
Approval of Phone-paid Services Authority's Code of Practice (fifteenth edition)

Consultation on whether Ofcom should approve a new edition of the Phone-paid Services Authority's Code of Practice for regulating Premium Rate Services

CONSULTATION:

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Closing Date for Responses: 11 June 2021

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1. Overview

There are a 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 phone-paid services or premium rate services (**PRS**). They include charity donations by text, music streaming, entering broadcast competitions, voting on TV talent shows and in-app purchases.

These services are valued by those that use them, however in certain cases they can sometimes give rise to consumer harm. Ofcom has overall responsibility to make sure that consumers are protected by ensuring appropriate rules are in place and enforced. To achieve this, we have designated the Phone-paid Services Authority (**PSA**) to carry out the day-to-day regulation of premium rate services.

The PSA regulates PRS by way of a Code of Practice. The current Code is the fourteenth edition, approved by Ofcom on 21 June 2016. On 8 April 2021 the PSA published a new draft Code of Practice (the draft Code) which is intended to ensure PRS regulation is fit for purpose in the coming years. In accordance with the statutory scheme, any draft Code must be considered and approved by Ofcom for it to have legal force. This consultation document sets out our assessment of the draft Code in light of the statutory legal tests which we must consider in approving the draft Code.

Having assessed the draft Code of Practice against the relevant legal test we are minded to approve the new Code.

Specifically, we provisionally consider that:

- (a) the PSA will have the function of administering and enforcing the draft Code;
- (b) the PSA is sufficiently independent of the providers of premium rate services;
- (c) there are adequate arrangements funding the activities of the PSA;
- (d) the provisions of the draft Code are objectively justifiable;
- (e) those provisions do not discriminate unduly against particular persons or against a particular description of persons;
- (f) those provisions are proportionate to what they are intended to achieve; and
- (g) they are transparent in relation to what those provisions are intended to achieve.

We invite stakeholders to comment on this provisional decision. This is a six-week consultation and the closing date for responses is 11 June 2021. This consultation is happening alongside the PSA's consultation on the draft Code. Subject to responses to our consultation, and the PSA's consultation, we aim to publish a final decision in Autumn 2021.

2. Background and legal framework

- 2.1 This section sets out the background to our approval of the draft Code, including an overview of PRS, its regulation and the relevant statutory framework.

Background

Premium rate services

- 2.2 The concept of PRS is broad. 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. Technically, they are services delivered via an Electronic Communications Network (**ECN**) and paid to the provider of an Electronic Communications Service (**ECS**).
- 2.3 These services may be accessed by way of a conventional voice call or SMS, but increasingly they are accessed in other ways, such as computers, smartphones or interactive digital TV. Common forms of PRS include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases.
- 2.4 In 2013, Ofcom introduced an unbundled tariff for revenue-sharing numbers including the number ranges used for PRS.¹ The unbundled tariff was introduced to enable consumers to better understand how much of their money is paid to their phone company and how much is passed to others, such as the organisation or service being called (such as the PRS provider). It requires that, instead of paying a single charge to their phone company, customers pay two separate charges:
- a) the Access Charge: which will be paid to the phone company which originates the call; and
 - b) the Service Charge: which is paid to the phone company which terminates the call and may be shared with the provider, i.e. the company providing a service using the number to cover or contribute towards their costs. Organisations and service providers must include their Service Charge whenever the number is presented (i.e. in advertising and marketing).
- 2.5 Certain service charges are subject to price caps. For example, Ofcom recently introduced a price cap in relation to directory enquiry services (i.e. 118 numbers).²

¹ Ofcom, [Simplifying non-geographic numbers - Statement](#), 12 December 2013

² Ofcom, [Directory Enquiries \(118\) Review – Statement](#), 28 November 2018

Regulation of PRS

- 2.6 The Communications Act 2003 (the **Act**) provides a framework for the regulation of PRS. Section 120 of the Act sets out the power for Ofcom to set conditions for the “*purposes of regulating the provision, content, promotion and marketing of premium rate services.*”
- 2.7 The Act identifies which services qualify as PRS and hence may be subject to such a condition. It provides that a service is a PRS if:
- a) it is a service falling within section 120(8) of the Act (see below);
 - 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.³
- 2.8 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.
- 2.9 In accordance with this framework Ofcom has set a condition (the **PRS Condition**)⁴ that requires relevant providers to comply with directions given by the ‘Enforcement Authority’ in accordance with, or for the purposes of enforcement of, an ‘Approved Code.’ The PRS Condition applies only to certain PRS, known as Controlled PRS (**CPRS**):

“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 Number⁵ 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*

³ Section 120(7) of the Act

⁴ The PRS Condition was most recently updated in December 2018. See Ofcom, [Review of the Premium Rate Services Condition – Statement](#), 19 December 2018

⁵ This is defined in paragraph 2(t) of the PRS Condition as a “Non-Geographic Number starting 087, 090, 091 or 118”.

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;*
- (v) the service is Internet Dialler Software operated; or*
- (vi) the service is a Sexual Entertainment Service.”*

- 2.10 Section 121 of the Act gives Ofcom the power to approve a code made by another party for regulating the provision and contents of premium rate services. The current code was drafted by the Phone-paid Services Authority, which administers and enforces the code, and was approved by Ofcom in June 2016.⁶ This is the fourteenth edition of PSA’s Code of Practice.
- 2.11 The Code sets out wide-ranging rules to protect consumers as well as setting out the processes that the PSA applies when enforcing the Code. It also provides for the PSA to be funded by way of a levy on industry. As noted above, the PRS Condition requires relevant providers (i.e. CPRS providers) to comply with any directions made by the PSA for the purposes of enforcing the Code. If a provider failed to do so, Ofcom could take enforcement action for breaching the PRS Condition. Where provision of PRS does not involve CPRS, such as where telephony services operate at tariffs below the relevant thresholds, the PRS Condition would not require compliance with PSA directions.⁷

The draft Code of Practice

- 2.12 In 2020, the PSA published a discussion document in which it explained it was intending to carry out a major strategic review of the Code of Practice. The PSA said this was the first such review since the introduction of the twelfth Code of Practice in 2011, with subsequent Code reviews focussing on incremental changes.
- 2.13 The review was, in particular, intended to build on the PSA’s new strategic purpose, which it published in December 2019. This set out the PSA’s goal to be a more proactive regulator that seeks to address harm before it occurs while also strengthening the PSA’s existing approaches for addressing ongoing or historic harm.
- 2.14 On 8 April 2020, the PSA published its draft fifteenth Code of Practice and opened a period of public consultation. While this document summarises some of the key concepts and provisions contained within the draft Code, the full detail is available within the PSA’s documents and we encourage stakeholders to refer to those documents.⁸

⁶ Ofcom, [Approval of the PhonepayPlus Code of Practice \(fourteenth edition\)](#), 21 June 2016

⁷ PRS providers may be required to respond to PSA information requests in order to assess the use of controlled PRS and any PRS operations falling outside the definition of controlled PRS.

⁸ See PSA’s [Consultation on its new Code of Practice](#).

Overview of the Draft Code

- 2.15 The draft Code sets out a new regulatory approach for the PSA and has, at its heart, three key aims:
- a) **Introducing standards in place of outcomes** which the PSA expects will be clearer and easier for industry to implement, meet consumer expectations but also allows space for innovation.
 - b) **Focusing on prevention of harm rather than cure** by introducing new provisions which enables the PSA to work with industry to build best practice and compliance, minimising the risk of consumer harm and the need for resource intensive enforcement.
 - c) **A code that is simpler and easier to comply with** by as far as possible merging the current framework of Code of Practice, Special Conditions and other documents, into a single consolidated document.

Standards and requirements

- 2.16 The draft Code introduces a number of consumer-orientated, organisation-orientated and service-specific standards and requirements. To some extent, these standards and requirements consolidate the regulatory rules and obligations contained within the 14th Code of Practice, special conditions and associated guidance.⁹ In order to achieve each standard, providers will be required to meet each of the supporting requirements, which set out in more detail exactly what providers must do.
- 2.17 The regulatory standards are:
- a) **Integrity:** Providers must act with integrity and not bring the PRS market into disrepute.
 - b) **Transparency:** Consumers must receive clear, complete and timely information to enable them to make fully informed decisions when purchasing phone-paid services.
 - c) **Fairness:** Consumers must be treated fairly throughout their experience of PRS, including by being charged for PRS only where they have provided informed and explicit consent to such charges.
 - d) **Customer care:** Consumers must receive excellent and timely customer care including the resolution of their complaints.
 - e) **Vulnerable consumers:** Services must be promoted and provided in a way that ensures they are not likely to cause harm or detriment to consumers who are, or may be, vulnerable as a result of their particular circumstances, characteristics or needs.
 - f) **Consumer privacy:** Consumer privacy must be respected and protected.

⁹ PSA, [Code, Special conditions, compliance updates & guidance](#)

- g) **Prevention of harm and offence:** Promotions and services must be provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public.
- h) **Organisation and service registration:** Organisations and individuals involved in providing PRS must provide the PSA with timely, accurate and detailed information about themselves and the services they offer or intend to offer.
- i) **Due diligence, risk assessment and control (DDRAC):** Organisations and individuals must perform effective due diligence on any person or organisation with whom they contract in relation to PRS. They must conduct a full and thorough assessment of potential risks arising from the provision, content, promotion, and marketing of PRS on an ongoing basis.
- j) **Systems:** All systems, including payment and consent verification platforms, used for the provision of and exit from PRS must be technically robust and secure.

2.18 In addition to these general standards, the PSA has also identified specific requirements for certain services that it does not consider appropriate, or relevant, to apply more generally. These requirements build on some of the specific requirements of the current special conditions and apply to such services as society lottery services, competition services and remote gambling services.

Supervision and verification

- 2.19 The draft Code introduces an increased focus on supervision and verification. This is intended to help deliver the PSA's goal of moving to a more proactive regulatory model which is intended to prevent harm in the first place rather than dealing with issues after the harm has occurred.
- 2.20 In order to achieve this, the PSA has proposed a number of new powers to carry out its proposed new supervisory activities which, among other things, will enable it to assess a provider's compliance with the code, to identify and resolve issues and, ultimately, to reduce the risk of actual or potential harm to consumers resulting from such non-compliance or other issues. These activities include assessing complaints and other intelligence, requiring audits or skilled persons reports to be prepared and requesting certain data to be provided periodically.
- 2.21 As noted above, one of the new regulatory standards relates to due diligence, risk assessment and control, which the PSA refers to as DDRAC. This requires providers to undertake more thorough verification of their contracted partners by setting clearer and more extensive DDRAC requirements. This will apply to all parties and require that sufficient checks and ongoing risk management is undertaken of any party they contract with, and by having the ability for the PSA to undertake enforcement action if these requirements are not complied with.

Compliance

- 2.22 The draft Code proposes a new structure to the PSA’s enforcement activities. It replaces the ‘track 1’ and ‘track 2’ enforcement procedures set out in the current 14th Code with a more flexible model based on engagement and enforcement. The overall aim of this is to enable the PSA to have a clearer framework around informal resolution which aims to provide more flexibility in terms of how it deals with any compliance concerns, and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action.
- 2.23 While informal resolution of compliance concerns was possible under the current 14th Code, it was not explicitly set out and, in the PSA’s view, this limited its effectiveness. Accordingly, the draft Code sets out the ability of the PSA to issue ‘enquiry letters’ and ‘warning letters’ which are both aimed at addressed actual or potential compliance concerns through a swift informal process.
- 2.24 Where cases are escalated to formal enforcement, the overall approach is consistent with PSA’s existing practices and processes. The draft Code does however seek to introduce some more streamlined decision-making for certain cases where decisions can be made by a single legally qualified member of the Code Adjudication Panel (rather than a full Tribunal). In addition, the draft Code strengthens the settlement procedure with the aim of encouraging providers subject to enforcement proceedings to use the process where appropriate.

Approval of the draft Code

- 2.25 In accordance with the statutory scheme, any draft Code must be considered and approved by Ofcom for it to have legal force. In this section, we set out our assessment of the draft Code in light of the statutory legal tests which we must consider in approving the draft Code.

Legal tests under section 121 of the Act

- 2.26 The PSA has responsibility for drafting the Code and consulting on the substance of the Code, which is being undertaken concurrently to this consultation. Ofcom has responsibility for deciding whether or not to approve the Code, and thereby confirming the PSA as the designated person for regulating CPRS.
- 2.27 Under section 121(1) of the Act, Ofcom may approve the draft Code if it appears:
- “(a) that a code has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;*
- (b) that the code contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services; and*

(c) that it would be appropriate for them to approve that code for the purposes of section 120”

2.28 Under section 121(2) of the Act Ofcom may not, however, approve the draft Code unless satisfied:

“(a) that there is a person who, under the code, has the function of administering and enforcing it; and

(b) that that person is sufficiently independent of the providers of premium rate services;

(c) that adequate arrangements are in force for funding the activities of that person in relation to the code;

(d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;

(e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;

(f) that those provisions are proportionate to what they are intended to achieve; and

(g) that, in relation to what those provisions are intended to achieve, they are transparent.”

2.29 Section 121(3) of the Act relates to the circumstances in which Ofcom can approve so much of the draft Code as relates to a person who is a provider of a service by virtue of section 120(12). This appears to Ofcom not to be relevant in relation to the draft Code.

Impact Assessment

2.30 Impact Assessments (‘IAs’) provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice in policy-making. This is reflected in section 7 of the Act, which states that we generally have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public or when there is a major change in Ofcom’s activities. As a matter of policy, Ofcom is committed to carrying out and publishing IAs in relation to the great majority of our policy decisions.¹⁰

2.31 The analysis presented in this document constitutes an IA for our proposal to approve the draft Code.

2.32 As part of our IAs, we conduct an Equality IA to identify whether our proposals would have particular effects on specific groups within society. We have therefore considered whether we were required to undertake a full Equality Impact Assessment for this review. On the

¹⁰ For further information about our approach to IAs, see the guidelines [Better Policy-Making: Ofcom’s Approach to Impact Assessment](#).

basis of our Initial Equality IA Screening, we determined that this was not required, because the changes in the draft Code do not raise specific equality issues.

Consultation period

- 2.33 Ofcom is inviting written views and comments by 5pm on Friday 11 June 2021 on its proposed approval of the draft Code. Details of how to respond can be found in Annex 2. Consultation questions are in Annex 5.

Next steps

- 2.34 Subject to the outcome of its consultation process, it is expected that the PSA will make its final decision on the draft Code and publish a statement in the Autumn. Subject to that process and subject to the responses to this consultation, Ofcom would expect to publish a statement on whether to approve the draft Code at the same time in the Autumn. If there are any material changes to the draft Code, Ofcom will carefully consider whether it is necessary for it to re-consult on its approval.
- 2.35 The PSA has proposed that the draft Code would come into effect three to six months after publication of its final statement and has invited stakeholder views on that timetable. Ofcom's final approval (if granted) would align to this timescale.

3. Approving the draft Code under section 121 of the Act

- 3.1 This section sets out the reasons why Ofcom is provisionally of the view that it would be consistent with the legal tests set out in section 121 of the Act to approve the draft Code.
- 3.2 In relation to section 121(1)(a) of the Act, Ofcom provisionally considers that the draft Code, developed by the PSA, *“has been made by a person for regulating the provision and contents of PRS, and the facilities made available in the provision of such services”*. In Ofcom’s provisional view, that is clear from the provisions of the draft Code and there is no change in this respect compared with the current 14th Code.
- 3.3 In relation to section 121(1)(b) of the Act, Ofcom provisionally considers that the draft Code, *“contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services”*. Ofcom’s provisional view is that this requirement is met. We are minded to consider, for the reasons set out in this consultation, that the changes proposed in the draft Code are, amongst other things, objectively justified and proportionate measures that address relevant regulatory needs. On that basis, our provisional view is that the draft Code as a whole contains provisions for regulating the arrangements made by PRS providers for promoting and marketing relevant services to the extent Ofcom thinks fit.
- 3.4 In relation to section 121(1)(c) of the Act, Ofcom provisionally considers, *“it would be appropriate for them to approve that code [the draft Code] for the purposes of section 120”*. In considering this, we are particularly mindful of the requirements of section 121(2) of the Act since Ofcom may not approve the draft Code unless all seven such requirements are met.
- 3.5 The seven requirements of section 121(2) of the Act, and our specific reasons for provisionally considering that they, and the overall requirement that it is appropriate to approve the draft Code, are met, are set out below. While we have set out our assessment under each, some of our considerations are relevant to more than one requirement. We have taken all these considerations into account in assessing whether, provisionally, we think all the requirements are met.

Requirement 1: *“that there is a person who, under the code, has the function of administering and enforcing it”*

- 3.6 Ofcom is provisionally satisfied that the PSA would continue to have responsibility for administering and enforcing the draft Code should it be approved under section 121 of the Act, as it does under the current 14th Code. In particular, paragraph 1.1.6 of the draft Code provides that the PSA will monitor compliance with the draft Code and, where necessary, take regulatory action such as informal engagement or formal enforcement action.

Requirement 2 “that that person is sufficiently independent of the providers of PRS”

- 3.7 Ofcom is provisionally satisfied that the PSA would, in operating in accordance with the draft Code, be sufficiently independent of the providers of PRS. Generally, the draft Code does not make any changes that Ofcom provisionally considers would have a bearing on the PSA’s independence from PRS providers.
- 3.8 The draft Code emphasises that the PSA operates independently from industry and that all Board members are appointed in their individual capacities only. It goes on to confirm no member of the Board may have any current commercial interest in PRS, but Board members may be appointed on the basis of their contemporary industry knowledge.¹¹
- 3.9 This principle is also reflected in the PSA’s Governance Statement,¹² which sets out how the PSA is run and includes details of its constitution, regulatory approach and operating principles, and the Board Members’ Code of Conduct¹³ While these documents are not part of the draft Code, we have taken them into account in considering whether the PSA is sufficiently independent of providers of PRS.
- 3.10 We are minded to consider that the draft Code also contains appropriate provisions to guarantee that the bodies responsible for making adjudications are sufficiently independent of PRS. In particular, the draft Code confirms that members of the Code Adjudication Panel – who act as final decision makers in enforcement matters under the code – will not have any commercial interest in the PRS sector throughout the entire duration of their membership.

Requirement 3: “that adequate arrangements are in force for funding the activities of that person in relation to the draft Code”

- 3.11 Ofcom is provisionally satisfied that the draft Code provides adequate arrangements for funding the activities of the PSA in relation to the draft Code. Generally, the draft Code does not make any changes to the existing arrangements that Ofcom provisionally considers would affect the adequacy of the PSA’s funding arrangements.
- 3.12 The PSA is a non-profit making organisation and is currently funded by a levy on industry participants calculated as a proportion of the financial transactions in the PRS value chain that are required to be collected by the Network Operator. We also note that the PSA continues to operate the registration scheme by requiring registrants to pay a reasonable registration fee.
- 3.13 The PSA consults on its business plan and budget each year, following which the business plans and budget (and the level of the levy necessary to meet that budget) are submitted to Ofcom for consideration and approval in accordance with the Code and Memorandum

¹¹See section 1.4 of the draft Code

¹² PSA, [Governance Statement](#), November 2019

¹³ PSA, [Handbook and Code of Conduct for Board Members](#), November 2019

of Understanding. The funding arrangements for the PSA are set out in full detail in chapter 7 of the draft Code.

Requirement 4: “that the provisions of the draft Code are objectively justifiable in relation to the services to which it relates”

- 3.14 Ofcom provisionally considers that the provisions of the draft Code are objectively justifiable in relation to the services to which it relates. In particular, Ofcom considers that the draft Code – which builds on the PSA’s new strategic purpose¹⁴ – will establish an appropriate regulatory regime for PRS by building a framework that both seeks to reduce the risks of consumer harm occurring and provides for strong and effective enforcement.
- 3.15 The draft Code represents a change in the regulatory approach of the PSA which is seeking to be a more proactive regulator that seeks to address harm, or potential harm, before it occurs in order to build consumer trust and confidence in the market. It does so by placing greater emphasis on verification and ongoing supervision by the PSA, including more stringent requirements relating to due diligence undertaken by Network operators and Intermediary providers in the value chain on parties they contract with for the provision of CPRS. This is intended to ensure the Code is fit for purpose not only for the market and consumer expectations today but also in light of potentially rapid changes driven by the growing importance of digital markets.
- 3.16 This is an evolution of the underlying approach adopted by the PSA in recent codes of practice, which was an outcomes-based model that emphasised *ex post* enforcement as the key tool to achieve compliance.
- 3.17 We consider that the aims and objectives set out in the PSA consultation, and summarised above at paragraph 2.15, are appropriate in the context of the PRS market, and indeed are necessary to ensure a well-functioning market that delivers for consumers.
- 3.18 To a significant extent, the draft Code builds on the existing rules and requirements of the current 14th Code, however we consider there are three key changes it is important to consider in detail.

Regulatory standards and requirements

- 3.19 The draft Code sets out seven consumer-facing standards and three organisational standards each of which are supported by a set of more detailed requirements. In our view, consolidating the core regulatory elements of the Code of Practice in this framework helps ensure the objective of each requirement is clear. Having considered each standard, and the overall framework, we consider the standards, and their associated requirements, are objectively justified for the reasons set out below.
- a) The **Integrity** standard requires organisations and individuals involved in the provision of the PRS to act with integrity and in such a way that will not bring the PRS market into

¹⁴ PSA, [Strategic Purpose](#), December 2019.

disrepute. It is supported by requirements that, in particular, requires providers to take steps to ensure that the Code is complied with and that consumer complaints are resolved quickly and fairly. We consider this will help foster trust in the PRS market and act as a deterrent to providers whose practices could harm consumers.

- b) The **Transparency** standard requires that consumers receive full and clear information to enable them to make a fully informed purchasing decision. It is supported by a range of detailed requirements including the promotion and marketing of PRS, the use of certain services and receipting arrangements. We consider that this will help improve overall consumer confidence in PRS by ensuring consumers are able to make informed decisions throughout their use of any particular PRS.
- c) The **Fairness** standard requires that consumers must be treated fairly throughout their experience of PRS including being charged for PRS only where they have provided informed and robust consent. It is supported by a range of detailed requirements, including requirements for multi-factor authorisation (in certain circumstances) and retaining evidence of consumer consent. We consider that this will help ensure customers are not charged for services they do not want to purchase and are not misled into doing so.
- d) The **Customer care** standard requires that customers must receive excellent and timely customer care including the resolution of their complaints. It is supported by requirements setting out how customer enquiries and complaints should be handled and, where relevant, how refunds should be provided to consumers. We consider that this will help ensure consumers have good experiences of PRS and will help protect consumers where things go wrong.
- e) The **Vulnerable consumers** standard requires that services are promoted and provided in a way that ensures they are not likely to cause harm or detriment to vulnerable consumers. It is supported by a requirement for providers to have, and to be able to produce on request, policies and procedures aimed at mitigating risks to vulnerable consumers. In addition, there are specific requirements for the protection of children, including age verifications for certain services. We consider this will help ensure vulnerable consumers are protected from harm.
- f) The **Consumer privacy** standard requires consumer privacy must be respected and protected. It is supported by requirements relating to the collection of consumer's data, including personal data. We consider that this will help ensure that the personal information of consumer is collected lawfully and responsibly.
- g) The **Prevention of harm and offence** standard requires that promotions and services are provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public. It is supported by requirements for providers to ensure PRS do not promote or incite hatred, encourage consumers to put themselves at risk and do not cause fear, anxiety, distress or offence in consumers or the general public. We consider that this will help ensure PRS are provided in a safe and responsible manner that minimises certain risks of consumer harm.

- h) The **Organisation and service information** standard requires organisations and individuals involved in providing PRS to provide the PSA with timely, accurate and detailed information. It is supported by requirements for PRS providers to register with the PSA and provide, and keep update, certain information their organisation and services. We consider that this will ensure the PSA has appropriate oversight over the PRS market, providing greater transparency and enabling effective regulatory interventions.
- i) The **Due diligence, risk assessment and control (DDRAC)** standard requires that organisations and individuals perform effective due diligence on any person or organisation with whom they contract in relation to PRS, and conduct a full and thorough ongoing assessment of potential risks arising from the provision, content, promotion and marketing of PRS. It is supported by requirements setting out the how providers should undertake these activities (including by complying with the additional requirements set out in annex 2 to the draft Code) and setting out particular expectations of intermediary providers and network operators. We consider that this is appropriate to ensure a culture of compliance through the PRS value chain and ensure that consumers are adequately protected from harm. This aligns with the PSA's objective of preventing non-compliance in the first place, and the consequent consumer harm, rather than dealing with issues after the event.
- j) The **Systems** standard requires that providers have in place systems (including relating to payment and consent verification) that are technically robust and secure. It is supported by requirements setting out how providers should ensure systems are operated with specific requirements for intermediary providers (including to comply with the technical standards set out annex 3 to the draft Code) and network operators. We consider that this will help ensure providers' systems remain secure and minimise the risk that consumers are charged for services they did not intend to purchase.

3.20 In addition to these general standards, the draft Code also imposes a number of service-specific requirements for Society Lotteries, Professional Advice, Competitions (including broadcast voting), Remote Gambling, Live Entertainment, and Service using virtual currency. We consider that these requirements are appropriate in light of the specific risks associated with these services.

Supervision

- 3.21 A significant new feature of the draft Code is the set of supervisory powers described in chapter four of the draft Code. The objective of these powers is to enable to PSA to have ongoing oversight of PRS providers and services in order to achieve and maintain compliance with the code. We consider that this will help ensure that the provisions of the draft Code are, in practice, complied with thereby ensuring customers are better protected from actual or potential harm.
- 3.22 As part of our assessment we have considered whether each of the supervisory tools is objectively justified given the PSA's overall objective of supporting and monitoring compliance with all the obligations set out in the draft Code. These tools include:

- a) requiring a PRS provide to submit an audit report annually or periodically as specified by the PSA;
- b) requiring a PRS provider to periodically report data and information; and
- c) requiring a PRS provider to produce a report on any matter related to the provision of PRS or to appoint a person to produce such a report.

3.23 We consider that these tools are appropriate and are necessary in order to enable the PSA to undertake supervisory activities with the aim of ensuring compliance and mitigating the risks of consumer harm.

Engagement and enforcement

3.24 The draft Code builds on the existing models of enforcement that have been employed by the PSA in recent codes of practice but, in addition, sets out a range of alternative processes. This includes:

- a) A clearer framework for informal resolution of compliance concerns;
- b) A more flexible framework for formal enforcement that allows for better use of pre-enforcement steps, such as the use of enquiry letters and warning letters that may enable compliance concerns to be resolved;
- c) An enhanced settlement process to enable quicker resolution of certain matters, for the benefit of both the PSA and industry stakeholders; and
- d) A more flexible decision-making procedure for enforcement cases that would allow a single legally qualified member of the CAP to make certain decisions.

3.25 We consider that these streamlined processes will improve the efficiency and effectiveness of the PSA's enforcement regime and will, in particular, enable parties who wish to cooperate with those streamlined processes to benefit from a quicker resolution in individual matters. We have also assessed those aspects of the draft Code which strengthen, or otherwise change, other elements of the enforcement regime.¹⁵ This includes changes to the interim measures, the threshold for individual sanctions and the availability of an oral hearing procedure. We consider that these changes are objectively justifiable and will help ensure an effective enforcement regime.

3.26 Finally, we have carefully considered the information gathering powers set out in the draft Code. We note these strengthen and expand upon the information gathering powers set out in previous codes. In our view, the ability for the PSA to gather accurate information, and rely on it, is critical to its ability to effectively regulate the sector and to make well-informed decisions, including those associated with enforcement. We provisionally consider the information gathering powers set out in the draft Code are objectively justified to achieve those goals.

¹⁵ We note s121(5) of the Act provides for enforcement provisions.

- 3.27 Accordingly, taking all these points together, our provisional view is that the draft Code as a whole meets the relevant objective justification requirement.

Requirement 5: “that those provisions are not such as to discriminate unduly against particular persons or against a particular descriptions of persons”

- 3.28 Ofcom provisionally considers that the provisions of the draft Code do not discriminate unduly against particular persons or against a particular description of persons. The draft Code, including its standards and underlying requirements, will be applied uniformly to relevant parties engaged in the premium rate sector, as defined under section 120 of the Act.
- 3.29 The draft Code provides for more flexible regulation and in particular the ability for regulatory parties to achieve the specified regulatory standards through alternative means (other than strict adherence to the underlying requirements of that standard). While this may mean that certain parties benefit from a different regulatory context, we provisionally consider that this would be consistent with a Code that is not unduly discriminatory. This framework enables the PSA to take a different regulatory approach where the circumstances justify that approach and avoids creating an unnecessarily rigid code that fails to take account of different circumstances. We note that that tailored approach to regulation set out in section 2.6 of the draft Code is in principle available to all providers of PRS and, where this provision is used, the PSA intends to publish details of any such arrangements on its website.
- 3.30 In relation to enforcement, the draft Code provides the PSA with greater procedural flexibility (relative to the current 14th Code). In particular, it codifies the PSA’s ability to resolve matters informally, to settle cases where appropriate and adopt streamlined decision making in certain cases (in which a single legally qualified member of the CAP would make a decision rather than a full Tribunal). As above, we provisionally consider that this flexibility will enable the PSA to adopt approaches that reflect particular circumstances and results in both efficiency and effectiveness benefits.
- 3.31 The PSA will in due course publish supporting guidance and published procedures, which will further set out how the PSA would expect to use these differentiated models of regulation and enforcement. We expect these procedures will provide assurance that the PSA will, in practice, operate this more flexible code in a way that is fair and not unduly discriminatory.

Requirement 6 “that those provisions are proportionate to what they are intended to achieve”

- 3.32 Ofcom provisionally considers that the provisions of the draft Code are proportionate to what they are intended to achieve. The central objective of PRS regulation is to protect consumers from the risks of harm that may accompany the use of such services. As set out above, we think the provisions of the draft Code pursue legitimate and appropriate objectives and are objectively justified in order to achieve those objectives. We

provisionally consider that the provisions of the draft Code go no further than necessary to achieve those objectives and as such do not impose an unreasonable regulatory burden.

3.33 In particular we have considered the standards, and associated requirements, set out in chapter 3 of the draft Code. These build on the prevailing regulatory framework which has long been accepted as appropriate and necessary and take account of the evolving needs of the sector. We provisionally consider they are proportionate to the overall objectives of the draft code.

3.34 We have also considered whether the supervision framework set out in chapter 4 of the draft Code and the engagement and enforcement framework set out in chapter 5 of the draft Code are proportionate. In our view these frameworks are necessary to achieve the overall objective of a code that enables a more proactive form of regulation. We note that in both cases, they will be subject to further safeguards as the PSA will set out, in advance through its published procedures, how it will use the powers and processes provided by these frameworks.

Requirement 7: “that, in relation to what those provisions are intended to achieve, they are transparent”

3.35 Ofcom provisionally considers that, in relation to what the draft Code is intended to achieve, the proposed provisions are transparent.

3.36 The draft Code has been produced by the PSA following extensive industry engagement and prior consultation. This includes the publication of a discussion document in February 2020 setting out the PSA’s objectives, early thinking and inviting stakeholder input. This was supported by a series of stakeholder discussions, including:

- a) Topic-based webinars;
- b) One-to-one, and group, industry meetings;
- c) Engagement with consumer advocacy bodies; and
- d) Gaining experience from other regulators.

3.37 On 8 April 2021, the PSA published the draft Code in full together with a detailed consultation document which set out its reasons for proposing to introduce the draft Code. This document also sets out how the PSA had taken into account the feedback from industry through its early engagement steps. Subject to the completion of this consultation process, we consider that draft Code has been developed in a transparent manner.

3.38 We also provisionally consider that the provisions of the draft Code are transparent in relation to what they are intended to achieve. The draft Code sets out clearly the expectations, requirements and regulatory approach associated with its proposed provisions. It provides for the PSA to publish, and where necessary consult on, relevant materials that further clarify the operation of the code, including the PSA’s guidance and published procedures, and any relevant best practice information.

Ofcom’s provisional view is that it would be appropriate to approve the proposed Code

3.39 Ofcom may not approve the draft Code unless we are satisfied of the above matters, as set out in section 121(2) of the Act. We must also be satisfied that it is appropriate for us to approve it. In deciding whether we are satisfied of such matters, Ofcom must act consistently with its general duties under section 3 of the Act, and in accordance with the six requirements set out in section 4 of the Act. We set out our provisional assessment as to those matters, and on approval of the draft Code overall, below.

Section 3: Ofcom’s general duties

3.40 Section 3(1) of the Act sets out the principal duties of Ofcom in carrying out its functions:

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

3.41 Section 3(2) and 3(4) of the Act are also relevant. They set out matters Ofcom must secure and/or have regard to pursuant to our duties. Section 3(4) provides that, in performing its duties, Ofcom must have regard to “such of the following as appear to them to be relevant in the circumstances”, including:

- a) the desirability of promoting competition in relevant markets;
- b) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- c) the desirability of encouraging investment and innovation in relevant markets;
- d) the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection;
- e) the needs of persons with disabilities, of the elderly and of those on low incomes;
- f) the desirability of preventing crime and disorder;
- g) the opinions of consumers in relevant markets and of members of the public generally; and
- h) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

3.42 Section 3(3) of the Act provides that, in performing their duties under subsection (1), Ofcom must have regard, in all cases, to:

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

3.43 Section 3(5) of the Act provides that Ofcom, in performing its duty of furthering the interests of consumers, must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

Section 4: The six Section 4 duties

3.44 Section 4 of the Act sets out six requirements which Ofcom, in carrying out its functions under inter alia Chapter 1 of Part 2 of the Act, must act in accordance with.

3.45 In broad terms, the six requirements are as follows:

- a) to promote competition, including in relation to:
 - i) the provision of electronic communications networks and services,
 - ii) the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or services, and
 - iii) the supply of directories capable of being used in connection with the use of electronic communications networks or electronic communications services.
- b) to promote the interests of all members of the public in the United Kingdom;
- c) to take account of the desirability of Ofcom's carrying out its functions in a manner which, so far as practicable, does not favour (a) one form of electronic communications network, service or associated facility, or (b) one means of providing or making available such a network, service or facility, over another;
- d) to encourage (to such extent as Ofcom consider appropriate for certain purposes which are specified in section 4(8) of the Act) the provision of network access and service interoperability;
- e) to encourage such compliance with the standards specified in section 4(10) of the Act as is necessary for facilitating service interoperability and securing freedom of choice for customers of communications providers; and
- f) to promote connectivity and access to very high capacity networks by members of the public and businesses in the United Kingdom.

Conclusion

3.46 Ofcom has carefully considered the draft Code and considers that, subject to the outcome of this consultation it would be appropriate for Ofcom to approve it. This provisional view is also conditional on the outcome of the PSA's parallel consultation on the substance of the draft Code.

3.47 In reaching this provisional conclusion, Ofcom has had regard to its duties under section 3 of the Act and, so far as relevant, section 4. Ofcom believes that approval of the draft Code would be compatible with those duties, not only because the draft Code would be in line with Ofcom's primary duty to further the interests of citizens and consumers, but also

because, amongst other things, it would promote greater consumer confidence in the PRS market and, as a result, encourage investment and innovation, and promote competition, in the sector.

- 3.48 In particular, Ofcom considers that effective competition can only exist where consumers are not misled about the cost or nature of services and where traders who cause consumer harm are held accountable. We are satisfied that the draft Code would further these aims.
- 3.49 In these ways, and others described in this document, the provisions of the draft Code, in our provisional view, satisfy the sorts of principles of fairness, effectiveness and efficiency with which the Code must be consistent. This contributes to our provisional satisfaction that approving it would be in line with our duties.
- 3.50 Finally, we would draw stakeholders' attention to the fact that the role of Ofcom is different to that of the PSA. The PSA is responsible for drafting the Code and is currently consulting on the substance of the draft Code. Stakeholders are encouraged to engage with that consultation. This consultation by Ofcom focuses on the extent to which the draft Code meet the legal tests for approval under the Act and that Ofcom approving it would be appropriate and consistent with those legal tests.
- 3.51 Ofcom would like to invite views on its position that it would be appropriate for the draft Code to be formally approved under section 121 of the Act. The consultation period will close at 5pm on 11 June 2021.

Question 1: Do you consider Ofcom should approve the PSA's 15th Code of Practice in its current form? Please provide an explanation to support your response.

Question 2: Do you have any views on the appropriate implementation period?

A1. [Draft] Notification of Approval of a Code for Premium Rate Services under section 121 of the Communications Act 2003

The approval of a Code for premium rate services for the purpose of sections 120 and 121 of the Communications Act 2003

Background

- A1.1 Section 121 of the Communications Act 2003 (c. 21) (“the Act”) empowers the Office of Communications (“Ofcom”), subject to being satisfied of certain matters specified in that section, to approve a code which has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services
- A1.2 On 8 April 2021 the Phone-paid Services Authority (PSA) published a draft Code of Practice (“the draft Code”) and a consultation document seeking stakeholder views on its content. In addition, the PSA consulted with Ofcom on the content of the code during its developed and ahead of the publication of the draft Code.
- A1.3 On 30 April 2021 Ofcom published a consultation document on the draft Code, stating that Ofcom was minded to approve that draft Code under section 121 and inviting comments on that proposal; and
- A1.4 Ofcom has now considered the responses which it received to the consultation document and, for the reasons set out in the Statement which accompanies this Notification, Ofcom considers that the requirements for the purposes of approving a code set out in section 121 of the Act have been satisfied and that it would be appropriate and in accordance with Ofcom’s statutory duties now to approve the draft Code.

Decision

- A1.5 Pursuant to sections 120 and 121 of the Act, Ofcom approves the draft Code which will take effect on [date].

Interpretation

- A1.6 In this Notification, unless the context otherwise requires, words or expressions used shall have the same meaning as they have been ascribed in the Act.
- A1.7 In this Notification –
- a) “Act” means the Communications Act 2003;
 - b) “PSA” means the Phone-paid Service Authority; and

- c) “draft Code” means the draft Code for Premium rate service published by the PSA on 8 April 2021.

A1.8 For the purpose of interpreting this Direction—

- a) headings and titles shall be disregarded;
- b) expressions cognate with those referred to in this Notification shall be construed accordingly; and
- c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

Signed by

Gaucht Rasmussen

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

April 2021

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 11 June 2021.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/approval-of-psa-code-of-practice-15>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ian.strawhorne@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A2.4 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.
- A2.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.6 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.
- A2.7 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.
- A2.8 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 5. 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.
- A2.9 If you want to discuss the issues and questions raised in this consultation, please contact Ian Strawhorne by email to ian.strawhorne@ofcom.org.uk.

Confidentiality

- A2.10 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 [the Ofcom website](#) as soon as we receive them.

- A2.11 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.
- A2.12 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.
- A2.13 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 in our [Terms of Use](#).

Next steps

- A2.14 Following this consultation period, Ofcom plans to publish a statement in Autumn 2021.
- A2.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.17 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.
- A2.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

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

A3. 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.

A4. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

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

DECLARATION

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

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

Name

Signed (if hard copy)

A5. Consultation questions

Ofcom's provisional view on approval of the draft Code

A5.1 We welcome stakeholder views on the following questions.

Question 1: Do you consider Ofcom should approve the PSA's 15th Code of Practice in its current form? Please provide an explanation to support your response.

Question 2: Do you have any views on the appropriate implementation period?