining the call charges that you would hear before you are actually connected to and charged for the PRS number; and
- if more details about costs and tariffs from individual services telephone companies were sent with the bills from telephone companies.

6.46 As can be seen in Figure 21 below, half chose the recorded message as the most useful method, equally popular amongst PRS users and non-users. Least welcome was the provision of more information with telephone bills. Subtracting the negative from the positive scores gives a ‘net useful’ rating, on which a recorded message is clearly most popular (+33), more details with bills least popular (-37). More details about the price in a PRS advertisement was the respondents’ second choice, with a net useful rating of 18.

6.47 Ofcom’s internal research on consumer transparency also indicated an overwhelming preference for pre-call announcements (for services with a tariff of over 10p per minute) by respondents, with the ability for consumers to opt in or out. 73% of respondents considered they would be likely to use pre-call announcements, 40% considered they would be very likely.

Figure 21: Reactions to alternative cost communications



Source; Ofcom’s consumer research

- 6.48 These preferences were reinforced by the qualitative research. The recorded message was popular for its directness and availability at the point of calling. However, some respondents rejected this option as they were concerned they would be charged to hear the message about the cost of the call. Potential users would need to be reassured about the nature of this information, and that they would not be charged if they did hang up before the call was connected.
- 6.49 In fact we have already considered the possibility of requiring pre-call announcements ('PCAs') for both 070 and 0870 numbers. We consulted on these issues in May 2007 and May 2008 respectively, and after both consultations we received a number of complaints about the introduction of PCAs. In particular, we identified certain automated calling services provided on the number ranges designed to protect human life or property, where use of the PCAs has caused these remotely activated calling services to fail because of the dialling delay introduced by the PCA. We therefore removed the proposed PCA requirement for 070 and 0870 numbers⁹².
- 6.50 We note that provision 5.7.5 of PhonepayPlus' Code of Practice indicates that there may be burglar alarms operating on PRS numbers, but we are not aware that any automated calling services are provided using 09 numbers. Indeed, given the relatively high average charge for these, we would consider it less likely that service providers would have chosen to offer services on these number ranges. Nevertheless, we would be interested in any stakeholder information on this as it clearly would be one of the factors that might have an impact on the viability of PCAs as a possible solution to consumer transparency concerns for PRS. If we were to carry out a study on the viability of PCAs, this would be an important consideration.
- 6.51 Furthermore, we understood from conversations with industry stakeholders, that a number of them considered the introduction of PCAs technically complex and costly to implement.
- 6.52 However, since PCAs are by far the preferred option of consumers, we would like to get stakeholders' opinion as to whether they consider it worthwhile to carry out a detailed study into the implications of introducing pre-call announcements for PRS, covering issues such as:
- Effectiveness and benefits;
 - Costs of implementation;
 - Responsibility for the announcement (OCPs or TCPs);
 - Details of the announcement (should there be an option to switch it off);
 - Potential for adverse impact on automated calling services; and
 - Interference of announcement with service categories.
- 6.53 It is also worth noting that, in the context of the review the European Framework mentioned above, there are proposals that would, if adopted, further strengthen tariff transparency requirements by enabling national regulators to require the provision of

⁹² More information can be found at <http://www.ofcom.org.uk/consult/condocs/numbering03/070precall/> and <http://www.ofcom.org.uk/consult/condocs/0870calls/>

information regarding pricing conditions of individual categories of services to be provided immediately prior to connecting the call.⁹³

Question 6.4: Do you consider PCAs would improve price transparency in the PRS market?

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

Other options to address price transparency:

6.54 Other options we would like to discuss involve PhonepayPlus potentially considering changing their Code of Practice or the application of their Code, and would require either issuing Help Notes or a change in the Code.

Require every advertisement to contain the BT price and the maximum price that may be charged by an OCP, including naming that OCP.

6.55 Under this option, an SP would have to include the relevant BT price in their advertisement (which is currently already the case) and the maximum price charged for the same service by an OCP, including the name of the OCP in question. For instance: 'Calls cost 25p from a BT line, the maximum for this call will be 70p from OCP X'.

6.56 As set out in paragraph 6.20 above, provision 5.7.1 of the PhonepayPlus Code of Practice sets out that users should be fully informed, clearly and straightforwardly, about the cost of a PRS prior to incurring any charge. As outlined in paragraph 4.24, it may be hard for SPs to discharge this obligation, given the number of OCPs and the variations in their PRS charges and the constraints in the space (or time) available for this information in advertising. For this reason, we do not believe that extending the obligations in provision 5.7 to require SPs to advertise all charges for a particular PRS would be practicable. It could also involve significant costs in terms of gathering, monitoring and updating tariff information for all PRS an SP offers.

6.57 This option, which would amend the PhonepayPlus Code of Practice to require SPs to include in its advertising BT's price and the maximum price which might be charged for the PRS, might be a more effective and workable means of improving price transparency. While it would not provide comprehensive pricing information for consumers, it would at least advise them of the maximum tariff they could face for this service.

6.58 The possible advantages of this option for each of the parties in the value chain are as follows:

- consumers would know what the maximum costs for a PRS could be, and based on this they could decide whether or not to go ahead with the call;
- for SPs, including a maximum tariff in advertisements should increase price transparency for consumers and could lead to fewer consumer questions, complaints and refunds. It could also result in increased consumer confidence, leading to more consumers using their services. It could, however, incur

⁹³ For further information on the review of the Electronic Communications Framework, see: http://ec.europa.eu/information_society/policy/ecomm/tomorrow/reform/index_en.htm.

additional costs for SPs in obtaining price information for their services from OCPs and updating them when necessary; and

- for OCPs, likewise, increased transparency could lead to fewer consumer complaints and to an increase in consumer confidence, leading to increased PRS revenues for OCPs. It is unclear whether the option would incur additional costs for OCPs in providing pricing information to SPs, given their existing obligation to publish their PRS tariffs under General Condition 14.

6.59 However, there is, potentially, a significant disadvantage with this option. There would continue to be limited price transparency in that the majority of retail prices charged by OCPs would not be advertised by the SP. This, and the fact that many calls to PRS are impulse purchases,⁹⁴ may dampen price competition between OCPs and, instead, could provide an incentive for OCPs to raise their prices to the highest advertised price. In other words, if there are limited competitive constraints, all OCPs that are not subject to an obligation to publish tariffs could be better off by raising their prices to, or close to the maximum. The risk is therefore that the highest published price may become a reference price for OCPs and result in higher PRS prices for consumers. The resulting consumer harm from higher prices may be significant.

Question 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 PRS market?

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

Question 6.8: Do you consider there are 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 SPs and OCPs)? Do you believe there are there any other costs involved under this option?

Facilitating effective consumer redress

6.60 Even if consumers have been able to make an informed decision to purchase a PRS insofar as price information is concerned - and as the preceding discussion highlighted that is not yet the case for all consumers - it is inevitable that some problems may arise and the consumer will want to be able to seek effective redress. For example, consumers may feel the quality of the service is not according to their expectations, or the service is not delivered.

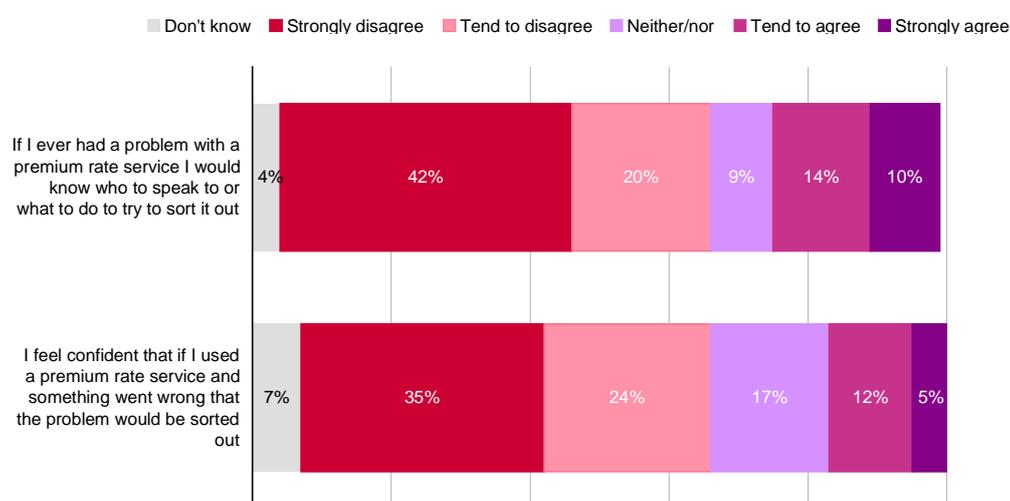
6.61 As noted in section 4, PhonepayPlus received 13,500 complaints in the period from April 2007 – March 2008. Over the full calendar year 2008, PhonepayPlus received

⁹⁴ These features distinguish the likely competitive outcome of this proposal from that expected to flow from the price transparency measures implemented by Ofcom's recent statement, 'Changes to 0870' (<http://www.ofcom.org.uk/consult/condocs/0870calls/0870statement/>). In that case, there will be greater price transparency in relation to the retail prices of all OCPs for 0870 calls and Ofcom expects that to improve the effectiveness of competition between OCPs, leading to a reduction in retail prices for 0870 calls overall. For the reasons set out above, we do not consider that similar price transparency measures to those adopted in relation to 0870 calls would be practicable or effective in relation to 09 calls.

almost 24,000 complaints, according to their Quarterly Report 2008/9 Q3 with mobile generating over 90% of total complaints.

- 6.62 Based on the market research commissioned by Ofcom (included in annex 7) it appears that only a minority of respondents would know what to do if they had a problem with a PRS; 60% of respondents would not know where to go; existing PRS users are only slightly more confident in knowing where to turn (27% positive vs. 64% negative). In sections 6.60 – 6.70 below we set out how consumers can find out the details of their SP in case they want to register a complaint and/or seek redress.
- 6.63 Expectations of resolving problems are also low, as can be seen in Figure 22 below. 17% are confident that a PRS problem would be resolved, whilst 59% lack confidence.

Figure 22: Expectations of resolving problems with PRS



Source: Ofcom's consumer research

- 6.64 Despite the confidence that some express in knowing where to turn if they had a PRS problem, only 16% first mention the SP. Twice as many would contact their fixed or mobile OCP.
- 6.65 Ofcom believes that further measures or revisions to the existing regulation might be appropriate in a number of areas related to the process of a consumer seeking redress:
- making it more straightforward for the consumer to be able to identify the provider of the PRS; and
 - making the complaints procedure of the Service/Information Provider more straightforward.

Both of these issues are discussed in turn below.

Identifying the provider of the PRS

- 6.66 The first step for a consumer seeking redress is to identify the provider of the PRS. In the majority of cases this will not be the consumer's OCP (with the exception of own-portal PRS where the provider of the PRS is the OCP), although it will often be the

OCP that receives the first enquiry from the consumer. It can be a frustrating experience for the consumer to track down the provider of the PRS.

- 6.67 A crucial tool for OCPs or for consumers directly is PhonepayPlus' number checker, which can be accessed through its website or via an interactive voice response system. There are around 85,000 hits on the number checker each month. At present this database can provide the name and a contact number for the service provider for 85% of all in-remit searches.
- 6.68 This means that there is a more time consuming process for identifying the SP for those numbers not captured within the 85% of successful checks. In those cases it is necessary to contact the TCP identified in the database to try to get the necessary contact details of the SP. This involves an extra step in the redress process and it is likely to be a complex process to elicit the necessary contact details from the TCP, with whom the consumer will have no contractual relationship. It would be much simpler for the consumer if the database were able to identify the service provider for all or most PRS numbers.
- 6.69 Ofcom commissioned Indepen (an economics consultancy) to assess the feasibility of extending the number checker to include all PRS numbers⁹⁵. Their cost benefit analysis identified that the major benefits would come as a result of the costs avoided by consumers and OCPs in having a more direct route to identify SP than currently available. Costs would, though, be incurred both setting up and maintaining the extended database. Overall, however, the analysis suggests that there is very strong case for expanding the number checker to include most PRS numbers. Its analysis estimated the Net Present Value ('NPV') of the benefits at £3.1 million and the NPV of the costs at £0.6 million giving a net benefit of £2.5 million over a 5 year time period.
- 6.70 Given the strength of the findings in respect of the financial case, Ofcom believes that the number checker should be expanded to cover most PRS numbers recognising that the costs of capturing every number may prove excessive and may add limited incremental value, since many PRS numbers will generate few or no hits. Please note that in order to achieve certain aspects of this proposal, a change in the PhonepayPlus Code of Practice may be required.

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 (e.g. revenues, complaints over the last X weeks etc)?

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

A formal service provider complaints procedure

- 6.71 It is already the case that a consumer's OCP is required to have a formal complaints process that conforms to a regulated code of practice (under GC14). This ensures that all OCPs have a process that meets a minimum required standard, the result being that consumers should have an adequate process for seeking redress. This is not the case at present for SPs/IPs, which means that consumers seeking redress in

⁹⁵ Indepen's report can be found in Annex 5.

the case of PRS could encounter very different standards of complaints handling depending on who the SP/IP is.

- 6.72 This is an unsatisfactory situation and it is an issue that PhonepayPlus has determined should come under review when it consults on revising its Code of Practice. We support this position and would welcome PhonepayPlus assessing the net benefits to be gained from requiring SPs/IPs to adopt a formal complaints procedure.

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

Empowering suppliers to act responsibly

- 6.73 Even with a comprehensive Code of Practice to govern the behaviour of players in the PRS sector, this merely sets out the rules and the requirement for the enforcement of these rules. We are keen to give responsible players within the industry an opportunity to play a role in improving the behaviour of other participants in the industry.
- 6.74 Ofcom believes that there are two areas in which industry players could play a greater role in improving the outcomes for consumers:
- suppliers could make more informed decisions about entering into contracts with commercial partners if they had access through a single point to a range of relevant information; and
 - OCPs could offer call barring functionalities to allow consumers to selectively bar access to certain PRS services.

A centralised registration scheme or information database

- 6.75 As emphasised at numerous points in this document, PRS can be provided through a complex supply chain with large numbers of SPs and IPs being involved across the industry. Under the PhonepayPlus Code of Practice ultimate responsibility for the content and promotion of PRS rests with the SP. However, PhonepayPlus recognise that on occasion, IPs are exercising de facto control over the design, promotion and/or operation of a PRS. Under the Code, PhonepayPlus have the ability in certain circumstances to deal directly with the IP. PhonepayPlus recently published a revised Help Note setting out the criteria, procedure and factors they take into account when considering dealing directly with an IP⁹⁶.
- 6.76 Changes in the sector underpin the role of IPs in the provision of PRS and breaches of the Code of Practice. In particular, the increase in mobile services and the related increase in mobile complaints. By the end of 2008 over 90% of complaints to PhonepayPlus were generated by mobile rather than fixed PRS - even though these mobile services represented only 50% of the PRS market. Yet mobile PRS are characterised by a handful of established SPs who provide the platforms from which many thousands of IPs promote and provide content for PRS. This suggests that there is a growing need to regulate mobile PRS IPs in some new and more rigorous way.

⁹⁶ This helpnote can be found at http://www.phonepayplus.org.uk/pdfs_helpnotes_code11/deal_IP.pdf.

- 6.77 With these developments in mind PhonepayPlus has started to focus more attention on how best to regulate IPs. As part of the development of the 12th version of their Code of Practice, PhonepayPlus are considering extending the current requirement for SPs to register in order to operate, to IPs. SPs will not be allowed to provide interconnect to IPs who cannot prove they have registered.
- 6.78 It would allow PhonepayPlus to prohibit IPs found to have been knowingly involved in a serious breach or series of breaches of the PhonepayPlus Code of Practice from involvement in or contracting for the provision of a type of category of service for a defined period of time. This will reduce the scope for IPs to continue to operate non-compliant services by contracting through a different SP. In addition, it will facilitate the investigation of IPs where deemed appropriate.
- 6.79 PhonepayPlus consider that such a change would require parties in the PRS supply chain to perform a degree of due diligence on parties further down the chain with whom they contract.

Question 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?

- 6.80 It is already the case that TCPs that contract with suppliers of PRS are required under the Code of Practice to undertake “regulatory” due diligence alongside their commercial due diligence of any contracted SP. They are required to collect information for PhonepayPlus so that it is able to identify and communicate with the SP and also collect appropriate information so as to satisfy themselves that the SP will be capable of complying with the relevant parts of the Code of Practice.
- 6.81 PhonepayPlus also collects a range of information as a part of its standard operations, for example adjudication decisions, which could be useful for industry players in assessing the likely future behaviour of potential commercial partners. PhonepayPlus also mandates that SPs register with them prior to offering PRS.
- 6.82 Certain players in the industry have argued that there could be a case for a central registration scheme that would collect and make accessible information on SPs and IPs. Suppliers could then use this information to make more informed decisions when selecting commercial partners.
- 6.83 Ofcom commissioned Indepen and at a later stage Plum (both economic consultants firms) to undertake an assessment of possible registration schemes. They evaluated a number of different possible options and made recommendations on the basis of their financial analysis of those options. Their full reports, including the options assessed, are available in annex 5 and 6.
- 6.84 Although they developed a number of different options, a few key features are common to the options:
- The commercial due diligence would be carried out by TCPs on SPs, and by SPs on IPs (depending on the option assessed).
 - Reputational history would be available from the registration database on SPs and IPs including names of directors or associated persons (depending on the option assessed).

6.85 A key finding in their analysis is that the financial justification for a centralised registration scheme is dependent on a reduction in the number of breaches of the Code of Practice by SPs and IPs (and therefore on bringing about benefits in the form of a reduction in consumer harm, derived from a reduction in number of complaints, investigations and adjudications). They identify two main benefits from introducing a central registration scheme:

- The costs of duplicated due diligence which are avoided by moving to such a scheme; and
- The benefits which arise from a reduction in the number of Code breaches.

The main costs identified are associated with developing and maintaining the database, carrying out due diligence checks and populating and updating the database.

Options assessed

6.86 The following options for a centralised registration scheme, including a short description of each of the options, were included in the first stage of the analysis, as carried out by Indepen. These options are assessed against the counterfactual, i.e. the current situation where PhonepayPlus have a number of databases and processes in place and where the 11th Code of Practice is in force.

- Option B: a central registration scheme for SPs only;
- Option C: as Option B but with the facility to search on the reputations of individual directors;
- Option D: a central registration scheme for SPs and IPs⁹⁷ but with the focus of regulation remaining on the former (please note that the requirement for IPs to register would require a change in the PhonepayPlus Code of Practice); and
- Option E: a central registration scheme for IPs only.

6.87 Indepen also, however, suggested that there could be a case for introducing what it refers to as a reputational database rather than a full, centralised registration scheme. This option was not further assessed by Indepen. Because of the increased involvement of IPs in breaches during 2007 and 2008, we subsequently, commissioned Plum to carry out a cost-benefit⁹⁸ for three sub-options for such a reputational database, which are included in annex 6:

- Option F1: this option would be very similar to the existing PhonepayPlus adjudications database with some minor modifications. A TCP or SP could use the due diligence section of the PhonepayPlus web site to check whether an IP or SP has been associated with breaches of the Code since the beginning of 2008. This information would provide due diligence information which the TCP or service provider could use in deciding whether or not contract with the IP under consideration. Names of directors would not be included under this option.

⁹⁷ Please note that Indepen use the term 'service promoters' where we use the term Information Providers.

⁹⁸ Please note that the final costs and benefits will depend on the exact way options are implemented and on the base line in respect of breaches of the Code and derived consumer harm.

- Option F2: a new reputational database which captures the reputations of individuals as well as companies via the PhonepayPlus registration database. Both SPs and IPs would be required to register with PhonepayPlus (which would require a change in the PhonepayPlus Code of Practice). Names of directors would be included under this option; and
- Option F3: as Option F2 but without requiring registration of the information providers. PhonepayPlus could seek the names of the directors of an IP alleged to have breached the Code from Companies House as and when a breach is investigated.

6.88 The net benefits of these three options are set out in Figure 23 below.

Figure 23: Net benefits of options for a stand-alone reputational database

Option	F1	F2	F3
Discounted benefits	£4.8m	£4.8m	£4.8m
Discounted costs	£0.02m	£1m	£0.5m
Net benefits	£4.8m	£3.8m	£4.3m
% reduction in Code breaches required to generate positive net benefits	0.01	0.42	0.22

Source: Plum Consulting

- 6.89 The figure also shows which percentage reduction in Code breaches is required for the option to generate a positive net benefit. From this table, it can be concluded that the costs of implementing option F1 are very low, and the benefits substantial. In addition, we believe this option could be implemented very quickly by PhonepayPlus.
- 6.90 Subject therefore to consultation responses, we are currently in favour of and recommend PhonepayPlus to look into implementing option F1. However, options F2 and F3 both generate substantial benefits to consumers and industry stakeholders. As set out above, recent complaints information suggests that there would be value in the ability for SPs to verify the reputation of IPs, and that IP registration could provide SPs with improved information regarding IPs and their directors based on which SPs can decide whether or not to contract with a certain IP. As can be seen in Figure 23 above, the cost differences between options F1, F2 and F3 are substantial.
- 6.91 The current PhonepayPlus budget does not include any provisions for the implementation and maintenance of registration schemes and/or reputational databases.
- 6.92 If one of the “F” options is implemented there are strong arguments which suggest that PhonepayPlus should run the reputational database rather than an independent commercial third-party. The Indepen study showed “almost universal agreement” amongst the wide range of stakeholders consulted that PhonepayPlus should run any central registration database which was established. In addition to stakeholders’ preference regarding the registration database, below we set out a number of reasons why we consider PhonepayPlus would be well placed to implement and operate such a database:

- PhonepayPlus is responsible for the adjudications from which the reputational information of the database is assembled. Making PhonepayPlus responsible for the database would help maximise the chance that the information on the database is accurate at the lowest operational costs;
- PhonepayPlus is independent of industry players but has an in-depth understanding of the industry. A commercial third-party which was independent of the industry would have a learning curve before it could run the reputational database efficiently. Furthermore, a commercial third-party which was involved in the industry could be unacceptable to some PRS players; and
- PhonepayPlus could build on its existing systems infrastructure and available information which could be more cost-effective than building a whole new environment.

Question 6.15: Do you consider 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?

Call barring functionalities

- 6.93 A number of OCPs offer call barring functionalities for specific PRS. These functionalities vary widely between OCPs. Under Article 10, paragraph 2 of the of the Universal Service Directive (2002/22/EC), which states that "Member States shall ensure that designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) provide the specific facilities and services set out in Annex I, Part A, in order that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service". Annex 1, Part A, sets out that selective call barring for outgoing calls is the facility whereby the subscriber can, on request to the telephone service provider, bar outgoing calls of defined types or to defined types of numbers free of charge.
- 6.94 The Article goes on to say that requirements to provide selective call barring can be waived if there is evidence that such a facility is widely available.
- 6.95 In 2003, we considered that because of the wide availability of selective call barring facilities throughout the industry, and the need for us to demonstrate that all regulation by us is appropriate and proportionate, we were not persuaded that there was any requirement for further regulatory intervention in this area.
- 6.96 It has always been the case that there are significant variations in the types of call barring products available, including the way in which they work, the types of calls which can be barred and the cost to the consumer. But given that most, if not all OCPs, do offer some form of call barring, consumers generally have choice. Therefore, the position has been that there are no current obligations upon OCPs to provide selective call barring for outgoing or incoming calls nor that, where they do so, such a facility should be free of charge. This remains a commercial decision of the OCPs themselves.

6.97 However, as set out above, this decision was made in 2003, and the market has since significantly changed, especially with regards to the increase in mobile PRS, and the use of reverse billed SMS as a payment mechanism. According to information provided on a voluntary basis by the mobile networks, all offer call barring facilities for the 09 number range. A facility to block outgoing calls and SMS messages to mobile short codes is currently not offered by most mobile providers. Reverse billed SMS messages, often related to subscription based services, which have caused the majority of mobile complaints into PhonepayPlus, can generally not be blocked. Figure 24 provides an overview of the information provided by the mobile networks.

Figure 24: Overview of information provided in respect of call barring by mobile networks

	09 barring	Outgoing voice to mobile short codes	Outgoing SMS to mobile short codes	Incoming Premium SMS
Mobile network A	3 levels depending on tariff	No	No	No (unless all incoming SMS blocked)
Mobile network B	All 09 can be barred, no sub-barring possible	No	No	No
Mobile network C	All 09 can be barred, no sub-barring possible	No	No	Yes
Mobile network D	All 09 can be barred, no sub-barring possible	Yes	Yes*	Yes*
Mobile network E	Either all 09 barred, or adult services bar	If 09 bar in place, mobile voice short codes mapping onto these numbers are barred as well.	No	Not on generality of incoming PRS SMS but systems can prevent users of non-adult verified phones from accessing and receiving premium rate adult content

*: Offered to customers who have experienced problems.

6.98 The consumer transparency research commissioned by Ofcom asked respondents about call barring. According to this research, 12% used call barring, and 86% did not and 46% considered call barring to be either important or very important.

6.99 Although there appears to be an interest from consumers in call barring, not all OCPs offer call barring functionalities to certain service categories. We would like to gain a better understanding of the following issues related to call barring:

- What could be reasons for OCPs not to offer call barring functionalities to certain service categories?
- Would call barring functionalities provide benefits to consumers?

6.100 In order to do so, we propose to carry out an analysis of the market for call barring facilities assessing:

- which functionalities are available;
- how widely they are available;
- whether these are fit for today's market;
- the costs of mandating call barring functionalities;

- the consumer benefits derived from the availability of call barring functionalities.

6.101 We are also interested to explore whether there is any willingness on behalf of OCPs to voluntarily extend their call barring facilities to include number ranges that currently cause high levels of consumer harm (such as reverse billed SMS).

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

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 24 July 2009**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/prs_scope/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email jeff.loan@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Jeff Loan
 Floor 6
 Dept Consumer Policy
 Riverside House
 2A Southwark Bridge Road
 London SE1 9HA
- Fax: 020 7783 4103
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Jeff Loan on 020 7981 3761.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Ofcom intends to publish a statement towards the end of the year.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 Please find below a list of questions included in the consultation document. The first number refers to the section of the consultation document where the question is discussed, e.g. Question 4.1 is the first question discussed in section 4.

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?

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?

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

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

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

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

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

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

Question 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.

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

Question 6.2: If you do 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 could have any negative side-effects? If so, which ones?

Question 6.4: Do you consider PCAs would improve price transparency in the PRS market?

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

Question 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 PRS market?

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

Question 6.8: Do you consider there are 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 SPs and OCPs)? Do you believe there are there any other costs involved under this option?

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 (e.g. revenues, complaints over the last X weeks etc)?

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

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

Question 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?

Question 6.15: Do you consider 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?

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

Annex 5

The feasibility of a central registration service for premium rate service providers

A5.1 Annex 5 is attached separately.

Annex 6

The benefits of a standalone reputational database for premium rate services

A6.1 Annex 6 is attached separately.

Annex 7

Consumer experience of PRS

A7.1 Annex 7 is attached separately.

Annex 8

Consumer harm from imperfect price information

- A8.1 This Annex expands on the considerations about the possible consumer harm that may arise from consumers having to make decisions as to whether or not to purchase PRS on the basis of incomplete information.
- A8.2 PRS information is incomplete because consumers only know the price of PRS when they are accessed via a BT subscription. This information is published, and available at the point of purchase, in the promotional messages from SPs or IPs. They could obtain price information from the tariffs published by their own OCP, but this is hard to find and not worth searching for in the light of low expenditure represented by a single or few PRS transactions.
- A8.3 From the promotional message consumers know the price of purchasing PRS using a BT subscription. They are informed that prices from other OCP may vary.
- A8.4 The first aspect to note is that BT customers can be thought of having sufficient information as to the tariffs for PRS services to make informed choices. Hence, it is unlikely that these consumers currently suffer or have suffered harm in the past.
- A8.5 Subscribers to other OCPs generally do not know the exact tariffs they face. They may be harmed, insofar as PRS are concerned, because they may have acted differently had they had access to the correct price information.
- A8.6 In order to illustrate when concerns may arise it is useful to focus on subscribers to OCPs other than BT. Also suppose that PRS prices could be either low or high. Consumers will form expectations about the PRS price they will face after sale, which could be either correct or incorrect, and make decisions on the basis of these expectations.
- A8.7 There are essentially three scenarios which are illustrated in Figure 25.
- Consumers' expectations may be correct and they choose whether to purchase a PRS or not on the basis of the correct information. In this case, there is no harm from imperfect information;
 - Consumers' expectations may be incorrect:
 - Consumers may expect low prices and act accordingly, but discover later that they paid high prices. Consumer harm from imperfect information arises when consumers decide to purchase a PRS on the basis of incorrect expectations. In other words, the harm arises when the consumer would not have bought the PRS, had they known that prices were high. On the other hand, if the consumer decided not to call when expecting low prices, it seems unlikely he or she would have called knowing that tariffs were high. Hence, it is unlikely that harm could arise in the latter case.
 - Alternatively, consumers may expect high prices and decide whether or not to purchase a PRS based on this expectation, but post-purchase find out that the price was low. If they decided to purchase a PRS, it seems unlikely that

there would be harm from imperfect information. Indeed, they are likely to have purchased it anyway, had they known that the prices were low instead. As above, there may be some harm from the fact that the expected tariffs may be “too high” and indicate market power. Harm from imperfect information arises if a consumer decided not to purchase a PRS, because they erroneously expected high tariffs. The harm consists of the lost consumer surplus that they would have enjoyed had they known that the prices were low. In other words, the harm amounts to the net benefit (the value of the PRS to her or him minus the price paid for it) that the consumer would have enjoyed had they purchased the PRS.

Figure 25: Consumers' Decision and Potential Harm under Imperfect Information

Consumer	Expectations are correct	Expectations are incorrect	
		Expects low prices but they are high	Expects high prices but they are low
Decides to call	Consumers make the right decision on the basis of correct expectations*	Harm. Consumer harm is the difference between the consumer surplus enjoyed when the prices were low and when they are high.**	No harm.*
Decides not to call		No harm.	Harm. Consumers lose the consumers surplus they would have enjoyed had they known prices were low and made the call.

* There is no harm from imperfect information. However, there may be consumer harm because tariffs are high (i.e. they may reflect market power).

** To illustrate assume that the consumer willingness to pay is 10 and the low and the high prices are 7 and 8 respectively. The consumer surplus is 2. However, had the prices being low the consumer surplus would have been 3. The harm to consumer is, hence, 1 (8-7). Also assume that the high price is 11 rather than 8. In this case had the consumer known the correct price he or she would have not made the call because surplus would have been -1. In this case the consumer harm amounts to 4 (3-(-1)).

Annex 9

The PRS Condition

Schedule

The modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(2) of the Act published by OFCOM on 2 May 2008

The PRS Condition shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

- (a) "Act" means the Communications Act 2003;
- (b) "Approved Code" means a code approved for the time being under section 121 of the Act;
- (c) "Communications Provider" means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;

or

- (iii) a person who:

- (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
- (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;
- (d) “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:
- (i) the service is obtained through a Special Services Number (except an 0870 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; or
 - (ii) the service is obtained other than through a Special Services Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax; or
 - (iii) the service is a Chatline Service; or
 - (iv) is Internet Dialler Software operated; or
 - (v) the service is a Sexual Entertainment Service;
- (f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or an subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;
- (g) “Controlled Premium Rate Service Provider” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;

- (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
 - (h) "Dial-up Telephone Number" means the telephone number used by an end user's computer that connects it to the Internet
 - (i) "Enforcement Authority" means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
 - (j) "Facility" includes reference to those things set out in section 120(14) of the Act;
 - (k) "International Call" means a call which terminates on an Electronic Communications Network outside the United Kingdom;
 - (l) "Internet Dialler Software" is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:
 - a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;
 - b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.
 - (m) "Internet Service Provider" means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.
 - (n) "National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
 - (o) "Premium Rate Service" shall have the meaning ascribed to it by section 120(7) of the Act;
 - (p) "Sexual Entertainment Service" means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;
 - (q) "Special Services Number" means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate;
3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.