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**Guidance and new Special conditions associated with the  
13th edition of the Code of Practice**

**Consultation Response by the  
Association for Interactive Media and Entertainment  
(AIME)**

## **AIME ([www.aimelink.org](http://www.aimelink.org))**

AIME is the UK based trade organisation representing the commercial and regulatory interests of member companies involved in the interactive media and entertainment Industry - where consumers interact or engage with services across converged media platforms, and pay for those services or content using a variety of micropayment technologies.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain, which is generally supported by Premium Rate (PRS) billing facilities, and our membership, represents in excess of 80% of the annual industry PRS revenues.

AIME promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

## **Member Input**

AIME welcomes the opportunity to respond to the PhonepayPlus Consultation on the 13<sup>th</sup> Code of Practice

To assist AIME in providing a comprehensive input to PhonepayPlus across its whole Membership base of 84 companies, AIME researched Members in the following manner;

- Online Survey
- One-to-one discussions
- Workshop
- Written responses

AIME Members who operate in the PRS markets are broadly split into three categories although there is some overlap inside individual Member businesses.

- Fixed Line Networks, Fixed L1 and L2 providers
- Broadcasters
- Mobile Networks, Mobile L1 and L2 providers

AIME also has in its Membership, professional support companies that provide legal and regulatory services to market participants. Their input provides qualification and gravitas to the statements and positioning within this response.

AIME received responses across all sections of the PRS value chain and from both small and large market entities.

Members rely on AIME to reflect their opinions with a consolidated response. Our response is predominantly gained from Member input and so views that may be expressed are not necessarily those of the AIME Executive or AIME Board.

Not all Members respond to PhonepayPlus via AIME. The responses that were received have all been unanimously in support of the positions set out in the response below, unless indicated accordingly within the relevant sections of the document. Some of AIME's Members who input their responses directly to PhonepayPlus through their regulatory staff and representatives have discussed their input with AIME. Wherever possible, we have ensured alignment of views.

Our response is divided into two sections: **General Comments** and, as requested by PhonepayPlus, **Answers to Specific Questions**. We have also provided commentary inside the 20 separate documents issued by PhonepayPlus to indicate where we believe the document could be improved or reviewed.

Therefore AIME's response is across several areas and should be regarded as an integrated response to the consultation.

# General Comments

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## Guidance

AIME welcomes updates to the Guidance and as stated in 2011 when the Guidance Notes concept was introduced, best practice would have been for the Guidance to have been updated on a frequent basis as the market and consumers' usage evolved. This is particularly important when the Guidance is used by the Executive to determine whether a provider has made the best efforts to comply with the Code in any given circumstance.

The general feeling of our Members is that updates to Guidance are overdue as they should be frequently reviewed to keep in line with consumer and market developments.

Unfortunately these latest updates appear a bit rushed and would have benefited from more time spent on them with industry expertise to assist.

As such, our recommendation is that some of the Guidance Documents are restructured and put out again for consultation. We do not believe that this will impact the introduction of the 13<sup>th</sup> Code but we do believe that industry should be able to comprehensively understand the expectations of PhonepayPlus when providers look at their products, promotions and operations to ascertain if the Code expectations are being met.

Of particular concern is the **Guidance on Complaint Handling**. PhonepayPlus' own research and AIME Members' feedback reports that this area needs improvement and the 13<sup>th</sup> Code introduction of alternative means of support (apart from voice telephony) needs strong guidance to ensure that issues do not arise from misunderstanding of how consumers expect to receive support.

We also express concern with the continuation of "Privacy and Consent to Charge" as one document. Robust Consent to Charge requirements have to be clearly laid out and cross referenced against the requirements of 2014 Consumer Contracts Regulation. Privacy is a separate expectation of consumers of premium rate services and the potential extent of consumer harm from marketing is less than from financial transactions. Although there are some overlaps in terms of how the consumer opts in and out of both charging and marketing, the Guidance should separate the two topics to provide clarity.

We note that in multiple locations across Guidance, PPP has stated what the Tribunal *will* consider when faced with a situation. This phrasing raises industry concerns that the outcome of Tribunals may be prejudiced by the views of the Executive. The Tribunal should operate independently of PhonepayPlus Executive views and consider both sides of any arguments presented to it by the Provider and the Executive. Therefore, we have suggested on each occasion that the Tribunal is referenced that

“will” is replaced with “may” or that the Guidance is clear that this is the view of the Executive rather than the Tribunal.

## Special Conditions

AIME welcomed the movement of certain existing Prior Permission regimes to Special Conditions as this regime had several process issues and had caused inadvertent Code breaches in the past. There is some concern however that the Special Conditions approach will give PhonepayPlus the ability to introduce new special conditions with less consultation and this concern is causing some uncertainty in the market. Additionally, the reserved rights to introduce, without consultation, new special conditions for individual services stifles investment in those new services.

The introduction of additional and onerous conditions into the HRRS Special Condition is a good example of this concern in demonstrating that PhonepayPlus can make unsubstantiated assessments of potential risks and can at times default back to the assumption that all industry participants start with the criminal intent to defraud consumers.

The introduction of these HRRS Special Conditions greatly limits potential business development that could have occurred through improved pricing and also negates the work that Ofcom conducted to assess risk before making its own judgement on raising maximum price caps. A good number of Members have stated that if these Special Conditions stand, they will focus their business towards non-PRS payment mechanics.

Indeed, just by categorising services over £1.53 as “High Risk”, this Special Condition have already led to cancelled plans by several blue chip providers to utilise the new price points. PhonepayPlus needs to be mindful of its dual role to provide the mechanisms for industry to succeed while also protecting consumers as laid out in its strategic plan.

AIME also expected the transposition of Prior Permission requirements into Special Conditions to be an opportunity to review whether each Prior Permission requirement had become outdated. Within the Special Conditions documents there are several references to redundant technology and service categories that no longer exist. While we acknowledge that removal of certain conditions may encourage some services to re-appear, we believe that the Special Conditions should themselves acknowledge that they may be redundant.

Finally, overlap exists across Conditions which increases complexity. With streamlined definitions and better cross referencing, there should be no need for a provider to have to acknowledge multiple Special Conditions in order to ensure that their services are covered.

See also AIMEs **Answers to PhonepayPlus Questions (1)** below.

**Q.1: Do you agree or disagree with the initial determinations set out in the above table (pages 10-12)? Please provide reasons for your response.**

**Please see AIME member's position below with each of the Guidance listed in the table.**

Title of Existing Guidance	Initial PhonepayPlus Determination	AIME Commentary
Application-based payments	Retain current guidance	Agree with proposal and review within one year
Competitions and other games with prizes	Retain current guidance	AIME does not agree. As competitions are driving calls to PPP and Consumer Contracts Regulation (CCR) sits close with PPP Code, this guidance requires a review as soon as possible.
Consumer refunds	Review wider strategic thinking	Agree with proposal to review along with Part 4 Code review.
Method of exit from a service	Retain current guidance	AIME suggests a review to ensure it is current and in line with CCR
The appropriate use of number ranges	In future we will refer stakeholders to Ofcom guidance on this matter.	Agree with proposal
The avoidance of undue delay	Retain current guidance	Agree with proposal
The conduct of live services	Review wider strategic thinking	Agree with proposal
Advice services	Review wider strategic thinking	Agree with proposal
Betting tipster services	Review wider strategic thinking	Agree with proposal
Children's services	Review wider strategic thinking	Agree with proposal but also include "Vulnerability" to guidance
Directory Enquiry (DQ)	Retain current guidance	Agree with proposal
Employment services	Retain current guidance	Agree with proposal
Fundraising and other charitable promotions	Retain current guidance	AIME does not agree. This guidance which sets out prescriptive conditions that are not reflected in the 12th Code for Subscription services is causing issues for Charities and does not have the flexibility for variation that the MNO Code for Subscription Services does (while protecting consumers). AIME will reflect the issues and alternative proposals in a separate document.
Public information services	To be removed	Agree with proposal

**Q.2: What further changes to current guidance or additional guidance do you consider necessary in future? Please provide supporting evidence for your response**

AIME is of the view that Guidance is required when new services or new promotional methods emerge, and when consumer issues appear to arise at the same time. AIME has provided to its members, guidance on Digital Marketing, Use of Co-registration, Web based subscriptions, typo squatting, using supermarket vouchers as rewards and 2013 Consumer Contracts Regulation. While it is easier for a trade association to provide topical Guidance due to reduced need for consultation, we expect PPP to also provide guidance to the industry on key emerging topics particularly when they create new customer care enquiries. At a minimum it would help Members and the broader industry if PhonepayPlus reacted to AIME's guidance so as help providers understand emerging best (or good) practice.



**Q.3: Do you consider the proposed alterations to guidance on DDRAC to be helpful and effective for improving compliance standards and developing appropriate procedures to meet Code obligations? Please provide some evidence in support of your response.**

Please also read AIME's comments inside the Guidance Document.

AIME welcomes a long overdue update to DDRAC Guidance and has provided inside the document some editorial proposals.

Our concern is that the practice of DDRAC has rapidly evolved inside the digital premium rate services industry to capture the emerging and unforeseen risks with affiliate marketing and other marketing including by unconnected parties using social media.

The DDRAC Guidance does not emphasise enough the risks that are being presented by parties that are multiple layers down a subcontracted affiliate chain and outside of the contractual relationship set up between the provider and the Advertising Network. Nor does it delineate the extent of the liability that may be attributed to L1's and L2's for such parties' actions. The suggestion that regulated parties must consider "all risks" is too broad and imprecise to be helpful.

We are also concerned that in the same way that L2's became caught by the emergence of rogue affiliates, the Guidance does not detail additional protections that should go with the new voice services price points that have been permitted by Ofcom under their NGCS review. The motivation for scam services will obviously be higher and prevention is always better than cure – in this case meaning more extensive due diligence by L1's on new L2's and enhanced risk assessment of PRS numbers operating at the new range of price points.

The proposed Special Conditions for the new price points is destructive for the majority of existing industry who wish to utilise this long awaited opportunity for their services (we will refer to this later) and the emphasis should be placed on due diligence and risk control by L1 providers on new L2's and new service models rather than treating the whole market as having criminal intentions.

Please see additional comments from AIME Executive and Members within the Guidance Document.

**Q.4: Do you consider the proposed alterations to guidance on promotions to be helpful and effective for improving compliance standards and managing advertising campaigns in keeping with the Code? Please provide some evidence in support of your response.**

Please also read AIME's comments inside the Guidance Document

The introduction of the Consumer Contracts Regulations (CCR) places obligations on “traders” including the information that should be displayed to consumers prior to their commitment in a distance selling arrangement. These regulations are not mirrored in this Guidance on Promotion for PRS. These regulations should be clearly referenced and guidance amended to ensure synergy.

Multiple references exist for WAP Push which is a technology that ceased to be used many years ago once mobile phones could support clickable links. These references need to be reviewed so that the Guidance is seen as contemporary and technology neutral.

An error has been made in the Voice based Call to Action for Broadcasters which we have corrected. The text of the section needs to be updated to reflect the new Ofcom recommended CTA and the mandatory requirement to split Service Charge from Access Charge. Additionally as the construction of the call-to-action text is not mandated, but Ofcom have suggested two variations for Broadcasters, AIME recommends that these variations are available to all PRS providers in the table after 3.6.

**Freemium and use of Free section 5:** This section needs overhaul and a detailed review. The emergence of CCR into UK law brings in the requirement to gain consumers positive opt-in to charge and some of this guidance, although updated for this consultation, is reflecting a pre-CCR environment. Additionally, changes to app store methods of gaining opt-in to free, freemium and chargeable apps should be considered and parallels reflected in the documentation. AIME recommends a detailed review with industry. In the absence of a detailed review, AIME can suggest amended text, but would need feedback from PhonepayPlus as to which option is best.

AIME has additionally suggested inside the document various ways of improving certain statements and updating the document to reflect current consumer technology.

Please see additional comments in the relevant Guidance Document.

**Q.5: Do you consider the proposed alterations to guidance on complaint handling to be helpful and effective for improving compliance standards and developing appropriate procedures to meet the relevant outcome in the Code? Please provide some evidence in support of your response.**

Please also read AIME's comments inside the Guidance Document

AIME is of the view that this document is not ready for publication or is published as an interim document, pending detailed review.

The Consumer Journey research findings, current experience of some consumers and that of L2's that receive incorrectly routed calls from consumers, suggests that consumer support is an area that needs clear guidance. This document needs to ensure that ALL parts of the value chain provide correct consumer handling. The responsibility for consumer support is placed on the L2 to ensure the correct support is in place, but the L2 does not have control over consumer facing parties in the value chain that are not directly contracted to the L2. For example, billing presentation and call centre handling of consumers.

The document refers repeatedly to complaints and redress. However, not all enquiries are complaints and not all consumers seeking redress are entitled to it. As such, this document does not provide balance nor does it suggest to industry how to handle consumers who seek redress for charges that they have knowingly incurred entirely under their control and / or responsibility. In these circumstances, redress is not appropriate, nor likely will it be offered. In the cases where a consumer is demanding a refund that they are not entitled to, this will escalate to a complaint which may not –even if it goes to the last mile- be resolved.

The guidance document assumes that all complaints are resolvable whereas **concluding** complaints is a far more appropriate outcome. There is one mention of an objective body that a consumer can use to resolve disputes, but this does not currently exist for PRS. PhonepayPlus is not that body as it will investigate a service being complained about and decide if the service has breached the Code. This does resolve a dispute and often leaves the consumer frustrated.

AIME Members request a review of this guidance to ensure that the provider who has invested in robust consent to charge processes, full pricing clarity and has ensured that a positive and informed opt-in to charging by the consumer is present, is not forced to refund the consumer or have that role performed out of their control by others in the value chain. The current guidance does not assume that the provider has performed their role correctly.

The changes to the Code that allow for alternative means of support (e.g. email) are not fleshed out into comprehensive guidance on how that support can be achieved and under what circumstances. While some companies have provided their consumers with on-line support (outside of PRS) and are experienced with how it should work (and thus might struggle with voice based support), other providers will be entering this area relatively inexperienced and would benefit from more comprehensive guidance.

AIME has added some notes to the document to suggest improvements but these comments are a dilution of total Member input. The document needs to build on the awareness of the role of all parties in consumer support, to guide on false redress attempts and to emphasise requirements for effective consumer support via non-telephony means.

**Q.6: Do you consider the proposed alterations to guidance on lower cost services to be helpful and effective for improving compliance standards and understanding our approach to regulating these services? Please provide some evidence in support of your response.**

Please also read AIMEs comments inside the Guidance Document

AIME understands that PhonepayPlus will update its web service with a list of the number ranges that now fall into the PRS Condition and are thus regulated by PhonepayPlus. This will improve clarity for the remaining industries using these numbers.

The document contains some inaccuracies around the interpretation of BIS Guidance for the use of premium rate numbers for helplines. We have provided comments in the document to assist PPP improve accuracy.

**Q.7: Do you consider the proposed alterations to guidance on definitions to be helpful, in particular providing an insight into the occasions when PhonepayPlus will make a determination under paragraph 5.3.8(c)? Please provide some evidence in support of your response.**

Please also read AIMEs comments inside the Guidance Document

AIME views the updated Guidance and clarification in the Code as a positive step to reducing instances where confusion may lay in the identification of roles.

There is one instance where we felt the document needed correction - when referring to affiliates and the company they contract to which is an affiliate network. It is rare for a L2 to contract directly with affiliates.

**Q.8: Do you consider the proposed alterations to guidance on establishing consent to be helpful and effective for improving compliance standards and developing appropriate procedures to meet Code obligations relating to PRS charges and privacy? Please provide some evidence in support of your response.**

Please also read AIME's comments inside the Guidance Document

AIME is strongly of the opinion (as in 2011) that this single combined Guidance note should be split into two Guidance notes as they cover different aspects of the consumer experience which has different potential for harm. They also have different opt-in methods and information requirements. The insertion of the marketing requirements into sentences that should be dedicated to consent to charge only confuses the reader.

Guidance should be split into "Privacy and Consent to Market" and "Robust Consent to Charge"

The latter document should be updated to operate in synergy with the 2013 Consumer Contracts Regulation (CCR) and utilise the same language for the point at which the consumer places their "order" for the goods or services in a distance sale conducted over the internet. One key point of the CCR is that it identifies the point in time that the contract between the consumer and the provider is established, how the consumer opted in to the charge, the unambiguous nature of opt in and the information that is presented to the consumer prior to their commitment. It also identifies what is the impact of not following various parts of the regulation.

AIME believes that a distinction should be clearly made between text messages that are serving the sole purpose of verifying the consumer's mobile number after a contract has been agreed between the consumer and the provider and text messages sent prior to the contract agreement and are therefore part of the promotion. This lack of distinction has caused confusion between PhonepayPlus and Industry in the past and should be alleviated with rewording.

As with other Guidance documents, AIME has provided comments in the document, but feels that a deeper review is needed to provide greater clarity to the PRS industry for Consent to Charge requirements and how to obtain and evidence consumer consent. The document could also be strengthened to clarify how the operation of the Payforit scheme assists providers to comply with the Code and CCR.

**Q.9: Do you consider the proposed alterations to guidance on virtual chat services to be helpful and effective for improving compliance standards and developing appropriate mechanisms to meet Code obligations? Please provide some evidence in support of your response.**

Please also read AIME's comments inside the Guidance Document

As PPP has stated, very little has changed in the Guidance apart from referencing different parts of the Code, but every opportunity to review Guidance should be taken particularly where issues have been experienced by providers and the environment has moved on since the original Guidance was created.

PPP definition of Virtual Chat in the Code 5.3.41 refers to “users” exchanging messages when engaged in the service, and would naturally be interpreted without a Code definition to mean end users (i.e. the party being charged for using the service). However, PPP has extended this meaning (detailed in Guidance) to include “operators” (also undefined in the Code), thereby including other services such as directory enquiry services, question and answer services, reverse charge (call home) services and any other premium rate services where an operator (an agent acting on behalf of and under the instruction of the provider) responds to a consumer via messages. Providers who believe that they are not operating Virtual Chat Services by referring to the Code definition are finding themselves caught by Guidance Note which they would not have heeded.

Non-sexual Virtual Chat Services have an age restriction (defined incorrectly in the 13<sup>th</sup> Code as available only for 16-17 year olds, whereas they should be available for 16 and up), and this now means that an operator based information service which has been defined by Guidance as a Virtual Chat service cannot be used by teenagers under 16 despite their current popularity with them. The provider of these services then risks investigation if generic promotions are viewed by children.

AIME highly recommends a rewrite to incorporate a fully expanded interpretation of the definition for Virtual Chat, a new definition of “user” and a new definition of “operator” together with an industry review to ensure only services that are real virtual chat services are captured. The current situation is contradictory and must be reviewed before Code 13 goes live.

Virtual Chat Services have had to provide a £10 reminder with forced termination on no response for a considerable amount of time. AIME would like to see at a minimum the £10 limit raised to £15 to align with certain voice based services that arguably present greater risk.

As with other Guidance documents, AIME has provided comments in the document, but feels that a deeper review of the document is needed to provide greater clarity to the PRS industry for Virtual Chat Services and for services that are not Virtual Chat, but may get caught through the definition.



# Special conditions – The Provisions

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**Q.10: Do you agree or disagree with our assessment of prior permission regimes and the proposed options relating to the transposition of provisions into the Special conditions framework under paragraph 3.11 of the 13<sup>th</sup> Code? Please provide evidence in support of your response, as appropriate.**

AIME broadly supports the concept of moving service categories away from the Prior Permission regime which has seen some failures in the past and towards Special Conditions. We are concerned however that the identification of service types that would drive the special conditions has been extended to service pricing and we detail our concerns later in this response.

We are aware of several high profile entities currently reviewing their planned introduction of enhanced voice services from July 1<sup>st</sup> based on internal concerns regarding operating services that are classified as “High Risk” by PhonepayPlus.

Code 13 Section 3.11 discusses introducing Special Conditions when there is likely to be a risk of a significant level of consumer harm from a particular *category* of a premium rate service. AIME Members do not believe that the price of a service itself poses risk if they are mitigated by other means and certainly do not pose “significant” levels of harm at the price levels that PhonepayPlus has set. Indeed, Ofcom's own determination on moving price caps from the 13 year old £1.50 to £3.60 per minute or £6 per call (inc VAT) stated: *“We have provisionally concluded in Annex 22 that the level of the SC caps should be set at £3 per minute and £5 per call (exclusive of VAT). We consider that these caps strike the right balance between the need to ensure service quality, variety and innovation while protecting consumers from fraud and bill shock and mitigating the risk of bad debt.... We maintain our view, as set out in the July 2012 consultation, that no additional [consumer protection] measures are justified at the level of the caps of £5 per call and £3 per minute cap for 09 calls”*<sup>1</sup> Item in braces added for clarity

AIME is of the view that Special Conditions should be utilised for service types that, by their structure, have a higher risk to consumers than other PRS services. These have been referred to in the consultation document as “Higher Risk Services” and providers of these services often acknowledge that their services carry greater risk due to the nature of the service and the usage of the service by consumers. We would like to see this “Higher Risk” terminology reflected in the Code instead of the usage of “High Risk” as defined in 3.11 and repeated elsewhere in the Code.

AIME members also expressed concern over the ability of PhonepayPlus to create new special conditions without consultation or oversight, especially where such conditions are based solely on the total service charge, length of call or specified action. This ability has been

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/summary/Part\\_B.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/summary/Part_B.pdf) section 9.96 onwards

created by 3.12.2d cross referring to Annex 2 Section D which we acknowledge may be a drafting error. AIME seeks assurance that this is the case?

**With regards to the proposals for each of the Special Conditions, please see AIME member's position below in the table and further in detail in this consultation response.**

Current prior permission regimes	Proposed option	AIME Commentary
Anonymous SMS	Remove prior permission regime entirely	Agree with proposal
Broadcast PRS	Transpose current prior permission provisions into Special conditions	Agree with proposal subject to detailed comments below and in Special Conditions document
Live entertainment and chat	Transpose current prior permission provisions into Special conditions	Agree with proposal subject to detailed comments below and in Special Conditions document
Higher rate PRS	New or significantly amended requirements in Special conditions	AIME Members disagree strongly with the proposals made and feel that this is detrimental for providers who are intending to use the new price points for legitimate services. It also works against Ofcom's own analysis of risk. Additionally, this is not a category of service for which special conditions should be created. The current proposal is unacceptable.
Credit broking services	Moderate variation or amalgamation of provisions in new Special conditions	Agree with proposal subject to detailed comments below and in Special Conditions document
Employment services	Remove prior permission regime entirely	Agree with proposal
Information, connection and signposting services	Transpose current prior permission provisions into Special conditions	Agree with proposal subject to detailed comments below and in Special Conditions document
Professional services, including counselling services	Moderate variation or amalgamation of provisions in new Special conditions	Agree with proposal
Pay per view services	New or significantly amended requirements in Special conditions	Special Condition needs significant work to reword definition to ONLY capture services that pose a higher risk and to acknowledge the Consumer Contracts Regulation that sets new standards for consumer opt-in to charges. Current proposal is unacceptable.

Call TV Quiz	Transpose current prior permission provisions into Special conditions	Agree with proposal subject to detailed comments below and in Special Conditions document
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**Q.11: Do you agree with our assessment of this service type and the proposed set of Special conditions for Broadcast PRS? If not, why? Please provide evidence in support of your response.**

Please also read AIMEs comments inside the Special Conditions Document

AIME agrees with the assessment of the service type but does not agree that the special condition is ready for publication for the following reasons:

- Exempted services should be described fully to avoid ambiguity and if any of them are subject to another Special Condition (e.g. Live Services), then this should be cross referenced.
- BPRS1 and BPRS5 overlap and should be reworded to combine into one condition.
- BPRS3 does not make any sense but may be superfluous anyway.
- References to Red Button need to be removed or minimised as this technology has virtually disappeared,
- BPRS6 is impossible to implement with Video on Demand (VOD) and needs to be reworded to allow for Broadcasters placing a warning over the interactive promotion inside VOD content.
- BPRS10 means that Broadcasters may incur two regulatory visits (Ofcom and PPP) and as PPP is an agency of Ofcom, this requirement should be reworded to ensure efficiency by combining the visits.

AIME recommends that the issues above are resolved prior to the publication of this Special Condition.

**Q.12: Do you agree with the proposed amalgamation of prior permission regimes and the proposed new structure for imposing Special conditions relating to live services? If not, why?**

AIME agrees with the assessment of the service type but does not agree that the special condition is ready for publication for the following reasons:

- The definition 5.3.23 is flawed in that the “one-to-one chatline” is itself a contradiction as a “chatline” is defined by Ofcom as “..*enabling of more than two persons*..”
- The definition of “Chatroom” is circular and flawed.
- The Special Condition should also refer to the Voice Based Text Charge special Condition if the provider is operating in this way.
- Exempted services should be described fully and if they are subject to another Special Condition, then this should be cross referenced.
- LECS2a. The capabilities of the PPP replay facilities need to be clearly laid out for industry including any connection capabilities. PPP also needs to accept that services are moving to “cloud” based facilities that are incompatible with old equipment but allow for adequate access with the features that are requested. Providers are often able to send standard audio files with the CLI date and time of recording detailed in the file title. PPP should detail all acceptable recording methods.
- LECS2d references an “Adjudicator”. This entity has not been defined.
- LECS4. An unannounced visit places the provider in jeopardy as the relevant staff to answer the detailed questions may not be available. These should be announced visits only. The equipment may not be able to be inspected if it is cloud based.
- LECS5 does not need “when dialled” as a condition.
- LECS10 place an unreasonable burden on the provider to not promote in places which are easily accessed by children. Even when the promoter aims for adult oriented sites, the internet as a whole is easily accessed by children and the ubiquity of affiliate marketing (even when the promoter is only promoting on named sites) makes this requirement unattainable.
- LECS14e refers to a “Compensation Scheme” that is not referenced in the document or in the Code. LECS14f to LECS14k looks like the content of a “Compensation Scheme” but requires detail that protects the provider (such as allowing time to respond to the Executive’s report) and should be detailed elsewhere so that it can be referenced by other Special Conditions operating a compensation scheme.
- LECS14c requires a Bond to be placed for compensation for unauthorised use. This assumes that the provider is legally responsible for compensating a bill payer for unauthorised use of their telecoms. As this would be a criminal case, the requirement to maintain a bond for these circumstances should be reviewed by a legal specialist.

AIME would like to see the issues above resolved prior to the publication of this Special Condition.

**Q.14: Do you agree with our proposal to abolish the previous prior permission regimes and create new Special conditions encompassing all HRPRS as set out in the proposed notice? If not, why? Please provide evidence in support of your response.**

Please also read AIME's comments inside the Special Conditions Document

AIME and its members disagree in totality with the proposals put forward by PhonepayPlus as being both excessive and unnecessary. The onerous conditions proposed will severely limit the ability by the majority of premium rate providers to create new entertainment products using the additional price points and these market restrictions have been made on the basis of an overestimation of the harm that can be created by the movement of price caps approved by Ofcom.

Special Conditions are designed to be applied to service **types** that create a higher risk than normal PRS, e.g. Live Chat. The price of a service does not define the service type and therefore PPP should assess, using existing analytical methods, where the risk profile is greatest and apply conditions to that risk. In addition AIME believes that the £1.53 price is outdated, is not based on any logical analysis, and is not supported by Ofcom.

At present, a single charged service costing up to £10 on premium SMS or up to £30 on Charge to Mobile can operate under the current PPP Code (in the case of a £30 service with a notification to the MNOs) without any specific condition. However, a non Sexual Entertainment Service (SES) 090 drop charge service of £1.60 (for example) will require under the proposed PPP conditions;

- Call recording (if it is a live service)
- Pre-charge announcement (technically impossible across all Networks/L1 relationships)
- Additional 60 days payment delay
- PhonepayPlus visit to premises
- A bond for compensation for unauthorised use
- Notification of go live and notification of changes to parties involved

As detailed earlier, these onerous and unworkable conditions are being imposed despite Ofcom's consultation statements that examined consumer risk and determined that the existing protection measures in place by PPP of Provider Registration, Due Diligence, Ongoing Risk Assessment, 30 day payment delay, service registration and service specific prior permissions (now Special Conditions) were sufficient to protect consumers.

Please refer to [http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/summary/Part\\_B.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/summary/Part_B.pdf) section 9.96 onwards for the full details.

The final Ofcom statement <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf> indicated that PPP would be considering if further consumer protection measures would be appropriate, but gave no indication and AIME believes gave no instruction that PPP should impose conditions that stop slightly short of an outright ban on services costing more than £1.53, removing choice for consumers and constraining industry at a time when innovation is most needed.



It is instructive to note that the existing Prior Permission regime stipulated for services over £1.28 plus VAT that the provider of a non-SES service needs to:

- Be using equipment of adequate technical quality.
- Register the PRN
- Not exceed £25.54 plus VAT

Under this Prior Permission, a provider could select voice and video shortcode services on mobile networks up to £5 per minute or £5 per call (or any combination).

AIME cannot therefore understand how PPP concluded that there was increased risk though an additional PRS number range (09). PPP has not indicated any research or statistical analysis to support this conclusion.

Also, it would appear that PPP has resurrected the old 2002 price cap of £1.50 (inc. VAT at 17.5%) as the point that risk increases despite years of experience of a market that can choose price points of greater value and without any evidence of additional risk to consumers.

While AIME acknowledges that the increased payments from new price points may act as an incentive to create new fraud and scams, we suggest that these issues, and the people who wish to propagate these issues, already exist and are under sufficient control by the value chain. The requirement for all L1's to perform due diligence on their L2 contracted customers and then perform ongoing risk management, prevents the majority of issues. Efforts should be made by L1's to increase their DDRAC efforts as the Service Charge increases, which plays to our points made in the DDRAC Guidance Note consultation response above.

AIME would argue that risk of fraud and scams are greater at low price levels (e.g. Wangiri) where they are likely to go unnoticed rather than at higher levels where they are easily spotted.

In examining PPP's identification of risk, AIME's response to them is as follows:

PPP identification of risk	AIME response
As with any live service, where evidence of service content is lost or otherwise unavailable, the lack of accountability can incentivise harmful or inappropriate service delivery	Live entertainment and Chat services have their own Special Conditions so there is no necessity to duplicate the conditions across.
As with any sexual entertainment service, the risk of underage use or inappropriate promotion.	SES Services have conditions set for them in the Code, so there is no necessity to duplicate.

PPP identification of risk	AIME response
Higher service revenues may increase the propensity of rogue providers to mislead consumers into calling higher rate services. The likeliest risks in this regard are misleading promotion (e.g. without price or with pricing obscured), or missed call scams which activate a drop charge upon call-back. It should also be noted that Ofcom's intended changes to the 070 and 076 number ranges as part of the NGCS review will dis-incentivise missed call scams away from those ranges.	The existing protection measures of Provider Registration, 30 day payment delay, Due Diligence and Ongoing Risk Assessment are working towards elimination of scams and the people who propagate them. Higher prices mean that enhanced risk assessment must be performed by the L1. The missed call scam seen on 070 ranges exploited the consumer's lack of distinction between a 070 number and a mobile number, which is inapplicable with 09 numbers.
Given that access to premium rate services is without significant barriers, providers may begin using such higher tariffs before establishing infrastructure and systems to an adequate technical quality, leaving consumers with high costs for low quality services.	This falsely assumes that existing providers will remain at sub-£1.50 prices and new provider will enter the market at higher prices. The majority of providers who will utilise the new price points are existing companies and will be moving some services to higher price points and introducing new ones. The function of due diligence by an L1 is to establish that high technical quality is established. PPP did not stipulate technical quality in the Special Condition (whereas it was stipulated in the Prior Permission) leaving doubt as to whether this remained a PPP priority.
The greater potential for financial detriment which occurs following overuse – either from the consumer being misled or because of use which is addictive in nature – or unauthorised use by people other than the bill payer.	The services that are likely to cause overuse or addiction are under their own conditions for spend reminders and forced termination, thereby already limiting exposure. The unauthorised use aspect by a consumer has diminished as consumers access to mobile increased (and will diminish further with increase whole price transparency). Large scale fraudulent use (e.g. hacking PABX systems) is a criminal matter.
Given the immediacy of the charges, the impact of high charges may be felt by consumers shortly after accessing a service, with consumers seeking information about the charges or redress equally quickly. Information on services must be available to support consumers when enquiries or complaints arise to avoid further confusion, distress and financial detriment.	Given that immediacy of charges was considered by PPP, the imposition of a 60 day additional withhold seems to be without justification. The Code (and CCR) stipulates the requirements for pre commitment information plus the Complaint Handling Guidance covers these requirements without any further impositions.

PhonepayPlus has asked for specific feedback on some of the proposals which we will provide here:

- Pre-charge voice announcer: This facility is not universally available as it relies on signalling facilities between the ONO and the TNO and for the TNO to provide the announcement declaring the cost of the call. We would like to refer you to the extensive work that Ofcom performed to ascertain if that facility would improve pricing transparency for consumers as an alternative to the

unbundled charges. If this requirement is imposed, the TNOs without this capability would not be able to compete and regulation would have created an uneven playing field. We did enjoy the suggestion however that voice compression technology could play the announcement faster but just wondered how this would work with both billing systems and consumers operating in real time.

- **Withhold:** PhonepayPlus suggests that a longer revenue withhold is appropriate to allow time to investigate and manage scams and refers to missed call scams as an example. The parallels are not robust as missed calls exploited the consumer believing that the number was a mobile number which we believe that a 09 prefix will not. Additionally, missed call scams generate peak traffic over a short time period and usually from mobile devices (07 numbers). This pattern can be detected quickly by the TNO and L1, AIT withholds put in place and numbers disconnected from the L2 in a short time period. A 30 day payment cycle is already in force and is unique to PRS. By imposing a 90 day payment cycle for a low and manageable problem, PPP is restraining trade to those providers that can afford to wait for payments and therefore restraining competition and depriving consumers of choice.
- **Bonds:** The posting of a bond is restrictive and gives the wrong message. AIME is working with large companies that have not previously considered PRS as a payment mechanic for their consumer products. Some of those products may generate high revenue flows. To be told that their low cost service is considered “high risk” and that they must place a bond to the same value as other “high risk” services with the regulator generates mirth but no business. In any market, where money is taken from consumers there will be risk of miscreants, but the emphasis is for the value chain to manage the risk, not constrain the whole market for the actions of a few.
- In summary, with the existing protection mechanisms in place since the introduction of the 12th Code, AIME does not believe that any further conditions are needed to utilise the new price points and also believes that the terminology of “HRPRS” should be relegated to the history books.

On the basis that the existing Prior Permission requirements were far less draconian than the new special conditions, AIME rejects the transposition from Prior Permission to Special Conditions in this instance. However, we believe that a suitable and pragmatic solution that requires less bureaucracy is possible but requires detailed discussion.

**Q.??: Do you agree with our assessment of this service type and the proposed set of Special conditions for Credit broking services? If not, why? Please provide evidence in support of your response.**

AIME has provided some commentary inside the Special Conditions document to improve clarity of certain points and terminology.

**Q.15: Do you agree with our assessment of this service type and the proposed set of Special conditions for ICSS? If not, why? Please provide evidence in support of your response.**

Please also read AIMEs comments inside the Special Conditions Document

AIME believes that ICSS 3 and 7 are excessive as the primary purpose of the ICSS service is to provide an easy route to information that would otherwise be difficult to find and to create a business from this service. A DQ service is not required to provide, before charging has commenced, the number being sought, so why should an ICSS service be required to undermine its business model? This requirement is therefore disproportionate and has been imposed, assuming underhand intentions by ALL ICSS services.

Some suggested revisions to the Special Conditions Document have been made provide clarity and suggest removal of duplication.

**Q.16: Do you agree with our proposal to continue to apply all special conditions to all ICSS, including those operating on lower cost number ranges? If not, why? Please provide evidence in support of your response.**

With removal of the disproportionate elements of ICSS3 and ICSS7, there would be no difference in the clarity that a consumer would need prior to making a financial commitment regardless of price.

AIME has provided some commentary inside the Special Conditions document to improve clarity of certain points and indicate areas of duplication.

**Q.17: Do you agree with the proposed amalgamation of counselling advice services within the broader scope of professional services, and the Special conditions proposed in relation to this category of services? If not, why? Please provide evidence in support of your response.**

Please also read AIMEs comments inside the Special Conditions Document

AIME agrees with the proposed amalgamation.

AIMEs other comments on the document are:

PROF4: Requiring operators (which should be defined to provide clarity) to hold a professional qualification appears to be excessive as operators may be following a computer driven hierarchical diagnostics system to perform the initial screening of the consumers request for assistance before passing through to the relevant professional with the correct training and memberships. This requirement should be reviewed to ensure that the consumer receives the professional advice ultimately from the qualified person.

PROF5 implies that the operators would need to be supervised which is questionable if they are already required to have appropriate qualifications. How will a PRS L1 perform due diligence on this requirement as they may not have the skills to be able to ascertain the L2's qualification levels?

PROF6 will require review as the service may be aimed at assisting people with vulnerabilities.

The "Important Note" at the foot of the page needs a rewrite as caps in Code section 3.12 are not capped on consumer spend but are capped on Service Charge spend and no concept of time based capping exists (although this was an AIME suggestion in 13<sup>th</sup> Code Consultation). Consumer spend is likely to be higher than Service Charge spend.

**Q.18: Do you agree with our assessment of this service type and the proposed set of Special conditions for Pay per view services? If not, why? Please provide evidence in support of your response.**

AIME does not agree with PPP's approach towards Pay per view services.

This was an opportunity to rewrite and clarify the definition of the services that needed to be captured and / or to abandon this Prior Permission / Special Condition and emphasise the requirements of the Consumer Contracts Regulation that specify that every purchase by a consumer has to be fully informed and that a positive opt in is gained from the consumer (and witnessed) with wording that unambiguously expresses an obligation to pay.

Instead, PPP has tried to lever even more services into an already vague definition and in doing so, brings a lack of technology neutrality between chargeable pay-per-view video services available from providers such as Now!, TalkTalk etc and Pay-per-view video services charged using premium rate.

The original intention of the Prior Permission (Pay-per-Page) was to capture services that allowed a scroll through several handset based web pages of pictures. The consumer was only informed of pricing on the first page and then was charged for each page visited thereafter, often with repeat charges for pages already visited.

Under CCR, this would not be permissible unless the consumer positively opted in to be charged for each page with clear pricing and an acceptance of the way the service worked. In which case, the consumer has accepted the risk.

The definition of the Special Condition seems to also attempt to capture video download or video stream services as well although it is vague as to whether it is the charge for the video that is perceived to present the risk or the charge for the page containing a thumbnail for a video that presents a risk. We believe that the latter required the introduction of a Prior Permission regime which we now suggest is outdated by other regulations and evolution.

While the special conditions mirror the requirements of CCR, and so are not onerous, AIME questions the need for a Special Condition in the first place.

AIME recommends that this Special Condition should be removed and replaced with Guidance on how to comply with Consumer Contracts regulation. PPV1 to PPV4 are now superfluous and PPV5 is bureaucratic and does not protect the consumer.



**Q.19: Do you agree with our assessment of this service type and the proposed set of Special conditions for Call TV Quiz services? If not, why? Please provide evidence in support of your response.**

AIMEs Broadcast Members did not express an interest in this Special Condition, but one member provided some commentary in the document which we have reflected in a copy of the Special Condition.

**Q.20: Do you agree with our assessment of this service type and the proposed set of Special conditions for Remote Gambling services? If not, why? Please provide evidence in support of your response.**

AIME has minor comments on this Special Condition.

The definition should be aligned with the Gambling Commission definition. <http://www.gamblingcommission.gov.uk/Gambling-sectors/Online/About-the-remote-gambling-industry/About-remote-gambling.aspx> and summarised if required.

RG1 and RG2 can be combined.

RG2: It seems disproportionate to require a refund if the user is found to be under 18 after the warnings to the user have already been made clear.

RG4 Bullet 3: We suggest a change from “significant” to “key” terms to align with other industries.

**Q.21: Do you agree with our assessment of this service type and the proposed set of Special conditions for Subscription services? If not, why? Please provide evidence in support of your response.**

AIME believes that the value for the prior permission was set at £4.50 in 2009 and should increase in line with RPI to £6 in a seven day period or alternatively an average cost between the subscription charges that exceed £1 per day. This will assist new services that are charging monthly.

Greater emphasis should be placed on the requirement to comply with Consumer Contracts Regulation requiring consumers to positively opt-in to a charge after receiving the necessary information that allows them to decide if they wish to purchase. The opt in must be an unambiguous button or a button with an unambiguous description of the use of that button proximate to the button or another action such as a tick box with an unambiguous description.

This will negate the requirement to stipulate wording that is not in scope.

If providers adhere to the CCR there would be no need for double opt-in as the consumer has made a fully informed decision with the relevant terms and pricing clearly laid out. As with Pay-per-view services, we feel that there is no continued necessity to require a special condition for subscription services if the requirements of the CCR were clearly communicated to industry through a Guidance note.

In the event this recommendation is not upheld, AIME comments on the Special Conditions are:

SS3 should be reworded to allow for the double opt-in to be an auditable web page requiring two button pressing rather than the implied text message responding.

SS4 repeats requirements that are already in MNO Code of Practice and would be helpful to cross reference these particularly as this document also covers promotions and suggested wording.

SS5 is unclear. A subscription service is already a repeating service in most cases (e.g. football results, weekly prize draw etc.) The requirement needs to emphasise that the consumer cannot join the same subscription service more than once (as indicated in the consultation document)

**Q.22: In light of the changes to the Code, do you agree with our proposal to introduce a separate set of Special conditions for subscription services where it is a Recurring Donation service? If not, why not?**

**Q.23: Do you agree with our assessment of this service type and the proposed set of Special conditions for Recurring Donation service? If not, why? Please provide evidence in support of your response.**

AIME is currently working with a number of charities that utilise the SKIP function for regular premium rate donations and this Special Condition provides them with a vehicle for the operation of donation subscription services without strict adherence to the current MNO Code of Practice for subscription services. However, the operation of the STOP reminder after three “SKIPS” is believed to be confusing consumers and has caused a drop-off in donations. As PhonepayPlus has rightly pointed out, charity donations via premium rate should operate on a level playing field to other forms of payments and there are no requirements for regularised reminders in other forms of payment.

We are aware of a proposal that has been submitted to PhonepayPlus to permit a controlled trial on the STOP reminder frequency while still supporting the consumer should they wish to discuss their regular donation with the charity (or contracted support service). This trial will establish the fine balance between consumer protection and regular donating.

As a result of this proposal, AIME suggests that this Special Condition is implemented as worded with one suggested change to the definition as below, but with the understanding that the outcome of the trial may require a new consultation on this Special Condition.

The definition for this Special Condition should be altered to cater for future developments where consumers can agree to regular donations via an online mobile payment system and these are charged to the mobile operator’s direct billing system (Charge to Mobile) instead of PSMS. The donation initiation, skip and reminder messages would continue via SMS.

*“premium rate services that are solely for the purpose of donating money on a recurring basis via a **network premium rate charging facility** to a charity or charities registered with the Charities Commission of England, Northern Ireland, Scotland or Wales,*

**Q.24: Do you agree with our assessment of this service type and the proposed set of Special conditions for Voice-based, Text charged services? If not, why? Please provide evidence in support of your response.**

AIME believes that this form of service, which became very popular with mobile users as it allowed them to engage with premium rate services without paying the mobile operator uplift, may have disappeared. However as innovative providers could create a voice service that was low cost to access but allowed the consumer to opt into chargeable premium services during the call, we will comment on the Special Condition as we do not believe that it is ready for publication.

**Definition:** The Live Entertainment & Chatline Service Special Condition needs to cross refer to this special condition so that providers of these services are not inadvertently breaching the Code.

A cross reference to LECS, Virtual Chat and SES requirements is needed.

**VBTC1:** This is an impossible condition as the initial access to the service can be on any number that can be used as a PRS. This includes some of the 08 ranges, 118, 09 and shortcodes. Not all networks provide non-adult barring on voice access to these numbers and not all networks provide an API to examine their age verified database. Additionally, not all consumers “own” their handsets, the majority being under a unique form of leasing agreement until the initial contract term completes. This condition should be brought into line with the age verification requirements of Live Services and SES.

**VBTC2:** This requirement is onerous as the only access to these services can be from a mobile device (in order to text charge) which in the majority of cases, the mobile number stays with the user. Once the user has been age verified on first access, they are unlikely to get younger prior to subsequent accesses.

**VBTC3b:** This requirement does not cater for a service that provides optional charged services within the call, for example to listen in to another chat session can be within the price charged for the call, but to join the chat session, incurs an additional charge. The requirement should be either a promoted total cost of call per minute (where this does not vary per user) or that all optional charges promoted within the call must have the consumer positive opt-in via a button press (which must be recorded).

**VBTC4:** This is poorly worded and should be re-written to state that the total cost of the call per minute (where relevant – see VBTC3b above) should have same or greater prominence than the price-per-minute for the access number, but both are required to be promoted.

**VBTC7:** Does this mean that the access number must be an adult shortcode provided by mobile networks (as well as other numbers designated as PRS numbers by Ofcom) or that the text charges must appear on adult shortcodes?

**Q25: Do you agree with our assessment of the impact which proposed changes to Guidance, and Special conditions Notices, will have? If not, why? Please provide any evidence in support of your response.**

AIME's detailed input to the consultation questions plus, where appropriate, detailed commentary on each Guidance and Special Conditions document will enable PPP to gain valuable broad industry insight into the impact of the Guidance and Special Conditions (as currently drafted) on the premium rate industry.

Our overriding concern is that if AIME's comprehensive input is heeded, a considerable amount of redrafting may be needed to several documents which may then require re-consultation. This will impact the 1<sup>st</sup> July timetable.

We suggest however, that an interim position can be agreed on certain contentious points that will gain acceptance by the industry while the redrafting and re-consultation takes place.

**Missing from Consultation**

One document that has been produced but not discussed as part of this consultation is the **Notice of Actions and Thresholds**. AIME would like to make the following observations:

Virtual chat services: AIME believes that the spend reminder and termination based on no response should increase to £15 inc. VAT to align with other service categories that have a spend reminder at £15

Subscription services: While the subscription reminder at £20 or monthly (whichever comes sooner) serves as a valuable aid to ensure consumers manage their premium rate spend, many existing low cost services find the monthly reminders erode their margins and impact consumer enjoyment. AIME suggests that consumers would still remain adequately informed if the reminder messages were sent monthly or at £20 with the choice remaining with the provider. Consumers would be reminded at £20 spend for services that cost less than £20 per month and would receive a monthly reminder for services that exceed £20 per month.

**Q26: Do you have a view as to whether any increased outpayment withhold period for Higher Rate PRS should be 45 or 60 days, or a different length? Please provide any evidence in support of your response.**

Please refer to our earlier response on this matter. We do not believe any increase in withhold is necessary and we believe that damage to innovation and trust will occur from the proposals. AIME was of the viewpoint that PPP supported business innovation and growth, but this is not reflected with this Special Condition.

## Statement of Representation

AIME confirms that this response has been compiled following a process of internal discussion and distribution of the relevant Consultation documentation to all AIME members.

A list of members can be found at <http://www.aimelink.org/company>

The views expressed in this response are a fair representation of the majority views held by the responding AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

## Close

We assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair and proportional regulatory regime for Premium Rate Interactive Media and Entertainment services in the UK.

If any clarification to our response is required or if we can be of any further assistance please contact Andrea Putnam-Moorcroft at +44 (0) 1252 711 443, or [regulatory@aimelink.org](mailto:regulatory@aimelink.org)