PRS development through outcomes-focussed regulation: A Review of PhonepayPlus' regulatory framework

A PUBLIC CONSULTATION

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Executive summary

PhonepayPlus' primary function as a regulator is consumer protection. Our approach to that function is to ensure that everyone can use premium rate services (PRS) with absolute confidence in a healthy and innovative market. Where it is possible to enhance consumer choice, and enable market growth by removing or reducing barriers to innovation without diminishing consumer protection, then that would be our aim.

In practice this means that PhonepayPlus has sought to be:

> **Fair and Proportionate** – examining all options and only intervening to the extent necessary
>
> **Decisive** in tackling harm – where we need to take action our measures are efficient and effective
>
> **Aware of the Bigger Picture** for businesses – reducing barriers to entry and allowing flexibility in achieving Code outcomes
>
> **Effective and Productive** in considering exemptions, pilots and grace periods to support innovation
>
> **Open** – having an open door policy and a willingness to engage in dialogue and work together with stakeholders
>
> **Professional** in continuously developing our regulation to offer consistent, outcomes-based protection

The overall PRS market in the UK has declined in recent years from £816m to £686m. However although a number of sectors have seen decline, others have seen significant growth. A number of sources suggest there is further significant potential for growth - especially around the development of the "charge to phone bill" payment model as an alternative to credit/debit cards or other e-commerce models when paying for digital goods and services. Mobile operators, payment aggregators, and indeed all other commercial participants in the PRS market, have a shared interest in developing new products to maximise this potential and halt the decline.

We will shortly enter our 30th year as the regulator of this increasingly evolving market. As we do we want to ensure that our regulatory approach remains capable of keeping pace with technological and market developments and support sustainable growth. A high level of consumer trust is a core element of that growth, and it is important that we can strike the right balance between convenience and ease of use on the one hand, and the risk of consumer detriment (leading to mistrust) on the other.

To this end we produced a discussion document – "How to encourage PRS development with effective, outcomes-focused regulation". This document is attached for reference at Annex D of this paper. Using the discussion document as a basis, in recent months PhonepayPlus has worked with key stakeholders to understand what we could do differently in order to best support innovation and growth in PRS, and in operator billing in particular. Following discussions and workshops we have arrived at the following five proposals:

1. **Higher Risk Services** - Develop a framework against which PhonepayPlus can assess whether a service type or mechanic is Higher Risk, and a process to explore mitigations or appropriate controls (including Special Conditions) if necessary
2. **Exemptions** – Clarify the process by which Exemptions from specific Code provisions or Special Conditions will be considered, and identify areas for potential exemption
3. **Regulatory Landscape** – Consider whether a 'regulatory map', setting out the overlapping interests of regulators in relation to telecoms and digital retail, would be of use to stakeholders
4. **Regulatory Relationships** - Seek to gain the support of relevant regulators to convene an ad hoc working group where it is necessary to consider joint regulatory handling of new business plans, mechanics, and service proposals
5. **Monitoring** – Examine the scope for a joint monitoring capability where intelligence is available to both regulator and industry

Section One – The changing PRS market

1.1 The premium rate services (PRS) market has adapted over the past 30 years as the network and handset technology around it has changed at a faster pace. The original fixed-line, voice-based services were succeeded by text-based services which are in turn being overtaken by video-rich online services in the present market. In addition to this convergence of communications and broadcast technologies, mobile and payment technology is also converging and offering consumers a range of payment options for essentially similar services.

1.2 The size of the market is also changing, reflecting the changes in service types. Whilst the market in 2015-16 was stable at an estimated £671.8m – down 0.26% from the previous year – this followed five years during which the market had declined from £816m down to £686m[1]. This decline is generally attributable to longstanding areas of the market – such as voice-based PRS, adult, and directory enquiries – facing competition from alternatives which are either free (e.g. the facilities on most smartphones to look up numbers and addresses) or paid via credit/debit cards.

1.3 However the picture is by no means gloomy looking ahead. Our 2015-16 Annual Market Review (AMR) records that mobile operator billing grew by 55%, with expectations that a similar level of growth (51%) will be repeated in 2016-17. In addition specific areas of the market – giving, gaming, gambling, and music and video content – are either beginning or continue to grow strongly year-on-year.

Opportunities for growth across the market

1.4 There are an increasing number of indicators which point to as yet untapped potential for the growth of operator billing. These are set out in more detail directly below, but in general they centre around the following three themes:

- Increased use of handsets and other smart devices to access the internet
- Convenience of operator billing
- Proliferation of digital goods and "virtual" goods and services

1.5 The increasing capability of handsets and other smart devices means that more UK consumers are using them instead of laptop or desktop PCs to access the internet. Ofcom's Communications Market Report 2016 (CMR)[2] identifies that nearly three-quarters (71%) of all UK households own at least one smartphone, and 59% own a tablet. The impact of 4G – 24m subscribers in the UK and growing fast – is that these consumers also do more online shopping and view more video content than ever before.

1.6 The 2015 CMR had previously reported that smartphones are twice as likely to be used for watching short-form video clips than for longer form TV shows or films. Whilst longer form broadcast is more developed in terms of monetization, monetized short-form clips, such as goal highlights, are more likely to be impulse purchases. In turn this could

[1] PhonepayPlus' 2015-16 Annual Market Review - https://www.phonepayplus.org.uk/~/media/Files/PhonepayPlus/Research/2016/AMR_PPP_Report2016.pdf

[2] http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf

increase the likelihood that consumers will prefer a method of payment which does not involve pre-registration or provision of credit/debit card details.

1.7 Research previously carried out by Deloitte projected a UK market for digital content of around £14bn by 2019. At present around 1% of that market is paid for through operator billing, whereas Deloitte saw the potential for this to grow to around 3-4% in the medium term. Whilst this might initially seem a small return, it represents around £500m annually.

1.8 Deloitte's report[3] examined a number of areas of the digital content market in terms of their potential for growth, including music, video, e-books, gambling and gaming. In common with the 41% growth in mobile gaming seen in the 2015-16 AMR, Deloitte had earlier identified mobile gaming apps as the fastest growing opportunity for operator billing. The key reason is that operator billing offers a frictionless payment experience which is more likely to be important to a gamer, who may prefer to pay "in-game" for add-ons than to pause and exit the game in order to enter credit card details.

1.9 App stores have begun to use operator billing in the UK. Google Play and Microsoft already do so, with Amazon and Apple also known to be seriously exploring it as an option. Whilst app stores have built their business on credit/debit cards, which carry more competitive margins for merchants and are likely to continue to do so for the foreseeable future, they have recognised that their "traditional" billing model will reach a point of saturation. Even those companies who have fiercely guarded their consumer billing relationships until this point are examining operator billing globally and indeed Apple has already begun to pilot operator billing in Germany.

1.10 We are also beginning to see mobile operator billing emerge as an option for payment for services, virtual goods, and even some physical goods. Examples include transport and theatre/cinema ticketing, road tolls, car parking, and small scale physical goods such as coffee or goods from vending machines. At present these are only rarely paid for through operator billing in the UK[4]. However increased use of operator billing as a payment mechanic for these goods and services could increase its wider visibility.

1.11 The new EU Payment Services' Directive 2 (PSD2) may, in the short to medium term at least, facilitate growth in operator billing for virtual goods. This is because it exempts operator billing for purchases of digital and virtual goods below certain thresholds (for both individual purchases and cumulative purchases across a month) from compliance with some of the requirements contained within it. How these thresholds are implemented will be important in terms of the opportunities for growth, but mobile operators and aggregators are clearly keen to develop those opportunities.

Obstacles to growth

1.12 Continued development in the PRS market faces a number of challenges. Whilst the UK is one of the world's leading e-commerce nations, it also has a well-established payment culture based on credit and debit cards. Latterly PayPal has also become a well-established

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[3] Research found on our website here: http://www.phonepayplus.org.uk/~/media/Files/PhonepayPlus/Research/Nov2014_Deloitte_research.pdf

[4] Note: In the UK whilst some services using operator billing may be PRS they may not be Controlled PRS. PhonepayPlus on regulates those services that are Controlled PRS as defined by Ofcom.

payment mechanic for e-commerce. Consumers who are accustomed to these established payment mechanisms are unlikely to change to another mechanism unless there is a strong case for them to do so.

1.13 However our 2015-16 AMR cites nearly 23m users of PRS in the UK, which suggests a large percentage of the population has already tried operator billing in one form or another. Also consumers entering the market (such as the young) are less likely to have an established payment preference and so may be more attracted to operator billing, especially if it is an easier, smoother option for the services they consume. Operator billing does not require a lengthy pre-registration process or the provision of card or other personal details. A low-friction payment experience can also be preferable when a consumer is purchasing add-ons or extensions even as they consume digital content, or where a purchase must be completed in a hurry – for example for a train or tram ticket.

1.14 It is not just consumers that need to be persuaded to look outside a payment system to which they are accustomed. The merchant's share of each transaction is historically lower for operator billing than for card-based payments. Our understanding is that card companies only retain between 0.5% and 3% of the transaction, whilst mobile operators take up to 10%, not including a further 3-5% which passes to the aggregator.

1.15 Against this can be set the higher conversion rates reported by some aggregators for operator billing. A whitepaper produced by Dimoco Europe and Juniper Research in 2016[5] cites conversion rates as high as 77% for first-time purchases of some services, especially small value transactions of under €10. This is in comparison with a 10-12% conversion rate for card-based transactions.

1.16 Another potential limit on operator billing is the expectation that it is most likely to be used for low-value purchases. This is based on a view of consumers' expectations of the size of their phone bills (typically tens of pounds a month), the greater levels of protection currently in UK legislation (e.g. the Consumer Credit Act) for card-based purchases, the low appetite telecoms operators will likely have for increasing their exposure to bad debt, and uncertainty as to how the previously identified transaction limits in the PSD2 will be implemented. However if ease of use and higher conversion rates are the unique selling points of operator billing, then the volume rather than the average size of transactions may prove to be more important.

1.17 Recent discussions with industry stakeholders have grouped these obstacles to growth into four categories as follows:

a) Low consumer awareness and engagement – branding is weak
b) Complex payment experience driven by riskier service types
c) No standard payment product across the market – integration costs can be high
d) Complex, multi-level compliance and regulatory framework

<u>The role of the regulator</u>

[5] "The Future of Carrier Billing in Europe 3.0"

1.18 With respect to the first three categories, these are commercial considerations which belong primarily within the remit of industry stakeholders. However the fourth of these sits, amongst others, with PhonepayPlus, and challenges us to ensure our regulatory approach continues to act effectively and efficiently to prevent consumer detriment whilst also supporting sustainable market growth.

1.19 These challenges should not work against each other. High standards of customer service and protection, leading to trust, are a cornerstone of any retail market that functions well. Consumer trust leads in turn to certainty, which attracts further investment in new ideas and sectors. Whilst it is necessary to strike a balance between innovation and convenience on one side and the risk of consumer detriment on the other, PhonepayPlus aims to do this through the minimum necessary levels of regulation, and with a flexible approach that encourages innovation and looks to solve problems through enhanced competition and a collaborative approach as well as through the Code.

1.20 PhonepayPlus also has a good track record of working proactively with other regulators where markets or sectors overlap or are adjacent. Our principal relationship is with Ofcom, but other examples include the Advertising Standards Authority (ASA) and Gambling Commission with both of whom we have memoranda of understanding (MoU’s). As markets converge so can regulatory remits, and we are keen to extend a co-operative approach to other regulators who share an interest in digital payments, in order that we can react quickly to innovation and risk, and avoid dual regulatory intervention.

1.21 As PhonepayPlus reaches its 30th year as the independent regulator of this changing market, we have sought to understand what we could do differently in order to best support innovation and growth in PRS, and in operator billing in particular. Following on from the initial discussion paper, and subsequent discussions and workshops with key stakeholders, we have developed five proposals which can be grouped as follows:

Adapting current framework to embed a risk-based approach

1) Higher Risk Services - Develop a framework against which PhonepayPlus can assess whether a service type or mechanic is Higher Risk, and a process to explore mitigations or appropriate controls (including Special Conditions) if necessary
2) Exemptions – Clarify the process by which exemptions from specific provisions of the Code or Special Conditions will be considered, and identify areas for potential exemption

Being clear and collaborative where legislative requirements overlap

3) Regulatory Landscape – Consider whether a ‘regulatory map’, setting out the overlapping interests of regulators in relation to telecoms and digital retail, would be of use to stakeholders
4) Regulatory Relationships - Seek to gain the support of relevant regulators to convene an ad hoc working group where it is necessary to consider joint regulatory handling of new business plans, mechanics, and service proposals

Achieving consistency and economies of scale through joint monitoring

5) Monitoring – Examine the scope for a joint monitoring capability where intelligence is available to both regulator and industry

1.22 The remainder of this paper sets out these proposals in more detail. However in putting forward these proposals, the caveat is that we have identified what we believe can be realistically achieved within this financial year. In this way we act as a source of momentum rather than delaying it, and our timeframes also align with work that industry stakeholders, led by MNOs, are doing to address the other three obstacles to growth as set out at paragraph 1.17.

1.23 At this stage we have deliberately sought to work within the Code (i.e. the 14^{th} edition) that PhonepayPlus currently has. This is because we believe the current Code offers the flexibility we need to address issues in the market without going through the lengthy process of a Code change. We are keen to identify whether barriers exist within the 14^{th} edition of the PhonepayPlus Code, or within wider legislation or regulation other than the Code, and what change may be required and the opportunities and prospects for that change. We would welcome any views stakeholders have in this regard.

Q1: Do you agree with our view that the current Code of Practice offers sufficient flexibility to address barriers to growth in the PRS market, without reducing consumer protection?

Q2: Are there barriers to growth which exist in legislation and regulation other than the PhonepayPlus Code? Please identify them along with any arguments or evidence you have as to why a change would be desirable.

Section Two – Proposals

Risk-based approach to regulation

2.1 Regulation is by no means the only way in which a regulator can influence a market to achieve consumer trust. Indeed the use of prescriptive regulation can sometimes be a blunt instrument with unintended consequences which do not effectively serve the consumer's best interests. This is why in recent years PhonepayPlus has moved to an outcomes-based Code and approach to regulation.

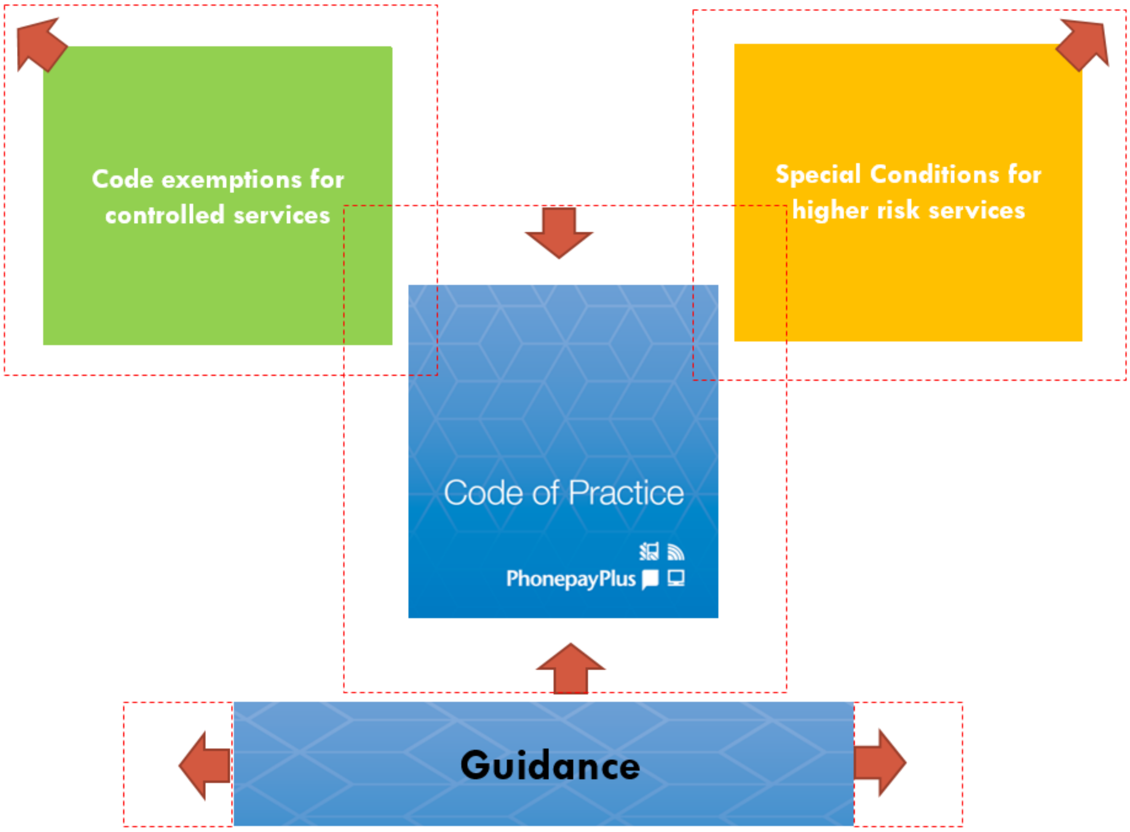
2.2 Within this framework it is important that we are able to apply a proportionate level of regulation. Particular categories of service – e.g. specified content, set of promotional practices, payment or other operational mechanic – may present a higher level of risk than normal. In such cases we aim to set clear regulatory expectations, specifically targeting risk if necessary, and underline that with robust monitoring and enforcement. Equally some categories of service may present a lower level of risk, either because they have an intrinsically low risk or because what risk they have can be controlled. In these cases it is right to consider adapting the expectations in the Code if the same outcomes can be achieved by alternative means.

2.3 As a converging, innovating market produces new services and service categories, we are keen to ensure our approach is as consistent as possible. Whilst an emerging higher risk service may not need immediate intervention, it is right to keep a watching brief in order that we can act swiftly to prevent consumer harm and maintain consumer trust. Conversely where an emerging service is lower risk, we would need to collaborate with industry to determine the level of regulatory controls required.

2.4 Mechanisms already exist within the Code to introduce Special Conditions which target specific risks within higher risk service categories, and to create exemptions from particular Code provisions where a service presents intrinsically low risk or demonstrates that risk can be suitably controlled. However until this point risk has been assessed on a case-by-case basis in relation to the Special Conditions regime or applications for Code exemptions .

2.5 We have looked to develop an objective approach to determining which categories of service are lower or higher risk. This involves first identifying and evidencing levels of risk, then considering whether any suitable mitigations or market-led controls exist, and finally using this as the base to develop an appropriate response. Assessing risk against a standard set of objective criteria will achieve greater consistency, in that stakeholders will have a greater degree of clarity and certainty as to our considerations. This is especially important with higher risk, where Special Conditions should only be proposed if there is no adequate market-led or collaborative solution.

2.6 In taking a risk-based approach, our goal is that we can make best use of the flexibility available in our current regulatory framework. The diagram overleaf demonstrates our view that an adapted framework can make our use of Special Conditions and Code exemptions more targeted and incisive, and widen their reach as appropriate.



2.7 Additionally we expect a risk-based approach to allow industry stakeholders to streamline their own self-regulation. This is both through giving industry a clearer assessment of whether a service category is higher or lower risk, and also through the potential for Special Conditions to adopt similar, but more outcome-based, requirements to those which currently sit in self-regulation. In particular the self-regulation carried out by mobile networks in respect of their joint trusted payments scheme, Payforit.

Proposal 1) - Objective criteria and process for risk assessment

2.8 To develop criteria and a process to analyse consumer risk, we started by reviewing existing Special Conditions regime and the types of consumer risk which they were designed to mitigate. Whilst historic risk is not necessarily an indicator of future risk, it does represent a body of experience built up over our thirty years of regulating the PRS market. We also tested emerging and potential future service categories and mechanics to identify any further risk characteristics. This was then further tested with industry working groups to identify the following proposed taxonomy of risk characteristics:

Risk Characteristic	Examples
Financial Harm	• High one-off cost • High cumulative cost
Passing Off	• Unauthorised use of trusted brands or marks • Misleading representation of trusted brands or marks • Lack of Professional Qualifications or Membership
Uninformed Consent	• Confusing consumer journey • Complexity of proposition • Overall presentation lacks clarity
Unauthorised Consent	• Lack of appropriately robust consent to charge • Lack of appropriately robust consent to data use • Inadequate technical systems lead to charge without consent
Vulnerable Groups	• Underage access • Lack of allowance for needs of vulnerable • Targeting of vulnerable
Unreasonable Offence	• Indecent – e.g. sexual • Offensive or menacing – e.g. disability, gender, race, religion, sexuality • General – e.g. pro-anorexia

2.9 Financial Harm relates to the potential for the consumer to suffer significant or serious financial detriment as the result of a service. This can be because of a high one-off charge, the potential for the consumer to make multiple purchases quickly – for example as part of a video game on an app – leading to a high aggregate charge, or even recurring charges as part of a subscription. We recognise that consumers can knowingly consent to incurring above average one-off or cumulative charges, and that many PRS consumers do so willingly. However it is also clear that a higher charge, especially one which is immediate or can be run up quickly, can exacerbate the risk level of a service.

2.10 The next two characteristics, Passing Off and Uninformed Consent, deal with different aspects of the information asymmetry which is present to some degree in most retail environments. Passing Off relates to scenarios where consumers are more inclined to trust or engage in a service because they believe it is associated with something else they trust. An example would be services which use the logos, colours, fonts or familiar promotional phrasing of a trusted brand in order to imply a false association with that brand. A different example is where a PRS offers professional advice or counselling – services in which a consumer arguably places a greater level of trust and confidence in the qualification and skills of those providing the service. It is important that such advice is given only by those appropriately qualified to do so, particularly where it is reasonable to expect that consumers would automatically assume this to be the case.

2.11 Uninformed consent is intended to go beyond the requirements for clear and prominent pricing which are contained within the Code. Even where pricing or other key terms of an offer are displayed, an overly complex or confusing promotional journey may cause consumers to miss or misunderstand them. An example would be where consumers are led from a marketing pop-up or banner to a website which they did not intend to visit, and where they are then asked to click through a number of pages where no PRS offer or charge is mentioned. By the time the consumer reaches a page where pricing is displayed, they may have become impatient with the repeated “click-through” and so click once more without studying the price or even the information that they are consenting to a charge.[6]

2.12 Whilst proof of consent to charge for voice services was, and remains, generally robust, the evolution of the market means that there are an increasing number of methods and systems by which a consumer can consent to a charge to their phone bill (and to future marketing) for digital content or services. PRS themselves do not carry a risk of Unauthorised Consent, but the methods by which they choose to achieve that consent may do so.

2.13 Beyond the basic Code requirements that consent must be robust and provable, methods of consent may carry weaknesses which require more specific requirements to mitigate risk. An example might be a service category which is known to carry a high risk of practices by merchants or marketing affiliates to obscure payment information or triggers – as opposed to simply distract from or provide confusing payment information. There may be a need for a more specific technical standard to prevent such activity.

2.14 The risk to Vulnerable Groups is a subject which PhonepayPlus has lately focused on, with Guidance having been recently issued. Where services can be expected to engage with, or carry a particular attraction to, those who are vulnerable, either for inherent reasons (e.g. age, learning difficulties) or circumstantial (e.g. debt), these consumers may be less likely to make fully informed, rational decisions. In addition where the vulnerable group is under-age consumers, there exists a likelihood that they will gain access to inappropriate content unless controls exist to prevent them from doing so.

2.15 Lastly, Unreasonable Offence covers the risk that services will provide content which is considered indecent, offensive, or menacing and may be contrary to the law. We have also considered theoretical scenarios such as a hypothetical PRS which provides pro-anorexia advice. In all cases the risk is that services will break the law or damage the wider reputation of the market, or that reasonable individuals will be shocked or distressed.

2.16 In all six of the characteristics proposed above is important to note that the examples given above are only examples, and are not intended to be exhaustive in respect of each characteristic.

2.17 In arriving at these six characteristics we considered a number of others. The first was the length – i.e. number of steps – in a consumer journey. Some affiliate marketers and/or merchants have recently introduced a greater number of steps into a consumer’s journey from first discovering an offer to completing a purchase, which has created greater complexity and opportunities for consumer confusion. However we considered that the number of steps is not an intrinsic characteristic of risk to consumers. It does not follow that a consumer journey with fewer steps will automatically carry less risk. The proposition could be complicated enough to provide an equally high risk of uninformed consent. As such we considered the number of steps in a consumer journey could be captured within Uninformed Consent.

[6] Summary report on ‘*A study of consumer journeys relating to online competition and adult PRS*’ by Craft Realities:
http://www.phonepayplus.org.uk/~/media/Files/PhonepayPlus/Research/2016/Summary-report-on-A-study-of-consumer-journeys-relating-to-online-competition-and-adult-PRS.pdf

2.18 The second rejected characteristic was the attractiveness of a service category to those outside of PhonepayPlus' regulatory remit – i.e. affiliate marketers. There is significant evidence of harm being caused by affiliates, who are often paid per transaction and therefore can employ techniques to obscure pricing or complicate the consumer purchase journey, and so it would seem that affiliates contribute to a higher risk profile. However we have decided against including it because in our view the attraction to affiliates is not a consumer risk but a consequence of inherent consumer risk characteristics which a service already possesses. Affiliates are rarely attracted, for example, to services which carry a low-cost one-off charge and which have a robust payment platform which prevents uninformed or unauthorised consent.

2.19 The third suggested characteristic which we rejected was one of Reputational Damage – that is, to the wider industry. We accept the risk that a service could cause such damage to the wider market. However our view is that this could occur as a consequence of any of the six characteristics which we have included, but not as a consumer risk which occurs separately from them. We would welcome any argument to the contrary.

Q3 – Do you agree with the Taxonomy of Risk Characteristics proposed above as objective assessment criteria? Please give reasons, including for any changes or additions you would like to propose.

2.20 Some aspects of the risk characteristics in the taxonomy will be binary, and some will operate on a spectrum. For example there is either a risk that underage consumers could access content which is barred to them, or there is not. Similarly a service which offers professional advice or counselling either has properly qualified individuals to offer that advice, or it does not and automatically carries a higher risk that consumers will be given incorrect or unsuitable advice.

2.21 However many other aspects of risk operate on a spectrum – for example cost, offence, and promotional complexity. So even if a service carries an underlying risk, there is still a need to evidence whether that risk is great enough to be considered higher risk. Where it is necessary to better define what higher and lower risk would look like across a spectrum in relation to a specific characteristic, we will consider working with stakeholders on appropriate Guidance.

2.22 Equally whilst some of these characteristics may exist in a service, it does not automatically follow that the service as a whole is higher risk. For example a service may have the potential to cause serious financial harm. But if it uses a robust payment mechanism which ensures the consumer is not misled as to the price or any other aspect of the deal on offer, carries no risk to vulnerable consumers, and does not provide content likely to cause offence, then it is unlikely that the service is higher risk as a whole.

2.23 Finally, even where a risk – whether higher or not – exists there is always the possibility that it can be suitably controlled without recourse to PhonepayPlus' regulation. It is important that we build all the above considerations into the process by which we assess and respond to risk.

2.24 Our proposed Risk Assessment Process therefore works as follows. A flowchart setting out our proposed action flow in response to higher risk is also set out at Annex A to this document.

Step One – Identify risks

PhonepayPlus reviews the service category – whether defined by content, mechanic, or other – against the Risk Taxonomy to identify if any risk characteristics are present. If there are no risks, then the process is at an end.

Step Two – Evidence risks

Evidence why the risks are present in the service category, and to what extent. If binary risks are present then they are automatically considered a higher risk, but other risks will need to be evidenced as to whether they are "lower" or "higher" along the spectrum.

In doing this we would consider drawing evidence from a number of sources, including Complaint/Case data from either PhonepayPlus or industry stakeholders; Monitoring (whether ours or from other sources); Compliance Advice Requests to PhonepayPlus; Research (either existent or bespoke); Experience of other PRS markets or other digital sectors; Expert opinion (e.g. security).

If there are no higher risks, then the process is at an end (although exemptions from the Code may be sought separately in respect of a lower risk service). If evidence is inconclusive – in particular where a service has yet to commence in the market - then we might keep a watching brief but take no further action at present.

Step Three – Identify mitigations

Explore whether the risk is or is reasonably likely to be suitably controlled, either through a market-based solution or a solution undertaken as a pilot in collaboration with the regulator. If a market-based solution or pilot is reasonably likely, then we would work with industry to implement this with a plan to review the benefits after a defined period of time.

Step Four – Appropriate response

PhonepayPlus would develop and consult appropriate Special Conditions, evidencing the need and likely impact. If proposed conditions are rejected at consultation, or changes in the market render the conditions ineffectual or obsolete, then we would revisit the conditions.

Q4 – Do you agree with our proposed Risk Assessment Process? Please give reasons, including for any changes or additions you would like to propose.

2.25 In proposing these risk assessment criteria and process, we are conscious that we should review existing Special Conditions regimes against it. As a regulator, we should review whether market circumstances continue to warrant the designation of higher risk to certain service categories. In doing so we should also review whether Special Conditions continue to be the most appropriate response – it may be that the market or regulatory evolution can now offer other suitable controls – and whether the specific conditions we have in place are the right ones.

2.26 A review which applies the new Risk Assessment Process to the existing Special Conditions regimes is set out at Annex B to this paper. This sets out our consideration, and in light of this our view as to whether each regime should be retained or removed. In summary our view is that most of the current regimes should be retained on the grounds that higher risk continues to exist, and that the conditions within them continue to provide the correct controls for that risk.

2.27 In relation to Broadcast PRS, it was clear that technical improvements made by the mobile networks and major broadcasters have reduced risk. However the higher risk presented by minor broadcasters, coupled with the recommendation from major broadcasters that we retain the regime, has led us to determine we should do so. To the best of our understanding Call TV Quiz services do not currently operate in the UK. However the risks which the service category presents have not changed, and so we are minded to currently retain the regime and review this position over the next 12 months.

2.28 However we propose to remove the current Special Conditions regimes around Consumer Credit and Remote Gambling. In both cases developments in regulation now mean that the conditions within these regimes duplicate similar requirements set out by other regulators – the Financial Conduct Authority and the Gambling Commission respectively. As such it is an opportunity for PhonepayPlus to reduce regulatory burden without lessening the protection afforded to consumers.

2.29 Whilst the Gambling Commission does not replicate the £30 per day spending cap which we currently impose upon PRS-paid gambling, this is no longer set out within Special Conditions since the introduction of the 13th edition of the Code in 2015. Instead the cap is set out in a separate notice around specified charges and maximum durations of calls, which is issued under paragraph 3.12 of the Code as opposed to paragraph 3.11 under which Special Conditions are issued. So whilst we propose to remove Special Conditions around Remote Gambling, we propose to retain the cap at present.

2.30 We would welcome any comments from respondents on the Review of Existing Special Conditions Regimes attached at Annex B, or the paragraphs and proposals to remove two regimes which are directly above. We will consider any comments, and carry out any necessary further work, separately from this consultation.

Q5 – Do you agree with the conclusions of our application of the new Risk Assessment Process to existing Special Conditions regimes, and the proposals to remove the current regimes around Consumer Credit and Remote Gambling regimes? Please give reasons, including for any changes or additions you would like to propose.

<u>Proposal 2) – Code exemptions</u>

2.31 For several editions of the PhonepayPlus Code, it has been the case that exemptions can be sought as follows:

- Where a provider can demonstrate to PhonepayPlus' satisfaction that an objective of the Code can be met by other means than strict adherence to a Code provision
- Where, following reasonable consultation, PhonepayPlus is satisfied that an objective of the Code can be met by means other than strict adherence to a Code provision

2.32 It is important to note that whilst exemptions are generally thought of as being granted to lower risk services in relation to dis-applying Code provisions, PhonepayPlus is also able to consider removing a service category or sub-category from the requirement to comply with an existing specific Special Condition or Special Conditions Notice (containing multiple conditions) if there is sufficient evidence to demonstrate that the higher risk can be controlled effectively by other means[7].

2.33 In practice exemptions have been rarely sought. At present only four service categories benefit from exemptions, as set out in the table below:

Service Category	Areas of Code where Exemption granted
Recurring Donation (to charities which are registered with a UK Charities Commission)	• Registration Charge • STOP Reminder every month
Services operating on Voice Shortcodes (<20ppm)	• Registration
Services operating on 087 range	• Registration
App Stores	• Registration (of individual developers) • Monthly spend reminders • Children's Spending Caps

2.34 The majority of exemptions or requests for exemption have been made within the last two calendar years. This points to a growing appetite for achieving Code outcomes by alternative means. In terms of our stated aim of widening the reach of exemptions, we consider the current wording within the Code to be suitable to achieve this aim. However we believe a significant part of the PRS value chain remains unaware of how the exemptions process works. So in order to better facilitate innovation we are using this paper to clarify how the process works, and seek comment on whether it could be further improved. A flowchart of the process is also set out at Annex C to this paper:

Step One – Analysis of request or need

Upon receipt of a request for an exemption, or where we have identified a potential industry-wide need, we would seek answers to three main questions:

- How is the provider (or the wider market) proposing to meet the outcome associated with a Code rule?
- How will risk be controlled by the provider (or the wider market)?
- Is there a business case for exemption based on the service category or mechanic being intrinsically low-risk? – i.e. it may be that even without additional mitigation, the level of risk present is low enough that there is no present need for the Code to control it.

[7] This will not generally require consultation and can therefore be dealt with more swiftly through a separate process which is not the subject of this consultation.

If PhonepayPlus is not satisfied that the outcome in question will be met by the proposed actions to control risk, or that no satisfactory business case for an exemption otherwise exists, then the process is at an end.

Step Two – Consideration of whether a Code exemption should be market-wide

If an individual party (as opposed to a generic market request) makes a reasonable case for a Code exemption, or at least a pilot to test whether such an exemption can be granted on a permanent basis, then we will consider whether such an exemption or pilot should be made available to the whole market. This follows a view expressed by a number of key industry stakeholders that our default approach should be to make Code exemptions generic in order to maintain a level playing field.

There may be good reasons why a Code exemption or a pilot should be limited to the individual party who requested it. For example if a provider has developed a technical control which is commercially sensitive then it may not be fair that they should share the precise details of it across the market. However in such a case we would still look to set an outcome which allows achievement by other means. More generally we agree that generic exemptions should be our default unless there is a strong argument to the contrary.

Step Three – Actions to grant the exemption

At this stage actions will slightly differ, depending on whether the exemption is intended to be limited to an individual party or made generically available to all parties in the market who meet the criteria:

Exemptions limited to an individual party

We will consider whether a pilot is necessary in order to test the proposed alternative means by which a Code outcome will be met. Or alternatively to test the proposed method by which risk will be controlled. If we consider there is a need for a pilot then we will establish one with a view to making the exemption permanent if the pilot is successful. We may decide to extend the pilot to include other providers that can meet the criteria for the pilot. However, such providers would be required to individually approach PhonepayPlus[8] in order to participate in the pilot[9]. If there is no need for a pilot, then we will grant the Code exemption to the individual provider in accordance with paragraph 3.10.4(b) of the Code and publish the details of it in line with the requirements set out at paragraph 3.10.5 of the Code.

Generic exemptions

If we propose (or there is an appropriate market request for) a generic exemption, then we will consult on that exemption before it is granted as required by the Code. Whilst the need for a pilot is more likely in the case of an individual party's request, we may also consider a pilot as part of a consultation on generic exemptions we propose. A pilot conducted following any generic exemption consultation would be open to all providers in the pilot exemption

[8] To ensure compliance with paragraph 3.10.4(a) of the Code.
[9] Examples of previous pilots conducted on this basis were those in relation to Recurring Donations and App Stores.

category. With generic exemptions there is no requirement for providers meeting the criteria to approach PhonepayPlus in order to benefit from the exemption.

Should the proposed generic exemption be rejected at consultation, or be rendered obsolete by market developments, then we will review the terms of it and consult again if necessary.

2.35 In setting out the exemptions process clearly and asking for feedback, we are conscious of a need to make exemptions more visible and accessible going forward. We will look to do this through website and other communications once we have received any feedback from respondents to this paper.

Q6 – Do you agree with our proposed exemptions process? Please give reasons, including for any changes or additions you would like to propose.

2.36 To assist with widening the current reach of exemptions within the market, we have also considered where exemptions might be applied, or existing Code provisions might be useful to rely on, in the near future. This consideration encompassed both Code rules and Special Conditions (through a separate process), but also potential business models which might serve to control risk. We have tested the list below at stakeholder workshops, but we would welcome further feedback from respondents:

Code Rules/Special Conditions	
Rule/Condition	**Description**
Rule 3.5.1 – the "30 day rule"	At present network operators are required to withhold any payment in respect of a PRS transaction for at least 30 days from the date of that transaction before making it available to parties along the value chain. We are interested to examine whether the risk of earlier or immediate outpayment – e.g. that merchants could perpetrate a scam and exit the market prior to being held to account – could be controlled by alternative means.
Special Condition RDS3 – as relates to Recurring Donation Services	Currently charities who accept recurring monthly donations via text charging must remind consumers of the existence of the "STOP" command every three months. Some charities have already approached us with a view to making a business case to extend this requirement to every six months.

Business Models	
Business Model	**Description**
App Stores	App stores have made cases for exemptions in a number of areas – registration for their developers; monthly subscription reminders; children's spending caps - over the last two years and these exemptions have been subject to a pilot (open to App stores on individual application). We propose to consider the continuation and scope of these exemptions after this consultation.
Level 1 provider taking responsibility for compliance with various Code provisions on behalf of Level 2 provider.	As the market tries to attract new clients to use phone-bill payment as an option for their transactions, it is clear that a significant number of blue-chip Level 2 clients are unfamiliar with a model where they take full responsibility for compliance with payment rules. In other payment markets – e.g. credit/debit – the payment platform/acquirer has direct responsibility for achieving regulatory outcomes in relation to payment services and transactions. As a result some payment aggregators have suggested they could mirror this approach – and be held directly responsible for Code compliance - to make a comparable offer to potential clients who currently only use credit/debit payment. We would point out that paragraph 3.8.1 of Code recognises that Level 1 providers can, on behalf of a Level 2 provider, provide a part of a PRS that directly impacts consumers and in such circumstances the Level 1 provider will be directly responsible for compliance with the Code in relation to the part it performs.

Q7 – Do you have any comments on, or suggested additions to, our list of areas where we might consider exemptions in the near future?

Overlapping legislative requirements

2.37 Since different payment mechanisms have developed at different times, and independently of each other, the basis for regulating them is often different and will usually consist of a mixture of UK and EU law. As digital payment has converged, the regulatory landscape has become increasingly variegated and fragmented, with a number of different regulators having different remits and objectives which can intersect as the market innovates or changes. These include the Bank of England, Competition and Markets Authority (CMA), Financial Conduct Authority (FCA), Ofcom, Payment Systems Regulator (PSR) and the Information Commissioner's Office (ICO), as well as PhonepayPlus. Additional regulators, such as the Advertising Standards Authority (ASA), The British Board of Film Classification (BBFC), or the Gambling Commission, can also intersect with this group where there are issues around transparency, vulnerability, or content.

2.38 Certainty and stability are valued by business and are factors which encourage investment. A complex regulatory environment can serve to achieve the opposite if businesses are not clear about overlapping requirements, or whether a single regulator will take responsibility for their transactions from end to end.

2.39 One recent example of this relates to the use of e-money within digital transactions. A basic model based on those outlined to PhonepayPlus involves consumers purchasing e-money via their mobile operator, the cost of which is charged to their phone bill. The e-money is then available for the consumer to use to purchase products or services from specified merchants. In this scenario the mobile operator is the distributor of the e-money, with an FCA licenced payment provider supplying the e-money to them, and facilitating the transaction between consumer and merchant. Where a PRS provider is the e-money licence holder, they would naturally be keen to understand whether any part of the transaction constitutes a controlled PRS (CPRS) and therefore falls into PhonepayPlus' remit.

2.40 In looking at these issues our approach is informed by our commitment to proportionate regulation. Consumers must be adequately protected in relation to any phone-bill transaction, and our goal as far as possible is to see consistent standards of consumer protection applied. We seek to consult and work in tandem with other regulators to ensure that regulation is carried out by the organisation best placed to do so. Additionally we would look to facilitate joint meetings with other regulators and industry where there are issues of common interest. A recent example of this is a series of meetings with the FCA and HM Treasury in relation to implementation of the revised EU Payment Services Directive.

2.41 As operator billing moves into new areas such as virtual goods – e.g. ticketing – and physical goods there will be increasing questions as to the consumer risks and appropriate controls for them. It is clear from our discussions with industry that they would welcome greater clarity on the boundaries between the remits of different regulators and where they overlap. Equally industry would welcome a proactive approach where regulators clarify who will take the lead where new service categories or mechanics lead to overlapping jurisdiction.

Proposal 3) – “Map” of regulatory landscape

2.42 Our objective is to give industry as much clarity as possible in terms of the intersecting remits and scope of regulators. This is in line with our commitment to transparency, and will allow innovators to be better informed as to any potential overlaps as they develop new products or mechanics. So far we have received mixed viewpoints on whether an “at a glance” map which identifies these intersections is necessary, and the additional value it could deliver. As such we would welcome views on whether there is value in commissioning work to produce this map of the regulatory landscape.

Q8 – Would a map of the digital payments regulatory landscape, setting out the intersecting remits and scope of different regulators, be of value? Please provide the rationale behind your answer.

Proposal 4) – Joint working group of regulators

2.43 PhonepayPlus has historically been proactive in its dealings with other regulators where there are issues of overlap, or indeed where there are potential gaps in regulation. Whilst our lead relationship is with Ofcom, we continue to work closely with the ICO, ASA and FCA around issues of data protection and marketing consent, promotion, and payments security respectively.

2.44 We propose to further strengthen these arrangements to the benefit of those working in or around the operator billing space. We propose to seek other regulators’ support to convene an ad hoc working group to jointly consider and agree a response to new business models, plans, and proposals. This will provide a clear route for industry to make such proposals or ask more general questions, and in response provides industry with timely, joined-up advice on regulatory requirements.

2.45 Whilst we do not currently have a definitive list of other regulators whom we would propose to invite into this working group, we would propose to draw regulators from the following areas. We consider these to be the areas which overlap in relation to phone-charged payment:

- Payments
- Telecoms
- Advertising
- Data/Privacy
- Consumer Protection

2.46 This is likely, but by no means limited, to include Ofcom, the Financial Conduct Authority, the Advertising Standards Authority, the Information Commissioner’s Office, and the Competition and Markets Authority (and Trading Standards Authority). However we would welcome any suggestions as to other regulators which respondents believe should be included in a joint working group.

Q9 – Would a joint working group of regulators, to consider and provide a joint response to questions of regulatory overlap, be of value?

Q10 – Which regulators should we invite to take part in such a group, and why?

Proposal 5) - Joint monitoring

2.47 The four Mobile Network Operators (MNOs) also work to provide strong levels of consumer protection within the market. Their key areas of activity are the setting of common rules which providers utilising their joint secure payment system, Payforit, have to follow, and monitoring of services offered over their networks to ensure these rules are adhered to. These rules seek to build on Code outcomes with the aim of ensuring consistent standards of compliance with them, and are usually more prescriptive than Code requirements. One of the aims of the current "Project Slimline", a joint endeavour between all four MNOs, is to streamline the rules which they set around Payforit.

2.48 At present each MNO, and PhonepayPlus, engage in their own individual monitoring. PhonepayPlus has an in-house monitoring facility, whereas MNOs (and in some cases, Level 1 payment aggregators) engage specialist monitoring companies. However each of these monitoring efforts are to the same end – to protect consumers by ensuring compliance with recognised outcomes.

2.49 We are exploring whether more joint work could be done around monitoring. By establishing a central pool of monitoring capability from which PhonepayPlus and the MNOs can draw, our view is that we could derive more consistent information - perceived inconsistency being a historic concern of some payment platforms and merchants. The potential would also exist for ways of working leading to efficiency through economies of scale.

Q11 – We would welcome any comments on the scope and approach of a joint monitoring capability.

Section Three – How to respond

3.1 We now seek your views on the contents of this consultation. Responses to the questions should be emailed to Mark Collins via our Consultations email (consultations@phonepayplus.org.uk) by the deadline of Wednesday 12th October 2016.

3.2 The questions asked in this document are as follows:

Q1: Do you agree with our view that the current Code of Practice offers sufficient flexibility to address barriers to growth in the PRS market, without reducing consumer protection?

Q2: Are there barriers to growth which exist in legislation and regulation other than the PhonepayPlus Code? Please identify them along with any arguments or evidence you have as to why a change would be desirable.

Q3 – Do you agree with the Taxonomy of Risk Characteristics proposed above as objective assessment criteria? Please give reasons, including for any changes or additions you would like to propose.

Q4 – Do you agree with our proposed Risk Assessment Process? Please give reasons, including for any changes or additions you would like to propose.

Q5 – Do you agree with the conclusions of our application of the new Risk Assessment Process to existing Special Conditions regimes, and the proposals to remove the current regimes around Consumer Credit and Remote Gambling regimes? Please give reasons, including for any changes or additions you would like to propose.

Q6 – Do you agree with our proposed Exemptions process? Please give reasons, including for any changes or additions you would like to propose.

Q7 – Do you have any comments on, or suggested additions to, our list of areas where we might consider exemptions in the near future?

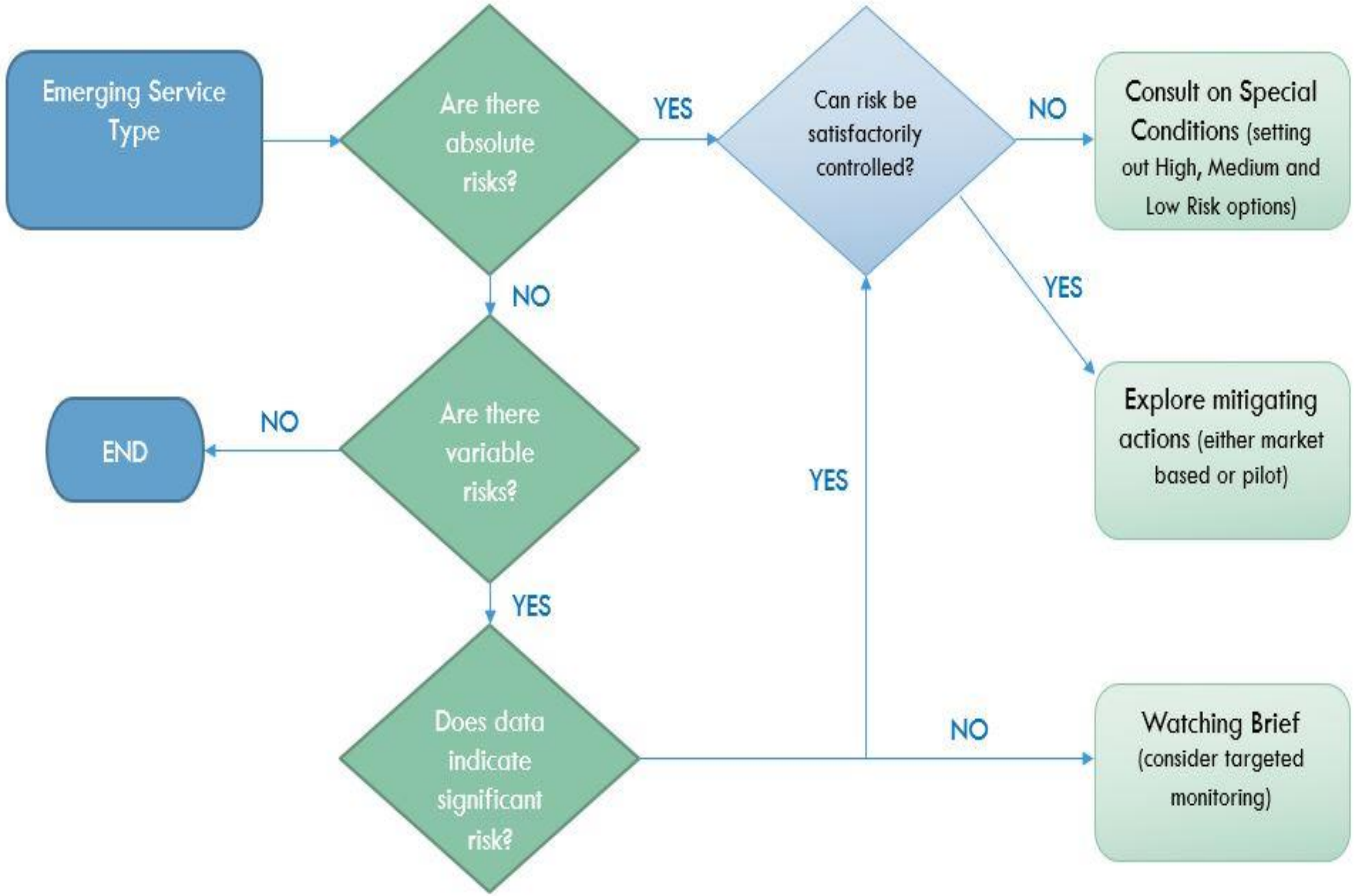
Q8 – Would a map of the digital payments regulatory landscape, setting out the intersecting remits and scope of different regulators, be of value? Please provide the rationale behind your answer.

Q9 – Would a joint working group of regulators, to consider and provide a joint response to questions of regulatory overlap, be of value?

Q10 – Which regulators should we invite to take part in such a group, and why?

Q11 – We would welcome any comments on the scope and approach of a joint monitoring capability.

HIGHER RISK ACTION FLOW



Annex B: Application of risk assessment framework to existing Special conditions regimes

Broadcast PRS

Risk	Apparent	Why	Evidence	Response
Financial Harm	No			
Passing Off	No			
Uninformed Consent	Potentially	Technical failure, repeat broadcasts, or intervention on broadcast side may undermine any informed consent given for PRS charges	• Experience – Past events where large numbers of consumer complaints resulted from 'lost' votes which were billed after late arrival due to lack of network capacity; • Industry experts – All major broadcasters continue to request market standards to maintain compliance levels	Conditions in place in the following areas: • Adequate technical quality requirements; • Effective process for vote management; • Premium rate number (PRN) usage outside of original broadcasts; • Management of roles and responsibilities across value chains Technical improvements have greatly reduced the possibility of latent billing caused by lack of network capacity
Unauthorised Consent	No			
Vulnerable Groups	No			
Unreasonable Offence	No			

Call TV Quiz services

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Addictive calling; Higher tariffs following Ofcom's 2015 NGCS Review gives rise to higher potential cumulative cost	• Complaints data regarding high phone bills (where consumers were not aware of the cost of calling or the frequency with which they had called); • Other regulators – Complaints to Ofcom and the Gambling Commission. The cumulative volume of complaints was enough that these two organisations and PhonepayPlus were called to give evidence before the Culture, Media and Sport Parliamentary Select Committee in 2006	• Code provisions considered to offer adequate protection – provided consumers have given informed consent as below

Passing Off	No			
Uninformed Consent	Yes	Information – and consequently consumer awareness – of the full cost of calls and/or chance of successful progress to answering an on-screen question is limited or unavailable.	• Complaints data regarding high phone bills (where consumers were not aware of the cost of calling or the frequency with which they had called); • Monitoring – Entries per hour ranged from 478 to 55,816, but with only 0.04% to 7.53% of callers getting through to answer a question; • Other regulators – Complaints to Ofcom and the Gambling Commission. The cumulative volume of complaints was enough that these two organisations and PhonepayPlus were called to give evidence before the Culture, Media and Sport Parliamentary Select Committee in 2006	Conditions in place in the following areas: • Promotional requirements relating to service type, including risk of charges even where participation is not possible • Provisions relating to key information included in a crawl or scroll system on screen • Spoken pricing requirements during the broadcast of the show • Information supplied to consumers on connection of the call At present, no Call TV Quiz Services exist on any major broadcast networks. However the risk profile remains the same, and a risk exists that minor broadcasters may offer such services.
Unauthorised Consent	No			
Vulnerable Groups	Yes	Underage access; Addictive nature of service	• Age restrictions for cash prizes (16+); • Bespoke research in 2006 suggested that consumers were most likely to belong to the DE social groups with lower income	• Code provisions considered to offer adequate protection – provided consumers have given informed consent as above
Unreasonable Offence	No			

Credit Broking Services

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	High cumulative spend possible, especially following higher tariffs arising from NGCS Review	• Complaint data shows repeat calls • Complaint data also shows providers unnecessarily prolonging calls to last the maximum 15 minutes	• Code provisions considered to offer adequate protection Code provisions reinforce FCA requirements (see CONC 2.5)

Passing Off	Yes	Brokerage services may imply ability to lend directly, increasing the chance consumers will call	• Evidence from PhonepayPlus service reviews that brokers were not making details of actual lenders adequately clear	Condition in place requiring Notification of information to PhonepayPlus on commencement of the service FCA's CONC requirements require adherence to same outcomes in order to achieve a broking licence
Uninformed Consent	Yes	Complexity of the offer, including the complexity of claiming the guaranteed refund for unsuccessful loan applications	• As directly above • Also complaint evidence suggests that the method to claim refunds for calls which did not lead to successful loans was not made clear by providers	• Reliance on enforcement of the Code in line with Service-Specific Guidance FCA's CONC requirements require adherence to same outcomes in order to achieve a broking licence
Unauthorised Consent	Potentially	Bill payer unaware of service usage and associated costs	• Complaint evidence indicates some callers seeking financial assistance resort to using phone services where they are not the bill payer	• Reliance on enforcement of the Code in line with Service-Specific Guidance
Vulnerable Groups	Yes	Financial difficulties create vulnerabilities based on circumstances; High cumulative spend has bigger impact on financially vulnerable	• FCA reports, including research • Experience – past cases of Code breaches affecting vulnerable groups	• Reliance on enforcement of the Code in line with Service-Specific Guidance
Unreasonable Offence	No			

Information, Connection and Signposting Services

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Potential for high call charges after onward connection – this is both because the consumer may be unaware of the rate at which a long call to resolve their issue is being charged; and also because the provider has no control over whether the consumer is placed on hold or otherwise kept waiting.	• Complaint data and consumer evidence of long call durations including end organisation queue hold times • Evidence of providers using higher rate PRN's (following Ofcom's NGCS Review) and drop charge plus per minute tariffs	Conditions in place in the following areas: • Information necessary on initial connection of the call, and prior to forward connection if requested by the consumer

Passing Off	Yes	High complaint levels citing unauthorised association with the organisation the consumer is actually trying to contact	• Records of promotional material and complete consumer journeys from complaints, service reviews and compliance (prior permission applications under 12th Code & continued monitoring)	Conditions in place in the following areas: • Provision of links in online promotional material to official websites providing information for free or at a lower cost • Promotional requirements relating to service type and price
Uninformed Consent	Yes	As directly above	• Evidence from complainant statements and as directly above	Conditions in place in the following areas: • Technical quality standards setting up Search Engine Marketing • Promotional requirements relating to service type and price • Information necessary on initial connection of the call and prior to forward connection if requested by the consumer
Unauthorised Consent	Potentially	Bill payer unaware of service usage and associated costs	• Complaint evidence cites calls made by non-bill payers	
Vulnerable Groups	Potentially	Dependent on the original services sought, public services can be relied upon by vulnerable groups who would be particularly disadvantaged by ICSS costs	• Complaint evidence of callers wanting to connect to various non-universal Government services - for example housing benefits • Evidence of complaints made by or on behalf of elderly consumers	Conditions in place in the following areas: • Promotional requirements relating to service type and price
Unreasonable Offence	No			

Live Entertainment and Chat Services

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Potential for high cumulative costs; Addictive nature of services	• Complaint evidence of repeat calls accumulating bills as high as tens of thousands of pounds	Condition in place to impose bond requirements on some categories of live service
Passing Off	Potentially	Tarot and psychic services can potentially imply skills and qualifications around prediction, which are unsubstantiated	• Evidence from compliance requests of providers believing their proposed services to be counselling or other forms of professional advice when the content is entertainment based	• Code provisions considered to offer adequate protection

Uninformed Consent	Potentially	Dependent on the complexity of the offer		• Code provisions considered to offer adequate protection
Unauthorised Consent	Potentially	Bill payer can be unaware of service usage and associated costs	• Complainant evidence of services being used without bill payer permission - including services being used by minors	Condition in place to impose bond requirements on some categories of live service
Vulnerable Groups	Yes	Underage usage; Addictive usage	• Age restrictions in place • Complaint evidence of services being used by minors. • Also complaint evidence of elderly, and people with learning difficulties running up high bills with repeat/addictive use	Conditions in place in the following areas: • Requirements for services to verify age and promote as appropriate • New guidance on enabling consumer spend controls
Unreasonable Offence	Yes	Dependent on content and promotional material; multi-party chat carries risks of C2C offence	• Historical evidence of offence or menace caused by callers to other callers and operators in chatrooms	Conditions in place in the following areas: • Requirement for calls to be recorded, and those recordings to be retained for a period • Requirement to monitor chatrooms

<u>Pay Per View Services</u>

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Potential for high cumulative spend;	• Significant complaint evidence from numerous complainants citing they have experienced bill-shock	Conditions in place in the following areas: • Promotional requirements relating to service type and related charges
Passing Off	No			
Uninformed Consent	Yes	Complexity of payment mechanic and clarity of terms	• Significant evidence of complainants not understanding payments mechanics or even that such services carry any charge	Conditions in place in the following areas: • Promotional requirements relating to service type and related charges • Notification of information to PhonepayPlus on commencement of the service • Prohibition on multiple charges for the same content, which can be triggered by browsing behaviours of consumers
Unauthorised Consent	Potentially	Lack of awareness of transactions may lead to phone users not taking due caution or seeking bill payers permission (likely to be dealt with in tandem with provisions addressing other risks)	• Evidence from bill payers stating services have been accessed from their phones without consent	• Code provisions considered to offer adequate protection

Vulnerable Groups	Potentially	Underage access to adult services	• Complainant evidence of underage access particularly with minors using contract phones which are auto age verified	• Code provisions considered to offer adequate protection
Unreasonable Offence	Yes	Dependent on content and promotional material	• Evidence from compliance advice requests of service promotions portraying or implying potentially illegal content	• Code provisions considered to offer adequate protection

Professional services

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Potential for high cumulative spend; Potential for "dependent" spend where a consumer receives counselling	• Experience and historical evidence of high consumer spend	Conditions in place in the following areas: • Call duration restrictions • Signed written agreements between counsellor and client detailing call cost, length and number of sessions
Passing Off	Yes	Claiming of professional expertise or qualifications which a provider/operators does not hold	• No specific evidence from complaints. However, there is a primary risk that a provider could claim to have expertise and qualifications that they do not, and that this could carry adverse or even dangerous consequences for the consumer	Conditions in place in the following areas: • The need for requisite qualifications and membership of professional bodies dependent on service type and advice offered • An established appropriate structure of supervision
Uninformed Consent	Yes	Dependent on complexity of offer and clarity of promotions	• No recent evidence to refer to however there is historic risk potential	Conditions in place in the following areas: • Promotional requirements relating to service type and qualifications and / or quality of advice offered
Unauthorised Consent	Potentially	Bill payer unaware of service usage and associated costs		Conditions in place in the following areas: • Promotional material advising bill payer permission before use
Vulnerable Groups	Yes	Circumstances leading users to seek advice may equally place user in position of vulnerability	• As above no recent evidence to refer to however there is again historic risk potential	Conditions in place in the following areas: • The need for suitable and appropriate levels of monitoring and supervision
Unreasonable Offence	No			

Recurring Donations

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Subscription mechanic can lead to high cumulative charge	• No evidence of this to date in complaints or other sources. Any evidence would be available through a complainants phone bill	• Code provisions considered to offer adequate protection
Passing Off	No	Charities cannot use the 7x shortcode for Recurring Donations unless they have proven they are registered with the Charities' Commission		
Uninformed Consent	Potentially	Whilst initial offer is simple, the subscription and SKIP elements add a greater degree of complexity	• No current evidence. However, there is an appetite within the sector to increase the gap between stop reminders to 6 months. This is likely to increase the potential.	Conditions in place in the following areas: • Promotional requirements relating to the STOP command • Management and operation of the SKIP function for donors to miss a payment without existing the recurring donation service
Unauthorised Consent	No			
Vulnerable Groups	No			
Unreasonable Offence	No			

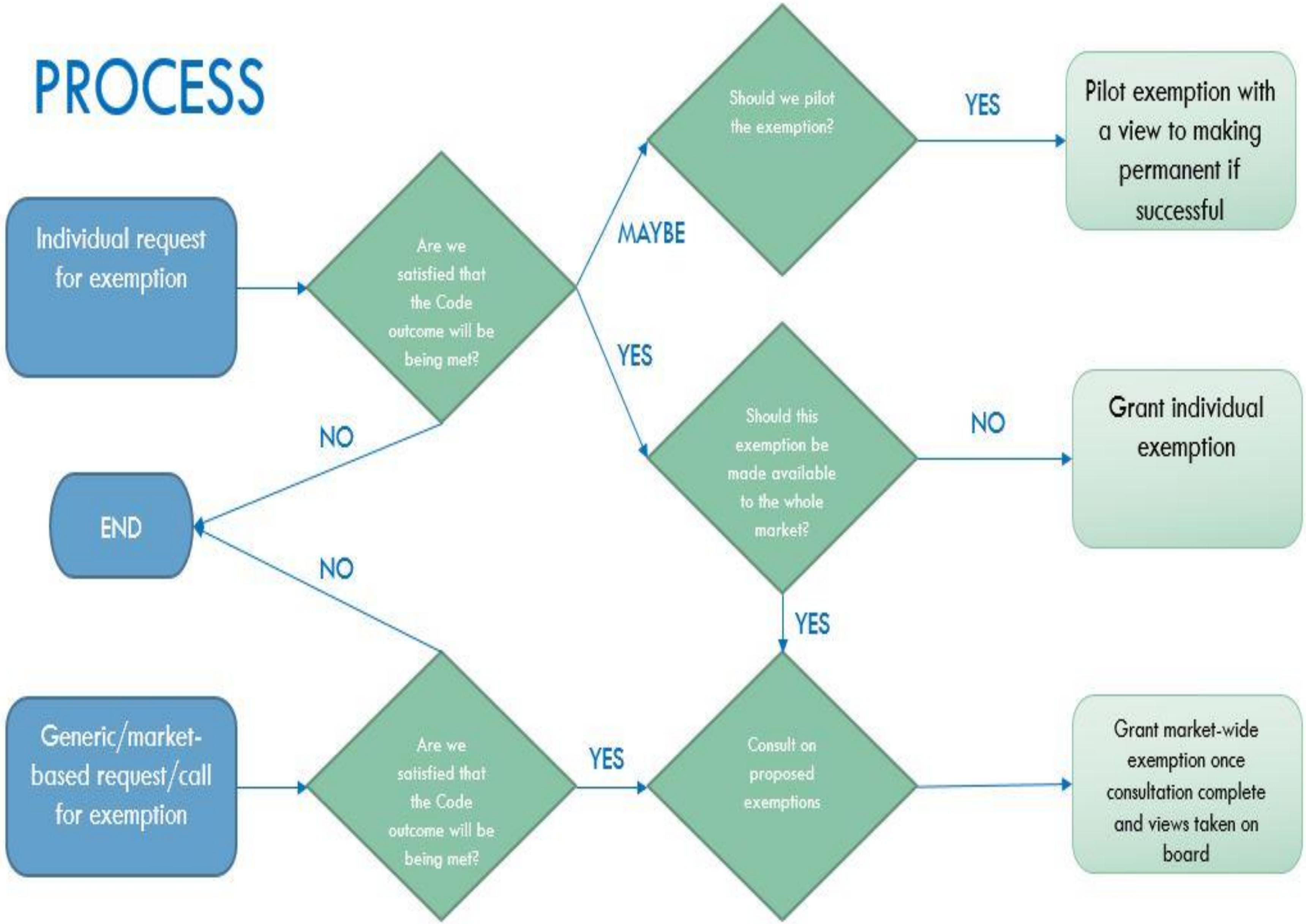
Remote Gambling

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Potential for up to £30 per day spend Repeat/addictive use	• Complaint evidence of repeat spending	• Code provisions considered to offer adequate protection
Passing Off	No			
Uninformed Consent	Yes	Complexity of the offer – e.g. how winnings will be paid, how winnings will be calculated, access to playing history, and restrictions on access to winnings (free bets and bonuses offers) Potential complexity of journey	• No specific evidence to refer to, there is only small potential for risk	Conditions in place in the following areas: • Promotional requirements relating to key terms and responsible gambling • Accessibility to betting history and account information Gambling licence requires adherence to same outcomes

Unauthorised Consent	Potentially	The methods of consent – e.g. Payforit, PSMS PIN loop - are sometimes exploited	• No specific evidence; small risk of unauthorised use with an existing player account, or if an individual has access to all of bill payers details	• Code provisions considered to offer adequate protection Gambling licence requires strict “Know Your Client” - this is reinforced by our Code and Special conditions
Vulnerable Groups	Yes	Underage access Risk of irresponsible gambling or addiction	• Some complaint evidence of repeat irresponsible usage • No evidence of underage access	Conditions in place in the following areas: • Provisions relating to age restrictions Gambling licence requires strict KYC this is reinforced by our Code and Special conditions
Unreasonable Offence	No			

<u>Subscription services (over £4.50 in any given 7 day period)</u>

Risk	Apparent	Why	Evidence	Response
Financial Harm	Yes	Subscription mechanic can lead to high cumulative charge	• Extensive, significant complaint data – consumer bills and provider logs	Conditions in place in the following areas: • Promotional requirements relating to the payment system and charging frequency
Passing Off	No			
Uninformed Consent	Yes	Complexity of offer Complexity of consumer journey	• Extensive, significant complaint evidence available – promotional material and complex consumer journeys obtained through service reviews and discovered by monitoring	Conditions in place in the following areas: • Promotional requirements relating to the payment system and charging frequency • Requirements for an initial receipt sent to the consumer by an appropriate means, such as email or text message
Unauthorised Consent	Potentially	The methods of consent – e.g. Payforit, PSMS PIN loop - are sometimes exploited	• Evidence from complaints and investigations where consent to charge breaches have been upheld	Conditions in place in the following areas: • Prohibition on any given subscription service charging consumers multiple times
Vulnerable Groups	No			
Unreasonable Offence	No	Whilst this depends on content, this is addressed by the Code or other Special Conditions regimes		


PROCESS
Individual request for exemption
Are we satisfied that the Code outcome will be being met?
MAYBE
YES
NO
Should we pilot the exemption?
YES
Pilot exemption with a view to making permanent if successful
Should this exemption be made available to the whole market?
NO
Grant individual exemption
YES
END
NO
Generic/market-based request/call for exemption
Are we satisfied that the Code outcome will be being met?
YES
Consult on proposed exemptions
Grant market-wide exemption once consultation complete and views taken on board

How to encourage PRS development with effective outcomes-focussed regulation.

A discussion document.

Introduction from the Chairman

1. Promoting growth and innovation is a key objective of government. Successive governments have sought to minimise or reduce regulatory burdens on business and in particular to remove or reduce barriers to investment and innovation. I strongly believe that the approach of regulators including PhonepayPlus should be no different. Our primary function as a regulator is consumer protection: Ofcom's principal duty is "*to further the interests of consumers in communications markets, where appropriate by promoting competition*"[10]. I believe we should mirror that approach. This paper is designed to start a debate on how best to enhance consumer choice and to deliver services consumers want without diminishing effective consumer protection. We believe consumers benefit from competition and diversity. PhonepayPlus can work with all parts of the industry.

2. The Premium Rate Service Market has declined from £816m to £686m over the past 5 years. MNOs and service providers, and indeed all participants in the PRS market, have a shared interest in halting this decline and developing new products to grow the market. A report by Deloitte's suggests that there is the potential for the market for digital content and services charged to a phone bill to grow by as much as £500 million.

3. PhonepayPlus's current goal is to ensure everyone can use premium rate services with absolute confidence in a healthy and innovative market. In supporting a healthy market we are aiming for regulation that is responsive, protects consumers where necessary and focusses on outcomes.

4. In practice this means that PhonepayPlus has in the past sought to be:

    Proportionate – looking at all the options, only intervening to the extent necessary, and not just reaching for enforcement tools at the first opportunity. This is to ensure that consumers are properly protected, and industry is treated fairly.

    Effective in stamping out harm – where we need to take action, the measures we take are efficient and effective.

    Enabling for businesses –reducing barriers to entry, allowing you to be flexible in achieving Code outcomes and considering exceptions, pilots and grace periods to support new models and innovation.

    Responsive and accessible – having an open door policy, being on the end of the phone and ready to have an open dialogue.

    And finally taking a **collaborative approach** – we are better when we work together.

[10] Communications Act 2003, s.3(1)(b)

5. Our starting point is a belief that the ‘charge to mobile/charge to bill’ payment model has sufficient potential for growth and innovation that it can sit alongside other payment mechanisms such as card payments and digital and mobile wallets for some time to come. Numerous studies have shown the UK to be a global leader in e-commerce over a long period[11] and m-commerce as a proportion of e-commerce has grown dramatically in recent years. The UK has great strengths in financial services generally and fintech in particular, where the government stresses the presence of a large and technologically sophisticated customer base as a key factor in the strength of the market.[12]

6. PRS have had to adapt over the past 30 years as technology has changed – the original fixed-line, voice-based services were succeeded by text-based services which are in turn being overtaken by video-rich online services. In addition to the convergence of communications and broadcasting technologies we are now seeing mobile and payment technology converging, offering consumers a range of payment options for essentially similar services. We want to ensure that our regulatory approach is capable of keeping pace with technological developments and supports sustainable growth in the market. We see high standards of customer service and consumer protection as core elements of sustainable growth in what is essentially a retail market.

7. We would like to work with Mobile Network Operators and other key value chain participants in assessing whether there is scope for some further regulatory flexibility or deregulation of the market without undermining the proper levels of protection for consumers. Our remit requires PhonepayPlus to remain independent of the market and to provide effective consumer protection. PhonepayPlus strives to support the provision of compliant services which consumers can have confidence in, through the minimum level of regulation and flexible approaches. But this does not mean that we cannot work to reduce regulation and focus our future efforts on enhancing competition, good practice and co-operation.

8. We want to consider with industry partners and other interested bodies how we can further support growth and innovation in the market – providing a well regulated environment which builds confidence, certainty, investment and growth.

9. We would like to explore proactively, primarily with the MNOs, how we might consider whether the current regulatory regime creates unnecessary barriers to entry or growth and how our statutory based regulation and MNO contractual self-regulation complement each other, or otherwise. Is there duplication we can remove or can we at least provide greater clarity over the roles and remits of different regulators?

10. The Board would like to explore whether there are different regulatory approaches or other interventions PhonepayPlus could take to support market growth. We would like to hear views on the role PhonepayPlus could take, understand what the industry would like us to do more or less of, and perhaps devise a better regulatory framework which we, collaboratively, could put in place which optimises the regulation and contractual arrangements currently in place.

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[11] See for example - https://www.bcg.com/documents/file100409.pdf -
[12] See for example - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428647/UKTI_Fintech_capability_V2.pdf

11. Our role in such discussions is in the context of a regulator and I am mindful that our role is limited to the regulatory framework and approach, the expectations we set out and certainty on the extent of our remit. But I see encouraging competition is central to our regulatory role because of the benefits it brings to consumers in terms of pricing and the availability of new services. We would like to test assumptions around the sufficiency of the flexibility built into our Code and regulatory framework and the clarity of our scope and that of other regulators given the convergence of digital content, services and payments in the market. This will also necessitate consideration of other adjacent and potentially overlapping regulatory regimes in the areas of communications, general consumer and payments regulations.

12. PhonepayPlus has a good track record of working collaboratively with other regulatorsand I am keen to continue to build strong relationships with other organisations regulating adjacent or overlapping market sectors. Our principal relationship is of course with Ofcom, who determine the scope of what we regulate and approve our Code of Practice. We have developed a close and effective working relationship with Ofcom since it was established in 2003. We also have MoUs with the Advertising Standards Authority and Gambling Commission, recognising our overlapping remits and shared interest in a co-operative approach to regulation. This is an approach that we are working to extend to our relations with other regulators, including those with interests in payments, such as the FCA.

13. The other factors in this discussion are primarily in the commercial remit of MNOs and their value chain partners. I want to support strategic discussions in this space and to provide a forum and incentive for such discussions to take place in support of our visions to building confidence for all in a heathy and innovative market.

David Edmonds

Chairman

Format

We envisage holding a series of workshops with MNO partners and Level 1 and Level 2 providers. The workshops would consist of small groups to ensure full contribution of all participants. We would ask for short papers in advance where this looks helpful[13]. We do not want a huge bureaucratic exercise. We would aim for a 'White Paper' on the future of regulation and PRS by July 2016. We would look for 'quick wins'.

Workshop: What is our view of the market? What is the regulatory framework that will best support growth and innovation in the market?

Objectives and content:

- Agreeing aims, objectives and scope of initiative. High level overview of the market. Discussion of market data, trends, risks and opportunities. Areas for further intelligence and analysis.
- Assessment of communications regulatory drivers and framework, broader regulatory landscape (consumer, communications and payments) opportunities and threats and areas for more flexible and smarter (effective and cost efficient) working.

Workshop: What do different players in the market need to do to support innovation and growth in the market?

Objectives and content:

- Sharing progress and ideas with invited value chain participants. Seeking to gain a clearer common understanding of what different participants in the market can do to support growth and innovation.

We have not defined any specific output as a result of this initiative. We want to use these meetings to inform our strategic approach and work with the industry to define the specific actions which would be most effective in growing the market in a positive way. The following note is intended to provide a basis for discussion with a view to developing a common understanding.

[13] A "regulatory map" looking at the remit and role of different regulators and regulations in this space has been suggested as a key contribution to the debate.

Discussion paper to inform workshops

1. Do we have a common view of the scale of the current PRS market, how it is developing and what the opportunities and threats are?

1.1 The Annual Market Review[14] prepared for PhonepayPlus estimated the current PRS market size at £686m in 2014, down from £709m in 2013[15]. This 3% decline followed a number of years of decline leading to concerns for the long term health of the PRS market.

1.2 However there are also a number of positive signs from research conducted for PhonepayPlus including the AMR and the Deloitte report[16]

1.3 The Deloitte research projected a UK market for digital content of around £14 billion by 2019 – up from approximately £6.5bn in 2014. At present, around 1% of that market is paid for by the consumer by operator billing. If the market share of operator billing remained at that level it would generate revenues of £140-150m by 2019, whereas Deloitte saw potential for this to grow to as much as £500m. This would represent significant growth of the market share of operator billing as a payment mechanism for digital content, but would still be as little as 3-4% of the market. Credit card payment is likely to remain overwhelmingly the payment method of choice, but we regard a 3-4% market share as a realistic possibility for operator billing.

Trends

1.4 The research highlights a number of trends:

- Decline in 'traditional' market areas (directory enquiries, adult services, voice PRS) largely as a result of competition from free substitutes or substitutes that can be paid for by credit/debit cards.
- Growth in operator billing as part of an overall return to (modest) growth for mobile services.
- Growth in specific areas of the market – gaming, gambling and giving.
- Reduction in the number of users of PRS – from over 19 million to 16.5 million in 2014. However, this is still 25% of the population. Almost 11 million PRS users were also reported as being interested in using their mobile device to pay for "other transactions" based on operator billing.

Discussion point – do you share this view of the scale of the market and the analysis of market trends? Is there evidence that supports or contradicts this view of the market?

[14] Annual Market Review 2014 - http://www.phonepayplus.org.uk/~/media/Files/PhonepayPlus/News-Items/2015July/2014-Annual-Market-Review.pdf
[15] Revenue – including charitable giving.
[16] Deloitte – Short and medium term prognosis of UK phone-paid premium rate services (PRS)

2. What are the opportunities for growth in PRS/operator billing? What are the threats and other factors that could inhibit or undermine potential growth?

2.1 UK consumers are increasingly accessing the internet via mobile and other wireless devices as opposed to via desktop PCs and laptops. The increasing capability of both the devices and the mobile networks is driving this change. Around 2/3 of UK adults now own a smartphone, while over half of all households own a tablet.[17]

2.2 The Deloitte report examined a number of areas of the digital content market and analysed the potential for growth, including music, video, e-books, gambling and gaming. In common with the growth in the market identified in the AMR, the Deloitte report identified mobile gaming apps as the fastest growing opportunity for carrier billing. The key reason here is that carrier billing offers a frictionless payment experience which can be important to the user in relation to gameplay – put simply, a player may not want to exit the game to enter credit card details and may therefore find carrier billing to be an easier alternative.

2.3 There is further evidence that would suggest some further opportunity for carrier billing growth:

- The Ofcom CMR reports that smartphones are twice as likely to be used for watching short-form video clips as opposed to longer form TV programmes or films.
- Just under half of smartphone users use their phones for transactional activities – online purchases and online banking in particular. This is of course facilitated by apps.
- 4G is also having an impact. There are around 24 million 4G subscribers in the UK and growing very fast. 4G users do more online shopping on their phones than 3G users and view more video content than 3G users.

2.4 In addition we are beginning to see mobile payment mechanisms emerging for services, virtual goods and physical goods – examples being ticketing (transport, cinemas), car parking, coffee and vending machines. While these goods and services currently are not typically paid for through PRS (and some may not be PRS at all), the ability to use operator billing for these types of transaction could build the commercial case for operator billing more generally. Anecdotally, some see physical and quasi-physical goods as the key opportunity for growth in operator billing.

2.5 App stores are beginning to use operator billing. Google Play and Microsoft already use operator billing in the UK and Amazon and Apple are known to be looking seriously at operator billing as a proposition. App stores have traditionally used credit/debit cards as the means of purchase and we know that the margins that credit card companies charge are likely to remain more competitive than operator billing margins. However, app store providers recognise that they reach a point of saturation where they do not continue to grow further sticking to their traditional billing models and so even those companies which have traditionally guarded the customer

[17] Ofcom Communications Market Report 2015.

relationship most fiercely (notably Apple) are looking at operator billing as a growth opportunity globally.

2.6 The ease of use for consumers in paying for goods and services through operator billing is another positive factor. Consumers do not have to pre-register (as you do with card payments) or have a separate payment account (as you do with PayPal). Bango, a leading mobile payment aggregator, say that they see an average payment conversion of 70% for operator billing compared to 40% for credit card.

2.7 The picture is not all positive. The biggest factor that operator billing has to overcome is competition from better established payment mechanisms. Operator billing is coming late to the market with card payments and PayPal already well established. Once consumers have got accustomed to using a particular payment mechanism, they are unlikely to change to another mechanism unless there are strong reasons for them to do so. However, new consumers entering the market (such as the young) may not have an established preference for a particular payment mechanism and (may be more attracted to using operator billing).

2.8 The success and growth of PayPal as a payment mechanic provides lessons for the potential for growth in operator billing. Consumer confidence is as important as ease of use/low friction; consumers need to trust the brand and understand how they can seek redress if things go wrong.

2.9 The UK may be a particularly challenging market for operators to establish operator billing even though the UK is perhaps the leading e-commerce nation in the world. UK consumers have a high propensity to shop online and spend more per capita than consumers in other markets. However, credit and debit card purchases are well established to an extent that is not even true in other developed markets such as Germany, where there has been historical antipathy to use of credit cards and especially online.

2.10 A further factor that favours card payments over operator billing is the fact that merchant pay out rates have tended to be less attractive for operator billing than for other payment mechanisms. Credit card companies typically only take between 0.5% and 5% of each transaction, whereas it is understood MNOs take in the region of 10-15%. The MNOs also face the challenge that this area of activity is not their core business and hence have higher costs than the credit card companies.

2.11 A limiting factor for the potential of operator billing is the expectation that it is most likely to be used for low-value purchases. This is based on a view of consumers' expectations of the size of their phone bills (typically tens of pounds per month), the levels of protection in legislation (e.g. the Consumer Credit Act) for credit card purchases which do not exist for operator billing coupled with telecoms operators' limited appetite for increasing their exposure to possible bad debt. This limitation may be reinforced by the new Payment Services Directive (PSD2), which imposes transaction limits (for individual purchases and a monthly aggregate). Uncertainty over precisely how PSD2 will be implemented, including how the transaction limits are to be managed is a further factor which could hinder operator billing growth. However, if ease of use is the USP of operator billing, transaction limits in themselves may not overly hinder growth.

2.12 According to the research we have referenced and industry commentary, operator billing growth is dependent on the following factors:

- Competitive commission rates
- More platforms offering mobile operator billing
- Investment in the user experience
- Accessibility for merchants
- Standardised approach from MNOs
- Co-ordination through value chain
- Identification of new products and services (of scale)
- United industry promoting the simplicity and consumer demand and establishing as a rival payment to credit and debit cards
- Effective, proportionate, simplified regulatory framework

Discussion points – do you agree that there is a significant opportunity for growth in operator billing as a payment mechanism? If so, where do you see the greatest potential for growth? Is there a compelling business proposition in which sufficient margin can be captured and consumer value is enhanced? What are the major enablers that would make this happen and what are the key barriers?

3. What regulatory framework will best support innovation and growth in the PRS market and in operator billing in particular?

3.1 Technological innovation has led to situations where a consumer is able to choose from a range of different payment mechanisms when making a payment, especially for digital content, but increasingly for other transactions as well.

3.2 Since these different payment mechanisms have developed independently and at different times, the basis for regulating the different payment mechanisms is usually different in each case and may consist of a mixture of EU and domestic UK law. The regulatory landscape is therefore complex and fragmented with a number of different regulators operating with different remits and objectives – these include the Bank of England, Competition and Markets Authority, Financial Conduct Authority, Ofcom, Information Commissioner's Office PhonepayPlus and the Payments Systems Regulator.[18]

3.3 Business values regulatory certainty and stability. A complex regulatory environment can lead to uncertainty – e.g. whether there are overlapping requirements, whether a single regulator is responsible for the entire transaction end to end etc.

3.4 As noted in the previous section, one example of this relates to the Payment Services Directive and its forthcoming update (PSD1 and PSD2). MNOs have in the past expressed concern that the scope of application of PSD1 was uncertain and therefore they were reluctant to invest in new services. More recently as the new PSD2 has crystallized, they have been concerned about the potential impact of thresholds in the new legislation and in particular how those thresholds will be interpreted and enforced in the UK.

[18] See "Innovations in UK consumer electronic payments" http://stakeholders.ofcom.org.uk/binaries/research/technology-research/2014/e-payments.pdf .

3.5 Another area where the industry has asked us for a steer relates to the use of e-money in electronic transactions. The basic model involves consumers purchasing e-money via their MNO, the cost of which is charged to their phone bill. This e-money is then available to the consumer to use for purchases from specific merchants. The MNO is in this instance a distributor of e-money, with an e-money licence holder (who is therefore regulated by the FCA) supplying the e-money to the MNO distributor and facilitating the transaction between the merchant and the consumer. Some PRS aggregators are e-money licence holders and they have asked us to guide them on whether PhonepayPlus regulation applies to this sort of service. A key underlying question is whether there is any part of these transactions that constitutes a controlled PRS (CPRS).

3.6 Our approach is informed by our overall strategic vision and commitment to appropriate regulation. We are not looking to regulate services merely because transactions are charged to a phone bill. Consumers have to be adequately protected in relation to a transaction charged to their phone bill. We want as far as possible to see consistent standards of consumer protection applied. We have therefore sought to consult and collaborate with other regulators – in particular FCA and Ofcom – to ensure that we are not regulating where others are better placed to do so. We can also look to facilitate joint meetings with other regulators and the industry where there are issues of common interest and as we have done in the past in relation to e.g. the Payment Services Directive.

3.7 The remainder of PhonepayPlus regulation is concerned with other issues of consumer protection, including the consumer proposition such as pricing transparency, promotion, consent to charge, misleading, inappropriate content etc. Other regulations become relevant here, notably general consumer regulation (as enforced by the CMA and Trading Standards).

3.8 A key question with regard to the regulatory framework in place is whether the consumer risks are adequately controlled by a combination of (a) payments regulation; (b) communications regulation, (c) self-regulatory scheme rules; and (d) general consumer legislation or whether in fact the regulatory landscape is overly complex and therefore a potential barrier to growth. Is there a route to simplifying the regulations without reducing consumer protection or increasing consumer harm?

3.9 Should operator billing move into areas outside of digital content, such as ticketing or physical goods, there may be an argument that these transactions are not higher risk in the same way as digital content and that consequently general consumer law, rather than sectoral regulation, would be sufficient.

3.10 As operator billing has moved further into app stores and other services and products, we have had to understand the consumer risks and controls associated with this and the best way of applying PhonepayPlus regulation to these new business models in a way that is effective and proportionate. Well-known companies and charities enjoying a high level of consumer trust and recognition will also represent a different level of risk compared to some other PRS providers.

3.11 Close co-operation with other regulators, in particular Ofcom but also FCA, ICO and the CMA, is increasingly important and it is clear from our discussions with industry that they would welcome greater clarity from the regulatory community on the boundaries between their remits, including who will take the lead in circumstances where legislation creates overlapping jurisdiction.

Discussion points – Does the current regulatory framework support operator billing? If not, what are the regulatory barriers that are inhibiting growth and innovation and how are these best addressed? Is operator billing in a better or worse regulatory position than other payment mechanisms?

4. What else can PhonepayPlus do to stimulate confidence and innovation in the market?

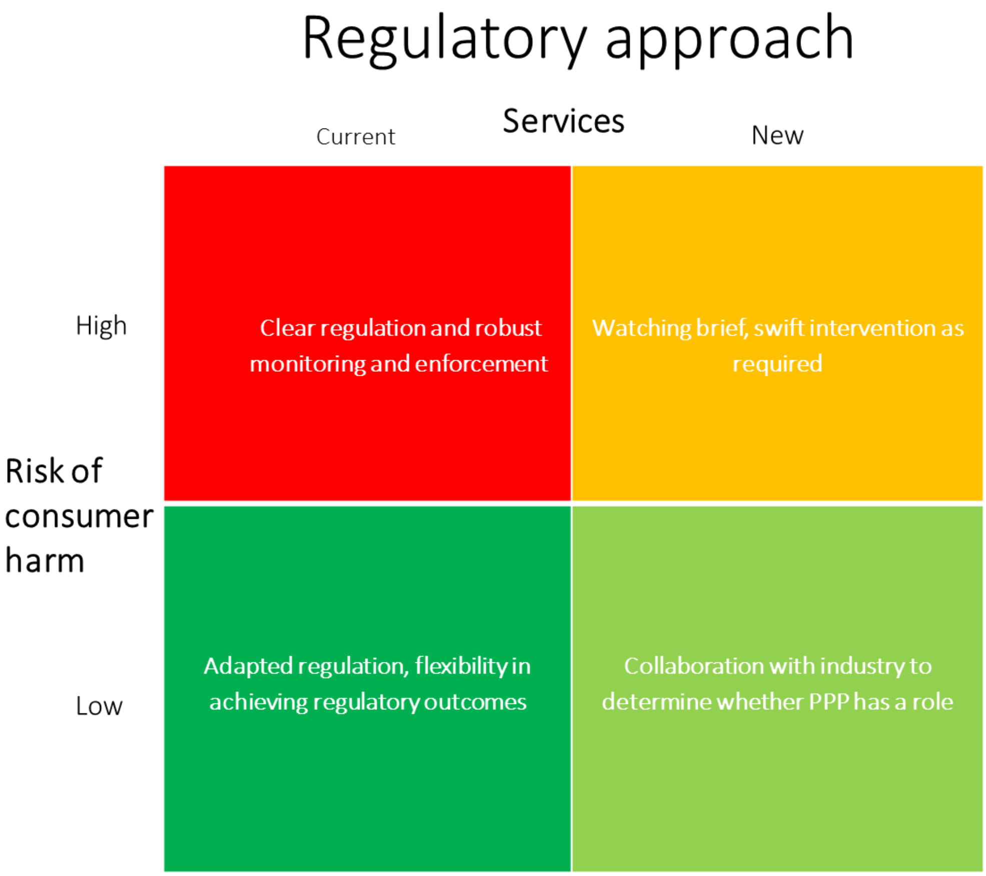
4.1 Regulation is not the only means available to a regulator in influencing markets and indeed can often be a blunt instrument with unintended consequences. Classically a regulator will intervene to address a particular market failure. One of the market failures that we seek to address is information asymmetry – i.e. where consumers and other players in the market do not have sufficient reliable information to be able to make informed decisions.

4.2 One of the ways that regulators can address this market failure is to provide information through research and other means. Ofcom’s research – such as its annual Communications Market Report – is regarded as supporting growth by providing insight into the market. We hope that our Annual Market Review fulfils a similar objective in relation to PRS.

4.3 We have also commissioned research into consumer behaviour and developed material that supports consumer education with a view to ensuring that consumers are better informed and better able to protect themselves or seek redress where something has gone wrong.

4.4 Forbearing from regulation to facilitate innovation or trialling new regulatory approaches are also things we have done in the past 12-18 months as part of having an outcomes-based Code of Practice. We are happy to work with the industry to understand new approaches and to see if our regulatory approach can accommodate a new service through pilots, trials, grace periods and exemptions. Our app store pilot, which ran from May 2014 - May 2015 is a case in point.

4.5 Our overall regulatory approach can be summarised in the diagram below.



Discussion points – Is the regulatory regime sufficiently flexible to support innovation, minimise barriers to entry and enable new business models. Is the regulatory response to risk in the market appropriate? How is risk assessed and what is the correct response to that risk?

5. How can we increase consumer confidence in PRS and operator billing in particular?

5.1 According to the AMR, the number of users of PRS fell by 2.8 million between 2013 and 2014 or almost 15% of the user base. The ability to get free substitutes or lack of continuing interest in the service were the top reasons cited – i.e. judgements about the inherent worth of the service. However, another key reason cited was bad experience with a PRS or fear of being ripped off. Nevertheless almost 11 million users expressed some interest in being able to use their phone to purchase other goods and services via operator billing.

5.2 Our primary approach to ensuring that consumers can use PRS confidently is to set out clear standards and expectations in our Code of Practice and in associated guidance. High levels of compliance with the Code and good practice in terms of clear information for consumers about the services they are engaging with, especially in relation to pricing are key.

5.3 As noted above, we also provide consumer information on how to avoid problems using PRS and specialist information targeted at children. We work to understand what might cause particular consumers or groups of consumers to become vulnerable and following on from initial research[19], we are now working with industry and consumer bodies to develop guidance for the industry on what they can do to provide good levels of protection for vulnerable consumers.

5.4 The MNOs also work to provide strong levels of consumer protection. Two key areas of activity are monitoring of services offered over their networks and setting common rules through the Payforit scheme which service providers have to adhere to. Following a spike in complaints to PhonepayPlus at the beginning of 2015 which lasted till June, the industry and PhonepayPlus came together to discuss what actions could be taken. The main result of those discussions was a revision of PFI scheme rules, introducing additional requirements that service providers need to meet. These new rules have contributed to a sharp decrease in complaints from consumers but service providers are complaining that the requirements imposed by the MNOs exceed the requirements of the PhonepayPlus Code of Practice.

5.5 We would like to explore whether there is further joint work that could be done in this respect - e.g. whether any rationalisation of our respective approaches is possible or whether there is scope for working together to improve our approach to monitoring of services. Any such initiative would need to offer at least the same level of consumer protection as at present, but joint working at least raises the possibility of ways of working that could lead to efficiency savings, either for PhonepayPlus or the industry or both.

Discussion points – What are the most effective ways – other than regulation – of increasing consumer confidence, especially in relation to operator billing? Is there more collaborative work that industry and PhonepayPlus can do to increase confidence and potentially offer more efficient ways of working?

[19] http://www.phonepayplus.org.uk/news-and-events/news/2015/july/phonepayplus-publishes-discussion-document-on-vulnerability