



Guidance to television  
broadcasters  
on verification obligations for  
the use of premium rate  
services in programmes

# Objectives and requirements for systems of third-party verification of premium rate telephone services (PRS) used in programmes

## Introduction

All Ofcom television broadcasting licences contain a condition that licensees implement and maintain a system to verify the proper handling of premium rate telephone communications. This condition was introduced following the consultation document published in July 2007, *Participation TV: protecting viewers and consumers and keeping advertising separate from editorial*<sup>1</sup>.

The contents of this guidance note were first published in February 2008 in the Ofcom Statement *Participation TV Part 1: protecting viewers and consumers*. The Statement discusses the background to the licence variation and is available in document format at <http://www.ofcom.org.uk/consult/condocs/participationtv/statement/ptvstatement.pdf>.

**Note:** Ofcom has concluded that a further consultation should be held about the position of radio licences. **At the time of publication this section therefore applies only to television broadcasters licensed by Ofcom.**

## The licence variation

The following variation came into force on **9 May 2008** for all classes of television broadcasting licence. A grace period operates such that verification arrangements for premium rate services (PRS), as required under condition 3(b) and its sub-conditions, will come into force on **1 August 2008**.

**Note:** In the Ofcom Statement *Participation TV Part 1: protecting viewers and consumers*, Ofcom made clear that it would conduct a schedule of spot checks for 12-18 months after the verification obligation came into force.

**Note:** the position and general condition number of the variation within the various categories of television broadcasting licence differs. In each case, however, the new Condition is headed *Requirements for the handling of communications from viewers*. The sub-numbering given below is consistent with all.

- (1) The Licensee shall be responsible for all arrangements for the management of communication, including telephony, between members of the public and the Licensee or the Licensee's contractors or agents (together here described as "the Licensee") where such communication is publicised in programmes. 'Communication' includes, but is not limited to, methods of communication in which consideration is passed between a member of the public and the Licensee directly or indirectly and methods of

---

<sup>1</sup> The consultation document and subsequent statement are available at <http://www.ofcom.org.uk/consult/condocs/participationtv/>

- communication intended to allow members of the public to register with the Licensee indications of preference or intended to allow entry to any competition, game or scheme operated by the Licensee.
- (2)(a) Arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee must ensure, in particular, that:
- (i) reasonable skill and care is exercised by the Licensee in the selection of the means of communication and in the handling of communications received;
  - (ii) voting, competitions, games or similar schemes are conducted in such ways as to provide fair and consistent treatment of all eligible votes and entries; and
  - (iii) publicity in programmes for voting, competitions, games or similar schemes is not materially misleading.
- (b) In addition to the requirements in sub-paragraph 2(a), the Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.
- (3)(a) The Licensee shall implement and maintain appropriate compliance procedures to ensure arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee fulfil all the requirements set out in paragraph 2 above.
- (b) Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party ('the third party'), in accordance with the following requirements:
- (i) Verification shall include confirmation by the third party that an end-to-end analysis of the technical and administrative systems to be used for the receipt and processing of votes and competition entries from members of the public has been conducted and that such systems fulfil all the requirements set out in paragraph 2 above. All such systems and the analysis of such systems must be fully documented.
  - (ii) Verification shall include appropriately regular reviews by the third party of individual programmes. Such reviews must track all votes or competition entries through all stages from receipt, and the results of each review must be fully documented.
  - (iii) The Licensee shall ensure that a Director of the Board (or, where there is no Board, an appropriate equivalent) ('the designated Director') has specific responsibility for verification.
  - (iv) The Licensee shall ensure that the third party provides reports regarding analyses of processes (as specified under sub-paragraph 3(b)(i)) and reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)) to the

designated Director. If significant irregularities or other problems are discovered, the Licensee shall ensure that these are reported forthwith to Ofcom.

- (v) The Licensee shall provide forthwith and in an appropriate form any information requested by Ofcom regarding verification.
- (vi) The Licensee shall retain for at least two years all relevant data regarding votes and competition entries from callers by means of Controlled Premium Rate Services and all documentation regarding the verification of its systems (as specified under sub-paragraph 3(b)(i)) and the reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)).

(vii) The Licensee shall publish annually a statement signed by the designated Director confirming that he is satisfied that the Licensee has in place suitable procedures to fulfil the requirements of paragraph 3(b) and confirming the name of the third party engaged by the Licensee to fulfil the requirements of paragraph 3(b).

## General

This note is intended to assist licensees in the design and operation of the PRS verification arrangements required under Condition 3(b). But the broader responsibilities created by Conditions 1, 2 and 3(a) should of course be borne in mind.

Under Conditions 1, 2 and 3(a) television licensees are responsible for the proper management and handling of all communications they invite through programme publicity. This may frequently be PRS mechanisms, but will also be communications solicited through any other means – email, post and so on. Licensees should bear in mind, therefore, that applications of PRS that are not votes or competitions – viewer comments invited through premium rated text messages, for example – and that do not attract verification obligations are nevertheless subject to this general obligation to treat communications from viewers with reasonable skill and care.

Condition 3(a) makes clear that suitable compliance arrangements must be in place for the licensee to fulfil the obligations set out in Condition 2.

## Verification: scope

Verification measures, to include third-party advice and scrutiny, are required under Condition 3(b) only for certain applications of controlled premium rate services (PRS) used in programmes. At this time, Ofcom requires verification only where all three of the following criteria are satisfied:

- Viewer participation is by means of controlled premium rate services (as defined by the PRS condition made under section 120 of the Communications Act 2003)  
The PRS condition can be found at [http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/PRSCondition\\_2\\_.pdf](http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/PRSCondition_2_.pdf);
- The nature of the viewer participation is voting or competition entry; and
- The PRS application (either a vote or competition) is publicised within programme time.

For the avoidance of doubt, nothing in this document applies to the use of PRS or other communication methods in advertising time.

**Note:** At present, controlled premium rate services are those for which calls cost more than 10 pence per minute or more than a 10 pence single charge. However, Ofcom is presently considering changing the terms of the PRS condition. This may mean that a broader range of revenue-share calls falls within the definition.

'Voting' means schemes in which viewers are invited to register a vote to decide the outcome of a contest of any sort within a programme, or the outcome of any stage in such a contest. Viewer voting schemes are typically used to decide the fate of contestants in 'reality' competitions, but can be used to select winning entries in contests between any competing parties, for example historical figures, sports personalities or monuments.

For the purposes of verification required by the licence condition, voting does not include opinion polls, that is schemes in which viewers are asked to express a point of view by choosing a preference on a topic but where the outcome is confined to gauging a balance of opinion.

The definition of competitions does not include any gambling activity licensed by the Gambling Commission.

**Note:** As explained under 'General' above, television broadcasting licences make licensees responsible for all means of communications with audiences that are publicised in programmes. Therefore, licensees should consider with the utmost care the management of votes, competition entries and all other participation techniques whatever mode of communication is used. Breach of the licence may result in the imposition of a statutory sanction. The new licence conditions make clear that compliance procedures must be in place for all communications with the public that are publicised in programmes, whether they attract the need for third-party verification or not.

### **Verification: principles**

The design of verification processes is a matter for licensees. Ofcom will not advise on or 'approve' particular detail of schemes.

Ofcom reserves the right to ask for details in suitable formats as it requires. On these occasions Ofcom may review the systems being used by licensees in a particular case, e.g. a specific viewer competition, or more generally. Failures in compliance or inadequate arrangements for verification may constitute a breach of the licence condition and result in the imposition of a statutory sanction.

Because licensees are themselves responsible for the design and operation of their verification arrangements it is the licensee's responsibility to decide such matters as the frequency of checks on systems, particular programme arrangements and PRS traffic handling, as well as on the choice of third parties. The licence condition is therefore intended to allow licensees flexibility in its fulfilment.

However, Ofcom does expect that licensees will achieve certain minimum standards in the operation of their verification processes. This document sets out the high-level objectives and basic operational requirements expected.

## Terminology

Paragraph 3 of the new licence condition is intended to ensure that licensees put in place active systems to examine, monitor and report on the ways in which certain PRS applications are handled. Because these will entail scrutiny of, among other things, technical arrangements, programme production arrangements, communication measures between producers and others, record keeping and authentication of statistics, no particular term is more suitable than any other to describe the general approach. 'Audit' and 'verification', for example, are used in this document within their general meanings of assurance, assessment, evaluation and checking.

Further, as used here the terms 'verification', 'audit', 'compliance' and the like should be interpreted within the general context of Ofcom licence conditions and guidance offered against licences. They are not intended to carry any meaning, or attract any specific rules, that might apply in other contexts, such as financial audit.

## Objectives

Ofcom expects that means of verification of PRS applications, as defined above, will protect viewers and consumers, inform licensees and allow effective action by the regulator. The objectives of verification are, therefore, to promote *trust*.

It has been clear to Ofcom through investigations that too often broadcasters themselves did not know enough about the processes applied to the handling of viewers' interactions – principally premium rate phone calls – they were inviting in their programming. Third-party oversight of these processes will greatly enhance broadcasters' confidence – and viewers' trust – in their use of PRS. The assurance measures, all dependent on advice and agreement from appropriate parties external to the broadcaster, cover both end-to-end examination of systems and scrutiny of particular uses within programmes and series; and the verification should be done in a way that is capable of detailed interrogation and is documented thoroughly.

Where shortcomings are identified, either in design or operation, they can be put right and if necessary reported to the regulator. Verification is intended to address the systemic bad practice that has been apparent in some cases.

## Requirements

Ofcom has set out the basic requirements of a licensee's verification processes in the amended licences. The discussion below seeks to add guidance to these requirements; to allow licensees better to understand the obligations placed on them.

The guidance that follows is linked to each of the Sub-conditions of the licence variation.

- **Where the Licensee uses a controlled premium rate service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party ('the third party'), in accordance with the following requirements:** (Licence amendment 3(b))

See the discussion on Scope, above, in respect of controlled PRS and definitions of voting and competitions.

To ensure public trust, it is essential that appropriate independent third parties should advise on and scrutinise the processes that licensees adopt for their use of PRS.

What constitutes 'appropriate' is a matter in the first instance for each licensee. Large or complicated PRS systems will require correspondingly sophisticated third-party input; simpler operations will require less complex third-party analysis. However, in all cases, licensees must be able to demonstrate to the satisfaction of Ofcom that the third party chosen has appropriate expertise in the relevant fields.

The relevant specialisms and fields of expertise that licensees are likely to require in third parties include, but are not limited to, systems analysis, data security, risk assessment, audit, telecommunications network design and PRS provision. In some of these fields experience and expertise will be covered by professional qualifications.

Third-party involvement will extend at least to agreeing the form and outcomes of prior assessment of systems and applications, and of the review of particular uses of PRS – see the following requirements below.

- **Verification shall include confirmation by the third party that an end-to-end analysis of the technical and administrative systems to be used for the receipt and processing of votes and competition entries from members of the public has been conducted and that such systems fulfil all the requirements set out in paragraph 2 above. All such systems and the analysis of such systems must be fully documented.** (Licence amendment 3 (b) (i))

Full assessment of the technical and administrative chains used for the receipt and handling of PRS interactions is fundamental.

This requirement applies to all the stages of interaction including, as appropriate: choices of network (capacity, latency, reliability etc); production issues such as the periods built into programming for voting and competition entry deadlines; and aggregation of votes and entries (which are likely to come from different routes in many cases). Clearly, the independent analysis must include intermediate, mostly technical, services supplied by contractors, with requirements of record keeping, time stamping and so on, as necessary.

It is likely that licensees will maintain 'backbone' PRS handling systems, or at least that elements of a PRS 'chain' will be common to different uses of PRS. New programmes or

series that involve PRS votes or competitions, or both, will often use background processes that have been examined and 'signed off' recently. Prior assessment may therefore be taken into account where appropriate. But for every new use – essentially every new programme or series that uses PRS voting or competitions – a full end-to-end assessment must still be undertaken, even if some or much of the system can be treated as having been checked.

The process and outcomes of system evaluations must be fully documented and reports made to the appointed board member (see below for board level reporting).

Documentation must be capable of demonstrating the analysis undertaken and the reasons for accepting the system design. Because this documentation is intended for both the licensee and the regulator, it should be prepared in way that allows it to be used to demonstrate intelligibly to those without detailed knowledge of the particular verification regime that proper rigour has been applied.

- **Verification shall include appropriately regular reviews by the third party of individual programmes. Such reviews must track all votes or competition entries through all stages from receipt, and the results of each review must be fully documented.** (Licence amendment 3 (b) (ii))

It is implicit from 'appropriately regular' that Ofcom does not expect that every individual programme's or series's use of PRS votes or competitions need be subject to particular review (although full records of interactions and their processing must be kept for all – see the comment against Sub-condition 3(b)(vi) below). We expect, though, that larger schemes, particularly those run by public service broadcasters, will attract more regular scrutiny than more modest ones: in some cases it may be that on the advice of the third-party a big series or large, regular competition will attract continuing audit.

The reviews must be fully documented and reports made to an appointed board member (see following comment about board level reporting).

- **The Licensee shall ensure that a Director of the Board (or, where there is no Board, an appropriate equivalent) ('the designated Director') has specific responsibility for verification.** (Licence amendment 3 (b) (iii))
- **The Licensee shall ensure that the third party provides reports regarding analyses of processes (as specified under sub-paragraph 3(b)(i)) and reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)) to the designated Director. If significant irregularities or other problems are discovered, the Licensee shall ensure that these are reported forthwith to Ofcom.** (Licence amendment 3 (b) (iv))

The process of verification (including audit of individual programmes) is intended to assist licensees to know as far as possible whether their systems are sufficiently robust. It should act both to pre-empt problems and quickly detect those that may nevertheless occur. This must entail a reporting line to the most senior decision making level within a licensee.



It is likely that the Board Director with existing audit responsibilities will be the 'designated Director'. This may be a non-executive Director.

The designated Director must inform Ofcom of significant or systematic problems. Not to do so is likely to be regarded as a serious breach of the licence.

What might constitute problems reportable to Ofcom cannot be anticipated in detail. Ofcom expects licensees to exercise judgment. But some tests that can be applied by licensees *include*:

- material effect  
Has an irregularity led to any material detriment to viewers? If so, the need for reporting to Ofcom will probably be stronger than otherwise.
- scale  
How many viewers were disadvantaged by the problem, for example? The bigger the numbers affected, the more reason to report.
- structural flaws  
E.g. was a competition discovered to be inherently unfair because of the method of selection of winners? Where whole schemes are found to have been deficient, the harm, and the reasons to report, will generally be greater than much more localised problems.
- identification of longer-standing defects  
Does the identification of a problem indicate that the problem has been present for a time? And what therefore is the scale of the effect of the problem?

These are merely some aspects of deficiencies that licensees may wish to consider when assessing whether a matter should be reported to Ofcom under sub-Condition 3(b)(iv). If any doubt exists in particular cases, licensees should approach Ofcom.

The designated Director should create written records of his or her acknowledgement of reports supplied by the third party. Such records may be asked for by Ofcom.

- **The Licensee shall provide forthwith and in an appropriate form any information requested by Ofcom regarding verification.** (Licence amendment 3 (b) (v))

Keeping records of what has been assessed and how it has been assessed is crucial to the proper running of processes and their review, both internally and externally. Ofcom may require these documents themselves.

However, in the longer term Ofcom anticipates that it is more often likely to require documentation from particular audits of programmes or series than evidence of verification systems more generally. Where this or any other operational documentation is asked for it should be made available straightaway and in a form that can be readily assessed by Ofcom. Simple print-outs of data and similar are unlikely to be acceptable.

Ofcom expects that in many cases summary formats of audits will be appropriate, at least at an initial stage of investigation.

- **The Licensee shall retain for at least two years all relevant data regarding votes and competition entries from callers by means of Controlled Premium Rate Services and all documentation regarding the verification of its systems (as specified under sub-paragraph 3(b)(i)) and the reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)).** (Licence amendment 3 (b) (vi))

Under this requirement, records must be maintained of all interactions from members of the public at all stages. 'Interactions' will be any votes or competition entries from consumers; 'stages' will be all points at which interactions are recorded and processed, whether carried forward or, in the case of competitions, eliminated. This requirement is self-limiting: the fewer the interactions, the fewer the records.

Where questions arise about an instance of a licensee's use of PRS, it may be that no particular programme or series audit was performed at the time. But Ofcom expects that the data will be readily available for such an audit to be performed at some later point.

Because voting and competition schemes invite and aggregate individual interactions, it is crucial to the testing of any system that audit can disaggregate, i.e. that it can determine how any individual entry was handled.

The two-year retention requirement is a minimum period. Ofcom's experience from investigations of code breaches has been that records are generally available for longer.

- **The Licensee shall publish annually a statement signed by the designated Director confirming that he is satisfied that the Licensee has in place suitable procedures to fulfil the requirements of paragraph 3(b) and confirming the name of the third party engaged by the Licensee to fulfil the requirements of paragraph 3(b).** (Licence amendment 3(b) (vii))

This requirement is important for licensees publicly to demonstrate continuing attention to the responsibilities placed upon them. It will help to ensure that the public is aware of the licensee's commitment to rigorous compliance and give Ofcom reassurance that proper processes are in place.

The statement need not be approved or endorsed by the third party and need reveal no more than the limited information referred to in the licence sub-paragraph itself.

The statement should be published in a place or document that is generally available for public inspection. Licensees may wish to publish the statement on an appropriate part of a website, for example.