



**Review of Information, Connection and/or
Signposting Services**

A PhonepayPlus Consultation

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Executive summary

PhonepayPlus is the UK's regulator of premium rate services (PRS). Our purpose is to provide effective and proportionate regulation of PRS so that consumers can use these services with absolute confidence.

This consultation document deals with the issue of Information, Connection and/or Signposting Services (ICSS). These are PRS that are promoted prominently on search engines such as Google or Bing, or sometimes on classified ads websites such as Gumtree, and can be defined as follows:

Premium rate services (other than directory enquiry services), which provide consumers with information, advice and/or assistance relating to specific organisations, businesses and/or services that such organisations or businesses provide, or which provide connection to such organisations, businesses and/or services.

PhonepayPlus has received a significant number of complaints about these services over the last two quarters, including from the public service organisations with whose helplines or information ICSS providers associate themselves, some of which have resulted in regulatory activity up to and including adjudications by a PhonepayPlus Tribunal.

We became concerned about the potential for these services to cause significant consumer harm, in particular by misleading consumers into thinking that the premium rate number they are being offered is an actual number of the organisation they are wishing to dial. This not only calls into question the value that consumers would derive from services if they were clearly and fully informed, given that the same service or information can be easy to access and available for free or at a significantly lower cost, but also risks undermining consumer confidence in the public or commercial organisations with which the ICSS associate themselves.

Initially, PhonepayPlus issued a Compliance Update on 13 March 2012¹, setting out our concerns and putting forward a range of recommendations as to how to ensure that ICSS do not breach our Code of Practice. We also indicated in the Compliance Update that we would be bringing forward proposals for a prior permissions regime, to ensure that these services can only operate if they have first been verified by PhonepayPlus as meeting the conditions specified in the prior permissions regime with enhanced obligations.

¹ <http://www.phonepayplus.org.uk/For-Business/Code-and-Help/Code-Compliance-Updates/Information-services.aspx>

As we have further developed proposals for prior permissions, we have become aware that consumer harm can be heightened in some cases by three other factors. Firstly, the fact that vulnerable consumers seeking access to information or helplines may be especially susceptible to misleading promotions, and may suffer particular detriment in terms of cost. Secondly, that consumers may also be subject to delays – either through being put on hold or by being asked to provide details which are irrelevant to the information later supplied – once they have called an ICSS. Lastly, that consumers may in some cases be asked by a service to provide personal and/or confidential data such as account details or passwords, with a risk that this data could subsequently be used to make purchases on a consumer's account or to market to them.

The objective of this consultation is to consult and seek views on the putting in place of effective and proportionate controls to ensure that ICSS do not continue to cause consumer harm. We are aware that Google have recently changed their policy on AdWords (their search engine marketing tool) to require greater transparency from ICSS. Whilst we welcome this, we think there remains a strong case for additional regulatory controls through a prior permissions regime.

The conditions we are proposing to include in the prior permissions regime for ICSS are designed to target and address the consumer harms we have identified and relate to the following areas where consumer harm could occur:

- The use of Search Engine Marketing (SEM) to give the PRS greater prominence to an actual website and/or helpline – proposed conditions here include a specific requirement to state in displayed SEM results “this is a premium rate service”.
- The use of web pages, and in some cases other promotions such as classified ads, to mislead consumers into believing that a PRS is in fact the number they are looking for, or that it is providing information which is not publicly available elsewhere.
- The lack of an alert before a PRS directly connects consumers to a helpline that informs the consumer they are using a PRS.
- A lack of prominent pricing information on web pages or in other promotions.
- Potential for consumers to be held in a queue when connected via a PRS, thus increasing the total cost of the call.
- Potential for consumers to be delayed where an operator requests details which are irrelevant to the information or advice being provided.
- Potential for consumers to be asked to provide personal and/or confidential data.

Lastly in proposing prior permissions regimes in respect of ICSS, it is our objective to prevent misleading PRS from raising the cost of accessing and using public or commercial services. It is not our objective to cut across the genuine delivery of such services to consumers, and as such providers who fall into the following categories would be exempted from the need to seek prior permission in order to operate any ICSS (though they would remain subject to our Code of Practice):

- Charities registered with the Charities Commission of England, Northern Ireland, Scotland or Wales; and
- Any provider who has an established, written agreement with a public or commercial organisation to operate an information, advice, or assistance service on their behalf. In this case, the provider would not be required to seek permission in respect of services which were operated as part of such an agreement. However, such an agreement must be provided to PhonepayPlus upon request.

A full list of PhonepayPlus' proposed conditions can be found in Annex A of this document.

We are seeking views from consumers, industry and other parties with an interest in the proposals by the deadline of **27 September 2012**.

Section 1: Definition and explanation of Information, Connection and/or Signposting Services (ICSS)

Definition of an Information, Connection and/or Signposting Service

1.1 In our Compliance Update of 13 March we called these services “third party information services” on the basis that they provide third parties with information relating to, or connection or signposting to, public service or commercial organisations or contact lines.

1.2 After further consideration, we consider that ICSS is a clearer short-hand term. This reflects that what they do is either provide advice or information about how to access or use public or commercial services, and/or connect or direct consumers to specific contact numbers or helplines they are seeking and charge at premium rate for doing so.

1.3 Typically, these services operate on the 090 number range, which from a BT landline costs up to £1.53 a minute but which can cost considerably more from a mobile phone (a relevant consideration given that a significant number of low-income households do not possess a fixed line connection).

1.4 The Compliance Update of 13 March offered an initial definition of these services, but upon further consideration, and for the purposes of this section of the consultation document, we would define ICSS as follows:

Premium rate services (other than directory enquiry services), which provide consumers with information, advice and/or assistance relating to specific organisations, businesses and/or services that such organisations or businesses provide, or which provide connection to such organisations, businesses and/or services.

Explanation of how ICSS operate

1.5 Our analysis of ICSS has brought to light that there are a number of variant models by which these services can operate. Examples of each of these variants are set out as follows. The first, and most frequent, example we have seen can be illustrated by a particular service relating to NHS Direct:

- a) Consumers looking to dial NHS Direct will type “NHS Direct” into a search engine such as Google or Bing. The search engine will ordinarily produce a link to the NHS

Direct website, which will contain the lower cost number for NHS Direct and any free information which NHS Direct supplies.

- b) However, the search engine may also produce results for premium rate services (PRS) which offer connection and signposting to NHS Direct, which, as a result of Search Engine Marketing (SEM) techniques, may feature more prominently in the results page than the real NHS Direct site, typically at the top of the search results page.
- c) Consumers who click on a link promoting a PRS will then be taken to a web page which might offer any of the following using a premium rate number:
 - A direct connection to NHS Direct
 - An Interactive Voice Recognition (IVR) facility which provides the actual number of NHS Direct
 - An IVR facility containing information which is available on NHS Direct's website or from calling NHS Direct
 - The option via automated or live operator of being given the number of NHS Direct or being connected directly to the service

1.6 Whilst all the services in this example would enable the consumer to access NHS Direct helplines and/or information, they would charge a premium rate for doing so, when the consumer can access what in this case is a public service at a significantly lower cost. Even where a PRS implies association with a commercial organisation it is likely that the contact line or information they provide is still provided for free or at a significantly lower cost than the PRS the consumer used.

1.7 A second, slightly different example is one we have seen in relation to housing benefit advice:

- a) Consumers looking through web-based classified ads (such as those on Gumtree or LOOT) see ads promoting a "DSS friendly" housing advice line on a premium rate number.
- b) Consumers who call the number are asked a number of questions about themselves and their circumstances, which significantly lengthens the time of the call, and are then provided with the numbers of landlords and/or estate agents which the provider claims are "DSS friendly".

1.8 Consumers in this second example do receive advice – i.e. the contact numbers of potential landlords. However, there is a risk that they are unduly delayed by being asked

questions which are not material to the provision of the contact numbers afterwards. Whilst consumers do not necessarily believe that they are directly contacting a DSS helpline, there is a risk that they are misled into believing that they are accessing expertise which is not publicly available elsewhere, and at a lower cost. As with the first example, there are other risks around the potentially misleading nature of the advertising which we will address in greater detail during the next section.

1.9 A third example, which again slightly varies, relates to a number of online retailers and/or payment providers with whom consumers have accounts secured by passwords:

- a) Consumers looking to dial the customer contact lines of an online retailer will type the name of the retailer into a search engine such as Google or Bing. The search engine will ordinarily produce a link to the retailer's website, on which it is possible to find a customer contact number.
- b) However, the search engine may also produce results for PRS which imply the customer complaint and/or enquiry facilities that they offer are associated with an online retailer. As a result of SEM techniques the links to the premium rate providers may feature more prominently in the results page than the real websites, typically at the top of the search results page.
- c) Consumers who click on a link promoting a PRS will then be taken to a webpage which further implies that by calling the premium rate number the consumer will be able to enquire or complain directly to the online retailer concerned.
- d) Consumers who call the number are asked for secure details about their account with the online retailer, including their password, which an operator then uses to log into their account and make a complaint on the consumer's behalf using an email or instant messaging-based complaint facility which the consumer could access themselves at no cost.

1.10 Whilst this service enables the consumer to register an enquiry or a complaint, it is not made clear to the consumer that they are giving personal and/or confidential data to a third party – i.e. the premium rate provider – or that the provider is undertaking an action which the consumer could undertake themselves for free.

ICSS and directory enquiry services

1.11 In the process of producing this consultation document, we spoke to a number of providers of ICSS. Some providers suggested that the connection and signposting aspects

of their services were no different to directory enquiry (DQ) services and should be treated similarly.

1.12 We do not agree. Whilst DQ services (for example 118 118 and 118 500) also provide consumers with contact information on or a connection to phone numbers they are seeking, there are important differences in the nature of the services provided that materially affect the consumer experience. These differences are set out in the following table:

Directory enquiries services	Information, Connection and/or Signposting Services
Offer a comprehensive range of numbers and marketed as such	Offer information derived from, or advice or assistance in relation to, or connection/signposting to, a specific organisation and/or helpline and marketed as such
The consumer has to provide information about the number they are seeking to the provider during the operation of the service	The consumer's search for the number happens before the service is engaged (i.e. at the search engine or classified ads stage)
Generally have strong brand awareness with consumers	Have no brand awareness with consumers – indeed consumers will probably not realise that these services exist
Use the 118 number range which is well recognised by the public as a premium rate number	Typically use 090 numbers which have low public awareness and consumers may not recognise as being premium rate

1.13 The key point is that because of the differences outlined in the table above, when consumers dial a DQ service, they understand what they are getting – i.e. a PRS that provides them with phone numbers. However, this is not the case with ICSS, where the consumer can easily be misled into believing that the number they are dialling is the actual helpline they are seeking, rather than a PRS which provides onward connection or signposting.

1.14 This is reflected in the fact that PhonepayPlus has not received a single complaint from consumers who have called a DQ service believing it to be the actual number they were looking for. By contrast, we have recently received 104 such complaints from

consumers relating to ICSS, and opened three investigations over the last quarter as a result.

1.15 PhonepayPlus therefore considers that it is entirely appropriate to define and treat these two types of service differently.

Q1: Do you agree with our definition of Information, Connection and/or Signposting Services (ICSS)? If not, what alternative would you propose?

Q2: Do you agree with our description of how ICSS operate? Are there other variants not covered in this section?

Q3: Do you agree with the distinction we are making between the connection and signposting aspects of ICSS on the one hand and directory enquiry (DQ) services on the other? If not, why not?

Section 2 – Evidence of consumer harm

Complaints and enquiries

2.1 Over the last two quarters, PhonepayPlus has received a total of 104 formal complaints about ICSS. In addition, PhonepayPlus' number checker was checked 1334 times in relation to ICSS over the same period.

2.2 Whilst these numbers of complaints and number checks are not a high proportion of the overall volume of complaints and number checks that are made by consumers about PRS, they nonetheless suggest that consumer harm is being caused and they are based on a combination of consumer complaints and referrals from public and commercial organisations themselves about a range of different numbers and providers. To date consumers have checked our number checker, and/or complained, about 33 separate services provided by 16 different providers. In addition, a number of public and commercial organisations have contacted us to complain about ICSS which relate to their numbers and/or information or services.

2.3 The public and commercial organisations to which the ICSS related included the following:

- NHS Direct
- DVLA
- UK Passport Agency
- Inland Revenue
- Housing benefit information and/or applications
- Olympic information and/or tickets
- Sky customer services
- BT customer services
- Amazon customer services
- PayPal customer services
- eBay customer services

- X-Box customer services
- Sony Playstation customer services
- Virgin Media customer services

Case studies of enforcement action

2.4 As a result of these complaints, PhonepayPlus has opened a number of investigations. The following case studies illustrate enforcement action which has been taken so far:

Case study one: ICSS service providing signposting to official Olympic 2012 numbers

2.5 In April 2012, PhonepayPlus was made aware of an ICSS provider promoting and operating a premium rate signposting service – i.e. a recording which provided the numbers of the service the consumer was actually searching for – for official Olympic 2012 numbers including job opportunities, travel information and general queries. The actual numbers run by the London Organising Committee for the Olympic and Paralympic Games (LOCOG) are either freephone or provided at low cost (i.e. less than 5p per minute), whereas the cost of using the ICSS was a £1.53 charge upon connection.

2.6 The layout and appearance of the ICSS website (which used Olympic branding and logos) clearly suggested an affiliation to Olympics 2012, where in reality no such association existed. Furthermore, the website was advertised through SEM so that it appeared in the top returned results for key word searches.

2.7 Lastly was a concern that job seekers – by their nature likely to be financially vulnerable - might call a PRS number instead of the actual, lower cost, number they had been searching for via the web.

Case study two: ICSS providing direct connection for NHS Direct helpline

2.8 PhonepayPlus' independent Tribunal recently adjudicated in respect of an ICSS provider who promoted and operated a premium rate number that provided an onward direct connection to the National Health Service helpline. The provider used SEM to prioritise the service's website in web search results so it was above the actual NHS Direct website. In addition, the layout, colouring, and wording of the service website implied that the premium rate number was the actual NHS Direct helpline number, and consumers had been misled into calling it.

2.9 This was evident in the complaints PhonepayPlus had received from consumers who had suffered financial detriment, as they had not realised they were calling a premium rate number which would charge them at £1.02 per minute. Many of the complaints reflected that the need to quickly seek medical advice had lessened the consumers' capacity to evaluate the search engine results, and subsequently the provider's website, as to whether this was the actual service they required.

2.10 The Tribunal determined that the service was promoted in such a way as to imply an association with NHS Direct, and that consumers were misled into the belief that the ICSS was the actual NHS Direct advice line. The Tribunal further concluded that consumers who required the services of the NHS Direct helpline were likely to need timely medical advice and were therefore vulnerable due to their personal circumstances.

Case Study three: ICSS providing information about housing benefit

2.11 A PhonepayPlus Tribunal also recently adjudicated in respect of an ICSS provider who promoted a "DSS friendly" housing advice line on various websites for classified ads (such as Gumtree or LOOT) and in classified print ads.

2.12 All the consumers who complained reported that they had not been informed of the £1.53 per minute charge for the call, either in promotion or when the call commenced. Complainants also reported that during the call they were left on hold for periods, and asked questions by an operator which significantly lengthened the call duration. Once these questions had been answered, consumers were then given a list of numbers for estate agents, which on further investigation had no connection to the ICSS provider or to DSS friendly landlords.

2.13 A Tribunal determined that the provider had misled consumers, by stating that they had access to actual DSS friendly properties and that the contact details provided were for DSS friendly landlords when in fact the provider could not support these claims. They also found that in promising DSS friendly contacts they had misled consumers, and especially those who were likely to be vulnerable by virtue of their financial circumstances, into believing that they were offering advice and information which was not publicly available. In fact, this information was available from the DSS itself at a significantly lower cost. Lastly, the Tribunal concluded that the questions asked to consumers had no bearing on the list of numbers they were subsequently given, and as such the provider had unduly delayed consumers.

Concerns expressed by Direct Gov and online retailers

2.14 In addition to consumer complaints, and the resulting enforcement action outlined above, PhonepayPlus has also been contacted by Direct Gov², and an online retailer. Both have raised concerns about ICSS with us, which can be summarized as follows:

- A reputational risk, whereby consumers who are misled into calling a ICSS may then lose trust in the public service or commercial organisation with which the ICSS associates itself.
- The use of SEM, and subsequent misleading branding, layout or wording in promotions, infringes trade mark and/or copyright.
- That some ICSS collect protected personal and/or confidential data from consumers without their informed consent, and may then potentially misuse the data afterwards.
- ICSS distort the governmental aim that public helplines and/or information are accessible to the public regardless of spending power.
- A delay in delivery of a public service caused by additional steps could have harmful consequences (e.g. when a consumer thinks they are contacting NHS Direct for urgent advice, but is actually contacting a signposting service).
- Many public and commercial organisations do not deliberately conceal their helpline numbers or information – indeed Direct Gov exists in order to ensure public helplines and information are easily accessible. As such, in many cases the consumer benefit of ICSS is negligible.

Conclusion

2.15 Analysis of the evidence above suggests that there is a fundamental problem with the way in which many ICSS currently operate, in that many consumers are misled into believing either (a) that the ICSS is the actual helpline, or source of information, they are seeking rather than a PRS; or (b) that they are obtaining expert advice or information or assistance that is not available to the general public when in fact in many cases this could be obtained direct from the relevant public or commercial organisation at no, or lower, cost.

2.16 The potentially misleading nature of the services arises at several stages:

- Through the use of SEM techniques which enable these services to be brought to consumers' attention at the point they are looking for a particular phone number or

² Direct Gov is the official government website for UK citizens, operated by the Cabinet Office, and provides easy-to-find information and contact details in respect of all public service organisations and their free or lower cost helplines. It will be rebranded in autumn 2012 as "Gov.uk", but will continue with the same remit.

service (and in a way that may give the premium rate service equal or greater prominence to the actual helpline or information).

- That when consumers then click on a web link to the PRS, the web page in the worst cases may appear similar in wording, layout, colour, or use of logos to the webpage of the public or commercial organisation they are looking for, or at least does not clearly and prominently explain to the consumer that the number offered is an ICSS and not the helpline or information itself. Even if it does this may still confuse a consumer who does not understand SEM, and where the address of the provider's website is similar to the website of the actual public or commercial organisation.
- That promotion for an ICSS may imply, through SEM or otherwise, that they are offering advice and/or information about a public service or commercial organisation, or how to use a public service (e.g. application for housing or child benefit) which is unique to the ICSS and not publicly available at a lower cost.
- That once the consumer dials the premium rate number, there is also no alert that the consumer is using an ICSS and not dialling an actual public or commercial organisation's number.

2.17 In addition to the potential to mislead at each stage of the consumer's journey, there are also secondary issues which may compound the harm caused to a misled consumer:

- Lack of pricing transparency and/or prominence when the consumer reaches the premium rate provider's webpage.
- Potential for the consumer to be unduly delayed. This can either be through being held in a queue if the service connects them directly through to the number they were originally looking for (so increasing the total cost of the call), or through delay caused by the consumer being put on hold or being asked for information which is not necessary in relation to the information they are seeking.
- Potential for consumers to be asked to provide protected personal and/or confidential data without being fully informed of who it is being provided to (i.e. a PRS provider rather than a company with whom they have a direct relationship) or how it will be used.

2.18 PhonepayPlus concludes that there is robust evidence that ICSS have been operating, and have the potential to operate, in a way that is misleading to consumers and that carries a high risk of serious harm. This is likely to be in breach of the following provisions of PhonepayPlus' Code of Practice:

- Paragraph 2.2.1: *Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*
- Paragraph 2.3.2: *Premium rate services must not mislead or be likely to mislead in any way. This is likely to be relevant to all services.*
- Paragraph 2.3.4: *Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged. This is likely to be relevant where consumers are held in a queue, put on hold, or asked questions which are not relevant prior to the provision of information.*
- Paragraph 2.3.10: *Premium rate services must not seek to take advantage of any vulnerable group or any vulnerability caused to consumers by their personal circumstances.*
- Paragraph 2.4.1: *Level 2 providers must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy*

Q4 – Do you agree with our assessment of consumer harm in relation to ICSS? If not, why not?

Q5 – Is there other evidence of concerns and/or harm that you are aware of and which have not been referred to in this section? If so, please provide them and any evidence that substantiates them.

Section 3 – Proposals to introduce a prior permission regime

3.1 The Code of Practice gives PhonepayPlus the power to establish a prior permissions regime for any service that poses a “higher risk” to consumers. A prior permissions regime is one where the service can only operate if it has first been verified by PhonepayPlus as meeting relevant, pre-determined conditions. The rationale for this is that with higher risk services, *ex ante*, rather than *ex poste*, controls may be required to ensure that consumers are adequately protected. PhonepayPlus currently has 16 prior permissions regimes in place for higher risk services, including for example PRS which offer gambling, professional advice, or live multi-party chat.

3.2 Based on the analysis in the previous section, PhonepayPlus considers ICSS to carry a higher level of risk which meets the threshold for a prior permissions regime. This is based on the following considerations:

- a) The potentially misleading nature of ICSS. Because of the way many ICSS are promoted, both through the use of SEM and websites which either mislead or do not clearly inform consumers, there is a high risk that consumers will believe that they are contacting the actual organisation or service they are seeking rather than a PRS, or that they are gaining access to information, advice or assistance that is not available elsewhere.
- b) Many ICSS provide something that is available for free, or at a lower cost, from the organisations with whom they imply association. Whilst we accept that in some cases a contact number will be difficult to locate, or an ICSS may provide expertise which is not available elsewhere, there is a heightened risk that consumers may be misled into purchasing a PRS which is of little or no added value, and which they would not have chosen to purchase had they been clearly and fully informed.
- c) The reputational risk to public and commercial organisations with which ICSS imply association. Because ICSS promote to consumers in a way that associates them with specific organisations or services, there is a risk that harm will undermine consumer confidence in the public and commercial organisations concerned, and also in PRS in general. This is particularly serious where public organisations are involved, as consumer confidence in public services can be affected, but can also present a risk to the reputation of commercial organisations.
- d) The fact that a previous PhonepayPlus adjudication (in 2009 against the sole provider of such services at that time) and the Compliance Update released on 13

March do not appear to have modified previous practice substantially such that the need for prior permissions is negated.

3.3 To these considerations we would also add three more factors, which may aggravate consumer harm further when it occurs:

- Some ICSS may imply association with organisations or services which are particularly attractive to vulnerable consumers – examples might be NHS Direct or DSS housing benefit, but also potentially banks and utilities in some circumstances. Vulnerable consumers are less likely to carefully scrutinise promotional material, especially search engine results, and consumers who are vulnerable financially may be misled into paying a disproportionately high charge for a service which they could obtain elsewhere at a much lower cost.
- Consumers may be subject to undue delays once they have called an ICSS (both from being placed on hold or through being asked to supply irrelevant details to an operator), further increasing the potential cost of using the service.
- Consumers may be asked to provide protected personal and/or confidential data to an ICSS provider in order to facilitate the assistance the provider is offering. This may potentially constitute obtaining data without informed consent (as the consumer may still think they are giving details to the actual organisation they are seeking), and also creates the potential for subsequent misuse of the data.

3.4 In considering the issues and risks we have identified, we have also considered whether they could be controlled through alternatives to PhonepayPlus regulatory activity. We have considered in particular two potential routes: firstly the potential enforcement of trademark, passing off and copyright law and secondly action by search engines to block websites or limit access to search engine marketing.

Trademark, copyright and passing off

3.5 In cases where a PRS is promoting itself in a way that to the consumer makes it look like it is the public service or commercial organisation concerned (for example NHS Direct), there may be scope for the organisation concerned to consider whether their trademark and/or copyright has been infringed or passing off has occurred and if so, whether to take enforcement action to protect their trademark and/or copyright. Notwithstanding this, we have doubts as to whether trademark, copyright, or passing off alone will be sufficient to deal with the problems we have identified for four main reasons.

3.6 Firstly, it may be relatively easy for PRS providers to operate their services in a way that doesn't go as far as clearly infringing trademark and/or copyright, or amounting to passing off, but nonetheless still misleads consumers into thinking that they are accessing a public or commercial organisation's helpline rather than a PRS.

3.7 Secondly, bringing proceedings for trademark and/or copyright infringement, or passing off, carries costs and risks (e.g. in terms of the prospects of success) and public organisations in particular may be reluctant to bring such proceedings unless the matter is very serious. Thirdly, the resolution of these cases may take time and may (i.e. where interim relief is either not sought or granted) allow consumer harm to continue until proceedings are resolved.

3.8 Finally, legal proceedings for trademark and/or copyright infringement and/or passing off will only deal with issues on an individual case basis. It may therefore be easy for an unscrupulous provider simply to open up a new service that repeats the same harm – moving the problem on rather than fundamentally addressing this.

3.9 For these reasons we are not convinced that the problem we have identified will be satisfactorily resolved for consumers through copyright law. But we are not experts in this area of law and we would welcome further input on this point.

Search engines

3.10 We are aware that search engines, such as Google or Bing, can take action to block websites or limit access to SEM where a breach of the law or their terms and conditions has occurred. We note that on 24 June Google AdWords³ released the AdWords policy "Sale of free items and official services", which sets out specific terms and conditions that AdWords clients must adhere to where they promote PRS which charge for access to free, or charged, numbers of information.

3.11 A copy of Google's AdWords policy is attached at Annex B of this document. In broad terms, it sets the following expectations, which are similar to some of the prior permission conditions which this document goes on to propose in Section 4 under the heading 'B) Misleading promotion on web pages or within other promotions':

³ Google's search engine marketing tool

- That websites advertising such services must be transparent about the way in which services operate (and affiliation or otherwise to a government body);
- Websites must mention that the service the consumer actually seeks is available for free or at a lower charge; and
- Websites must provide a working link to the original website where the number or information the consumer seeks can be obtained, and is given equal prominence.

3.12 We note Google's action, but note that it is not the only provider of SEM. We also note that SEM is not the only way in which ICSS are promoted – we have highlighted earlier examples of services promoted via online classified ads sites such as Gumtree. Whilst we welcome Google's new policy, a prior permissions regime would put in place broader controls, and controls which extend beyond clients of Google AdWords and SEM in general, that we believe are needed to address the full range of consumer harm presented by ICSS. In addition, a prior permissions regime is underpinned by a regulator enforcement procedure, and a procedure to ensure that consumers can obtain redress where appropriate.

3.13 In short, and for the reasons outlined above, we have no reason to believe at this stage that either legal action as described above or action by search engines will be sufficient on their own to address the consumer harm we have identified. Therefore, PhoneyPayPlus proposes to introduce a requirement for providers of ICSS to seek prior permission in order to operate. Permission will be subject to a number of conditions, consideration and proposals for which are set out in the next section of this document and also listed in a draft Notice at Annex A. The impact of prior permission is also considered in Section 5 of this document.

Proposed exemptions from a requirement to seek prior permission

3.14 In proposing a prior permissions regime, we must be mindful of any services which share characteristics with an ICSS, but which are actually providing a genuine service. Our objective with these proposals is to prevent consumer harm, not to cut across the genuine delivery of services to consumers. As such, we propose that providers who fall into the following categories would be exempted from the need to seek prior permission in order to operate any ICSS:

- Charities registered with the Charities Commission in England, Northern Ireland, Scotland or Wales; and

- Any provider who has an established, written agreement with a public or commercial organisation to operate an information, advice, or assistance service on their behalf. In this case, the provider would not be required to seek permission in respect of services which were operated as part of such an agreement. However, such an agreement must be provided to PhonepayPlus upon request.

3.15 It is important to note that these are proposed exemptions to the prior permissions regime, not to our Code of Practice. Exempt providers will still remain subject to our Code of Practice and will be required to operate these services in a way that is compliant with our Code.

Q6 – Do you agree with our assessment that ICSS carry a level of risk which meets the threshold for a prior permissions regime? If not, why not?

Q7 – Do you agree with our proposed exemptions from a requirement to seek prior permission? If not, why not?

Section 4 – Consideration and proposals for prior permission conditions

4.1 We have previously said that we consider consumers can be potentially misled at each stage of the promotion and purchase of ICSS. This section of the document sets out our consideration of these stages, and the issues which may compound the harm caused to misled consumers, and makes proposals for specific prior permission conditions to mitigate those risks. For ease of reference, the issues are as follows:

- a) The use of SEM to give the PRS greater prominence to an actual public or commercial organisations' website and/or helpline.
- b) The use of web pages, and in some cases other promotions such as classified ads, to mislead consumers into believing that a PRS is in fact the number they are looking for, or that the information or advice they will receive is unique to the PRS and not publicly available elsewhere.
- c) The lack of an alert before a PRS directly connects consumers to a helpline that informs the consumer they are using a PRS.
- d) The potential for consumers to consent to providing secure personal and/or confidential data where that consent is not fully informed.

4.2 Three further issues which may compound the harm caused by consumers being misled are as follows. We have factored them into our consideration of issues a) to c) above:

- A lack of prominent pricing information on web pages or in other promotions.
- Potential for consumers to be held in a queue when connected via a PRS, thus increasing the total cost of the call.
- Potential for consumers to be delayed where an operator requests details which are irrelevant to the information or advice being provided.

4.3 As part of our consideration we have spoken to a variety of stakeholders including those representing consumers, public and commercial organisations, and, those in the industry who are involved in the delivery of ICSS.

A) Use of Search Engine Marketing (SEM)

4.4 Where a consumer searches on the web for a helpline they require, an ICSS provider will often ensure their website is pushed to the top of the consumer's search results through SEM techniques. SEM is where website owners pay search engines such as Google or Bing for key search words which are designed to place their website high in a list of search engine results. An example would be purchasing terms such as "Get medical advice by calling this number", or "Company X' complaints line".

4.5 As such, the consumer is presented with a list of paid-for results where links to the websites of one or more ICSS providers appear above websites which are directly related to the number or information the consumer is looking for. Where PhonepayPlus has carried out searches as part of our own monitoring, often the first 2 or 3 search results are from ICSS providers who have used SEM to prioritise their websites.

4.6 In addition, the ICSS website addresses, which are displayed as part of the search engine results, are often similar to web addresses which contain the actual number, or information, the consumer is looking for. This is likely to confuse consumers by creating a perception that the website promoting a PRS is either owned by the public or commercial organisation they wish to contact, or is formally associated with it.

4.7 As part of our stakeholder conversations, we note a general view from both industry and consumers that ICSS should not seek to imply any false association with the number the consumer is looking for, or imply that the advice and information they offer is unique where it is also publicly available. We also note that most popular search engines clearly display results that have been prioritised through SEM in a shaded box, in order to differentiate them from the non-sponsored results beneath them.

4.8 However, we do not agree that the majority of consumers will be informed enough about SEM to understand where websites have web addresses, metatags, or metadescrptions which clearly seek to use SEM and imply that they are the service the consumer seeks.

4.9 We have considered whether placing specific controls on the use of SEM could drive rogue providers to promote in other ways. It is unlikely given the static, and relatively high, costs of printing and distributing physical advertising such as flyers, that these methods would be preferred to the generally cheaper cost of promotions on the web.

4.10 Whilst we are aware of ICSS which have used classified advertising, both on the web and in print, the risks associated with this practice do not differ at the SEM stage, albeit other risks associated with this practice are addressed under the next heading.

4.11 In addition, the web offers greater flexibility of pricing, in that the cost of SEM changes on a 15-minute basis. This means that a provider can temporarily suspend all advertising where the cost to conversion ratio is not profitable, a flexibility not open to them in physical or broadcast advertising.

4.12 However, SEM shares certain characteristics with Search Engine Optimisation (SEO), a practice whereby website owners also use metatags and metadescrptions to place their website high in a list of search engine results, but do not pay search engines to specifically identify them. Nevertheless, a skilled provider using the right technology may be able to use SEO to achieve a similar effect, and this may become a more attractive proposition if specific controls are placed upon SEM alone.

4.13 As a result, PhoneyPayPlus' view is that the following controls should be in place to ensure that consumers are not misled when they search for public or commercial organisations with which ICSS associate themselves:

- a) Web-based promotions should not use metadescrptions or metatags which mislead a consumer into believing (a) that their service is the actual service the consumer is seeking; or (b) that they are providing advice or information that is not already available from a public or commercial organisation (unless they genuinely are providing advice or information that is not available in this way). In addition, web-based promotions should contain metadescrptions which make it clear that the service on offer is a PRS, and not the helpline or information the consumer is seeking. The SEM should therefore display the phrase "This is a premium rate telephone service" at the beginning of the metadescrption to ensure it is clearly on-screen when the consumer views the search engine results.
- b) ICSS should not promote using websites with addresses which mislead a consumer into believing the website is associated with the organisation they are seeking

Q8 – Do you agree with this assessment and PhoneyPayPlus' proposed conditions around SEM? If not, why not?

Q9 – Do you agree with the need to require the inclusion of specific wording in SEM results as displayed to the consumer on-screen in search engine results that states “This is a premium rate telephone service”? If not, why not?

B) Misleading promotion on web pages or within other promotions

4.14 Whilst the majority of ICSS promote using web pages in respect of each of a provider’s services, a minority promote instead using classified ads, either in print or on websites such as Gumtree or LOOT. PhonepayPlus monitoring has identified that both types of promotion may be presented in such a way as to do one or more of the following:

- Fail to clearly explain that this is not the helpline the consumer is looking for, but rather a service which will offer the number of that helpline, or a direct connection to it
- Imply that the information, advice, and or assistance offered is unique to the ICSS, rather than being available from a public or commercial organisation at a lower cost. This would include services which take consumers’ secure data in order to log into their online account, and make a web-based complaint or enquiry which the consumer is unlikely to know they could do themselves for free.
- Imply an association with the public or commercial organisation the consumer wishes to contact or obtain information from when no such association exists. This can be done through misleading copy on the website or in a classified ad – e.g. “call now to make a complaint”, “call now to get medical advice” – and/or a layout, font type, logo or colour scheme which is the same or similar to the organisation the consumer is actually looking for
- Fail to clearly state the cost of the service

4.15 These practices present a clear risk that the consumer will be misled. This risk is enhanced where consumers are vulnerable by circumstance as they are less likely to carefully scrutinise information, and may be less able to pay a PRS charge if there is a cheaper alternative.

4.16 Once again, we note a general consensus between the consumer and industry stakeholders we talked to, that consumers should not be misled by web pages or sites promoting ICSS. Some providers stated that there was no need to be anything other than transparent, and that their websites did not mislead in any of the ways described above.

4.17 PhonepayPlus has tested a number of ICSS websites, and has found a significant variance in terms of their clarity and transparency. As such, whilst we accept that not every provider looks to mislead the consumer, a significant number are currently not as transparent as we believe is now necessary. However, we also recognise the concern expressed by consumer representatives that promotion may move from web-based to other formats if web-based promotion is specifically controlled.

4.18 As such, PhonepayPlus proposes the following controls in respect of promotion of ICSS, on the web or in other promotional mechanics:

- a) Layout and presentation of information must comply with all Code obligations to clearly state the price and other key information immediately next to the PRS number and in a sufficiently prominent format.
- b) Promotional material must clearly and prominently state (where this is factually the case) (i) that the information provided by the PRS (be it a phone number, advice or information) is available direct from the relevant public or commercial organisation at no or lower cost; and (ii) where it relates to a connection or signposting service, the promotion should provide the actual contact number of the helpline; and (iii) where it relates to an information advice or assistance service, the promotion should provide the phone number or the web address where the consumer can obtain the information, advice or assistance. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised.
- c) Promotional material must be distinct in appearance from the organisation being sought. Promotions must not use descriptions, colour or typeface which is, or may be, perceived to imitate the organisation the consumer is looking for. Promotions must not imply that advice and/or information is unique to an ICSS when the same advice and/or information is available from a public or commercial organisation.
- d) Where a service requires the consumer to provide secure personal and/or confidential details, such as online account numbers or passwords, then promotional material must clearly inform the consumer that their details are being provided to a third party, and not the organisation they actually wish to contact. In addition, where such secure data will be used to log into a consumer's online account in order to undertake any action on the consumer's behalf, promotional material must clearly inform consumers of this, and that they could perform such actions themselves at no cost.

4.19 We noted in Section 3 of this document that the expectations set out in the recently released Google AdWords' "Sale of free items and official services" policy, which forms part of the terms and conditions for ICSS providers using AdWords, are similar to some of the conditions proposed directly above. Of the four conditions above, we consider that conditions B ii) and D go beyond the expectations set out as part of Google AdWords "Sale of free items and official services" policy.

4.20 Condition B ii) in effect requires providers to give consumers the actual number or a link to the actual information they are looking for when they reach the website promoting the ICSS. This condition goes beyond Google AdWords' expectation that providers only need to provide a link to the 'official source' of the information the consumer is looking for, and is a higher standard which we believe is necessary due to the heightened risk that consumers may be misled into purchasing a PRS which is of little or no added value, and which they would not have chosen to purchase had they been clearly and fully informed. However, we also consider that there may be scope for some flexibility around condition B ii) in certain circumstances.

4.21 This is because the majority of ICSS providers have stated their view that in some cases a genuine service is being offered to consumers that they may be prepared to pay a premium rate for. They pointed out that some commercial organisations make their contact details for customer services difficult to find through internet searches, and/or to locate on their websites, to encourage consumers to contact them by email rather than phone and therefore save costs. Consequently, they suggested that in some cases consumers might be prepared to pay a premium rate to be signposted, or connected straight through, to a helpline rather than having to spend time searching the internet for it.

4.22 We accept this to some extent, although we believe that if a consumer types the name of a company and reference to a company's service into a search engine, it must be a reasonable assumption that they are looking for the company's service and not for a premium rate connection service in the first instance. However, where an ICSS provides connection and/or signposting to a helpline which could be regarded as hard to find, condition B ii) may result in the provider being required to give their service (i.e. the fact that they have located a hard to find number and provided a signpost or connection to it) to consumers for free.

4.23 As such we may be prepared to consider dis-applying condition B ii) in respect of **connection and signposting services only**, and instead requiring that a link to the relevant

organisations' website is provided so that the consumer can search the website for the number if they so wish. Such a dis-application would depend on evidence provided by consultation respondents, and only apply where a provider could demonstrate two criteria clearly:

- That the number the provider is signposting and/or connecting to is not used primarily by vulnerable consumers; and
- That the number they are signposting and/or connecting to is not easy to locate (i.e. there must be evidence that the number is hard to find).

4.24 We would welcome views from respondents on whether condition B ii) in respect of misleading promotion should apply to all ICSS, or whether a revised condition as outlined above should apply to those services which only offer connection and/or signposting, and not information, advice or assistance of any kind, and which meet the criteria above.

Q10 – Do you agree with this assessment and PhonepayPlus' proposed conditions around promotion of ICSS? If not, why not?

Q11 – Do you have any views on whether condition B ii) should be applied to all ICSS, or whether an altered condition, as outlined above, should apply only to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.

C) Lack of an alert before consumers are connected to information or a helpline via a PRS

4.25 Once a consumer has dialled an ICSS one of the following will occur:

1. Model 1: Connection to an Interactive Voice Recognition (IVR) facility which gives the number of the helpline sought; or
2. Model 2: Connection to an IVR which provides information or signposting concerning the organisation the consumer wishes to contact.
3. Model 3: Immediate through connection to the number the consumer is seeking, but at a higher cost than if the consumer had called the actual number directly themselves; or
4. Model 4: Provision of the number sought via automated operator, and then the option of being connected directly through to the service.

5. Model 5: Connection to an operator who provides advice/information, and/or signposting concerning the organisation the consumer wishes to contact, and/or onward connection to it.
6. Model 6: Connection to an operator who provides assistance to the consumer in making a complaint to an organisation, and often asks the consumer to provide secure data in order to do so.

4.26 Where model 1 is the case, PhonepayPlus' view is that this must be a short message which would not require the consumer to listen for more than around 30 seconds (and so incur additional charges beyond one minute). Therefore, the PRS charge should never be more than £1.53 at maximum. However our view would be that consumers should be told to be ready to note the number down, preferably on the website before they call the PRS, in order that they do not have to repeat the call.

4.27 Where model 2 is the case, then we consider that any IVR message must not be unreasonably prolonged or delayed – i.e. it should contain only relevant information, and not repeat itself in any way. In addition, the consumer should be informed, in a free message at the start of the call, of the cost of the service.

4.28 In addition, where model 2 is the case, we would consider that the free message should also state that the information, advice or assistance is freely available elsewhere, and provide the relevant web address which the consumer is looking for.

4.29 Where models 3, 4, 5 or 6 are the case, there is a significant risk that the consumer may be connected to a service which keeps them waiting in a queue. This may lead to them incurring a significant bill of which they may not be consciously aware.

4.30 In addition, where model 5 is the case and an operator provides advice and/or information there is a significant risk that the consumer will be delayed, either by being put on hold or by being asked to provide details which are irrelevant to the information later supplied. Once again, this may lead to the consumer incurring a significant bill of which they are unaware, and for which there is no need given the service provided. This therefore could potentially breach the Code.

4.31 In addition where model 6 is the case there is a significant risk that consumers will be asked for secure personal and/or confidential data without realising either that they are giving it to an ICSS provider, and not the organisation they actually wished to contact, or that

the data will be used to log into their secure account and instigate a web-based complaints process which the consumer could undertake themselves. It is our view that in both cases the consumer should be clearly informed, and a failure to do so may constitute a breach of the Code, and potentially the Data Protection Act 1998.

4.32 PhonepayPlus further considers that where a consumer is directly connected to a helpline, whether immediately or as an option once a number has been provided, then they should be informed of key information via a free message at the start of the call before they are connected. As a minimum, the message should inform them of the price per minute, and that they may be held in a queue, and also provide the number of the actual helpline they originally sought. In both cases, there should be a gap of around five seconds between the end of the message and connection (and charging). This will ensure the consumer has the chance to disconnect before they are charged if they wish to do so.

4.33 As with conditions around misleading promotions, we may consider a different requirement where a service is a connection and/or signposting service only, and where it is not used mainly by those who might be considered vulnerable and links to a genuinely hard to find number. Where this was the case we would consider dis-applying a requirement to provide the number of a helpline the consumer originally sought, and require instead that a free message at the start of the call stated that the number was available elsewhere, and the address of the relevant organisation's website in order that the consumer could end the call and search for the number themselves if they so wished. As before, we would welcome any views or evidence respondents have.

4.34 As such, our proposed prior permission conditions read as follows:

- a) Where an ICSS provides an IVR containing the number of the service the consumer is actually looking for, then promotional material must clearly instruct consumers to have a pen and paper ready, or some other means of recording the number, before they call.
- b) Where consumers are signposted or connected to a public or commercial organisation's number at a premium rate, providers must ensure that consumers receive a free message at the start of the call, before onward connection to a chargeable service, informing them of the price per minute and the actual number they are seeking along with the cost of calling that number.
- c) Where there is the possibility that the consumer will be placed in a queue, the free message must also inform consumers of this.

- d) Where the consumer is connected to an IVR containing information, this information must not be unreasonably prolonged or delayed, and the consumer must be informed of the cost of the call in a free message at the start of the call before charging commences.
- e) Where the consumer is connected to an IVR containing information which is freely available on the web, the consumer must be informed of this, and the address of the relevant website, at the start of the call before charging commences.
- f) Where the consumer has been connected to an operator who will provide them with the number and/or information they are seeking, they must not be asked to supply details which are irrelevant to the provision of the information they seek.
- g) Where the consumer is asked to supply secure personal and/or confidential details, then they must be clearly informed that their details are being provided to a third party, and not the organisation they wished to contact. In addition where such secure data will be used to log into a consumer's online account in order to undertake any action on their behalf, then consumers must be clearly informed of this and that they could perform these actions themselves at no cost. They should also be advised as to how this data will be stored, retained or further used.
- h) Where the consumer has been provided with the number they are seeking, and then has the option of being connected to it directly, they must be informed clearly of the cost per minute of doing so and be given the opportunity to refuse. Where onward connection is automatic, then the consumer must first be clearly informed of the cost, and a gap of five seconds must be provided in between the provision of information and connection, in order that the consumer can choose to end the call.
- i) ICSS must not provide any facility which makes it possible for the consumer to save a PRS number to their phone.

Q12 – Do you agree with this assessment and PhonepayPlus' proposed conditions once a consumer has dialled an ICSS? If not, why not?

Q13 – Do you have any views on whether condition B should be applied to all connection and signposting services, or whether an altered condition, requiring that the consumer is given the website of the organisation they are looking for rather than the actual number, should apply to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.

D) Collection of personal and/or confidential data from consumers

4.35 We have previously highlighted that some ICSS connect the consumer to an operator who requests personal and/or confidential data from them. Our experience of this practice to date is either that that an operator collects personal and/or confidential data which is irrelevant to the service in order to prolong a call, or that an operator uses the data to log in to a consumer's account with an online retailer, and perform actions such as registering enquiries or complaints on behalf of the consumer, either by email or an instant messaging function, which the consumer could have performed for themselves.

4.36 There is a specific risk arising from this practice that the consumer will be misled into believing that the provider needs their personal and/or confidential data to perform a service of unique value, and we have addressed this risk under the previous headings of "Misleading Promotions" and "Lack of alert before consumers are connected" (conditions D and F and G respectively).

4.37 However, beyond the risk the consumer will be misled there is a more general risk that the provider will not be compliant with the Data Protection Act 1998 in respect of the processing of personal data. The consumer's privacy, and effective enforcement, may be compromised if one or more of the following occurs:

- The provider does not register as a Data Controller with the Information Commissioner's Office (ICO), as required by the Data Protection Act 1998.
- The provider does not provide the ICO (during notification) with the full details of the types of personal data it intends to process
- The consumer is not fully informed as to how their personal data will be processed
- The provider uses personal data in a different way to that advised to the consumer
- The provider does not have adequate arrangements in place to prevent personal data being passed to or used by other parties without prior and informed consumer consent – an example would be an employee of an ICSS provider who recorded secure personal data and removed that from the premises, or made purchases on a consumer's online account using their personal data to log in.

4.38 In light of this consideration PhonepayPlus proposes the following conditions:

- a) Providers of ICSS who intend to collect personal data and are Data Controllers as defined within the Data Protection Act 1998 must satisfy PhonepayPlus that they have complied with the requirement to notify the ICO and provide it with full details of the types of data that they will be processing. Providers must ensure that they

comply with all other requirements of the Data Protection Act 1998 in relation to the processing of consumers' personal data at all times.

- b) Providers of ICSS who intend to collect confidential data/information (e.g. login passwords, PIN numbers etc) that may not fall within the definition of personal data should clearly inform consumers as to their intended use of such information, and obtain consumer consent before confidential information is used. Providers should thereafter not use the information for any other purpose or on any other occasion without further consumer consent being given.

Q14 – Do you agree with this assessment and PhonepayPlus' proposed condition where an ICSS collects personal and/or confidential data from consumers? If not, why not?

Section 5 – Regulatory impact assessment

5.1 In proposing to introduce a prior permissions regime, we must be mindful of the impact it will have and whether that impact is proportionate. Firstly, prior permission would carry an additional fee of £300, which we consider is negligible.

5.2 Secondly, we must consider whether any of the conditions imposed would have a disproportionate impact on providers. PhonepayPlus considers the majority of conditions relate directly to changes to either websites (including the address and use of metadescrptions), or information provided to consumers via operators and/or IVR messages. As such we do not consider there are any proposed conditions which would place an unnecessary burden on providers in terms of operational costs to comply. Additionally, ICSS providers who use Google AdWords in respect of SEM will already be required to make changes to their websites which are in line with some of the conditions we propose around “Misleading promotions on web pages or within other promotions”, thus reducing any cost in respect of our proposed conditions.

5.3 We do recognise that some of these conditions are likely to reduce revenues and therefore incentives to operate for providers, especially where ICSS provide information, advice or assistance, or are connection and/or signposting services which relate to numbers which are easy to find or are used mainly by vulnerable consumers. However, we do not consider this is disproportionate given four factors:

- The potential for consumers to be misled into believing they are contacting the actual organisation they are looking for, even to the extent of providing personal and/or confidential data to them in some cases, or that they are obtaining information, advice or assistance which cannot be obtained elsewhere at a lower cost.
- The potential risk to vulnerable consumers, both in terms of cost and any delay where urgent advice is sought.
- The risk to the general reputation of both public and commercial organisations.
- The secondary risk to the reputation of PRS as a whole.

5.4 A key point is that in cases where ICSS *are* providing a genuine value added service to consumers over and above what is available directly from public or commercial organisations, then greater transparency around their operation in the way we propose

should not prevent these services from attracting well-informed consumers if the consumer is genuinely willing to pay a premium for the value added.

5.5 We must also consider, as with all prior permission regimes which we propose, whether it is necessary to set a bond. Some of those who provide ICSS have signalled that they would prefer a bond to be set as a higher barrier to market entry, which would potentially deter those with less than honest intentions.

5.6 However we must balance this against the fact that the loss of prior permission prevents any provider from operating a service of that type, and so would serve as a significant deterrent even without the introduction of a bond.

Q15 – Do you have any thoughts on whether a bond is necessary? If so please provide them, and any evidence that supports them.

Q16 – Do you agree with our impact assessment? If not, why not?

Section 6 – Next steps

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later than **27 September 2012** (10 weeks from the date of issue of this document).

Where possible, comments should be submitted in writing and sent by email to:

bthakur@phonepayplus.org.uk. Copies may also be sent by mail to:

Bee Thakur, Regulatory Affairs Executive – Industry Relations, PhonepayPlus, Clove Building, 4 Maguire Street, London SE1 2NQ

Tel: 020 7940 7442

If you have any queries about this consultation, please telephone or email Bee Thakur using the above contact details.

Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all, or part, of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.

List of consultation questions

Q1: Do you agree with our definition of Information, connection and/or signposting services (ICSS)? If not, what alternative would you propose?

Q2: Do you agree with our description of how ICSS operate? Are there other variants not covered in this section?

Q3: Do you agree with the distinction we are making between the connection and signposting aspects of ICSS on the one hand and directory enquiry services on the other? If not, why not?

Q4 – Do you agree with our assessment of consumer harm in relation to ICSS? If not, why not?

Q5 – Is there other evidence of concerns and/or harm that you are aware of and which have not been referred to in this section? If so, please provide them and any evidence that substantiates them.

Q6 – Do you agree with our assessment that ICSS carry a level of risk which meets the threshold for a prior permissions regime? If not, why not?

Q7 – Do you agree with our proposed exemptions from a requirement to seek prior permission? If not, why not?

Q8 – Do you agree with this assessment and PhonepayPlus' proposed conditions around Search Engine Marketing (SEM)? If not, why not?

Q9 – Do you agree with the need to require the inclusion of specific wording in SEM results as displayed to the consumer on-screen in search engine results that states “This is a premium rate telephone service”? If not, why not?

Q10 – Do you agree with this assessment and PhonepayPlus' proposed conditions around promotion of ICSS? If not, why not?

Q11 – Do you have any views on whether condition B ii) should be applied to all ICSS, or whether an altered condition, as outlined above, should apply only to connection

and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.

Q12 – Do you agree with this assessment and PhonepayPlus’ proposed conditions once a consumer has dialled an ICSS? If not, why not?

Q13 – Do you have any views on whether condition B should be applied to all connection and signposting services, or whether an altered condition, requiring that the consumer is given the website of the organisation they are looking for rather than the actual number, should apply to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so please provide them, and any evidence which supports them.

Q14 – Do you agree with this assessment and PhonepayPlus’ proposed condition where an ICSS collects personal and/or confidential data from consumers? If not, why not?

Q15 – Do you have any thoughts on whether a bond is necessary? If so please provide them, and any evidence that supports them.

Q16 – Do you agree with our impact assessment? If not, why not?

Annex A

PRIOR PERMISSIONS NOTICE

Issued on XX xxxx 2012

FOR THE ATTENTION OF ALL SERVICE PROVIDERS INTENDING TO OPERATE INFORMATION, CONNECTION, AND/OR SIGNPOSTING SERVICES

This Notice is being issued to inform all service providers who intend to provide Information, Connection and/or Signposting Services (ICSS) that new rules apply. Providers are required to apply for a prior permission licence to operate such services. Services operating without a licence to operate ICSS will be considered to be in breach of the PhonepayPlus Code of Practice.

For the avoidance of doubt, an ICSS is defined as follows:

Premium rate services (other than directory enquiry services), which provide consumers with information, advice and/or assistance relating to specific organisations, businesses and/or services that such organisations or businesses provide, or which provide connection to such organisations, businesses and/or services.

For the avoidance of doubt, this definition does not apply to Directory enquiry (DQ) services as defined in PhonepayPlus “Guidance on Directory Enquiry Services” and which currently operate on the 118 number range.

For the further avoidance of doubt, the following providers of ICSS are exempt from this Notice:

- Charities registered with the Charities Commission in England, Northern Ireland, Scotland or Wales; and
- Any provider who has an established, written agreement with a public or commercial organisation to operate an information, advice, or assistance service on their behalf. In this case, the provider would not be required to seek permission in respect of

services which were operated as part of such an agreement. Such agreement must be provided to PhonepayPlus upon request.

General Conditions

- All provisions of the PhonepayPlus Code (as far as they are applicable) apply to the service.
- PhonepayPlus may impose such further conditions as it may deem necessary upon reasonable notice.
- This permissions certificate may be revoked without notice by PhonepayPlus if any condition is breached.
- PhonepayPlus may revoke this permission certificate for any other reason after giving reasonable notice.
- This permission is granted to the service provider and relates only to it (and, for the avoidance of doubt, does not relate to any subsidiary or associated company or any other company) and may not be assigned or otherwise transferred in any way.
- The service provider will notify PhonepayPlus of the applicable telephone number(s) or access code(s) when the service commences and, once notified, the telephone number(s) or access code(s) of the service may not be changed without the prior written consent of PhonepayPlus. If, for any reason, the service fails to commence within six months from the date of this permission certificate, or having commenced does not operate for any continuous period of six months, this permission certificate (in either case) will immediately cease to be in force.

Specific Conditions

Search Engine Marketing (SEM)

- a) Web-based promotions should not use metadescrptions or metatags which mislead a consumer into believing (a) that their service is the actual service the consumer is seeking; or (b) that they are providing advice or information that is not already available from a public or commercial organisation (unless they genuinely are providing advice or information that is not available in this way). In addition, web-based promotions should contain metadescrptions which make it clear that the service on offer is a premium rate service (PRS), and not the helpline or information the consumer is seeking. The Search Engine Marketing (SEM) should therefore display the phrase "This is a premium rate telephone service" at the beginning of

the metadescription to ensure it is clearly on-screen when the consumer views the search engine results.

- b) Services must not promote using websites with addresses which mislead a consumer into believing the website is associated with the organisation they are seeking

Promotions and Promotional material (including website landing pages for the service)

- a) Layout and presentation of information must comply with all Code obligations to clearly state the price and other key information immediately next to the PRS number and in a sufficiently prominent format.
- b) Promotional material must clearly and prominently state (where this is factually the case) (i) that the information provided by the PRS (be it a phone number, advice or information) is available direct from the relevant public or commercial organisation at no or lower cost; and (ii) where it relates to a connection or signposting service, the promotion should provide the actual contact number of the helpline; and (iii) where it relates to an information, advice or assistance service, the promotion should provide the phone number or the web address where the consumer can obtain the information, advice and/or assistance. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised.
- c) Promotional material must be distinct in appearance from the organisation being sought. Promotions must not use descriptions, colour or typeface which is, or may be, perceived to imitate the organisation the consumer is looking for. Promotions must not imply that advice and/or information is unique to an ICSS when the same advice and/or information is available from a public or commercial organisation.
- d) Where a service requires the consumer to provide secure personal and/or confidential details, such as online account numbers or passwords, then promotional material must clearly inform the consumer that their details are being provided to a third party, and not the organisation they actually wish to contact. In addition, where such secure data will be used to log into a consumer's online account in order to undertake any action on the consumer's behalf, promotional material must clearly inform consumers of this, and that they could perform such actions themselves at no cost.

Alerts on connection or prior to charging

- a) Where an ICSS provides an IVR containing the number of the service the consumer is actually looking for, then promotional material must clearly instruct consumers to have a pen and paper ready, or some other means of recording the number, before they call.
- b) Where consumers are signposted or connected to a public or commercial organisation's number at a premium rate, providers must ensure that consumers receive a free message at the start of the call before onward connection to a chargeable service informing them of the price per minute and the actual number they are seeking along with the cost of calling that number.
- c) Where there is the possibility that the consumer will be placed in a queue, the free message must also inform consumers of this.
- d) Where the consumer is connected to an IVR containing information, this information must not be unreasonably prolonged or delayed, and the consumer must be informed of the cost of the call in a free message at the start of the call before charging commences.
- e) Where the consumer is connected to an IVR containing information which is freely available on the web, the consumer must be informed of this, and the address of the relevant website, at the start of the call before charging commences.
- f) Where the consumer has been connected to an operator who will provide them with the number and/or information they are seeking, they must not be asked to supply details which are irrelevant to the provision of the information they seek.
- g) Where the consumer is asked to supply secure personal and/or confidential details, then they must be clearly informed that their details are being provided to a third party, and not the organisation they wished to contact. In addition, where such secure data will be used to log into a consumer's online account in order to undertake any action on their behalf, then consumers must be clearly informed of this and that they could perform these actions themselves at no cost. They should also be advised as to how this data will be stored, retained, or further used.
- h) Where the consumer has been provided with the number they are seeking, and then has the option of being connected to it directly, they must be informed clearly of the cost per minute of doing so and be given the opportunity to refuse. Where onward connection is automatic, then the consumer must first be clearly informed of the cost, and a gap of five seconds must be provided in between the provision of information and connection, in order that the consumer can choose to end the call.
- i) ICSS must not provide any facility which makes it possible for the consumer to save a PRS number to their phone.

Collection of personal data from consumers

- a) Providers of ICSS who intend to collect personal data and are Data Controllers as defined within the Data Protection Act 1998 must satisfy PhonepayPlus that they have complied with the requirement to notify the Information Commissioner's Office (ICO) and provide it with full details of the types of data that they will be processing. Providers must ensure that they comply with the requirements of the Data Protection Act 1998 in relation to the processing of consumers' personal data at all times.
- b) Providers of ICSS who intend to collect confidential data/information (e.g. login passwords, PIN numbers etc) that may not fall within the definition of personal data should clearly inform consumers as to their intended use of such information, and obtain consumer consent before confidential information is used. Providers should thereafter not use the information for any other purpose or on any other occasion without further consumer consent being given

PhonepayPlus recommends that service providers submit their applications as soon as possible. Application can be submitted via email to compliance@phonepayplus.org.uk.

Service providers are reminded that the granting of a prior permissions licence by PhonepayPlus to operate ICSS does not serve as an obligation to any network operator to provide connection or carriage for such services.

Annex B

Google AdWords policy - Sale of free items and official services

What's the policy?

Google AdWords doesn't allow the sale of items or services that are otherwise available for free.

We also don't allow the sale of government forms or services that are available for free or for a lower price on the official or government site.

Please see the examples below for guidelines on how to comply with this policy if you're advertising the following:

- Services associated with official forms/services
- Services associated with products/services that are otherwise available for free

We've created this policy to protect our users from being misled.

Examples

Website	Allowed?	Details
Charging for free items	 Not allowed	Google doesn't allow the promotion of sites that charge for products or services that are otherwise available for free.
Charging for free software	 Not allowed	Google doesn't allow the promotion of sites that charge for downloads of software that's widely available for free.
Selling AdWords coupons	 Not allowed	Google doesn't allow the promotion of sites that charge for Google AdWords coupons.
Selling government forms	 Not allowed	Google doesn't allow the promotion of sites that charge for government forms that are free or available for a lower price on the government site.

Government form information	 Allowed	Google allows the promotion of sites that provide information about government forms.
Charging for services associated with an official form or service	 Allowed with limitations	<p>Google allows the promotion of sites that charge for services associated with an official form or service, as long as:</p> <ul style="list-style-type: none"> • They accurately represent the added value they're charging for • They clearly and prominently state their affiliation/non-affiliation with the government or official body • They clearly mention that the original service is available for free or for a charge • They provide a working link to the official source with equal prominence at the point of entry to the service <p><u>See an example website</u></p>
Charging for services associated with products or services that are otherwise available for free	 Allowed with limitations	<p>Google allows the promotion of sites that charge for services associated with products or services that are otherwise available for free, as long as:</p> <ul style="list-style-type: none"> • They accurately represent the added value they're charging for • They clearly mention that the products or services are otherwise available for free • They provide a working link to the source of the products or services with equal prominence at the point of entry to the service
Free software	 Allowed	Google allows the promotion of sites that provide free software or information about free software.

What can I do if my site gets suspended?

- Ensure that the products or services you're selling aren't already available for free.
- Remove all products that are available for free elsewhere, or provide those products for free on your site.
- If you charge users for services associated with products or services that are otherwise available for free, such as telephone directory sites that charge for access to toll-free or premium rate phone numbers, you must accurately represent on the site the added value you're charging for. Be explicit that the product or service is otherwise available for free and ensure that a working link to the official source of the product or service is provided to users with equal prominence at the point of entry to your service.
- Ensure you do not charge users for free government forms or services.
- If you charge users for services associated with government forms or services, such as assistance with document preparation or filing, you must accurately represent the added value you're charging for on your site. Clearly and prominently state your affiliation or non-affiliation with the government or official body. Be explicit that the forms or services are available for free or for a charge and ensure that a working link to the official source of the form or service is provided to users with equal prominence at the point of entry to your service.
- Please note that we may look at other pages of a website for compliance, not just the landing page of an ad.
- After making any necessary changes to your site, request a re-review of your site by following the instructions below.

How can I request a re-review of my website?

Once you've addressed the violation, please contact us via the link below. You'll be taken to our "Site Policy" form where you can request a re-review of your site.

What happens if I violate this policy?

- **Ad disapproval:** Ads that don't follow this policy may get disapproved. When an ad gets disapproved, it won't be able to run until the policy violation is fixed and the ad is approved.
- **Domain suspension:** Websites that violate our advertising policies may get suspended from running AdWords ads. This means that the website can no longer be advertised with AdWords until the problem is fixed.

- **Account suspension:** An account may get suspended if you have several violations or a serious violation. If this happens, all ads in the suspended account will stop running, and we may no longer accept advertising from you. Any related accounts may also get permanently suspended and your new accounts may get automatically suspended at set up. Learn more about [suspended accounts](#).