

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

A PUBLIC CONSULTATION

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Section 1: Executive Summary

Introduction

- 1.1 PhonepayPlus is the independent regulator of premium rate services (PRS) in the UK. Our aim is to provide effective and proportionate regulation that builds consumer trust and confidence in a healthy and innovative market.
- 1.2 During the summer in 2014, PhonepayPlus undertook a full consultation into its new Code of Practice, the 13th edition, which is expected to come into force on 1 July 2015. This new Code is being introduced in conjunction with the non-geographic call services (NGCS)¹ review and tariff changes adopted by Ofcom, which will be enforced from 1 July 2015. When a new Code is launched it is important that PhonepayPlus assists industry and other key stakeholders in understanding the impact of those changes.
- 1.3 PhonepayPlus published a statement following the consultation on 25 March 2015, and sets out the Code that is laid before the European Parliament for comment². The statement seeks to fully introduce the Code amendments and our intention in relation to its future enforcement. The consultation sits alongside that statement, with the proposed guidance offering further clarity on a range of subjects affected by the new Code.
- 1.4 The new Code introduces a new framework of Special conditions, which adds greater flexibility for the targeted regulation of services and their identified risks. This compliments an outcomes based Code, because the use of Special conditions removes the need for prescriptive service specific rules and regulations.
- 1.5 The new framework of Special conditions enables PhonepayPlus to consult on the introduction of new Special conditions which may be generally required to meet specific risks and issues related to service types or categories. In the past, the flexibility to introduce new requirements has been afforded the regulator via the use of prior permission requirements under the Code. The power to use prior permission is retained in the new Code for future use where Special conditions may be considered ineffective and circumstances demand more stringent checks on specific services before they are made accessible by the public.
- 1.6 The process of consultation on Special conditions is important, as the provisions that are adopted within this framework of Special conditions are enforceable as Code requirements. Any enforcement of these provisions will be done in the same way that rules and obligations in Parts 2 to 4 of the Code are enforced.

¹ Non-geographic numbers are those phone numbers which are not linked to a specific location. They include 03,05, 07, 08, 09, 116 and 118, and are widely used by business, central and local government, charities and statutory bodies for a variety of activities ranging from information and helplines to voting in TV game shows.

² The Statement is published on the PhonepayPlus website here:

<http://www.phonepayplus.org.uk/News-And-Events/News/2015/3/Statement-on-PhonepayPlus-13th-Code-of-Practice.aspx>

1.7 This consultation paper has two overarching purposes:

- i. The presentation of guidance that has been reviewed and updated in line with the new Code and changes seen in the PRS market over time.
- ii. The proposal of Special conditions for a range of service types that have previously been regulated by way of prior permission under the 12th Code.

1.8 In relation to guidance, a full review has taken place looking at the full suite of guidance published in relation to the 12th Code. This review has indicated the guidance can be developed over time, with some updated in advance of the new Code coming in to force, and other items being considered later.

1.9 There are consultation questions raised for both parts, as we seek stakeholder feedback on:

- i. the expectations set out in the seven pieces of guidance we are updating now³; and,
- ii. the twelve proposed schemes for Special conditions⁴.

Guidance

1.10 The Code Review Project has involved a widespread review of current guidance, considering each piece of guidance and considering whether it requires amendment. Amendments may be required for a number of reasons, including the wording of Code provisions changing or market innovations or commercial factors arising over time, which means a change in regulatory policy is necessary. Even where policy remains the same, the reasons or justification for such expectations may vary over time, and guidance may be amended to reflect that new rationale.

1.11 The seven pieces of guidance that have been amended relate to:

- i. Due diligence, risk assessment and control (DDRAC)
- ii. Promoting PRS
- iii. Complaint handling
- iv. Lower cost services
- v. Definitions, including parties in the value chain
- vi. Privacy and consent to charge, and
- vii. Virtual chat services

1.12 The consultation sets out our proposed changes to some current guidance at this time, and an initial assessment of whether the remaining guidance either:

³ See Section 2 below relating to guidance: **Questions 1 to 9** of this consultation relate to guidance.

⁴ See Section 3 below relating to Special conditions: **Questions 10 to 23** of this consultation relate to the various service categories for which Special conditions are proposed.

- remains relevant, or
- may require future changes⁵.

Special conditions

- 1.13 This consultation sets out our aim to maintain the current levels of consumer protection found in prior permission regimes, while removing the need for prior permission to be obtained before launching such services. We also propose to focus requirements with the same accuracy and precision that was possible within the previous prior permission regimes.
- 1.14 The new Code contains 24 types of Special condition, which offers flexibility in terms of delivering targeted measures going beyond the Code for specific higher risk services. Furthermore the Special conditions framework offers clarity to regulated parties in terms of the provisions that are likely to be adopted where risks are identified.

Impact on current prior permissions regimes

- 1.15 Prior permissions, to date, have formed an important part of PhonepayPlus' regulatory framework. However, the transition made under the 12th Code to an outcomes-based approach to regulation has resulted in a Code that is inherently flexible as well as technology and service neutral. By contrast, prior permissions are a legacy of a relatively prescriptive approach to regulation, where rules are specific, restrictive and can quickly become obsolete. We believe that broad reliance on prior permission is inconsistent with our overall regulatory approach where necessary consumer protections are otherwise in place.
- 1.16 Prior permissions remain an important tool in dealing with higher risk services that could, if left unchecked, lead to significant consumer harm. We therefore do not rule out introducing new prior permission regimes in the future. However, while we intend to retain the power to introduce new regimes, we intend to use prior permission far more sparingly, and only where there is appropriate cause to do so. Where we do so, we will publicly consult and focus on engagement with relevant stakeholders (including Ofcom) and will only make changes after consultation and having considered all representations made.
- 1.17 We will remove all 17 prior permission regimes that are currently in place, effective from the date the 13th Code comes into effect. This means industry has a real opportunity to consider what services can be delivered effectively via PRS using the new tariff structure adopted by Ofcom and to introduce services to the market without the burden of applying for prior permission.

⁵ Any such changes would be proposed in a second consultation later in the year once the new Code has taken effect and market impact can be better assessed.

- 1.18 The scope of the outcomes-based Code and the adoption of Special conditions under paragraph 3.11.1 of the 13th Code will ensure the high standards expected by consumers will be maintained going forward.

How to respond to this consultation

- 1.19 PhonepayPlus invites all stakeholders to consider the proposed guidance and Special conditions, and the services to which they relate. We welcome feedback on our general approach to the development of guidance and Special conditions, including our use of the powers at paragraph 3.11 of the 13th Code. What would be particularly helpful are specific comments on the expectations set out in guidance and the evidence relating to the likely impact businesses and consumers will feel with the implementation of Special conditions.
- 1.20 Given these proposed Special conditions reflect the first adoption of such measures under paragraph 3.11 of the 13th Code; we anticipate stakeholders may have some questions about this consultation. To help gather informed responses, we recommend respondents consider early engagement with PhonepayPlus during this consultation period to raise any questions or discuss any aspects of these proposals. Such positive engagement can feed into further written responses to the consultation later in the process.
- 1.21 Section 5 of this document outlines how to contact us during the consultation, as well as how to submit feedback along with evidence in support of your views. The deadline for responses is **Friday, 15 May 2015**.

Section 2: Guidance

Reasons for updating Guidance

- 2.1. All current guidance is kept under review over time to ensure it is clear, fit for purpose, and effective in assisting the delivering of high compliance standards in the industry. During this period of review of the Code and the consultation on the 13th Code, all 25 pieces of guidance PhonepayPlus has published since summer 2011 have been scrutinised. The seven pieces of guidance that this consultation paper deals with warranted immediate consideration in light of changes to the Code and market developments. They are:
- i. Due diligence, risk assessment and control (DDRAC)
 - ii. Promoting PRS
 - iii. Complaint handling
 - iv. Lower cost services
 - v. Definitions, including parties in the value chain
 - vi. Privacy and consent to charge
 - vii. Virtual chat services
- 2.2. The remaining 18 pieces of existing guidance were considered and found to be capable of sustaining a healthy PRS market at the present time. As part of this consultation we welcome further input from industry relating to any guidance not considered at this time. This input may provide evidence that current guidance is fit for purpose, or highlight questions or doubts as to the strength of particular pieces of guidance that may warrant further attention in due course.
- 2.3. The industry has already given feedback relating to topics such as DDRAC. The feedback has often suggested DDRAC obligations could be more clearly explained and that such guidance needs to offer practical help for businesses to test risks and improve compliance standards.
- 2.4. The guidance on DDRAC has been reworked and the new structure is designed to respond to industry feedback. The desired outcome of such DDRAC exercises is set out in the guidance, and we give insight into how directors and managers within providers can consider such tasks, with the goal of building appropriate compliance structures for long term success.
- 2.5. The guidance on complaint handling has been updated to reflect the need to provide appropriate access to customer care services, and deliver an effective process for raising issues and seeking redress.
- 2.6. Other proposed new guidance considers the new tariffs and the implementation of proposals in the NGCS review conducted by Ofcom.

- 2.7. It should be noted that the transition from prior permission to Special conditions affects a number of service types about which we have given guidance in the past. Instead of developing new guidance on these topics, we propose that this consultation paper reflects our current thinking on such services and that the Special conditions themselves will set out clear expectations for industry.
- 2.8. Given that these Special conditions will not be adopted until full consultation has taken place and we have listened to stakeholder feedback, PhonepayPlus has not developed the requisite replacement guidance at this time. Instead, we intend to consult new guidance of the following topics at a later date:
- ‘Advice services’ – please refer to the Special conditions for professional services, including counselling advice services (PROF).
 - Betting tipster services – please refer to the Special conditions for remote gambling services (RG)
 - ‘Fundraising and other charitable promotions’ – please refer to the Special conditions for recurring donation services (RDS)
 - ‘Conduct of live services’ – please refer to the Special conditions for live entertainment and chatline services (LECS), and higher rate PRS (HRPRS)
 - ‘Quiz TV’ – please refer to the Special conditions for call quiz TV services (CTV)
 - ‘Subscription services’ – please refer to the Special conditions for subscription services (SUBS)
- 2.9. In the meantime, the current guidance is still valid for these service types.

Navigating this consultation in relation to Guidance

- 2.10. Our approach to the review of guidance, and the development of proposed new amended guidance, is covered in this Section of the consultation paper. Copies of the seven pieces of amended guidance are annexed to this consultation and labelled as follows:
- **Annex B1 – Due diligence, risk assessment and control (DDRAC)**
 - **Annex B2 – Promoting PRS**
 - **Annex B3 – Complaint handling**
 - **Annex B4 – Lower cost services**
 - **Annex B5 – Definitions, including parties in the value chain**
 - **Annex B6 – Privacy and consent to charge**
 - **Annex B7 – Virtual chat services**
- 2.11. A summary of our review for those pieces of guidance that are not being amended at this time is found at paragraphs 2.13 to 2.16 including a schedule of our assessments. The reasons each of these are changing are set out below.

2.12. Respondents to this consultation may have comments or feedback on each piece of guidance or only on specific guidance that affects their business operations. We welcome any and all input and will consider it as we finalise this guidance ahead of the new 13th Code coming in force on 1 July 2015.

Intention to review and develop further Guidance in future

2.13. PhonepayPlus has considered the remaining 18 pieces of guidance and the following proposed options were considered in relation to all:

- a. Retain current guidance – Where Code rule or paragraph numbers change, these can be amended without consultation. If the expectations set out in the guidance remain the same under the 13th Code then it is appropriate to retain it.
- b. Amend guidance and consult on changes – Where expectations are changing either due to changes to the provisions of the Code or based on commercial factors affecting the industry which require a new approach or interpretation of Code provisions, then the guidance may need amendment.
- c. Review wider strategic thinking before consideration of changes to guidance – Where there is justification for some review of principles or policy in relation to topics, such as characteristics associated with vulnerability or definitions of children's services, but the nature of that review is such that current guidance cannot be updated yet, it is appropriate to wait. The outcome of dialogue with industry in coming months may highlight areas of guidance that do require further amendment. This will be considered at the appropriate time.

2.14. Under proposed option 'c', it may be considered appropriate to remove a piece of guidance without replacing it like for like. An example of this is included in the table below, in relation to public information services. This guidance was initially introduced to meet a wider problem, and as a result of ongoing issues with information, connection, and signposting services (ICSS) the policy relating to prior permission was developed.

2.15. On review, the public information services guidance is considered redundant as it is superseded by later publications. While we propose there is reason to impose Special conditions on ICSS, any additional guidance is not considered necessary at the present time.

2.16. The table below shows our initial determinations in respect of our future approach to each piece of existing guidance that is not included in this consultation.

Title of Existing Guidance	Initial Determination	Commentary
Application-based payments	Retain current guidance	As the app store pilot progresses there may be lessons learnt that lead to future consideration of this guidance.

Title of Existing Guidance	Initial Determination	Commentary
Competitions and other games with prizes	Retain current guidance	This remains fit for purpose.
Consumer refunds	Review wider strategic thinking (See also ' <i>complaint handling</i> ' changes)	The review of Part 4 of the Code ('Part 4 Review') may lead to changes that impact on the content of this guidance. In future it is our intention to place such information within the <i>Investigations and Sanctions Procedure</i> document.
Method of exit from a service	Retain current guidance	Technology has developed; however, the current guidance makes clear the expectations for consumer protection in this area, which can still be relied on.
The appropriate use of number ranges	In future we will refer stakeholders to Ofcom guidance on this matter.	This factual information will be cross-referenced in a suitable way without the adoption of a General Guidance note.
The avoidance of undue delay	Retain current guidance	This remains fit for purpose.
The conduct of live services	Review wider strategic thinking	Guidance to be updated in line with final Special conditions imposed following this consultation
Advice services	Review wider strategic thinking	Guidance to be updated in line with final Special conditions imposed following this consultation
Betting tipster services	Review wider strategic thinking	Guidance to be updated in line with final Special conditions imposed following this consultation
Children's services	Review wider strategic thinking	There are proposals for dialogue with industry and other regulators on the topic.
Directory Enquiry (DQ)	Retain current guidance See also consultation on <i>Special conditions for 'Higher rate PRS'</i>	This remains fit for purpose.
Employment services	Retain current guidance	This remains fit for purpose.
Fundraising and other charitable promotions	Retain current guidance See also consultation on <i>Special conditions for 'Recurring donation services'</i>	Guidance to be updated in line with final Special conditions imposed following this consultation
Public information services	To be removed	This guidance has been superseded by policy developments relating to ICSS.

Title of Existing Guidance	Initial Determination	Commentary
Quiz TV	Review wider strategic thinking	Guidance to be updated in line with final Special conditions imposed following this consultation
Subscription services	Review wider strategic thinking	Guidance to be updated in line with final Special conditions imposed following this consultation
Digital Marketing	Retain current guidance	This remains fit for purpose.
Consumer credit services	Retain current guidance	This guidance was published in December 2014 following a full review of the regulation of such services and remains fit for purpose.

2.17. At this stage in the review process, PhonepayPlus invites respondents to consider the guidance above, on which we plan to make no immediate changes, and provide feedback on our determinations and any specific evidence justifying further amendments. We will consider such responses as we look at the full suite of guidance in future.

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

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

Answering consultation questions on proposed guidance (Q3 to Q9)

2.18. While PhonepayPlus has separated out our reasoning for amending guidance under the various headings below, the questions we ask are the same for each piece of guidance. Please consider the following when you read the sub-sections within this consultation paper, beginning with DDRAC, and the annexes containing the draft guidance. When responding to each consultation question in turn, your considerations relating to these matters will be useful to us in finalising guidance:

- a. Is the level of information provided in the Guidance sufficient?
- b. Are the expectations expressed in Guidance confusing or likely to cause difficulty to business when complying with the Code?
- c. Is there anything extra in terms of the Guidance that could assist industry when offering high quality PRS?

Guidance on due diligence, risk assessment and control (DDRAC)

2.19. The guidance (**Annex B1**) is now structured around the four parts of the process of risk assessment, which begins with the due diligence exercise. This version of the guidance emphasises the purpose behind each part of the risk assessment process, with the core being a commitment to compliance with the regulatory obligations set out in the PhonepayPlus Code of Practice. This approach has been chosen to help

industry members understand the benefits of compliance, which in turn will help individuals (Directors, sole traders, compliance managers or account managers) to meet the expectations set out in the guidance.

2.20. Regardless of the structural changes to the guidance, our expectations have not changed. The four parts are:

- i. Know your client
- ii. All risks identified
- iii. Actions taken to control any risks
- iv. Responding to incidents

2.21. PhonepayPlus has observed that industry has responded well to these Code obligations and the guidance we have previously published. In terms of establishing some form of procedure, steps have been taken by businesses to look at these obligations.

2.22. However, there have been investigations into industry members since September 2011 which have identified specific failures of procedures to deliver the outcomes expected of them, and consumers have suffered as a result. To further support industry in achieving desired outcomes and improving Code compliance standards across the value chain, the new guidance has included the fourth section – *‘responding to incidents’*.

2.23. PhonepayPlus recognises that risks can become issues, regardless of the procedures in place. The investigations that have led to a Tribunal hearing have involved failures to respond proactively when issues have arisen. The guidance attempts to support businesses in establishing a more joined up approach to incident management, with knock-on effect being the ongoing improvement to DDRAC procedures over time.

2.24. Where a business responds effectively and proactively to issues, this can mitigate against consumer harm resulting from breaches of the Code that have been unforeseen or caused by a third party. Indeed, even where deliberate fault can be attached to original breaches of the Code, after the incident has occurred a provider may be able to remedy such breaches for the future where DDRAC procedures are effectively managed based on the core commitment to compliance⁶.

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

⁶ Any remedy will be unable to cover over past breaches; however, such action will limit the scope, impact and consequences of the original breaches.

Guidance on promoting premium rate services (PRS)

- 2.25. The current guidance is considered to be dated, with sections referring to specific issues and concerns in the industry in 2011. It is also a document that has been found to be hard to navigate. While much of the content remains valid for businesses promoting PRS in 2015, PhonepayPlus would like the guidance to offer support in a way that permits readers to dip into it and find helpful advice for issues that arise.
- 2.26. The new guidance is found at **Annex B2**. The new structure means that the reader can navigate to the relevant sections more directly. Although some pieces of advice have been removed, it is our intention that the remaining sections give a clear indication of expectations when a provider comes to design and run advertising campaigns.
- 2.27. Our objective is set out in the first section '*desired outcome: establishing confidence in PRS with high quality promotions*'. Given the diverse PRS market, stakeholders are reminded that guidance is unlikely to address every scenario or media by which providers may wish to advertise. However, guidance does offer general advice in relation to our expectations for transparency in promotions (section 2); pricing information (section 3); misleading promotions (section 7) and inappropriate promotions (section 8).
- 2.28. Given the expansion in use of affiliate marketers and digital marketing techniques, there is advice on promoting via the internet (section 6); direct marketing to a consumer's mobile phone (section 9); and using affiliate marketing (section 10).
- 2.29. PhonepayPlus retains the section devoted to advertising PRS on radio, which is aligned to Ofcom's Broadcasting Code so far as it relates to radio advertising⁷. This is found at section 4 of the guidance.
- 2.30. PhonepayPlus also retains expectations around the promotion of 'free' products or services, or free elements associated with PRS as promotional hooks. With the expansion of the freemium model for services especially relating to applications and games, the advice has been reviewed and consolidated within one section of the guidance – section 5.

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

Guidance on complaint handling

- 2.31. The guidance has been amended and restructured to reflect the purpose behind complaint management and handling. Good complaint management is recognised to

⁷ Section 10 of Ofcom's Broadcasting Code relates to commercial communications in radio programming: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references-radio/>

be more important in light of the Code changes offering businesses greater flexibility in how they give customers access to support services. This guidance is found at **Annex B3**.

- 2.32. PhonepayPlus recognises that not all contacts to support services amount to a complaint; however, the Code is set up to ensure compliance standards are met, and our focus is on the appropriate handling of those contacts that do amount to a complaint or claim for redress.
- 2.33. What the new provisions in the Code acknowledge is that where a consumer is happy to access help via suitable means other than a non-PRS telephone number, they may be equally happy to raise a complaint through the same channel. Indeed, the Code acknowledges that the means are secondary to the objective, which is to have an easy route to make a complaint and potentially claim redress.
- 2.34. The provisional new guidance adds greater emphasis to how consumers access customer services, and what amounts to an *effective* process for handling complaints that do arise.
- 2.35. PhonepayPlus considers that in some instances consumers will have a legitimate expectation for access to customer care via a telephone line. The guidance reflects this and highlights when it might be inappropriate to remove such a route of access entirely.
- 2.36. Moreover the law has changed in relation to post-contractual customer services, which has been explained in compliance advice issued to the industry on 24 March 2014. This advice was given in advance of the change in the law from 13 June 2014. The new guidance reflects this advice (section 4, **Annex B3**).
- 2.37. Some of the example processes have been provisionally removed from the guidance. The focus has now shifted to the principles behind constructing an effective process tailored to the type of service consumers are accessing. Those traditional processes set out as examples in the current guidance are still capable of complying with the Code obligations; however, the guidance is drafted to enable providers to meet those obligations within the flexibility afforded under the new 13th Code.

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

Guidance on lower cost services

- 2.38. The new guidance (**Annex B4**) offers broad coverage of advice for providers using lower cost PRS numbers, including 087x.
- 2.39. The guidance on lower cost services covers aspects of DDRAC (section 1); registration requirements (sections 2 and 3); pricing information in promotional material (sections 5 and 6); undue delay (section 7); complaint handling (section 8); spending

caps (section 9); and call recordings and monitoring (section 10). The guidance has been amended to reflect the range of Code changes across these areas.

- 2.40. Section 4 of the guidance relates to the impact of Special conditions for lower cost services. While the use of lower price points used may lead to Special conditions not being applied to some services, there may be occasions where it is necessary to apply Special conditions to service types regardless of the cost to consumer.

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

Guidance on definitions, including parties in the value chain

- 2.41. The focus of the guidance on definitions is looking at paragraph 5.3.8 of the Code, which considers the roles of Level 1 and Level 2 providers. This is because PhonepayPlus recognises the complexity of certain value chains within the industry that delivers PRS, and the importance of establishing the roles for the purpose of enforcing the Code.
- 2.42. In 2014, we considered the examples provided within existing guidance aimed at addressing areas of doubt, or issues relating to sharing of responsibilities across a value chain. This has led to significant changes to the structure and content of the guidance. The new guidance is found at **Annex B5**.
- 2.43. The definitions of Level 1 and Level 2 providers have not changed, and our expectations on each participant in the value chain remain as before.
- 2.44. Paragraph 5.3.8(c) of the Code deals with those occasions when PhonepayPlus must make a determination as to who holds which role. Paragraph 5.3.8(c) has been amended slightly in the new Code with the guidance being amended in keeping with that change.
- 2.45. The new guidance reflects the importance of apportioning responsibilities accurately so that liability under the Code can be established if problems arise. Where there is material doubt PhonepayPlus makes a determination as to which party is the Level 1 provider and which is the Level 2 provider. There is now an expanded section explaining when PhonepayPlus would make such a determination, and how it would make such an assessment of the evidence in each case.
- 2.46. The examples in the guidance, which indicate the process by which assessments and determinations are made, are intended to add further clarity to how this provision will be applied in future.

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

Guidance on privacy and consent to charge

- 2.47. Since 1 September 2011, the approach PhonepayPlus has taken in relation to the outcome of privacy at Part 2.4 of the Code has been to adopt measures that overlap significantly with the Privacy and Electronic Communications Regulations 2003 (PECR 2003). The Code applies to all Level 2 providers regardless of the promotional material and associated campaigns used to reach its customer base.
- 2.48. This is clear in the Code itself⁸; however, we have received feedback from industry that the guidance has over-emphasised the connection with PECR 2003. Given these regulations cover only direct marketing sent via electronic communication, some readers have interpreted our guidance to only explain expectations in relation to such promotional material. This is not the intention of the Code or the guidance.
- 2.49. Privacy is a right and not a luxury for consumers. It is important that businesses do not violate this right. The expectations of PhonepayPlus have not changed in relation to consent; however, we have sought to improve the structure of the guidance and ensure it is easy to use. This new guidance is found at **Annex B6**.
- 2.50. The guidance seeks to explain the importance of prominence in relation to key information necessary to establish valid consent. This is relevant for both processes used to obtain consent to charge or consent to receive marketing.
- 2.51. In a similar way to our guidance on DDRAC, the guidance on consent to charge seeks to establish the purpose behind our provisions on matters relating to consent. This is to equip industry for the task of building processes for obtaining adequate consent and later improving on them where necessary to maintain standards consumers expect.

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

Guidance on virtual chat services

- 2.52. Provisionally, this guidance has not been changed significantly. However, it refers to rule 2.3.12(c) of the current Code, which is being removed and replaced with paragraph 3.12 in the new 13th Code. The new guidance, found at **Annex B7**, takes account of this change.
- 2.53. Paragraph 3.12 of the 13th Code enables PhonepayPlus to set limits and actions for spending at intervals or thresholds. These may vary over time depending on the nature of the service and the risks associated with it. Notices will be published from time to time to set out such limits and actions along with the thresholds that trigger them.
- 2.54. The virtual chat services guidance does not seek to explain the process by which notices are issued under paragraph 3.12. This is communicated elsewhere through 1)

⁸ See rules 2.4.2 and 2.4.3

the statement following consultation of the 13th Code; and, 2) in the proposed Notice(s) to be published when the new Code comes in to force on 1 July 2015.

2.55. In relation to virtual chat services, it is our intention to retain the current threshold and actions relating to reminder messages once £10 has been spent. The guidance reflects that proposal, meaning the standards expected of industry have not changed.

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

Section 3: Special conditions – The Provisions

Introduction to Special conditions in Annex 2 to the Code

- 3.1 A Special condition is a targeted requirement used to address higher risk services to ensure consumer protection is achieved under the new Code. There are 24 types of Special condition at Paragraph 1.1(a) to (x) of Annex 2 to the 13th Code. Special conditions offer flexibility in terms of delivering targeted measures going beyond the Code for specific higher risk services. Furthermore the Special conditions framework offers clarity to regulated parties transparently setting out expectations. The requirements of Special conditions will be set out in published Notices.
- 3.2 Our aim is to maintain the current levels of consumer protection found in prior permission regimes, while removing the need for prior permission to be obtained before launching such services. We also want to be able to focus requirements with the same accuracy and precision that was possible within the prior permission regimes.
- 3.3 The Special conditions framework makes this possible in the following ways:
- PhonepayPlus will be able to identify specific categories of service to which Special conditions apply, such as those listed at paragraph 3.5 below;
 - PhonepayPlus will be able to select only those Special conditions that are necessary to protect consumers based on the nature of the service, its promotion and delivery;
 - PhonepayPlus will impose, and remove, such Special conditions on providers of specific categories of services as and when necessary following industry-wide consultation. Where circumstances change, the regulation of industry sectors may therefore be modified without a full Code change.
- 3.4 PhonepayPlus consulted on the 13th Code looking at establishing spending caps and other actions under paragraph 3.12 of the Code for a range of services. The Notice of caps and other actions, such as spend reminders, is published with our statement following consultation of the 13th Code⁹. This means some provisions previously found under prior permission will be set out in this Notice of caps and other actions. There is also the power to adopt spending caps under Special conditions.

Navigating this consultation in relation to Special conditions

- 3.5 Our approach to the first group of services that are subject to Special conditions is covered in this Section. Copies of the twelve proposed Special conditions Notices are annexed to this consultation and labelled as follows:
- **Annex C1 – Broadcast PRS (BCAST)**

⁹ See Annex B to the Code Statement dated 26 March 2015 entitled – ‘Notice of actions and thresholds imposed under paragraph 3.12 of the Code’: <http://www.phonepayplus.org.uk/News-And-Events/News/2015/3/Statement-on-PhonepayPlus-13th-Code-of-Practice.aspx>

- **Annex C2 – Live entertainment and chatline services (LECS)**
- **Annex C3 – Higher rate PRS (HRPRS)**
- **Annex C4 – Credit broking services (CBRK)**
- **Annex C5 – Information, connection, and signposting services (ICSS)**
- **Annex C6 – Professional services, including counselling services (PROF)**
- **Annex C7 – Pay per view services (PPV)**
- **Annex C8 – Call TV Quiz services (CTQ)**
- **Annex C9 – Remote gambling services (RG)**
- **Annex C10 – Subscription services (SUBS)**
- **Annex C11 – Recurring donation services (RDS)**
- **Annex C12 – Voice-based, Text charged (VBTC)**

3.6 A summary of our review of prior permission, and our considerations relating to the transition of provisions to Special conditions under the 13th Code, is found at paragraphs 3.8 to 3.9 including a schedule of our assessments.

3.7 From paragraph 3.10 onwards we set out reasons for the imposition of Special conditions, in the order listed above. **Questions 10 to 23** of this consultation relate to our proposals for Special conditions found on page 49.

Transition of prior permission regimes to Special conditions

3.8 The following table indicates our proposals for each prior permission regime following a full review of the additional conditions introduced by those regimes. The range of prior permission notices have been established at various times since the adoption of the 8th edition of the Code of Practice in 1998.

3.9 In the table we set out our intention for each regime having considered the following proposed options:

- Remove the regime entirely – Where the Code outcomes and rules have sufficient coverage, therefore mitigating risks sufficiently for enforcement of those provisions to be effective, then we provisionally consider it appropriate to remove the prior permission regime without replacement with any Special conditions.
- Transpose current prior permission provisions into Special conditions – Where, provisionally, it appears to us the risks to consumers are only properly dealt with via the additional conditions found in the prior permission regime, we propose that it is important to retain those same standards of consumer protection under Special conditions. Some provisions may be removed where they relate to the administration of prior permission, but most would still be relied upon under the new framework.
- Moderate variation or amalgamation of provisions – Where we are minded that risks to consumers remain, yet there appear to be alternative means to address

those risks, we propose varying provisions found in a current prior permission regime or by amalgamating prior permission regimes to form new Special conditions.

- New or significantly amended requirements in Special conditions – Where there appear to be more significant changes in the market, we have proposed amending the definition of service types and the relevance of provisions or introduced new Special conditions. There are only two areas where this is relevant – higher rate PRS (HRPRS) and pay per view services (PAYV).

Current prior permission regimes	Proposed option	Commentary
Anonymous SMS	Remove prior permission regime entirely	Outcomes based Code deals with the risks posed
Broadcast PRS	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions
Live entertainment and chat	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions
Higher rate PRS	New or significantly amended requirements in Special conditions	The new aspect of this regime is a reaction to the new tariff structure being implemented by Ofcom.
Credit broking services	Moderate variation or amalgamation of provisions in new Special conditions	Please note that the new prior permission regime announced on 9 December 2014 has introduced new approach to regulation in this sector. No further changes made to those provisions.
Employment services	Remove prior permission regime entirely	Outcomes based Code deals with the risks posed
Information, connection and signposting services	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions
Professional services, including counselling services	Moderate variation or amalgamation of provisions in new Special conditions	PhonepayPlus intends counselling services to be a subset of professional services. The standards cross over from current prior permission regimes into the new framework.
Pay per view services	New or significantly amended requirements in Special conditions	The changes focus on the definition of the service type with some amendment of provisions aligned to that definition.
Call TV Quiz	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions

Current prior permission regimes	Proposed option	Commentary
Remote gambling services	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions
Subscription services	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions
Recurring donation services	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions
Voice-based, Text charged	Transpose current prior permission provisions into Special conditions	Current provisions in prior permission regime remain fit for purpose and transpose easily to Special conditions

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

Broadcast PRS (BCAST)

- 3.10 These services have historically faced significant scrutiny following some high profile broadcasting issues associated with the use of premium rate phone services. The work of Ofcom and PhonepayPlus has led to widespread improvements in industry standards, which has relied on the cooperative efforts of industry itself.
- 3.11 Our preliminary view is that the risks associated with Broadcast PRS remain, and industry feedback has suggested that the current prior permission regime has had a positive impact on maintaining high standards across this sector. Previously, the major broadcasters have suggested they would prefer that the current conditions are retained under the 13th edition of the Code. Therefore PhonepayPlus proposes to retain the current standards set out in the additional provisions of the regime, but intends to transpose those standards into the Special conditions framework. The proposed Special conditions are found at **Annex C1**.
- 3.12 The following Special conditions found in Annex 2 to the Code allow for the current provisions to be imposed under paragraph 3.11.1 of the 13th Code:
- i. Paragraph 1.1(a): requirements as to contractual arrangements and the management of roles across a chain of providers in relation to a high risk service;
 - ii. Paragraph 1.1(b): requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers;
 - iii. Paragraph 1.1(c): requirements to ensure there is an adequate technical quality to the provision of the high risk service;

- iv. Paragraph 1.1(o): membership of professional bodies, training and supervision to have been and be undertaken and qualifications, licences and insurance required to be held by relevant providers or relevant individuals engaged in the provision of the high risk services and the evidence of such that may need to be provided to PhonepayPlus;
- v. Paragraph 1.1(r): PhonepayPlus' access to premises in order to monitor the compliance of a high risk service with the Code and any relevant special conditions;

Summary of proposals:

- Promotional standards for pricing information and key information – **no change**
- Technical quality standards for vote collection and counting – **no change**
- Closure of premium rate lines during repeat shows – **no change**
- Contractual arrangements between key parties in the delivery chain and clarity around responsibilities – **no change**

Q.11: Do you agree with our assessment of this service type and the proposed set of Special conditions for Broadcast PRS? If not, why? Please provide evidence in support of your response.

Special conditions for Live entertainment and chatline services (LECS)

- 3.13 The proposed notice of Special conditions for LECS, found at **Annex C2**, refers to the two separate definitions for live entertainment services – see paragraph 5.3.23 of the Code – and chatline services – at paragraph 5.3.13 of the Code:
- “Live entertainment service’ is a service which allows the caller to speak live with a live operator or one or more other consumers for entertainment purposes, including, but not limited to, one to one Chatline (sexual or non-sexual), psychic or tarot services.”
 - “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
 - i. each of them having agreed with each other; or
 - ii. one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service.”

3.14 Our review of these services looked at:

- i. Conditions within the various prior permission regimes;
- ii. Duplication across prior permission regimes.

3.15 On review of the various live services regimes under prior permission it was clear that the majority of conditions were designed to prevent risks of underage use and/or bill shock arising from adult services and chat lines. Some are also set out to ensure systems are in place to enable appropriate enforcement activities can be undertaken to protect consumers where complaints arise. This benefits both industry and consumers by establishing a means for independent testing of complaints to discount the vexatious claims and pursue the legitimate ones effectively.

3.16 There was significant duplication and we provisionally consider it advantageous to amalgamate the existing prior permissions regimes around Live Entertainment Services and Multi-Party Chat Services¹⁰ into one special conditions notice. Where a condition relates only to one identified service type, this has been made clear within the proposed notice. Where technical standards have broader application, such as for age-verification processes, this is also made clear in the proposed notice.

3.17 The proposed Notice of Special conditions for live services is found at **Annex C2**. The following Special conditions are found in Annex 2 to the Code, allowing for the provisions to be imposed under paragraph 3.11.1 of the 13th Code:

- i. Paragraph 1.1(b): requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers;
- ii. Paragraph 1.1(f): steps to be taken to ensure that a high risk service is not used by or promoted in such a way as to make it particularly attractive to persons under the age of 18 years old or younger;
- iii. Paragraph 1.1(g): the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over;
- iv. Paragraph 1.1 (i): required recording equipment of voice based high risk services and the use and standard of that equipment;
- v. Paragraph 1.1(j): the retention of such recordings and their provision with related information to PhonepayPlus;
- vi. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
- vii. Paragraph 1.1(m): requirements for caller agreement before a high risk service proceeds before the caller is charged;
- viii. Paragraph 1.1(q): the monitoring of the use of high risk services and in particular the information to be given to callers and action to be taken in the course of such monitoring;

¹⁰ Multi-Party Chat services fall within the definition of “Chatline Service”, and the draft special conditions clearly set out that they allow multiple consumers to access one chatroom simultaneously

- ix. Paragraph 1.1(r): PhonepayPlus' access to premises in order to monitor the compliance of a high risk service with the Code and any relevant special conditions;
- x. Paragraph 1.1(s): facilitate the carrying out by PhonepayPlus or an approved third party of an audit of compliance of a high risk service with the Code and any relevant special conditions;
- xi. Paragraph 1.1(u): the lodging with PhonepayPlus, prior to commencement of a high risk service, of a legally binding document ("a bond") by which a third party guarantees a relevant provider's payment of sums, as security for meeting compensation claims in relation to unauthorised use of the service;
- xii. Paragraph 1.1(x): providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

Summary of proposals:

- Regulatory structure of Special conditions relating to live services – **changes proposed**
- Bond arrangements associated with live services – **no change**
- Requirement for calls to be recorded, and those recordings to be retained for a period – **no change**
- Requirements for services to verify age and promote as appropriate – **no change**
- Requirement to monitor chatrooms – **no change**

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

Q.13: Do you agree with the proposed Special conditions for live services? If not, why? Please provide evidence in support of your response.

Special conditions for Higher rate PRS (HRPRS)

3.18 We are proposing to remove the two current prior permission regimes relating to services charging more than (a) 85 pence per minute (excluding VAT), or (b) more than £1.28 per minute (excluding VAT), and create one set of Special conditions encompassing all higher rate PRS (HRPRS).

3.19 When we refer to HRPRS we use the following definition:

*"Any live or IVR-based PRS which is provided for entertainment purposes and costs over £1.53 per minute and/or carries a £1.53 (or higher) charge upon connection"*¹¹

¹¹ The proposed notice of Special conditions for HRPRS indicates that there will remain an exemption in place for both Directory Enquiry (DQ) services and for *Voice-based, Text charged* services. The latter has a separate set of Special conditions proposed on the service type, found below at page 38.

- 3.20 In relation to premium rate services with higher tariffs, the current regimes relate to services charging more than (a) 85 pence per minute (excluding VAT), or (b) more than £1.28 per minute (excluding VAT). In relation to these, PhonepayPlus provisionally considers that:
- i. The amounts triggering any such provisions need to be relevant and proportionate given Ofcom's NGCS tariff changes;
 - ii. The conditions associated with these regimes were primarily designed to apply to adult services at these higher tariffs.
- 3.21 Spending caps now sit under a separate provision of the 13th Code, at paragraph 3.12. While there is the opportunity to impose spending restrictions under the Special conditions framework, at present we intend to introduce caps only under paragraph 3.12. Cap amounts will be specified in a Notice, which is annexed to the Code Statement.
- 3.22 PhonepayPlus has listened to industry feedback during the extended stakeholder engagement undertaken as part of the Code Review Project, and understands a wider range of services are likely to operate above £1.53 per minute when the new tariffs are introduced from 1 July 2015. This is one of the reasons for the new tariff structure; however, we note the flexibility in proposed tariffs may also attract a wide range of providers to rely, in part at least, on PRS for mobile payments¹².
- 3.23 We examined factors that could heighten the risk of consumer harm. We provisionally identified the following:
- As with any live service, where evidence of service content is lost or otherwise unavailable, the lack of accountability can incentivise harmful or inappropriate service delivery.
 - As with any sexual entertainment service, the risk of underage use or inappropriate promotion.
 - Higher service revenues may increase the propensity of rogue providers to mislead consumers into calling higher rate services. The likeliest risks in this regard are misleading promotion (e.g. without price or with pricing obscured), or missed call scams which activate a drop charge upon call-back. It should also be noted that Ofcom's intended changes to the 070 and 076 number ranges as part of the NGCS review will dis-incentivise missed call scams away from those ranges.
 - Given the accessibility to premium rate services is without significant barriers, providers may begin using such higher tariffs before establishing infrastructure

¹² See independent report by InterConnect Communications setting out a range of tariffs available from July 2015 here: <http://www.icc-uk.com/download/Final%20Report%20Supplement%20on%20NGCS%20Price%20Points.pdf>

and systems to an adequate technical quality, leaving consumers with high costs for low quality services.

- The greater potential for financial detriment which occurs following overuse – either from the consumer being misled or because of use which is addictive in nature – or unauthorised use by people other than the bill payer.
- Given the immediacy of the charges, the impact of high charges may be felt by consumers shortly after accessing a service, with consumers seeking information about the charges or redress equally quickly. Information on services must be available to support consumers when enquiries or complaints arise to avoid further confusion, distress and financial detriment.

3.24 Given these concerns, PhonepayPlus has proposed a range of conditions to ensure calls are recorded and evidence held to enable investigation of issues if they arise; that services can be tested and delivery platforms inspected to ensure they are fit for purpose; that there is sufficient transparency relating to the nature and cost of HRPRS; and that providers are deterred from abusing the higher tariffs offered under the post-NGCS Review landscape.

3.25 The proposed notice of Special conditions for HRPRS is found at **Annex C3**. The following Special conditions found in Annex 2 to the Code allow for the current provisions to be imposed under paragraph 3.11.1 of the 13th Code:

- i. Paragraph 1.1(i): required recording equipment of voice based high risk services and the use and standard of that equipment;
- ii. Paragraph 1.1(j): the retention of such recordings and their provision with related information to PhonepayPlus;
- iii. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
- iv. Paragraph 1.1(m): the provision of defined information to PhonepayPlus and the intervals that it is to be given and the manner to which it is provided;
- v. Paragraph 1.1(t): the retention of revenue generated from a high risk service;
- vi. Paragraph 1.1(r): PhonepayPlus' access to premises in order to monitor the compliance of a high risk service with the Code and any relevant special conditions;
- vii. Paragraph 1.1(u): the lodging with PhonepayPlus, prior to commencement of a high risk service, of a legally binding document ("a bond") by which a third party guarantees a relevant provider's payment of sums, as security for meeting compensation claims in relation to unauthorised use of the service;
- viii. Paragraph 1.1(x): providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

Summary of proposals: The basis for these proposed Special conditions come from the provisions previously imposed under prior permission for ‘services over £1.28 + VAT per minute’¹³, and for ‘services over 85 pence + VAT per minute’.

- Call recording requirements – **no change**
- Requirement for information given on connection prior to any charges – **changes proposed**
- Revenue retention proposals – **changes proposed**
- Opportunity for PhonepayPlus to carry out inspections of sites involved in the operation and delivery of a service – **changes proposed**
- Bond arrangements for compensation claims – **no change**
- Notification to PhonepayPlus of information relating to the service and its provider at commencement of the service – **changes proposed**
- For sexual entertainment services, requirements are in place to ensure services are promoted to and used by consumers over the age of 18 – **no change**

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

Special conditions for Credit broking services (CBRK)

3.26 This industry sector has faced significant scrutiny and regulatory change in recent years, as documented in our policy statement¹⁴ following our review of consumer credit services and consultation on future regulatory standards. This statement was published on 9 December 2014, and established a new streamlined prior permission regime based on notification to PhonepayPlus alongside new guidance for industry¹⁵.

3.27 The additional provision imposed under prior permission and paragraph 3.10 of the current Code mirrors the Special condition found at Annex 2, paragraph 1.1(x):

“Providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.”

3.28 We propose that the requirements in the current prior permission regime for credit broking services – i.e. the requirement to notify before or at commencement of the

¹³ The prior permission regime is found on our website here: http://www.phonepayplus.org.uk/For-Business/~media/Files/PhonepayPlus/Prior_permission/Prior_permission_Services_over_1_28_plus_VAT_per_minute.pdf

¹⁴ Final Statement on Consumer Credit Services Review found on our website here: http://www.phonepayplus.org.uk/News-And-Events/News/2014/12/~media/Files/PhonepayPlus/News%202014/Final%20statement%20on%20consumer%20credit%20services_Nov_2014.pdf

¹⁵ Guidance on credit broking services in the PRS sector found on our website here: http://www.phonepayplus.org.uk/News-And-Events/News/2014/12/~media/Files/PhonepayPlus/News%202014/Service_specific_Guidance_Consumer_Credit_November_2014.pdf

service – will be transposed to new Special conditions. This is reflected in the December 2014 guidance, which we propose would also remain fit for purpose after the 13th Code comes in to force on 1 July 2015. This guidance is a result of a review and consultation relating to these services and so we are not consulting further on these proposals.

3.29 The proposed Notice of Special conditions for credit broking services is found at **Annex C4**.

Summary of proposals:

- Notification of information to PhonepayPlus on commencement of the service – **no change**
- Reliance on enforcement of the Code in line with Service-Specific Guidance – **no change**

Special conditions for Information, connection and signposting services (ICSS)

3.30 Before imposing prior permission requirements on ICSS in September 2013, there were significant numbers of complaints relating to these services misleading consumers and failing to provide key information transparently before callers connected to the service. These issues were covered in great length in our review and consultation relating to ICSS¹⁶.

3.31 As part of our current review we examined factors that could heighten the risk of consumer harm. We provisionally identified the following, which match findings of previous ICSS reviews:

- Consumers discover promotions for ICSS passively when searching for other specific information – and importantly not for a PRS. The context in which consumers are presented with promotional material relating to such services establishes a higher risk that consumers are misled as to the nature of the information and the identity of the provider of that information.
- The risk that consumers will mistake a PRS provider's website for the official site, and therefore also mistake the PRS number as being the actual number of the organisation they seek. This is especially the case where PRS providers have used the same fonts, colours, language or logos as official sites (including government departments or other public services)
- The risk that consumers may provide confidential or otherwise personal information (such as passwords, pin codes or other private details) to PRS providers without realising that they are calling a third party PRS, and not the

¹⁶ Final Statement on ICSS following consultation found on our website here:
http://www.phonepayplus.org.uk/For-Business/Consultations-and-Invitations-to-Tender/Previous-consultations/~/_media/Files/PhonepayPlus/Consultation%20PDFs/ICSS/ICSS%20statement%20%2031%20July%202013.pdf

official customer support line of a company. This also creates more general issues in terms of the Data Protection Act and its requirements.

- Given the immediacy of the charges, it is likely consumers will seek information about the charges or redress shortly after those charges have been levied. Where information on services is not available to respond to consumer enquiries or complaints there is the additional risk of further confusion, distress and financial detriment.

3.32 The proposed Notice of Special conditions for ICSS is found at **Annex C5**, and shows the extent to which current provisions have been relied upon to maintain high compliance standards. In particular we have proposed at this stage to continue to apply the same standards to all ICSS, including those operating on lower priced ranges such as 087x.

3.33 Our reasoning is that consumers should not be misled into calling an ICSS, regardless of the cost of doing so. As such we propose that the same requirements (currently in prior permission) in terms of the information which is provided to consumers should apply, especially when ICSS are being advertised via search engines. We would welcome any views or evidence about the proportionality of the application of particular conditions to lower-cost ICSS .

3.34 The following Special conditions found in Annex 2 to the Code allow for the current provisions to be imposed under paragraph 3.11.1 of the 13th Code:

- i. Paragraph 1.1(c): requirements to ensure there is an adequate technical quality to the provision of the high risk service;
- ii. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
- iii. Paragraph 1.1(n): requirements for caller agreement before a high risk service proceeds before the caller is charged;
- iv. Paragraph 1.1(x): providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

Summary of proposals:

- Technical quality standards setting up Search Engine Marketing – **no change**
- Promotional requirements relating to service type and price – **no change**
- Provision of links in online promotional material to official websites providing information for free or at a lower cost – **no change**
- Information necessary on initial connection of the call and prior to forward connection if requested by the consumer – **no change**

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

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

Special conditions for Professional services, including counselling advice services (PROF)

- 3.35 The review of prior permissions highlighted the overlapping nature of two categories – professional services and counselling advice services. There are particular expectations from consumers in relation to professional services in terms of the quality of service and the outcome delivered. The risks associated with them relate to the quality of advice given and the inability of the consumer to test this prior to making payment. This is based on the impulse purchasing ability and the immediacy of charges during use of the services.
- 3.36 In addition to these risks, counselling advice services may impact upon vulnerable consumers and further risks require consideration as a result. It is also worth noting here that the counsellors can also be placed in difficult circumstances based on the nature of the calls they receive from consumers. The additional provisions that we have considered include those relating to monitoring of calls and advice given.
- 3.37 The proposed Notice of Special conditions for these services is found at **Annex C6**. The review did not indicate a need for the standards to change, and indeed the proposed provisions have been transposed across into the Special conditions framework. This would be possible with reliance on the following Special conditions found in Annex 2 to the Code:
- i. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
 - ii. Paragraph 1.1(m): the provision of defined information to PhonepayPlus and the intervals at which it is to be given and the manner to which it is provided;
 - iii. Paragraph 1.1(n): requirements for caller agreement before a high risk service proceeds before the caller is charged
 - iv. Paragraph 1.1(o): membership of professional bodies, training and supervision to have been and be undertaken and qualifications licences and insurance required to be held by relevant providers or relevant individuals engaged in the provision of the high risk services and the evidence of such that may need to be provided to PhonepayPlus;
 - v. Paragraph 1.1(p): compliance with the requirements of relevant regulators and professional bodies.

Summary of proposals:

- Closer connection between the Special conditions for professional services, including counselling advice services – **changes proposed**
- Promotional requirements relating to service type and qualifications and / or quality of advice offered – **no change**
- The need for requisite qualifications and membership of professional bodies dependent on service type and advice offered – **no change**
- The need for suitable and appropriate levels of monitoring and supervision – **no change**

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

Special conditions for Pay per view services (PPV)

3.38 With the development of technology and the growth of the PPV market, industry feedback has suggested that the definition of this service type required some review. PhonepayPlus has taken the opportunity to consider the definition as part of its review of the prior permission regime. The previous definition simply referred to the action that triggered the charge: “*services which charges per page or image viewed*”.

3.39 Given that viewing such content is now possible in a number of different ways, it has become more important to clarify our definition of pay per view services. For example, many services involve straightforward downloading of content to be viewed using the browser of the consumer’s handset and would be regarded by us as more akin to one-off purchases rather than “pay per view”. PhonepayPlus propose the following definition as it accurately covers those services envisaged by the current prior permission regime:

“Any PRS that charges for: each static image, webpage of static images, or video footage (either a clip or segment of a narrative or complete film) or webpage of video footage, which is streamed - or otherwise viewed - through a website or other browser provided by the service for that purpose.”

3.40 The intention behind this change in definition is to retain the same standards across all such services that are viewed either on a provider’s website, or within a browser provided specifically by the service for that purpose. This in turn would exclude product which is purchased from a provider’s website, but once purchased is downloaded to the consumer’s handset and no longer requires any interaction with the provider to view repeatedly.

3.41 Our preliminary view is that there is significant risk of bill shock based on the service type and payment structure for these pay per view services because of rapid viewing of multiple pieces of content. This has been effectively regulated under the prior permission regime since its adoption in 2009. PhonepayPlus proposes to retain the

provisions that establish high standards of transparency relating to such purchases. The proposed Notice of Special conditions for this service is found at **Annex C7**.

3.42 In addition, due to the nature of the service type, consumers are capable of very high spending in a short period of time. This has the capacity to generate both enquiries about the charges as well as potential complaints. To ensure PhonepayPlus is equipped to respond to any consumer contacts with accurate information relating to the service and help consumers with their enquiries and / or complaints, we propose to require providers notify us with specific information at the commencement of the service¹⁷.

3.43 The provisions are proposed using the following Special conditions found in Annex 2 of the Code:

- i. Paragraph 1.1 (k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
- ii. Paragraph 1.1 (l): Callers not being charged more than once for services they have already received;
- iii. Paragraph 1.1(x): providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

Summary of proposals:

- Definition of pay per view services – **changes proposed**
- Promotional requirements relating to service type and related charges – **no change**
- Prohibition on multiple charges for the same content, which can be triggered by browsing behaviours of consumers – **no change**
- Notification of information to PhonepayPlus on commencement of the service – **changes proposed**

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

Special conditions for Call TV Quiz services (CTQ)

3.44 The review highlighted that some aspects of these live services, linked to live broadcast shows, held unique risks relating to consumer participation and the restrictions on callers having direct access to the service dependent on a range of factors. Our assessment also supported the provisional view that the current provisions remained fit for purpose for managing those risks.

¹⁷ See **PPV5** in the proposed notice of Special conditions: *Providers must inform PhonepayPlus within 24 hours of any service becoming operational, and must also provide a description of the service, the name of the service and all relevant pricing points, all relevant shortcodes, examples of all promotional material, and any known websites where such material, or links to it, are likely to appear.*

3.45 The relevant provisions all fall within one Special condition found in Annex 2 to the Code - Paragraph 1.1(k) – which states:

“information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts)”.

These provisions seek to mitigate against consumers accessing the service with false expectations established by the content of promotional material. The omission of key information is central to these issues, and has been successfully addressed by the prior permission regime.

3.46 The proposed Notice of Special conditions for Call TV Quiz services is found at **Annex C8**.

Summary of proposals:

- Promotional requirements relating to service type, including risk of charges even where participation is not possible – **no change**
- Provisions relating to key information included in a crawl or scroll system on screen – **no change**
- Spoken pricing requirements during the broadcast of the show – **no change**
- Information supplied to consumers on connection of the call – **no change**

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

Special conditions for Remote gambling services (RG)

3.47 These services have been the subject of much debate and scrutiny in Parliament over the last 18 months, and the Department of Culture, Media, and Sport (DCMS) initiated a review of gambling advertising in April 2014¹⁸. The review was conducted by various organisations, including the Remote Gambling Association (RGA) representing industry, the Gambling Commission, The Committees for Advertising Practices (CAP and BCAP), and the Advertising Standards Authority (ASA). The reviews were concluded between June and December 2014.

3.48 PhonepayPlus notes that the various reviews have not called for significant or wide reaching regulatory changes or significant changes to enforcement processes relating to gambling advertising. They do indicate an ongoing concern that gambling activities may impact vulnerable consumers, and that a robust regulatory response is needed to deal with these potentially sensitive issues.

¹⁸ DCMS announcement is found on the Government website here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307458/Gambling_Protectons_and_Controls_.pdf

- 3.49 Our preliminary view is that the risks that are addressed by the prior permission regime for remote gambling services remain and the provisions within that regime are effective in supporting the regulation of such services in the UK market and so we propose that they should be transposed into Special conditions.
- 3.50 PhonepayPlus has strengthened the Code with the inclusion of rule 2.1.4, which states: “*PRS providers and relevant individuals engaged in the provision of a service must hold all licences, permissions and qualifications required by law.*”
- 3.51 The current prior permission regime includes a requirement relating to services operating under any requisite licences required by law. This provision is not being transposed across into Special conditions because of the amendment to the Code itself. This assists with the regulation of gambling services accessed by UK consumers which are subject to licencing requirements under the Gambling Act 2005 as amended by the Gambling (Licensing and Advertising) Act 2014. The 2014 Act came into force on 1 November 2014. It means that only gambling operators licensed by the Gambling Commission will be permitted to advertise to consumers in Great Britain or provide them with remote gambling facilities.
- 3.52 The proposed Notice of Special conditions for remote gambling services is found at **Annex C9**. The provisions are proposed using the following Special conditions found in Annex 2 of the Code:
- i. Paragraph 1.1(e): specified action required in order to and as a consequence of verifying or a failure to verify the age of callers;
 - ii. Paragraph 1.1(g): the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over;
 - iii. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts).

Summary of proposals:

- Provisions relating to age restrictions – **no change**
- Promotional requirements relating to key terms and responsible gambling – **no change**
- Accessibility to betting history and account information – **no change**

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

Special conditions for Subscription services (SUBS)

- 3.53 Subscription services which cost above £4.50 in any given 7-day period became subject to prior permission in 2009. This followed clear evidence of consumer harm related to access, service consent, and payment method.

- 3.54 The current regime was originally designed at a time when the majority of subscriptions were charged via mobile-terminating (MT) premium short message service (PSMS) delivery. However as the range of PRS options relating to subscription payment has expanded, our preliminary view is that the same clear risks exist regardless of payment mechanic. Provisionally we consider these to include:
- Consumers may sign up without clear visibility of the price;
 - Consumers will be consenting to a recurring charge without that consent being properly informed¹⁹;
 - Consumer consent must be seen to be independently verifiable and robust – i.e. records of consumer interaction cannot be “spoofed” or retrospectively adjusted - for confidence in the payment mechanic;
 - Consumers may be charged twice for the same billing period.
- 3.55 These issues are ubiquitous to subscription payments regardless of payment mechanic, although the different mechanics may seek to mitigate the third point to varying degrees. This was acknowledged explicitly in 2013 when PhonepayPlus removed the exemption for Payforit services following encouragement from Mobile Network operators based on evidence they presented at the time relating to relevant consumer complaints. This brought the Payforit payment mechanic in line with other subscription services above the cost threshold where prior permission is required.
- 3.56 The digital marketplace continues to broaden in both size and service type, with new ways for consumers to subscribe while still using premium rate billing. At the same time, payment methods have developed in relation to similar services paid for via a range of payment mechanics including card payments and use of virtual currencies or e-money solutions.
- 3.57 PhonepayPlus provisionally considers that some of these methods have improved transparency of key information, and so increased general consumer expectations in relation to such information. In particular we note the widespread expectation that consumers will receive a receipt for digital purchases, via email, text message, or other electronic means. In light of the importance of transparency and pricing, established as one of the key outcomes within Part 2 of the Code, PhonepayPlus proposes to establish wider use of electronic receipts in relation to subscription services paid for via PRS to align with these broader consumer expectations.
- 3.58 The new provisions relating to electronic receipts are designed to allow flexibility to providers in terms of how receipts are delivered to consumers. However, it is anticipated most providers will choose to issue either:
- a) a subscription initiation message via SMS, in-keeping with the Mobile Network operator (MNO) guidelines; or,

¹⁹ It is our preliminary view this is likely to increase not only the potential financial detriment but also increases the providers propensity to mislead consumers into accessing a service.

- b) an email containing relevant payment information, similar to those issued by app stores.

3.59 Lastly we have noticed a number of cases over the life of the 12th Code where consumers have been charged the same weekly or monthly subscription fee twice. This can be as a result of a rogue merchant making repeated billing requests which an aggregator fails to notice and prevent. Alternatively it can be due to malware which the consumer has received at some point during the subscription from one of the parties involved in the delivery chain. For example malware code contained within an app which the consumer has downloaded as part of an ongoing subscription. As a result we have proposed adding a condition designed to explicitly prevent any such practice, and to ensure that all those in the service value chain take appropriate responsibility to prevent it.

3.60 The proposed notice of Special conditions for subscription services is found at **Annex C10**. The provisions would be imposed using the following Special conditions found in Annex 2 of the Code:

- i. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
- ii. Paragraph 1.1(n): requirements for caller agreement before a high risk service proceeds before the caller is charged;
- iii. Paragraph 1.1(l): Callers not being charged more than once for services they have already received.

Summary of proposals:

- Promotional requirements relating to the payment system and charging frequency – **no change**
- Requirements for an initial receipt sent to the consumer by an appropriate means, such as email or text message – **changes proposed**
- Prohibition on any given subscription service charging consumers multiple times – **changes proposed**

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

Special conditions for Recurring donation services (RDS)

3.61 PhonepayPlus worked closely with charities and the various intermediaries developing text donation solutions for these organisations to set up a pilot scheme for the provision of recurring donation services (RDS). This pilot scheme led to a permanent exemption for such providers in relation to rule 2.3.12(d)(v) of the Code (which outlines requirements around subscription reminder messages and the termination of such

services). The exemption was set out in a Statement of Application for charitable donations dated 3 March 2014²⁰

- 3.62 Under the 13th Code, changes relating to spending caps and other actions and thresholds have led to the removal of rule 2.3.12. PhonepayPlus has reviewed whether the current arrangements remain suitable, and it is our provisional view that the special conditions framework can be used to achieve the same objective as the current Statement of Application.
- 3.63 PhonepayPlus intends that donors who use PRS to make repeat donations to charity will continue to be protected under our regulatory framework in keeping with other subscription-based services. However, we continue to recognise the need for measures to allow text donations to operate on a level playing field with card payments for similar charitable giving.
- 3.64 We propose that the provisions found in the Statement of Application will therefore be transposed into Special conditions to ensure similar standards are maintained in relation to charities offering donors transparency of the STOP command as well as the alternative option to use the SKIP function to prevent specific monthly donations without entirely terminating their donations via the RDS.
- 3.65 We would draw to the attention of respondents that we have removed two obligations which were previously within the Statement of Application. The first is the requirement for all free service messages to start with “FreeMsg” or equivalent words at the outset. We propose to remove this in light of the absence of any complaints about text donation services in this regard since text donation was first piloted in 2011. The requirements not to charge for service messages, and not to generally mislead consumers, would continue to be covered by provisions within the Code.
- 3.66 The second is the requirement for all those taking advantage of the exemption from rule 2.3.12(d)(v) to operate on 7-series shortcodes, a range of which have been specially set aside by the mobile networks for charities and are VAT-exempt. This is in light of a small number of charities who wish to offer recurring donations via mechanics such as competitions, or offer benefits in kind such as a free gift. Neither of these are acceptable for VAT exemption purposes, and so such charities would be unable to use the 7-series shortcodes.
- 3.67 This proposal does not alter the wider requirements for providers to operate on appropriate number ranges, and we continue to highlight the value to charities of using designated 7-series shortcodes, as they are specifically reserved for charities to ensure the charity receives maximum value from the donation.

²⁰ See Annex A to the Final Statement on charitable donations services on our website: http://www.phonepayplus.org.uk/For-Business/Consultations-and-Invitations-to-Tender/Previous-consultations/~/_media/Files/PhonepayPlus/Prior_permission/SKIP%20option%20%20charitable%20donation%20by%20text.pdf

3.68 We propose to continue to restrict RDS, and consequently the use of the SKIP command, to registered charities. For the purposes of the proposed notice we have defined Recurring Donation Services as follows:

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

3.69 The proposed notice of Special conditions for Recurring Donation services is found at **Annex C11**. The provisions are proposed using the following Special conditions found in Annex 2 of the Code:

- i. Paragraph 1.1(b): requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers;
- ii. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts).

Summary of proposals:

- Promotional requirements relating to the STOP command – **no change**
- Management and operation of the SKIP function for donors to miss a payment without existing the recurring donation service – **no change**

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

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

Special conditions for Voice-based, Text charged (VBTC)

3.70 These services fall within the broader definition of live services; however, there are some unique consumer protection issues due to the service numbers consumers are calling (usually 08' number ranges) and the separation or delay in payment via PSMS charges.

3.71 The current prior permission regime has effectively mitigated against the risks to consumers posed by this payment mechanic, which relate to the disassociation of PRS payments with geographic numbers and the potential for misleading promotions (in that a geographic number may be used, which could imply a lower charge and would also appear to breach appropriate use of geographic numbers). It is provisionally considered appropriate to transpose these into Special conditions to maintain standards after the 13th Code comes in to force.

3.72 The proposed notice of Special conditions for Voice-based, Text charged services is found at **Annex C12**. The provisions would be imposed using the following Special conditions found in Annex 2 of the Code:

- i. Paragraph 1.1(f): steps to be taken to ensure that a high risk service is not used by or promoted in such a way as to make it particularly attractive to persons under the age of 18 years old or younger;
- ii. Paragraph 1.1(g): the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over;
- iii. Paragraph 1.1(k): information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts).
- iv. Paragraph 1.1(q): the monitoring of the use of high risk services and in particular the information to be given to callers and action to be taken in the course of such monitoring.

Summary of proposals:

- Requirements relating to appropriate age restrictions, where relevant – **no change**
- Promotional requirements relating to the service type, including reference to call monitoring that is in place – **no change**
- Call monitoring requirements – **no change**

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

Section 4: Impact Assessments relating to Special conditions

Reduction in regulatory burden

- 4.1 The new framework will reduce the burden on industry and regulator in relation to the presentation and assessment of prior permission applications. When new service types are seen to pose some degree of higher risk, PhonepayPlus would consider what Special conditions listed in Annex 2 to the 13th Code may reduce the risk of consumer harm. The adoption of Special conditions would be to further enhance the outcomes in Part 2 of the Code, and thereby ensure businesses understood our expectations.
- 4.2 PhonepayPlus has previously received a degree of criticism based on some perceptions that we have 'imposed' guidance as an extension of the Code. The feedback has suggested guidance could better equip providers to interpret the Code and deliver compliant services thereby increasing confidence. We agree that guidance ought to enable businesses to develop services with a clear understanding of the Code provisions. Special conditions are intended to offer greater legal certainty around regulatory obligations, reducing regulatory costs for business after services are launched.
- 4.3 Where service types are no longer subject to prior permission and no additional Special conditions are being invoked this will naturally reduce the regulatory burden on such services. However, the reason for such scaling back of these regimes is that the expected standards can be achieved and enforced under the Code provisions found in Part 2.

General due diligence and risk control expectations

- 4.4 PhonepayPlus also recognises the importance of DDRAC in enforcing the Code. Now that prior permission is not required, there will be a need for services that would need to meet Special conditions to be carefully managed by Network operators and Level 1 providers. Industry cooperation will thereby assist with the enforcement of the Special conditions. The procedures to undertake such activities are necessary regardless of these changes and the revised DDRAC guidance attached to this consultation is designed to support the development and implementation of such procedures. Therefore, the impact on providers across the value chain should be minimal.

Impact of individual Special conditions notices

- 4.5 As previously illustrated at paragraph 3.9 of this consultation, the majority of proposed special conditions notices on which we are consulting either directly translate conditions across from the prior permissions regime they are designed to replace or do so with only minimal changes. In effect this means that the majority of conditions, and the requirements within them, already apply to providers of the services concerned. So we do not consider that these proposed notices would carry any additional regulatory burden or other impact in addition to that which has previously applied, and which has previously been evidenced and consulted during the life of previous Codes.

- 4.6 PhonepayPlus considers that there are three exceptions to this, which are the notice setting out a new set of proposed conditions in relation to Higher Rate PRS and the altered notices around “Pay per view” services and Subscription Services over £4.50 in any 7-day period. We assess the impact in relation to these proposed notices directly below:

Impact of Special conditions on Higher Rate PRS (HRPRS)

- 4.7 As previously explained, the proposed special conditions notice attached to “Higher Rate” PRS – i.e. PRS which will carry a per minute cost and/or drop charge higher than the previously prescribed maximum of £1.53 – has been newly created. Whilst PhonepayPlus has previously had prior permissions regimes in place for services which cost above £1.53, these regimes were designed for risks presented by sexual entertainment services provided by mobile voice shortcodes at a cost of £2 per minute, and were not suitable for the wider range of services which will shortly be able to charge at higher rates.
- 4.8 Of the eight proposed conditions set out in the special conditions notice, some repeat existing requirements for non-HRPRS live or sexual entertainment services. These are:
- a requirement for live calls to be recorded (HRPRS1);
 - the right of PhonepayPlus to inspect premises to ensure Code compliance (HRPRS4);
 - requirement to dissuade under-age or unauthorised usage (HRPRS8), and;
 - requirement that promotional material does not imply the involvement of anybody under the age of 18, and be appropriately targeted (HRPRS9).
- 4.9 Given that providers of live and/or sexual entertainment services are already subject to such requirements, we do not consider the introduction of those Special conditions would cause additional burden. Similarly, providers currently have to provide service details (including responsible parties, numbers, and promotional material) when applying for prior permission. As such we do not consider that the requirement to do so within 24 hours of commencing operation (HRPRS6) would place any additional requirement on providers.
- 4.10 However, three of the proposed conditions would place altered requirements. The first is the requirement at condition HRPRS2 for the consumer to be provided with a free message upon connection to an HRPRS – i.e. after connection but before charging commences – which sets out the name of the service and the cost per minute and/or cost upon connection as applicable.
- 4.11 Whilst live entertainment services are already subject to a requirement to provide the name and cost of the service immediately upon connection, this does not require the message to be free. We propose that the increased risk of misleading promotion and missed call scams that higher service revenues and drop charges could, and in some cases will, bring make it necessary for consumers to be provided with brief service and price information, and the choice to hang up before charging commences.

- 4.12 In proposing this requirement, we have sought to test its technical feasibility. Our understanding is that any free message prior to the commencement of charging could not be provided by a Level 2 or Level 1 provider, as evidently they do not control the operation of the billing switch. We have spoken to a number of terminating networks who suggest that their platform can facilitate such a message in the originating network's 'Delta channel', or 'D-channel', and this has been confirmed by originating networks. However such a message would have to be short – our understanding is that any free message in the 'D-channel' prior to billing could only last around 10 seconds.
- 4.13 Based on trials we have conducted in-house, we would suggest that providing a message which contains the following would take between 8 and 9.5 seconds:
- the name of the service;
 - pricing information where there is both a drop charge and an ongoing charge per minute;
 - the phrase *"if you do not wish to be charged, please hang up now"*.
- 4.14 Where there is only a connection charge or a drop charge, and not both, this would obviously reduce the time further. If the name of the service was not required, but just the cost and reminder to hang up if the consumer did not wish to be charged, this would likely reduce the time even further. Our trials have not allowed for the possibility of using voice compression technology to quicken the playback of a pre-recorded message, which would reduce the required time yet again.
- 4.15 PhonepayPlus would welcome any feedback on the understanding we have set out above, supported by evidence, or alternative suggestions as to how a free message could be delivered prior to the commencement of billing for a HRPRS.
- 4.16 The second proposed condition which would place an altered requirement is HRPRS3. This condition seeks to set a longer period during which outpayments in respect of a service must be withheld than the general requirement of 30 days set out at paragraph 3.5.1 of the PhonepayPlus Code.
- 4.17 PhonepayPlus acknowledges that most HRPRS operators will utilise the new range of tariffs legitimately bringing new services into the market, perhaps for the first time. The higher tariffs do offer an attractive option, which we must recognise will gain the attention of some rogue merchants. Such rogue merchants may be incentivised to provide misleading promotions or missed call scams, harming consumers and potentially impacting on the value of the market as a whole. PhonepayPlus proposes that a longer withhold period is necessary for HRPRS to reduce the risk of non-compliant services entering the market, especially in greater numbers. We note at paragraph 3.23 of this consultation that higher drop charges and the intended changes to charges on the 070 and 076 ranges significantly increase the risk of missed call scams on the 09 range.

- 4.18 PhonepayPlus recognises that 09x numbers do not carry the same difficulties as 070x numbers in terms of investigation, in that providers of 09x numbers are immediately required to register with PhonepayPlus before operating, and that there is no need to establish that 09x numbers are being used for revenue shared PRS before commencing any investigation. However we have experienced, and continue to experience, circumstances where providers attempt to dissolve or liquidate their organisations once it is clear that an investigation will commence, in order to avoid paying any consumer refunds or fines following a later Tribunal decision.
- 4.19 During this consultation we have emphasized a number of times that the increased revenue which can be derived from HRPRS – up to £3 per minute and £5 in terms of a drop charge – increases the propensity for rogue providers to mislead consumers in order to quickly profit from a series of scams. We believe it is important that such operators are strongly dis-incentivised from taking advantage of HRPRS, and inflicting wider reputational damage on the market, while others are still beginning to build on the commercial opportunities that increased pricing caps can deliver to those operating legitimate PRS businesses. Additionally, we believe that it is important to ensure to the fullest extent possible that providers who do transgress provide appropriate refunds and pay fines under the polluter pays principle.
- 4.20 For these reasons PhonepayPlus proposes that the withhold requirement be extended beyond 30 days for HRPRS. Our provisional view is that extending the limit to either 45 or 60 days will ensure that HRPRS providers will remain in the market for at least two billing cycles, allowing evidence of consumer harm to be firmly established and acted upon. Given that a majority of HRPRS will be provided, at least at first, by established PRS providers as part of a wider portfolio of services at different price ranges, our provisional view is that this requirement would not carry excessive impact. We would welcome views on this matter.
- 4.21 Further, PhonepayPlus would welcome views on whether any period of increased withhold should be 45 or 60 days, and any evidence that supports these views.
- 4.22 The third proposed condition which would place additional requirements is the requirement to place a bond set out at HRPRS5. Providers of live and sexual entertainment services – whether above £1.53 per minute or not - are already required to post bonds, and so this requirement will be familiar to them. However PhonepayPlus has reviewed two aspects of the current bond requirements. The first is whether the requirement to post bonds should apply to all providers of HRPRS rather than just providers of live and sexual entertainment services, the second is whether an HRPRS bond should be of a higher amount, and if so how this amount should be calculated.
- 4.23 PhonepayPlus currently considers a number of factors when calculating the bond which a provider must pay in respect of a service. Some of these aspects relate only to live services – such as the number of operators and whether they are home or site based. The factors common across the board are the type of service, claim history (against the provider), and breach history (of the provider). The risk rating attached to

such factors can rise or fall depending on the claims and breaches against providers, but also the risk posed by the services they are operating.

- 4.24 As before, we have emphasized a number of times that the increased revenue which can be derived from HRPRS will also act as an incentive for rogue operators and so increases the propensity for consumer harm, and also the amount of any financial detriment. However we are also aware that price is not the only factor in terms of the risk that a provider presents. A significant number of existing providers of live and sexual entertainment services have a longstanding history of compliance, and a significant proportion of these are likely to provide HRPRS with the same approach.
- 4.25 At present the extent to which providers will move to HRPRS is still largely unknown, and so the actual level of harm to consumers cannot be forecast with any accuracy. However where harm does occur it is a given that the detriment caused will be higher (in terms of the PRS charge) and so the size of any claim against a bond will also increase.
- 4.26 In addition, one of the key areas of risk which accompanies the introduction of HRPRS is that of services which carry a drop charge but no further payment – e.g. payment is taken upon connection and the call disconnects after a short message. Most services using this mechanic are unlikely to fall into the category of live services or sexual entertainment services (for which a bond is already required), and we are minded that this makes a clear case for extending a bond requirement for HRPRS beyond those two service categories.
- 4.27 Given the consideration above, PhonepayPlus proposes to extend the requirement to post a bond to all providers of HRPRS. It is our provisional view that the majority of providers of HRPRS will be existing providers of live or sexual entertainment services who will be familiar with the need to post a bond and would need to do so regardless of whether the service was HRPRS or not. We would welcome any views and evidence from providers who do not currently have to post a bond.
- 4.28 PhonepayPlus proposes to uniformly rate all HRPRS providers as carrying a higher likelihood of compensation claims than if they were only providing other service types, such as tarot, sexual entertainment or live chat, during the first year of the new Code and Special conditions. This means that their individual ratings will be unaffected by other criteria when their bond is calculated (such as breach history or other service factors).
- 4.29 Given the need to ensure that consumers are not exposed to greater risk, or the fledgling HRPRS market to reputational damage, we are minded to view this proposal as the fairest way of controlling that risk. Whilst providers of HRPRS would have their bond calculated according to a higher rating in terms of the risk of consumer claims, those with a better history of compliance would continue to benefit from their lower ratings in other areas. The overall amount of the bond they would be required to post would remain lower in comparison to providers who carry greater risk in terms of breach history or other factors of their service.

- 4.30 At the end of the first year, as with providers who are new to the market, the higher claim ratings would be reviewed against actual performance and downgraded if necessary. We consider this would ensure that providers who do not need to activate their bond in the first year receive a lower rating in comparison to those who do, and as such reward compliance. We would welcome any views and evidence from providers about the approach we have outlined above.

Impact of Special conditions on Pay per view services (PPV)

- 4.31 PhonepayPlus proposes to alter the definition of “Pay per page or image viewed” to clarify the existing intention to capture services where consumers view images using a browser they do not own, but which is provided by the provider for that purpose. We do not consider that this new definition impacts on services which were not previously captured, although we would welcome any reasoning to the contrary.
- 4.32 There are two further proposed changes, the first being a requirement to provide receipts. As set out earlier in this consultation, digital receipts are now routinely provided for digital goods or services purchased using a range of different payment methods and mechanics. It is our provisional view that consumers generally expect to receive a digital receipt for any purchase they make on a website or app store, and so the addition of a condition around receipts would merely ensure consistency with consumer expectations.
- 4.33 Whilst there is no absolute requirement to issue digital receipts for “Pay per view” purchases, it is also clear that many such purchases will currently be receipted. Where a purchase is charged via mobile termination-based (MT) PSMS, as some “Pay per page” services still are, then this will serve as a receipt. Additionally where “Pay per Page” services are charged using the mobile networks’ secure Payforit “Single Click”, the Payforit rules require that a receipt is issued.
- 4.34 Where neither of these is the case, then it is still our provisional assessment that issuing a digital receipt will not be disproportionately burdensome. Should providers wish to issue receipts by email, then they would be required to collect a consumer’s email address. The costs involved in changing the website and servers to collect such information are likely to be negligible, and whilst collecting email addresses might require the provider to register as a Data Controller provisionally we do not consider this an onerous process.
- 4.35 Should providers wish to issue receipts by text, where it is not already a technical or mobile network requirement that they do so, we would consider that the cost of sending out bulk SMS in this way would be around 4-5p per SMS. We provisionally consider this negligible when set against the greater clarity that receipts provide to consumers.
- 4.36 The second proposed change is a requirement to provide specified information about the service within 24 hours of a “Pay per Page” service commencing operation. The

information required would be: service name, description, pricing points and relevant shortcodes, all promotional material, and websites where promotions are likely to appear. Such a requirement already exists, in that all providers currently applying for prior permission must provide similar information before permission is granted and their service can operate, and so we do not see this proposed requirement would place any new burden on providers of “Pay per Page” services.

Impact of Special conditions on Subscription Services (SUBS)

- 4.27 As with “Pay per Page” services, provisionally we do not consider the financial or wider resource implications of a new requirement to provide receipts to be onerous. This is given the greater clarity receipts would provide and the growing consumer expectation of a digital receipt. In relation to subscription services we also note that previous PhonepayPlus Codes from the 9th to 11th editions included a requirement for consumers to receive a free “initiation message” upon consenting to a subscription. This had to set out the name of the service, the charges, confirmation of repeat charging, the billing period, provider contact details, and how to stop any more charges. In effect, this acted as a form of digital receipt.
- 4.28 Whilst the 12th edition of the Code removed this requirement, PhonepayPlus notes that mobile networks retained it as part of their contractual obligations with their clients. As such we do not consider this additional requirement on providers of subscriptions would carry additional burden or impact, given it is currently still expected of them by mobile networks.

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

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

Section 5: How to respond to this consultation

- 5.1 PhonepayPlus recognises the breadth of this consultation in terms of what it covers and who it impacts. In light of this, we want to encourage stakeholders to raise any questions relating to this document and the various annexures as soon as possible. We may be able to arrange meetings to discuss feedback as well as considering your written responses.
- 5.2 Where anything is unclear in the proposals introduced in this paper, please do not wait to state this in your final submissions of response. Indeed, where questions can be addressed during this consultation to assist you with your response, PhonepayPlus will be better equipped to develop its proposals following this consultation.
- 5.3 PhonepayPlus welcomes responses to the questions set out in this document by no later than **15 May 2015**. This will allow us to fully consider any comments that stakeholders may have and develop final pieces of guidance and notices of Special conditions in advance of the NGCS changes taking effect on 1 July 2015.
- 5.4 Responses should be submitted by email to David Levitt dlevitt@phonepayplus.org.uk. Copies can also sent by mail to:

Mr David Levitt
Senior Policy Executive
PhonepayPlus
Clove Building
4 Maguire Street
London SE1 2NQ
Tel: 020 7940 7445

Shaping future Guidance

- 5.5 PhonepayPlus continues to keep guidance under review and while we have only produced seven pieces of guidance for your scrutiny and comment at this time, there is an intention to further develop guidance as the 13th Code is implemented and enforced. In responding to **Question 2** of this consultation, stakeholders can take this opportunity to shape future guidance as well as engage in developing the guidance annexed to this document.

Full list of consultation questions

Guidance: Q.1 to Q.9

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

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

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

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

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

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

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

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

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

Special conditions: Q.10 to Q.23

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

Q.11: Do you agree with our assessment of this service type and the proposed set of Special conditions for Broadcast PRS? If not, why? Please provide evidence in support of your response.

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

Q.13: Do you agree with the proposed Special conditions for live services? If not, why? Please provide evidence in support of your response.

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

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

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

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

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

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

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

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

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

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

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

Impact Assessment: Q.25 to Q.26

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

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

List of annexures to this consultation

Annex A – Special conditions: Implementation of new framework

Annex B relates to Guidance proposals:

Annex B1 – Due diligence, risk assessment and control (DDRAC)

Annex B2 – Promoting PRS

Annex B3 – Complaint handling

Annex B4 – Lower cost services

Annex B5 – Definitions, including parties in the value chain

Annex B6 – Privacy and consent to charge

Annex B7 – Virtual chat services

Annex C relates to notices of proposed Special conditions

Annex C1 – Broadcast PRS (BCAST)

Annex C2 – Live entertainment and chatline services (LECS)

Annex C3 – Higher rate PRS (HRPRS)

Annex C4 – Credit broking services (CBRK)

Annex C5 – Information, connection, and signposting services (ICSS)

Annex C6 – Professional services, including counselling services (PROF)

Annex C7 – Pay per view services (PPV)

Annex C8 – Call TV Quiz services (CTQ)

Annex C9 – Remote gambling services (RG)

Annex C10 – Subscription services (SUBS)

Annex C11 – Recurring donation services (RDS)

Annex C12 – Voice-based, Text charged (VBTC)

Annex A: Special conditions – Implementation of new framework

1. The following information sets out our expectations for providers of PRS which are currently affected by prior permission requirements, and who may be required to comply with Special conditions in the future. Whether businesses are already operating services with prior permission, or intending to launch a service to which Special conditions will apply from 1 July 2015 onwards, please consider these details relating to implementation.
2. PhonepayPlus can support providers throughout this transition period. Please see below for more details.

Providers holding prior permission

3. To a large extent our proposals would see additional conditions, which have been introduced over time using powers under prior permission provisions in the Code, being transposed across to the Special conditions framework without modification. As such, those providers already operating relevant services to the standards expected in the prior permission regime ought to take note of the proposals for Special conditions and continue to operate services in accordance with these conditions from the date that the 13th Code comes in to force.
4. Please retain prior permission certificates throughout this transition period as the regimes continue to be enforced during the full period up until the 12th Code is replaced.

Providers launching new services covered by Special conditions

5. Given the 12th Code remains enforceable until 1 July 2015, the prior permission requirements remain in force and PhonepayPlus encourages providers to consider their options when introducing new services. If services are launched before the transition date, providers must set out the service within an application for prior permission and ensure the service operates in full compliance with the relevant additional conditions imposed under paragraph 3.10.1 of the Code.
6. Where there is evidence of services not complying with expected standards, PhonepayPlus may use its discretion to enforce the Code using appropriate action under Part 4.

Support for providers during the transition period

7. Throughout the period of consultation, and following the final statement on Special conditions being adopted from the launch of the 13th Code, industry members affected by the proposed changes may seek compliance advice and support to enable the effective implementation of the new regulations. Providers are encouraged to put questions and requests for advice in writing, and these can be sent to compliance@phonepayplus.org.uk.