

Review of the Premium Rate Services Condition

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

CONSULTATION:

Publication Date: 26 July 2018

Closing Date for Responses: 21 September 2018

About this document

This consultation sets out Ofcom's proposal to modify the Premium Rate Services Condition so that it applies to all Information, Connection or Signposting Services (ICSS).

ICSS are a form of premium rate service. They are essentially services which:

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

Currently, the Premium Rate Services Condition only applies to ICSS operating on certain number ranges and price points. The effect of our proposal would be that the Premium Rate Services Condition would apply to all premium rate services which are ICSS irrespective of number range or price point. This would create a common regulatory framework for ICSS and would mean that all ICSS would be subject to the Phone-paid Services Authority's regulatory regime.

This document sets out why we consider that this is the most appropriate course of action to address the actual and potential harm arising from ICSS.

We invite views on our proposal.

Contents

Section

1. Executive summary	1
2. Background and legal framework	4
3. The PRS Scope Review statement and summary of the analytical framework	10
4. Assessment of harm arising from '084' ICSS	15
5. Proposals to protect customers	22
A1. Responding to this consultation	31
A2. Consultation coversheet	34
A3. Ofcom's consultation principles	35
A4. Consultation questions	36
A5. Notification of a proposed modification to the Premium Rate Services Condition under section 120A of the Act	37
A6. Evidence of Harm	42
A7. Legal basis for Ofcom's proposals	51

1. Executive summary

- 1.1 There is a whole range of interactive services that consumers can access via their landline and mobile phones, computers and digital TV. Where these services are charged for via the customer's telephone bill or pre-pay account, they are known as premium rate services (PRS). They can include receiving a daily horoscope, following football scores, voting in television programmes, making charity text donations or downloading the latest ringtone. While these services are valued by those who use them, they can give rise to consumer harm.
- 1.2 Ofcom has overall responsibility to make sure that PRS are regulated appropriately and that consumers are protected from the harm that may arise. Ofcom sets the PRS Condition and providers within the scope of that Condition are regulated by the Phone-paid Services Authority (PSA) in accordance with its Code of Practice (the PSA Code).¹ The PSA Code establishes certain standards for the operation of such services in the UK. The PRS Condition only applies in respect of 'Controlled PRS', and so only a subset of PRS are subject to regulation by the PSA (and Ofcom's statutory backstop powers).
- 1.3 Information Connection and Signposting Services (ICSS) are a form of PRS. They are essentially services which:
- a) provide advice or information about how to access or use public or commercial services; and/or
 - b) connect or direct consumers to specific contact numbers or helplines that they are seeking, usually at a higher charge than calling directly.
- 1.4 An example of how consumers may interact with ICSS services in practice is set out below.

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

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

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

- 1.5 Only ICSS operating on certain number ranges and at certain price points currently fall within the definition of Controlled PRS in the PRS Condition. The effect of this is that some ICSS are regulated by the PSA in accordance with the PSA Code, whereas some fall outside the scope of the PSA regulatory framework. Notably, most ICSS operating on the '087' and '09' number ranges fall within the definition of Controlled PRS, whereas ICSS operating on the '084' number range do not.
- 1.6 Over the last year, Ofcom has seen growing concern about the consumer harm arising from ICSS operating on the '084' number range. As a result, we decided to conduct a review into whether the current regulatory arrangements for ICSS are sufficient to protect consumers from that harm.
- 1.7 Having reviewed the available information, we consider that there is evidence, as set out in this consultation document, of actual and potential harm arising from ICSS operating on the '084' number range sufficient to justify regulatory intervention.
- 1.8 We consider that ICSS can result in four key risks to citizens and consumers:
- a) the potential for serious consumer harm as consumers are being misled into using ICSS services leading to financial harm and bill shock as well as emotional distress;
 - b) specific risks to vulnerable consumers as some ICSS providers target public service helplines;
 - c) risks to the reputation and operation of both public and commercial organisations as consumers may blame the organisation to whom the calls are being put through to for any financial and emotional harm suffered. This can also cause damage to the operation of these organisations as they spend time, money and resource attempting to combat this reputational harm; and
 - d) the potential risk that, the way in which ICSS is being used leads to consumer trust and confidence in PRS being undermined, resulting in consequent damage to the PRS sector as a whole.
- 1.9 We consider that, the types of harm identified, are likely to be the same, or similar, for those number ranges that do not fall within the PRS Condition as those that currently do. Ofcom is therefore proposing to extend the definition of Controlled PRS in the PRS Condition to include all ICSS, irrespective of number range or price point. The effect of this proposal would be that all forms of ICSS would be captured by the PRS Condition and, consequently, be regulated by the PSA, thereby creating a common regulatory framework across all ICSS.
- 1.10 We consider this proposal is the most appropriate course of action to address the actual and potential harm arising from ICSS as a common regulatory framework would:
- be easier for consumers to understand and would simplify the task of delivering better consumer education about the safe and appropriate use of ICSS;
 - enable ICSS providers to compete on a level playing field and promote a more competitive ICSS market; and

Consultation on modifying the Premium Rate Services Condition

- ensure that providers could not evade PSA regulation by simply migrating to other numbers which would not be captured by the PRS Condition.
- 1.11 We consider that the PSA are well placed to deliver regulation across the ICSS sector given that they currently do so for those ICSS which already fall within the PRS Condition and have undertaken significant work to address the harm arising from these services in recent years.
- 1.12 We invite comments on our findings of harm and our proposal. The deadline for response is 21 September 2018. We aim to publish our statement before the end of 2018.

2. Background and legal framework

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

PRS regulation in the UK

What are PRS?

- 2.2 In general terms, PRS are a form of micro-payment for paid for content, goods and services charged to a consumer's bill for electronic communications services.²
- 2.3 They may be accessed by way of a conventional voice call, but may also be accessed in other ways, such as SMS, computers, mobile phone downloads or interactive digital TV. Common forms of PRS include TV voting lines, competitions, adult entertainment, chat lines, business information services, technical helplines, mobile phone ringtones and game downloads, horoscopes and directory enquiry services.
- 2.4 PRS vary in cost but tend to cost more than a normal phone call or text message. They usually operate on numbers beginning 09, 118, 087 or five or six digit mobile voice and text shortcodes usually beginning 6, 7 or 8.

Background to PRS regulation

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

² The statutory definition of PRS is set out in paragraph 2.10 below.

find out who was the actual supplier; which can also mean that consumers are passed from one provider to another. The hassle involved can therefore outweigh the benefit to be gained and may likely deter consumers from pushing for redress.

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

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

The PRS regulatory framework

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

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

Who is required to comply with the PRS Condition?

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

2.10 A service is within the definition of PRS if:

³ The version of the PRS Condition used for the purposes of this consultation document can be found in the Schedule to Annex 5 which sets out the relevant version of the PRS Condition together with the modifications which are proposed by this Consultation Document.

⁴ The current version of the PRS Code can be found at: https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Code-of-Practice/PSA_Code_of_Practice_14th_Digital.ashx?la=en&hash=49BE1A6A76303EEBCF254A692015059D4D4171A3.

- a) it is a service falling within section 120(8) of the Act;
- b) there is a charge for the provision of the service;
- c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
- d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.⁵

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

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

2.12 Ofcom may set conditions which apply either:

- a) generally to every person who provides a PRS (PRS Providers),
- b) to PRS Providers of a specified description, or
- c) to PRS Providers who provide a specified description of PRS.⁶

2.13 Ofcom has set a PRS Condition which applies to Communications Providers and Controlled PRS Providers in relation to the provision of Controlled PRS.⁷

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

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

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

(ii) the service is obtained other than through a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a

⁵ Section 120(7) of the Act.

⁶ Section 120(2) of the Act.

⁷ The definition of “Communication Provider” and “Controller Premium Rate Service Provider” is set out in paragraph 2 of the PRS Condition.

Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);

- (iii) the service is a Chatline Service;*
- (iv) the service is Internet Dialler Software operated; or*
- (v) the service is a Sexual Entertainment Service.*

- 2.15 The definition of “PRS Number” is set out in paragraph 2(r) of the of the PRS Condition as a “Non-Geographic Number starting 087, 090, 091 or 118”.
- 2.16 Persons involved in the provision of Controlled PRS to whom the PRS Condition applies must comply with directions given in accordance with the PSA Code by the PSA for the purposes of enforcing the provisions of that Code.⁸ A failure to comply with a PSA direction may amount to a breach of the PRS Condition which may result in Ofcom taking enforcement action under the relevant procedures set out in the Act. Ofcom’s enforcement powers are sometimes known as statutory ‘backstop powers’. The PSA Code also applies in respect of the provision of PRS which are not Controlled PRS but compliance is voluntary.

ICSS regulation in the UK

What are ICSS?

- 2.17 ICSS are a form of PRS. They are essentially services which:
- a) provide advice or information about how to access or use public or commercial services; and/or
 - b) connect or direct consumers to specific contact numbers or helplines that they are seeking, usually at a higher charge than calling directly.
- 2.18 ICSS services are typically provided on ‘09’, ‘087’ and ‘084’ numbers.
- 2.19 ICSS are defined by the PSA for the purpose of the Special Conditions⁹ they have imposed in respect of providers of such services as:
- “Premium Rate Services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.”¹⁰*

⁸ Paragraph 1 of the PRS Condition.

⁹ See paragraph 2.22 below for an explanation of the PSA Special Conditions.

¹⁰ See: https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Guidance-and-compliance/Explore-our-guidance/Guidance-files/24_Notice-of-SC-for-ICSS.ashx?la=en&hash=D08ABDC0A6E424B60EB560E53FAE6A9925E3547B.

How are ICSS regulated?

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

ICSS within the PRS regulatory framework

- 2.21 ICSS fall within the definition of Controlled PRS and so within scope of the PRS regulatory framework where the ICSS is a PRS which is obtained:
- a) through a PRS Number and the Service Charge¹¹ for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call (excluding VAT); or
 - b) other than through a PRS Number and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute (including VAT).
- 2.22 ICSS of this kind must be provided in accordance with the PSA Code, administered and enforced by the PSA. ICSS are considered by the PSA to give rise to increased potential for consumer harm and are therefore subject to Special Conditions imposed by the PSA under the PSA Code. Those Special Conditions impose stricter requirements on ICSS providers, including requirements to provide a link to where the official number for the organisation being called can be found and to announce the premium call charges at the start of the call. A breach of those Special Conditions is enforceable by the PSA as if it were a breach of the PSA Code, and so is likewise subject to Ofcom's statutory backstop powers.

ICSS outside of the PRS regulatory framework

- 2.23 ICSS which are not Controlled PRS fall outside of the scope of the PRS Condition. As above, ICSS will not be a Controlled PRS if they are obtained other than through a PRS number and the charge for the call is less than 10 pence per minute, as would be the case for a number starting '084', or where the service is obtained through a PRS number and the Service Charge for the call does not exceed 5.833 pence per minute or call.
- 2.24 The Advertising Standards Authority (ASA) has a role in regulating the promotion of these services in certain circumstances. The ASA would look into any breaches of the advertising standards rules and act to ban advertisements that are misleading, harmful, offensive or irresponsible. The ASA can sanction companies if they fail to respond, for example they operate a "wall of shame" which creates bad publicity for companies that do not comply, but they do not have the power to fine companies.¹²

¹¹ Service Charge is defined in paragraph 2(t) of the PRS Special Condition.

¹² More information about the ASA can be found on their website here: <https://www.asa.org.uk/>

ICSS and Directory Enquiry services

- 2.25 Directory Enquiry (DQ) services are a form of PRS. They are retail services provided by telephone to consumers and businesses that give callers the telephone number of the particular individual, business or public service they are looking for. In the UK, these services are provided on the 118 number range.
- 2.26 As set out in paragraph 2.19 above, DQ services are explicitly excluded by the current ICSS definition which has been adopted by the PSA for the purpose of the Special Conditions it has imposed in relation to ICSS. This is on the basis that, while ICSS and DQ services share common characteristics insofar as their purpose is to provide information and advice to consumers, including signposting and connection services, there are some key differences between how consumers engage with DQ and ICSS.
- 2.27 In 2013 the PSA undertook a review (the PSA 2013 Review) of ICSS operating on PRS numbers.¹³ In the PSA 2013 Review, the PSA suggests the differences between DQ and ICSS were as follows:
- DQ services are normally used as an alternative to searching the internet, whereas ICSS are only accessible to consumers who are searching on the internet, most often for free information rather than a paid-for ICSS.
 - DQ services are clearly branded around the service being provided, whereas ICSS are marketed, especially at the SEM marketing stage, around the name of the organisation with which the ICSS implies association.
 - According to research conducted on behalf of the PSA¹⁴, 96% of consumers who called a DQ service were aware of the type of service on offer. By contrast 78% of consumers who had dialled an ICSS thought they had dialled the number of the organisation they were looking for, and not an ICSS.

¹³ The PSA 2013 Review is available here: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Consultation-PDFs/CD_ICSS_24_April_2013.pdf

¹⁴ See: https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Research_Apr_2013_Information_Connection_Signposting.pdf

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

Introduction

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

The PRS Scope Review statement

- 3.3 There is no specific test in the Act as to when Ofcom should or should not exercise our powers under section 120 of the Act to designate a service as a Controlled PRS. We must apply our general duties and seek to make decisions which reflect the purpose of the legislative provisions and the harm they seek to address.
- 3.4 To facilitate a consistent approach towards meeting these duties and addressing the relevant harm, Ofcom carried out a review of the way in which PRS are regulated. This included considering market developments including the rapid growth in the number and range of such services. This led to the development of an analytical framework (the PRS Analytical Framework), based on characteristics common to PRS and risks to which they may give rise. This was set out in the “The PRS Scope Review” statement (the PRS Scope Review) published by Ofcom in October 2009.¹⁵
- 3.5 The PRS Analytical Framework does not replace the statutory regime, nor add an extra layer of regulation. But, as we said in the PRS Scope Review:
- “When considering whether there is a need to amend the PRS Condition we intend to exercise our duties under the Act by applying an analytical framework...”¹⁶ and*
- “... [it] will help inform future Ofcom considerations on whether the scope of regulation should be widened or narrowed. This framework will help determine whether a particular service or service category carries sufficient risks of consumer harm to require inclusion in the regulatory regime.”¹⁷*
- 3.6 In particular, our general duties under section 3(1) of the Act are, in carrying out our functions (including making and modifying PRS conditions):

¹⁵ The PRS Scope Review is available here: https://www.ofcom.org.uk/data/assets/pdf_file/0015/32901/prs.pdf

¹⁶ The PRS Scope Review, paragraph 1.10.

¹⁷ The PRS Scope Review, page 2.

*"...to further the interests of citizens in relation to communications matters"; and
"...to further the interests of consumers in relevant markets, where appropriate by promoting competition."*

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

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

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

The PRS Analytical Framework

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

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

Supply -side characteristics

3.11 The supply-side characteristics identified were:

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

3.12 Ofcom noted three risks arising out of these characteristics:

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

- price differences for the same PRS sold by different OCPs, arising because *"...a consumer's OCP sets the retail price of a PRS rather than the supplier of the service"*, which in turn makes it difficult for service and information providers to communicate prices to consumers and which may incentivise OCPs to raise prices; and
- *"...the consumer may not be able to easily identify the supplier of the service in the event that problems arise. This raises concerns about their ability to seek effective redress."*¹⁸

Demand-side characteristics

3.13 The demand-side characteristics identified were:

- i) PRS are experience goods, "typically consumed upon purchase" and "...consumers are only able to ascertain the quality of a PRS at the point at which it is consumed";
- ii) there is likely a long and complex supply chain, in which consumers access and pay for PRS via their OCP but the service is supplied by a third-party service provider along with an IP, and in which the parties are not all visible to, or in commercial relationships with, one another;
- iii) consumers are billed by and pay their OCP's for PRS via their bill (or pay-as-you-go credit), so charges are only apparent after the event and if the consumer receives a sufficiently itemised bill;
- iv) although prices are higher than most ordinary telephone calls, a single PRS transaction is often low value compared to many other consumer purchases;
- v) PRS are typically impulse purchases with easy sales processes requiring little effort or authentication;
- vi) some PRS provide content that may be considered inappropriate by or offensive to a wider audience, including minors; and
- vii) a significant number of PRS, such as ring tones and games, are marketed to or may appeal to children, many of whom have their own mobile phone handsets and make up a significant part of the market for certain PRS.¹⁹

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

- as consumers cannot gauge the quality of experience goods until after purchase, *"...if reputation is not very important PRS suppliers may have incentives to provide low quality or high price services"*;
- a complex supply chain, and especially separation of the billing and supplying parties may mean:
 - *"If consumers are dissatisfied with any aspect of the service (e.g. promotion, quality of service, charge), they might therefore find it difficult to identify and contact the*

¹⁸ The PRS Scope Review, paragraph 3.8.

¹⁹ The PRS Scope Review, paragraphs 3.9-3.16.

party who is responsible for the part of the service with which they are dissatisfied...";

- *"... suppliers can exploit the complexity of the supply chain to shift the responsibility to other SPs and/or IPs further down the supply chain and avoid responsibility for resolving consumer complaints..."; and*
- *"This would affect a consumer's ability to obtain information or advice, to identify the right party to complain to, and ultimately to seek redress. In many cases, consumers may not be able to seek redress from their OCP, as it is not usually the direct provider of the PRS in issue".*
- *the effect of the billing process is that at best, "...total charges for the service will only become apparent after the event," but the nature of some billing (non-itemised or available only electronically or at extra cost) and pay-as-you payments means....some consumers may never be fully aware of the charges incurred for a particular service. Since PRS prices vary by SP and also by OCP, often consumers do not know the price prior and even post purchase";*
- *given the low transaction value, "...consumers may only invest a limited amount of time and effort to assess the purchase of a particular PRS and may not consider it worthwhile to shop around [and]...may not consider it worth the effort to make a complaint about an individual PRS if they were not satisfied [and]...may not be very likely to pursue it to its conclusion...";*
- *impulse purchases with limited authentication processes mean, "...consumers can easily purchase a service without necessarily considering the implications," and in particular, "The simplicity of the sales process could result again in consumers not making the effort to check and understand the charges that they will face for a PRS when making such an impulse purchase...";*
- *material that might be considered inappropriate or offensive to some audiences (such as adult material) may be accessed inadvertently or by minors; and*
- *there is a particular risk for children who "are unlikely to use a credit card to make ... purchases," for whom, "...the payment mechanism for PRS may be attractive," and who "...may be more likely to enter into impulse purchases without being sufficiently well informed or capable of making informed decisions about the purchase of a PRS, and may be more susceptible to scams and misleading advertising."²⁰*

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

- The consumer's Originating Communications Provider ('OCP') is not the actual supplier of the PRS.

²⁰ The PRS Scope Review, paragraph 3.16.

- There is a complex, fragmented value chain, with large numbers of suppliers operating at different levels in the chain.
- Barriers to entry and exit are relatively low at the Information Provider level.
- Consumers are only able to ascertain the quality of the PRS at the point at which it is consumed.
- There is separation between the party billing the consumer and the party supplying the service.
- The price of the PRS is low (in absolute terms), potentially discouraging consumers from shopping around before buying and from seeking redress.
- The purchase process involves little or no authentication, encouraging consumers to purchase on impulse.
- The PRS is likely to involve inappropriate or offensive content.
- The PRS is likely to be marketed to children or likely to have a particular appeal to children.²¹

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

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

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

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

²¹ The PRS Scope Review, page 5.

4. Assessment of harm arising from '084' ICSS

- 4.1 This section sets out Ofcom's assessment of the evidence of harm arising from '084' ICSS. Further details of the evidence we have relied on is available at Annex 6.

Background

- 4.2 Over the last year, we have seen growing concern relating to consumer harm arising from ICSS using '084' numbers. This includes concern from consumer interest groups, such as the Fair Telecoms Campaign (FTC), Communications Providers, government departments, charities and other organisations.²² The main concern raised has been that consumers are being misled into calling ICSS at higher call cost rates than they would face if they were contacting direct customer service numbers on lower cost number ranges.
- 4.3 Given the growing level of concern, and the nature of the potential harm, we decided to conduct a review into whether the current regulatory arrangements for ICSS are sufficient to protect consumers from harm.

Assessment methodology

- 4.4 The current regulatory arrangements for ICSS are set out in Section 2. To determine the consumer harm, or likely consumer harm, that '084' ICSS are liable to cause we completed:
- i) an assessment of '084' ICSS against Ofcom's PRS Analytical Framework,²³ to determine whether they have characteristics which could give rise to a level of consumer harm which may not be sufficiently addressed by existing regulation; and
 - ii) an assessment of the available evidence of the actual (and potential) harm caused by '084' ICSS.
- 4.5 We set out our findings below.

Application of the PRS Analytical Framework to '084' ICSS

- 4.6 As set out in Section 3, the PRS Analytical Framework sets out a number of supply and demand side characteristics of regulated PRS which, in the past, have given rise to consumer harm. We therefore considered whether any, or all, of these characteristics apply to '084' ICSS in order to establish whether '084' ICSS has any of these characteristics which is likely to give rise to consumer harm.

²² For example, we had concerns raised by the Advertising Standards Authority, the Department for Culture, Media & Sport, HM Revenue & Customs, the Department for Work & Pensions, the Department and Vehicle Licensing Agency and the RSPCA.

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

4.7 Having done so, our assessment is that many of the characteristics set out in the PRS Analytical Framework as likely to cause consumer harm can be found in '084' ICSS. In particular:

- **The consumer's originating CP is not the supplier of the PRS:** The supply and demand-side risks relating to the difficulty of pursuing complaints, and, on the demand side, of suppliers seeking to pass responsibility to others in the supply chain, are liable to arise. With '084' ICSS, as with regulated ICSS, this problem is compounded where consumers are unaware they have been connected via a third party ICSS provider and so complain to the organisation they have sought to contact.
- **There is a complex and fragmented supply chain, with providers operating at different levels, as is the case with other PRS:** This results in little reputational incentives on ICSS providers to ensure that risks do not arise and consumers are protected from misleading practices. In particular, ICSS providers do not have enduring presences and relationships with consumers in relevant markets such that they will protect consumers in order not to harm their reputations and to preserve those relationships.
- **Barriers to entry and exit are low and relatively low:** particularly in relation to third party connection services, where there is only a modest investment required in order to provide ICSS. This leads to risk on the supply-side, of opportunistic behaviour and, on the demand-side, of low-quality, high priced (relative to quality) services.
- **Consumers are only able to ascertain the quality of the PRS at the point at which it is consumed:** The quality of the service is generally only ascertained at the point of consumption. This characteristic feeds into the risks of opportunistic behaviour (on the supply-side) and low-quality, high priced (relative to quality) services (on the demand-side) offered by providers to whom reputation is not very important.
- **There is separation between the party which bills consumers (the originating CP) and that supplying the service:** As above, this leads to a supply-side risk that consumers cannot identify providers where problems arise, and on the demand-side of suppliers seeking to shift responsibility for those problems. This places some limits on the supply-side risks of opportunistic behaviour and incentives to raise prices, and of consumers having difficulty identifying the relevant provider in case of problems.
- **'084' ICSS are also characterised by their low price (compared to other forms of regulated PRS):** These services have a Service Charge of up to 5.833 pence per minute/call and this puts them at the low end in terms of price for other forms of Controlled PRS.²⁴ This raises the demand-side risks of consumers investing only limited time and effort assessing their purchase and not shopping around, and considering it either not worth making, or not pursuing to any conclusion, complaints about services they are unhappy with. These risks are heightened with '084' ICSS, compared to Controlled PRS, since the sums involved are potentially less and the incentives to

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

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

pursue concerns for individual consumers are, accordingly, very low. This means that consumers are less likely to pursue redress (even where they have suffered financial harm) and it creates an uneven playing field in the market.

- **There is an easy sales processes requiring little effort or authentication by consumers:** In the absence of an authentication process consumers can easily purchase a service without necessarily considering the implications. In the context of ICSS, for example, when carrying out an online search for an organisation they are trying to contact, consumers will be presented with a range of numbers which they believe are associated with that organisation. The simplicity of the sales process means consumers do not always make the effort to check and understand the charges which they are likely to incur.
- **'084' ICSS, like regulated ICSS, are less likely to involve content which may be inappropriate for, or considered offensive by, certain consumers:** This is because ICSS are simply providing information and/or connection as opposed to providing content services.
- **'084' ICSS have the same potential to mislead children as other forms of regulated PRS do:** They provide an easy way to contact other organisations, some of which may appeal to children who may be more susceptible, of making impulse purchases and/or of falling victim to misleading practices.

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

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

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

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

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

Source: Ofcom

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

- 4.10 Based on our assessment above, we consider that ‘084’ ICSS has many characteristics which could give rise to consumer harm as set out in the PRS Analytical Framework and which therefore give rise to a prima facie case for regulation.

Assessment of harm caused by ‘084’ ICSS

Sources of evidence

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

²⁸ Evidence from third parties includes a range of commercial and public organisations who have either sought Ofcom out on this issue of their own accord or have responded to a letter sent by Ofcom in May 2018 calling for evidence of harm relating to 084 ICSS. This is set out in more detail in Annex 6.

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

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

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

³² See page 27 of the Jigsaw research.

4.14 Therefore, we have focused our analysis on the information gathered from the sources listed at 4.11 above.

Approach to assessing evidence

4.15 As noted in section 2, in 2013 the PSA undertook a review (the PSA 2013 Review) of the risk of harm presented by ICSS operating on PRS numbers.³³ The PSA 2013 Review identified several concerns with the way in which ICSS were being provided that could lead to harm. Whilst the PSA 2013 Review was specifically considering the use of ICSS on '09' and '087' numbers, we consider that many of the risks which it identified are likely to be common across all forms of ICSS, including '084' ICSS.

4.16 The 2013 PSA Review resulted in ICSS operating on PRS numbers being subject to the PSA's prior permissions regime to address the harm identified.³⁴ The PSA identified four factors which it considered justify introducing these additional requirements. These were:

- a) The potential for serious consumer harm;
- b) The risk to vulnerable consumers;
- c) The risk to the general reputation of both public and commercial organisations; and
- d) The secondary risk to the reputation of PRS as a whole.

4.17 As part of Ofcom's review of the evidence of harm caused by '084' ICSS, we therefore considered all evidence against these four key themes.

Assessment of evidence

4.18 Having assessed the information set out above, our analysis both supports and slightly broadens the scope of the four areas of harm that the PSA identified in relation to ICSS in the PSA 2013 Review.

4.19 We consider that there is evidence of substantial actual and potential harm arising from the way in which '084' ICSS are being used and this harm results in the following four key risks to citizens and consumers:

- i) **The potential for serious consumer harm:** we consider the evidence shows that consumers are being misled into using '084' ICSS services through 'passing off' or poor price transparency which leads to financial harm and bill shock as well as emotional distress for consumers;
- ii) **The risk to vulnerable consumers:** we consider that the evidence shows that there are particular risks to vulnerable consumers as some '084' ICSS providers are

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

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

targeting public service helplines that may be used by particularly vulnerable people;

- iii) **The risk to the reputation and operation of both public and commercial organisations:** we consider the evidence shows there are reputational risks to the organisations to whom the 084 calls are being put through to as consumers may consider them responsible for the financial and emotional harm suffered. This can also cause damage to the operation of these organisations as they spend time, money and resource in attempting to combat this reputational harm; and
- iv) **The secondary risk to the reputation of PRS as a whole:** we consider that there is a potential risk that, the way in which 084 is being used leads to consumer trust and confidence in PRS is being undermined, which can result in consequent damage to the PRS sector as a whole.

4.20 The key risks and the evidence we have relied on in reaching them are set out in full in Annex 6.

Consultation question

Question1: Do you agree with our assessment of harm? Please give reasons.

5. Proposals to protect customers

Introduction

- 5.1 We have considered what intervention would be appropriate and proportionate, to protect consumers and citizens from the risks of harm we have identified in section 3 arising from '084' ICSS.
- 5.2 In assessing the most appropriate remedy, we have taken account of:
- i) the harms we have identified arising from '084' ICSS, including the evidence that consumers are being misled into using these ICSS services leading to financial and emotional harm, and the risks to vulnerable consumers; and
 - ii) the current regulatory framework for ICSS that meet the definition of Controlled PRS, i.e. ICSS operating on the 'PRS Numbers' which exceed the relevant cost threshold and the harms that this regulation aims to address.
 - iii) whether there remain any potential regulatory loopholes which may be exploited by providers seeking to evade PSA regulation through a possible migration to other numbers which sit outside the PSA's regulatory regime.
- 5.3 In this section we set out our proposal to protect consumers from the harm identified and give our reasons for considering this to be an appropriate and proportionate remedy. The legal basis for the proposal is set out at Annex 7.

Proposal to extend the definition of Controlled PRS in the PRS condition

- 5.4 Based on the evidence set out in section 4 and Annex 6, our view is that there is evidence of actual and potential consumer harm arising from '084' ICSS which justifies regulatory intervention.
- 5.5 To address this harm, we propose to modify the PRS Condition to extend the definition of Controlled PRS to include all ICSS, irrespective of the number through which they are obtained or the level of the Service Charge which applies. The effect of this proposal would be that all forms of ICSS would fall under the PRS regulatory framework thereby creating a common regulatory framework across all ICSS.
- 5.6 We consider this proposal is the most appropriate course of action to address the actual and potential harm arising from ICSS as a common regulatory framework and would:
- be easier for consumers to understand and would simplify the task of delivering better consumer education about the safe and appropriate use of ICSS;
 - enable ICSS providers to compete on a level playing field and promote a more competitive ICSS market; and
 - ensure that providers could not evade PSA regulation by simply migrating to other numbers which would not be captured by the PRS Condition.

- 5.7 This change will only impact PRS providers offering ICSS which are currently outside the definition of Controlled PRS, namely:
- ICSS which are not obtained via a PRS number³⁵, where the charge for or rate of the call does not exceed 10 pence per minute (including VAT);
 - ICSS which are obtained via a PRS number, where the Service Charge for the call does not exceed 5.833 pence per minute or call (excluding VAT).
- 5.8 Extending the PRS Condition to capture all ICSS would mean that all ICSS would then become subject to the PRS Condition and the PSA Code, bringing ICSS within the remit of PSA regulation, irrespective of the number through which they are obtained or the level of Service Charge which applies.
- 5.9 We consider that this that this is an appropriate way to address the harm associated with ICSS because we believe that:
- a) the risks associated with ICSS are common across all forms of ICSS, irrespective of the number through which they are obtained or the Service Charge which applies; and
 - b) it is necessary to prevent providers attempting to evade the PRS regulatory framework by migrating to other numbers which may not be caught by our proposals if we simply extend the Controlled PRS definition to include '084' ICSS.

Risks common across all ICSS

- 5.10 Our analysis of the harm (see section 4 and Annex 6) focuses on evidence relating to '084' ICSS as this is the number range that was brought to Ofcom's attention as potentially causing consumer harm outside of the 087 and 09 number ranges. However, we consider that the risks of harm arising from 084 ICSS are largely the same as those arising from ICSS that the PSA identified on 087 and 09 numbers.³⁶ Furthermore, given the way in which ICSS is provided, we consider that these risks of harm are likely to be common across all ICSS, irrespective of whether they are operating on 084, 087, 090 or any other number range.
- 5.11 The maximum Service Charge for ICSS on 084 will be lower compared to ICSS obtained through a 087 or 09 number and we note that this could somewhat limit the level of potential financial detriment caused to consumers. More generally, the effect of extending the definition of Controlled PRS to cover all ICSS will be to capture ICSS to which a lower Service Charge applies. However, our view, based on the evidence we have assessed, is that financial detriment is not the only relevant consideration in terms of consumer harm arising from ICSS. For this reason, we do not consider that the price difference is sufficient to change our position that all ICSS services should be subject to a common regulatory regime bearing in mind that:

³⁵ PRS Number is defined in the PRS Condition as 087, 090, 091 or 118. We note that the 118 number range is allocated to DQ services and we consider these further at paragraph 5.27 to 5.29 below.

³⁶ See section 4 and Annex 6.

- a) although the maximum Service Charge for calls to 087 and 09 may be higher than for calls to ICSS operating on numbers that do not meet the current Controlled PRS definition, the Access Charge³⁷ may be very similar, meaning that the actual cost of ICSS on 087 and 09 compared to ICSS operating on numbers with a lower Service Charge may be more marginal in practice. This is illustrated in the tables set out at paragraphs 5.12 and 5.13 below by comparing the Service Charge and Access Charge implemented by providers on 087 and 09 as compared to 084.
- b) there is clear evidence that, despite the lower Service Charge price point, 084 ICSS are causing consumers financial harm, and sometimes this is targeted at particularly financially vulnerable consumers. We therefore consider this to be a risk present across all ICSS, even those operating at a lower price point;³⁸ and
- c) even for services at a lower price point, the impact on consumers confidence where they are misled as to the true nature of the service, and the costs associated with it, is the same.³⁹

5.12 The table below sets out the maximum Service Charge for calls to 09, 087 and 084 numbers in pence per minute (ppm) taken from the National Telephone Numbering Plan⁴⁰:

Number	09	087	084
Service charge	300 ⁴¹	10.83 ⁴²	5.833 ⁴³

Source: The National Telephone Numbering Plan

5.13 The table below sets out the Access Charge for calls to 09, 087 and 084 numbers from a range of mobile providers in ppm:⁴⁴

³⁸ The evidence of harm is set out in Annex 6.

³⁹ We note that the PSA came to a similar conclusion in its 2013 Statement entitled 'Further assessment of Information, Connection and/or Signposting Services' when discussing the different price points for '087' and '09' ICSS. See paragraph 4.14: <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Consultation-PDFs/ICSS/ICSS-statement--31-July-2013.ashx>.

⁴⁰ The current version of the National Telephone Numbering Plan is available here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0016/36070/numbering_plan_july2015.pdf

⁴¹ The National Telephone Numbering Plan sets out that the applicable Service Charge must not exceed:

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

⁴² The National Telephone Numbering Plan sets out that the applicable Service Charge must not exceed:

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

⁴³ The National Telephone Numbering Plan sets out that the applicable Service Charge must not exceed:

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

⁴⁴ Please note that the prices have been sourced from CPs websites (as referenced) and are correct at the time of publication. Prices are subject to change.

Communication Provider	09	087	084
Vodafone ⁴⁵ – Monthly	55	55	55
PAYG	45	45	45
EE ⁴⁶ – Monthly	55	55	55
PAYG	44	44	44
O2 ⁴⁷ - Monthly	55	55	55
PAYG	55	55	55
Three ⁴⁸ – Monthly	55	55	55
PAYG	45	45	45

Source: Mobile operators websites

Attempts to evade PSA regulation

- 5.14 As above, we acknowledge that our assessment of the evidence focuses on ICSS operating on the 084 number range, whereas our proposal will have consequences for all ICSS that are not currently caught by the definition of Controlled PRS.
- 5.15 However, we consider that this is a necessary and proportionate measure to avoid the possible migration of ‘rogue’ ICSS providers seeking to circumvent the PSA regulation by migrating to other numbers which may not be caught by our proposals if we simply extended the Controlled PRS definition to include 084 ICSS.
- 5.16 For example, if we were to extend the definition of Controlled PRS to include ICSS operating on 084 only, then we note that CPs could evade PSA regulation by operating ICSS on the 09 or 087 number range, but charging less than 5.833 pence per minute.⁴⁹
- 5.17 We consider it is particularly important to ensure that no regulatory loopholes such as this exist given that:
- a) as noted above, we consider that the risks to citizens and consumers are common across all ICSS, irrespective of the charge for the call; and
 - b) we have already seen evidence of one ICSS operator, following a sanction from the PSA for breaches of the ICSS Special Conditions, migrating from the 087 number range to

⁴⁵ <https://www.vodafone.co.uk/help-and-information/costs-and-charges/call-and-text-charges>

⁴⁶ <https://ee.co.uk/help/help-new/billing-usage-and-top-up/call-text-and-data-charges/charges-for-calling-non-geographic-numbers>

⁴⁷ <https://www.o2.co.uk/help/account-and-billing/other-numbers-and-charges>

⁴⁸ http://www.three.co.uk/Three_price_guide

⁴⁹ The National Telephone Numbering Plan sets an upper price cap on 087 and 09 numbers, but there is no minimum price. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0013/102613/national-numbering-plan.pdf

the 084 number range meaning they would not be subject to PSA regulation.⁵⁰ We want to ensure that ICSS operators are not able to evade PSA regulation in this way. [8<].

Regulatory compliance costs

- 5.18 We also acknowledge that for those ICSS providers who will now be caught by the PRS regulatory framework, this may involve certain costs, for example to ensure compliance with the relevant rules and/or any reporting obligations. In addition, if the PSA decide to take enforcement action against any ICSS providers for any potential breach of the PSA Code then they may be liable to sanctions.
- 5.19 However, we consider that the additional costs involved in this are proportionate given the benefits that a common regulatory framework for all ICSS will bring. We say this because:
- a) the PRS regulatory framework is not intended to place undue regulatory burdens on the PRS industry. Rather it aims to be open, fair and robust, underpinned by a set of core values and behaviours which includes striving to be fair, reasonable and well-informed.⁵¹ The PSA Code itself is approved by Ofcom only if satisfied that, amongst other things, the provisions of the code are proportionate to what they are intended to achieve.⁵²
 - b) as set out above, there are clear benefits to consumers in creating a common regulatory framework to protect them from the harm that is common to all ICSS.

The remit of the PSA

- 5.20 The proposal would place the responsibility for delivering regulation for all ICSS onto the PSA.
- 5.21 We consider that the PSA are well placed to deliver regulation across the ICSS sector given that they currently do so for ICSS which fall within the definition of Controlled PRS and have undertaken significant work to address the harm arising from these services in recent years. Specifically, we note that:
- in 2013, following significant research and consultation on the consumer harm caused by ICSS, the PSA brought in the PSA ICSS Special Conditions which were purposefully designed to address the consumer harm arising from these services.⁵³ The PSA has

⁵⁰ Halek Online Limited were sanctioned by the PSA for breaches of the ICSS Special Conditions when using the 087 number range. See: <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Our-role-in-the-industry/Tribunal-adjudications/2018/137924-Halak-Online-Ltd.ashx?la=en&hash=830D788A3A77E6B7EE297DF91C69313A0F22AC57>. Halek Online Limited now offer the same call connection service using an 084 number. This can be seen by visiting their website here: <https://helplinecontactnumber.co.uk/hsbc-contact-number/>.

⁵¹ See: <https://psauthority.org.uk/about-us/who-we-are>

⁵² As set out under Section 121(2)(f) of the Act.

⁵³ See: <https://psauthority.org.uk/for-business/public-consultations/past-consultations/further-assessment-of-icss>

noted that there has been a decrease in the number of complaints made to them about ICSS on the 09 and 087 number ranges since these came into effect; and

- the PSA has effectively regulated those ICSS which fall within its remit, and taken numerous enforcement actions against ICSS providers who have breached PSA rules.⁵⁴ Most recently the PSA fined an ICSS provider £200,000 for breaches of the PSA ICSS Special Condition.⁵⁵

Other options we have considered

5.22 In reaching the proposal set out above, we did consider whether there were any other options which might meet our policy objectives of protecting consumers from the harm arising from 084 ICSS. The other main remedies we considered were:

- a) **Maintain the status quo:** we considered whether the harm identified may be addressed by market forces such as reputation and competition without the need for intervention by Ofcom. However, we ruled this out as given:
 - i) our findings from our assessment of harm against the PRS Analytical Framework were that there is a complex and fragmented supply chain, with providers operating at different levels, in relation to 084 ICSS. This means that there are little reputational incentives on ICSS providers to ensure that risks do not arise, and consumers are protected from misleading practices. We did not consider that this was likely to change if regulation was maintained in its current form; and
 - ii) the evidence of actual and potential harm arising from 084 ICSS.
- b) **Restrict the use of ICSS to PRS Numbers:** we considered whether it would be appropriate to ring fence the use of ICSS to PRS Numbers only i.e. those numbers defined in the PRS Condition as PRS Numbers including 087 and 090, but not 084. However, we considered this would have more adverse consequences than extending the definition of Controlled PRS to include all ICSS because:
 - i) it would force ICSS providers currently operating on non-PRS Numbers to migrate to PRS Numbers which could prove costly for providers and which may force genuine ICSS providers out of the market; and
 - ii) the PRS Numbers of '087' and '09' have a higher maximum service charge than the 084 number range, and therefore the result of this may be a reduction in choice and an increase in price for consumers.
- c) **Extend the definition of Controlled PRS to include '084' ICSS only:** We considered whether, rather than extending the definition to include all ICSS, we should only extend the PRS Condition to include ICSS operating on '084' numbers. However we ruled this out because, as set out at paragraphs 5.14 to 5.17, this may cause a regulatory

⁵⁴ This includes three publicised Adjudications into ICSS providers. See: <https://psauthority.org.uk/for-business/tribunal-adjudications?type=ICSS>

⁵⁵ See: <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Our-role-in-the-industry/Tribunal-adjudications/2018/137924-Halak-Online-Ltd.ashx?la=en&hash=830D788A3A77E6B7EE297DF91C69313A0F22AC57>

loophole where ICSS providers may be able to avoid PSA regulation by migrating to other non-PRS numbers, or to PRS Numbers which have a price point of less than 5.833 pence per minute. As noted above, we consider that although the lower service charge price point may lessen the financial detriment caused to consumers somewhat, we do not consider that this difference is sufficient to change our position that all ICSS services should be subject to a common regulatory regime.

Proposed remedy to address consumer harm

- 5.23 In summary, we have found that there is consumer harm arising from ICSS provided on '084' numbers, and that this harm is common across all ICSS. We are, therefore, proposing to extend the definition of Controlled PRS in the PRS Condition to include all ICSS, irrespective of number or price point. The effect of this would be that all ICSS would meet the definition of Controlled PRS in the PRS Condition and all ICSS providers would be subject to the PSA Code. We consider this is a proportionate and appropriate response to the level of harm we have identified.
- 5.24 The text of the proposed modification to the PRS Condition is set out at Annex 5. We set out our reasons for believing that this modification meets Ofcom's general and legal duties in Annex 7.

Definition of ICSS

- 5.25 The proposed modification to the PRS Condition, set out in Annex 5, sets out a definition of ICSS as well as when a service will not be an ICSS. It states that:
- "Information, Connection or Signposting Service" means a service which provides:*
- (i) a connection to another person or service; or*
 - (ii) information, advice or assistance relating to another person or service.*
- But a service is not an Information, Connection or Signposting Service where:*
- (i) it is a Directory Enquiry Facility; or*
 - (ii) the provider of the service is, in accordance with a written agreement, acting on behalf of the person or service to whom the end-user is being connected, or in relation to which the information, advice or assistance is being provided."*
- 5.26 Below we set out the reasons for carving out certain services from the scope of the ICSS definition.

DQ services

- 5.27 DQ services are explicitly excluded by the current definition of ICSS adopted by the PSA in the ICSS Special Conditions. We consider that such services should also be excluded from the definition of ICSS used for the purposes of the PRS Condition. We say this because, as set out in section 2, there are some key differences with how consumers engage with DQ

and ICSS which we consider materially affect the consumer experience and level of risk associated with each service.

- 5.28 In particular, we note that according to the PSA DQ Research, when consumers dial a DQ service, they generally understand the service that they are calling will provide them with the telephone number they are seeking.⁵⁶ However, this is not the case with ICSS, where consumers can be easily misled into believing that the number they are dialling is the actual helpline or number they are seeking, rather than a PRS number that is providing onward connection or signposting at a higher price.⁵⁷
- 5.29 On this basis we consider that it is appropriate to define and treat these two types of services differently for the purpose of how they are regulated. We have therefore excluded an ICSS which is a 'Directory Enquiry Facility' as defined in the proposed PRS Condition.⁵⁸ Directory Enquiry services provided on the 118 number range are the subject of a separate Ofcom review that is currently underway and has made proposals for addressing the harms that have been identified on the 118 number range.⁵⁹

Acting on behalf of the person or service

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

⁵⁶ As set out in section 2, according to the PSA DQ Research, 96% of the consumers who called a DQ service were aware of the service they offer.

⁵⁷ As set out in section 2, according to the PSA DQ Research, 78% of consumers who dialled an ICSS thought they had dialled the number of the organisation they were looking for.

⁵⁸ The text of the proposed modification to the PRS Condition is set out at Annex 5. The proposed PRS Condition gives 'Directory Enquiry Facility' the meaning given in the Schedule to the Notification published by Ofcom on 19 September 2017 under section 48(1) of the Act. The Notification referred to is available here:

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

⁵⁹ See: https://www.ofcom.org.uk/data/assets/pdf_file/0028/114796/consultation-118-review.pdf

Implementation

- 5.32 We propose that the modified PRS Condition should have an implementation period of four weeks to enable those ICSS providers who may be caught by the modified PRS Condition to make any necessary changes to comply with the new requirements.
- 5.33 During this period, the PSA will notify the industry of how it intends to apply the PSA Code provisions to those ICSS which were not subject to PSA regulation previously. We understand that this notification will include any immediate requirements arising from the PSA Code of Practice (such as registration). We also understand that the PSA intends to consult on the current special conditions that apply to ICSS at, or close to the time of publication of, Ofcom's Statement, including on the definition of ICSS which should be caught by the special conditions regime." We would welcome stakeholder views on our proposal for an implementation period.

Consultation questions

Question 2: Do you agree with the proposals for reform? Please give reasons.

Question 3: Do you agree with our proposal of a four week implementation period? Please give reasons.

1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 21 September 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/review-premium-rate-services-condition>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ICSS.consultation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only and will not be valid after 21 September 2018.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Kathryn Searle
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Catriona Craig on 01312207305, or by email to Catriona.craig@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement before the end of 2018.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Consultation on modifying the Premium Rate Services Condition

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

2. Consultation coversheet

BASIC DETAILS

Consultation title: organisation realise

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)

3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

4. Consultation questions

1. Do you agree with our assessment of harm? Please give reasons.
2. Do you agree with the proposals for reform? Please give reasons.
3. Do you agree with our proposal of a four week implementation period? Please give reasons.

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

- A5.1 Ofcom proposes to modify the PRS Condition. The draft modification is set out in the Schedule to this Notification.
- A5.2 Ofcom's reasons for making this proposal, and the effect of the proposed modification, are set out in the consultation document to which this Notification is annexed.
- A5.3 Ofcom considers that the proposal complies with the requirements of sections 47, 120 and 120A of the Act, insofar as they are applicable.
- A5.4 In making this proposal, Ofcom has considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- A5.5 Representations may be made to Ofcom about the proposed modification until **5pm on 21 September 2018**.
- A5.6 If implemented, the modification shall enter into force on a date to be specified in Ofcom's final statement in relation to this proposal.
- A5.7 A copy of this Notification and the accompanying consultation document is being sent to the Secretary of State.
- A5.8 In this Notification:
- a) "**the Act**" means the Communications Act 2003;
 - b) "**Ofcom**" means the Office of Communications; and
 - c) "**PRS Condition**" means the condition set under section 120 of the Act by the Director General of Telecommunications on 23 December 2003 as amended from time to time.
- A5.9 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- A5.10 For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- A5.11 The Schedule to this Notification shall form part of this Notification.

Signed by

Lindsey Fussell

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

26 July 2018

SCHEDULE

The modifications to the PRS Condition⁶⁰ are shown as follows:

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

⁶⁰ On 19 September 2017, Ofcom published a statement which included modifications which were being made to the PRS Condition: <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>. Those modifications enter into force on 1 October 2018. We expect the modifications in this Schedule to come into force on or after that date and so the modifications which come into force on 1 October are reflected in version of the PRS Condition as set out in this Schedule.

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

- ~~(v)~~(vi) the service is a Sexual Entertainment Service;
- (f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;
- (g) “Controlled Premium Rate Service Provider” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (h) “Dial-up Telephone Number” means the telephone number used by an end user’s computer that connects it to the Internet;
- ~~(i)~~ “Directory Enquiry Facility” has the meaning given in the Schedule to the Notification published by Ofcom on 19 September 2017 under section 48(1) of the Act.⁶¹
- ~~(j)~~(j) “Enforcement Authority” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- ~~(k)~~(k) “Facility” includes reference to those things set out in section 120(14) of the Act;
- ~~(l)~~(l) “International Call” means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- ~~(m)~~ “Information, Connection or Signposting Service” means a service which provides:
- ~~(i)~~ a connection to another person or service; or
 - ~~(ii)~~ information, advice or assistance relating to another person or service.
- But a service is not an Information, Connection or Signposting Service where:
- ~~(i)~~ it is a Directory Enquiry Facility; or
 - ~~(ii)~~ the provider of the service is, in accordance with a written agreement, acting on behalf of the person or service to whom the end-user is being connected, or in relation to which the information, advice or assistance is being provided.
- ~~(n)~~(n) “Internet Dialler Software” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:
- (i) an end-user’s existing Internet Service Provider replaces the Dial-up Telephone Number; or

⁶¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf.

- (ii) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent;

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

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

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

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

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

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

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

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

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

6. Evidence of Harm

A6.1 This Annex sets out the evidence we have relied on in reaching our view that there is substantial actual and potential harm arising from '084' ICSS.

Key risks to citizens and consumers

A6.2 In Section 4 we set out that we considered that there is evidence of substantial actual and potential harm arising from the way in which '084' ICSS is being used resulting in four key risks to citizens and consumers:

- a) **The potential for serious consumer harm:** we consider the evidence shows that consumers are being misled into using '084' ICSS services through 'passing off'⁶² or poor price transparency which leads to financial harm and bill shock⁶³ as well as emotional distress for consumers;
- b) **The risk to vulnerable consumers:** we consider that the evidence shows that there are particular risks to vulnerable consumers as some ICSS providers are targeting public service helplines that may be used by particularly vulnerable people;
- c) **The risk to the reputation and operation of both public and commercial organisations:** we consider the evidence shows there are reputational risks to the organisations to whom the 084 calls are being put through to as, for example, consumers may blame them for the financial and emotional harm caused. This can also cause damage to the operation of these organisations as they spend time, money and resource in attempting to combat this reputational harm; and
- d) **The secondary risk to the reputation of PRS as a whole:** we consider that there is a potential risk that, the way in which 084 is being used leads to consumer trust and confidence in PRS is being undermined, which can result in consequent damage to the PRS sector as a whole.

A6.3 The evidence we have relied on in reaching this view is set out below.

(a) The potential for serious consumer harm

A6.4 Based on Ofcom's assessment of the evidence, we consider that it is possible to make a provisional finding that there is potential for serious consumer harm because some '084' ICSS providers are:

- a) misleading customers into using these services through 'passing off' and poor price transparency; and

⁶² By 'passing off' we mean that ICSS providers are misleading customers into thinking that, by calling the 084 numbers, they are contacting the organisation they wish to speak to directly.

⁶³ By 'bill shock' we mean that customers are experiencing a negative reaction on receiving their telephone bill as they have incurred unexpected charges.

- b) that this is leading to financial harm and bill shock as well as emotional distress for consumers.

A6.5 In particular, we have taken account of the following evidence from the listed sources:

Other regulators

Payphone Services Authority

- A6.6 The PSA conducted a study into the prevalence of '084' ICSS advertising using an automated web testing methodology (data-harvesting). PSA used scripts to input commonly used search terms for contacting 449 of the most commonly searched-for organisations' customer care numbers in the UK. The scripts were used on both Bing and Google, who together hold the largest market share for search engines. The list of 449 organisations was derived from an analysis of ICSS sites.
- A6.7 The PSA's analysis showed that there are around 140 providers using the Google search network and around 156 providers using the Bing search network to advertise ICSS using '084' numbers.
- A6.8 ICSS using '087' was popular in paid for adverts and, therefore, consumers who clicked on the top results were more likely to engage with an '087' ICSS than an '084' ICSS. However, ICSS on '084' numbers were more prevalent in the main list of search results – this means that users who either scanned the whole search results page to look for a contact number (without clicking through to contact centre landing page or used Google places) were at higher risk of unwittingly engaging with an '084' ICSS.
- A6.9 The PSA's analysis also indicated that where '084' ICSS was being offered on both Google and Bing, pricing transparency was poor and would be likely to be non-compliant with the pricing transparency requirements set out in either its Special Conditions for ICSS or the Code of Practice more generally.
- A6.10 In addition, the PSA have recently published an adjudication against an ICSS provider operating ICSS on '087' numbers. This identified that the provider had breached the PSA Special Conditions by:
- a) imitating the branding of the companies it was offering connection to online;
 - b) not making it clear that it was a third party charging premium rates for calls; and
 - c) not notifying the PSA of the numbers it was operating.
- A6.11 The PSA fined the company £200,000 and access to the service is now barred until the company remedies the breaches to the satisfaction of the PSA.⁶⁴
- A6.12 The seriousness of the findings and the level of fine imposed shows how seriously the PSA take any breaches of the PSA Special Conditions by ICSS providers given the potential for serious consumer harm if these conditions are not followed. This also highlights the

⁶⁴ The Adjudication is available here: <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Our-role-in-the-industry/Tribunal-adjudications/2018/137924-Halak-Online-Ltd.ashx>

potential for consumer harm raised by 084 ICSS providers as they are not subject to these PSA Special Conditions.

A6.13 [X].

Advertising Standards Authority (ASA)

- A6.14 Under the ASA standards, ICSS providers are required to make clear in their advertisements that they provide a call-forwarding service rather than an official number for third-party services. The ASA notes that it has received evidence through complaints that *“consumers have been misled using ‘084’ ICSS and have suffered financial harm by calling these numbers, often when trying to contact public as well as commercial organisations.”*
- A6.15 It highlighted one case against Number Directory Ltd where it banned the ad on three counts of misleading consumers by implying association with Virgin Media. Number Directory’s webpage was headed "Contact Virgin Media" and contained multiple references to Virgin Media, their contact details and products.⁶⁵ The ASA considered consumers were likely to think that they were calling the official Virgin Media customer services number and would be charged the typical rate for that type of call. Calls to the official number were free for Virgin Media customers, whereas the ‘0843’ number provided by Number Directory incurred a 5p per minute charge from a BT landline, with charges varying on other networks
- A6.16 In addition, the ASA found that the quickphonenumber.uk website breached the UK Advertising Code for misleadingly implying it offers an official TNT contact phone number, when it is in fact a call-forwarding service.⁶⁶ In July 2015 the ASA wrote guidance around the advertising of call-forwarding services and specifically what advertisers needed to do to comply with the UK Advertising Code which set out that call forwarding services must make clear they provide a call-forwarding service.⁶⁷
- A6.17 The ASA also noted that it has undertaken compliance work against 16 ICSS websites with three referred to Trading Standards for consideration; assurances received from seven that they will comply with the ASA rules, and six are undergoing sanctions the ASA have applied to them.⁶⁸

Government departments and other organisations

DVLA

- A6.18 The DVLA explained that it has had over twenty documented instances of ‘084’ ICSS providers misleading consumers into using ICSS whilst thinking that they are calling DVLA direct. This includes companies amending Google maps telephone numbers and addresses

⁶⁵ See: <https://www.asa.org.uk/rulings/number-directory-ltd-a15-299859.html>

⁶⁶ See: <https://www.asa.org.uk/non-compliant/quick-phone-number.html>

⁶⁷ See: <https://www.asa.org.uk/news/compliance-update-call-forwarding-services.html>

⁶⁸ Details of ASA sanctions can be found on their website here: <https://www.asa.org.uk/codes-and-rulings/sanctions.html>

to an '084' number and fake address for DVLA and leaving comments on the Google maps giving positive feedback on the use of the number.

- A6.19 The DVLA also noted that it has received complaints from consumers about this and it cited one example where one of its customers spent 50 minutes calling an '084' number without being put through and another who waited 30 minutes without being put through.
- A6.20 The DVLA stated that "We continue to see this as a major issue and one that is causing our staff added work, our customers unneeded financial hardship and mental distress and the Agency time, money and resource in attempting to combat the reputational damage."

DWP

- A6.21 DWP responded by saying it does not specifically record complaint against call charges but it was able to identify 19 complaints regarding '084' ICSS over a two month period, with reported call charges ranging up to £88.
- A6.22 DWP was also included in a recent You and Yours Radio 4 programme.⁶⁹ This show included an article that related to the Finsbury Park Job Centre where an ICSS provider inserted an '084' number into the Job Centre details in Google Maps using the 'suggest an edit' function. The programme focused on one consumer who was misled into dialing the '084' without realising they were being connected through an ICSS and was charged over £20 for this call.

RSPCA

- A6.23 The RSPCA issued a formal complaint to Ofcom in 2017 about '084' ICSS on the basis that customers were being misled into contacting '084' ICSS when trying to contact RSPCA without realising they were using ICSS.
- A6.24 They note that "due to the lack of clear information about who operates these numbers, together with the unauthorised use of RSPCA copyright material on the websites, they give the impression that the numbers are operated by the RSPCA". It reported that it had conducted an online search which found eight different sites with incorrect numbers in the first 10 pages of Google. In addition, it stated that it had received "a steady trickle" of complaints from customers who had contacted them via '084' numbers and been left with unexpected bills.

HMRC

- A6.25 In response to Ofcom's letter requesting any relevant evidence which they may be able to provide about the impact of '084' ICSS, HMRC responded to say that it has received over a dozen ministerial complaints from customers regarding ICSS over the last two years.⁷⁰ HMRC has been able to bring some call connection domains into its portfolio, and its own

⁶⁹ <https://www.bbc.co.uk/programmes/b09z1d3p#playt=0h01m02s>

⁷⁰ HMRC were unable to clarify whether these ICSS were operated on '084' numbers as opposed to '09' or '087' numbers.

analysis shows that it has saved its customers approximately £2.4 million in call connection cost from these sites. [REDACTED].

Home Office

A6.26 [REDACTED].

Communications providers

Vodafone

A6.27 Vodafone provided evidence relating to an audit it carried out earlier in the year. This audit looked at credits made to customers between December '17 and March '18. The intention of the audit was to identify the extent of credits being provided as a result of calls made to ICSS. This showed a total of 74 calls in total. Of these, the majority of calls (57) related to calls made to '084' numbers, with the level of credits applied to '084' ICSS being £1,130.94 as opposed to ICSS on '09' and '087' numbers which was £322.41. Vodafone noted that the information should be treated as a snapshot rather than a full indication of the extent of complaints made or indeed the volume of calls via ICSS.

Sky

A6.28 Sky completed an analysis of all calls made to 084 numbers in April 2018 by its customers across its base (Sky Talk, Now TV and Sky Mobile). Sky then analysed the numbers to identify which were ICSS numbers and which were genuine numbers. Once the ICSS numbers were identified, Sky extracted a summary of the relevant retail records to see how much the customer was billed and compared this to how much the customer would have been charged if they dialled the official contact number.

A6.29 Sky then analysed the top 15 numbers (by call duration) and found that a total of 19,786 calls were made to these numbers in April 2018 with a total duration of 181, 396 minutes. These calls were made by 13, 963 distinct customers who were charged a total of £33, 207.45 for making these calls. Had the customer called the official number for the organisation they were trying to contact they would have been charged £1959.91 which means they were charged an additional £22,284 averaging an additional £1.73 per call.

A6.30 Sky's analysis shows that the vast majority of these calls to 084 numbers did not include a 'Pre Connect announcement' i.e. an announcement letting the customer know at what rate the call would be charged at.

A6.31 Included in the calls to the top 15 084 numbers were calls that were directed to the DWP. Sky note that for some calls to the DWP, once the customer is transferred through by the ICSS to the DWP number they then hear an announcement saying 'Welcome to the Department of Work and Pensions, this is a free call...' which could lead to confusion about the cost of the call for the customer.

A6.32 Sky also completed a similar analysis on calls made to 0870 numbers which are currently regulated by the PSA and subject to the PSA Code and it is worth noting that of the top 10

0870 numbers (by call duration), all of these did include a Pre Connect announcement informing the customer of the cost of the call connection service.

Plusnet

A6.33 Plusnet said it had identified two websites which were using '084' ICSS and alleging an association with Plusnet. Plusnet further noted that it had reviewed the scale of the problem, and that it had found that these '084' ICSS numbers were dialled by customers 378 times at a total cost of £294.

(b) The risk to vulnerable consumers

A6.34 Based on our assessment of the evidence, we consider that it is possible to make a provisional finding that '084' ICSS does pose a risk to vulnerable consumers bearing in mind that there are cases of '084' ICSS targeting government and public service helplines that would typically be used by consumers who are likely to be considered vulnerable. The evidence we have relied on includes the following:

DWP

A6.35 As noted above, one of the companies that provided evidence to us in relation to the misuse of '084' ICSS was the DWP. The DWP were especially concerned about the risk of harm as consumers who are likely to contact Job Centres are also less likely to be able to afford these excessive call charges. DWP raised concerns about the combination of ICSS call charges and misleading information resulting in additional costs to vulnerable customer groups who can least afford it. DWP also provided details from complaints which it received which demonstrate that the impact on customers is not purely financial - customers also complained about being "misdirected" and "conned" at a time when they were vulnerable.

Home Office

A6.36 [REDACTED].

Consumer Research⁷¹

A6.37 Research was conducted by Nottingham University in 2017 to understand consumer behaviour in relation to ICSS. Although this research was focused on ICSS using PRS numbers, it is nevertheless relevant in the context of assessing likely harm arising from '084' ICSS given the shared characteristics.

⁷¹ The consumer research was commissioned by PSA and conducted by Linguistic Profiling for Professionals at the University of Nottingham. It is available here: <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Resources/Consumer-behaviour-and-ICSS-Exploring-how-consumers-respond-to-ICSS.ashx?la=en&hash=ACE521A3348AED0F7346DA4459CD6FEBE38D316>

- A6.38 The research demonstrated that consumers may inadvertently choose to use a call connection service offered by a third party whilst believing that they are directly contacting an organisation that they are seeking to contact.
- A6.39 The research did not examine consumers in particularly vulnerable groups. However, it suggests that consumers who self-identify as having low-level of technological literacy may be more likely to contact an organisation via a third party whilst believing that they are directly contacting the organisation.

(c) The risk to the reputation and operation of both public and commercial organisations

- A6.40 Based on our assessment of the evidence, we consider that it is possible to make a provisional finding that '084' poses a risk to the reputation and operation of both public and commercial organisations.
- A6.41 We say this because, through our information gathering, we received information from organisations expressing concern that '084' ICSS were misleading consumers into using ICSS to be connected through to their organisations and this was damaging to them, both in terms of their reputation externally and their internal operations and ability to carry out their functions. The evidence we have relied on in reaching this view includes the following:

DVLA

- A6.42 DVLA reported that customers are directing their complaints resulting from their experiences with the ICSS and requesting compensation from the DVLA and noted that this causes reputational harm for DVLA.
- A6.43 The DVLA noted that:
- "The damage to DVLA would be through the complaints that customers send in wrongly accusing DVLA of advertising the number demanding compensation and criticising our service on online forums.*
- Again this has an impact on DVLA as we are displayed as an unprofessional organisation and customers believe we are connected with the site.*
- When someone has used an ICSS number and realised that they have been charged excessively, they usually vent their frustration on social media sites, which has a reputational impact on us as we have no comeback."*
- A6.44 They sent Ofcom an example of consumers complaining on public forums like Twitter when they have been charged excessively, to which DVLA have no response.
- A6.45 As noted above, the DVLA also stated that "We continue to see this as a major issue and one that is causing our staff added work, our customers unneeded financial hardship and mental distress and the Agency time, money and resource in attempting to combat the reputational damage."

RSPCA

- A6.46 RSPCA noted that these types of scams hurt their operations as they rely on the public having trust in their reputation and being willing and able to contact them directly to report animal abuse.
- A6.47 In a press release in 2017 the RSPCA urged customers to avoid “‘0844’ phone scams” it said that “not only can these numbers leave people with a hefty phone bill, but it also means members of the public may be put off contacting us when an animal is in desperate need of care”. The RSPCA also note that they “rely on the public to contact us when an animal is in need and the last thing we want is for someone to be put off by an awful scam like this.”⁷²

HMRC

- A6.48 [X].
- A6.49 [X].
- A6.50 [X].
- A6.51 [X].

[X]

- A6.52 [X] explained that, due to the nature of their business, they do not have any direct evidence of harm caused to their own customers by ICSS, but they do “*have experience of being involved in the value chain where harm has been alleged*”. [X] explained that where their partners provide services to well-known customer service numbers that have been targeted by ICSS, [X] is made aware of the “*frustration by these end users and the harm caused by their customers unknowingly using the ICSS number.*”
- A6.53 [X] explained that its “*own reputation can be impugned*” and that where their “*partners have used a [X] non geographic number to serve an ICSS, those calling it think [X] have caused the harm and blame us.*”

(d) The secondary risk to the reputation of PRS as a whole

- A6.54 As detailed above, our provisional assessment is that ‘084’ ICSS is causing serious consumer harm, that there are particular risks to vulnerable consumers and, also, it is causing harm to the operation and reputation of both public and commercial organisations. We consider that this is damaging the ICSS sector but, also, that it has the potential to cause damage to the PRS sector as a whole.
- A6.55 The evidence we have collected demonstrates that there is misuse of ICSS being operated on ‘084’ numbers and this is resulting in negative media coverage. This damages consumer

⁷² The press release is available here: https://www.rspca.org.uk/whatwedo/latest/details/-/articleName/2017_11_07_PhoneScam

trust and confidence in ICSS and PRS, more generally, and undermines the integrity of the PRS market. This can also discourage investment and innovation in the market place and deter new entrants from entering the market.

7. Legal basis for Ofcom's proposals

A7.1 When modifying conditions, Ofcom is required to meet various tests set out in the Act. These tests, and Ofcom's assessment of how these are met in connection with the proposed modification to the PRS Condition are set out in this Annex.

Section 3 – Ofcom's general duties

A7.2 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:

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

A7.3 In addition, Ofcom must have regard in all cases to:

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

A7.4 In carrying out its principal duty, Ofcom must have regard to certain, specified objectives and considerations to the extent they are relevant. These include:

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

A7.5 Ofcom considers that extending the definition of Controlled PRS in the PRS Condition to include all ICSS irrespective of the number on which it is provided on is in line with the principal duty. In particular:

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

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

Section 4 – European Union obligations

A7.6 Section 4 of the Act requires Ofcom in carrying out our functions under section 120 of the Act, to act in accordance with specified Community requirements. These include, for example, requirements in relation to the promotion of competition and of the interests of all EU citizens. Ofcom considers that the proposed modification of the PRS Condition is in accordance with these requirements. For example, the proposed modification will promote competition as set out in the preceding paragraph. There is no conflict between the proposed modification and any of the Community requirements.

Section 47 – Test for modifying conditions

A7.7 As set out under section 47(1) of the Act, when modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

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

A7.8 We consider that the proposed modification to the PRS Condition complies with the legal tests set out in section 47(2) because it is:

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

common regulatory framework across the ICSS industry which we consider materially affects the consumer experience and level of risk associated with each service;

- **transparent:** Ofcom has consulted on, published and applied the analytical framework, and is consulting on the proposed modification which is set out in full in Annex 5 and explained in this document including the basis for, and effect of our proposal.

A7.9 In addition to the above, we note that as set out in Section 4/Annex 6, we have applied the PRS Analytical Framework to ICSS operating on the 084 number range and, having done so, our assessment is that it has most of the characteristics identified as likely to cause harm which may not be sufficiently addressed by existing regulation. The PRS Analytical Framework was designed to ensure that Ofcom intervention is only targeted at PRS in respect of which action is needed and that consumer interests are furthered in a transparent, proportionate and consistent way.

Equality Impact Assessment

A7.10 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.⁴⁵ We refer to groups of people with these protected characteristics as “equality groups”.

A7.11 We fulfil these obligations by carrying out an Equality Impact Assessment (“EIA”), which examines the potential impact our proposed policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.

A7.12 We have not considered it necessary to carry out separate EIAs in relation to our additional equality duties in Northern Ireland, regarding religious belief and political opinion. This is because we anticipate that our proposals will not have a differential impact on any equality group in Northern Ireland compared to consumers in general.

A7.13 We consider that the proposal set out in this consultation document would have a positive impact on consumers and citizens in the UK as it is aimed at protecting them from the harm that is associated with 084 ICSS by creating a common regulatory framework across all ICSS which will:

- a) be easier for consumers to understand and would simplify the task of delivering better consumer education about the safe and appropriate use of ICSS;
- b) enable ICSS providers to compete on a level playing field and promote a more competitive ICSS market; and
- c) ensure that providers could not evade PSA regulation by simply migrating to other numbers which would not be captured by the PRS Condition.

A7.14 In addition, we consider this will help protect vulnerable consumers given that the evidence suggests that some ICSS providers are targeting public service helplines that may be used by particularly vulnerable people, including DWP and [§<].

A7.15 We do not consider that there is evidence of potential negative impacts on equality groups. However, we invite comment on this in response to this consultation.