



**Further assessment of Information,
Connection and/or Signposting Services**

**A Final Statement Following PhonepayPlus'
Consultation**

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Executive Summary

1. 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 them with absolute confidence.
2. Information Connection and/or Signposting Services (ICSS) are PRS which are promoted prominently on search engines (such as Google, Bing or Yahoo), or sometimes on classified ads websites (such as Gumtree). Where consumers use a search engine to obtain a contact number for a popular organisation – examples might include telephone companies, utilities such as gas or electricity, or travel agents or airlines - or particular advice or assistance connected with an organisation (such as advice about housing benefit) then ICSS promotions will usually appear at the top of search engine results in the “sponsored” links. Typically consumers who click on one of these sponsored links are directed to a website providing a premium rate number to call a service which will do one of the following:
 - Provide the actual contact number the consumer is looking for, and/or provide onward connection to it, also charged at premium rate regardless of the usual cost of calling the actual number.
 - Provide information or advice, which is normally available at no cost from the organisation the consumer was looking to contact.
 - Provide a facility which allows the consumer to make a complaint to an organisation with whom they have an online account via the ICSS provider. This is normally not only available to the consumer for free, via the actual organisation's website, but in addition the caller must provide the ICSS provider with the confidential password to their account in order that the provider can access the actual organisation's complaint facility.
3. PhonepayPlus defines these services as follows:

“Premium rate services, excluding full national directory enquiry services¹, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.”
4. As a result of complaints, and subsequent adjudications, about ICSS, arising both from consumers and the organisations with which ICSS providers imply association, PhonepayPlus issued a consultation in July 2012 that identified a higher than normal risk presented by ICSS and set out proposals for a prior permissions regime.
5. The July 2012 consultation set out our concerns that the way in which ICSS were promoted, in particular through search engine marketing, could mislead consumers into either believing that an ICSS number is the actual number of the organisation they wished to dial, or alternatively into believing that they were getting extra information or assistance that was not available from the relevant end organisation. This called into question whether a fully informed consumer would derive the same value from an ICSS, given that in most cases the

¹ This is defined in the Ofcom Statement dated 1 March 2002, and has been adopted (to the extent set out) as follows: “A Directory Enquiry Service which provides information on allocations of numbers to subscribers from the United Kingdom numbering scheme to callers located in the United Kingdom. A National Directory Enquiry Service shall be considered a ‘full’ National Directory Enquiry Service for the time being if it provides information on the geographic numbers of all business and residential listings and on other numbers used for comparable purposes to geographical numbers (e.g. 08 numbers used for main switchboards etc), where the subject of the listing has not withheld their permission for its inclusion.”

organisation or information they sought was available for free or at a significantly lower cost. In addition ICSS which mislead consumers risked undermining consumer confidence in the organisations with which the ICSS providers implied association. The consultation set out proposals for prior permission conditions to address the following harm or potential harm as follows:

- The use of Search Engine Marketing (SEM) to give a website advertising the ICSS greater prominence in search engine results than the website of the organisation the consumer is actually seeking to talk to.
 - The use of websites, or other promotions such as classified ads, to mislead consumers into believing the ICSS number is the number they are actually looking for, or that the ICSS provides information which is not available elsewhere at a lower cost.
 - The lack of prominent and clear pricing information in a significant number of ICSS promotions.
 - The lack of an alert when a consumer calls an ICSS that informs them they are using a PRS.
 - The potential for consumers to be held in a queue when connected via an ICSS, so increasing the cost of the call.
 - The undue delay caused to some consumers when an ICSS operator requests details which are irrelevant to the information or advice being provided.
 - The request by some ICSS for consumers to provide personal and/or confidential data such as account login details.
6. In response to the July 2012 consultation we received broad support for our proposals. However a number of ICSS providers, especially those who provided signposting and/or connection but not advice or assistance, objected to the introduction of a prior permissions regime and some of the specific proposed conditions. Their objections could be grouped into the following arguments:
- i. That there is very little evidence of consumer harm with ICSS, and in particular call connection services, with relatively few complaints being received either by PhonepayPlus or by the providers themselves.
 - ii. That in a world where many organisations make it hard to find their phone number on their website, ICSS which provide call connection meet a genuine consumer need that consumers are prepared to pay a premium rate for.
 - iii. That ICSS which provide call connection are a cheaper form of directory enquiry (DQ) service and imposing prior permission requirements on them, but not on DQ services, is anti-competitive and will damage innovation, competition and choice in the DQ market, entrenching the perceived “duopoly” of 118 118 and 118 500.
 - iv. That Type 1 and Type 2 ICSS should not be bracketed together and subject to the same approach as they are different services with different levels of consumer risk.
 - v. That any harm caused by individual ICSS could be dealt with adequately through enforcement action under the Code and a prior permission regime is not needed and would be disproportionate.
 - vi. That ICSS which provide only connection services (and not signposting, advice, and/or assistance) may be classed as an Electronic Communications Service, and therefore could not be brought within a prior permission regime without contravening EU Directives.

7. We did not consider that these arguments invalidated our original proposals, especially as the majority of respondents had supported them. However PhonepayPlus recognised that they deserved further consideration and analysis, and issued a statement to this effect on 18 December 2012. This statement also informed stakeholders that we would undertake further analysis in the following areas:
- External research to gain further quantitative and qualitative data relating to user and public.
 - perception of ICSS and an understanding of consumer usage of these services.
 - Consideration of the legal objection to the inclusion of connection-only ICSS in any prior permission regime.
 - Continued consideration of complaint and investigations data.
- Further engagement with organisations with which ICSS imply association in order to receive any data or consideration they could provide in respect of consumer feedback.
8. This further work produced strong evidence to support PhonepayPlus' view that ICSS services are misleading to many consumers and that a prior permissions regime is therefore necessary and proportionate. In particular, the consumer research indicated that whilst some ICSS users see some value in some of these services – in particular in helping consumers connect through to phone numbers quickly – 78% of consumers surveyed who had used an ICSS thought that they had called the organisation they wished to speak to and didn't realise they had been connected via a PRS. PhonepayPlus therefore issued a further consultation document on 24 April 2013, proposing that we introduce a prior permissions regime, but with some proposed minor amendments to the conditions we had originally proposed in July 2012.
9. Respondents to the 2013 consultation were again broadly supportive of our proposals, and of the view that a prior permission regime was necessary. Three respondents, all ICSS providers, continued to object to the introduction of a prior permissions regime, and to conditions requiring ICSS providers to state "premium rate connection service" or "premium rate assistance service" in any sponsored search engine results promoting their services. PhonepayPlus has fully considered these objections and the information provided in support of them, but does not consider them to be persuasive, especially when set against the body of research and complaints evidence PhonepayPlus has compiled that indicates significant consumer harm being caused by these services. Consequently, PhonepayPlus has therefore decided to implement a prior permissions regime for ICSS services. However, in response to points raised by various respondents we have made some further minor amendments to the prior permission conditions we proposed. These are set out in greater detail later in the document.
10. As such PhonepayPlus gives notice that from **Wednesday 11th September 2013** no ICSS may operate without prior written permission from PhonepayPlus. Notice of this requirement, along with a list of prior permission conditions, is attached at Annex A of this document.

Section 1: About PhonepayPlus and Prior Permission

About PhonepayPlus

- 1.1 Ofcom has recognised PhonepayPlus as the organisation responsible for the regulation of the PRS market by approving the PhonepayPlus Code of Practice in accordance with section 121 of the Communications Act 2003.
- 1.2 Premium rate services are products or services which are charged to a consumer's phone bill. Examples include music, video games (or the purchase of extra items such as weapons or tools within a video game), voting on TV shows, entering competitions, Directory Enquiry services, and live chat (such as psychic or adult-themed).
- 1.3 PhonepayPlus has regulated PRS since 1986. PhonepayPlus' goal is that everybody should be able to use PRS with absolute confidence. In pursuit of this goal, PhonepayPlus applies a Code of Practice which sets appropriate standards for promotion, content and operation of all premium rate services. The current Code of Practice is the 12th edition, which came into force on 1 September 2011 (the '**Code**'). In applying these standards, PhonepayPlus has particular regard to vulnerable people, especially children.

About Prior Permission

- 1.4 Prior permission regimes can be introduced by PhonepayPlus where an identified category of PRS poses a heightened risk of harm to users because of their promotion, content, means of operation, or a combination of those factors. Where a category of service is designated to require prior permission, paragraph 3.10.1 of the Code states such services must not be provided without PhonepayPlus' prior written permission.
- 1.5 Before any prior permission regime is introduced paragraph 3.10.1 requires PhonepayPlus to "give reasonable notice of such requirement". We are committed to forming strong and effective regulatory provisions and therefore have decided to go beyond the reasonable notice obligation and seek input from stakeholders, both industry and consumer focused, by consultation prior to introducing or substantially changing any prior permissions regime.
- 1.6 The current list of categories of services which require prior permission is published on our website, and includes live chat, gambling and counselling services.

Section 2: Background

Original consultation in 2012

- 2.1 Following concerns arising from consumer complaints, subsequent PhonepayPlus Tribunals, and our own monitoring, in July 2012 PhonepayPlus issued a consultation setting out proposals intended to address consumer harm associated with the operation and promotion of ICSS. These are services that are typically promoted through search engines in response to searches by consumers for an organisations' contact telephone number and such promotions usually appear at the top of the search results page as a result of being paid-for advertisements using search engine marketing. The services provide a PRS number to call to provide onward connection, information or signposting about the phone number being sought. These services are charged at a premium rate. These proposals were put forward as part of a review of ICSS, which we put out for consultation to industry members and other key stakeholders. This consultation period ended on 27 September 2012.
- 2.2 The 2012 review introduced a definition for ICSS, and distinguished between ICSS and Directory Enquiry (DQ) services. At that time we suggested *"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."*
- 2.3 The 2012 review also went on to set out a number of different variants of ICSS. These variants were placed into two main categories:
- Type 1 – 'Signposting', number provision and/or call connection services. Type 1 services usually offer the number of one organisation, or a small number of organisations, rather than the full range that a national DQ service provides, and may also provide onward connection to that number. In a limited number of cases, Type 1 services do not provide the number the consumer is seeking, but offer only onward connection to it via the premium rate number which the consumer has dialled.
- Type 2 – 'Helpline' or advice or assistance services (which may or may not include the consumer providing account details relating to an unrelated online account they hold, so that the ICSS provider can interact with the account on their behalf). Type 2 services usually offer operator-led assistance, or provide generic, pre-recorded advice via an Interactive Voice Response (IVR) system.
- 2.4 The 2012 review went on to set out the evidence of consumer harm relating to ICSS. We included case studies to outline the issues identified by both consumers, who complained to PhonepayPlus and by organisations, to which consumers of ICSS were being connected. In terms of relevant provisions of the Code the following matters were identified:
- Potential for consumers to be misled, at both the stages of internet search and then subsequently following a link to an ICSS provider's website. With Type 1 ICSS, we were concerned that consumers were being misled into believing that they were calling the end-organisation they wanted, rather than a premium rate connection service. With Type 2 ICSS, we considered that even where consumers recognised that they were calling a PRS, they were being misled into believing they were getting

an additional value added that was not available for free, when this was often not the case.

- Lack of pricing transparency and/or prominence when the consumer reaches the ICSS provider's webpage.
- Potential for the consumer to be unduly delayed in accessing the service.
- With Type 2 ICSS, potential for consumers to be asked to provide protected personal and/or confidential data without being fully informed of who such information 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.

2.5 The 2012 consultation proposed conditions around various headings, which reflected stages of consumer interaction with ICSS. The stages identified were:

- Use of Search Engine Marketing (SEM).
- Misleading promotion on web pages or within other promotions.
- Lack of an alert before consumers are connected to information or a helpline via PRS.
- Collection of personal and/or confidential data from consumers.

2.6 PhonepayPlus identified four factors that we considered to justify the regulatory impact these proposals may have:

- The potential for serious consumer harm.
- The risk to vulnerable consumers, bearing in mind that some ICSS operated in relation to public service helplines (such as NHS Direct and benefits lines) that may be used in particular by vulnerable people.
- The risk to the general reputation of both public and commercial organisations.
- The secondary risk to the reputation of PRS as a whole.

Responses to the 2012 consultation and the decision to gather further evidence

2.7 PhonepayPlus received a significant number of responses to our consultation of the 2012 review and the proposals arising from it. These responses are summarised in more detail in the 'Background' section of the 2013 consultation, but respondents to the 2012 consultation who objected to the review's conclusions and proposals put forward a number of arguments in support of their position, summarised in brief as follows:

- i. That there was very little evidence of consumer harm caused by ICSS, and in particular call connection services, with relatively few complaints being received either by PhonepayPlus or by the providers themselves at the time of the 2012 consultation.
- ii. That in a world where many organisations make it hard to find their phone number on their website, ICSS which provide call connection meet a genuine consumer need that consumers are prepared to pay a premium rate for.
- iii. That ICSS which provide call connection are a cheaper form of directory enquiry service and so imposing prior permission requirements on them, but not on DQ services, would be anti-competitive and damaging to innovation, competition and

choice in the DQ market, entrenching the perceived “duopoly” of 118 118 and 118 500.

- iv. That Type 1 and Type 2 ICSS should not be bracketed together and subject to the same approach as they are different services with different levels of consumer risk.
- v. That any harm caused by individual ICSS could be dealt with adequately through enforcement action under the Code of Practice, and as such a prior permission regime would be a disproportionate response to the risk presented by ICSS.
- vi. That ICSS which provide only connection services (and not signposting, advice, and/or assistance) may be classed as an Electronic Communications Service, and therefore could not be brought within a prior permission regime without contravening EU Directives.

2.8 We did not consider that the objections set out above invalidated our original proposals, especially as the majority of respondents to the consultation were supportive of them. At the same time, however, we recognised that some of the points made by ICSS providers, in particular those providing Type 1 call connection services, merited further consideration and analysis. To this end PhonepayPlus informed stakeholders of our intention to carry out further work in a statement issued on 18 December 2012, and invited stakeholders to provide any further information and/or evidence they had during the following period.

2.9 Following the 18 December statement PhonepayPlus conducted further work in a number of areas, as set out below:

- An external research project to gain further quantitative and qualitative data as relates to the public and consumer perceptions of ICSS, and understanding of how consumers interact with and use ICSS.
- Consideration of the legal objection to the inclusion of connection-only ICSS in any prior permission regime.
- Continued consideration of complaint and investigations data.
- Further engagement with organisations with which ICSS imply association in order to receive any data or consideration they could provide in respect of consumer feedback.

2013 consultation

2.10 Having analysed the evidence from the further work we undertook, we concluded that, whilst the majority of our original proposals were sound, and therefore we are continuing with our proposal for a prior permission regime for ICSS, a number of changes were necessary which would require a further consultation. For ease of reference the changes to our original proposals on which we then consulted were as follows:

- Make a minor adjustment to the definition of ICSS that we proposed in the original consultation in order to exclude only “national” DQ services, not all DQ services, from the definition.
- Remove the previously proposed exemption from prior permission requirements for any registered charities that choose to operate ICSS services (albeit registered charities will not be required to pay an application fee for prior permission).

- Make some adjustments to the prior permissions conditions we proposed in the original consultation, focusing on enhanced transparency throughout all stages of the consumer journey, but not requiring ICSS providers to give out for free the phone number of the end-organisation the consumer is seeking.

2.11 The public consultation document was published on 24 April 2013 and stakeholders were invited to respond by 6 June 2013. PhonepayPlus has received 14 responses from trade bodies, consumer groups, ICSS providers and other stakeholders. A list of respondents is provided at **Annex B**.

Section 3: Objections to adopting prior permission

3.1 The 2013 consultation considered previous objections and raised two questions around PhonepayPlus' view that there remained a case for the introduction of a prior permission regime:

Q1: Do you agree with our assessment in relation to the six objections that were raised to applying a prior permission regime to ICSS? If not, why not?

Q2: In light of this, do you agree with our conclusion to apply a prior permission regime to ICSS, but not to full national directory enquiry (118) services? If not, why not?

3.2 The majority of respondents had previously been supportive of changes to the regulation of ICSS and accepted PhonepayPlus' assessment of the previous objections. The respondents who were in support of our proposals welcomed the new evidence and indicated that they shared our view that there remained strong grounds for a prior permission regime to be introduced.

Continued objections from ICSS providers

3.3 Three ICSS providers continued to object to the proposed new prior permission regime on the following grounds:

- (i) Evidence of consumer harm – the three ICSS providers who objected each commented that PhonepayPlus' assessment of consumer harm did not match their experience, and suggested that in comparison with their own experience PhonepayPlus had presented an inaccurate or skewed picture. One provider claimed the research methodology was flawed, and provided evidence of users of its own ICSS website to argue there was little or no evidence of consumer harm as found by the research. One claimed PhonepayPlus' data actually suggested people were familiar with the service offered and gave evidence of users of its own ICSS website to argue consumers were free to make an informed choice whether to pay for the service or not. The final provider claimed the data was unclear and not broken down sufficiently to enable any proper assessment of the varying types of ICSS available to consumers. This ICSS provider went on to argue that the research did not make the case for all categories of ICSS to be included in any new prior permission regime.
- (ii) The contact details of the organisations which ICSS supply are hard to find –and as such PhonepayPlus' assessment undervalues the service supplied to consumers by ICSS providers. One ICSS provider who objected argued that the examples given in the consultation did not prove end organisations' numbers were readily available and in fact indicated there was a clear benefit to the consumer of being instantly connected to the relevant number and saving time. It also argued the research results were unclear as to consumers' perceptions of value.
- (iii) Failure to include DQ services – PhonepayPlus acknowledges there remain residual concerns relating to these new provisions being introduced only in

relation to ICSS and not applying to national DQ services. This is dealt with below at paragraph 3.10 onwards.

- (iv) Type 1 and Type 2 ICSS ought not to be bracketed together – two ICSS providers claimed the case had not been made for prior permission to be introduced for both types of service. The research was criticised for not providing a breakdown of consumer harm affecting the distinct service types and it was suggested previous PhonepayPlus adjudications had largely focussed on one type of service – provision of assistance. One provider argued that “*on the back of a percentage of research results saying that the ICSS were beneficial (34% of consumers interviewed considered that ICSS were useful) [it] was an important area to conduct an in-depth study.*”
- (v) Enforcement of the Code offers adequate protection – While continued objections did not focus on traditional enforcement action under the Code being an adequate alternative approach, PhonepayPlus has considered that option throughout the consultation period when assessing the merits of introducing the new prior permission regime. This is considered further in Section 5 ‘Regulatory Impact Assessment’.
- (vi) Legal objection – one ICSS provider continued to voice concerns that the proposed prior permission regime would be unlawful if it included connection-only Type 1 ICSS. This repeated an objection they had made in response to the 2012 consultation, and which PhonepayPlus had considered before making proposals as part of the 2013 consultation. The argument continued to be that, connection-only ICSS were Electronic Connection Services (ECS), and therefore the prior permission regime would impose a licensing requirement which contravened EU Directives. As a result the provider continued to argue that prior permission ought not to be applied to connection-only services.

3.4 In particular relation to objections (i), (ii) and (iv), the majority of respondents support the findings of the research and have called for swift implementation of the changes to ensure consumers are protected from the harm evidenced within the consultation document. Some ICSS providers have provided information showing that only a small proportion of consumers who search on a relevant search term click through to their particular ICSS website and then only a minority of those who click on the site go on to use the ICSS service. Their contention is that the drop off at each stage in the consumer journey shows that the service is not misleading – i.e. that the consumers who drop out at each stage do so because they have been informed about the nature of the service and that consequently those who remain and use the service do so on a well-informed basis. We do not consider this evidence to be compelling. It is inevitable with any form of marketing that not all, or even a majority, of potential customers will decide to use a particular provider’s service and that there will be drop offs at different stages of the consumer journey. This is particularly likely to be the case with search engine marketing, which is targeted at a very wide potential customer base and is used in the expectation that it will need to draw in only a small proportion of this very large base. What this information doesn’t tell us, however, is what proportion of those who used the ICSS understood the nature of the service. It is not contradictory for there to be drops off at prior stages of the consumer journey, but nonetheless for a high proportion of those consumers who ended up using the service still to have been misled.

- 3.5 The research carried out for PhonepayPlus directly sought information about consumer usage across the ICSS market, as opposed to focussing on website hits and calls for particular ICSS providers, and gained valuable insight into consumer perceptions. It found that 78% of ICSS users – i.e. those who had called an ICSS – thought that they were calling the actual organisation they wished to contact (and not an ICSS). Therefore whilst the metrics supplied by some ICSS providers suggest that many potential customers decide not to use a particular ICSS provider's service, it does not suggest that as a whole ICSS are promoted in a way which is clear and transparent to the majority of consumers.
- 3.6 In addition PhonepayPlus' own complaints data shows there has been a steady increase in monthly complaints – from 7 in July 2012 to 60 in April 2013 – about ICSS, even as Google has strengthened its Adwords policy for those promoting ICSS, and as PhonepayPlus has consulted on proposals for additional regulation. Whilst complaints have dropped slightly over the last two months – to 37 in May 2013 and 28 in June 2013 – the level is still well above that at the time of the 2012 consultation. This internal data is re-enforced by data from both public and private organisations with which ICSS imply association, suggesting they have received, and continue to receive, significant numbers of complaints in 2012 and 2013 from consumers who have contacted them via an ICSS, and who believe the ICSS number to be that of the organisation itself. The 2013 consultation highlighted data from the Driver and Vehicle Licensing Agency (DVLA) which indicates that they received 100 written complaints about ICSS during 2012, with many more customers passing comment within the context of their other communications with the DVLA. In addition a major UK company who wished to remain anonymous cited 123 complaints from consumers about ICSS during 2012, with the majority of those complaints reporting that the consumer believed the ICSS to be operated by the company they were trying to contact. The same company has confirmed that the level of complaint has remained consistent through 2013 so far.
- 3.7 The 2013 consultation also put forward PhonepayPlus' view, based on qualitative interviews as part of the independent consumer research carried out by Jigsaw, that the number of consumers who have complained, either to us or another entity, represents only a fraction of the number of consumers who had been misled by ICSS. Discussions with consumers by Jigsaw revealed that even where consumers had been misled by an ICSS and lost money they didn't complain for one of three main reasons:
- They didn't know who to complain to.
 - They perceived the process would be "too much hassle".
 - They felt embarrassed at having called the number and having been misled.
- 3.8 Whilst one provider cited the finding in research that 34% of consumers said that ICSS were "useful", the research also highlighted that 72% of ICSS users considered that it was "not clear what these services are offering", and that only 11% of ICSS users considered that ICSS offered value for money.
- 3.9 In relation to objection ii), PhonepayPlus has previously identified (in the 2013 consultation) that not all the organisations with which ICSS imply association have contact numbers which are difficult to locate on the organisation's website. The main determinant for ICSS providers in selecting the numbers they wish to provide appears to be the organisations which consumers most often attempt to contact, rather than the difficulty involved in contacting them.

3.10 In relation to objection v), PhonepayPlus notes that complaints about ICSS increased from 7 during July 2012 to 60 in April 2013. The figure for April 2013 is around 5% of our overall complaints, which we would consider disproportionate for a service which is not promoted outside of web-based SEM promotions and is considered niche. In the same period that complaints to PhonepayPlus rose from 7 per month to 60 per month, PhonepayPlus issued an initial consultation on tighter regulatory controls (July 2012) and PhonepayPlus Tribunals adjudicated against a further 7 specific ICSS and levied sanctions totalling £249,000. Whilst these sanctions have dealt with individual ICSS, they have not dissuaded other providers from causing the same or similar harm. In addition PhonepayPlus had previously released a Compliance Update (March 2012), setting out clear expectations of ICSS in relation to Code compliance, and Google, the largest of the search engines on which ICSS providers promote their services via SEM, changed their policy governing the use of the SEM facility Google Adwords to prevent misleading advertising by ICSS services.

3.11 PhonepayPlus further notes that the only drop in complaints about ICSS has occurred since the publication of the 2013 consultation, which set out our opinion and strong evidence that a prior permission regime for ICSS remained necessary and proportionate. Following publication of the consultation in April 2013 complaints have dropped for two consecutive months, to 37 complaints in May and 28 in June, which may indicate that the potential introduction of a prior permissions regime has served as a dissuasive measure where other previous actions have not.

3.12 Furthermore we have given previous consideration to whether the proposed prior permission conditions could, instead, be added directly to our Code of Practice. We have rejected this as an option for the following reasons:

- We are not satisfied that this would have any material impact on the levels of compliance by ICSS providers, given our previous attempts to advise them about how to comply with the Code have been unsuccessful.
- The PhonepayPlus Code is outcomes-based, in order to encourage innovation wherever it is possible to do so without consumer harm, and also to ensure the Code is future proof in a market where technology and market practice quickly evolve and change. Adding specific requirements for one niche service type would run directly counter to these principles.
- Prior permission conditions, or regimes, can be amended or withdrawn quickly (hypothetically with one month's notice) in response to increased compliance and/or other factors which reduce the consumer risk presented by identified service types. However rules within the Code cannot be withdrawn without a Code change, which makes adding conditions directly to the Code less proportionate in this regard.
- Even if the rules within Code were changed, our ability to enforce it proactively would not be. As such, and even with the addition of new paragraphs designed to address ICSS specifically, we would still be unable to proactively influence the activities of ICSS providers and our regulation would still be in reaction to consumer harm which had already occurred. Given that our enforcement so far – by its nature reactive - has not proven successful in reducing harm or complaints about ICSS, we do not consider that the introduction of new paragraphs into the Code would quickly resolve this situation.

- Making amendments to the Code is a necessarily lengthy process, involving full consultation of all proposed changes and then submission of the proposed new Code by Ofcom to the European Commission for a further 3 months. Whilst PhonepayPlus is currently reviewing the Code with a view to proposing amendments next year, any final amendments will not take effect until early 2015. Given that there is little evidence that consumer harm will abate via enforcement of the existing Code, it is our opinion that consulting on amendments to the Code to include ICSS – regardless of our view that such amendments would not help to proactively lessen the harm caused by ICSS – would delay any action and allow consumer harm to continue in the meantime.

3.13 In relation to objection (vi), PhonepayPlus considers that no new legal arguments or information has been provided in response to the 2013 consultation that were not previously provided, and considered, in response to the 2012 consultation. As such we are satisfied that the ICSS, including connection-only services, require similar controls as other types of ICSS, and that the provisions being adopted within the prior permission regime are appropriate and justifiable in all the circumstances. Finally, we are satisfied, having received appropriate legal advice, that the proposed prior permission regime is lawful and does not breach any of the EU Directives referred to by the ICSS provider.

3.14 As a result of this consideration, PhonepayPlus is satisfied that the case has been made for the introduction of a prior permission regime. Whilst we acknowledge that ICSS carry an amount of value for some consumers, we remain satisfied that it is necessary to introduce a prior permission requirement in order to ensure consumers can use ICSS with clear knowledge of the nature of the service and the associated costs. The specific conditions associated with this regime are discussed and set out in Section 4 of this document.

ICSS and directory enquiry services

3.15 One ICSS provider argued throughout their response that both ICSS and DQ services ought to be treated equally under the Code of Practice and any prior permission conditions imposed against ICSS ought to also apply to directory enquiry services. Whilst these comments are noted, PhonepayPlus also notes that the 2013 consultation set out a clear consideration of differences between how consumers engage with DQ and ICSS, which are summarised as follows:

- DQ services are normally used as an alternative to searching the internet, whereas ICSS are only accessible to consumers who are searching on the internet, most often for free information rather than a paid-for ICSS.
- DQ services are clearly branded around the service being provided, whereas ICSS are marketed, especially at the SEM marketing stage, around the name of the organisation with which the ICSS implies association.
- According to the research conducted for PhonepayPlus, 96% of consumers who called a DQ service were aware of the service on offer. By contrast 78% of consumers who had dialled an ICSS thought they had dialled the number of the organisation they were looking for, and not an ICSS.

3.16 So whilst PhonepayPlus notes the objection to differentiating between DQ and ICSS, we do not consider that adequate information or evidence has been provided to refute the consideration and reasoning set out in the 2013 consultation. We also note the low

evidence of consumer complaints about DQ (both internally and from external sources) in comparison with the rising complaints about ICSS.

- 3.17 PhonepayPlus is committed to enforcing the outcomes and rules contained within our Code of Practice where any problems arise and potential breaches are evidenced. As such where there is evidence of a DQ service operating in breach of the Code, steps will be taken to investigate and adjudicate if necessary. We also note that service-specific guidance has been published relating to directory enquiry services, and PhonepayPlus will continue to keep this under review. Where there is evidence that additional regulation is necessary to address consumer harm in relation to any sector within the premium rate services industry, such action will be considered, evidenced and pursued.
- 3.18 Currently, PhonepayPlus finds there are no grounds for the inclusion of DQ services within either the definition of ICSS, or within these proposals for a new prior permission regime. However, it is recognised that some ICSS will operate in such a way as to provide similar outcomes for consumers as might be available from directory enquiry services. That outcome may be described as the number associated with a particular business, organisation or service; and/or onward connection to such a number. The consumer journey to that end is what is distinctly different for each category of service.

Section 4: Summary of Responses and Conclusions

4.1 Having considered the objections to the introduction of a prior permissions regime per se in Section 3 of this document, this section considers the definition and specific conditions that have been proposed for inclusion within a prior permission regime for ICSS. The 2013 consultation outlines the reasons behind these proposals in more detail, and below is a summary of the responses to questions 3 to 11 and our conclusions. In summary PhonepayPlus has decided to retain many of the conditions previously proposed in the 2013 consultation. However, after due consideration, some further changes have been made to appropriately address some of the issues identified in consultation responses.

Definition of ICSS

4.2 PhonepayPlus proposed the following definition within the 2013 consultation. The definition had been slightly altered from that proposed in 2012, in order to ensure that full national DQ services were not inadvertently included in a requirement to seek prior permission:

“Premium rate services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.”

4.3 PhonepayPlus asked the following question in relation to alterations made to the 2012 review definition:

Q3 – Do you agree with our altered definition of Information, Connection and/or Signposting Services (ICSS)? If not, what alternative would you propose?

4.4 Out of the 14 responses to the 2013 consultation, 13 accepted the changes made to the definition. One objected on the basis that 08 numbers are sometimes referred to as Special Services numbers and not premium rate service numbers.

4.5 PhonepayPlus acknowledges that currently some Special Services numbers, as defined by Ofcom, also fall within the PRS condition set by Ofcom under the Communications Act 2003. All PRS caught by the PRS Condition, irrespective of the number used for access, fall within our regulatory remit and therefore any such Special Services numbers will be subject to the prior permission regime proposed by PhonepayPlus. As such we have not changed the definition we proposed.

Assessment of ICSS

Proposed exemptions – Charities and ICSS which have the consent of the organisation concerned

4.6 PhonepayPlus initially identified in its 2012 consultation that some charities might look to operate Type 2 ICSS services, and proposed an exemption from prior permission for ICSS which were operated by charities. However in light of an adjudication by a PhonepayPlus Tribunal in early 2013, against an ICSS provider which had also registered as a charity, this was given further consideration and the 2013 consultation reversed that position. The following question was asked in relation to charities:

Q4 – Do you agree with our proposals to remove the exemption for charities which we had previously proposed, but waive the requirement to pay a prior permission fee? If not, why not?

- 4.7 Respondents unanimously agreed with the removal of this exemption for the reasons given. Some respondents stated their agreement with our position that consumers require the same degree of protection regardless of the charitable status of an ICSS provider, and that the prior permission conditions would equally benefit consumers of an ICSS operated by a charity and an ICSS operated by a non-charitable organisation.
- 4.8 One respondent did identify potential cost implications to the industry, via the levy payment, for any exemption for charities from the usual requirement to pay for an application for prior permission. Whilst the cost implications are likely to be negligible, given the cost of prior permission application is currently £300 and that few charities are likely to apply the respondent felt that cost had not been fully outlined in the 2013 consultation document.
- 4.9 PhonepayPlus welcomes the support for this amendment. It recognises the cost described and is grateful for the pragmatism in all the responses on this point.
- 4.10 The other remaining exemption from the requirement to seek permission relates to ICSS operated explicitly on behalf of the organisation with which they associate or whose contact details they provide. One respondent has suggested this is an unnecessary loophole. PhonepayPlus acknowledges this point of view, but recognises that where an ICSS has been developed by prior contractual arrangement with the end organisation the consumer is searching for then this is likely to lower the risk of consumer confusion. The removal of a requirement to seek and adhere to prior permission does not remove the requirement for such services to be promoted accurately in accordance with the Code of Practice.

Consideration of the use of 087 numbers for provision of ICSS

- 4.11 A small number of respondents commented about 08 numbers in a variety of ways. One commented that the research had failed to drill down to identify the distinct risks posed by different number ranges, such as 09 and 08. Another respondent suggested similar protection was required on the 0844 number range.
- 4.12 PhonepayPlus only regulates those number ranges caught by the PRS condition as set by Ofcom under the Communications Act 2003. As such, only those 08 number ranges that fall within the PRS Condition, such as those operated on numbers within the 087 range, are required to adhere to the PhonepayPlus Code of Practice.
- 4.13 PhonepayPlus has considered the matter and recognises ICSS exist on a variety of different number ranges and at different price points. However, the heightened risk of consumer harm identified in the research and described in the 2013 consultation document covers all PRS numbers. In light of the widespread support for the prior permission regime and the conditions introduced for the additional protection of consumers using ICSS, there does not appear to be any grounds for exempting any particular number range where it is used for the provision of ICSS.
- 4.14 With reference to ICSS which may operate on the 087 range PhonepayPlus does recognise the significantly lower price point, which would lessen the financial detriment caused to consumers who had been misled into calling an ICSS. However, even for services at a lower price point, the impact on consumer confidence where promotional material fails to adequately introduce the true nature of the service, and the costs associated with it, is the same. For this reason PhonepayPlus has determined that all numbers falling within the PRS Condition will be covered by the new prior permission regime.

Conditions around search engine-based marketing of ICSS

4.15 In the 2013 consultation, PhonepayPlus had proposed the following conditions around Search Engine Marketing of ICSS. Conditions which had been altered or added in comparison to the proposals in the 2012 consultation are italicised:

(a) Web-based promotions should not use internet marketing or optimisations techniques (such as 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 "Premium rate connection service" at the beginning of the result as displayed (for a Type 1 ICSS) and "Premium rate assistance service" for a Type 2 ICSS 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.

4.16 In light of the research findings set out in the 2013 consultation, PhonepayPlus considered that greater transparency at the search engine marketing (SEM) stage was required. The research suggested that at this stage of the consumer journey the majority of consumers are looking for, and expecting to find, the number for free – i.e. intending only to pay the call charge levied by the organisation they are wishing to call, rather than an additional connection or signposting charge.

4.17 We therefore considered it important that the search engine result makes the type of PRS being promoted clear – e.g. that consumers are accessing a connection service and that they are paying a premium for doing so and not necessarily the same charge as if they called the organisation direct. The revised condition a) (as set out above) therefore proposed that all SEM results for all Type 1 ICSS should start with "Premium rate connection service". Type 2 ICSS do not offer a connection service and should therefore start with "Premium rate assistance service" instead.

4.18 PhonepayPlus asked the following question relating to this proposal:

Q5 - Do you agree with this assessment and PhonepayPlus' changes to proposed conditions around SEM? If not, why not and do you have an alternative to propose that would meet our objectives?

4.19 While the majority of respondents expressed no concerns with these proposals, there were some objections from three ICSS providers. These objections centred on two aspects. First, the requirement to emphasize "premium rate" in search engine results where such association may be viewed by consumers negatively. Second, the restriction on space in which to positively promote the service with the remaining available characters.

4.20 One respondent provided some evidence suggesting the number of visits to one particular website after introduction of the words "premium rate" dropped by a third. The Executive accepts that these changes may have an impact on visits to the websites associated with ICSS, however the research suggests that as many as 78% of consumers who called an ICSS did not understand the service, all of whom would have been drawn to an ICSS website via SEM. If the visitors to an ICSS website are reduced in number as a result of PhonepayPlus' proposed condition, the ratio of consumers who call an ICSS having visited the website is likely to rise, as the remaining visitors are potentially more likely to choose to

call the premium rate number having chosen to follow the link from SEM only after they are clear that the service on offer is a PRS.

- 4.21 Whilst one respondent proposed that condition a) be altered to read “connection service 10p/min” rather than “premium rate connection service” or “Premium rate assistance service”, this suggestion would not effectively convey that the service on offer is a PRS which does not hold official association with the organisation providing the real number. As such we have rejected it.
- 4.22 PhonepayPlus previously acknowledged in the 2013 consultation document that the proposals would have an impact on the number of available characters within promotional material. The responses are largely supportive of the reasons for requiring such wording to exist, and the respondents who object have not made a sufficient case to undermine that position.

Conditions around promotion of ICSS

- 4.23 Despite clear evidence that a significant number of consumers, whether they have used ICSS or not, are confused by what ICSS offers, the research by Jigsaw also indicates that 34% of ICSS users agreed with the statement “these services are useful”. In addition 32% of consumers agreed that the services saved them time. This suggested to PhonepayPlus that ICSS, where promoted in such a way that consumers can make a fully informed decision, will still hold some value for some consumers.
- 4.24 We also acknowledged concerns, expressed by respondents to the 2012 consultation proposals, that the originally proposed condition b ii) – which would have required the ICSS website to provide the actual number the consumer sought alongside the premium rate number – would in effect require ICSS providers to give their service away for free and that this could be seen as unreasonable and disproportionate when there are alternative remedies around greater transparency.
- 4.25 In light of this, we proposed to alter condition b) to remove any requirement for ICSS providers to provide the actual number of the organisation the consumer is looking for on their website. We also proposed that the requirement to provide a link to the organisation’s website, in order that consumers can search that site for themselves if they wish, would remain.
- 4.26 As such in the 2013 consultation, PhonepayPlus proposed the following conditions around promotion of ICSS. Conditions which had been altered or added in comparison to the proposals in the 2012 consultation are italicised:
- (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) 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. 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.

4.27 PhonepayPlus asked the following question relating to these proposals:

Q6 - Do you agree with this assessment and PhonepayPlus' changes to proposed conditions around promotion of ICSS? If not, why not?

4.28 A trade association, representing a number of those involved in some way with ICSS or their delivery but also the wider PRS industry, suggested that condition b) be further altered to require that an ICSS website contains a link to the relevant organisation's homepage. PhonepayPlus considers this to be a helpful suggestion, as if there is no requirement to link to an organisation's homepage there is the potential for ICSS providers to link to an obscure page on the website instead. As such we have altered the final condition b) in this regard, as set out below at paragraph 4.31 and also in the conditions at Annex A of the document.

4.29 In addition Ofcom's Communications Consumer Panel suggested that condition b) be further altered to read "the number provided from the PRS is available from the relevant public or commercial organisation" rather than "the information provided from the PRS is available from the relevant public or commercial organisation". This is on the grounds that their research has demonstrated that consumers searching on the web are often goal focused, and so will not recognise the term "information" as being applicable to the number they seek. Whilst this suggestion is not necessarily relevant in all cases (not all ICSS provide numbers), PhonepayPlus' opinion is that where ICSS do provide numbers then altering the condition to read as the Panel suggest could be beneficial.

4.30 As such we have altered condition b) to read as follows:

"Promotional material must clearly and prominently state as applicable (and where this is factually the case) that - the number (where the service is a Type 1 ICSS), or advice or assistance (where the service is a Type 2 ICSS), provided by the PRS is available direct from the relevant public or commercial organisation at no or lower cost. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised, and should include a link to the homepage of the website containing the actual number the consumer is looking for where such a website exists."

4.31 This final version of the condition is largely in keeping with the original intention as expressed in the 2013 consultation document. This additional wording is intended to clarify our expectations for those operating ICSS.

4.32 Other than comments around condition b), PhonepayPlus did not receive substantive comments on any of the other proposed conditions around promotion of ICSS.

Conditions around transparency and disclosure when an ICSS is called

4.33 In the 2013 consultation, PhonepayPlus proposed the following conditions around transparency and disclosure when an ICSS is called. Conditions which had been altered or added in comparison to the proposals in the 2012 consultation are italicised:

- (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) Consumers must receive an alert at the start of the call before onward connection informing them:
 - i. of the price per minute;

- ii. that “this is not [insert the end-organisation’s name], and [identify your name as the ICSS provider] can connect you to the number you require”; and
 - iii. *of the web address of the organisation the consumer is looking for.*
- (c) 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 message at the start of the call.
- (d) 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.
- (e) 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.
- (f) 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 that information about how this data will be stored, retained, or further used is available on the ICSS providers’ website. Providers should ensure that such information is fully and clearly provided on the website relevant to the number the consumer has called.
- (g) 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.*
- (h) ICSS must not provide any facility which makes it possible for the consumer to save a PRS number to their phone.

4.34 PhonepayPlus asked the following question relating to these proposals:

Q7 - Do you agree with this assessment and PhonepayPlus’ changes to proposed conditions once a consumer has dialled an ICSS? If not, why not?

4.35 As with the originally proposed condition b ii) around the promotion of ICSS (see paragraphs 4.25 and 4.26), the research which Jigsaw conducted for PhonepayPlus recognises that a significant minority of those who use ICSS consider them to be useful (34%) and that they will save them time (32%). As a result we proposed to remove the requirement to provide the number of the organisation the consumer is looking for from condition b).

4.36 While we maintain the view that there needs to be an alert at the start of the call, respondents to the 2013 consultation raised two points around condition b):

- that there is a difficulty involved in providing the alert free of charge, which makes the requirement disproportionate.
- that condition b iii) is unnecessary, as the consumer has already been provided with a link to the organisation’s website when they viewed the ICSS provider’s website.

- 4.37 With regard to the first of these points, our understanding is that the provision of a free alert upon connection (before switching to a charged call) is at best technically difficult and expensive and in some cases may not be possible on some networks. Whilst technical difficulty and cost may not be reasons in themselves to drop the requirement for a free alert, we also consider that the consumer will, if other conditions within the prior permission regime are followed, have been provided with a clear and prominent link to the organisation's website when they view the ICSS provider's website. In addition the time taken to provide the information required within condition b) is unlikely to add significantly to the cost of the call, and certainly no more than around 30 seconds. As such our view is that a requirement for the alert to be free would be disproportionate, and we have removed this from the final condition.
- 4.38 With regard to the second point we note that whilst some respondents to the 2013 consultation objected to condition b iii) some others supported it. However, and as before, we consider that during the previous phase of the consumer journey ICSS providers will be required to display on their website a clear, prominent and proximate link to the website of the organisation the consumer is seeking (and where the actual number can be found). In addition conditions b) i) and b) ii) will still ensure that the consumer is reminded of the price per minute of the service, and provided with the information that this is not the actual number they are looking for, upon connection to the ICSS. As such we have removed condition b iii) from the final prior permissions regime as set out at Annex A.
- 4.39 In relation to condition g), a number of respondents, including ICSS providers, suggested that the requirement for a five second delay prior to onward connection from an automated ICSS could prolong the cost of the call for consumers who did want to be put through. On the basis that the consumer will already be informed of the price per minute upon connection, and that they can hang up at any time whether there is a five-second period of silence or not, PhonepayPlus agrees that the requirement for a five second delay should be removed from condition g), and has done so as follows in the conditions set out at Annex A:

"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 per minute of doing so in order that the consumer can choose to end the call at any point."

Conditions around collection of consumer information by ICSS providers

- 4.40 In the 2013 consultation, PhonepayPlus proposed the following conditions around transparency and disclosure when an ICSS is called. Conditions which had been altered or added in comparison to the proposals in the 2012 consultation are italicised:
- (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.*

- (c) Providers of ICSS who intend to collect personal and/or confidential data and/or information should only collect information which is necessary to facilitate provision of the service, and should provide evidence that any data or information they have collected is necessary for service provision upon request by PhonepayPlus.

4.41 PhonepayPlus asked the following questions relating to these proposals:

Q8 - Do you agree with this assessment and PhonepayPlus' changes to proposed conditions where an ICSS collects personal and/or confidential data from consumers? If not, why not?

Q9 – Do you agree with the additional condition c) in respect of a requirement to only collect information necessary for the provision of the service? If not, why not?

4.42 In respect of Q9, PhonepayPlus did not receive any substantive comments and so condition c) will remain unchanged. However in respect of condition b) the Communications Consumer Panel expressed concern that consumers may unwittingly provide details to an ICSS provider about their private accounts and invalidate the terms and conditions of those accounts with the organisations which operate them. Whilst they accept that an ICSS provider could provide this information within terms and conditions on their website, they also contend that consumers are very unlikely to examine them there, and as such may not realise the full implications of providing such information as part of a call to an ICSS.

4.43 PhonepayPlus considers that the provision of this information may increase the length, and cost, of a call by around 30 seconds or more. We have considered whether the information could be provided as an option within the call, with the consumer pressing their keypad to hear more, but on balance we consider this option would be technically difficult. In addition we do not consider that such an option will be taken by many more consumers than could visit the ICSS provider's website, and get the same information at no additional cost.

4.44 On balance however, we have concluded that consumers will not suffer huge detriment (i.e. no more than around 30 seconds added to the call), and that this is outweighed by the benefit of the consumer being fully informed of the implications of providing information during an ICSS call.

4.45 As such we have altered condition b) to read as follows:

“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 make clear that by providing such information the consumer may be breaching the terms and conditions of the organisation they have a protected account with, and that the ICSS provider may then have unrestricted access to the consumer's account including, where applicable, payment details. Consumer consent should then be obtained before any confidential information is used. Providers should not thereafter use the information for any other purpose or on any other occasion without further consumer consent being given. As soon as the purpose for collecting the confidential information has been achieved the information should be destroyed immediately and permanently.”

Whether a bond should be necessary for ICSS providers to obtain prior permission

4.46 PhonepayPlus considered as part of the Regulatory Impact Assessment whether it was necessary to set a bond. Some of those who provide ICSS had 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.

4.47 However our consideration balanced 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.

4.48 PhonepayPlus asked the following question in relation to any potential bond requirement:

Q10 - Do you have any further evidence on whether a bond is necessary? If so please provide it.

4.49 One respondent suggested that a bond requirement would offer a further deterrent for unscrupulous providers and that the research gave grounds for such a requirement to be implemented alongside the prior permission regime. While this may be the case, the Executive consider that the conditions imposed are aimed at driving up compliance standards across the industry. The requirement for a bond will be kept under review; however, it is not considered necessary at this time.

Live services and current exemptions to prior permission requirements

4.50 PhonepayPlus proposed to remove the exemption for connection services from the list of exemptions. Such services that historically fall within this exemption would not fall within the definition of ICSS. For this reason, the removal of the exemption ought not to have any significant regulatory impact on those services in terms of the new regime.

4.51 PhonepayPlus recognised that other established prior permission regimes may have an impact on such historical services going forward, and we invited any affected providers to discuss the regulatory impact as part of this consultation.

4.52 PhonepayPlus asked the following questions relating to this proposal:

Q11 – Do you agree with our proposal to alter the list of current exemptions from prior permission, so that ‘connection services’ are removed? If not, why not?

4.53 The responses were unanimous in supporting the proposals to ensure consistency and ensure these proposals were not undermined.

4.54 One respondent did state the view that such changes are only necessary if the new prior permission regime is introduced, and it was reiterated that their position objected to such a change. However no changes have been made in light of responses to this question.

Section 5: Regulatory Impact Assessment

- 5.1 Respondents to the 2012 review consultation expressed that there may be a greater cost than our assessment had provided for in three areas:
- i. The increase in cost of SEM promotion due to the requirement to state “premium rate service” in SEM descriptions. One ICSS provider suggested that the price they pay is directly correlated to the length of copy they use.
 - ii. The cost of providing free pre-call announcements on connection to an ICSS.
 - iii. The cost of monitoring accessibility (i.e. whether the consumer will be placed in a queue or not) to organisations to which ICSS provide onward connection.
- 5.2 With respect to i) PhonepayPlus recognised the potential character limitations within SEM descriptions, and that to increase the word count as required by condition a) around the SEM stage of an ICSS is to increase advertising cost to the ICSS provider. However we did not consider that this increase in cost is disproportionate if it will ensure that consumers who set out to find a number for free are clearly informed of the nature of the service being promoted.
- 5.3 With respect to ii) and iii), PhonepayPlus had addressed these concerns by removing the originally proposed conditions that ICSS providers suggested would disproportionately increase costs if they were required to implement them. While there will remain costs associated with the provision of an alert on connection to the service, it was suggested the length of that alert is likely to be shorter now that there is no requirement to announce whether the consumer will be placed in a queue or not. Furthermore the 2013 consultation emphasised there is now no requirement for the alert to be provided free of charge.
- 5.4 PhonepayPlus asked the following question in relation to the regulatory impact assessment:

Q12: Do you have any evidence of significant cost which ICSS providers will incur as a result of a requirement to state “premium rate connection service” or “premium rate assistance service” in SEM descriptions? If so please provide it.

- 5.5 PhonepayPlus received further objections from 3 respondents, all of whom are ICSS providers. These objections all related to the assessment of the cost flowing from additional requirements associated with SEM. The respondents suggested that PhonepayPlus had not fully considered the impact of the changes, and practicalities associated with the requirement to state “premium rate connection service” or “premium rate assistance service”.
- 5.6 The ICSS providers who raised this objection argued that it is not simply the loss of advertising space that is costly, but also the loss of advertising analytics that flow from the inability to use the space to include additional words that would naturally improve the connectivity between search terms used by consumers and the search engine delivering the best matches. This suggestion indicates that because people are unlikely to use words like “premium rate” as part of their search for customer service numbers, then the ICSS result may not appear so far up the search results page(s) or may not appear at all.
- 5.7 We acknowledge that this is a relevant consideration. However the external research cited in our 2013 consultation highlights that 82% of consumers search for telephone numbers of organisations they wish to contact by using the internet. Given that an alternative option in connection with this question was “call a 118 service”, which only 8% of consumers selected despite the fact they could select any number of the optional answers, we consider it a reasonable assumption that a large majority (if not all) of the 82% of

consumers who selected “using the internet” did not intend to use any kind of PRS to find the number when they began their search.

- 5.8 As such PhonepayPlus considers it necessary that consumers who have chosen a route which does not carry the expectation of using a PRS are informed at the earliest opportunity that the SEM link they are clicking on is a PRS which carries a charge. We therefore consider that the proposals have the prospect to improve the match between the consumer search and the services being presented as a result of that search. This is distinct from the arguments made by ICSS providers in that it appears they want to continue to present PRS, with the same frequency, to consumers even though the search may not explicitly seek a *'premium'* service or *'connection'* service. Whilst we are aware of the potential impact on providers, we consider this must be balanced against transparency for the consumer.
- 5.9 As a result of the consideration above, PhonepayPlus is satisfied the proposals are fair and proportionate in all the circumstances.

Section 6: Next steps

- 6.1 The prior permission regime will begin following a period of transition in which any changes can be made to relevant services operating in the UK. That period runs from the date of publication of this statement for six weeks. Applications for prior permission must be made as soon as possible, and no later than **Wednesday, 11 September 2013**.
- 6.2 All Level 2 providers that operate ICSS, of any type except where exempt for provision of an authorised ICSS in agreement with the organisation to which it relates, are required to apply for prior permission. This includes organisations with charitable status. Charities will need to provide evidence of their charitable status to ensure they have any application fees waived in accordance with these proposals.
- 6.3 Level 2 providers can apply for prior permission for ICSS that they operate by emailing information about the relevant service(s) to priorpermissions@phonepayplus.org.uk.
- 6.4 Services that are operating as at Wednesday **31 July 2013** can continue to operate while the application is being processed; however, any ICSS provider not intending to continue operating a service once they require prior permission must terminate the service by **Wednesday 11 September 2013**.
- 6.5 In the transition period PhonepayPlus will continue to enforce the Code provisions as against Level 2 providers who operate ICSS in breach of the Code. Investigations will be conducted in the normal way, using the appropriate procedures.
- 6.6 After **Wednesday 11 September 2013**, where no application has been made to begin the process of obtaining a prior permission, any ICSS that is found to be operating without said prior permission will be assessed against Part 3 of the Code and relevant enforcement action will be taken.

Annex A) Prior permission notice

PRIOR PERMISSIONS NOTICE

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 (12th Edition) (the “Code”).

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

“Premium rate services, excluding full national directory enquiry services², that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific 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”, which currently operate on the 118 number range.

There are different variants of ICSS, which for ease of reference are put in two categories:

- Type 1 – ‘Signposting’, number provision and/or call connection services. Type 1 services usually offer the number of one organisation, or a small number of organisations, rather than the full range that a national Directory Enquiry (DQ) service provides, and may also provide onward connection to that number. In a limited number of cases, Type 1 services do not provide the number the consumer is seeking, but offer only onward connection to it via the premium rate number which the consumer has dialled.
- Type 2 – ‘Helpline’ or advice or assistance services (which may or may not include the consumer providing account details relating to an unrelated online account they hold, so that the ICSS provider can interact with the account on their behalf). Type 2 services usually offer operator-led assistance, or provide generic, pre-recorded advice via an Interactive Voice Response (IVR) system.

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

- 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.

² This is defined in the Ofcom Statement dated 1 March 2002, and has been adopted (to the extent set out) as follows: “A Directory Enquiry Service which provides information on allocations of numbers to subscribers from the United Kingdom numbering scheme to callers located in the United Kingdom. A National Directory Enquiry Service shall be considered a ‘full’ National Directory Enquiry Service for the time being if it provides information on the geographic numbers of all business and residential listings and on other numbers used for comparable purposes to geographical numbers (e.g. 08 numbers used for main switchboards etc), where the subject of the listing has not withheld their permission for its inclusion.”

General Conditions

- All provisions of the 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 internet marketing or optimisations techniques (such as metadescriptions 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 metadescriptions 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 "Premium rate connection service" at the beginning of the result as displayed (for a Type 1 ICSS) and "Premium rate assistance service" for a Type 2 ICSS 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) that the number (where the service is a Type 1 ICSS), or advice or assistance (where the service is a Type 2 ICSS) provided by the PRS is available direct from the relevant public or commercial organisation at no or lower cost. The presentation of

this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised, and should include a link to the homepage of the website containing the actual number the consumer is looking for where such a website exists.

- 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

- 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) Consumers must receive an alert at the start of the call before onward connection informing them:
 - (i) of the price per minute; and
 - (ii) that "this is not [insert the end-organisation's name], and [identify your name as the ICSS provider] can connect you to the number you require".
- c) 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 message at the start of the call.
- d) 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.
- e) 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.
- f) 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 that information about how this data will be stored, retained, or further used is available on the ICSS providers' website. Providers should ensure that such information is fully and clearly provided on the website relevant to the number the consumer has called.
- g) 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 per minute of doing so in order that the consumer can choose to end the call at any point.

- h) 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 make clear that by providing such information the consumer may be breaching the terms and conditions of the organisation they have a protected account with, and that the ICSS provider may then have unrestricted access to the consumer's account including, where applicable, payment details. Consumer consent should then be obtained before any 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. As soon as the purpose for collecting the confidential information has been achieved the information should be destroyed immediately and permanently.
- c) Providers of ICSS who intend to collect personal and/or confidential data and/or information should only collect information which is necessary to facilitate provision of the service, and should provide evidence that any data or information they have collected is necessary for service provision upon request by PhonepayPlus.

PhonepayPlus recommends that service providers submit their applications as soon as possible. Applications can be submitted via email to priorpermissions@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) List of respondents to consultations

2012 review and consultation

AIME

Four anonymous responses

BT

Citizens Advice

Cable&Wireless

Communications Consumer Panel (CCP)

Clix Connex Ltd

Consumer Focus

Direct Gov

Information Commissioner's Office (ICO)

Numbers Plus Ltd.

PayPal

PRS Directory Service Ltd

Telefonica UK Ltd

The Helpline Group Ltd.

The Number UK Ltd

Which?

2013 further assessment and consultation

AIME

Two anonymous responses

BSkyB Group

BT

Communications Consumer Panel (CCP)

Clix Connex Ltd

The Electoral Commission

Live Box Ltd

Numbers Plus Ltd

Telefonica UK Ltd

The Number UK Ltd

Red Play Media Ltd

Vodafone