

The PRS Scope Review



Response to consultation by the Premium Rate Association for and on behalf of its members.

July 2009

Introduction

The Premium Rate Association (PRA) thanks Ofcom for this opportunity to add comment to this consultation piece.

As a non profit, membership driven, trade organisation operating in the Premium Rate telephony sector we welcome appropriate regulation to protect consumers. Our members understand the need for balanced regulation to instil public trust in the premium rate billing mechanism and we support all relevant and appropriate industry agreed regulatory change in this arena.

The PRA welcomes the review of the scope of premium rate regulation, which it believes, in conjunction with the construction of the PhonepayPlus 12th Code of Practice, is an opportunity to provide a complete regulatory framework which enables industry whilst protecting the consumer.

The sector is characterised by rapid technological innovation, which it is acknowledged places particular pressure on regulatory drafting. We believe that the solution to these issues is regular dialogue between the regulator and industry. The PRA looks forward to working with Ofcom to build and maintain the strong relationship already in place between our two organisations and facilitate this interchange of ideas.

Question 4.1: Do you agree with our analysis of the characteristics of the PRS supply side and the possible concerns related to these characteristics?

We believe that Ofcom's analysis provides a technically accurate, though simplistic, snap shot of the industry supply chain. Whilst the analysis is in keeping with current regulatory interpretations, it does not provide the detail that is needed to fully understand and regulate issues directly at source. It is necessary, in fact a requisite, to fully understand the money transfer in the industry.

It should be noted that the Network, service provider and Information provider may be one and the same in some instances.

Within the Information Provider classification is a complex mix of companies supplying products and service to multiple Service Providers. Whilst it is true that the Service Provider acts as the gateway between product and consumer, addressing poor practice at this level may fail to remove the true cause of non compliance and allow the IP to continue poor business practices through other Service Providers. Contracts should be in place to enable each party in the value chain to be identified with their relevant obligations defined.

We believe a more extensive and detailed analysis of the makeup of the industry may benefit Ofcom in addressing consumer harm.

The old licensing regime provided greater transparency and facilitated the regulator to act more quickly against consumer harm. The relaxation of licensing conditions has resulted in an increase in Network Operators, over which Ofcom has a reduced visibility and control.

During its meeting with Ofcom in June, the PRA, along with other trade groups, was specifically invited to advise Ofcom on the problems of defining Ofcom regulatory scope, given future circumstances where other utility providers may provide the facility to bill non-core products to customer bills. We believe that such a consideration has revealed to Ofcom that the evolution of PRS has stretched Ofcom outside of its true regulatory remit.

The fact that communication providers have widened their scope to become financial providers should not in itself be sufficient grounds for Ofcom intervention, nor for its agency PhonepayPlus. It would be considered rightly perverse that high street supermarkets which have now widened their operations to sell insurance, should be accountable to the FSA for the quality of its cornflakes. The argument is equally as relevant to the distinction between networks wearing the dual hat of communication provider and financial provider.

We would invite Ofcom to consider whether, at the network level, it believes the PRS billing mechanism to be intrinsically similar to credit card and debit card transactions. In these circumstances it may fall to the FSA to regulate what are essentially financial products, rather than communication network issues.

We believe that Ofcom would benefit from restricting its regulatory scope to ensuring that appropriate infrastructure exists to transit any and all messages over an electronic communication in messages from point A to point B in its intended form. How a message is actioned on receipt should not fall within Ofcom's regulatory scope.

There would be no ambiguity over the scope if regulation of all financial payment mechanisms were passed to the FSA and the regulation of product quality to trading standards and the courts. There is nothing within the characteristic of PRS products that render them distinct from other retail purchases, ring tones being a type of software not dissimilar to those offered in high street computer shops; Chat and advice line, not dissimilar to visiting a consultant paid by the hour; and pictures music and videos are equally available in high street music shops or newsagencies. Therefore the same mechanisms of recourse should apply to all retail transactions.

In deed the characteristics of the PRS payment mechanism may already open the door to an application of the consumer Credit Act 1974 as the best course of consumer redress for contract phone accounts. It should fall to the Telecom Network to refund all genuine consumers, with the fall back of the ombudsman service, which already exists at a network level, for the adjudication of complaints.

This system is already in place, though seldom utilised. Free market forces would see Network quickly discontinue the provision of facilities to service providers who are negative revenue streams and correct the market without regulatory intervention. Consumers are already well versed in their statutory rights for retail purchases and should be advised that these same rights extend to PRS purchases.

We realise that such whole scale review of regulation would be a considerable step, though we believe that Ofcom has now reached a junction, through the Scope Review, where such a step would be timely and appropriate. If Ofcom continues, without revision, to take an interest in the wider contractual issues of financial arranges and transaction conducted over a communications network, it will find it increasingly difficult to justify its scope of regulation as the PRS industry evolves.

Given that Ofcom through its agency PhonepayPlus has set itself up as the arbitrator of the fairness and legality of purchases of PRS services, surely the same argument must extend to all transactions conducted over an electronic communication network, including card payments where details are given over the phone, or indeed to verbal contracts in telephone conversations. In this logical progression it becomes clear that Ofcom and PhonepayPlus have unwittingly confused the boundaries between the regulation of a communication network and other more generic commercial issues.

The likely response is that the immediate and impulse nature of PRS transaction renders them distinct from other transaction types, necessitating Ofcom's additional intervention. For such an argument to hold weight, we would question why vending machines and arcades machines, which are equally impersonal impulse purchases, do not then require the same additional consumer safe guards.

Having reflected on Ofcom's dilemma, the PRA can understand the difficulties that Ofcom has encountered in defining PRS scope and can in the circumstances see good reason for referring regulation of PRS to the FSA and Trading Standards so as to sit alongside other similar products and services. This would no doubt free up Ofcom to concentrate on its core responsibilities.

In any respect we are concerned that the definition of PRS needs to be accurately defined to prevent regulatory creep. For example the characteristics of mobile phones generally appear to meet the current criteria for Premium Rate and whilst PSDN and credit card calls do not. A tight definition is required to ensure that both provider and regulator are clear what falls within scope and what does not.

Question 4.2: Do you agree with our analysis of the demand characteristics of PRS? Do you think there are additional characteristics which are not included in our analysis?

We would concur with Ofcom that PRS content is generally consumed at the point of purchase, 'experience goods'. The subjective nature of the consumer's experience can present Service Providers with difficulties in identifying genuine complaints from those users who might abuse the complaints system to obtain free access to services. As Service Providers are still liable for making network outpayments when processing refunds, as well as bearing administrative costs, there is an understandable desire to minimise any systemic abuse of Service Provider goodwill, which could in turn place considerable strain on the business.

We would disagree with Ofcom as to the extent of issues presented by 'Bill-Supply separation'. It is currently and likely to remain a regulatory requirement that service providers identify themselves and provide a customer service number within all premium rate promotions. Customers therefore are provided opportunity to identify the company they are purchasing from should it be necessary to seek redress. In the event that a customer is unable to recall a particular number appearing on the bill then this can normally be obtained from their Network Provider, or the PhonepayPlus Number Checker.

We believe there that it is needlessly restrictive to predict and restrict the PRS payment mechanism to billing purely via the phone bill in the future, though

acknowledge that this is the current billing arrangement. There may well be scope for opening the payment mechanism to integrate with other billing entities. Given the clear financial nature of the PRS billing mechanism, we believe that there may be an argument for fully integrating PRS regulation with the regulation of other financial payment mechanisms.

Current regulatory restrictions ensure a price cap on premium rate transactions and therefore Ofcom are correct to identify low expenditure purchases as a current PRS characteristic. Given the right consumer protection measures the scope for tariff points to be increased to enable the PRS payment mechanism to be used for a much wider variety of purchases. We would therefore caution against price points being used as a future defining characteristic of PRS.

Whilst we do not disagree with Ofcom's observations as to the ease of the sales process, we do believe that consumers are made aware of the cost of using purchasing a product or service at the point of promotion. The impulse nature of PRS purchases should not absolve consumers of responsibility for their buying decisions when pricing is clearly presented.

We note in relation to analysis of 'inappropriate or offensive content' that this is neither distinct in that it does not apply to all PRS services, nor is it distinct in that PRS is not the only purchase mechanism for adult orientated content. It is suffice to say that whilst some PRS content is of an adult nature, the industry already takes step to prevent access from those under 18, through age verification barring at a network level.

There is certainly scope for the use of the PRS payment mechanism by children, though we believe that the perceived level of consumer harm may be exaggerated given that parents have access to barring arrangements or spending caps to control purchasing by their children. Whilst we believe that the industry takes a responsible approach to protecting children from harm, we would support appropriate and balance regulation to protect children from less scrupulous operators.

Question 4.3: Do you agree with our assessment of the potential consumer harm in a situation where PRS regulation is ineffective?

The Premium Rate Association strongly supports the need for appropriate regulation in order to build consumer trust. Whilst there are many reputable operators within the industry, we also acknowledge the consumer harm stemming from a small minority of dishonest operators. We welcome appropriate regulation to protect both consumers and variability of the industry.

It is also clear that unintentional consumer harm also results from the lack of pricing transparency when calling cross-network. We believe that the regulator

has an important part to play in addressing these types of issue. We believe that pricing transparency is now one of the major barriers to building consumer trust.

Whilst we acknowledge the benefits of effective regulation, it is important to recognize that over regulation may be equally damaging to industry and reduce choice for the consumer.

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

An analysis of data from PhonepayPlus indicates that Mobile related PRS now forms the majority of consumer complaints. Consumer misunderstanding about subscription services forming the vast majority of these complaints. The premium Rate Association recognised this trend and was broadly supportive of the proposals contained within the PhonepayPlus Mobile Review, which echoed a number of solutions that the association believed necessary to address consumer harm.

We believe that the implementation of consumer protection measures contained in the Mobile Review has made a positive contribution in addressing consumer harm and that this is now being reflected in a downward trend in complaints received. We believe that given that any new regulator measures requires time to produce fruit it may be premature to conclude to what extent regulation is lacking.

It is our strong belief that where consumers are provided with clearly stated terms and conditions and pricing information that they bear appropriate responsibility for their purchase decision. A strong distinction should be made between cases where consumer have not been provided with sufficient information and those case where the consumer has simply failed to take note of the information made available. We believe that this distinction has not always made by the regulator in the past, though welcome recent action by PhonepayPlus in taking note of this factor when dealing with complaints. We hope that Ofcom will apply a similar mindset in its regulatory stance.

The Premium Rate Association is pleased to note that the work it has carried out with the regulators and through member initiatives has contributed positively to a reduction in fixed line consumer harm. We hope that Ofcom and other regulatory bodies will continue to make use of the association considerable expertise to produce the correct regulatory solutions for mobile technology.

The Premium Rate Association has been warning of the consumer harm posed by the lack of pricing transparency for all PRS telephony, particularly Mobile, for over a decade and we welcome Ofcom's eventual acceptance of this as an issue. We have previously proposed regulatory solutions to Ofcom and now look forward to a meaningful discussion about addressing this substantial issue.

We acknowledge the importance of effective consumer address and would draw Ofcom's attention to the work being carried out by the Premium Rate Association and other members of the PhonepayPlus Industry Liaison panel to assist PhonepayPlus in building a robust complaint and customer service framework for the industry.

Question 5.1: Do you agree with the application of the characteristics to the services?

We would broadly agree with the application of service characteristics, though would disagree with the extent that product experience is a defining factor for some service types.

Services such as '08000 mumdad' and text rather than video based football goal notifications are not likely to be quality driven as consumers will either receive the service or will not, there is very little scope for value add to enable quality to become a defining characteristic.

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

We do not disagree with the analysis, though believe that this presents a worse case scenario. The majority of operators seek to provide good quality services, which will attract repeat business.

The analysis in relation to potential exploitation by children does fail to take account of barring arrangements at a network level.

We would urge caution that regulation should not seek to replace common sense. Consumers are provided with both pricing information and contact details within promotional material and providing this is prominent the consumer should bear responsibility for a purchase decision.

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

We believe Ofcom's assessment of consumer access to alternative dispute resolution services to be accurate.

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

During Ofcom's 2008 consultation on self and co-regulation the Premium Rate Association put forward an argument for co-regulation of premium rate service.

We concur with Ofcom's view that whilst the majority of companies involved in premium rate services would take a mature and consumer focused approach to self regulation, such a system may be abused by other less reputable companies.

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.

We believe there remains a strong case for co-regulation, though feel that self-regulation, would be unlikely to benefit the industry or consumer at this present time.

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

It is the Premium Rate Association's long standing belief that a set retail price would be the best, preferred and essential solution to deliver pricing transparency.

Question 6.2: If you do believe there is a consumer benefit, do you have suggestions as to how this option could be implemented?

The simplest solution would be a single universal charge for transiting a premium rate service across all networks.

If Ofcom are not minded to implement a single retail price across all OCPs, then a rate specifically tied to the OCPs standard call rate should be considered.

As OCPs do not intrinsically add value to a premium rate service and only act as a billing provider, Ofcom may be minded to look to the arrangements in place to manage other similar payment mechanisms such as Visa, Mastercard and Maestro to identify solutions.

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

We note Ofcom's analysis of the possible negative implications of retail price setting. Whilst not insignificant these concerns could be mitigated by setting a suitable pricing ceiling.

We perceive that as consumers are currently unaware of the level of mark-up applied by the OCPs, that the proposed consumer safeguards provided by competition are already minimal.

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

Whilst PCAs would clearly be an improvement to pricing transparency, they would only be of full benefit if they provide the caller with a price specific to their inbound CLI. A pricing announcement that provides a generic range of costs is unlikely to benefit the consumer and may add to undue delay.

Pricing information that states the maximum price may also have a negative impact on a Service Providers ability to retain business, if consumers are given the impression that a call may cost them more than it does.

Whilst the PRA would be supportive of measure that would improve pricing transparency, we believe that solutions should be favored that enable consumers to easily understand the pricing of calling or texting a service prior to interacting.

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

We are strongly supportive of an Ofcom study on measures to improve pricing transparency. It is our belief that the lack of pricing transparency is a major barrier to building consumer trust and a contributory factor to consumer harm.

Addressing this issue is beyond the scope of any one Service Provider or Network Operator and not naturally addressed by free market principles. We believe that regulatory intervention is necessary to achieve a solution.

The Premium Rate Association's preferred solution would be a recommended retail price. Whilst we understand that such a solution would require a careful consideration of the law, we do not believe that this would be in itself prohibitive. We would encourage Ofcom to include a full analysis of viability or legal options for such a measure within its study.

We would of course support an analysis of other options, such as pre-call announcements, for due consideration.

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?

Stating a maximum tariff as opposed to 'calls may cost considerably more' is likely to be preferable, though should not replace the need for a solution that provides the consumer with complete price transparency.

Absolute pricing transparency has to be the goal and due to market conditions unless an RRP is set by Ofcom this would not be possible.

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

If Ofcom refuses to intervene in order to set interconnect rates or a RRP, then an informed consumer is key to enabling the principles of competition to regulate the market. Stating the name of the highest cost provider is likely to provide premium rate customers with the information required to assess their network provider and allow consumer demand to drive down price.

Question 6.8: Do you consider there are any additional implications linked to this option, apart from the ones we have set out above?

We are concerned that a requirement to add yet further details to the terms and conditions presented to consumers could result in more not less consumer harm.

Consumers are unlikely to read large amounts of small print and information provided must be kept to a minimum to ensure the consumer takes note.

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?

We do not have the necessary data available to answer this question.

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

We would support measures to improve the PhonepayPlus, which provides a tool to direct consumer customer service issues back to the industry. We would however question the foundation of the costs involved to facilitate the project.

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)?

It would seem sensible for all premium rate numbers currently operating services to be included in the Number Checker. All premium rate customers should be provided with a facility to identify and contact the company with which they contract.

The Number checker should be seen as a facility to enable good customer service arrangements for all premium rate providers and consumers should not have restriction placed on their access to this important information.

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

It would appear sensible to include a description of the service along with the information service providers are already required to provide at the point of promotion as stipulated at S5.8 of the PhonepayPlus Code of Practice.

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?

We strongly support the introduction of a mechanism which would allow the industry to handle its own complaints.

The Premium Rate Association is already actively engaged with PhonepayPlus in establishing a complaints procedure which would be agreeable to industry and generally supports the direction of travel.

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?

We are supportive of measures which would see sanctions directed at the area of the supply chain responsible for consumer harm. We believe that IPs have an

equal responsibility to ensure that promotions and content are compliant with the Code of Practice.

We do not believe that compliance should pass exclusively to IP. It should remain requisite on all in the value chain to carry out appropriate due diligence and foster good compliance activity.

Some of our members have suggested that the answer may lie in a simply model based on responsibly and encapsulated within a commercial contract. In the PRS industry the responsible operators are neither protected, rewarded or encouraged by the regulator or major networks to hold such values. New regulations in this industry tend to be reactionary and always at a cost to small and responsible operators.

Many of the problems in the industry can be resolved by effective commercial contracts between each party with a social and consumer responsibility element included, with the regulator only being used as an arbitrator or safe-guarder of that part of any contract as it applies to the consumer. The industry as with any other sectors should be afford the right to try and redress their consumers' issues and only after the companies complaints process has been exhausted should the regulatory become involved if the consumers issue has not been satisfactorily resolved by the PRS company.

An effective contract should be able to identify all parties and their responsibility relationship to the consumer. These contracts could be mandatory sent to Ofcom or PPP for scrutiny before completion and an appropriate Licence Type Approval issued. At the point of licence approval Ofcom or PPP would have the right to approve or reject. They would also have the right to request changes or offer a restricted type of licence.

This concept is not dissimilar to the licensing system used by, restaurants, taxis, bus operators and public houses. In each instance the public interested element is written in. This stops or controls unscrupulous operators at the first entry point to the industry and creates an immediate consumer protection.

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

We believe the registration scheme should be driven by number allocations, the process of number allocation being carried out by networks. It is the number that then results in revenue by the consumer making calls. Therefore surely there is some merit in the Network/aggregator being involved in the process of registration.

We suggested in 1998 that each person or company wanting to enter the industry had to be registered with a body who would then allocate a number to be presented to the relevant network operator. The Network Operator would then confirm that this registration number was active and would record all numbers issued to this company or individual. The revenue stream in this industry is crucial to allow any harm to be stopped.

It may also assist Ofcom to look at the registration scheme in place for companies using the credit card payment mechanism, which requires companies to be completely vetted before being offered a merchant's licence. Attached to the license are quite a number of conditions, especially in relation to the consumer and consumer protection, including the requirement to have a clear and transparent policy on pricing and promotion. The important part of the licence is the protection it gives to the consumer. That quite simply if they make a complaint, the credit card issuer can stop or delay payment to the company until the matter is resolved direct with bank or the consumer. It is effective because set out in the merchants contract are all the conditions and responsibilities for the seller to continue to hold the license and this works very well in the consumer interest .

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

We would be in favor of Option D requiring both Service Providers and Information Providers to register. By ensuring that all levels of the value chain are registered both regulator and industry have maximum visibility of those involved in premium rate provision. A registration scheme in line with option D would enable the regulator to identify those responsible for consumer harm and provide Service Providers with an appropriate tool to assist in due diligence. The registration of both SP and IP would also discourage companies from seeking to side step their obligations by claiming to be an IP when in fact an SP

We believe that an effective licensing system should use commercial contracts as the bases of good consumer practises.

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

We would have substantial concerns about the operation of a reputational database. Any database which contains information likely to be influential in decisions to form contracts would need to be supported by appropriate safeguards to ensure that inaccurate data or opinion does not unfairly impact upon the companies the database contains. The current proposal provides inadequate detail to enable us to satisfy these concerns.

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

We believe bill payers should be provided the rights tools in order to manage and control phone usage, particularly where a phone has been provided to a child. Preventing unauthorised access is beneficial to the industry if it reduces the number of complaints over disputed calls. Barring facilities appear a sensible solution for this purpose.

We would support Ofcom's proposal for further research in this area in order to find solutions agreeable to the industry.

Conclusion

We hope that our response, though frank in places, proves useful to Ofcom in developing a regulatory framework which enabling industry innovation today, whilst possessing the flexibility to protect consumers into the future.

We would welcome dialogue with Ofcom on any of the points raised in this submission. We look forward to working productively and harmoniously towards our common goals; empowering the regulator to enable the industry to meet consumer expectations.