

**The Ofcom PRS Scope Review
and its impact for PhonepayPlus
and the 12th Code of Practice: A
briefing Document for the Ofcom
Industry Workshop on 25th June
2009**

1.0 Background

The Ofcom Premium Rate Services (PRS) Scope Review (“the Review”) was published by Ofcom on 15 May 2009 for consultation. This paper is not a formal response to the Ofcom consultation document but we hope that interested stakeholders will find benefit in considering their response to the Review if they have some indication as to how PhonepayPlus is minded to consider the various options that Ofcom is outlining at this stage for consultation.

As the body responsible for the day-to-day regulation of PRS PhonepayPlus very much welcomes the approach adopted in the Review. Ofcom makes clear that PRS offers a convenient way to buy and enjoy products spontaneously. They typically offer some form of content that is charged to a customer’s phone bill or pre-pay account. Most PRS are for ‘impulse’ purchases and can be characterised by a relatively low expenditure. PRS are a simple means of purchasing a service because consumers can, for example, make the purchase using their telephone or mobile handset and need not provide any further authentication information. This can make PRS a good payment mechanism for buying relatively low expenditure content services or for participating in competitions or voting.

Ofcom equally recognises, as do we, that consumers value PRS because of the simplicity of the payment mechanism and the attractiveness of the services that can be purchased using this method. However, some of the characteristics that make PRS so convenient for consumers can also give rise to consumer harm. As a result, it has always been recognised that separate provision should be made for the regulation of PRS.

However, we and Ofcom recognise that the market for PRS has been the subject of significant change over the last ten years. Ofcom identify three main changes as being:

1. An increase in mobile phone usage, which has led to a strong increase in mobile PRS usage, and in mobile PRS related complaints;
2. An increase in the number of communication providers and number ranges on which PRS are being offered which has led to a more complex and fragmented market for consumers; and
3. A lack of clarity in the market as to which services are captured by PRS regulation.

As a result of these changes, Ofcom and we see the need to ensure the current PRS regulatory regime meets the needs of consumers, affords an appropriate level of consumer protection and, at the same time, supports an innovative and changing PRS industry.

Like Ofcom we consider that in the absence of effective regulation:

1. Consumers may find themselves unable to make an informed decision prior to the purchase of a PRS;
2. Consumers may be dissuaded from seeking redress when things do go wrong, and may lack an effective means of doing so; and
3. Consumers may be exposed to offensive or inappropriate content.

Ofcom also makes clear in the Review the consumer outcomes that they see in the best interest of consumer of PRS. These are:

- Consumers should be able to purchase PRS with confidence and, of course, the more this is the case the more vibrant and healthy will be the PRS market;
- Consumers should be confident when they purchase a service that they know (and can find out with relative ease) what price they are paying for that service and whether it is a one-off purchase or whether a subscription to the service is being purchased;
- To the greatest extent possible when purchasing a remote service, consumers should be able to understand the quality and facets of that service. The service should function in the way that it is represented to the consumer and as part of that, it should be possible for the consumer to terminate a service without unnecessary delay and complexity; and
- It is obvious, but worth stating that when a consumer purchases a PRS they should receive that service.

We support these outcomes and they provide a context for developing our next Code of Practice which will be aligned to key outcomes that we will expect it to deliver when supported by effective proactive engagement with key stakeholders as well as effective enforcement where necessary.

The analysis and evidence set out in the Review leads Ofcom to suggest there are gaps in the regulatory framework that may need to be addressed, particularly in respect of price transparency, complaints procedures and empowering PRS suppliers to act responsibly. Based on its evidence from market research and independent studies in respect of the types of consumer harm identified Ofcom proposes the following specific actions:

Target area	Options
1. Facilitating consumers to make informed decisions	a. Carry out a study into the implications of introducing pre-call announcements for PRS; b. Require every PRS advertisement to contain, in addition to the BT price, the maximum price that may be charged by a communications provider, including the name of that provider.
2. Facilitating effective consumer redress	a. PhonepayPlus to expand their number checker so that consumers can more easily identify the service provider for services for which they have been charged; b. PhonepayPlus to carry out an analysis of the benefits of requiring PRS service providers and information providers to adopt a formal complaints procedure.
3. Empowering PRS suppliers to act responsibly	a. PhonepayPlus to introduce a registration scheme / reputational database in order for parties in the PRS supply chain to find out information about potential and current partners down the PRS supply chain; b. Carry out an analysis of the market for call barring facilities in order to assess the availability and functionality of call barring.

Most of these options would have some impact upon PhonepayPlus as the day to day regulator of PhonepayPlus should they be agreed following consultation. For this reason this paper is designed to outline our initial thinking about the practical implications of these options and how they would impact upon our forthcoming review of the Code (which is now underway in its preliminary phase and early pre-consultation) as well as other services that we provide such as in facilitating redress as well as empowering suppliers to act in a responsible manner.

In the remainder of this document we outline under each target and option outlined by Ofcom, our initial response and likely impact for PhonepayPlus as the day to day regulator of PRS who applies and enforces the Code of Practice principally on service and information providers.

2.0 Facilitating Consumers to make informed decisions

Ofcom sets out the following options in the Review under this heading:

- Carry out a study into the implications of introducing pre-call announcements for PRS.
- Require every PRS advertisement to contain, in addition to the BT price, the maximum price that may be charged by a communications provider, including the name of that provider.

The implications for PhonepayPlus and the next Code are assessed below.

Carry out a study into the implications of introducing pre-call announcements for PRS

Context: Consumers want to be able to purchase a service that as well as meeting their needs is also clearly priced so that they can make an informed decision about the nature of the purchase before they commit to buy. The price of a service is typically a key factor therefore in a consumer's decision to make a purchase. However when consumers call 090 services the actual cost of the call will be set by the Originating Communication Provider (OCP) rather than the supplier of the PRS whose ability to communicate the actual cost is likely to be limited to advising of the cost of the call from a BT line only. We are of the view that this undermines consumer confidence in PRS, reduce the potential take up of new services and can cause detriment in the absence of clear pricing information.

Consumer research presented by Ofcom suggests that some consumers would find benefit in pre-call announcements. For this reason Ofcom suggests the possibility of undertaking a study to consider this proposal. Such a study would need to put consumers' needs at the forefront when considering potential benefits as well as the technical impacts alongside their cost.

Likely impact: One issue, amongst many, that Ofcom raises in the Review is in such an arrangement where responsibility for delivering such an announcement would sit. If it sat with OCPs then we would not expect to take primary responsibility for ensuring it was adhered to. If however the responsibility were to sit below that with TCPs or SP (if indeed that is possible in terms of delivering the goal of transparency) then it is conceivable that the enforcement mechanism for such a decision would need to rest in the PhonepayPlus Code of Practice. Given our clear regulatory interests, we will therefore expect to be engaged with Ofcom on this matter should it conclude through the review that there is merit in undertaking a full study into the provision of Pre-Call Announcements in PRS.

Require every PRS advertisement to contain, in addition to the BT price, the maximum price that may be charged by a communications provider, including the name of that provider

Context: This is a further option presented by Ofcom to advance improvements in pricing transparency for PRS. In this option providers of services would be mandated to make clear the highest potential total cost of the service from an OCP such as a mobile operator.

Likely Impact for PhonepayPlus: Ofcom makes clear under this option that it would expect the regulation and enforcement of such an approach to rest with PhonepayPlus under its Code of Practice. Providers would therefore be obliged to put in place arrangements to determine the maximum price of the service and have procedures to keep it under review as such prices changed over time.

Delivery of this obligation would not necessarily require a Code change as we already have Help Notes that give guidance on the format and wording of promotions for PRS. Along with a clear communication plan PhonepayPlus could deliver such a change by amending its Help Note and giving reasonable notice to service and information providers of such a change that would need to be made to all marketing material. Issues around marketing materials with a long shelf life would need to be addressed but that could be considered in discussion and consultation with industry trade bodies and the Industry Liaison Panel (ILP).

3.0 Facilitating effective consumer redress

Ofcom sets out the following options in the Review under this heading:

- PhonepayPlus to expand their number checker so that consumers can more easily identify the service provider for services for which they have been charged.
- PhonepayPlus to carry out an analysis of the benefits of requiring PRS service providers and information providers to adopt a formal complaints procedure.

The implications for PhonepayPlus and the next Code are assessed below.

PhonepayPlus to expand their number checker so that consumers can more easily identify the service provider for services for which they have been charged

Context: In the context of assisting consumers to receive effective redress Ofcom sets out its view that the regulatory mechanisms might be adjusted to make it easier and more straightforward for consumers to be able to identify the provider of a PRS. Recognising the complexity of the value chain for the provision of PRS and that many consumers may in the first instance contact their OCP the PhonepayPlus Number Checker has for some time played a critical role in providing consumer information about the contact details of the provider of the service. Currently the Number Checker returns contact details for some 85% of checks made to it. Ofcom's economic assessment suggests however that there would be strong benefits in extending the Number Checker to all PRS numbers and shortcodes.

Likely impact for PhonepayPlus: PhonepayPlus agrees with this recommendation and has underway an Industry Working Group under the umbrella of the ILP to look at how improvements to the Number Checker could be secured in the most effective way. It will take on board this recommendation in the Review and will assess the marginal cost implications and associated benefits with attempting to deliver near 100% checks routinely.

One possible outcome may be the need to mandate, in the next 12th Code, the provision of certain basic information by providers to ensure that the Number Checker is effective and where providers do not fulfil their obligations to deliver information to ensure that the Number Checker can secure these benefits that there are appropriate regulatory mechanism to enforce the need to secure such information.

PhonepayPlus to carry out an analysis of the benefits of requiring PRS service providers and information providers to adopt a formal complaints procedure

Context: Ofcom makes clear that whilst OCPs are required to have formal complaint processes that conform to a regulated code of practice under the General Condition 14, this does not typically apply to service and other providers of PRS. As a consequence consumers can – and do in our experience – encounter a variety of sometimes different and poorer standards of complaint handling depending on the service or information provider that the customer may be trying to contact.

Likely impact for PhonepayPlus: PhonepayPlus has already initiated a project which is reviewing the lifecycle of a complaint from the point at which a consumer first encounters a problem with a PRS. This work, insofar as it affects industry providers, is being project managed in such a way as to engage relevant representative bodies in the industry as well as securing support from the ILP. As well as this we have also recognised the need to re-consider, as part of the development of the 12th Code, the need to enhance the obligation on service and information providers' responsibilities for effective complaint management. It is essential that consumers feel confident that their questions will be answered – and complaints investigated and resolved – as quickly and effectively as possible. The process may be less important than the outcome and should recognise that PhonepayPlus will not be so much concerned with uniformity of process as with effectiveness of outcomes.

4.0 Empowering PRS suppliers to act responsibly

Ofcom sets out the following options in the Review under this heading:

- PhonepayPlus to introduce a registration scheme / reputational database in order for parties in the PRS supply chain to find out information about potential and current partners down the PRS supply chain;
- Carry out an analysis of the market for call barring facilities in order to assess the availability and functionality of call barring.

The implications for PhonepayPlus and the next Code are assessed below.

PhonepayPlus to introduce a registration scheme / reputational database in order for parties in the PRS supply chain to find out information about potential and current partners down the PRS supply chain

Context: We, like Ofcom, recognise that changes in the PRS sector, especially in the context of the role of providers downstream of those currently defined in the 11th Code of Practice as “service providers”, calls for further consideration to where in the value chain the burden of regulation should be placed as PhonepayPlus applies the Code. This is already under active consideration as part of our current Code review. We note that Ofcom’s preferred registration scheme (“F1” option) may be the most cost effective under the current regulation of the 11th Code. However, if, as is likely to be proposed through a new 12th Code, responsibility for enforcement is to move away from the current primary focus on those currently defined as “service providers” then this is only likely to be really effective if supported by a registration scheme that appears to most closely equate to the “F2” option proposed by Ofcom’s consultants as outlined on pages 68 and 69 of the Review. In our view the discounted benefits that could be derived from such a scheme in context of a revised Code are likely to be greater than proposed for the alternative options F1 and F3. This consideration sits well with a full analysis and consideration of the benefits of extending and enhancing our current registration processes which we have for service providers to all providers contracted directly or indirectly with those service providers – currently defined as information providers.

Likely impact for PhonepayPlus: The likely impact of there being agreement to PhonepayPlus running any form of registration scheme / reputational database fall into the following areas:

- **Cost:** There will be costs associated with implementation and maintenance of a registration scheme which do not currently feature in the PhonepayPlus budget at present. The costs will vary considerably between a reputational database and registration Scheme which is quite a different sort of undertaking. PhonepayPlus recognises the proposed benefits of such a registration scheme which, over time, should translate into lower regulatory costs in the activities related to enforcement, but those costs will not be realised before up front costs would need to be incurred to initiated and build such a tool which Ofcom’s consultants provide some indicative costings for;
- **Code:** In order to secure and mandate compliance by all relevant parties to supplying any necessary information in a prescribed format it is likely that the next Code of Practice would need to mandate in broad terms the nature of the obligations placed upon all parties to ensure that they register such

information as may be necessary and update this periodically as finalised in any form of agreed arrangement;

- **Enforcement:** If the arrangement for registration scheme/reputational database is to bring the benefits that Ofcom's consultants suggest then there will need to be mechanisms that deal with repeat offenders who breach the Code and who wilfully set out to cause public harm. The linkages here to a registration process need full exploration.

Carry out an analysis of the market for call barring facilities in order to assess the availability and functionality of call barring

Context: The current position is that there are no current obligations imposed by Ofcom upon OCPs to provide selective call barring for outgoing or incoming calls. This remains a commercial decision for OCPs and is not one regulated by PhonepayPlus.

Likely impact for PhonepayPlus: There is unlikely to be any direct impact for the future development of the PhonepayPlus Code of Practice. We do believe however that it would be advisable that OCPs voluntary keep PhonepayPlus advised as to their call barring arrangements as they develop and adjust them so that PhonepayPlus can accurately advise consumers who contact us for advice about such arrangements.