



## **Response to Ofcom's PRS Scope Review**

on behalf of Orange Personal Communications Services Ltd

24 July 2009



## Introduction

Orange welcomes the opportunity to comment on the long-awaited PRS scope review.

We have focused on the practical proposals made by Ofcom in the body of our response. For our detailed views on Ofcom's analytical framework, we would refer you to the Mobile Broadband Group's response. However, we would take this opportunity to make a few observations on Ofcom's approach.

Ofcom has clearly decided that the legal scope of Premium Rate Services (PRS) is not being dealt with at this time, although we believe it would have been appropriate and indeed logical to define the scope of regulated services in the first instance. Ofcom has instead decided to focus on describing the general characteristics of what Ofcom considers to be examples of new PRS. These characteristics are not unique to PRS but can be applied to a broad range of services. The end result is that Ofcom's framework establishes the circumstances which create a need for regulation more generally rather than those which create a need for PRS regulation more precisely. Whilst we appreciate that this is Ofcom's approach to the consultation, and time cannot now be wound back, this does not mean the debate on the legal scope of Premium Rate Services no longer needs to be had. On the contrary this is imperative if industry and consumers are going to have regulatory clarity. We would ask Ofcom to confirm when and how Ofcom intends to address this fundamental question of legal scope.

The approach that we had anticipated Ofcom to take, based on the Terms of Reference for the Review, was that Ofcom would first clarify the legal scope of PRS so that stakeholders could understand what services Ofcom was seeking to regulate, and why. An analytical framework would only subsequently be developed to draw out that subset of PRS that required sector specific regulation, because of the elevated risk of consumer harm. These subset of services would be included with the scope of "Controlled Premium Rate Services" (if not already) for formal regulation by PhonepayPlus.

As Ofcom has not addressed the scope issue, the longstanding debate over the legal status of Payforit has regrettably not progressed. Orange remains of the view that Payforit is not a premium rate service as defined in s.120 of the Communications Act and therefore it cannot sit within the PRS regulatory framework. Our response to this consultation is therefore without prejudice to our view on what constitutes a premium rate service. The mobile operators have shared their legal opinion with Ofcom on the status of Payforit, but Ofcom has yet to share any similar documentation.

Indeed, Ofcom has not engaged in any public debate about the status of Payforit. For instance, when Ofcom decided to bring 0871 into the PRS fold, it first conducted a detailed consultation on the issue, culminating in a review of the Premium Rate Condition in order to effectuate the decision to include 0871 under PhonepayPlus's remit. PhonepayPlus also conducted a thorough review, understanding that the PhonepayPlus Code, which was not drafted with 0871 services in mind, might not be relevant in its entirety to 0871 services. Without prejudice to our position on the legal status of Payforit, we note that Ofcom has not



conducted a similar exercise for Payforit but has simply decided that Payforit **IS** regulated by PhonepayPlus and therefore the Code, in its entirety, applies to such services.

Ofcom has bundled Payforit into the scope of PRS regulation whilst at the same time seemingly acknowledging that it may not be a PRS. Ofcom's recent Mostly Mobile report<sup>1</sup> would suggest that not all mobile applications, including Payforit, are premium rate services:

*"... applications for mobile phones are being sold over the internet. This effectively means that the same service can be subject to different regulation according to the way in which it is delivered. For example, a mobile ringtone or application which is delivered by text message is subject to regulation by Ofcom and PhonepayPlus, as it is classified as a phone-pay service. But a ringtone or other application which is ordered and paid for over the mobile internet (e.g. through a mobile applications store) is regulated in the same way as any other purchase through general consumer law. Applications and services are likely to be sold increasingly over the mobile internet, and consumers may need to be informed about which type of regulation applies, otherwise there is the possibility that they will have incorrect expectations about their rights if they encounter a problem".*

Payforit purchases are delivered over the mobile internet and are not a PRS.

Judging by comments made in the scope review and stated in the second half of the quotation above, it would seem that Ofcom's concern is to ensure that consumers have access to redress should their mobile content experience (PRS or otherwise) go wrong. This sentiment is understandable. However, just because PhonepayPlus exists to deal with premium rate service complaints does not mean that it is proportionate or appropriate to conclude that it should deal with all "phone-paid" complaints just because it would make it easier for the consumer to have one port of call. The Communications Act sets out what a premium rate service is and only services which fit that definition can be bound by the Conditions set by Ofcom and enforced by PhonepayPlus. Ofcom cannot formally extend the remit of PhonepayPlus without a change to the law. It is for this reason that Orange disagrees with the use of the term "Phonepaid service", as this is misleading. Not all services charged to a mobile (or indeed other communications providers') phone bill are premium rate services and therefore regulated by PhonepayPlus.

If Ofcom maintains that PhonepayPlus should regulate services other than PRS, then Ofcom should be calling for a review of the Communications Act and not single-handedly extending the scope of the regulation without the analysis to underpin the decision.

Orange has stated its willingness to discuss a way forward on this issue, and indeed has instigated these discussions. However, in order for a meaningful compromise to be made, Ofcom needs to first recognise that we cannot accept its interpretation of Payforit as a premium rate service as we believe s.120 clearly states that it is not. We cannot move forwards unless Ofcom takes a more practical approach.

We believe this is just the start of discussions with regards to the scope of premium rate services and we look forward to continuing these with Ofcom and PhonepayPlus.

---

<sup>1</sup> Page 90



## Specific Questions

We have not answered all the questions posed by Ofcom but have focused our responses on the practical proposals for regulation made by Ofcom.

### ***Question 4.4: Do you agree with our assessment of the potential and actual consumer harm in respect of PRS?***

We have two general comments to make on the assumptions and conclusions made by Ofcom.

Firstly, Ofcom suggests that pre-pay customers are at a particular risk when using PRS, because they do not receive a phone bill. Orange disagrees with this comment and we would be interested to see any evidence from Ofcom that pre-pay customers “are typically less aware as to how much they spend on PRS” (3.27 b)).

This comment fundamentally overlooks the main reasons why pre paid services remain so popular with customers. It is precisely because pre paid services give customers the ability to better control spend that customers value pre-pay. Our customers can verify on the spot how much credit they have left on their account and can and do contact us where they have concerns about their spend (e.g. if their credit is going down faster than they expect).

Secondly, from Ofcom’s assessment, it appears clear that on portal services pose less risk of actual consumer harm. PhonepayPlus report receiving very few complaints about on portal services (5.41). This is either because there are very few issues with on portal services, and/or where there are issues, these are dealt with by the mobile operator. In an on portal environment there is a single point of contact for dealing with PRS issues i.e. our customer services. Ofcom must take this into account when considering the scope of premium rate regulation. In the absence of evidence that on portal service pose a similar level of risk as off portal services, it is disproportionate to regulate the former in the same manner as the latter.

### ***Question 5.2: Do you agree with our assessment of potential harm for each of the services?***

Without prejudice to our position that Payfort is not a premium rate service, we disagree with the assessment of harm for Payfort. For instance, Ofcom remarks that the fact the Payfort scheme rules do not apply to the advertising of the service means that a discrepancy between the advertising and confirmation screens *may* occur and that this in itself will cause consumer harm. However, this misses the point on how Payfort changes the customer’s shopping experience, aligning it with any other type of internet shopping. Payfort ensures that customers know precisely how much they are being charged before they are charged and the customer must confirm this charge before committing to it. Any discrepancies between the advertising and actual service cost will therefore be highlighted before the customer commits to the purpose. This also means that the advertising need not be bound



by the same prescriptive promotional pricing rules as PRS; rather, services can be advertised as per any retail outlet like Amazon for instance. The advertising attracts the customer into the shop, but does not necessarily need to specify what it is selling and how much this costs. The customer will discover this upon browsing the store content.

Ofcom appears concerned that if Payforit is not subject to PRS regulation, it will allow providers to advertise without including details of price, which may not be available until the customer actually makes a purchase. However, such advertising is widespread in other sectors and causes no consumer detriment. Manufacturers often advertise goods (of far greater value than PRS) and do not include details of price, which will vary according to retailer – mobile handsets themselves are a very good example. Indeed, the vast majority of goods and services advertised across print and broadcast media do not contain details of price, as that is not the purpose of the advert. It is unclear why Ofcom believes that PRS should meet far more stringent standards than apply in almost any other sector.

As a general remark, it is unclear how Ofcom intends to apply this framework to future or other services in order to assess the need for regulation. Figure 16 contains a somewhat arbitrary categorisation of potential harm per service – is this how Ofcom will apply the framework in practice going forwards?

***Question 5.3: Do you agree with our assessment of alternative means of protection for the new services in our analysis?***

Ofcom's assessment concludes that complaints about on portal services would be dealt with in-house, under complaints processes defined under GC 14. We agree that issues with on portal services should be dealt with in-house and therefore sector specific regulation is not required. This is what happens today even though, strictly speaking, the scope of GC 14.1 would exclude any content services. From a practical perspective, it makes sense for such complaints to be handled via Orange rather than a third party.

***Question 5.4: Do you agree with our analysis of the appropriateness of self-regulatory initiatives in the context of PRS?***

***Question 5.5: Do you consider self-regulatory initiatives could be implemented for (certain) PRS? If so, please set out for which services, and what such an initiative would look like.***

Orange disagrees that Payforit is a premium rate service. Despite our disagreement, Orange has sought to engage with Ofcom in order to move forward on a co-operative basis. We have proposed an enhanced self-regulatory regime to Ofcom over and above what is already in operation (and working well, bearing in mind complaints figures). However, we have found Ofcom reluctant to find a compromise whilst at the same time not sharing any legal opinion to support its view, nor being able to provide evidence of consumer harm in the absence of formal regulation. We believe a self regulatory approach to regulating Payforit is logical and feasible and we are not convinced by Ofcom's response that it is not.



The scope review reiterates the criteria for self-regulation as defined by Ofcom. We note Ofcom's concerns around sanctions and dispute resolution and the need for these processes to be in place for self regulation to be effective. In terms of sanctions, where merchants/APIs are in breach of the scheme rules, there are commercial sanctions that can be applied, ultimately resulting in Payforit accreditation being removed. Parties that do not abide by the scheme rules cannot participate in the Payforit scheme. This is a powerful commercial deterrent. In terms of Ofcom's concerns around escalation procedures for consumers, as we have discussed with Ofcom in the past, Orange is willing to discuss how this issue can be addressed via involvement from a neutral third party. However, Ofcom has thus far seemed reluctant to discuss any options other than formal (PRS) regulation, which we cannot accept.

We would reiterate our willingness to move this issue with Ofcom forward without resorting to legal action at this time. However, this will only be successful if Ofcom is prepared to discuss a real compromise solution.

***Question 6.1: Do you consider there is a consumer benefit requiring all OCPs to offer the same retail price to a PRS number?***

***Question 6.3: Do you consider this option could have any negative side-effects? If so, which ones?***

As a matter of principle, Orange is against any moves towards retail price regulation, which is essentially what is being proposed by Ofcom here. Out of all the options considered by Ofcom for improving price transparency, this would appear to be the least proportionate, and we do not support it.

Regulation of retail rates for 09 services could only be mandated after a full market review, which will be resource intensive and costly for all involved. There would also need to be a thorough assessment of the appropriate retail price point at which to regulate. This is likely to be further complicated by the fact that there is no consistent wholesale pricing regime in place (there is no wholesale regulation and an NTS call termination market review has been ongoing since 2004). With such a large number of different operators with different cost bases it is difficult to see a one size fits all solution being possible, and certainly not within a short timeframe. This whole process could take upwards of two years.

We are also not convinced that the pricing transparency benefits for the consumer would outweigh the costs of having a single retail rate. Removing the freedom to set retail rates for a competitive call origination service might lead to a revenue gap (because of an imposed lowering of retail rates and lack of control over wholesale rates), which would have to be recovered via some other way. This means there is a risk the impact might have to be cushioned via changes to pricing for other competitive and unregulated services (e.g. data services or via other number ranges, such as 08, or even inclusive minute bundle offerings).

On the other hand, of course, a single price point may actually mean that prices will have to rise for some OCPs if the single rate is set above existing retail rates after detailed market analysis. There may be no incentive for these OCPs to lower their rates below the regulated threshold, particularly as only the higher, regulated rate would be advertised in promotional materials for services.



In the absence of robust evidence that the lack of a single price point is causing consumer harm (in effect that competition is failing to deliver for consumers), it does not seem proportionate to pursue this option at this stage.

In terms of *pricing communication*, there is logically a benefit in having one single consumer facing price point. Indeed, from a mobile perspective, this is already achievable, having been delivered voluntarily by the industry via shortcode pricing. Aggregators/content providers have control over the retail price for their service as they can go to each of the terminating networks, look at the available terminating rates for their desired platform (e.g. voice, SMS, MMS) and choose the same price point across networks if they so wish (and if such price points are available across networks).

This system is possible because the mobile operator is both the originating and terminating network. A single price point is not possible from an 09 perspective because the originating network and terminating network are rarely the same and therefore the service provider cannot influence the retail rate. In short, service providers already have the choice to offer a single price point on mobile; there is no need to force one onto the market via regulation for 09.

We note Ofcom's reference to the new EU Framework and the possible powers national regulatory authorities may have – if the latest Council Common Position is accepted by the European Parliament and this is still not confirmed – to set maximum tariffs for particular number ranges in the interests of consumer protection. These proposals have not yet been adopted and therefore it is premature to assume that Ofcom will be afforded these powers.

Moreover, the power is not to set a fixed rate, but a maximum rate (i.e. so that consumers are not charged excessively). As described below (6.6) the concern around a “maximum cost” approach is that it could incentivise all operators to cluster around the maximum level, therefore undermining competition and the consumer interest. We do not believe Ofcom should use this power as a catch all defence for retail pricing regulation. There must be clear evidence of a consumer protection requirement before such powers are exercised and we do not believe there is consumer detriment caused by 09 rates being set competitively.

Ofcom announced in 2006<sup>2</sup> that it would look to improve call cost communication through the Numbering Plan and said that it would consult on this in the latter stages of 2006: “*We will raise consumer transparency by developing tariff descriptions that give information on call costs regardless of the type of line a call is made from*”. However, Ofcom has not considered this issue to be sufficiently important to be addressed even three years later. We would suggest that before Ofcom considers retail regulation, it first considers whether the Numbering Plan is still clearly communicating service types/costs to consumers and if not, what enhancements can be made. That being said, such a review of the numbering plan must focus on *generic descriptions* and must not stray into the realms of retail regulation with the introduction of charging caps through the numbering plan.

---

<sup>2</sup> <http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/statement.pdf> (1.45)



**Question 6.4: Do you consider PCAs would improve price transparency in the PRS market?**

In theory, PCAs should improve price transparency, but in practice, the cost of implementation is likely to outweigh the benefits.

Firstly, there are concerns around the effect PCAs may have on certain equipment and services, such as burglar and personal alarms. Network PCAs can cause such equipment to time out, thereby posing a serious risk to citizens. Ofcom was sufficiently concerned about this discovery to retract regulation on 070 pre-call announcements. Worryingly, this showed Ofcom had required the implementation of PCA regulation for 070 without first considering the wider consequences. Network PCAs are not a simple matter of an IVR change. They are likely to have a wider impact on networks and services. We fully support Ofcom's proposal to conduct a full and thorough analysis of PCAs before considering this option in further detail.

Secondly, the implementation of network PCAs is very costly, particularly where customer/service specific pricing information has to be provided, rather than a general statement (e.g. a maximum call charge). Ofcom also reached this conclusion on costs in 2006 when looking at the issue as part of the NTS review<sup>3</sup>. For one, as networks will not have control over the services operating behind a number, it would seem likely that technical changes would have to be made to allow dynamic pricing information to be provided (and Ofcom must bear in mind that there is likely to be more than one price point for each number range – and that different customer price plans may charge different amounts for calls to different numbers as well). The cost of implementing and maintaining PCAs will likely need to be covered via higher cost of calls for consumers. However, whilst 09 terminating operators would arguably benefit the most from this obligatory spend on PCAs, they would not be contributing to the one off or ongoing costs of maintaining this information. This imbalance would need to be addressed. Indeed, a requirement on terminating providers to provide the pre-call announcement may be a more cost efficient and proportionate option.

Thirdly, regardless of whether PCAs are required at originating or terminating network level, there will always be the ongoing complexities of monitoring and updating IVRs to ensure the correct information is being relayed to consumers. This will add significant operational costs.

Fourthly, consumer attitudes towards PCAs are unclear based on existing research. Ofcom's latest research (annex 7) would suggest that, out of the three prompted options for increasing pricing information (more information with bills, more information with advertising and pre call announcements) consumers would tend prefer pre call announcements, but this is inconclusive. Whilst consumers may support PCAs, research shows that almost half also find them annoying<sup>4</sup>. This contradiction needs to be further examined in order to understand consumer reactions to PCAs and the impact on their use of services. For instance, consumers find being made to "hang on" before being connected frustrating, and PCAs would be seen to increase connection times. Other consumers may mis-understand the free to caller nature of PCAs, thinking they are charged on connection, which may deter them

---

<sup>3</sup> E.g. see 3.27/3.101 *Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services* and 6.119 *NTS: A Way Forward Consultation*

<sup>4</sup> 1.30 NTS: A Way Forward Consultation [http://www.ofcom.org.uk/consult/condocs/nts\\_forward/nts\\_way\\_forward.pdf](http://www.ofcom.org.uk/consult/condocs/nts_forward/nts_way_forward.pdf)





from making any calls at all. Ofcom also has anecdotal evidence that regular users of directory enquiry services find the tariff announcements provided by service providers prior to connecting calls to destination numbers annoying<sup>5</sup>.

Finally, it is worth noting that PCAs would not work for text based services or any other future non voiced based services. Therefore, it is not a technology neutral or forward looking solution.

***Question 6.5: Do you consider Ofcom should carry out such a study? If so, which aspects should such a study cover?***

Following a review of all the policy options and the responses to this consultation, if Ofcom remains of the view that PCAs are still a viable option, then it would be essential for Ofcom to conduct a detailed study, weighing up the costs and benefits, to confirm its thinking. As highlighted above, Ofcom's failure to do this as part of their work on 070 and 0870 could have led to significant consumer harm.

We agree with the list of issues proposed for the study. However, we believe market research into consumer attitudes must also be conducted to understand the full picture. Moreover, there should not be an assumption that PCAs can only be conducted at OCP level. The terminating provider, who would reap the most benefits from PCAs, would also likely be able to provide free-to-caller pre call announcements.

***Question 6.6: Do you consider including BT's tariff and a maximum tariff for the PRS in PRS advertisements would improve price transparency in the PRS market?***

We are not convinced of the merits of this proposal (although it is the "least bad" out of all the proposals put forward by Ofcom).

Firstly, we would be concerned that such an approach could create adverse pricing incentives, resulting in prices across networks clustering around the maximum price point.

Secondly, the cost to service providers/information providers of maintaining this information on their promotional material needs to be taken into account. That said, whilst this will be resource intensive to do, it is not impossible. There are tools available to assist the SP/IP in this regard, for instance the launch of [www.callcosts.co.uk](http://www.callcosts.co.uk). This is because OCPs are already obliged to publish complete tariff information and therefore this is already in the public domain. SPs/IPs should have confidence that the information they are promoting is correct, because there is a regulatory obligation on OCPs to ensure this. If Ofcom were to pursue this option, it should avoid stoking the concerns currently prevalent in the participation TV market where broadcasters are nervous about using OCP pricing information because of their regulatory responsibilities to ensure correct pricing. If SPs/IPs have sought to ensure the information is correct and up-to-date and can demonstrate this, Ofcom should be content

---

<sup>5</sup> A7.17 NTS: A Way Forward Consultation



that best endeavours have been made. They cannot be held responsible for OCP's regulatory compliance.

Thirdly, it is not clear that Ofcom has considered the consumer experience. We are increasingly concerned with the amount of regulatory information that must be provided to customers at point of sale – providing customers with too much information may actually be detrimental and can lead to “information fatigue”<sup>6</sup>. With so much information provided at the same time – how can consumers distinguish what is the most important and relevant? If Ofcom does decide this information is necessary, it should first consider what other information the customer is provided with at point of purchase and whether all this information is still pertinent to the customer journey. Providing more and more information does not make for more informed consumers; providing useful and meaningful information does.

***Question 6.7: Do you consider the name of the OCP with the highest tariff should be included?***

No. We are not convinced that this would bring incremental benefits for the consumer when compared with 6.6 above. Ofcom expects that “naming and shaming” may induce the operator charging the highest amount to reduce their pricing. However, in reality, in view of the plethora of different PRS services, some of which have relatively small audiences, being named as “most expensive” in some promotional material will not lead to a pricing refresh, particularly in view of the complexities of pricing PRS numbers. On the other hand, the requirement to include the additional information would make the pricing message longer, thus increasing the potential for causing customer confusion.

Furthermore, there would be additional practical difficulties. What would happen if more than one operator used that same retail price point, which is very likely to occur if Ofcom is proposing to specify a maximum limit?

***Question 6.9: Could you provide us with an estimate of cost information regarding the collection and updating of tariff information (for SPs and OCPs)? Do you believe there are there any other costs involved under this option?***

From an OCP perspective, we do not envisage any additional costs as we already publish comprehensive 09 pricing information under our GC 10 and 14 obligations and the information is available to the public.

***Question 6.10: Do you agree with our proposal to expand the PhonepayPlus number checker?***

Yes. This is a useful tool for regulators, industry and consumers alike and we would support its enhancement. However, much work can be done to improve the accuracy of the

---

<sup>6</sup> <http://www.berr.gov.uk/files/file44367.pdf>



information currently provided, and we are working with PhonepayPlus to do this, via the ILP working group. For example, the number checker does not differentiate between the cost of different services operating on the same shortcode (SMS, MMS, video) or between MO and MT costs.

***Question 6.11: Which criteria should be used regarding numbers to be included in the number checker (e.g. revenues, complaints over the last X weeks etc)?***

***Question 6.12: What information should be included per number in the number checker?***

Ideally, all live shortcodes/premium rate numbers should be contained in the tool so that all queries can be dealt with and undue concern is avoided. For example, if a customer does not find any pricing information in the number checker, they may presume the service is not legitimate. However, at present, resource constraints, quite understandably, mean this is not possible, because the uploading of information to the search tool is a manual process. As this information needs to be carefully maintained to ensure its accuracy, we can understand that there are limits to the volume of numbers the number checker can currently contain.

The PhonepayPlus ILP working group is currently looking at the parameters and operation of the number checker. Orange is already participating in this working group and will continue to work to ensure that we have a fit for purpose number checker that is useful and helpful to consumers.

At a general level, we would make the following points.

- The information to be returned must be defined by the main purpose of the number checker: is its aim to give customers more information on a service they have been charged for or to give them details of someone they can complain to, or both? If both, the amount of information provided will likely need to be condensed in order to keep the search responses user friendly.
- The information provided must be clear that more than one service may operate on a mobile shortcode. For instance, some shortcodes are shared by different information providers offering a variety of services (or different services offered by the same information provider using different key words) and these shortcodes can support various types of platform (SMS, MMS, voice, video). The current number checker does not make these distinctions, which could mislead the customer e.g. they may be told a price that applies to service A operating on the shortcode, when in fact their query is in relation to service B. Again, the key is to ensure a balance between accurate and complete information and any resource and user-friendliness constraints.

Therefore, at this present time, we would suggest the following information needs to be provided from a shortcode perspective. However, these are our early thoughts and viability/cost/usability also needs to be taken into account.

*Dedicated short codes*



- Brief / general description of the service
- Service Provider Name
- Aggregator Name
- Cost of MO messages if SMS or MMS or cost per min if voice/video
- Cost of MT messages if SMS or MMS
- Explanation of charges (1 x MO and 2 x MT etc)
- Customer Care number
- Opening Hours
- Customer Care e-mail address
- Website details if applicable

*Shared short codes*

- Details that this is a shared short code used by more than one service provider and explanation of Aggregator / SP
- Aggregator Name
- Aggregator Customer Care number
- Opening Hours
- Customer Care e-mail address

***Question 6.13: Do you agree PhonepayPlus should carry out an analysis into the benefits of requiring SP/IPs to adopt a formal complaints procedure?***

Orange agrees with this proposal and is participating in PhonepayPlus's working group on this matter. However, we are concerned about the potential for scope creep. Whilst it is understandable that PhonepayPlus wants to understand the end to end customer journey, the implication of this exercise is to establish an end to end complaints handling process for PRS. In other words PhonepayPlus would ideally require all parties in the value chain – including originating networks – to be subject to its complaints handling standards. This would in effect mean that Orange's complaints handling systems and processes would not only be regulated by Ofcom, but also potentially by PhonepayPlus on a relatively minor aspect of our service, which is obviously duplicative and disproportionate.

Complaints about PRS constitute a tiny proportion of the total contacts Orange receives on a daily basis and it is unrealistic and intrusive to suggest that changes to such a complex operation might be required in order to deal with the relatively minor issue of PRS. Such an approach would have a significant and extremely costly impact on our call centre operations.



Ofcom already ensures that we have clear complaints handling procedures in place (and these are designed to deal with all types of customer query) and is already reviewing the regulatory framework in this regard. Furthermore, we are already required to set out clearly how we handle PRS complaints via GC 14. We do not believe that additional regulation of OCP's complaints handling processes is necessary. PhonepayPlus should focus its efforts on service providers/information providers who need to take responsibility for dealing with consumer issues.

In terms of the proposed complaints procedure itself, PhonepayPlus should avoid being prescriptive about how the procedure should be implemented and what it should look like. Customer service is a key competitive differentiator and central to a brand's identity. Poor customer service is rarely rewarded with loyal customers in a competitive market.

***Question 6.14: Do you consider that in light of developments in the PRS market, IPs should be targeted as a point of regulation, in addition to SPs or on their own? If so, what kind of rules should be applied to IPs and/or SPs?***

Orange agrees that IPs should be targeted as a point of regulation. The IP is responsible for the sales and marketing of the PRS service. The SP simply facilitates this customer interaction. Targeting regulation at the point where customer harm is caused should result in more responsible IP behaviour and ensure regulation is focused on the point of potential customer harm.

In a mobile environment, SPs should be required to perform more due diligence, but should not be held otherwise responsible for IP's bad practices (unless a lack of due diligence has led to consumer harm). Orange understands the benefits from a regulator's perspective of targeting regulation at the SP level, as this is a much more identifiable body. However, whilst this may be administratively easier for PhonepayPlus, it may not be the most effective means of preventing harm. Should PhonepayPlus fail to be able to contact the IP in a new framework where regulation is focused on the IP, the SP should be required to take responsibility for the breaches and questioned around the level of due diligence conducted before signing on the content provider. This would incentivise due diligence at point of connection whilst minimising the burden on compliant service providers.

We agree that it would be useful for information on IPs who are persistently in breach of the PhonepayPlus code and who have been banned from operating certain services to be pushed out to registered Service Providers. This does not necessitate an IP registration database but a simply email alert service.

***Question 6.15: Do you consider there are other options for a registration scheme / reputational database which have not been included in these studies?***

***Question 6.16: Which is your preferred option, and what are the reasons for this?***



We have no objection to the concept of a SP/IP database in principle, but our concern is that a database must not be implemented (whether reputational or registration) just because it seems like a “good idea”. It must have a clearly defined purpose.

Ofcom's consultants conclude that the “financial justification” for a centralised registration scheme is dependent on the reduction in the number of breaches of the Code of Practice by SPs. The question that needs to be answered is how such a registration scheme would reduce complaints, so that any database can be designed accordingly. Indeed, there may be alternatives to a database for reducing complaints. An early warning system or more proactive testing could also meet this requirement. All these options need to be explored. There must not be a fixation on a database as a panacea, particularly where the financial benefits are difficult to quantify until after the event.

If a database is still considered essential further to consultation, we must undergo a comprehensive requirements gathering exercise so that we are clear on what issues the database would seek to resolve, what information it therefore needs to include, and how this information should be used. For example, is the database designed for due diligence, to aid enforcement, to reduce complaints levels, to enable PhoneyPayPlus to issue Prior Permissions or a combination of all/several of these points? How are stakeholders are expected to use and act on the information? Unless these questions are addressed, we risk introducing a database that may not be fit for purpose.

Once we have a clear view as to the purpose and use of the database, we can better define what categories of information to include e.g. do we want to include entire adjudication histories for an SP/IP or just include recent (significant) cases? Each field that the database will contain must be of demonstrable use and utility. This will help us form a better view as to costs versus benefits and indeed how costs for the database should be apportioned (i.e. those who benefit from efficiencies should fund the database). It may be that the costs should not be funded out of the PhoneyPayPlus levy.

We see that there are certain general pros and cons with a database approach

- *Advantages*

There may be benefits from a fraud/scam prevention perspective. Unscrupulous market players may be deterred from entering the market (bureaucracy can discourage rogue players) or will not be able to promote their services because responsible industry players, having done their due diligence, know not to risk doing business with them or will build in additional checks if they choose to do so..

- *Disadvantages*

The PRS industry's success has been due to the innovative nature of the market, notably smaller, niche market players. We would be concerned if the registration process became so bureaucratic and expensive that it deterred legitimate new players from entering the market or prevented industry players from doing business with them, because of the due diligence requirements. Due diligence is important, but it must be proportionate and must not constitute a barrier to entry.



There is also an argument that the database would only serve to “punish” compliant players by making them register even though they have a good track record and are offering legitimate services.

We would also highlight that, while we agree that it will likely be necessary for director details to be contained in the database in order for it to be effective, we must ensure that any information included is objective and factual. This information must allow companies to make their own, independent business decisions. Otherwise, there is a risk of legal action or disputes due to perceived reputational damage. Only PhonepayPlus should be able to prohibit IPs/individuals from operating in the market, and this must be based on objective information. For instance, IPs should be flagged as high risk only if there have been a series of unresolved, serious breaches and not solely because PhonepayPlus suspects wrong doing.

***Question 6.17: Do you agree with our analysis that PhonepayPlus should run a registration scheme / reputational database?***

Yes.

***Question 6.18: Do you agree with the options identified regarding call barring facilities?***

We do not believe that there is any requirement for regulation in this area. Orange already offers 09 call barring services without regulation and we do not believe it would be appropriate or proportionate to regulate for shortcode barring. There are low levels of use of call barring, even though it is widely available (86% do not use call barring<sup>7</sup>) and the expected costs of implementing shortcode barring are expected to be high.

Significant investment would be required to implement shortcode barring on our network. In order to mitigate this, any barring facilities would have to be introduced during our regular platform upgrade cycles, rather than as a bespoke change required by regulation. However, before Ofcom pursues this option, as with PCAs, there is a need for a full and rigorous cost benefit analysis in the first instance.

*All queries in relation to this response should be to Clare Seabourne, Senior Regulatory Analyst, Orange, The Point, 37 North Wharf Road, London W2 1AG – [clare.seabourne@orange-ftgroup.com](mailto:clare.seabourne@orange-ftgroup.com)*

---

<sup>7</sup> 6.98 PRS Scope Review