

Memorandum of understanding between the Gambling Commission (“the Commission”) and the Phone-paid Services Authority

This memorandum provides a framework for cooperation between the Commission and the Phone-paid Services Authority (“the Parties”). The Parties are committed to:

- promote mutual support, common understanding of each other’s responsibilities, working procedures, legal powers and constraints;
- have an agreed procedure for handling complaints;
- facilitate the effective exchange of information to assist each organisation to achieve its objectives; and
- ensure appropriate consultation on matters of mutual interest.

The Parties do not intend this memorandum to be legally binding and it shall not create any legally enforceable duties or obligations between them.

The role and function of the Commission

Under the Gambling Act 2005 (“the 2005 Act”), the Commission regulates all commercial gambling in Great Britain, apart from spread betting. This covers betting (for example on horseracing, football or other sporting events and including pool betting), bingo, casinos, lotteries, and gaming machines. It regulates remote gambling (for example by mobile phone, interactive TV or web-based) as well as the more traditional terrestrial forms of gambling. The Gambling (Licensing & Advertising) Act 2014 provides that only gambling operators licensed by the Commission are permitted to advertise to consumers in Great Britain or provide them with remote gambling facilities.

The Commission's statutory obligation in regulating these activities is to permit gambling in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives, which are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable people from being harmed or exploited by gambling.

The Commission issues licences to gambling operators and has developed a framework of Licence Conditions and Codes of Practice (“LCCP”) with which operators are expected to comply. The Commission has a wide range of powers including the power to investigate a suspected non-compliance of the LCCP and investigate and prosecute breaches of the 2005 Act, such as illegal gambling.

The role and function of Phone-paid Services Authority

Under the Communication Act 2003 ("the 2003 Act"), the Office of Communications ("Ofcom") regulates the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

Premium rate services ("PRS") are defined in section 120 of the 2003 Act and cover information and entertainment transmitted for a fee by telephone, fax, PC (email, internet), mobile telephone (SMS/WAP) or interactive digital TV. Services include sports, voting and adult chat lines, ringtones and logos, competition, directory enquiry, and business information services. The money paid by a user for a PRS is generally shared between the company carrying the service and the organisation providing the content.

Phone-paid Services Authority regulates PRS in the UK. Phone-paid Services Authority is recognised by Ofcom as the enforcement authority for PRS and Ofcom have approved the Phone-paid Services Authority Code of Practice ("the Code") for this purpose. Phone-paid Services Authority and Ofcom have a memorandum of understanding setting out how the two bodies work together in the performance of their respective functions under the Code and the 2003 Act.

PRS and gambling

PRS providers may offer a remote gambling service and as such, they would not only be required to comply with the Code, but would also require a Commission licence.

The Code requires PRS providers to comply with the law. If a PRS gambling service provider is found to be advertising to, or transacting with, consumers based in Great Britain without a Commission licence, the Phone-paid Services Authority is able to receive complaints directly from members of the public or conduct its own monitoring, and has the power to investigate service providers.

Based upon the intelligence gathered by the Phone-paid Services Authority, cases can be investigated using a range of enforcement procedures, including the more low key Track 1 procedure to swiftly address breaches of the Code; or the more in-depth investigations using the Track 2 or Emergency Procedures, which both involve close examination of the evidence that is tested before a Tribunal.

Mutual Support

The Parties agree to provide relevant support to each other in discharging their regulatory responsibilities in areas where they have mutual interests. For example, this may be in respect of remote gambling services which use PRS as a payment device, or in dealing with instances where gambling services are being provided under the guise of commercial lotteries, free draws or prize competitions where PRS is used as a payment mechanism.

Where the discharge of the regulatory responsibility is also a matter, in particular, within the remit of Ofcom or the Advertising Standards Authority, then the Parties may also liaise with them if appropriate. This will extend to matters relating to complaints handling (see below).

Complaints handling

The principle which underlies complaints handling is that the organisation best equipped to handle the complaint should do so having regard to the nature of the service and the nature and causes of public harm, including enforcement efforts.

The process to be followed can be broken into the following:

- Complaints to the Commission about PRS which are not thought to be gambling services will result in the complainant being referred to the Phone-paid Services Authority
- Complaints to the Phone-paid Services Authority about a non-PRS which is a gambling or remote gambling service will result in the complainant being referred to the Commission
- Complaints to either of the Parties about a gambling or remote gambling service which uses a PRS – The party receiving the complaint will (subject to any duty of confidentiality which might be owed to the complainant), at the earliest opportunity liaise with the other party with a view to agreeing the best approach under the circumstances.

Effective communications and information sharing

The Parties agree to share relevant information with each other when necessary and lawfully possible, in order to assist in the discharge of regulatory responsibilities. The legal gateways and information sharing requirements are detailed in appendix one. Such information may include (but is not limited to):

- sharing on-going information about applications for licences for remote gambling services using PRS as a payment mechanism;
- sharing information about gambling services using PRS which may be operating illegally – this may include referral to either party for enforcement action;
- sharing information about complaints about remote gambling services which use PRS as a payment mechanism and how those complaints are being investigated;
- sharing information about developments with prize competition and free draw mechanics where the novelty of the development may bring into question whether the service is in fact a form of gambling;
- sharing in advance of publication information about policy developments which could impact on the other party such that it may be able to offer advice or assistance to that development and assist in meeting the objectives of this MOU.

Such arrangements may be constrained by data protection and privacy requirements.

Points of contact

The point of contact in the Commission for sharing information and discussing complaints is:

Intelligence Unit
Email intelligence@gamblingcommission.gov.uk
Telephone 0121 230 6710.

For policy matters the point of contact is:

Louise Notley
Email l.notley@gamblingcommission.gov.uk
Telephone 0121 230 6695

The point of contact for Phone-paid Services Authority is:

Michael Pemberton
Interim Head of CR¹ and Enforcement - Phone-paid Services Authority
Telephone 020 7940 7407
Email mpemberton@psauthority.org.uk

Review

Under this memorandum of understanding, the Commission and the Phone-paid Services Authority aim to create and maintain positive and effective communications. In addition the Parties commit to review the effective operation of this memorandum of understanding on an annual basis.

Signed

Signed

Jenny Williams
Chief Executive
Gambling Commission

Joanne Prowse
Acting Chief Executive
Phone-paid Services Authority

Date

Date

¹ CR stands for Complaint Resolution. This relates to enforcement action undertaken under the Track 1 procedure defined at paragraph 4.3 of the Phone-paid Services Authority Code of Practice

Appendix One

Gambling Commission:

1. Information may be shared between the Gambling Commission and the Phone-paid Services Authority by virtue of:
 - S.29 and S.35 of DPA 1998
 - S.30 of the Gambling Act 2005
 - Case law
2. S.29 (3) of DPA 1998 permits the sharing of information between parties for the following purposes:
 - The prevention and detection of crime
 - The apprehension or prosecution of offenders
 - The assessment or collection of any tax or duty or any impositions of a similar nature
3. S.35 (1) of DPA 1998 permits the sharing of information where another Act, law or court order requires it.
4. With reference to S.35 (1) of DPA 1998, S.30 allows for limited exchange of information between the Commission and other parties subject to the conditions listed.
5. However the legal gateway provided by S.30 does not override restrictions established by other Acts and the further use or sharing of information provided by another body may be prohibited.
6. This agreement is pursuant to the Data Protection Act 1998.

Phone-paid Services Authority

1. Information may be shared between the Phone-paid Services Authority and the Gambling Commission by virtue of:
 - S.29 and S.35 of DPA 1998
 - Paragraph 1.6 of the Phone-paid Services Authority Code of Practice, 12th edition (2011)
 - Case law
2. S.29 (3) of DPA 1998 permits the sharing of information between parties for the following purposes:
 - The prevention and detection of crime
 - The apprehension or prosecution of offenders
 - The assessment or collection of any tax or duty or any impositions of a similar nature
3. S.35 (1) of DPA 1998 permits the sharing of information where another Act, law or court order requires it.

4. This agreement is pursuant to the Data Protection Act 1998..”
5. Paragraph 1.6 of the Phone-paid Services Authority Code of Practice permits the sharing of *confidential* information where the requestor can demonstrate that such information is required for the purpose of investigating fraud or other offences, or if it enters the public domain or becomes lawfully available from a third party free from any confidentiality restriction.

The Information sharing process

The Commission and Phone-paid Services Authority are both data controllers under the Data Protection Act 1998 and when processing or sharing personal data, both organisations are required to do so in accordance with the requirements of this Act.

The following points apply to the manner in which information will be shared and stored by each party.

1. This process does not cover information that is already in the public domain.
2. Procedures for notifying the other party of the transmission and receipt of sensitive information shall ensure all exchanges of information are traceable.
3. Any specific technical and customary standards for the packaging, transmission, recording and reading of exchanged information shall be explicitly stated, otherwise standard commercial solutions shall be applied.
4. Where other protective marking systems are used, the relevant parties shall agree common marking and handling guidelines.
5. Shared information must not be further disclosed to any other party or used for a purpose alternative to any one stated without the consent of the originating party, unless required to do so by law.
6. Both parties will ensure that, to the best of their knowledge, shared information is as accurate, up to date and adequate for the purpose disclosed and where one party discovers this not to be the case, they will inform the originating party of this.
7. Exceptions to this process shall only be permitted where they are agreed to by both parties, there is clear requirement (e.g. time-sensitive operations) or harm or injury could occur otherwise.

Information storage

8. Both parties agree that shared information should only be retained for the period necessary to achieve the objectives of the disclosure.
9. Both parties will ensure that received information is attributable and traceable to the other by marking or referencing.
10. Both parties shall apply security controls to all processing of shared information including transmission, storage and destruction and that personal data shall be protected.
11. Both parties will ensure that staff handling Protectively Marked material are appropriately trained and vetted.
12. Both parties will keep a disclosure log recording shared information.