



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

FINAL STATEMENT FOLLOWING CONSULTATION

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Contents

Section 1: Executive Summary	3
Our consultation	3
Guidance	4
Special conditions	4
Our determination	5
Section 2: Guidance	7
Reasons for updating Guidance	7
Feedback on our proposals and our determinations	8
Due diligence, risk assessment and control.....	8
Promoting PRS.....	9
Complaint handling	10
Lower cost services.....	11
Definitions, including parties in the value chain	12
‘Privacy’ and ‘Consent to charge’	13
Virtual chat services	14
Section 3: Special conditions	16
Introduction to Special conditions in Annex 2 to the Code	16
Presentation of final Notices of Special conditions	16
Feedback on our proposals and our determinations	17
Broadcast PRS (BPRS)	17
Live entertainment and chatline services (LECS)	18
Decision to not proceed with conditions for Higher rate PRS (HRPRS).....	20
Credit broking services (CBRK)	24
Information, connection and signposting services (ICSS)	25
Professional services, including counselling advice services (PROF).....	27
Pay per view services (PPV).....	28
Call TV Quiz services (CTQ).....	30
Remote gambling services (RG).....	31
Subscription services (SS)	33
Recurring donation services (RDS).....	36
Decision to not proceed with conditions for Voice-based, Text charged (VBTC)	38
Section 4: Implementation.....	40
Support for providers during the transition period.....	41
List of respondents to this statement	41
List of annexures to this statement	42

Section 1: Executive Summary

Our consultation

- 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 will 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 also 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, most usually through Guidance which sets out clear expectations.
- 1.3 The new Code also 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.
- 1.4 The new framework enables PhonepayPlus to consult on the introduction of new, specific conditions in relation to identified service types, provided those conditions derive from one of the 24 general Special conditions contained within the Code itself.
- 1.5 The process of consultation on Special conditions was 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.
- 1.6 As such our consultation had 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.
- 1.7 In relation to guidance, we conducted a full review of the suite of guidance published in relation to the 12th Code. This review indicated that some guidance can be developed over time, with other guidance needing to be updated before the introduction of the 13th Code. In relation to Special Conditions we conducted a review of existing prior permission regimes, and proposed that 11 of them be translated across to Special Conditions regimes with some changes as appropriate. We also

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.

proposed a new Special Conditions regime for Higher Rate PRS, ahead of the introduction of higher price points for per-minute and drop charge based voice calls following the NGCS Review.

1.8 Our consultation sought stakeholder feedback on:

- i. the expectations set out in the seven pieces of guidance we proposed to update before the launch of the Code; and
- ii. the twelve proposed schemes for Special conditions.

Guidance

1.9 The Code Review Project involved an initial widespread review of current guidance, which considered each piece of guidance that supported the 12th edition of the Code, and whether it was still relevant and/or required amendment. Amendments might be required for a number of reasons, which include changes to the Code that must be reflected in Guidance, changes in technical or market practices, or reasonable changes in the standard of consumer expectation.

1.10 Following an initial review, a number of pieces of existing Guidance were identified as requiring some form of amendment or update. However these were divided into two groups, with the first group being Guidance which realistically needed amendment before the 13th edition of the Code was published, and the second group being Guidance which could be amended once the Code had been published.

1.11 The first group of seven pieces of guidance on which amendments were consulted was:

- 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.

Special conditions

1.12 The consultation in 2014 of the 13th edition of the Code of Practice had set out proposals to add a requirement to abide by identified Special Conditions. This would retain current consumer protections, whilst removing the cost and time involved in obtaining a prior permission before launching a service. With these proposals having been well-received, and Special Conditions forming part of the 13th Code, we also consulted on proposals for specific Special Conditions regimes as applied to identified higher risk service types. The consultation proposed to remove all 17 prior permission regimes currently in place, effective from the date the 13th Code comes into effect.

- 1.13 Some of these regimes were considered no longer necessary. This was either because of changes in the market which had made the service type defunct, or because the risks could now be dealt with using a more outcomes-based Code than when the regime was first created.
- 1.14 However 11 of the existing prior permissions regimes were still considered necessary, in that the service types still existed, still carried the same level of risk (even if the risks had evolved in some respects), and still could not be dealt with through application of the Code alone. In respect of the 11 regimes, the consultation set out proposals to transpose them, with mergers and modifications in a few cases, to Special Conditions regimes. The consultation also set out proposals for a new Special Conditions regime to be applied to all “Higher Rate PRS”. That is PRS which would operate at price rates above the existing price per minute and ‘drop charge’ caps of £1.53, which will be raised to up to £3.60 and £5 from 1st July as part of Ofcom’s NGCS Review.
- 1.15 In summary, the 12 Special Conditions regimes on which we consulted were as follows:
- Broadcast PRS
 - Live Entertainment and Chatlines
 - Higher Rate PRS
 - Consumer Credit
 - Information, Connection and Signposting Services
 - Professional Advice and Counselling
 - Pay-per-Page or Image
 - Call TV Quiz
 - Subscription Services (over £4.50 in any given 7-day period)
 - Recurring Donation Services
 - Remote Gambling
 - Voice-Based Text Charged services.

Our determination

- 1.16 As a result of feedback to the consultation, we have decided to introduce eight pieces of altered Guidance to coincide with the launch of the 13th Code, and to go ahead with ten of the twelve Special Conditions regimes on which we consulted. In both cases, we have also made alterations to the content of some documents.
- 1.17 The key changes to our original proposals are as follows:
- The splitting of Guidance on Privacy and Consent to Charge into two distinct pieces of Guidance
 - Changes to Promotions Guidance, with temporary removal of the section on “Freemium” pending further discussion with all relevant stakeholders

- The decision not to introduce Special Conditions in relation to Higher Rate PRS at this time
- The removal of, or alteration of, some of the proposed Special Conditions in relation to Pay-per-Page and Subscription Services
- The decision not to introduce the Special Condition for Voice-based Text Charged services
- A commitment to keep various other issues under review if there is evidence to do so. These include changes to thresholds for Virtual Chat and Subscriptions, and potential changes to Special Conditions around Recurring Donation Services.

Section 2: Guidance

Reasons for updating Guidance

2.1. Guidance is generally reviewed to ensure it remains fit for purpose, and is as clear and effective as possible to facilitate high compliance standards in the industry. As part of the review of the 13th Code, all 25 pieces of guidance PhonepayPlus published since summer 2011 were scrutinised. Whilst there is a need to review some further Guidance once the Code has been published, PhonepayPlus will update as to the scope and timetable for that work shortly. In the meantime we consulted on proposed changes to seven pieces of Guidance which warranted immediate consideration in light of changes to the Code and market developments. They were:

- 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. In particular we asked respondents to the consultation to focus on three questions when considering our proposed changes and additions. These were:

- 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?

2.3. Responses, and our analysis and determination in light of them, are set out in more detail below. However one result of the feedback we received is that we have split Guidance on Privacy and Consent to Charge into two separate pieces of Guidance. As a result we now intend to publish eight pieces of revised Guidance along with the 13th Code (with the other 18 pieces of existing Guidance also continuing to support the 13th Code). Copies of the eight² pieces of finalised guidance are annexed to this consultation and labelled as follows:

- **Annex A1 – Due diligence, risk assessment and control (DDRAC)**
- **Annex A2 – Promoting PRS**

² See below at paragraphs 2.28 to 2.33 of this Statement for information about our decision to separate the guidance on Privacy and Consent to charge in to two documents – one on Privacy and one on Consent to charge.

- **Annex A3 – Complaint handling**
- **Annex A4 – Lower cost services**
- **Annex A5 – Definitions, including parties in the value chain**
- **Annex A6 – Privacy**
- **Annex A7 – Consent to charge**
- **Annex A8 – Virtual chat services**

Feedback on our proposals and our determinations

Due diligence, risk assessment and control

- 2.4. In relation to this Guidance we did not identify the need for extensive changes in terms of the expectations set out. The consultation identified that the underlying expectations remained necessary and proportionate, and this was not challenged by respondents. Instead our proposals were to change the structure and some of the language within the Guidance, in order to make it clearer and easier to navigate.
- 2.5. The new version of the Guidance was structured around the four parts of the process of risk assessment, beginning with the initial due diligence exercise on prospective clients. The four parts were:
- Know your client
 - All risks identified
 - Actions taken to control any risks
 - Responding to incidents
- 2.6. In addition we also added material around risk management of affiliate marketing, which had previously been included in our 2014 Discussion Paper on Affiliate Marketing and had been well-received by those who responded.

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.

- 2.7. Responses were generally supportive of the proposed changes. A number of respondents suggested relatively minor amendments to wording which we have made, in order to clarify our expectations in respect of certain details. This was either because the proposed draft was not considered clear enough, or because the tone of the guidance was seen to need improvement. We have agreed to make changes, which are clearly marked in the annexed guidance (**Annex A1**).
- 2.8. The most significant of these was an objection to the use of the heading “All Risks Identified” as one of the four parts of the DDRAC process. A number of respondents, including a trade association representing a significant number of industry

stakeholders, signalled their view that this term could imply an expectation on providers to identify every possible risk, regardless of whether it is reasonable to expect this.

- 2.9. As a result of this feedback we have, along with a number of other small changes to support comments made by respondents, changed “All Risks Identified” to “Properly identify the risks” in the final version of DDRAC Guidance. This shifts the emphasis to ensuring the procedures in place to identify risks are thorough and do so properly, without setting an expectation that every potential risk can be identified, regardless of whether the difficulty in doing so makes it reasonable. The final version of the Guidance is attached at **Annex A1** to this document.

Promoting PRS

- 2.10. First and most pressing among the changes we proposed to this document was an update to the sections on pricing transparency and radio advertising. This update was to how network access charges are presented in promotions, and reflects the separation of access and service charges which the NGCS Review will introduce on 1st July 2015.
- 2.11. Our second key change was, as with DDRAC, to restructure and where appropriate reword the document in order to make it generally clearer and easy to navigate. In doing so we added material to reflect the more recent widespread use of affiliate marketing, as previously set out in our 2014 Affiliate Marketing discussion paper.
- 2.12. Lastly we consolidated various expectations around the promotion of “free” products or services, or services operating to a “Freemium” model, into one section of the proposed Guidance – section 5 – making changes as appropriate.

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.

- 2.13. Stakeholder feedback fell into four main areas. The first was a number of comments and suggested changes around specific wording or tone within the draft, which we have found helpful and reflected in the final version. The second was that some stakeholders pointed out drafting errors in the pricing transparency wording to separate service and access charges. In particular the proposed draft set out expectations in terms of the wording which would be used by Broadcast PRS which were different from those now agreed with Ofcom. As such we have changed these inaccuracies in the final version of the document.
- 2.14. Thirdly a variety of stakeholders fed back concerns about Section 5 of the draft which set out expectations around “Freemium”. Whilst respondents signalled such a section was useful, the general feeling was that the content required more consideration with wider input from those engaged in the freemium service delivery and payment structures. In particular, we do not intend to delay publication of Guidance on

Promoting PRS in order to do this. Rather we have temporarily removed Section 5 from the final version at **Annex A2**, with a view to holding dialogue with interested parties in the immediate future, and reinserting the section into the Guidance once it has been reviewed and refined.

- 2.15. We expect only a short delay until this section is re-inserted. In the meantime general Code expectations around transparency and requirements not to mislead are supported by other guidance on Promoting PRS, and elsewhere. Although slightly less precise, the published advice still sets clear expectations for transparency and fairness in relation to consumers' understanding of any deal on offer, which can be relied upon by providers using 'freemium' service models.
- 2.16. Lastly a small number of respondents raised objections to the existing expectation, retained in Guidance, that the wording "50p/min" is not appropriately clear. This was presumably for reasons of space within promotional material, especially promotional texts.
- 2.17. In the absence of any evidence that consumers now find "50p/min" easier to understand than they did when it was a significant source of consumer confusion, we are not minded to change this advice at this time. We note, as previously when the expectation was introduced, that the abbreviation "min" could also be interpreted as "minimum" by a consumer who is not familiar with such formatting, which could easily create confusion unless the phrase "per min" is used to qualify the 50p or other amount promoted as the service cost. Given we will shortly begin to review Section 5 of this Guidance, we remain open to any further evidence around this objection. In the meantime, we note that Guidance is not binding on a Tribunal and providers who disagree can use whatever pricing clarity they feel will achieve Code outcomes.
- 2.18. The final version of Guidance on Promotions and Promotional Material is attached at **Annex A2** of this document.

Complaint handling

- 2.19. As with other Guidance, Guidance on Complaint Handling was altered in part to make the structure and wording more accessible. However the key change in this Guidance was to reflect changes to the 13th Code of Practice. As the 13th Code will no longer require providers to have a non-PRS UK number to receive complaints in all circumstances, the Guidance was altered to reflect expectations as to when it would be appropriate to retain a non-PRS UK number, and when it would be appropriate to use alternative complaint methods such as email or instant messaging.
- 2.20. Lastly, the Guidance was changed to reflect changes in UK law as relate to which number ranges are appropriate for post-contractual consumer support. This advice had previously been given by PhonepayPlus in a Compliance Update in March 2014, and was merely being consolidated into the Guidance for ease of reference.

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.**

- 2.21. Responses suggested a number of alterations to the Guidance to make it precisely clear when using an alternative to a non-PRS UK number would be appropriate. As a result we have made a number of minor changes to aid clarity.
- 2.22. Two respondents, one a trade association, made specific reference to the tone of the document. In particular the apparent emphasis on financial redress, which may not be appropriate in all cases and should not be forced on providers where it is not warranted. Additionally these respondents expressed a wish for the Guidance to increase in scope to deal with all aspects of customer care, and not just complaint handling. Lastly, a view that the guidance may not be fit for purpose, because there was insufficient guidance for Mobile Network Operators (MNOs) as to how to handle and redirect PRS complaints. We are not convinced that Guidance, which sets out how to comply with the PhonepayPlus Code, should set wider expectations which go beyond the Code remit and do not aid compliance with any of the Code's provisions. Whilst we remain open to discussion of how such Guidance might be delivered by industry stakeholders with PhonepayPlus' participation, we have not made changes to reflect any proposed wider scope at this time.
- 2.23. However we have made changes to reflect that redress can be offered in a number of forms, not just financial. We have also altered paragraph 3.2 of the Guidance, to strongly recommend that MNOs pass consumer complaints to the Level 2 provider in the first instance, with PhonepayPlus being contacted if a resolution is not possible at that stage. This gives Level 2 providers the opportunity to provide appropriate redress for consumers without the need for regulator involvement.
- 2.24. A Level 1 provider commented about the reference to dispute resolution for complainants and the possible recourse to an objective third party. PhonepayPlus does not intend to name possible parties that fulfil that role given it may vary over time. However, some clarity has been added in relation to this advice at paragraph X.X given it relates to schemes set up to provide alternative dispute resolution (ADR) and the objective third party is likely to be an approved ADR entity providing such services.
- 2.25. The final version of the Guidance is attached at **Annex A3**.

Lower cost services

- 2.26. This Guidance had previously covered a range of Code expectations and how they relate to Lower Cost Services. Expectations may be reduced if Lower Cost Services are deemed to carry a reduced risk to consumers. Because this Guidance addresses a number of different Code expectations – DDRAC, registration, transparency, spending caps, and complaint handling – we proposed changes to reflect changes in the Code and which would be introduced by the NGCS Review.

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.

- 2.27. The majority of respondents either considered these changes acceptable, or did not comment. Industry stakeholders support the approach, adopted since Ofcom designated 0871/2/3 numbers as controlled PRS, which uses light-touch regulation for such lower cost services based on Ofcom's assessment of risk associated with these services. One trade association raised concerns that our current approach to have reduced expectations for Lower Cost Services in some respects may not be justifiable. We do not propose any changes at this stage given the lower expectations were set during the consultation on the 12th Code and the current NGCS changes do not affect these lower tariffs. While we retain the view that this approach is proportionate to the level of risk presented by such services, we would welcome any further evidence of the risks and issues going forward.
- 2.28. One trade association suggested that our summary of BIS Guidance on compliance with the Consumer Contracts Regulations 2013, contained within Section 8, is inaccurate. However we have summarised this Guidance almost verbatim rather than providing interpretation to it, and so we do not propose to change this summary at this time. The final version of the Guidance on Lower Cost Services can be found at **Annex A4**.

Definitions, including parties in the value chain

- 2.29. Previously Guidance on Definitions had reflected the new introduction of the terms "Level 1 provider" and "Level 2 provider" with the 12th Code, and had set out where such parties were likely to sit in a variety of different value chains. With the industry now familiar with this terminology, we proposed that Guidance be restructured to instead do the following:
- Briefly signpost the definitions within the Code
 - Explain how we would determine responsibility in the event of an investigation
 - Explain how we would determine whether a party was a Level 1 or Level 2 during an investigation, in line with the slightly altered paragraph 5.8.3c) of the 13th Code

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.

- 2.30. Feedback on this proposed Guidance suggests it was well-received by the majority of respondents as a useful revision which is fit for purpose. As a result of specific feedback around wording which could be more clearly expressed, we have made minor amendments to paragraphs 1.5 (around responsibility where the PRS value chain extends beyond a Level 2 provider) and 2.2 (to reflect that breaches would be considered but not necessarily raised). These changes are clearly marked within the

final version of Guidance on Definitions, which can be found at **Annex A5** to this document.

'Privacy' and 'Consent to charge'

2.31. On reviewing this guidance, we considered our expectations had not changed in relation to content and the means by which industry could comply with those expectations set out within it. However we did propose to restructure it in order to ensure it was as easy to use as possible. In particular, the Guidance sets expectations in respect of consent to charging and to marketing, and whilst these expectations are sometimes the same it is important that providers are able to reference them quickly and clearly.

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.

2.32. Feedback from a number of providers fell into three categories. Firstly that the Guidance should be separated into two different pieces – Privacy, and then Consent to Charge – rather than making a link between both of them. Second, that expectations around consent to marketing and consent to charging should no longer be the same given that charging carries the greater immediate detriment to consumers. Thirdly, that Guidance on Consent to Charge should reflect the requirements around transparency prior to charging in the Consumer Contract Regulations 2014.

2.33. In respect of the first of the above points, we have accepted the need to separate the Guidance into two distinct documents – Privacy and Consent to Charge. This is in order to provide an easier and quicker point of reference for those who wish to address compliance with one, but not the other. We have also clarified within Guidance on Privacy to make clear that while section 2.4 of the Code overlaps significantly with the Privacy and Electronic Communications Regulations 2003 (PECR 2003), the Guidance does not only address the direct electronic marketing to which those Regulations apply.

2.34. In relation to introducing a different expectation for proof of consent in relation to marketing, we do not immediately agree that consent to marketing should carry a lower burden than for charging. We have received, and continue to receive, complaints about marketing which is misleading, inappropriate or just irritating which the consumer claims they did not request or otherwise consent to. In such cases a robust, auditable proof of consent can help to quickly establish the validity of the consumer or provider's arguments in any debate. This view is supported by the recent legislative changes to the ICO enforcement measures which deal with nuisance calls and texts. These changes were predicated on the fact that detriment could be other than financial, and still serious enough to investigate and sanction.

- 2.35. In addition unsolicited marketing which is frequent and bothersome, contains inappropriate imagery, or which in the age of smartphones can contain immediate links to charged material all carries significant reputational risk to the PRS industry. As such an expectation that consent is recorded in a robust and tamper-proof way does not seem overly onerous, especially as providers will already be required to have robust systems in place to establish consent to charge. Whilst we are open to further consideration of this matter in the future, we do not see any immediate evidence that unsolicited marketing is much less of an issue for consumers, or carries much less overall impact, than unsolicited charging.
- 2.36. Lastly we have added text from our recent Compliance Update on Consumer Contract Regulations to the updated Guidance on Consent to Charge. This is for ease of reference, but also to reflect that providers must meet these standards in terms of the information they provide to consumers before the consumer consents to a charge. The final Guidance on Privacy, and Guidance on Consent to Charge, are at **Annexes A6** and **A7** of this document respectively.

Virtual chat services

- 2.37. Proposed changes to this Guidance were intended to reflect changes to spend reminder thresholds which had been contained within the Code. The 12th and current edition of the Code sets out a reminder to providers that Virtual Chat Services must comply with the requirements of Rule 2.3.12c). These are to remind consumers of every £10 spent, and to make no further charges without a positive opt-in. Whilst the requirement has not changed in the 13th Code, in future the threshold will be set using a Notice imposed by paragraph 3.12 of the Code, and because it sits outside the text of the Code itself can be altered following appropriate consultation.

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.

- 2.38. Feedback suggested that VAT and other pricing terms could be presented with greater clarity within the Guidance. We have made changes to clarify as a result. Other than this feedback fell into two main areas. Firstly, the decision to retain the current threshold for spend reminder and re opt-in. We acknowledge that some other spend caps and thresholds were raised during consultation of the 13th Code, but this was following a full, evidence based consultation which proposed to keep Virtual Chat caps at their current level. As such the guidance merely reflects the determination of that consultation process. Any changes to Virtual Chat thresholds would require another evidence-based consultation, and we are open to discussion of any evidence which would make the case for consulting on a change to the existing amount.
- 2.39. Secondly one respondent, supported by previous discussions with a number of other industry stakeholders, questioned whether the definition of Virtual Chat, and therefore all of the expectations within the Guidance, should be applied to “Any Questions Answered” (AQA) services. AQA services are services operating on a mobile

shortcode to which the consumer texts a question, and then receives a message in response which contains the answer. They use the same charging mechanic as Virtual Chat, but are a series of individual answers to questions rather than an ongoing dialogue with an operator, and as such while they carry some of the same risks, they have different characteristics which set them apart from Virtual Chat in some respects.

- 2.40. In response to this point we have added text to the Virtual Chat Guidance that clarifies that where AQA services are only a series of answers to one off questions, and cannot be described as a dialogue, then the expectations within the Guidance will not apply. This also reflects the recently issued Compliance Update on AQA services, which sets its own expectations for that service type. The final version of the Virtual Chat Guidance can be found at **Annex A8** to this document.

Section 3: Special conditions

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 consultation set out an intention 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 In our statement following consultation on the 13th Code published on 26 March 2015, PhonepayPlus issued a Notice of caps and other actions, such as spend reminders, in accordance with the Code provisions at 3.12 of the 13th Code³. Some provisions previously found under prior permission were set out in that Notice of caps and other actions, meaning we consulted on Notices of Special conditions which deliberately avoided duplication. There is the power to adopt spending caps under Special conditions, but these have not been used for any of the service categories discussed in this consultation.

Presentation of final Notices of Special conditions

- 3.5 The concept of clearly setting additional expectations for higher risk service types was seen to remain necessary and proportionate. During the latest consultation, industry have commented on the clarity found in the structure and documentation associated

³ 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>

with the Special conditions framework. It was also noted from respondents to the consultation that the shift away from the current prior permissions regime was welcomed by industry.

3.6 Alongside this final statement on guidance and Special conditions, PhonepayPlus publishes copies of the ten finalised Special conditions Notices for services that are subject to Special conditions from 1 July 2015 onwards are annexed to this consultation and labelled as follows:

- **Annex B1 – Broadcast PRS (BPRS)**
- **Annex B2 – Live entertainment and chatline services (LECS)**
- **Annex B3 – Credit broking services (CBRK)**
- **Annex B4 – Information, connection, and signposting services (ICSS)**
- **Annex B5 – Professional services, including counselling services (PROF)**
- **Annex B6 – Pay per view services (PPV)**
- **Annex B7 – Call TV Quiz services (CTQ)**
- **Annex B8 – Remote gambling services (RG)**
- **Annex B9 – Subscription services (SS)**
- **Annex B10 – Recurring donation services (RDS)**

Feedback on our proposals and our determinations

Broadcast PRS (BPRS)

3.7 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.

3.8 Our preliminary view was 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. The risks have been shown to be mitigated with the successful compliance with these conditions.

3.9 PhonepayPlus proposed to retain the current standards set out in the additional provisions of the regime, but intended to transpose those standards into the Special conditions framework. We asked the following question in relation to our proposals:

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.

3.10 One mobile network operator responded in support of these proposals confirming the view that the conditions previously seen in the prior permission regime had established

high compliance standards. The network agreed with the decision to transpose those conditions in the new framework of Special conditions.

- 3.11 A trade body and a TV broadcaster raised some doubts about the necessity of some of the provisions, such as that relating to red button technology (**BPRS3**); and suggested requirements relating to due diligence, risk assessment and control found in Part 3 of the Code, supported by new Guidance, were capable of meeting the objective of **BPRS10**.
- 3.12 PhonepayPlus considered the provisions and found that they added significant clarity in relation to relevant safeguards that are necessary to manage Broadcast PRS in a way that reduces risks and enables services to operate successfully for all parties involved in product delivery as well as payment. In relation to **BPRS3**, PhonepayPlus retains the view that where red button technology is still used similar standards ought to be maintained. However, we acknowledge this is used far less frequently. Furthermore, the provision at **BPRS2** is far clearer in terms of our expectations for voting lines and count procedure.
- 3.13 PhonepayPlus has decided that greater clarity can be achieved by removing **BPRS3** and adding the following wording into **BPRS2** so as to achieve the same standards when different PRS technology is utilised:
- “Calls, including those made via red button interactive technology, and SMS entries which are received before lines have been announced as opened, or after an announcement that lines are closed has been made, should be considered invalid and not be counted, except that calls which have already commenced at the time of a closure announcement must be allowed to be completed and counted...”*
- 3.14 **BPRS10** deals with establishment of procedures for back-up of operational systems, which may be a product delivered as a result of an effective risk assessment and control process. However, this is an explicit expectation that is considered necessary and proportionate in all cases and as such it is deemed appropriate to include this provision as a Special condition, enforceable along with other Code requirements. This establishes certainty for industry.
- 3.15 Our position following consultation is to proceed with these proposals. The finalised Notice of Special conditions for Broadcast PRS is found at **Annex B1**.

Live entertainment and chatline services (LECS)

- 3.16 In our proposals PhonepayPlus referred to two separate, pre-determined definitions for live entertainment services – see paragraph 5.3.23 of the Code – and chatline services – at paragraph 5.3.13 of the Code. These definitions are established with reference to legislation and Ofcom regulatory policy in this area:
- “‘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.”

3.17 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. Our proposals considered the removal of areas of duplication. We asked the following questions in relation to our proposals:

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.

- 3.18 In general the comments relating specifically to the provisions themselves were positive and acknowledged the ongoing need for such conditions that have been the industry standard for many years.
- 3.19 There was wide spread support for the review process and the amalgamation of services where possible. Respondents suggest this makes the conditions more accessible and by extension means the expectations are clearer.
- 3.20 The majority of comments, including those made from a trade body, were ancillary to the conditions themselves – which have been applied consistently over the period when prior permission was required. The points discussed were relevant to implementation and application by industry and the regulator, such as when PhonepayPlus may require access to inspect premises. These comments dealing with implementation are duly noted; however, PhonepayPlus considers that the conditions themselves are fit for purpose subject to the following minor changes:

- **LECS4** – This provision relates to access to premises to conduct investigations into Code compliance. It was noted that inconsistency had arose in PhonepayPlus’ approach to adopting Special conditions under *Annex 2, Paragraph (r)* specifically in relation to whether notice would be given or not. PhonepayPlus intends to give reasonable notice of the need for access and an amendment is made to reflect that.
- **LECS5** – A trade body indicated that the words “when dialled” were unhelpful and unnecessary in the context of the condition and its objective. PhonepayPlus agrees and has removed these words.

3.21 It has been noted by a trade body that **LECS2(d)** refers to an Adjudicator as part of the procedure relating to bond arrangements. We acknowledge that reference to an “Adjudicator” is a legacy from older Codes, where providers of LECS were required to post two bonds, the second of which was to the Live Chat Services Compensation Scheme, and was accessed to make refunds in the event of unauthorised use by minors. Following the dissolution of the Live Chat Compensation Scheme, there was no longer any need to make a distinction between adjudications in respect of different bonds, and the decision makers involved. As such decisions regarding the remaining bond are made by a legally qualified member of the Code Compliance Panel, and we previously consulted on altering LECS14 in order to make this clear.

3.22 As such, we intend to remove all reference to “Adjudicator” from **LECS2(d)**. However the procedure referenced at **LECS14** needs to be clearly and transparently set out, and PhonepayPlus agrees with the call for additional information to be provided on its website. This information can now be found on the PhonepayPlus website⁴.

3.23 The finalised Notice of Special conditions for live services is found at **Annex B2**.

Decision to not proceed with conditions for Higher rate PRS (HRPRS)

3.24 PhonepayPlus asked the following questions in relation to HRPRS:

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.

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.

3.25 The feedback received on these proposals relating to introducing new Special conditions for future higher rate PRS was extensive and varied. PhonepayPlus recognises that while there were a small number of respondents who considered our

⁴ <LINK>

approach was appropriate given the risks, including some unknown factors associated with the higher tariffs, many of the responses set out significant concerns.

3.26 The proposal was framed by the definition we gave to HRPRS, which was:

“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”⁵

3.27 There was agreement with our assessment in terms of the impact of the higher tariffs, with a wide range of services envisaged to operate above £1.53 per minute when the new tariffs are introduced from 1 July 2015. The flexibility in proposed tariffs is seen to have the potential to attract a wide range of providers to rely, in part at least, on PRS for mobile payments⁶. However, respondents frequently pointed to the future market being an unknown space, with both opportunities as well as risks. Neither the risks or the opportunities are as yet fully understood, and respondents asked PhonepayPlus to wait for additional information and evidence before introducing additional regulatory burdens.

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

⁵ 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.

⁶ 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>

- 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.
- 3.29 One trade body provided a very useful breakdown of its assessment of these risks, acknowledging the potential scope of each, while indicating its belief the Code of Practice may be able to address a number of them. It also identified areas where other commercial factors would play a part in mitigating against such risks.
- 3.30 Our proposals included 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.
- 3.31 Trade bodies and other respondents called for these proposals to be put on hold until the risks were better understood, and that conditions only be considered where the Code did not provide adequate protection to consumers and for a healthy market.
- 3.32 A number of other concerns were raised in relation to our approach to HRPRS:
- Defining service category primarily by cost was considered inappropriate in these circumstances because of the variety of services, range of payment options (connection charge, per minute charges, per call charges), and the range of price points covered from £1.53 to £3.60 per minute; and / or up to £6 drop charge.
 - Such a definition led to conditions cutting across technology in a way that had the potential to be problematic and confusing. Some respondents considered it was not future proof nor effective for some potential service categories that may utilise these number ranges.
 - The conditions tackled generic risks and were therefore not sufficiently targeted making a full impact assessment difficult to make. Some respondents were concerned that the conditions, such as lengthening the delayed outpayment beyond 30 days, appeared to treat service providers in the same way regardless of past behaviour or business model. Particular concern was raised that use of higher tariffs may be wrongly associated with criminal activities.
- 3.33 It is noted that some services operated at higher tariffs will be appropriately protected with reference to other Special conditions requirements, such as live entertainment and chatline services. As such the intention to avoid duplication had not been fully achieved within the original package of Notices. Respondents suggested that future

consideration of service types defined more narrowly and focussed on those categories that are proven to pose particular risks to consumers would help avoid such duplication. Furthermore, providers who were developing services properly and evidencing good practice may be in a position to support the regulator in targeting malpractice within their market sectors.

- 3.34 It has been noted by some respondents that the types of conditions that have been subject to consultation may prove effective where implemented in a targeted way. It is agreed that where issues do arise in the market following 1 July 2015, PhonepayPlus may be in a position to quickly adopt relevant and proportionate safeguards to address any such consumer harm.
- 3.35 Concerning Special condition **HRPRS2**, the technological requirements associated with offering a pre-call announcement free of charge led to particular concerns raised from network operators. While it was seen as potentially feasible, a some significant cost, to introduce such measures, the length of any period without cost to consumers would be restricted to such an extent that may remove or undermine the intended benefit for consumers. It was persuasively set out by a number of respondents, during discussions as well as within written submissions to the consultation, that consumers may hear a warning and end the call, but not do so quickly enough to avoid the charges starting. Given the consumer expectations that no such charge would arise, bill shock would be inevitable and raise confusion as well as distrust of PRS more generally.
- 3.36 Respondents argued that the introduction of such measures would be counterproductive, and that emphasis ought to remain on the effective provision of clear information about the service before calls are made. This is the emphasis that is already established within the outcome of transparency and pricing in Part 2 of the Code. While it may be appropriate to reiterate pricing information at the start of the call, it is said to be too onerous to expect such information to be supplied without cost, and with the expectation that no charge would result from the call ending before the service itself was consumed.
- 3.37 PhonepayPlus has listened to all the feedback and decided not to proceed with Special conditions for HRPRS at this time. Any future proposals will be considered in light of this feedback and be based on evidence gathered during the period after the new tariffs take effect on 1 July 2015. Ofcom assessed the risks associated with the tariff increases in the NGCS Review, and it identified no evidence that there would be significant increases in risk caused by higher price points alone. A communications provider responded to our consultation and quoted the Ofcom NGCS Statement from December 2013:

“2.34 We also considered options for additional consumer protection measures on these number ranges, such as pre-call announcements (‘PCSs’). We considered, however, that as the service charge caps proposed, such additional measures were unlikely to be necessary...”

“9.103 We maintain our view, as set out in the July 2012 consultation, that no additional measures are justified at the level of the caps of £5 per call and £3 per minute cap for 09 calls. In particular, we believe that the existing PhonepayPlus requirements are effective at protecting consumers.”

3.38 In the PhonepayPlus consultation, having at this stage acknowledged the perceived risks associated with the higher tariffs, we reflect on the feedback from industry and call on relevant parties to continue to address them. As industry develop services charged at these higher tariffs, and run any associated promotional campaigns, PhonepayPlus considers that application of effective due diligence, risk assessment and control processes will be important as the market develops and takes up the opportunities afforded providers by the NGCS changes. We will carry out structured monitoring to ensure any risk presented by service types charging at higher rates is identified and appropriately addressed.

Credit broking services (CBRK)

3.39 This industry sector has faced significant scrutiny and regulatory change in recent years, as documented in our policy statement⁷ 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 industry⁸.

3.40 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.”

3.41 We proposed 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 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.

3.42 PhonepayPlus did not address a particular question on this topic in the consultation. The approach taken by stakeholders to consistently engage with the consultation on each Notice of Special conditions is helpful; and we received some limited feedback on these proposals with one trade body questioning the definition of services.

⁷ 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

⁸ 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

PhonepayPlus has considered the definition and is satisfied that it remains fit for purpose and fully aligned with Financial Conduct Authority (FCA) regulations. This was achieved with close collaboration with the FCA during the review and the development of guidance ahead of publication of our policy statement in December 2014.

- 3.43 A useful comment was given in relation to our insertion of the PhonepayPlus office address within the formal document. Since beginning our consultation process, it has become clear that this information is subject to change from time to time and, as advised by the respondent trade body, we have amended **CBRK2(b)** to refer providers to our website to find the latest information when undertaking these obligations.
- 3.44 Our position following consultation is to proceed with these proposals. The finalised Notice of Special conditions for credit broking services is found at **Annex B3**.

Information, connection and signposting services (ICSS)

- 3.45 The proposed Notice of Special conditions for ICSS highlighted the extent to which current prior permission provisions have been relied upon to maintain high compliance standards. In particular we proposed at this stage to continue to apply the same standards to all ICSS, including those operating on lower priced ranges such as 087x.
- 3.46 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.
- 3.47 We asked the following questions in relation to ICSS within the consultation:

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.

- 3.48 In recent months a PhonepayPlus Tribunal has considered an application for review relating to a decision to refuse prior permission pending changes being made to an ICSS as required. While the decision of the Tribunal did consider the refusal appropriate until promotional material complied with the regulatory standards, PhonepayPlus has considered submissions relating to the underlying ICSS requirements as part of this consultation process.
- 3.49 ICSS providers have submitted responses to the consultation and argued that the objective set out in **ICSS1**, which relates to Search Engine Marketing and the accuracy of service descriptions to avoid misunderstanding of results displayed to people using search tools online, may be achieved without specific reference to the placement of such information. It has been suggested only a minor change is necessary to achieve

the position that would offer better flexibility to industry while still achieving suitable compliance levels.

- 3.50 PhonepayPlus has carefully considered these submissions and reviewed the scope of Code provisions, such as rule 2.3.2 on misleading promotions, and how compliance across these provisions may adequately protect consumers. It is worth acknowledging that the consumer of an ICSS usually begins their search by accessing the internet looking for information about a business, product, or service. This search is made using free search engine tools with no evidence they intend to pay for access to the final information or help they seek. ICSS offer access to such information, potentially more quickly and easily than a wide-spread or indepth internet search, at a cost to the consumer. It is important the switch from a free search started by the consumer to a paid for service accessing said information is made voluntarily and in an informed way.
- 3.51 We have decided that while placement of information is important because the layout of advertising may be capable of misleading consumers, where such problems arise these will constitute a breach of rule 2.3.2 of the Code.
- 3.52 As a result, the requirement at **ICSS1** is primarily focussed on accuracy of service description to impact upon the potential consumer using the search engine in a way that identifies the search engine result as marketing for a PRS as opposed to the information originally sought. PhonepayPlus has decided to make it explicit that the accurate information is *clearly* displayed. However, we have decided to remove the phrase “*at the beginning of*” when referring to the search engine results. This is in keeping with the constructive feedback from industry.
- 3.53 A trade body and other providers commented on the repetitive requirements found in **ICSS3** and **ICSS7** relating to information necessary to be presented to the consumer on websites and within IVR messaging. PhonepayPlus has considered the submissions suggesting a range of conditions are unnecessary in light of the scope of the Code provisions, and decided that the conditions are required to ensure compliance standards are maintained throughout the consumer journey. However, we have decided that **ICSS7** is too onerous in light of the information displayed elsewhere. We have removed this condition from the finalised Notice of Special conditions, found at **Annex B4**.
- 3.54 The remaining proposals have been taken forward without changes. PhonepayPlus has considered the research findings that indicated 78% of consumers did not realise they were calling an ICSS, instead believing the search results found were for the numbers they were seeking in the first place; and that 72% of consumers thought it unclear what ICSS offered. While actual detriment is lessened at lower price points, there is a general risk that consumers will be misled into making a call they would otherwise not have made and this will reduce their confidence in PRS more broadly. Therefore the risk to the overall reputation of PRS remains constant regardless of the actual levels of financial detriment.

3.55 Given those considerations exist regardless of the cost of the ICSS, there is no evidence to suggest the risks associated with these services are less when services operate at a lower price point. Indeed, some respondents to our consultation suggested PhonepayPlus ought to consider regulation of ICSS even where they operate on 084 number ranges. While we remain focussed only on those controlled PRS that are within remit, we consider it necessary and proportionate to expect providers using 087 number ranges to comply with these Special conditions as well as those providers using other PRS number ranges associated with higher tariffs.

Professional services, including counselling advice services (PROF)

3.56 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.

3.57 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.

3.58 The review did not indicate a need for the standards to change, and indeed our proposal involved the transition of provisions across into the Special conditions framework. We asked the following question in relation to this service type:

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.

3.59 There was wide-spread agreement with the restructuring of these service categories with respondents indicating that this approach made the expectations more accessible to relevant service providers. On an administrative point, a trade body indicated that the defined category and sub-category along with assigned Special conditions needed to be clear throughout the document and use of the phrase “such services” left room for doubt.

3.60 This feedback is noted and PhonepayPlus has sought to achieve clarity by stating explicitly the service types by title throughout the document.

3.61 A trade body suggested the purpose behind a number of conditions could be clearer. These provisions have been in place since they were introduced under prior permission and have worked effectively to manage risks. There is only one provision which we consider may require amendment. This is because we consider the

provisions to be primarily setting standards and that the conditions achieve this goal at present.

3.62 Following a review of the Notice, we have decided to amend **PROF4** with the intention of removing any specific uncertainty about our expectations. This amendment means the condition will now read:

*"Operators **whose role requires them to deliver professional advice based upon their own judgement** should hold a formal qualification..."*

3.63 In relation to **PROF5**, we consider there to be a need for supervision of staff designated the task of providing professional services. However, it is recognised that the nature of that supervision, its structure and scope, may vary greatly depending on the type of professional service or advice being offered. The objective of any structure of supervision is to achieve the necessary quality and consistency expected by consumers.

3.64 In relation to the final sentence in **PROF5**, this is included to make it clear what our expectations are where services are subject to investigation. Any structure needs to be formally established and documented, and be consistently applied to all relevant staff.

3.65 A question was raised by a trade body in relation to **PROF6**: could this be covered by guidance in relation to rule 2.3.10 of the Code dealing with consumer vulnerability? The intent behind **PROF6** is to ensure that vulnerable consumers are escalated for other treatment after a reasonable period as would be the case with any kind of counselling or therapy. This is distinguishable from the rationale behind rule 2.3.10, which falls within the outcome of 'Fairness'. This Code provision focusses on adverse affects arising from the operation and promotion of a PRS on consumers subject to circumstances that may make them vulnerable to financial or other harm. The Special condition focusses on appropriate professional treatment being arranged for vulnerable users of the service inkeeping with their needs. These two things do not overlap and therefore the Special condition is considered appropriate and proportionate.

3.66 Our position following consultation is to proceed with these proposals. The finalised Notice of Special conditions for professional services is found at **Annex B5**.

Pay per view services (PPV)

3.67 We proposed a new definition in relation to PPV services. The previous definition simply referred to the action that triggered the charge: "*services which charges per page or image viewed*". PhonepayPlus proposed a definition expressly with the intention of excluding the following example taken from the consultation paper:

"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".

- 3.68 PhonepayPlus proposed 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.”

- 3.69 The intention behind this change in definition was to ensure consistency of standards across all Pay-per-View services, regardless of whether they 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. We asked the following question in our consultation:

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.

- 3.70 In relation to our definition a trade body suggested the definition still went too far and appeared to include services where content was paid for following an individual purchase transaction. This was seen to contradict our stated intentions, and further clarification was necessary to ensure only those services that posed the risks were caught by the definition and required to meet the additional measures. In the same response there was some suggestion that changes in wider consumer protection regulations and technology has reduced the number of such services coming to the market.
- 3.71 PhonepayPlus has considered the definition itself and considers that it accurately describes the service type to which these measures are applied. However, clarity is necessary to avoid some pay-for-product services, which do still involve some form of live streaming technology for product consumption, being mistakenly associated with PPV services. The Notice is amended to offer such clarity.
- 3.72 Having considered those services that may fall within the definition, we have reviewed the conditions themselves and the market to which it relates, and find that many providers are already satisfying these requirements meaning the impact of our regulations on such services will be minimal. This impact is lessened further by the decision to remove two prescriptive conditions where evidence suggests compliance standards are effectively set elsewhere in the Code and by wider regulatory requirements.
- 3.73 Turning to the Special conditions themselves, PhonepayPlus proposed to retain the provisions that establish high standards of transparency relating to such purchases. We proposed the inclusion of a condition relating to issuance of a receipt or other notification of consumer spend following each purchase session.

- 3.74 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. We proposed to require providers notify us with specific information at the commencement of the service.
- 3.75 Some respondents have suggested that conditions set out in the proposals overlap with Consumer Contracts Regulations and our Code provisions associated with transparency and pricing. At the time the prior permission regime was established, wider regulations for digital content was sparse and had proven ineffectual in driving high compliance standards. However, the market has developed considerably since 2010. Feedback suggested this was a good opportunity to review the range of regulations applicable to these services, and the effectiveness of our own Code provisions.
- 3.76 During the consultation period, PhonepayPlus has worked with industry to consider advice applicable to PRS in light of the Consumer Contracts Regulations. It has become clear that industry understands the requirements those set out and the discussion has clarified the standards expected under rules found in 2.2 of the Code on transparency and pricing, as well as 2.3 dealing with fairness.
- 3.77 PhonepayPlus has reconsidered its position in relation to two proposed conditions, and has decided to remove both **PPV1** and **PPV2** from the Notice of Special conditions for PPV services. The changes are clearly marked in the annexed Notice (**Annex B6**).
- 3.78 Where similar arguments have been set out in relation to **PPV4** and **PPV5**, PhonepayPlus has considered them to be less persuasive. These deal with ensuring that all charges to a consumer are fully understood and authorised, and that the consumer has a record of each charge for ease of reference. This is distinct from requirements within Consumer Contract Regulations for the consumer to be clearly informed before consent to a purchase. Whilst the Code sets clear outcomes in relation to consent to charge, we continue to receive complaints about perceived overcharging on Pay-per-View services which indicate that the Code outcomes on their own do not provide suitable clarity or deterrent to deal with the risks involved. In particular the MNO requirement for all PPV services using Payforit to issue receipts suggests it is not unreasonable in terms of impact to extend such a requirement to all PPV services.
- 3.79 Our position is to continue to implement our other proposals subject to the above amendments, and our finalised Notice is provided at **Annex B6** to this statement. We recognise developments may occur in the future operation of such services, and we will use the flexibility afforded by the Special conditions framework in the Code to keep this Notice under review, and up to date.

Call TV Quiz services (CTQ)

- 3.80 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.

- 3.81 The provisions we proposed 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. We asked the following question in the consultation:

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.

- 3.82 We received very little input on this particular category of service, which we consider is partly due to the long-standing requirements being consistently applied – with effective results. A trade body offered some commentary in relation to conditions **CTQ5** and **CTQ6** in relation to the element of ‘chance’. The feedback suggested this was not relevant to a consumer’s decision to make a transaction, based on comparison with ‘chance to win’ statistics.
- 3.83 PhonepayPlus has given this some consideration and concluded that these provisions do not relate to a chance to win, instead dealing with the factors affecting the consumer’s ability to get what they pay for, which is access to – and participation on – the television show. This is considered relevant information for potential callers.
- 3.84 Additionally the on-screen presenters have been known to state "no-one's calling in right now" when this is not the case and people are in fact trying to access the show. This type of situation is not possible with the lottery or pools, where it is generally accepted lots of others will play and where the moment of entry is not critical. This was one of the biggest concerns during incidents where Call TV Quizzes were investigated and sanctioned by both PhonepayPlus and Ofcom in 2007.
- 3.85 We have decided to proceed with these proposals as planned. The finalised Notice of Special conditions for Call TV Quiz services is found at **Annex B7**.

Remote gambling services (RG)

- 3.86 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 2014⁹. The review was conducted by various organisations, including the Remote Gambling Association (RGA) representing industry, the Gambling Commission, The Committees for Advertising Practices (CAP

⁹ 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

and BCAP), and the Advertising Standards Authority (ASA). The reviews were concluded between June and December 2014.

- 3.87 The findings have indicated 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.
- 3.88 Our preliminary view was 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.
- 3.89 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 with the inclusion of rule 2.1.4, which requires all legal obligations relating to licences and qualifications to be met. The Code change alongside the removal of the old condition is an example of the simplification process currently being implemented.
- 3.90 We asked the following question in consultation with stakeholders:

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.

- 3.91 The feedback from industry has been positive, with only minor suggested amendments being raised. There is a suggestion that greater clarity could be added to the definition of these services with reference to the legal definition found in statute. PhonepayPlus considers it necessary to specifically define services based on the use of PRS facilities, and we have decided to support the proposed definition by quoting the definition of 'remote gambling services' found in statute within the notice. This does not amend the definition itself, but does make understanding the reach of these conditions easier.
- 3.92 It was suggested by a trade body that the phrase "significant terms" is inconsistent with other terminology used, and we have decided to amend this to "key terms" to address this in the final Notice.
- 3.93 There was one suggestion that refund requirements in **RG2** were disproportionate. This requirement follows the legal stipulation that under 18 year olds should not be permitted to gamble. By extension, businesses are not required to pay out winnings to individuals found to be under age. It follows that where a user is found to be under age, refunds ought to be paid as if the user had not accessed the service. This provision ought not to be used by consumers to leverage a profit based on winnings and stake refunds, and it may be appropriate in some circumstances for any winnings previously paid out to the consumer to be deducted from the refund claim. Therefore we are not making this proposed amendment to **RG2**.

3.94 Our position is to proceed with proposals as planned. The finalised Notice of Special conditions for remote gambling services is found at **Annex B8**.

Subscription services (SS)

3.95 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.

3.96 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 was that the same clear risks exist regardless of payment mechanic. Provisionally we considered 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 informed¹⁰;
- 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.

3.97 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.

3.98 PhonepayPlus provisionally considered 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.

¹⁰ 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.

3.99 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,
- b) an email containing relevant payment information, similar to those issued by app stores.

3.100 Lastly we noted 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 proposed adding a condition designed to explicitly prevent any such practice, and to make sure that all those in the service value chain take appropriate responsibility to prevent it.

3.101 We asked the following question about Special conditions for subscription services:

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.

3.102 A trade body has responded by calling for an increase in the threshold amount set out in these proposals to be amended to reflect inflation, and argued that Retail Price Index (RPI) data suggested it should move upwards to £6 in a seven day period. Alternatively, conditions imposed on subscriptions above a threshold based on average daily spend instead of a weekly amount was advocated. It was suggested a figure of £1 per day was appropriate, which would involve a £7 weekly figure or £30 per month.

3.103 But for the reference to RPI, there was no further submissions or evidence in support of them. We note that an increase to £6 would likely be considerably in excess of the cumulative RPI over the years since the former prior permissions regime was introduced in 2009. We also note that there is nothing in the proposed conditions, or in our wider regulatory framework, that proscribes providers from charging £6, or more, for a weekly subscription.

3.104 Beyond arguments about the appropriate level of any threshold, there is a counter-argument that suggests that special conditions may be necessary across all subscription services regardless of cost. We note that services using subscription charging at or below £4.50 in any given 7-day period have continued to be a significant source of complaint. There has also been an increase in the number of services which operate at £4.50, but not above it. This trend suggests that some providers had

sought to set their price at the highest level possible to avoid the old prior permission conditions, and in practice the new special conditions.

3.105 We recognise that the Code provisions do go some way to protecting consumers, and the additional conditions are targeted at higher risk services. The higher risks are linked to the impact felt financially when consumers are dealing with subscriptions levying higher fees. As such PhonepayPlus retain the view that a threshold remains justified. However we remain open to ongoing review of the amount at which any threshold is set. If evidence exists for the amount to be decreased, increased, or removed entirely so all subscription services are subject to Special conditions, we will consult on such a change as appropriate.

3.106 When looking at the conditions themselves, feedback from a trade body and other stakeholders suggested some of the conditions needed to be reviewed and potentially removed in light of wider regulations and the effectiveness of the Code provisions themselves.

3.107 PhonepayPlus has considered the proposed Notice of Special conditions and we have determined that **SS1** and **SS2** do deal with circumstances that are addressed by other regulations and provisions found in Part 2 of the Code, both in relation to outcomes around 'transparency and pricing' and 'fairness'.

3.108 Feedback suggested that **SS3** could be updated to deal with advances in technology by removing explicit reference to a communication (suggesting a text message in every instance). PhonepayPlus requires any process to achieve sufficient clarity for the consumer, but does recognise alternative means may be adopted while establishing the auditable consent necessary, which remains at the heart of this condition. We have decided to amend **SS3** so it now states:

*"Prior to delivering the initial charge of a subscription service, providers are required to obtain a 'double opt-in' from the consumer in the form of a positive, recorded and auditable response to a communication outlining **where** the costs and name of the premium rate service **have been presented clearly to the consumer.**"*

3.109 Based on feedback from a trade body, a footnote has been added to **SS4** to highlight the fact mobile network operators may set guidelines in-keeping with these requirements from time to time.

3.110 Feedback has highlighted some confusion in relation to double charging in relation to subscription services where recurring charges are expected by consumers. PhonepayPlus has considered **SS5** and decided to add some wording to make clear that this requirement relates to a prohibition on charging a consumer more than once *in a single billing cycle* for any service(s) they have already received. This is considered sufficient to address the risk and not undermine normal operation of subscription payments.

3.111 The finalised notice of Special conditions for subscription services reflecting these amendments following consultation is found at **Annex B9**.

Recurring donation services (RDS)

- 3.112 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 2014¹¹
- 3.113 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.
- 3.114 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.
- 3.115 We proposed 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.
- 3.116 We proposed the removal of 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 proposed 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.
- 3.117 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.
- 3.118 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

¹¹ 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

designated 7-series shortcodes, as they are specifically reserved for charities to ensure the charity receives maximum value from the donation.

3.119 We proposed to continue to restrict RDS, and consequently the use of the SKIP command, to registered charities.

3.120 PhonepayPlus asked the following questions in relation to these proposals:

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.

3.121 There was widespread support for the separation of RDS from other forms of subscription service involving a similar recurring charge.

3.122 A trade body considered the definition could be improved by the removal of explicit reference to the means of leveraging the charge. The specific mention of text messaging facilities was no longer seen as necessary. It is acknowledged that premium rate text messages was likely to be used as part of the PRS facility given the mechanics associated with the successful operation of the SKIP function itself. However, the definition was overly restrictive of new technical developments as set out in the consultation.

3.123 PhonepayPlus has considered this feedback and has decided to amend the definition

3.124 For the purposes of the finalised 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** to a charity or charities registered with the Charities Commission of England, Northern Ireland, Scotland or Wales, ~~via a premium rate text shortcode on a recurring basis.~~”*

3.125 Respondents to the consultation have indicated an interest in reviewing how the STOP command is promoted during the operation of RDS. This is in light of the success of the SKIP function and the data collected when it is a central feature of the service. These comments come from a trade body and a number of intermediaries already providing RDS to charities. Separate to the current Code Review Project and this consultation following the review of prior permissions and the adoption of Special conditions, discussions on this topic are ongoing.

3.126 PhonepayPlus is willing to engage further and explore the evidence for a further amendment to Special conditions for RDS. Given the timescales for implementation of Special conditions in line with the launch of the 13th Code on 1 July 2015, and the flexibility afforded under the framework established by paragraph 3.11 of the 13th Code, PhonepayPlus intends to proceed with the current conditions. We will then

consider the industry proposals and where the evidence warrants further changes in policy, this will be consulted upon in due course. PhonepayPlus intends to pursue this work stream without any undue delay.

3.127 The finalised notice of Special conditions for Recurring Donation services is found at **Annex B10**.

Decision to not proceed with conditions for Voice-based, Text charged (VBTC)

3.128 This category of service was defined following the development of a new payment facility involving premium rate text charges associated with voice calls made to non-PRS lines. Once established, the new payment facility posed some unique consumer protection issues and the prior permission framework was used to introduce additional safeguards to control our the payments were operated, including safeguards relating to how services were promoted in the first place.

3.129 What has been highlighted in feedback to this consultation, which involved the proposal to transpose the conditions from prior permission to the new framework of Special conditions, is the fact that these services appear to reduce the clarity between the number dialled by the consumer, the service offered on the call, and the charges later issued by PRS facilities involving text messages.

3.130 In relation to our proposals, PhonepayPlus asked the following question in the consultation:

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.

3.131 A trade body commented that there were certain technical restrictions that appeared to raise problems for providers seeking to operate these facilities.

3.132 As shown historically with the development of these services, the technical feasibility does exist, with the conditions introduced to offer protection in this area. Such services have continued to operate over many years since the prior permission regime was first introduced.

3.133 PhonepayPlus has reviewed the proposed Notice of Special conditions and the service category in light of the NGCS proposals, including the intention set out by Ofcom in relation to those changes to NGCS. Having summarised the changes that were being confirmed in its Final Statement issued on 12 December 2013, Ofcom stated the following:

“1.17 Taken together, these changes will simplify the UK’s numbering system and allow consumers to gain a better understanding of what different numbers mean, as well as their cost.”

3.134 Based on this review of the VBTC services, this use of non-adult PRS numbers to access a service while charges are issued via text message appears to add unnecessary complexity at a time when NGCS are being simplified by Ofcom.

Furthermore, there is a real risk that consumers who expect adult services to be on premium rate numbers designated for that purpose may be misled regardless of the safeguards the prior permission regime sought to introduce.

3.135 PhonepayPlus has also received feedback from industry stakeholders who have been developing similar technology which may fall within this definition but which do not resemble the traditional voice-based text-payment mechanics which the original prior permission provisions were designed to address. Such modern payment mechanics have been designed to comply with the Code provisions, and seek to meet the outcomes set out in Part 2. It has been argued that the Code is effective in achieving requisite high standards and the prior permission conditions are no longer satisfactory or helpful.

3.136 PhonepayPlus has decided to not proceed with the proposed Notice of Special conditions. Instead we will require such live services to operate in accordance with the 13th Code and the Notice of Special conditions for other live entertainment and chatline services (see Notice for LESC at **Annex B2**).

Section 4: Implementation

- 4.1 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.
- 4.2 A number of stakeholders have commented that the implementation period for changes to live services has been very short, which has led to some industry members struggling to put in place a full suite of technical measures in compliance with the new standards. The feedback has pointed to both the requirements set out in Annex B to the PhonepayPlus Code Statement, published on 26 March 2015, and some of the technical requirements set out in Special conditions, consulted upon between 31 March and 15 May 2015.
- 4.3 PhonepayPlus notes that some of the issues flagged by industry are no longer being taken forward at the present time, especially given the removal of proposals in relation to HRPRS. However, this statement does confirm requirements relating to issuance of receipts in relation to both subscription services over £4.50 in any seven day period and Pay-Per-View services.
- 4.4 Furthermore, it is understood some businesses had sought to reduce costs associated with the new regulations by bundling technical development of IVR services for both the spending caps and the Special conditions requirements together. This inevitably delayed implementation regardless of advance notification by the regulator of spending caps in March 2015.
- 4.5 PhonepayPlus confirms that the 13th Code is enforceable from 1 July 2015, including the Special conditions set out in the Notices annexed to this statement. However, where there are regulatory standards that are being introduced for the first time then PhonepayPlus will look to collaborate with industry members to ensure all technical standards are fully implemented **before 1 August 2015**. A list of measures to which this may apply is set out below:
- Reminders provided in call after £15 has been spent;
 - Consent to further charges in call after £30 has been spent;
 - Receipt requirements set out in **PPV2** (see **Annexes B6**).
- 4.6 PhonepayPlus advises those providers who are unable to comply with these requirements as at 1 July 2015 to notify us of the nature of the delay and confirm steps are being taken to implement the necessary changes.

Support for providers during the transition period

- 4.7 During this period following the launch of the 13th Code, industry members affected by the full range of 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.

List of respondents to this statement

There were two confidential responses from industry stakeholders, along with sixteen submissions from the following parties:

1. Action4
2. AIME
3. Biongiorno
4. BBC
5. BT
6. Channel 4
7. Clix Connect, and others
8. Dualmix Services
9. FCS
10. Ian Galtin
11. IMImobile
12. Louis Groves
13. Micro Software & Computers
14. Nine Group
15. UKCTA
16. Vodafone

List of annexures to this statement

Annex A relates to Guidance proposals:

Annex A1 – Due diligence, risk assessment and control (DDRAC)

Annex A2 – Promoting PRS

Annex A3 – Complaint handling

Annex A4 – Lower cost services

Annex A5 – Definitions, including parties in the value chain

Annex A6 – Privacy

Annex A7 – Consent to charge

Annex A8 – Virtual chat services

Annex B relates to notices of proposed Special conditions

Annex B1 – Broadcast PRS (BPRS)

Annex B2 – Live entertainment and chatline services (LECS)

Annex B3 – Credit broking services (CBRK)

Annex B4 – Information, connection, and signposting services (ICSS)

Annex B5 – Professional services, including counselling services (PROF)

Annex B6 – Pay per view services (PPV)

Annex B7 – Call TV Quiz services (CTQ)

Annex B8 – Remote gambling services (RG)

Annex B9 – Subscription services (SS)

Annex B10 – Recurring donation services (RDS)