

**Statement on introducing Special
conditions for online competition
services & online adult premium rate
services**

30/11/2016

Contents

Executive summary	2
About the Phone-paid Services Authority (PSA)	2
Refinement of proposals following consultation	2
Timetable for implementation and enforcement	3
Section 1 – Policy development	4
Consulting on proposed new Special conditions	4
Assessing the risks associated with online competition and online adult PRS	5
Section 2 – Online competition services	9
Definition of ‘online competition services’	9
Point of purchase	10
Consent to charge – double opt-in	12
Promotional material	13
Receipts	14
Opt-out processes	15
Brand awareness	16
Section 3 – Online adult premium rate services	17
Definition of ‘online adult PRS’	17
Overlap between provisions across online competition services and online adult PRS	18
Age verification and age appropriate advertising	18
Section 4 – Next steps	20
Implementation	20
Enforcement of the Code and new Special conditions	20
Other work streams	21

Executive summary

About the Phone-paid Services Authority (PSA)

The Phone-paid Services Authority (PSA) is the UK regulator of content, goods and services charged to a phone bill.

During our 30th year of operation we have been reviewing the regulation of the phone-paid services market in various ways. The consultation into proposed new Special conditions for two service types reflects our interest in improving clarity for consumers as they engage with phone-paid services. The policy has developed through close engagement with industry members, across the complex value chains, seeking to address concerns in the market relating to high complaint volumes for online competition services, and online adult premium rate services (PRS)¹.

The policy is about much more than addressing high complaint volumes – it has been seeking to understand why consumers in these particular market sectors show low satisfaction and trust ratings in our Annual Market Reviews, and why complaints raised with the PSA often point to a lack of consent to charge. Consumers often claim to have very little knowledge of the services when they see the charges appear on their phone bills. A key part of the policy development was the commissioning of research to understand this better.

There is more information about the research and stakeholder engagement in Section 1 of this Statement.

Refinement of proposals following consultation

The consultation paper was published on 17 August 2016 alongside two proposed Notices of Special conditions, one for each service type – (i) online competition services, and (ii) online adult PRS. The PSA consults on proposals raised under section 3.11 of the PSA Code of Practice – the framework for Special conditions.

The consultation closed on 12 October 2016 and we received 6 responses from a range of stakeholders, some of which asked for submissions to be treated confidentially. It is noted that a concurrent consultation on the regulatory framework, within which Special conditions exist to assist with the effective regulation of higher risk services in the market, attracted 12 responses. Some of the points raised in responses to the regulatory framework consultation were relevant to the assessment of Special conditions for online competition and online adult PRS, and were duly considered.

The PSA has refined its proposals for Special conditions. However, it is noted some responses called for proposals to be dropped entirely or for provisions to be targeted at only some of the providers of these two service types or a service type defined by a more restricted definition. The PSA has considered these submissions and determined that Special conditions should be adopted for these two service types. This Statement sets out the reasons for that decision.

¹ PRS is the term defined in statute used to refer to phone-paid services, which the PSA regulates following Ofcom's approval of the PSA Code of Practice in accordance with the Communications Act 2003.

The definition of competition service has changed slightly in light of submissions made, especially by a broadcaster who sought an amendment to clarify that broadcast competition services were not intended to be caught by these proposals. This is to make sure the concept of 'online' remains relevant to the subject of online competition services, where previously the definitions across both Notices was set out to highlight consistency in relation to this concept. That consistency is unaffected by the amendment suggested by the respondent. See the Notice of Special conditions and Section 2 for more details.

We have retained provisions as consulted upon, except for in relation to the following areas where we have accepted in part submissions from respondents:

- Insertion of a mobile originating short message service (MO SMS) method for double opt-in – ONLC 1 and ONLA 1;
- Removal of the prescriptive requirements for opt-out processes – ONLC 6 & 7 along with ONLA 5 & 6;
- Removal of reference to the lower age threshold entirely, with focus on those services that fall within Ofcom's definition of sexual entertainment services (SES) – ONLA 11²;
- Refinement of age verification requirements to focus properly on mobile content as opposed to live calls, to ensure relevance with online adult PRS – ONLA 11³.

In relation to opt-out processes, there is a clear need to improve systems for consumers. However, the PSA does not have all the relevant information available to make a clear determination as to final provisions at ONLC 6 & 7 and ONLA 5 & 6 given the responses point to ineffectual outcomes. Therefore, the PSA will be seeking industry engagement to further evidence the effectiveness of remedies and costs associated with these proposals and possible alternatives.

Until the outcome of the above review is notified to industry, the PSA calls on industry members to apply the provisions at rule 2.3.11 and section 2.6 of the Code. Where there is clear evidence opt-out processes are not effective or accessible for consumers we will use our enforcement powers to tackle those issues in the market.

Timetable for implementation and enforcement

The PSA has today published updated Notices of Special conditions for two separate service types, online competition services and online adult PRS. We have sought to add clarity throughout this Statement as to our expectations for such services, and in particular outline our approach to brand identification in Section 2.

The PSA is providing service providers who operate services to which these Notices of Special conditions apply with a set period in which to make any necessary changes to the promotion and operation of the service. We encourage providers to make the changes in the shortest possible timescale to achieve the necessary consumer protection that this policy seeks to establish. We expect all relevant services to operate in compliance with these Notices by no later than 00:01 on 4 January 2017.

² ONLA 11 becomes ONLA 9 in the final version of the Notice of Special conditions due to other changes.

³ As above (Footnote 2).

Section 1 – Policy development

Consulting on proposed new Special conditions

- 1.1 When the PSA seeks to adopt new Special conditions under paragraph 3.11 of the Code, under normal circumstances it will consult publicly to seek advice and feedback from stakeholders on the underlying basis for any new provisions and the proposed Notice of Special conditions. Following discussions with industry stakeholders via the Rapid Response Team framework to address concerns about online competition and online adult PRS in late 2015, consumer perceptions were tested through a piece of research undertaken for the PSA by Craft Realities. The research findings were set out in a summary report published alongside our consultation in August 2016.
- 1.2 The research pointed towards significant concerns with consumer understanding of phone-paid service charges associated with online competition and online adult PRS, and the consumer experience at the point of purchase, when opting out of services, and with brand awareness affecting the ability of consumers to seek assistance when issues arise.
- 1.3 Given the prior engagement with the Rapid Response Team, and the access to the research in Spring 2016, the PSA was able to undertake significant pre-consultation activities when developing proposals to address risks identified with online competition and online adult PRS. The formal consultation paper then set out proposals formally and draft Notices of Special conditions were published on 17 August 2016.
- 1.4 In the consultation we asked eight questions to assist with our assessment of the policy strategy being pursued, the defined service types to which we sought to impose Special conditions, and the provisions themselves that were set out to improve the consumer experience. All the questions except for Question 5 dealt with both service types – the exception being directed at the provisions set out in the Notice of Special conditions for online adult PRS that dealt with age verification and age appropriate promotions.
- 1.5 Question 1 looked beyond the proposals, recognising that the measures set out may not address all consumer issues, and specifically invited respondents to consider what additional requirements may be necessary to improve post-contractual consumer journeys. The question asked:
“Do you agree that additional responsibilities placed on network operators and Level 1 providers, to offer redress upfront and inspect consumer complaints and disputed PRS payments, are necessary to improve the post-transaction consumer journey and increase consumer confidence? Are there additional or other measures that could deliver this outcome?”
- 1.6 While respondents understood the need to meet consumer expectations in delivering access to customer care, industry members expressed different views as to who was best placed to assist consumers. While network operators were frequently the first place a consumer approaches for help, Level 2 providers were keen to deal with the issues directly without matters being addressed directly by the network operators or

Level 1 providers. However, examples were given when this was seen as an unnecessary complication and it was noted that phone-paid services as a payment method may be more competitive with other payment facilities if consumers could address issues directly with their bill provider or the intermediary responsible for the payment being arranged – the Level 1 provider.

- 1.7 The issues considered as part of this consultation and the responses received highlight the need to continue working towards a solution that benefits consumers, offers a more consistent approach across the phone-paid services market, and delivers swift outcomes for both consumers and Level 2 providers seeking to offer these phone-paid services. A number of work streams underway will help to address these, including future research into the consumer journey and our consumer engagement strategy, which is being developed.
- 1.8 The PSA is not proposing additional Special conditions at this stage and yet recognises industry's willingness to consider ways to make complaint handling more accessible and effective, in compliance with rules under section 2.6 of the Code of Practice.

Assessing the risks associated with online competition and online adult PRS

- 1.9 Question 2 looked to test the necessity for Special conditions for two separate service types, both of which were a cause for concern and were discussed by the Rapid Response Team in late 2015. It was worded as follows:

“Do you agree with us that Special conditions are necessary for online competition and adult services? Please provide an explanation to support your response.”

- 1.10 The online competition and online adult PRS markets were both causing disproportionately high levels of complaints to Mobile Network operators and the regulator, and many consumers were stating a lack of awareness of any consent to charge. From the consumer perspective, it appeared charges were being applied to their accounts without consent. However, the Rapid Response Team acknowledged that in many cases consumers were interacting with service promotions prior to charges appearing on the phone bill.
- 1.11 The research by Craft Realities was commissioned to explore this disconnect between interaction with phone-paid services and the resulting payments. The research observed consumers engaging with online competition and adult services. It drew a number of conclusions, including:
 - It is quite possible for a consumer to provide unintentional consent to an online competition or online adult service.
 - In relation to subscription online competition and adult services, consumers can remain unaware that consent to recurring charges has been given.
 - Consumers from the research are unaware that it is possible to pay for internet content via a phone bill.
 - Opt in and opt out mechanisms are insufficiently robust or transparent from a consumer perspective.

- Consumers from the research regard online competition and adult services as higher risk than journeys such as PayPal/Amazon/iTunes purchase flows or SMS voting flows.
- The findings suggest issues with these services are undermining consumers' trust in their MNOs.

1.12 The PSA has considered the service types in light of the research and industry engagement associated with the development of this policy. We have found common elements cutting across both service categories, which in other aspects are very distinctive, included the following:

- Promotions often involved *push* instead of *pull* mechanics;
- Services relied less on a clear brand and more on the desirability of the prize in terms of competitions, and the product such as video content in terms of online adult PRS;
- Both attracted the use of click training and such marketing was effective in terms of: inducing clicks to answer quiz questions in terms of competitions; and, answering product filtering and age verification questions in terms of online adult PRS.

1.13 For quite different reasons, respondents to the consultation expressed concern at being associated with the other service type. Competition service providers wished to be disassociated with age restricted content; and adult service providers expressed concern at the level of scrutiny placed on their services when the apparent abuse in terms of marketing was seen to be more effective when pointing to competition services. As set out above, it was clear from the research that the same issues were having an impact on both markets. However, the separate Notices of Special conditions do highlight the distinct approaches being taken with regard to each service type based on the independent assessment of each category as against the risk framework. Where risks were aligned similar solutions could be proposed to address those areas of overlap when it comes to consumer experience. Where the risk differed, the proposed regulatory controls also differed.

1.14 The PSA has continued to track complaint levels. The evidence gathered shows ongoing investment in affiliate marketing and an absence of clear messaging at the point of purchase has continued to generate high levels of consumer complaints related to both service types⁴. Some industry members have commented that other regulations, including the Consumer Contract Regulations, and industry measures under development are capable of addressing the market issues. However, to date the complaint evidence supports a need for further regulatory intervention, in keeping with the proposals set out for consultation.

1.15 Question 3 explored whether our assessment of risks and the resulting proposals were suitably linked. At pages 7 – 11 of the consultation paper for online competition

⁴ Complaints received by PhonepayPlus: Sep 2014 – Sep 2016

services, and pages 12 – 15 for online adult PRS, the tabulated assessment highlighted the suggested connections throughout. The question we posed stated:

“Do you agree with our assessment of the risks posed to consumers by these services and our policy proposals as set out at pages 7 to 11 and 12 to 15? Please provide an explanation to support your response.”

- 1.16 A general theme in responses pointed directly to affiliate marketing suggesting that was a root cause of the consumer issues being addressed. Questions were raised as to the general approach to tackle Level 2 provider activities through Special conditions instead of attempting to reduce bad practices in marketing. This is a theme raised in prior consultations associated with both Code development and guidance for industry. The PSA remains focussed on its remit to regulate the phone-paid services market, and as such has set out proposals to improve the information and transparency of pricing flowing from service providers to consumers. These aim to reduce the ability of rogue affiliate marketers to generate leads that are successful at pushing through conversions as the Level 2 providers will correct any misinformation presented at the point of purchase.
- 1.17 This consultation was undertaken in tandem with a consultation on our regulatory framework under the 14th Code of Practice. Reflecting on industry comments raised across both these consultations, it appears that the general approach to risk assessment is supported. Stakeholders focus their comments on the application of the risk taxonomy and the impact of individual provisions. In subsequent sections of this statement, the PSA sets out the specific concerns more directly.
- 1.18 It is worth flagging at this stage where industry saw weaknesses in the link between risk assessment and adoption of Special conditions:
- **Double opt-in** – Reaction to proposals suggested the options available for industry to achieve verifiable consent to charge were too limited and ignored valid mobile originating short message service (MO SMS) solutions that were equally capable of reducing or removing identified risks.
 - **Receipts** – Having supported the need for a clear point of purchase, stakeholders suggested that remedy would impact on consumers and reduce the need for regular receipts when charges are made, especially in relation to subscription charges. As such, requirement for receipts is seen to be unnecessary and potentially an unwanted element of the billing mechanic from a consumer perspective.
 - **Opt-out processes** – It was argued that the risks identified did not point to a need for additional regulation of opt-out processes. The Code already sets out requirements for access to effective complaint handling processes and methods of exit that work for consumers. It was suggested that the Code was correct to permit low-cost methods of exiting a service, and nothing associated with the service types under scrutiny justified a free method of exit.
 - **Adult services** – Some respondents made a general challenge against the risk assessment of online adult PRS suggesting the data did not point to an issue in

this sector. Action4 suggested that the measures were based not on the risk assessment but on a moral judgment.

- 1.19 The PSA has considered all the responses to the consultation and addressed these points in different ways. In terms of double opt-in and opt-out processes, we have made changes to proposals seeking to take forward only those Special conditions that are clearly demonstrated to address the risks identified at this stage.
- 1.20 In terms of receipts we have decided to retain the requirements as consulted. This is because there are consumer benefits derived from receipts associated with phone-paid service charges in relation to brand awareness and the improved clarity around the payment facility as a whole. At this time there is justification for taking steps to improve the consumer experience so awareness grows. We will keep track of consumer satisfaction levels and other indicators to assess whether these measures remain necessary in due course.
- 1.21 Finally, in terms of adult services, the PSA are adopting Special conditions for a specific group of adult services. The risks associated with online adult PRS are clearly evidenced in the consumer research and in the findings of the recent *Annual Market Review*, as well as the continued disproportionately high level of complaints. As such, we are proceeding with a range of Special conditions to tackle specific issues. These measures are designed to give consumers greater awareness of the payment facility and costs associated with these phone-paid services. While we do anticipate some impact on conversion rates, consumers will still be able to access and use these services with greater confidence and control.

Section 2 – Online competition services

Definition of ‘online competition services’

2.1 Whenever the PSA look to adopt Special conditions, it is important to be targeted and have a clear understanding of the service type under assessment. Furthermore, for the effective implementation of any additional measures, it is important to identify the service type to which those measures apply. The definition is the primary consideration, and is found at the start of any Notice of Special conditions.

2.2 Both service types considered as part of this consultation had definitions that required an explanation of the concept of ‘online’. We suggested the definition of ‘online competition services’ was as follows:

“...those premium rate services (PRS) that are provided fully or partially online, including services that initiate a PRS transaction online, where the primary promotion is online and presents a consumer with a chance to win a prize by competing with other entrants, and which is paid for on a pay to enter or subscription basis.

As presented in guidance, some examples of competition services would be:

(a) Lotteries;

(b) Other games with prizes;

(c) An entry mechanism into a draw;

(d) Information about prizes and how to claim them.

‘Online’ refers to those services consumed on personal computers or mobile devices (such as smartphones, tablets, etc.) whether accessed via a Wi-Fi connection or directly through mobile internet (2G, 3G, 4G, etc). If the consumer is given the choice to consume the digital products or services online or to download them for off-line use, the service must still comply with these Special conditions.”

2.3 The final paragraph outlining the concept of ‘online’ was drafted in general terms and was designed to cover all service types for consistency. That does not mean the Special conditions have broader effect, but that any reference to ‘online’ in future regulation is standardised and consistently applied.

2.4 A broadcaster and other respondents identified an issue with this approach when thinking about competition services. It was submitted that it is hard to envisage any competition service meeting the core definition involving a system for downloading the service for offline use. If it was gaming or indeed adult mobile content, such as videos or images, then downloading is a factor, but for competitions the downloading element appears redundant and unhelpful.

2.5 The PSA accepts these submissions and sees no difficulties in amending the definition so that the second sentence associated with the concept of ‘online’ is removed entirely.

2.6 Respondents have also questioned the specific reference to a Wi-Fi connection in relation to the concept of ‘online’ where the reality is that, however the consumer accesses internet content, phone-paid services may be promoted ‘online’. We had a

number of suggested amendments and while the PSA accepts the submitted concerns, for simplicity we have decided to amend the definition of 'online' to read as follows:

“Online’ refers to those products or services consumed on personal computers or mobile devices (such as smartphones, tablets, etc.) and are provided or accessed via a Wi-Fi connection or directly through an internet gateway. (2G, 3G, 4G, etc). If the consumer is given the choice to consume the digital products or services online or to download them for off-line use, the service must still comply with these Special conditions.”

- 2.7 Some respondents expressed concern that the broad definition of 'online competition services' did not target specific services that cause consumer harm and as such service providers who currently did not generate significant complaint levels would be equally affected by the adoption of Special conditions. This was submitted to be unfair and disproportionate.
- 2.8 The first point to raise in response to this general challenge is to reflect on the nature of the additional measures being applied. The PSA is not seeking to restrict access to services at all. Instead it is setting standards for the presentation of key information at the point of purchase, the need for robust consent to charge, the issuance of receipts, and the notification to the PSA when the service is launched or shortly thereafter.
- 2.9 As such, those service providers already giving clear visibility to the phone-paid service transactions entered into by consumers will either be complying with the new measures or have no difficulty in meeting the requirements. Furthermore, where consumers are already choosing to engage with a service with full visibility of the costs associated with it and the nature of the payment facility, those consumers are likely to continue to make use of the service.
- 2.10 We anticipate some decrease in conversions as a result of the changes, which may occur where consumers were previously not aware of the charges or the payment facility they would be using to make the transaction. Some consumers having gained that knowledge from the clear point of purchase and the friction built into the opt-in process may choose to purchase other products and services, or not to proceed with any such transaction. This will have a positive impact on the wider market and boost confidence in phone-paid services. It is anticipated such confidence could translate into additional purchases albeit these may be made with competing products and services.
- 2.11 For these reasons, and to fully respond to the consumer concerns identified in the research, the PSA intends to retain the definition of online competition services and apply effective Special conditions to those services that fall within it.

Point of purchase

- 2.12 For online competition services, ONLC 1 sets out expectations for the clarity of information presented in a distinctive point of purchase. Respondents, including the Association for Interactive Media and Entertainment (AIME), indicated agreement with the principle behind the provision, highlighting the overlap with the Code outcome for transparency and pricing at section 2.2. However, AIME commented that the provision itself could be presented as an outcome and leave greater flexibility for how it is achieved.

- 2.13 AIME also commented on the use of the phrase “abundantly clear” suggesting this went beyond what was necessary, and by definition led to onerous over-regulation. On this point, the PSA considers that the emphasis is on the clear separation established by compliance with the requirement. Therefore the word “*abundantly*” is removed from the final version. We expect clarity to be achieved by service providers in compliance with this provision.
- 2.14 AIME and ImpulsePay, along with other respondents, make reference to the Consumer Contract Regulations (CCRs) at various points during their responses. In relation to ONLC 1 the emphasis is on the capacity for the CCRs to achieve similar standards. As is widely recognised, the PSA enforces its Code and leaves other enforcement bodies to act on behalf of consumers when other regulations are breached. The PSA has endeavoured to make sure these provisions do not conflict with the CCRs or other regulations. By complying with ONLC 1 it is hoped service providers will be meeting expectations set out elsewhere.
- 2.15 The PSA intended to permit a certain level of flexibility for the implementation of ONLC 1, while indicating the key aspects of any point of purchase that must be delivered to meet consumer expectations. These key aspects are derived from the consumer research findings and reflect on the nature of complaints reported to the PSA. ONLC 1 states:
- “The point of purchase must be separated from service interaction, including its promotion, in a clear and effective way to allow the consumer to consider their purchase. At the point of purchase, PRS providers must:*
- (a) clearly signpost the point of purchase by making it distinctive from other aspects of the service (such as by design and colour scheme) and take all reasonable steps to make that distinction abundantly clear, avoiding any confusion between service promotion and the point of purchase;*
 - (b) ensure that consumers, when committing to a purchase, explicitly acknowledge that the purchase implies an obligation to pay;*
 - (c) ensure that consumers are made aware, in a clear and prominent manner and directly before the consumer commits to a purchase, of the cost of the service, and the frequency of charges; and*
 - (d) indicate that the PRS payment will be added to the consumers phone account.”*
- 2.16 The provision leaves it open to parties in the value chain to determine how to achieve the clear separation of the point of purchase from the service interaction, including its promotion. There is flexibility for each limb of the provision:
- (a) design, colour scheme,
 - (b) wording used to express the obligation to pay,
 - (c) methodology for increased prominence of the pricing information, and
 - (d) wording used to indicate the phone-paid service charge will appear on the consumer’s phone bill.

2.17 Each limb is important and the adoption of this Special condition is to make sure the consumer gets the right level of information to avoid unexpected charges appearing on their phone-bill. This is central to our response to the consumer research findings, and as such the PSA will retain the provision in the final Notice published alongside this Statement.

Consent to charge – double opt-in

2.18 ONLC 2 deals with the need to confirm the consumer’s willingness to pay and also to give the broader value chain greater visibility of the consumer’s engagement with the service. Since opening the consultation in August 2016, the PSA has now announced a review of technical expertise in the phone-paid services market for consent to charge. This is likely to lead to a refreshed understanding of how consumers engage with services and make use of these payment facilities. Such understanding may lead to new guidance on the topic.

2.19 In terms of these proposals, we have consulted on establishing double opt-in for these specific service types. Again we have looked to establish some flexibility in terms of how opt-in processes are created and operated, but with some stipulation as to mechanisms capable of meeting consumer expectations and achieving a robust level of consent before charges are applied to consumers’ phone bills.

2.20 AIME highlighted that mobile originating short message services have been successfully used by industry members over many years to gain an opt-in for charges to commence. It suggested some amendments to the provision to introduce three different MO SMS models:

- Receipt of an MO SMS following instructions issued to consumers via MT SMS;
- Receipt of an MO SMS following on-screen instructions issued to consumers;
- Receipt of an MO SMS following use of technology to pre-populate SMS composition tools within a consumer’s handset, making it easier for consumers to send the MO SMS.

2.21 Reflecting on the need for flexibility in the provision, the PSA is not minded to be prescriptive in its approach to including an additional option for MO SMS opt-in. However, it is accepted that issuance of an MO SMS to a shortcode controlled by the same Level 1 provider involved in the phone-paid service billing process is capable of achieving the same objective. Such MO SMS requests for charges to commence must be consumer controlled. Furthermore, third party evidence that an MO has been received is considered less robust evidence of consent to charge, hence the PSA seeking to involve the Level 1 provider who is also providing access to the Mobile Network operator for the billing element of the phone-paid service being used by the Level 2 provider and its consumers.

2.22 To achieve this added flexibility in ONLC 2, the PSA will insert the following wording as a third sub-paragraph within the provision:

- (c) Use of a secure, consumer controlled, mobile originating short message service (MO SMS) system for consumers to notify the Mobile Network operator and Level 1 provider(s) of confirmation of the charge request.*

- 2.23 AIME also seek the addition of parameterised links as a further option for robust consent to charge. At the present time these have not been fully demonstrated to the PSA for the option to be added to the list within this provision. As part of the wider review of consent to charge, the PSA will consider such technology and where it is demonstrated that such options deliver an equivalent level of robust consent to charge, visible to the value chain involved in the operation of the phone-paid service, we will consider amending the Special conditions in future.
- 2.24 As at the launch of the Special conditions for these specific service types, ONLC 2 will only permit the flexibility afforded within the three options set out in the Notice published alongside this Statement.

Promotional material

- 2.25 Industry respondents welcomed the call for greater brand awareness to be achieved through promotional material, and suggested that the provision at ONLC 3 took an outcomes-based approach. However, given the concept of brand identity is not covered in guidance or elsewhere in PSA regulations, respondents frequently sought some additional clarity as to brand identification.
- 2.26 The PSA recognises the complexity associated with building and maintaining a brand, and acknowledges there are a range of methods for brand identification. It is for this reason that flexibility is built into the outcomes-based approach taken with ONLC 3. For simplicity, the PSA considers two aspects of brand management: (i) corporate branding – where the company name is the focus of branding across its products and services; and, (ii) service branding – where a company builds a brand around a particular product or service it offers, or creates a range of different successful products or services with each being branded uniquely.

Corporate branding

- 2.27 Some of the biggest global brands are built around the corporate identity itself and whether they offer a single service type or a complete range of products and services, each new offering is linked in to the corporate branding. Consumer trust in the corporate brand is key to expansion of service offerings and there are incentives to improve those services to maintain the reputation of the corporate image associated with that branding.

Service branding

- 2.28 This can come about for a variety of reasons but is often associated with success for a business over a particular product it brings to market. Where the original branding is seen as associated with that successful consumer engagement, it may be that the franchise is built upon those foundations rather than the underlying corporate identity. Some consumers may have little awareness of the business behind the product and so long as the product works and fulfils the consumer's needs, there is little need to invest in the expansion of the corporate branding. Indeed, some businesses may look to re-name the corporate entity to align with the service branding.

Brand identification

- 2.29 Based on the above, the key elements to both corporate and service branding are consumer awareness and consumer engagement. The consumer research undertaken by Craft Realities highlighted many consumers could not distinguish between phone-paid service providers based on the nature of advertising for both competitions and some online adult mobile content. Both emphasised the product or prize on offer, with consumers often misaligning these things with third party brands that had no affiliation to the service provider. With multiple competition providers all promoting the 'latest' gadgets within similar online media, utilising the same affiliate marketing practices to reach their audiences, the scope for confusion on the consumer side is clear.
- 2.30 By shifting focus away from the prizes on to a clear brand, the intention is to raise awareness of the service providers in the market competing for consumer engagement. This should improve the consumer experience pre- and post-transaction. Regardless of whether the consumer recognises the service providers activities in the phone-paid services market through corporate branding or service branding, ONLC 3 requires providers to clearly identify the brand of the current service offered to and used by consumers.
- 2.31 If a particular service provider has multiple competitions operating in the market at the same time, it is recommended that corporate branding is emphasised in compliance with the provision. The services may each be operated separately but brand management will be easier to control with corporate branding being prominently displayed across the whole range.
- 2.32 If a smaller number of competition services operate around particular prizes, then there may be scope for service branding to be developed. So long as consumers are clear as to which service(s) they are using, service providers are capable of complying with ONLC 3 while managing a number of distinctive brands.
- 2.33 In relation to brand awareness, where service branding is the focus of promotional material, as opposed to corporate branding, it is important that service providers comply with the notification requirement set out at the end of the Notice of Special conditions. This is covered in more detail later in this section of the Statement.
- 2.34 Nothing in the responses to ONLC 3 or 4 suggested any amendments were required and as such the PSA are proceeding to adopt them in the final version of the Notice of Special conditions published alongside this Statement.

Receipts

- 2.35 This provision was widely accepted for one-off purchases and when subscription services were first initiated. This has become standard practice across various payment facilities, including on the operator billing system, Payforit. Questions were raised as to the necessity for receipts to be issued each time a charge is applied to the consumer's phone bill. Respondents suggested that consumers had little interest in such messages and may be confused by them.
- 2.36 The PSA sees the issuance of receipts as a key aspect of its response to the consumer research as it has a role in improving consumer awareness of the payment facility used

as well as informing consumers of specific services to which they are subscribed. Such information puts the consumer in control of their spending and raises awareness of the frequency of those charges.

- 2.37 The PSA does acknowledge that these objectives are shared across other provisions, especially ONLC 1 dealing with the point of purchase. We will keep the market under review as well as make an assessment of the impact of these Special conditions following implementation. One aspect of that review will be to assess the ongoing need for this frequency of receipts based on consumer awareness increasing in response to other factors.
- 2.38 The PSA will proceed with the requirements as consulted.

Opt-out processes

- 2.39 The PSA proposed a prescribed means of opt-out, creating flexibility by explicitly setting out means for opt-out based on payment mechanics and permitting either mechanic to be used so long as the appropriate opt-out process was in place. The two payment mechanics included in the Notice were:
- Operator billing platforms; and,
 - Premium short messaging service (PSMS) charges.
- 2.40 While the prescribed means of opt-out varied to suit each payment mechanic, the objective was the same for each: achieve a clear method of opting out from future charges by allowing consumers to respond directly to any service messages received. Importantly, in response to the consumer research, the PSA considered making the opt-out process entirely free for the consumer. This was a shift in policy for these particular service types, given the Code permits complaint processes to exist at 'low-cost'⁵. There is nothing in paragraph 2.3.11 of the Code relating to the cost of termination of a service, only that no further charges should be applied after the consumer has opted out of the service.
- 2.41 Respondents expressed concern at this shift in policy suggesting that consumers that are signed up to a subscription service are likely to accept a nominal charge for termination of the service. It was argued that to make it entirely free was unjustified and disproportionate. Respondents also highlighted that where the opt-out mechanic failed the current Code provision was sufficient to deal with the consumer harm without the need for more prescriptive regulation.
- 2.42 Based on the research findings, there is a clear need to improve opt-out processes for consumers. However, the PSA does not have all the relevant information available to make a clear determination as to final provisions at ONLC 6 & 7 and ONLA 5 & 6 given the responses point to ineffectual outcomes. Therefore, the PSA will be seeking industry engagement to further evidence the effectiveness of remedies and costs associated with these proposals and possible alternatives (the review).

⁵ See rule 2.6.2 of the Code in relation to *Complaint handling*.

- 2.43 Following the review the PSA may decide to re-introduce the provisions at ONLC 6 & 7 and ONLA 5 & 6 (or a variation of these provisions) following reasonable notice. The review may also lead the PSA to consider making opt-out free for all phone-paid services, which would, following consultation, require a small Code amendment at paragraph 2.3.11. Other potential outcomes may be improved proposals for Special conditions for relevant higher risk services, or refreshed guidance to highlight the expectations to be met under the Code.
- 2.44 Until the review is completed and the outcome notified to industry, the PSA calls on industry members to apply the provisions at rule 2.3.11 and section 2.6 of the Code. Where there is clear evidence opt-out processes are not effective or accessible for consumers we will use our enforcement powers to tackle those issues in the market.

Brand awareness

- 2.45 The PSA set out proposals in the Notice of Special conditions for online competition services at ONLC 8⁶ relating to notification requirements. The information sought from service providers within 48 hours of launching a new service is listed within the provision itself and has been established to equip the PSA to respond to consumer enquiries or complaints. It is also capable to improving the information available on the number checker service offered on the PSA website, which is designed to provide consumers with information about the service and to direct them to the Level 2 provider responsible for the service to seek assistance.
- 2.46 One benefit of the information being available to consumers at the point of enquiry is that it potentially reduces confusion and improves consumer awareness. Both of these are capable of improving the satisfaction levels indicated for these relevant service types in recent *Annual Market Reviews* undertaken on behalf of the PSA. Industry have been supportive of this goal and the provision set out to achieve it.

⁶ ONLC 8 becomes ONLC 6 in the final version of the Notice of Special conditions due to other changes.

Section 3 – Online adult premium rate services

Definition of ‘online adult PRS’

- 3.1 As indicated in Section 2 above, whenever the PSA look to adopt Special conditions, it is important to be targeted and have a clear understanding of the service type under assessment. Furthermore, for the effective implementation of any additional measures, it is important to identify the service type to which those measures apply. The definition is the primary consideration, and is found at the start of any Notice of Special conditions.
- 3.2 While respondents were critical of the approach taken when adopting Special conditions for online adult PRS, the definition itself was not directly challenged. Some confusion did arise later in the Notice in relation to reference being made to ‘under 16’ year olds suggesting the proposed Notice went beyond sexual entertainment services (SES). The majority of respondents indicated that if the definition was restricted to SES then that was appropriate.
- 3.3 One respondent sought to highlight ‘glamour’ services may pose a higher risk to consumers as evidenced by recent PhonepayPlus and PSA Tribunal adjudications for breach of the Code. The argument was made in two forms: first, suggesting that the problems were not in the online adult PRS market at all therefore the Special conditions should not be applied to such SES; second, suggesting that ‘glamour’ services should be captured to avoid problems migrating from SES to online ‘glamour’ content to avoid the new regulations.
- 3.4 Separate from these proposals, the PSA is reviewing the overlapping issues affecting consumers of SES and glamour video content. Already it is recognised that marketing of these services can be conjoined with age verification filters playing a role in directing consumers who interact with affiliate marketing to content suitable for over 18’s or the broader market including 16 and 17 year olds. One aspect of our review will be to explore whether content being presented to the wider audience meets the British Board of Film Classification’s (BBFC) definition of ‘adult’ material thereby making any such promotion to under 18’s inappropriate.
- 3.5 Turning back to these proposals, the evidence from consumer research points to particular issues for online adult PRS, as defined in relation to Ofcom’s definition of SES. It should be noted that Ofcom’s definition of SES and the meaning of ‘glamour’ services are not mutually exclusive. The definition of SES focuses on the nature of the service and therefore a glamour service may still fall within the definition of a SES depending on the nature of such services. The PSA will therefore proceed with implementing Special conditions under the definition as consulted on in August 2016. The confusion relating to ‘under 16’ will be addressed by the removal of this reference to the lower age threshold at ONLA 11⁷.

⁷ ONLA 11 becomes ONLA 9 in the final version of the Notice of Special conditions due to other changes.

Overlap between provisions across online competition services and online adult PRS

3.6 To avoid unnecessary repetition in this Statement, there are a number of issues identified by respondents to the consultation that affect provisions in both the Notices of Special conditions. This is true for the following provisions relating to online adult PRS:

- ONLA 1 – Point of purchase⁸
- ONLA 2 – Consent to charge - ‘double opt-in’⁹
- ONLA 3 – Promotional material¹⁰
- ONLA 4 – Receipts¹¹
- ONLA 5 & 6 – Opt-out processes¹²
- ONLA 12 – Brand awareness and notification requirements¹³

3.7 Where changes have been made to the equivalent provisions in the Notice of Special conditions for online competition services, the PSA will make the same amendments for online adult PRS. The reasons for these amendments are to achieve consistency and make sure such provisions are effective. Where we have accepted arguments raised in relation to online competition services, it follows that the same arguments are persuasive for these services as well.

3.8 It is noted that some respondents did make arguments in terms of the provisions listed at 3.6 above. It should be noted that the PSA took consideration of those arguments when assessing the equivalent provisions in relation to online competition services.

3.9 The Notice of Special conditions for online adult PRS published alongside this Statement should be read in full to see how these changes have been implemented consistently across the two service types.

Age verification and age appropriate advertising

3.10 A number of the proposed provisions set out in the Notice of Special conditions for online adult PRS carry across from other such Notices dealing with service types associated with the adult sector. In adopting a new set of regulations for online adult PRS it was considered appropriate to achieve consistency across the market.

3.11 It is again noted that some respondents challenged the evidence justifying any adoption of Special conditions for this service type. Some respondents, including Action4 suggested the adult sector did not pose a higher risk such that it warranted additional prescriptive measures, found in ONLA 7 to ONLA 11¹⁴. Given the legislative

⁸ Paragraphs 2.12 to 2.17 of this Statement

⁹ Paragraphs 2.18 to 2.24 of this Statement

¹⁰ Paragraphs 2.25 to 2.34 of this Statement

¹¹ Paragraphs 2.35 to 2.38 of this Statement

¹² Paragraphs 2.39 to 2.44 of this Statement

¹³ Paragraphs 2.45 to 2.46 of this Statement

¹⁴ These become ONLA 5 to ONLA 9 in the final version of the Notice of Special conditions due to other changes.

background to regulation of adult services, such as SES, and the findings of the recent consumer research, the PSA intend to proceed with its proposals. These include provisions relating to age verification and age appropriate advertising, which are consistently applied across the adult sector for phone-paid services.

3.12 Other respondents focussed on individual provisions, accepting the rationale behind each of them, but indicating particular problems with ONLA 11¹⁵. Respondents, including AIME, highlight that reference is made to ‘operators’ implying their role in providing the service and their capacity to add a layer of protection against underage use of an adult service. Quite rightly, respondents highlight the types of service caught by the definition of online adult PRS, and the fact that these are unlikely to involve voice calls or operators actively engaging in dialogue with consumers engaging with the service.

3.13 The PSA has duly considered the provision again and retained a focus on the objective of filtering out those underage users that are identified through the operation of the online adult PRS. The new wording for ONLA 9, as numbered in the final version of the Notice of Special conditions, is set out below:

“All providers of services must take steps to verify the age of consumers before they can access the service itself. This includes, but is not necessarily limited to, use of an age verification question and age verification filters ~~operators trained to identify any other indication that a caller~~ to prevent access to users who may be under 18, or under 16 as applicable.”

3.14 As indicated above, in reaction to the confusion posed by reference to “under 16” users in relation to adult services, and in accordance with the wording of the relevant Code provisions in Code Annex 2, paragraph 1.1(f) and (g), we have removed text “or under 16 as applicable”.

¹⁵ ONLA 11 becomes ONLA 9 in the final version of the Notice of Special conditions due to other changes.

Section 4 – Next steps

Implementation

- 4.1 The PSA has today published updated Notices of Special conditions for two separate service types, online competition services and online adult PRS. We have sought to add clarity throughout this Statement as to our expectations for such services, and in particular outline our approach to brand identification in Section 2 above¹⁶.
- 4.2 The PSA is providing service providers who operate services to which these Notices of Special conditions apply with a set period in which to make any necessary changes to the promotion and operation of the service. We encourage providers to make the changes in the shortest possible timescale to achieve the necessary consumer protection that this policy seeks to establish. We expect all relevant services to operate in compliance with these Notices by no later than **00:01 on 4 January 2017**.
- 4.3 Where providers approach the PSA with evidence relating to services subject to the Special conditions Notices, suggesting that they are capable of operating in full compliance with the Code and offer equivalent standards as those set out in the Notices, these will be fully assessed. Such consideration may lead to further consultation on changes to the provisions contained within the Notices to respond to the new technical standards. Alternatively, it may lead to further consultation on changes to the relevant definitions of service types carving out those services, either online competition or online adult PRS, which may operate outside of the scope of the Special conditions framework.
- 4.4 As stated at paragraph 2.23, the PSA will consider parameterised links as a means to establish effective consent to charge, and industry are able to raise other service mechanics and solutions in due course.

Enforcement of the Code and new Special conditions

- 4.5 From **4 January 2017** the PSA will begin enforcing the new provisions set out in the Notices of Special conditions. Just because the services fall within a category of higher risk services does not mean all enforcement activities will be formal in nature. Where there is strong cooperation with any investigation and acceptance of any identified breaches of these provisions, it still may be possible to use the Track 1 procedure and agree an action plan in accordance with the Code and supporting procedures.
- 4.6 We note that industry stakeholders have suggested some providers may seek to undermine the steps taken in reaction to the high complaint volumes and set up alternative subscription-based services that fall outside of these new Notices of Special conditions. Where there is evidence of consumer harm migrating from online competition services or online adult PRS towards other sectors, we will consider any potential breaches of the Code, including Rule 2.3.1 relating to fair and equitable treatment of consumers. The PSA will use its enforcement powers under the Code to protect consumers where there is such evidence of potential breaches. The PSA will

¹⁶ Paragraphs 2.25 to 2.34 of this Statement

also use the risk assessment framework to consider whether Special conditions are required for a broader set of online services, including such services.

Other work streams

- 4.7 The PSA will review the impact of these new provisions over time and will consider whether to introduce additional measures are required to further protect consumers, or whether to reduce regulatory burdens on providers where appropriate to do so. Any such review will attempt to identify where benefits are accrued from some of the new provisions, such as those relating to the point of purchase, and whether others can be scaled back in light of any increased consumer awareness in these sectors.
- 4.8 In light of the responses to this consultation, the PSA will undertake some further work on opt-out processes seeking industry engagement to further evidence the effectiveness of remedies and costs associated with current proposals and possible alternatives. We are committed to improving the consumer experience when users of a service decide to terminate subscriptions in light of the consumer research findings. The PSA will look to bring forward its proposals and commence engagement as soon as possible.
- 4.9 Some respondents have highlighted issues with the use of shared shortcodes during this consultation process. The PSA acknowledges that this goes beyond the service types that are subject to these proposals, and as such we will consider the impact on consumers generally when shared shortcodes are used.