

# Governance Statement

**relating to the  
constitution, powers and funding  
of the Phone-paid Services Authority**

**July 2016**

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## Governance Statement

### PART I – Constitution, Regulation, Strategy

#### A. Constitution

1. The Phone-paid Services Authority Limited (“Phone-paid Services Authority”) is the body responsible for the regulation of premium rate services. It is constituted as a non-profit-making company limited by guarantee whose members are the Directors of the Company. It is a public body at law, but not a designated public body for such purposes as Freedom of Information, or Legislative and Better Regulatory Reform.
2. The objects of the Company as set out in the Memorandum of Association are:

For the protection of the public to supervise the content of promotional material for and other matters relating to premium rate services (being as defined in the Communications Act 2003) and in particular but without prejudice to the generality of the foregoing;

(i) to set standards relating to the content and promotion of premium rate services whether through Codes of Practice or otherwise and to keep such standards under review;

(ii) to monitor such services to ensure that both the content and promotional material comply with these standards;

(iii) to investigate complaints relating to the content and the promotion of such services;

(iv) to recommend measures designed to achieve compliance where breaches of any such Code of Practice have been identified; and

(v) to provide occasional reports on the numbers and categories of complaints received and action taken and to produce leaflets, information letters and other material relevant to the setting of standards and the enforcement of the Codes of Practice.

3. The Articles of the Company prescribe that, unless otherwise determined by ordinary resolution, the minimum number of Directors is set at two and the maximum at 12. Currently the Board consists of the Chairman, the Chief Executive of the Phone-paid Services Authority, and up to five non-Executive Directors, all appointed in their individual capacities following an open recruitment and selection process. Whilst a minority of Board members have contemporary industry knowledge, the Board is not involved in adjudicatory work and Tribunals.
4. The main functions of Board members involve the formulation of the Phone-paid Services Authority policies and strategies, including the development and enforcement of the Phone-paid Services Authority Code of Practice (“the Code”); the setting and reviewing of the

corporate strategy and annual business plans; and supervising the work of the Chief Executive, Executive and Code Adjudication Panel, who are accountable to the Board for ensuring the provision of an effective and efficient regulatory service.

5. Board members serve for a term of three years, subject to a maximum of two consecutive terms. They are required to comply with the seven Nolan principles of public life. The company appoints a Company Secretary.
6. The accounting reference date of the company is 31<sup>st</sup> March. Although a small company and therefore able to rely on the exemptions set out in the Companies Act 2006 regarding the form and contents of its annual accounts, The Phone-paid Services Authority produces an Annual Report – as part of its commitment to summarise its business activities, plans, strategies and performance measures – together with a description of the risks and uncertainties affecting it.
7. The Board of the Phone-paid Services Authority appoints the Chief Executive and has appointed two sub-Committees to manage certain areas of its responsibilities. These are the Resources Committee and the Audit Risk and Corporate Governance Committee.
8. The reserve powers of the Board are set out in the Schedule.

## **B. Regulatory Function**

9. Ofcom has formal responsibility for regulating premium rate services under the terms of the Communications Act 2003. Under the powers set out in section 121 of the Act Ofcom has designated the Phone-paid Services Authority to deliver the regulation of the premium rate services market, by approving the Code.
10. The Code is developed by the Executive and approved by the Board. Following an open consultation process, the Code is formally approved by Ofcom under section 120 of the Communications Act 2003 and is notified to the EU Commission under Directive 2015/1535/EU as amended.
11. The Administrative Court has determined that the Phone-paid Services Authority is an enforcement authority with statutory responsibility for enforcing the Code. The Phone-paid Services Authority has not been designated as a body subject to the Freedom of Information Act 2000, nor is it subject to the Legislative and Regulatory Reform Act 2006. However, in carrying out its regulatory remit, Tthe Phone-paid Services Authority has undertaken to comply with the HM Government Code of Practice on Consultation, and to have regard to the five principles of good regulation, namely:

transparency; accountability; proportionality; consistency; targeting.

## **C. Regulatory Remit**

12. The term ‘premium rate services’ (“PRS”) is defined in section 120 of the Communications Act 2003, and under that section Ofcom has set a Condition (“PRS Condition”), which defines a

subset of PRS known as 'controlled premium rate services' ("Controlled PRS"); it is these services that the Phone-paid Services Authority regulates. Through the Code, the Phone-paid Services Authority regulates the content, promotion and overall operation of these services. PRS in essence offer some form of content, product or service that is charged to users' phone account by their operator.

13. The current PRS Condition set by Ofcom is available on Ofcom's website at <http://stakeholders.ofcom.org.uk/telecoms/policy/premium-rate-services>.
14. Network providers involved in the provision of Controlled PRS are subject to Ofcom's backstop enforcement powers. Controlled PRS require this level of regulation because of their potential to cause consumer harm that may not be adequately addressed by more generic consumer protection regulations.
15. PRS typically offer information and entertainment services via fixed or mobile phone, PC (e-mail, internet), or interactive digital TV. There are many sorts of services, examples of which are:
  - Apps, including in-app purchases
  - Games and competitions
  - TV voting and charitable donations
  - Directory enquiries
  - Sports and news alerts
  - Remote gambling services
  - Advice lines and technical support lines
  - Chat and business information

These services typically operate using SMS short codes; 118 directory enquiry numbers; 0870, 0871, 0872 or 0873 numbers; 070 numbers; 09 numbers and operator billing.

16. Landline PRS services include technical support helplines, customer support, competitions, television voting and entertainment services.
17. Some mobile PRS use micropayment mechanics including; short access codes ("shortcodes"), which are typically five- or six-digits, and Payforit - a direct to bill payment standard. These are typically shown on mobile bills as 'Payforit charge' 'premium rate call' or 'high premium rate service'. Premium rate charging for mobile content is generally on a 'per text message' or 'per transaction' basis, and includes services such as content downloads, in-app purchases, charitable giving, competitions and television voting.
18. Some PRS can be purchased using a variety of other payment methods apart from PRS. In such cases the Phone-paid Services Authority still regulates the service but there may be aspects of the service that may also fall within the remit of other regulatory authorities.
19. The potential for consumer harm from PRS is a function of the characteristics of these services, and can arise in a number of ways. The Ofcom Scope Review Statement of July 2012 identified the following factors to be taken into account:

- i. the consumer's [network provider] may not be the actual supplier of the PRS;
- ii. there is a complex, fragmented value chain, with large numbers of suppliers operating at different levels in the chain;
- iii. barriers to entry and exit are relatively low at the level at the content provider level;
- iv. consumers are only able to ascertain the quality of the PRS at the point at which it is consumed;
- v. There is a separation between the party billing the consumer and the party supplying the service;
- vi. the price of the PRS is low (in absolute terms), potentially discouraging consumers from shopping around before buying and from seeking redress;
- vii. the purchase process involves little or no authentication, encouraging consumers to purchase on impulse;
- viii. the PRS is likely to involve inappropriate or offensive content; and
- ix. the PRS is likely to be marketed to children or likely to have a particular appeal to children.

20. The Phone-paid Services Authority carries out its duties through the imposition and enforcement of responsibilities on defined parties who are collectively termed PRS providers. Level 1 providers provide a platform which, through arrangements made with a Network operator or another level 1 provider, enable the relevant PRS to be accessed by a consumer or provides another technical service which facilitates the provision of the relevant PRS. Level 2 providers control or are responsible for the operation, content and promotion of the relevant PRS and/or the use of a facility within the PRS.

21. The Phone-paid Services Authority provides Guidance which, although not part of the Code, provides detailed advice on specific areas of the Code, with the intention of assisting those involved in the provision of PRS to comply with the Code rules and outcomes. This Guidance, together with a copy of the relevant legislation and other relevant material, are available on the Phone-paid Services Authority website at [psauthoty.org.uk](http://psauthoty.org.uk) and on request from the Phone-paid Services Authority.

22. The Phone-paid Services Authority seeks to deliver its core regulatory remit through:

- working collaboratively with industry and regulatory stakeholders to explore further regulatory flexibility or deregulation of the market;
- systematically reviewing monitoring tools and compliance processes to manage the balance between a vibrant PRS market for providers whilst ensuring consumers are properly protected;
- developing an integrated consumer strategy to provide opportunities for consumers to make better informed decisions when engaging with PRS;

- delivering an outcomes-based Code in a fast moving and complex environment;
- extending the depth and range of stakeholder and regulatory bodies relationships and engagement to ensure clarity and consistency;
- developing the ability to understand and anticipate market changes via means such as risk management, horizon scanning;
- contributing to policy development and managing the impact of key legislation on the PRS market;
- working closely with Ofcom to deliver effective PRS regulation.

## D. Strategy

23. As the regulator for PRS, the Phone-paid Services Authority's vision is that anyone should be able to use PRS with absolute confidence.
24. In pursuit of our regulatory vision, the Code protects consumers by setting appropriate standards for the promotion, content and overall operation of PRS. This takes account of people, particularly children, who may be especially vulnerable.
25. To ensure our regulation protects consumers in a rapidly changing digital economy the Code is underpinned by six outcomes:
  - i. Legality – PRS must not break the law or encourage others to do so,
  - ii. Transparency and Pricing – PRS have to clearly inform consumers of the price and all other key information within promotions before a purchase is made,
  - iii. Fairness – services have to treat consumers fairly – e.g. not mislead the consumer, deliver the right products in a timely way, and give the consumer a clear way of opting out of further charges when they no longer wish to use the service,
  - iv. Privacy – PRS providers can only market to consumers with their provable consent,
  - v. Avoidance of harm – PRS must not contain unreasonably offensive material, or incite discrimination or hatred, and lastly,
  - vi. Complaint handling – consumers must have a quick and easily accessible method of complaining, and complaints and any refunds must be handled quickly, fairly and transparently by providers.
26. The flexible nature of the outcomes provided in the Code means that the Phone-paid Services Authority is able to maintain stable and effective regulation during periods of rapid innovation and change in the micropayments market.
27. The Phone-paid Services Authority promotes compliance by giving advice through Guidance, and directly on request to, providers of PRS, helping them meet the outcomes of the Code. If there are breaches of the Code, the Phone-paid Services Authority swiftly enforces its provisions in order to minimise consumer harm and encourage compliance in the future.
28. In carrying out its strategy, the Phone-paid Services Authority is committed to its core values and behaviours being:

Right touch

- **Fair and proportionate**  
Be fair reasonable and well-informed.  
Ensure our actions support good regulatory outcomes for all stakeholders and give certainty and confidence.
- **Aware of the bigger picture**  
Anticipate developments that may affect us and those around us.  
Be curious and inquisitive, ask questions and challenge assumptions. Be flexible and enabling of responsible innovation.  
Plan for the future and think of the impact of our work.

#### Collaborative

- **Open**  
Look outward, share ideas, listen to others and embrace their knowledge. Collaborate with everyone. Be approachable, transparent and accountable.
- **Decisive**  
Make decisions in a timely manner with confidence and clarity.

#### Value for money

- **Effective and productive**  
Pursue our priorities energetically.  
Get it right first time and swiftly deliver effective outcomes.  
Innovate to find creative solutions and work more efficiently
- **Professional**  
Be experts: we are role models and we support others.  
Be reliable because we are consistent, pay attention to detail and are focused on quality.

29. The Phone-paid Services Authority has five key objectives which shape its work as a quality regulator and ensure high standards are adhered to, however the market fluctuates:-

1. to continue to drive up compliance levels and trust in the market;
2. to identify and prevent emerging risks to consumers;
3. to help consumers use premium rate services with confidence;
4. to ensure that regulatory frameworks keep pace with market changes;
5. to deliver effective and efficient regulation.

### **E. Regulatory Procedures**

30. The Phone-paid Services Authority's regulatory approach involves working collaboratively with industry to allow business to flourish and build a healthy market with a high standard of compliance, whilst putting the consumer at the forefront.

31. Regulation is open, fair and robust, underpinned by an outcomes-based Code of Practice.

32. The Phone-paid Services Authority requires all PRS that operate in the UK to register with it, with the exception of 0871/2/3 and Voice Shortcodes, subject to meeting certain criteria.<sup>1</sup> The

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<sup>1</sup> Reference to the exemption notice see <http://www.The Phone-paid Services Authority.org.uk/news-and-events/news/2015/june/notification-of-exemption>



registration scheme provides transparency in the market, enabling more effective due diligence on the part of contracting providers, preempting harm in some cases.

33. The Phone-paid Services Authority adjudicates complaints that are referred to it by consumers, members of the public, industry, and through its monitoring of services.
34. Where a minor breach of the Code is identified, such as a promotion missing a helpline number, an informal resolution process may be used. An informal resolution process may result in a changes being made to the service or promotion and refunds being provided to eligible complainants.
35. Generally, the Phone-paid Services Authority uses an allocation process and criteria to determine the investigation process it will use to consider cases it decides to investigate. These are set out in the Code and further in the Code's Supporting Procedures, both of which are published on the Phone-paid Services Authority website. Where it appears that there may be more serious breaches of the Code, a formal investigation is likely to be opened. A formal investigation involves detailed questions being asked of the provider and can ultimately, where the evidence supports it, result in the case being presented to the independent Code Adjudication Panel ('CAP') for determination.
36. The Phone-paid Services Authority currently operates two formal procedures (as set out in the Code) for investigating apparent breaches of the Code. These are known as the 'Track 1' and 'Track 2' procedures. Where a case has been allocated to the Track 2 procedure The Phone-paid Services Authority may seek interim measures from the CAP such as a withhold of revenue or a suspension of part or all of the service, or other corrective action. The CAP decides whether such measures should be imposed.
37. The CAP carries out their adjudicatory work sitting as Tribunals (comprising three CAP members; one legally qualified member and two lay members). The CAP is chaired by a qualified barrister or solicitor. Members of the CAP are appointed by the Board of The Phone-paid Services Authority in consultation with the Chairman of the CAP, who is also appointed by the Board. The CAP has no commercial interest in the PRS industry.
38. The CAP Tribunals have a wide range of sanctions available to them, all of which are set out in the Code, and are described further in the Phone-paid Services Authority Supporting Procedures. All Tribunal decisions are normally posted on the Phone-paid Services Authority website two weeks after the hearing.
39. Any respondent to proceedings alleging breaches of the Code may accept breaches and sanctions recommended by the Phone-paid Services Authority in a 'Warning Notice' (as described in the Code) or can enter into settlement discussions. If the apparent breaches and recommended sanctions are agreed, or a settlement is reached, these will be ratified by the CAP. If no agreement is reached the CAP determines the matter (either on the papers on through a formal oral hearing) and imposes sanctions it considers appropriate. A respondent is entitled to apply for a review of a CAP decision on limited grounds (a 'review'); these are a material error of fact or process, an error of law or the reaching of a decision that no reasonable Tribunal could have reached. If a review is granted this can be dealt with on the papers or through a formal oral hearing.

40. The Phone-paid Services Authority has the power to impose an administrative charge in respect of its administrative and legal costs for every case in which a breach is upheld by a Tribunal. The Phone-paid Services Authority will normally seek a recommendation from the Tribunal on the level of the administrative charge it wishes to impose. The administrative charge rates which are applied are published on the Phone-paid Services Authority website.

## **F. Treatment of Risk**

41. The Phone-paid Services Authority's policy in relation to risk management is to develop a culture that ensures that risks are fully identified, analysed and assessed. The Phone-paid Services Authority subjects ongoing risks to controls. Risk controls are designed to be both proportionate to the risk, and relevant to the expected outcome.
42. The risk management systems established and maintained by the Phone-paid Services Authority are designed to be sufficiently robust and defensible to inform decision taking and business planning, and to shape corporate strategies. Risks which impact on operational and financial outcomes are recorded in a regular, transparent and conforming manner, with reviews of the risk register taking place regularly.
43. Risks are reported to the Audit, Risk and Corporate Governance Committee, and form part of the report to Board meetings.

## **G. Independence**

44. The Phone-paid Services Authority operates in an entirely independent manner. Apart from a minority of members who are appointed on the basis of their contemporary industry knowledge, no member of the Board may have any commercial interest in the premium rate sector.
45. Board members do not take part in any adjudicatory decision making process. However, Board members are members of the Investigation Oversight Panel. This panel is composed of senior executives and non-executive Board members and will consider matters of case management and quality control during the progress of investigations. For further details the Supporting Procedures, available on our website.

## **H. Conflicts of Interest**

46. Within one month of appointment, each Board member is required to complete a Standing Declaration of Interest. If there are material changes to the declaration then a new one should be completed. All Board members are asked to complete a new declaration annually.
47. Declarations must list any relevant material financial interest, including investments, contracts and consultancies, held either personally, as a trustee or as an effective controller of a company (whether or not this is achieved by a majority interest).

48. Declarations must also cover the relevant financial interests of the Board member's close family members. They must also cover any relevant non-financial interests or connections. Any changes in these interests must also be declared as and when they occur. Declarations are re-sought and reviewed annually and the results of the review recorded.
49. Any independent, non-industry member who acquires a direct PRS interest or whose close family member(s) acquire(s) such an interest, must resign unless the Board specifically resolves to the contrary. In any event, the Board does not intend for more than one third of members to have industry interests.
50. In addition to a standing declaration of interest, disclosure must be made at each Board and Committee meeting, and on any occasion when a possible conflict of interest arises. The Board member concerned should normally declare to the Chairman that there is a possible conflict, including the details of what it is and withdraw from taking part in any decision making during any meeting.

## **J. Personal Data and Confidential Information**

51. The Phone-paid Services Authority receives and processes personal data, and does so in accordance with the rights and obligations provided for under the Data Protection Act 1998 ("DPA"). Where personal data has been provided as part of the registration process, consent is sought for that data to be shared with organisations seeking a reference on the registrant. The Phone-paid Services Authority has a policy in place to ensure that it fully complies with the requirements of the DPA.
52. Where the Phone-paid Services Authority works with a third party data processor it will ensure it obtains confirmation from the processor that it too will comply with the requirements of the Data Protection Acts.
53. Confidential information that is received by the Phone-paid Services Authority will be kept in confidence by the Phone-paid Services Authority, and will not be divulged to any third party. Confidential information includes both confidential and commercially sensitive information that is marked as such or otherwise assessed by the Phone-paid Services Authority as such on an objective basis.
54. The Phone-paid Services Authority may disclose confidential information to its employees, officers, professional advisors, and to Ofcom or other proper authority for the purposes listed below. In all other cases, the Phone-paid Services Authority will not make any disclosures without consent, provided that when consent is sought, it will not be unreasonably withheld, and that there will be no unreasonable delay in reaching a decision as to whether to grant consent to disclosure.
55. The Phone-paid Services Authority may divulge confidential information if it is necessary for it to do so in order to discharge its responsibilities under the Code. Confidential information may also be disclosed to third parties that is already lawfully in the public domain, or has become lawfully available from a third party free from any confidentiality restriction.

56. Confidential information may also be disclosed in response to a request from a regulator or other lawful authority, or shared with law enforcement agencies for the purposes of investigating fraud or other criminal offences.
57. The Phone-paid Services Authority has adopted a policy in relation to the management and use of personal data and confidential information by its employees, which implements the provisions set out above.

## **K. Stakeholder Engagement**

58. The Phone-paid Services Authority is not subject to the Freedom of Information Act 2000, but volunteers to adhere to its provisions and endeavours to comply with the principle of transparency, and best practice for access to its non-confidential materials. Some categories of information, by the very nature of the Phone-paid Services Authority's regulatory remit, are not accessible by the public, but in accordance with the recommendations of the Information Commissioner's Office, the Phone-paid Services Authority has issued a publication scheme that is accessible via its website. This lists the documents that are made freely available to the public as to the activities, funding and budgetary arrangements, strategy, decision making processes, and policies and procedures of the Phone-paid Services Authority.
59. The Phone-paid Services Authority has four key stakeholder groups to whom it has specific responsibilities. These are:
- i. consumers and those who represent them;
  - ii. Government and other regulators/enforcement bodies (incl. Ofcom);
  - iii. The PRS industry; and
  - iv. legislators/parliamentarians.
60. As a strategic regulator the Phone-paid Services Authority clearly defines to its stakeholders the key regulatory outcomes it looks to achieve. The Phone-paid Services Authority reports regularly on measures and key performance indicators which best demonstrate the Phone-paid Services Authority's effectiveness in meeting these outcomes;
- A healthy market - a trusted and healthy market that can innovate, grow and is compliant with the Code of Practice;
  - Consumer confidence - a market that informed consumers have trust and confidence in;
  - Cost effective and proportionate - a regulator that is capable, cost effective and has the confidence of stakeholders.
61. The Phone-paid Services Authority reports regularly on information and metrics which look to track progress and provide measures of success to judge the level of effectiveness in meeting these outcomes. These reports are provided on a quarterly basis and are published on the Phone-paid Services Authority website.
62. The Phone-paid Services Authority periodically produces independent, external stakeholder surveys. The results of these surveys are considered an integral part of key performance indicators and provide feedback for stakeholders on levels of satisfaction of functions and services provided by the Phone-paid Services Authority.

63. The Phone-paid Services Authority acknowledges that despite the different perspectives and needs of these different stakeholder groups, there are some general requirements and needs that all stakeholders share. These are:

- i. clarity of purpose – we develop and enforce a Code of Practice and support industry with compliance; we assist consumers in a variety of ways through education, information and have a public service responsibility to assist in building trust in PRS; we provide support to other stakeholders as outlined below;
- ii. responsiveness to needs – we recognise the needs of stakeholders and find ways that best respond to them in a timely and efficient manner, which is practical and consistent with good regulation;
- iii. a professional approach – which we adopt in all our dealings with stakeholders;
- iv. impartiality – we draw on objective information and evidence in support of the decision we reach, and we have a governance structure that ensures we remain impartial in all decision-making; and
- v. operating in a way that engenders the principles of good regulation – we are accountable, proportionate, targeted, transparent and consistent in all that we do.

64. The Phone-paid Services Authority is committed to public consultation on matters affecting the design and application of regulation. In setting a consultation period we will consider a number of factors and set a timescale as appropriate.

65. In these consultations the Phone-paid Services Authority is committed to ensuring consideration is given to:

- i. identifying opportunities for reducing bureaucracy and regulatory burdens, for example the simplification or withdrawal of existing regulations;
- ii. conducting an impact assessment, whenever possible and practical, highlighting the potential costs, benefits and risks of the proposal;
- iii. developing feasible alternatives to regulations, and to encouraging respondents to suggest alternatives when responding to the consultation exercise;
- iv. the prospect of unintended consequences of the proposal and the perspective of respondents to such consequences
- v. analysing the practical enforcement and implementation issues of our policy, especially in light of views from respondents as to alternative approaches to implementation.

The Phone-paid Services Authority recognizes that a collaborative approach to regulation through increased engagement and partnership with industry and regulatory stakeholders is paramount to the success of effective PRS regulation and consumer protection. The Phone-paid Services Authority is committed to working closely with stakeholders in industry, to

ensure that there is a full and open dialogue as to market developments and a common understanding as to the interests of consumers.

To that end the Phone-paid Services Authority has established an advisory industry liaison panel (“ILP”) to identify emerging trends and issues in the market, and to facilitate a two-way communication with the industry. The relationship exists to ensure regulation is well informed through early sharing of concerns, information, ideas and proposals from both sides. Membership of the ILP comprises representatives from trade bodies, broadcasters, mobile network operators and PRS providers to ensure effective dialogue exists, and a nominee from Ofcom. Industry sub groups, including the Rapid Response Team (RRT) feed effectively into the panel. The Phone-paid Services Authority also works with PRS industry representative bodies such as AIME, FCS and Action 4, to share compliance updates and advice with industry.

66. The Phone-paid Services Authority also provides free compliance advice for providers on their services and promotions. This approach enables providers to operate flexibility whilst ensuring their services are compliant and consumers are confident in using them.

It is intended that this Governance Statement is periodically reviewed. In doing so, comments received by the Phone-paid Services Authority from stakeholders, as to improvements to its scope and content, will be taken into account.

## **PART II – Funding, budgets and levy**

### **L. Funding arrangements**

67. The Phone-paid Services Authority is funded through a levy from industry, charged on premium rate service providers. The rate of levy is reduced by monies received from a variety of sources, including interest accruing on monies held by it, and fines and administrative charges. The levy is collected (or withheld) by terminating networks from their out-payments to service providers.
68. The funding arrangements are set out at Annex 1 of the Phone-paid Services Authority Code of Practice (14<sup>th</sup> Edition) (“the Code”).
69. The Code defines ‘Outpayments’, ‘Revenue’, ‘Financial year’ and ‘Own service’ under Annex 1, 1.1 (a)-(d).

### **M. Budget, Activity Plan and Timetable**

70. As far as is practicable, by 31 December each year, the Phone-paid Services Authority will publish a proposed budget and activity plan for the forthcoming financial year for wide consultation and scrutiny.
71. The Phone-paid Services Authority works closely with Ofcom to ensure that, in satisfying their own statutory remit, the budget is sufficient to deliver effective PRS regulation while looking to develop further efficiency drivers and ongoing review of operational costs.
72. Once approval from Ofcom has been sought on the budget and business activity plan, The Phone-paid Services Authority will then announce its budget, specifying the amount it intends to collect (“the Budgeted Figure”) for the forthcoming financial year through the levy, having regard to its available and required reserves.

### **N. Forecasting**

73. Network operators are required to provide the Phone-paid Services Authority by the date specified in the timetable with a forecast of the value of outpayments to be made by the relevant Network operator and of any own service revenue anticipated during the forthcoming financial year and such forecast shall be used for calculating the levy payments.
74. In the absence of a forecast, The Phone-paid Services Authority will issue a direction to the Network operator requiring the provision of a forecast and/or may make its own forecast of the outpayments.
75. Own service revenue forecasted will be multiplied by the industry standard outpayment margins as determined by the Phone-paid Services Authority.

76. Where a Network operator has provided premium rate services for a period longer than three months in the first financial year of service provision, the Phone-paid Services Authority will forecast for the following financial year the outpayments likely to be made and the likely level of own service revenue, by reference to likely revenue generated.

## **O. Levy**

77. The levy funding model as set out in Annex 1 of the Code of Practice is the way in which PRS providers pay for the cost of regulation of their market. The Phone-paid Services Authority will determine the proportion of every outpayment and own receipts that need to be retained and paid to the Phone-paid Services Authority ("the levy").

78. The levy is a flat percentage charge on activity. The levy rate is announced annually following extensive consultation with the industry and other stakeholders regarding the Business Plan and Budget to be allocated to the Phone-paid Services Authority for its operations. The size of the levy is determined by a range of factors beyond the Phone-paid Services Authority annual budget, such as the size of the current market, the income received from bank interest, and the contribution made from prior receipts of fines and administrative charges. The Phone-paid Services Authority may from time to time vary the rate or rates at which the levy is set to ensure that it continues to receive adequate funding to carry out its activities as the designated regulator for premium rate services. The Phone-paid Services Authority will advise Network operators and other interested parties of the levy to be applied to outpayments, by publication on its website. The levy will be expressed as the proportion of each outpayment and own receipt that must be retained (e.g. 0.XX pence per £1).

79. Following receipt of notification, Network operators must inform everyone to whom they make outpayments of the set levy rate. Network operators are responsible for deducting the levy notified by the Phone-paid Services Authority.

80. Network operators are acting in the capacity of a collection agency. They are not liable financially for their own activity in the marketplace, but can be personally liable under the Phone-paid Services Authority Code to the extent that they fail to deduct the required levy outpayments.

## **P. Payments**

81. The Phone-paid Services Authority will advise each Network operator whose outpayments and/or own service revenue for the forthcoming year have been forecast of what the Network operator is expected to collect in the forthcoming year by the application of the levy.

82. Each Network operator's contribution will be calculated by multiplying its forecasted outpayments and own service receipts for the forthcoming year by the applicable levy for the time being (e.g. £1,000,000 x 0.XX).



83. Upon being advised of its contribution by the Phone-paid Services Authority, a Network operator must pay its contribution to the Phone-paid Services Authority by 12 equal monthly installments. Network operators should arrange to make payments by electronic transfer.
84. All levy invoices provided by the Phone-paid Services Authority to Network operators exclude VAT.
85. All Network operators must provide the Phone-paid Services Authority with quarterly reports upon the actual levels of outpayments that they are making as soon as is reasonably practicable following 30 June, 30 September, 31 December and 31 March in each year.

#### **Q. Late Payment**

86. If a Network operator fails to pay to the Phone-paid Services Authority monies due in accordance with the timescales either set out in the Code and/or directions issued by the Phone-paid Services Authority, then the Network operator will be liable to pay interest at a rate of 3% above the prevailing rate of HSBC plc from the date on which the relevant payment became due.

#### **R. Adjustments**

87. At the end of each year and no later than 30 April, Network operators must provide The Phone-paid Services Authority with a statement of the actual aggregate out payments that they have made; the revenue that they have received in their capacity as a Network operator and their own service revenue during the preceding year. Where it has supplied no services, the Network operator must state this in the statement.
88. Where a Network operator's payment to the Phone-paid Services Authority based on forecast out payments exceeds actual outpayment levels, the Network operator will be entitled to have the excess amount repaid.
89. Where the Phone-paid Services Authority concludes that a Network operator should have collected a greater amount than was actually paid to the Phone-paid Services Authority, the Network operator will be liable for the difference which will be payable forthwith on demand.

#### **S. Audit Arrangements**

90. The Phone-paid Services Authority auditor ("the Auditors") have the power to request from a Network operator direct confirmation by audited statement of the actual level of out payments it made and the actual revenue it retained in respect of premium rate services

supplied by it as a Network operator during any relevant period. Such audited statement may be provided by the Auditors, or by a Network operator's auditors who must provide such a statement within such reasonable time as the Auditors may request and/or the Phone-paid Services Authority may direct.

91. Network operators will not be subject to an audit request more than once in every four years – except where previous audited statements have revealed significant inconsistencies, or where information provided to or obtained by the Phone-paid Services Authority or its auditors may give cause for concern.
92. A Network operator or its auditors must, on request, supply such further information and/or explanation as may be necessary for the Phone-paid Services Authority auditors to satisfy themselves as to the accuracy of the figures supplied.
93. If the Auditors advise it to be necessary, the Phone-paid Services Authority may direct that a Network operator subjects itself to assessment by an agreed independent auditor for the purpose of establishing whether the Network operator has fully complied with its obligations under the Code. The costs of any such assessment shall be borne by the Phone-paid Services Authority unless the independent auditor concludes that the Network operator was not in all material respects complying with its obligations under the Code or where the independent auditor was unable to reach any conclusion because of non co-operation by the Network operator, in which case the costs will be borne by the Network operator.
94. Where an audit conducted has revealed material inconsistencies in the information previously supplied to the Phone-paid Services Authority by a Network operator, the Phone-paid Services Authority may take enforcement action under the Code.

## Schedule 1

### Reserved powers of the Board

The powers of the Board, which may not be delegated to sub-Committee or to any officer or employee of the Company, are set out below.

1. Ensuring that high standards of corporate governance are observed at all times, and determining the policies underpinning the Phone-paid Services Authority's risk management framework (the detail scrutiny of which is delegated to the ARCGC). As part of annual corporate governance practice providing and demonstrating sound and authentic Leadership.
2. Establishing the overall strategic direction and approval of the Phone-paid Services Authority's strategy and policy plans, and determining priorities and supporting procedures for implementing its strategy and policy plans (further to recommendations and final approval by Ofcom, as set out in the MoU with Ofcom).
3. Ensuring that the Board operates within the limits of its statutory authority and in accordance with any other conditions relating to the use of public funds.
4. Appointment of Board members in accordance with the terms of the Memorandum of Understanding with Ofcom.
5. Establishing Committees to deal with certain aspects of the business of the Board, and setting and amending the terms of reference of such Committees.
6. Appointing independent persons from outside of The Phone-paid Services Authority to sit on a Code Adjudication Panel for a period of not more than 6 years (including any initial probationary period).
7. Ensuring mechanisms are in place for adjudication of suspected breaches of the Code.
8. Appointment of a Chief Executive to the Phone-paid Services Authority in accordance with the terms of the MoU with Ofcom, and delegating to the Chief Executive the management of day to day operational and relationship issues.
9. At least once each year, evaluating the work and performance of the Phone-paid Services Authority Board.
10. Recommending to the Company in general meeting the appointment, reappointment or removal of the auditors of the Company, and setting and agreeing changes to the accounting policies of the Company.
11. Final approval of recommendations to Ofcom for approval of Code changes, and of supporting consultations and associated documents, as set out in the MoU with Ofcom.

12. Final approval of the Annual Accounts of the Phone-paid Services Authority.
13. Final approval of Business Plan and related budgeted expenditure levels for the Phone-paid Services Authority, as set out and in accordance with the MoU with Ofcom.
14. Making decisions affecting anything outside the ordinary course of the activities of the Phone-paid Services Authority.