



Audience Participation in Radio Programming

The use of premium rate services in radio: options for
improving consumer protection

Consultation

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Section 1

Summary

Background

- 1.1 Radio stations often encourage listeners to participate in the content of programming. Through phone-ins, debates and competitions, listeners are willing and often core participants in radio broadcasts, creating a sense in which radio listeners to a particular programme or station are a community with which presenters are engaged in a regular and developing conversation.
- 1.2 Increasingly, radio broadcasters have used premium rate telephony services ('PRS')¹ as the means by which listeners participate in programmes by phone and by short message services ('SMS' or 'text messages'). The development of new forms of competitions, such as auctions, and premium rate phone-ins has changed the nature of the relationship with participating listeners; they become paying customers while the station has the potential to develop a small, but consistent, revenue stream and increase listener loyalty.

Compliance concerns

- 1.3 In 2006 and 2007, numerous concerns were raised about the ways in which PRS were being used, primarily on television, but also on radio. Although the best-known investigations relating to the use of PRS in broadcasting have concerned television rather than radio broadcasting, we have recorded a number of breaches of the Broadcasting Code by radio licensees.² In 2007, we published details of three separate breaches of the Broadcasting Code, while a further two cases were resolved³ without a formal breach recorded. In 2008, ten breach cases and one resolved case were published, while a further eight breaches of the Broadcasting Code relating to competition mismanagement were sufficiently serious to warrant a

¹ PRS are defined in section 120(7) of the Communications Act 2003 ('the Act'). Under the Act, we have the power to set conditions which regulate the provision, content, promotion and marketing of PRS known as the PRS Condition. When we refer to PRS in the present consultation we mean those services defined as PRS under the PRS Condition currently in force, including premium SMS. For the avoidance of doubt, this includes all the 087 number ranges that are charged above 5p per minute for BT customers, such as 0871, 0872 and 0873 numbers which formally become PRS on 1 August 2009. For further information about the scope of the PRS Condition, including its application to some 087 services, see our statement *Extending Premium Rate Services Regulation to 087 Numbers* at <http://www.ofcom.org.uk/consult/condocs/087prs/087statement/statement.pdf>.

² Full details of Ofcom's investigations under the Broadcasting Code can be found in the Broadcast Bulletins at http://www.ofcom.org.uk/tv/obb/prog_cb/.

³ Ofcom's Guidelines for the handling of standards complaints and Cases (in programmes and sponsorship) defines resolved cases as complaints which are "satisfactorily 'resolved' without the necessity for formal intervention... Such circumstances are limited but might exist where a broadcaster has taken immediate and appropriate action and remedied the problem. A 'complaint resolved/no further action is necessary' finding is at Ofcom's discretion." See: <http://www.ofcom.org.uk/tv/ifi/guidance/standards/>.

financial penalty.⁴ In total, the broadcasters involved in these cases were fined £1.4m.

The case for further regulation

1.4 We consider that the continuing incidence of breaches suggests that further regulation may be required to protect consumers. In forming this view, we have taken account of relevant legal and regulatory considerations, as set out in detail in section 2. In particular, we believe that our duties require that we consider further regulation to protect the interests of consumers who use PRS to participate in radio programmes and related competitions. We also consider that any such regulation should have regard to our duty to secure a wide range of radio services. We believe that – while taking into particular account the potential for harm – any further regulation should be proportionate in all circumstances, as it may have an impact on the financial profitability of radio stations.

Options for regulation

1.5 This consultation builds on the findings of an earlier consultation which focussed on the use of PRS by television broadcasters, *Participation TV: protecting viewers and consumers, and keeping advertising separate from editorial*,⁵ (the July 2007 consultation and February 2008 statement). It is designed to offer a series of proposals which will serve to protect consumers and maintain trust in radio broadcasting, while taking account of the specific circumstances which apply to radio.

1.6 We examine three potential options for regulation:

- Option 1: the status quo option under which we would make no changes to the regulatory obligations on radio licensees. Instead, we would look to assess the efficacy of the RadioCentre's⁶ new *Code of Practice on Premium Rate Interaction* (attached as Annex 3 of this document) over a twelve month period. If, in our view, at the end of that period this arrangement was not working satisfactorily, we would then consider the introduction of further measures.
- Option 2: as with option 1, we would assess the efficacy of the RadioCentre's Code of Practice over a twelve month period. We would also introduce a variation to radio licences, to make clear that radio broadcasters are responsible for all aspects of their broadcast communications with the public.
- Option 3: as option 2, however this option would also extend to radio licensees the regulatory requirements placed on television broadcasters following the February 2008 statement. In addition to a licence variation, therefore, we would

⁴ The cases involving a financial penalty related to GCAP's 'One Network' of radio stations, Hertfordshire FM and various radio services provided by the BBC. Although the BBC is not licensed by Ofcom, the BBC Charter and Agreement impose on the BBC obligations to comply with the Broadcasting Code.

⁵ <http://www.ofcom.org.uk/consult/condocs/participationtv/consultation.pdf> Much of the background material to the present consultation can be found in the July 2007 consultation document.

⁶ RadioCentre is the trade association for UK commercial radio broadcasters.

introduce a mandatory regime of verification by an independent third party for PRS-based voting and competitions.

- 1.7 We consider that option 2, which also provides for the opportunity to reassess the situation in twelve months in the event of significant consumer harm, provides the best balance of consumer protection and industry interests.
- 1.8 We invite interested parties to make submissions on the issues set out in this document by **31 July 2009**. Following the consultation period, and after a full consideration of the responses that we receive, we intend to publish a final statement as soon as practicable.
- 1.9 The remainder of the consultation is structured as follows:
 - Section 2 below describes the background to this consultation, including those of Ofcom's statutory duties which are relevant.
 - Section 3 provides more detail about the work which we have previously undertaken to ensure listeners and consumers are protected and to better understand the techniques used by radio licensees to interact with listeners, including PRS.
 - Section 4 outlines our proposals for regulation of participation in radio programming and assesses the potential impact of each option.

Section 2

Legal and Regulatory Background

Introduction

2.1 In this section we set out our statutory duties and other relevant considerations that we must take into account in carrying out our duties, including those stated in the Communications Act 2003. We then explain the regulatory objectives of this consultation.

Ofcom's statutory duties under the Communications Act 2003

2.2 Ofcom has a series of duties laid out in the Communications Act 2003 ("the Act"), including its principal duty to further the interests of citizens and consumers.⁷ Beyond that, the Act specifies that we must secure the availability of a wide range of radio services throughout the UK⁸ and maintain plurality among providers of such services.⁹ It also requires us to apply standards that provide adequate protection for members of the public from the inclusion of offensive and harmful material in such services.¹⁰

2.3 The Act specifies that, in performing our duties, we must have regard to a variety of factors. They include:

- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
- b) any other principles appearing to us to represent best practice;
- c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- d) the desirability of encouraging investment and innovation in relevant markets;
- e) the need to ensure that standards are applied in a manner that best guarantees an appropriate level of freedom of expression;
- f) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
- g) the needs of persons on low incomes; and

⁷ Section 3(1) of the Act.

⁸ Section 3(2)(c)

⁹ Section 3(2)(d)

¹⁰ Section 3(2)(e)

- h) the opinions of consumers in relevant markets, and of members of the public generally.
- 2.4 As part of our duties in relation to broadcasting, we are responsible for setting standards for the content of programmes to secure standards objectives listed in section 319 (2) of the Act.¹¹ Those standards objectives include:
- a) that persons under the age of eighteen are protected;
 - b) the provision of adequate protection for members of the public from the inclusion in radio services of offensive and harmful material; and
 - c) that the unsuitable sponsorship of programmes included in radio services is prevented.
- 2.5 In setting standards, we are required to have regard to a number of matters including:¹²
- a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes;
 - b) the likely size and composition of the potential audience;
 - c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience; and
 - d) the desirability of maintaining the independence of editorial control over programme content.
- 2.6 In addition to the regulatory objectives themselves, the Act also specifies a number of responsibilities relating to the way in which we do our work. These include:
- a) a requirement to assess the impact of any changes which are likely to have a significant impact on persons carrying on businesses in markets regulated by us;¹³ and
 - b) a requirement to ensure that we neither impose nor maintain unnecessary burdens on businesses which we regulate.¹⁴

The Broadcasting Code

- 2.7 As stated above, we have a statutory duty to draw up a code for television and radio, covering standards in programming, sponsorship as well as fairness and privacy (the

¹¹ Section 319(1)

¹² Section 319(4)

¹³ Section 7

¹⁴ Section 6

'Broadcasting Code') to secure certain standards objectives, including those outlined above.

- 2.8 Following a consultation published in July 2004,¹⁵ we published a Broadcasting Code in May 2005. This Broadcasting Code came into force in July 2005.
- 2.9 Two aspects of the Broadcasting Code are of particular relevance to this current consultation. Rule 2.11 of the Broadcasting Code states that "competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known." In addition, section 10 contains principles and rules relating to commercial references within broadcast content. These include rules regarding the use of premium rate telephony services ('PRS') in programming.
- 2.10 It is also worth highlighting that, as a public authority, we have a specific duty under the Human Rights Act to ensure we do not act in a way which is incompatible with the European Convention on Human Rights. In particular, Article 10 of the Convention – the right to freedom of expression – specifies the right "to receive and impart information and ideas without interference by public authority". We must not interfere in these rights as they apply to both the broadcaster and the audience of broadcast services, unless we are satisfied that the restrictions we seek to apply are:
- a) prescribed by law; and
 - b) necessary to achieve one of the aims described in Article 10 (2) of the Convention.

Other regulatory authorities

- 2.11 PhonepayPlus (formerly known as ICSTIS) regulates PRS as defined in the Act.¹⁶ Its role is to prevent consumer harm and it regulates the content, promotion and overall operation of PRS through a Code of Practice.¹⁷ Among other things, Phonepay Plus requires: clear and accurate pricing information; honest advertising and service content; and appropriate and targeted promotions.
- 2.12 PhonepayPlus investigates complaints, and has the power to fine companies and bar access to services if the Code of Practice is breached. Other possible sanctions include ordering the service provider to pay reasonable and valid claims for compensation, and barring the individual(s) behind a company from running any other PRS under any company name on any telephone network for a defined period.

¹⁵ http://www.ofcom.org.uk/consult/condocs/Broadcasting_code/broadcasting_code/ Numerous changes have been made to the Broadcasting Code since it was first published. Readers are advised to check copies of the Broadcasting Code against the version available at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>. The last full version was published in October 2008.

¹⁶ See footnote 1.

¹⁷ <http://www.phonepayplus.org.uk/CodeOfPractice/default.asp>

Regulatory principles

- 2.13 We have published a set of principles which we endeavour to follow and which have been formulated in light of our regulatory obligations.¹⁸ Those of particular relevance to the issues discussed in this consultation are as follows:
- a) we will intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve;
 - b) we will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
 - c) we will strive to ensure our interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - d) we will always seek the least intrusive regulatory mechanisms to achieve our policy objectives; and
 - e) we will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.

Regulatory objectives

- 2.14 Given our statutory duties, objectives and principles described above, we consider that the following regulatory objectives are relevant to the regulation of premium rate services used in radio programming.
- 2.15 Our first objective is to further the interests of citizens and consumers by applying standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material, particularly those who are vulnerable and on low incomes.
- 2.16 We consider that listeners and participants in radio programming should be able to trust not only in the accuracy and propriety of all content, but also expect to be dealt with fairly when they have responded to a call-to-action by that radio station, particularly when they have paid to do so.
- 2.17 Our second objective is to further the interests of citizens and consumers by securing a wide range of radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests and the maintenance of a sufficient plurality of providers of different radio services.
- 2.18 We have set this objective because we are mindful that the outcomes of this consultation should be proportionate to the potential for harm, as they may have an impact on the financial profitability of radio stations. We will seek to avoid regulation that may place a disproportionate burden on licensees or result in any significant diminution in the commercial radio sector's investment in innovative programming that serves the broadest selection of audiences.

¹⁸ www.ofcom.org.uk/about/sdrp/.

- 2.19 Finally, our third objective is to ensure that any changes to current regulations should, in furthering the interests of citizens and consumers, so far as possible
- a) be evidence-based, proportionate, consistent, accountable and transparent;
 - b) avoid the imposition and maintenance of unnecessary regulatory measures; and
 - c) have regard to the right of freedom of expression.

Section 3

Context

Introduction

3.1 In this section we summarise the work we have undertaken over the past two years in relation to the protection of consumers participating in broadcast services. We also describe the range of techniques used by the radio industry to involve the public directly in programme content and, in particular, its use of premium rate telephony services ('PRS').

Inquiry into television broadcasters' use of PRS

3.2 In 2007, significant issues began to surface that suggested serious failures by broadcasters in the use of PRS on both radio and television had taken place, resulting in detriment to listeners and viewers. A number of investigations, both by us and by PhonepayPlus, subsequently revealed compliance failures by TV and radio broadcasters, affecting public trust in editorial standards. These investigations also demonstrated that the votes or competition entries of many viewers and listeners who were participating in programming via PRS methods, and who were therefore paying to do so, were being discounted either deliberately or through oversight by broadcasters and/or their third party agents.¹⁹

3.3 In addition to a number of individual investigations, we commissioned an inquiry, led by a member of the Ofcom Content Board, Richard Ayre (the 'Inquiry'),²⁰ who was asked to consider whether there were any systemic reasons behind the compliance failures in television.²¹ The Inquiry was also asked to make recommendations on ways in which public confidence in the use of PRS services by broadcasters could be restored.

3.4 The Inquiry concluded that television broadcasters did not always understand the nature of the obligation which they had to each viewer who chose to pay a premium in the expectation of receiving an additional service, such as a competition entry. The inquiry noted that this was a contractual relationship which went deeper than the traditional responsibility of broadcasters to maintain standards as defined in the Broadcasting Code. This was because the contract related to obligations that the broadcaster had to individual viewers rather than to the viewing public as a whole. The Inquiry's main recommendation was:

¹⁹ Full details of Ofcom's investigations under the Broadcasting Code can be found in the Broadcast Bulletins at http://www.ofcom.org.uk/tv/obb/prog_cb/.

²⁰ *Report of an inquiry into television broadcasters' use of premium rate telephone services in programmes*, ('The Inquiry'), <http://www.ofcom.org.uk/tv/ifi/prsinquiry/ayrereport/report.pdf>.

²¹ Although the Inquiry examined the use of PRS in television only, the report stated "it would be surprising, given the range of small-scale PRS-based competitions run on a large number of radio stations, if there had not been further instances of sharp or inadequate practice as yet undiscovered."

“... to make broadcasters directly responsible for PRS compliance right through the supply chain, just as they would be for broadcast content. That is the only method I can see to give broadcasters the incentive to exercise due diligence in the design, commissioning, delivery and auditing of PRS-based programming, together with effective contractual oversight of producers, service providers and telephony operators. It would place responsibility firmly where the audience already believes it to rest – with the people who commission the programmes and put them to air...”²²

- 3.5 The Inquiry therefore recommended that television broadcasting licences be amended to include a set of consumer protection requirements relating to these individual commercial transactions. It also recommended that broadcasters should be required to undertake an independent audit of their PRS processes and systems.²³
- 3.6 Although the Inquiry was concerned with the use of PRS on television, it recommended that, if we chose to consult on proposals to amend the licences of television broadcasters, we should also seek views on the extension of those provisions to radio licensees.²⁴

Consumer participation in television programming

Ofcom's consultation

- 3.7 We consulted on the Inquiry's recommendations between July and October 2007 in *Participation TV: protecting viewers and consumers, and keeping advertising separate from editorial* (known as 'the July 2007 consultation').
- 3.8 We agreed with the Inquiry's conclusion that broadcasters should be directly responsible for PRS compliance throughout the supply chain. Moreover, we considered that the problems identified by the Inquiry were not confined to financial harm incurred by viewers or listeners who took part in programmes by means of PRS, but also related to fundamental issues of trust and integrity, whatever the means of communication.
- 3.9 The July 2007 consultation set out proposals for a licence variation, closely based on a draft licence variation suggested in the Inquiry report. The draft licence condition was intended to set out clearly the compliance responsibilities which broadcasters had; for example, a requirement on broadcasters to ensure that voting and competitions were conducted in such a way as to provide fair and consistent treatment of all eligible votes and entries.
- 3.10 In addition to the new licence obligations regarding all forms of communications from viewers and listeners, the July 2007 consultation proposed that a broadcaster's compliance processes in respect of PRS should include independent third party oversight or verification. We proposed this additional requirement, in light of both the

²² The Inquiry, para. 1.37

²³ The Inquiry, para. 1.39

²⁴ The Inquiry, para. 1.41

Inquiry's recommendation and serious compliance failures by broadcasters who used PRS, to address the fact that ineffective systems, or weaknesses within systems, could not otherwise be detected easily in practice. The listener or viewer at home would not know, for example, if a programme competition broadcast 'as live' had in fact been pre-recorded, resulting in them having no opportunity to submit a winning entry.

- 3.11 The consultation sought views on three different options for verification, summarised below:
- a) Option A: licensees should be responsible for the design of their verification systems, and should provide reports to us on request;
 - b) Option B: as Option A, but with a specified reporting cycle (e.g. annually); or
 - c) Option C: we should set out a detailed and prescriptive specification for verification, to be reported annually.

Ofcom's statement

- 3.12 In February 2008, we published our statement *Participation TV Part 1: protecting viewers and consumers. Ofcom statement on consumer protection measures for viewers participating in programmes* ('the February 2008 statement').²⁵
- 3.13 In the February 2008 statement we said that, following an analysis of the responses to the July 2007 consultation, we had decided that the measures necessary to provide consumer protection and to promote public confidence in participation techniques – and trust more generally in broadcasting – were so important and so integral to licensees' operational obligations that licences were the appropriate instruments to use to implement these measures.
- 3.14 We chose, therefore, to make variations to television licences, such that,
- a) television licensees became responsible for all means of communication with the public where that communication was publicised in programmes; and
 - b) for certain types of communication (i.e. PRS voting and competitions) a mandatory regime of verification was to be introduced.
- 3.15 Of the three options for third party verification that were considered in the July 2007 consultation, we decided that Option A was the most appropriate.
- 3.16 In the February 2008 statement, we also noted, that:
- “because of insufficient data Ofcom did not issue an Impact Assessment for radio with the Consultation. Some respondents to the Consultation argued that Ofcom should not include radio licensees in its consideration of licence amendment. In view of these facts, Ofcom is not seeking to vary radio broadcasting licences at

²⁵ <http://www.ofcom.org.uk/consult/condocs/participationtv/statement/ptvstatement.pdf>

this time but will be consulting on extending the provisions to radio later...”

Consumer participation in radio programming

- 3.17 Since publication of the February 2008 statement, we have gathered further evidence on the radio industry’s use of techniques for involving the public directly in programme content and, particularly, its use of PRS.
- 3.18 At the end of 2008, we sent an information request to 11 of the UK’s largest radio groups, as well as the RadioCentre, the trade body for UK commercial radio. Between them, these groups account for over 92% of the UK’s commercial radio sector in terms of revenue, 70% of UK commercial analogue licences and over 90% of all commercial listening hours.²⁶
- 3.19 We asked a series of questions to gain an understanding of the scale of PRS use given the size of the commercial radio industry as a whole, including breakdowns of revenue for contests and for stations as a whole for the previous three years and the amounts paid out in prizes, the types of use and the compliance procedures in place designed to build listener trust.

Types of use in radio programming

- 3.20 The responses suggested that each of the radio groups contacted had, at one stage or another, used PRS within editorial content, although the scale of PRS use varied considerably among respondents. One group, which had used PRS exclusively for competitions on a few of its stations prior to 2007, had in total generated less than £10,000 in revenue. In contrast, another group, which had been using PRS in a variety of forms for some years, had received over £1m in revenue for each of the past three years.
- 3.21 PRS use by these radio groups fell broadly into three categories:
- 3.21.1 *Auction Competitions:* In these contests, listeners were generally invited to ‘bid’ for an item, with the lowest unique bid winning a prize. Auction competition contests were generally run over a period of days, with hints and tips for entry given by radio presenters throughout the competition period. Among the respondent group, these contests were run exclusively through premium-rate SMS, with entries charged at some of the higher available rates, generally around £1.50 per entry. In all cases, auction competitions were run in conjunction with a third party that administered the text messaging service and selected the winning entry. The third party also generally acted as the competition promoter.
- 3.21.2 *Competitions:* The radio groups contacted ran an array of competitions that varied significantly in their complexity and scope to win prizes, ranging from holidays, restaurant meals, concert tickets and cash. In the vast majority of cases these were either phone-in competitions (generally requiring entrants to ring

²⁶ See: Ofcom, *Communications Market Review 2008*, <http://www.ofcom.org.uk/research/cm/cmr08/>

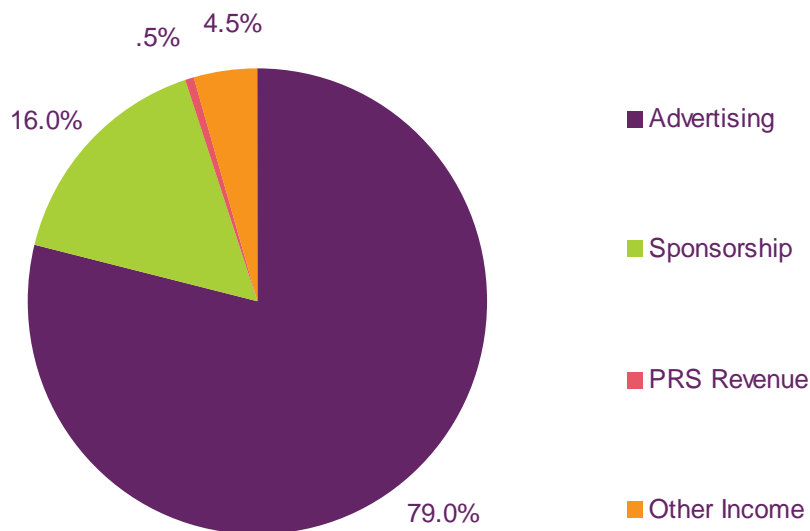
numbers in the 084 and 087 ranges)²⁷ or text-based (in most cases charged at 25p plus standard-network-rates, although some radio groups had recently introduced a 50p plus standard-network-rate charge).

3.21.3 *Feedback:* Nearly all of the groups surveyed used, or had used, premium rate telephone lines and SMS as a means to manage listener interaction, particularly during participation based 'phone-in' programming and music request shows. In nearly all cases texts were charged at 25p or 50p plus standard-network-rates while the number ranges used varied, with 084, 087, 03 and local lines all common.

Financial Value of PRS

3.22 Despite the high prevalence of PRS across the radio groups surveyed, the evidence indicated that premium-rate revenue did not account for a significant proportion of total revenue during the period in question – approximately 0.5% of the overall revenues of respondents or between £2.5m and £2.9m per annum:²⁸

Figure 1: Commercial Radio Revenue, by source



²⁷ To clarify, 084 and 0870 number ranges are not defined as PRS, although 0871, 0872 and 0873 numbers will be classified as PRS from 1 August 2009. See footnote 1.

²⁸ In light of the fact that respondents to our information request account for over 90% of the UK radio industry's revenue and that the commercial radio groups not contacted are overwhelmingly small enterprises without PRS capabilities, we have used respondents' figures as a proxy for PRS revenue across the radio sector.

- 3.23 To put these figures into context, the Inquiry estimated that a sum equivalent to 3% of television advertising revenue, approximately £100m, was generated by PRS in 2005.²⁹
- 3.24 This information adds weight to the claim frequently made to us by the radio industry that the purpose of most competition-based PRS on radio has been to generate and sustain audiences and not to raise revenue.³⁰ In many cases, PRS used for competitions are either revenue neutral or loss making. For example, all but one of the premium rate competitions run by one of the largest radio groups between 2005 and 2008 was loss making, given set-up and prize costs, while another respondent noted that cash prize competitions could only be run in conjunction with a sponsor.
- 3.25 The evidence gathered by us suggests that the income derived by the radio industry from PRS is unlikely to grow over the coming years. None of our respondents anticipated an increase, while most envisaged a continuing decline, in line with the 12% fall in premium rate revenue experienced by radio groups between 2006-7 and 2007-8. Respondents cited the 'fallout' from previous PRS scandals and the broader economic climate as the main causes of this.

Compliance measures

- 3.26 Although many of the most serious investigations relating to the use of PRS in broadcasting have concerned television rather than radio broadcasting, we have recorded a number of breaches of the Broadcasting Code by radio licensees. In 2007, we published details of three separate breaches of the Broadcasting Code, while two cases were resolved³¹ without a formal breach recorded. In 2008, ten breach cases and one resolved case were published, while a further eight breaches of the Code relating to competition mismanagement were sufficiently serious to warrant a financial penalty.³² In total, the broadcasters involved in these cases were fined £1.4m.
- 3.27 As part of our information gathering, and in light of the compliance failures noted above, we asked radio groups to explain any steps they had taken to ensure compliance with the Broadcasting Code. The responses we received were varied. One group had, for example, introduced detailed guidance for producers explaining

²⁹ Revenue from PRS in television has, however, declined significantly from this peak, following significant public concern about the use of PRS in broadcasting and the subsequent withdrawal of many television broadcasters from the premium-rate business. More recent figures are not available.

³⁰ See the response of the Radio Centre and others to the July 2007 consultation at <http://www.ofcom.org.uk/consult/condocs/participationtv/responses/>.

³¹ Ofcom's Guidelines for the handling of standards complaints and Cases (in programmes and sponsorship) defines resolved cases as complaints which are "satisfactorily 'resolved' without the necessity for formal intervention... Such circumstances are limited but might exist where a broadcaster has taken immediate and appropriate action and remedied the problem. A 'complaint resolved/no further action is necessary' decision is at Ofcom's discretion." See: <http://www.ofcom.org.uk/tv/ifi/guidance/standards/>.

³² The cases involving a financial penalty related to GCAP's 'One Network', Hertfordshire FM and various radio services provided by the BBC. Although the BBC is not licensed by Ofcom, the Code applies, in most aspects, to services provided by the BBC which are funded by the licence fee.

acceptable conduct and required all competitions to be signed off by the station managing director. Several of the other groups had also introduced requirements for senior level approval of competitions and training for editorial staff. However measures such as these have by no means been adopted on a universal basis – other groups have neither formal procedures nor competition guidance.

Section 4

Options for Regulation

Introduction

4.1 In this section we explain our reasoning for considering further regulation regarding listener participation in radio programming. We then outline a series of options for consultation, ranging from the status quo to requirements for third party verification of contests involving PRS, and invite comments on our preferred way forward.

Impact Assessment statement

4.2 The analysis presented in this section, when read in conjunction with the rest of this document, represents an impact assessment as defined in section 7 of the Act.

4.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy, we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions.

4.4 We have not carried out separate Equality Impact Assessments in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes. This is because we are not aware that the proposals being considered here, which are technical in nature and will affect all industry stakeholders equally, would have a differential impact in relation to people of different gender or ethnicity, on listeners in Northern Ireland or on disabled listeners compared to listeners in general. Similarly, we have not made a distinction between listeners in different parts of the UK or between listeners on low incomes. Again, we believe that the proposals under consideration will not have a particular effect on one group of listeners over another.³³

Reasons for considering further regulation

4.5 In formulating our options for consultation we have been mindful of the findings of the Inquiry and the July 2007 consultation, and have assessed these against the regulatory objectives outlined in Section 2. The Inquiry and the July 2007 consultation noted a concern that some broadcasters had conducted contests without due regard not only for the viewing or listening public as a whole, but also for the viewers and listeners who paid to enter contests via PRS routes.

³³ For further information about our approach to impact assessments, see the guidelines, *Better Policy-Making: Ofcom's approach to impact assessments* at: http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf.

- 4.6 Most of the cases cited in paragraph 3.26 above which relate to radio did not result in actual financial harm to participating listeners (in at least four of the cases, winners were faked because of a lack of entries). Although the financial harm caused to listeners is nowhere near the scale of that experienced by television viewers in other cases investigated by us, the level of financial harm is not, in our view, the only significant factor in deciding whether regulatory action is appropriate.
- 4.7 In particular, we consider that the often pre-meditated, deliberate and repeated nature of the breaches indicate a risk that viewers may suffer significant harm in future if regulation is not strengthened. We also consider that the fact that these incidents have occurred serves to undermine listeners' trust in the medium. Moreover, on issues as central to our primary duties as maintenance of trust and integrity in broadcast programming, we consider it is generally appropriate that we should enforce similar standards on television and radio.
- 4.8 Nevertheless, we are aware of the differences in scale between the television and radio industries and the relatively small sums generated from PRS by radio stations. We are also conscious of the significant downturn in advertising revenue experienced by the commercial radio sector as part of the difficult financial situation affecting the creative industries in the UK economy.³⁴ We are keen to ensure, therefore, that any measures we propose do not have a disproportionate adverse effect on the quality or variety of radio services available to UK citizens.

Proposals for further regulation

- 4.9 Since we began our work on the present consultation, the RadioCentre, the trade body for UK commercial radio, has produced a *Code of Practice on Premium Rate Interaction* (the 'Code of Practice') for its members – a full copy of the Code of Practice is attached as annex 3 to this consultation. The Code of Practice provides guidance for radio broadcasters on the use of PRS, including details of the various relationships involved in providing such services. It also identifies technical specifications for the management of PRS and includes requirements for the authorisation of PRS mechanics by senior management, clarity of pricing information and transparent complaints procedures.
- 4.10 In line with our regulatory principles and the regulatory objectives of this consultation, we welcome the steps taken by the RadioCentre and have included them within our consideration of possible regulatory options. It is important to note, however, that although compliance with the Code of Practice is a requirement for membership of the RadioCentre, the Code does not provide for enforcement by an independent self-regulatory body. As such, its scope is limited and it does not offer an alternative to statutory regulation by Ofcom and Phonepay Plus.
- 4.11 As noted above, we are conscious of the consequences which significant regulatory intervention may have in this area. We are therefore seeking views on three options

³⁴ The latest year on year figures available note that radio advertising revenue fell by 18% in Q4 2008 compared to Q4 2007.

that, while concentrating on PRS, also take into account the broader issues of participation in radio programming.

Option 1: To maintain the status quo

- 4.12 Under option 1, we would make no changes to the regulatory obligations on radio licensees. We would, however, assess the efficacy of the RadioCentre's Code of Practice over a twelve month period and then consider the introduction of further measures, including a verification requirement, if necessary.

Option 2: To vary radio licences without the introduction of a verification requirement

- 4.13 Under option 2, in addition to an assessment of the RadioCentre's Code of Practice as described above, we would also introduce a licence variation to ensure radio broadcasters are responsible for all aspects of communication with the public. We would not, however, include a third party verification requirement such as that introduced for television licensees in the February 2008 statement.
- 4.14 This licence variation would make radio licence holders unambiguously responsible for the management of any form of communication with or from listeners, where communication is solicited in programming. It would have the effect of assuring listeners that their calls, texts and emails will be treated properly and ensure the delivery of appropriate compliance arrangements.

Option 3: To extend broadcast television requirements to radio

- 4.15 Under option 3, the regulatory requirements placed on television broadcasters would be extended to radio licensees; namely, the introduction of a additional licence variation beyond the scope of that described in option 2, to ensure radio broadcasters are responsible for all aspects of communication with the public and a mandatory regime of third party verification for PRS.
- 4.16 In addition, the verification requirement would require a radio licensee which offers PRS voting and competitions to:
- a) obtain verification from an independent third party that its end-to-end processes comply with the requirements set out in the licence condition before using PRS in programmes for voting or competitions;
 - b) ensure that the independent third party regularly tests its use of PRS in programmes for voting or competitions;
 - c) decide the precise form of the verification and testing to be carried out by the independent third party in light of its specific requirements;
 - d) provide information about its compliance procedures and relevant data in a suitable form to Ofcom on request; and

- e) publish annually a statement signed by a designated Director confirming that it has appropriate processes in place, and giving the names of the third party appointed.

Assessment of the options

- 4.17 As discussed in section 2, we have set three regulatory objectives for this consultation against which we have assessed the options described above.
- 4.18 Our first objective is to further the interests of citizens and consumers by applying standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material, particularly those who are vulnerable and on low incomes.
- 4.19 Our second objective is to further the interest of citizens and consumers by securing a wide range of radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests and the maintenance of a sufficient plurality of providers of different radio services.
- 4.20 Our third objective is to ensure that any changes to current regulations should, in furthering the interests of citizens and consumers, so far as possible
 - a) be evidence-based, proportionate, consistent, accountable and transparent;
 - b) avoid the imposition and maintenance of unnecessary regulatory measures; and
 - c) have regard to the right of freedom of expression.

Assessment of option 1

- 4.21 The 'no change' option has the clear benefit that it is familiar to licensees and would not require any significant changes to the compliance systems of broadcasters. Such an approach would also demonstrate confidence in the RadioCentre's own steps to provide guidance in this area without introducing further regulation at a time of considerable financial difficulty for the radio industry.
- 4.22 However, it is important to be clear that in this consultation we are examining the case for further regulation - it is not our intention to remove the existing regulatory rules regarding PRS which are enforced by Ofcom under the Broadcasting Code and PhonepayPlus under its Code.
- 4.23 The RadioCentre's Code of Practice does not meet the conditions specified by us in our statement on the criteria to be applied by Ofcom for promoting effective co and self-regulation.³⁵ Although the Code provides guidance for the RadioCentre's members it does not envisage either the creation of an independent self-regulatory body to assess complaints made by listeners or a system of enforcement. In light of the consistent if small number of Broadcasting Code breaches in competitions

³⁵ See our statement on *Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation* at <http://www.ofcom.org.uk/consult/condocs/coregulation/statement/statement.pdf>.

identified by Ofcom in recent years, we are sceptical that the current regulatory rules are sufficient by themselves to provide protection to consumers or that the RadioCentre's Code of Practice would provide a sufficient additional incentive to radio licensees to ensure compliance.

- 4.24 In conclusion, as compared against our regulatory objectives, we consider that option 1:
- a) would make a modest contribution to our first objective, as the plans to review the effectiveness of the Code after 12 months would signal to broadcasters our willingness to take further action if necessary. However, during that period, Ofcom might be unable to take regulatory action in relation to problems with the operation of PRS because of limits on our powers under licences as they currently exist;
 - b) would meet our second objective, as this option ensures that no additional regulatory costs, which could lead stations to remove popular features and thereby threaten the range or quality of radio services, are imposed on radio licensees;
 - c) would meet our third objective, as it is proportionate, accountable and transparent. Although this option envisages a different regulatory structure to that imposed on television broadcasters, it does so because in the first instance it avoids the imposition of potentially unnecessary regulatory measures. Should that prove not to be the case, it allows for a television-like solution to be introduced.

Assessment of option 2

- 4.25 In the July 2007 consultation, we stated that we agreed with the Inquiry's conclusion that both television and radio broadcasters should be directly responsible for PRS compliance throughout the supply chain and decided to consult on its recommendation. Following an assessment of the evidence, in the February 2008 statement we concluded that measures which we considered necessary to provide consumer protection and promote public confidence in participation techniques were so integral to licensees' operational obligations that licences were the appropriate instruments to use to implement those measures.³⁶ The licences of television broadcasters were varied accordingly. From that point, television broadcasters have been responsible for the management of all communications with the public, where these are publicised in programmes. This general responsibility applied to all means of communication, including telephony, email, post and so on.
- 4.26 In the absence of significant changes to regulation or radio industry practices since, we consider that the principle of broadcaster responsibility for listener interaction, adopted by us in the July 2007 consultation and February 2008 statement for television licences and included in options 2 and 3, remains valid for radio licence holders. As we noted in the July 2007 consultation, it is our expectation that making

³⁶ See the February 2008 statement, 3.1-3.5.

the broadcaster formally responsible for compliance through the imposition of clear licence obligations should not impose any significant incremental costs on broadcasters. Radio broadcasters should have compliance procedures in place to ensure, as they are already required to do, that they comply with the Broadcasting Code. In light of that, this amendment should serve solely to provide clarity as to where responsibility for communication with listeners ultimately sits. We note also that requirements for radio broadcasters to have their own detailed compliance procedures form a part of the RadioCentre's Code of Practice.

- 4.27 As noted above, over the last two years we have upheld a consistent, if small number of complaints about radio competitions. Although it is the case that the overall level of financial harm for consumers has been small in comparison with cases on television,³⁷ it is one of the objectives of this consultation to ensure that radio listeners receive adequate protection from harmful material. This proposal has the benefit therefore of reconfirming the responsibility which radio licensees have for all aspects of communication with listeners.
- 4.28 However, option 2 does not include the verification requirement contained within option 3. It therefore presupposes a different regulatory approach on radio to that in television. This is not in itself unusual. The strict watershed rule on television is applied differently on radio, while there is no radio equivalent to the limits on advertising minutage on television codified in the Rules on the Amount and Distribution of Advertising. It does not therefore seem inappropriate on principle to draw a distinction between media regarding PRS, if such a distinction is more generally warranted.
- 4.29 In conclusion, as compared against the objectives listed above, we consider that option 2:
- a) would meet our first objective by reconfirming the responsibility that radio licensees have for all aspects of communication with listeners with the option of additional regulation if necessary;
 - b) would meet our second objective by ensuring that no additional costs were faced by broadcasters that could threaten the range or quality of services;
 - c) would meet our third objective, as it is proportionate, accountable and transparent. Although this option envisages a different regulatory structure to that imposed on television broadcasters, it does so because in the first instance it avoids the imposition of potentially unnecessary regulatory measures. Should that prove not to be the case, it allows for a television-like solution to be introduced.

³⁷ For example, Ofcom's investigation into a month-long competition run by GCap, then the largest radio broadcaster in the UK, across its network of stations in February 2007 noted that the total revenue generated by the company was £42,852. In comparison, ITV's revenue from a single competition contained within *Ant & Dec's Game Show Marathon*, broadcast on ITV1 on seven consecutive Saturday evenings between 17 September and 29 October 2005, generated £1,501,985 for the broadcaster. See, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/30GCapRadioStations.pdf and http://www.ofcom.org.uk/tv/obb/ocsc_adjud/lwt2.pdf.

Assessment of option 3

- 4.30 Option 3 provides the highest level of consumer protection and has the advantage of consistency with the regulations introduced in television following the February 2008 statement. Weighed against this however is the fact that, as in television, a requirement for radio broadcasters to introduce third party verification is likely to impose more significant costs than the other options.³⁸
- 4.31 In light of the fact that the scale and type of use of PRS by radio groups varies widely, it is difficult to compare with any certainty the costs of verification with possible benefits in terms of listener trust or increases in the number of listeners prepared to take part in PRS competitions, although it is notable that the evidence we have collected indicates that only a handful of radio contests will generate over £10,000. Nevertheless, it is notable that since the verification obligation was introduced on television broadcasters, the use of PRS for voting and competitions has declined, with the vast majority of satellite and cable broadcasters either limiting PRS activity to phone-ins (to which the verification obligation does not apply) or deciding not to use it at all. Among the commercial public service broadcasters (ITV, Channel 4 and Five) the amount of quiz television shown in particular has declined significantly, while in its latest accounts ITV plc has attributed a decline of £27m in its broadcast income “largely [to a] reduction of PRS revenues”. The likelihood is therefore that a combination of viewer boredom with quiz programming, loss of consumer trust following reports of malpractice and the difficulty of introducing auditable PRS systems has discouraged television broadcasters from investing in this area.³⁹
- 4.32 By comparison, the revenue which radio broadcasters generate from PRS is small,⁴⁰ with, to our knowledge, no radio equivalent to television programming containing premium-rate voting, such as *X-Factor*, or quiz-only content. As discussed above, the evidence we have gathered in our pre-consultation research suggests that PRS competitions on radio are rarely better than revenue neutral. One radio group we contacted which regularly ran such competitions received an average of £1,500 in entries on contests which cost approximately £15,000 to run. Another told us that all competition prizes were provided by sponsors as “throughout our use of PRS, we have never found that it makes a sufficient profit to enable us to provide from that large cash prizes”.
- 4.33 We are also mindful of the recent and significant downturn in commercial radio advertising revenue, which, according to unpublished figures gathered by Ofcom from broadcaster returns, fell by 18% year-on-year in the last quarter of 2008 alone. Given the very small number of stations which generate tens of thousands of pounds

³⁸ In the July 2007 consultation, we estimated that the cost of the verification requirements was likely to be “in the tens of thousands of pounds per broadcaster.” See para. A7.12.

³⁹ See the July 2007 consultation, A7.36-40.

⁴⁰ The evidence collected by Ofcom indicates that only radio stations generated more than £100,000 in revenue from PRS during the financial year 2007-8.

in revenue in PRS,⁴¹ the additional costs involved in setting up audit processes could prove uneconomic. The effect of such a move may be, therefore, to reduce the amount of innovative and interactive content on the air. In the absence of significant consumer discontent about radio PRS, it is unclear that the benefits of additional consumer confidence in radio participation, given the low level of revenue which stations earn from competitions, would be sufficient to justify the possible cost of third party verification.

- 4.34 Finally, we are conscious of the requirement of section 6(1) the Act to ensure that we do not impose unnecessary burdens on stakeholders. At present, for the reasons outlined above, we are unconvinced that the benefits of verification on radio outweigh the financial burdens of doing so.
- 4.35 In conclusion, as compared against the objectives listed above, we consider that option 3:
- a) should meet all aspects of our first objective in that it provides strong protection for members of the public from harmful material in competitions;
 - b) might not meet our second objective, on the grounds that the cost of third party verification could undermine the ability of commercial radio broadcasters to invest in innovative programming;
 - c) would only partially meet our third objective, in that, although the option provides for a consistent, accountable and transparent regulatory change, we are not convinced that such interventionist measures are proportionate on radio, given the low level of PRS income compared with television when third party verification was introduced.

Conclusion

- 4.36 In light of our assessment of the options outlined above, we consider that option 2, which also provides for the opportunity to reassess the situation in twelve months in the event of continued consumer harm, may provide the best balance of consumer protection and industry interests. However, we shall consider carefully any additional arguments made in response to this consultation.

Q1. Do you agree that radio broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? If not, please explain why.

Q2. Do you have any comments on the draft licence variation set out in Annex 2? Please explain any comments and provide your own drafting proposals as appropriate.

Q3. Do you consider there is a need for radio broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations

⁴¹ It is worth noting that PRS revenue includes income from phone-ins and music request programming. It is not therefore limited to contests for which third party verification is possible.

set out in paragraph 2 of the draft licence variation? If so, do you consider the method of verification discussed in section 4 is appropriate? Are there other appropriate options? Again, please provide reasons for your views.

Annex 1

Responding to this consultation

Introduction

A1.1 This Annex sets out Ofcom's consultation principles and processes, and explains how to respond to this consultation. Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 31 July 2009**.

Consultation principles

A1.2 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A1.3 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A1.4 We will be clear about who we are consulting, why, on what questions and for how long.

A1.5 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A1.6 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A1.7 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A1.8 If we are not able to follow one of these principles, we will explain why.

After the consultation

A1.9 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions

and will give an account of how the views of those concerned helped shape those decisions.

How to respond to this consultation

- A1.10 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 31 July 2009**. Ofcom considers that because the stakeholders to this consultation will be aware of the issues discussed, a 10 week consultation is not necessary.
- A1.11 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Anthony Szynkaruk on 020 7783 4341.
- A1.12 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/find>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet at the end of this Annex, to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.13 For larger consultation responses - particularly those with supporting charts, tables or other data - please email anthony.szynkaruk@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.14 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Anthony Szynkaruk
5th Floor
Content and Standards
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3806
- A1.15 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.16 It would be helpful if your response could include direct answers to the questions asked in this document; these are listed below. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Confidentiality

- A1.17 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.18 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.19 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Consultation questions

Q1. Do you agree that radio broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? If not, please explain why.

Q2. Do you have any comments on the draft licence variation set out in Annex 2? Please explain any comments and provide your own drafting proposals as appropriate.

Q3. Do you consider there is a need for radio broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations set out in paragraph 2 of the draft licence variation? If so, do you consider the method of verification discussed in section 4 is appropriate? Are there other appropriate options? Again, please provide reasons for your views.

Next steps

- A1.20 Following the end of the consultation period, Ofcom intends to publish a statement as soon as practicable.
- A1.21 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.22 Ofcom seeks to ensure that responding to a consultation is easy as possible. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom

could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

- A1.23 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Cover sheet for response to an Ofcom consultation**BASIC DETAILS**

Consultation title: Audience Participation in Radio Programming

To (Ofcom contact): Anthony Szykaruk

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 2

Draft Licence Variation

1 The Licensee shall be responsible for all arrangements for the management of communication, including telephony, between members of the public and the Licensee or the Licensee's contractors or agents (together here described as "the Licensee") where such communication is publicised in programmes. 'Communication' includes, but is not limited to, methods of communication in which consideration is passed between a member of the public and the Licensee directly or indirectly and methods of communication intended to allow members of the public to register with the Licensee indications of preference or intended to allow entry to any competition, game or scheme operated by the Licensee.

2(a) Arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee must ensure, in particular, that:

- i) reasonable skill and care is exercised by the Licensee in the selection of the means of communication and in the handling of communications received;
- ii) voting, competitions, games or similar schemes are conducted in such ways as to provide fair and consistent treatment of all eligible votes and entries; and
- iii) publicity in programmes for voting, competitions, games or similar schemes is not materially misleading.

(b) In addition to the requirements in sub-paragraph 2(a), the Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.

3 The Licensee shall implement and maintain appropriate compliance procedures to ensure arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee fulfil all the requirements set out in paragraph 2 above.

Annex 3

RadioCentre Code of Practice

RADIOCENTRE CODE OF PRACTICE ON PREMIUM RATE INTERACTION

BACKGROUND

This Code is intended to provide a set of guidelines and advice to radio broadcasters that use, or are considering using, premium rate services. In particular, the provisions in this Code are designed to enable radio stations to plan and manage premium rate activity in accordance with the principles of honesty, fairness, transparency and accountability.

This Code should be read in conjunction with the RadioCentre Principles of Editorial Trust. Both Codes are voluntary, but adherence to both is a condition of RadioCentre membership and RadioCentre reserves the right to suspend or cancel the membership of any broadcaster that is found to be wilfully or repeatedly in breach of these Codes.

“**Premium rate**” is defined as a form of communication or interaction between a consumer and a radio station where the consumer pays a cost additional to their normal usage costs for that form of communication, in return for which the consumer expects the provision of a service by the radio station. The communication will usually be a voice telephone call (via landline or mobile) or a text message from a mobile phone, but may also include interaction via a personal computer or digital TV. The additional cost will usually be in the range between 10p and £1.50. For premium rate text services, the charge may be levied by the receipt of an automated ‘bounce-back’ response message from the station to the consumer (‘mobile terminated’) or by the sending of a message by the consumer (‘mobile originated’) but the Codes and rules apply equally in either case. The services provided by the radio station may include the opportunity to communicate with a presenter and have a message, request or dedication read out on air; the opportunity to enter a competition; a vote in a poll; or registration for a subscription service to receive further messages or mobile content.

The terms “**broadcaster**”, “**group**” and “**station**” are used throughout this Code to refer to the companies and/or licensees responsible for the management and broadcast output of licensed radio services. In general, “broadcaster” is intended to mean a group or station, whereas “group” and “station” are, respectively, to mean one and not the other. However, these terms should be interpreted in the context of the individual Code sections in which they appear as well as the context of the group or stations to which they are applied, and the nature of any particular on-air feature. Common sense should be applied in determining the most appropriate and effective person within a group or station who should carry out the actions proposed in this Code.

This Code does not seek to describe the full detail of the regulatory Codes and laws that already exist to govern premium rate interaction in broadcasting, adherence to which is a condition of broadcasting licences. Stations must adhere to all those Codes, and should seek legal advice if in doubt. In particular, stations should be familiar with, and have the resources and systems, to ensure compliance with:

The Ofcom Broadcasting Code. This Code applies to any broadcast output and, for premium rate activity, will apply particularly to errors or faults in the on-air execution or promotion of competitions and features. The Code is enforced by Ofcom which may investigate complaints received from third-parties or instigated on its own initiative. Ofcom has a broad range of powers to sanction broadcasters for

breaches of its Code, including broadcast apologies, financial penalties and the shortening or revocation of broadcast licences.

The PhonepayPlus Code of Practice. This Code applies to all those in the premium rate value chain including network operators (for the delivery of premium rate messages and calls); service providers (for the processing and handling of premium rate messages and calls); and information providers, which includes broadcasters (for the promotion and execution of premium rate features). The Code is enforced by PhonepayPlus which may investigate complaints received from third-parties or instigated on its own initiative. PhonepayPlus is empowered to impose financial penalties on any company in the premium rate value chain for faults or errors in the execution, management or promotion of premium rate activity. It operates under delegated authority from Ofcom and may refer serious cases to Ofcom for further investigation and sanction.

The Broadcast Committee of Advertising Practice (BCAP) Radio Advertising Code and the Committee of Advertising Practice (CAP) Code of Advertising, Sales Promotion and Direct Marketing. These two Codes regulate the promotion and marketing of products and services, including premium rate services, via display advertising. The BCAP Code will apply to any spot advertising on a radio station of any premium rate service being promoted by any client (including 118 directory enquiries services), but not on-air promotions of the station's own activity, which will be covered by the Ofcom Broadcasting Code. The BCAP Code will also apply to any advertising on television of a radio station's premium rate services. The CAP Code will apply to any advertising in non-broadcast media (including newspaper, outdoor, direct mail and online other than the station's own website) of the radio station's premium rate activity. Promotion of the station's premium rate services on its own website would not fall under either Code, but would still be regulated under the PhonepayPlus Code of Practice. The Codes are enforced by the **Advertising Standards Authority (ASA)**, which considers complaints received from third parties and may investigate advertisements on its own initiative. The ASA can require an advertisement to be re-scripted, edited or re-made, or withdrawn from circulation altogether. It can refer persistent or repeated breaches of the BCAP Code to Ofcom for further investigation and sanction.

The Gambling Act 2005. This Act regulates gambling activity in Great Britain (separate legal arrangements exist in Northern Ireland). Its provisions cover, amongst other things, prize competitions that combine payment to enter (which includes premium rate entry) with either random selection of contestants or winners (a lottery) or prediction of the outcome of a future event (betting). Stations are strongly advised to seek legal advice before running a competition that includes either of these combinations of elements. The Act is enforced principally by the Gambling Commission, which has limited regulatory powers but will take legal action, including criminal prosecution, against companies it feels are in breach of the Act.

The Data Protection Act 1998. This Act regulates the gathering, storage and use of data and information about individuals and therefore has direct relevance to the personal data (e.g. name and contact information) collected in the process of a premium rate competition. Stations should seek legal advice if they are unsure of the Act's requirements. Compliance with the Act requires, amongst other things, that stations ensure that information about individuals is:

- used only for the purposes to which its owner has consented
- stored for no longer than its necessary for those purposes
- accessible to only those people who need access for those purposes

- kept secure against unauthorised access, theft or destruction
- made available to an individual who asks to see what information a radio station holds on them.

The Act is enforced by the Information Commissioner which can investigate complaints from the public and may take legal action against companies it feels are in breach of the Act.

Other Codes or laws may apply to premium rate activity. Stations should seek advice before undertaking new activity to ensure that they understand the rules that apply. They should also ensure that they refer to the latest editions of relevant regulatory Codes.

This Code has been approved by the Board of the RadioCentre. Any revisions or amendments will also be approved by the Board and communicated to all RadioCentre members.

This document has been prepared by RadioCentre to assist members when running premium rate services. It is not, and does not purport to be, legal or other advice; nor is it comprehensive but is a summary only. Members should take their own advice and review relevant legislation and documents made under, or pursuant to, relevant legislation in relation to matters covered by this code. RadioCentre accepts no liability in relation to this code or in relation to any act or omission arising from it.

STATEMENT OF PRINCIPLES

Commercial Radio exists to entertain and inform its audiences. Listener interaction has been at the heart of Commercial Radio throughout its history. Listeners enjoy interacting with commercial stations, whether it be through phone-ins, competitions, polls or a range of other programme features. The production of these features and the provision of prizes incur costs that stations are entitled to recoup from, amongst other sources, premium rate telephony services. Use of premium rate services (PRS) is not only a legitimate means of covering the costs of production but also of generating additional revenue.

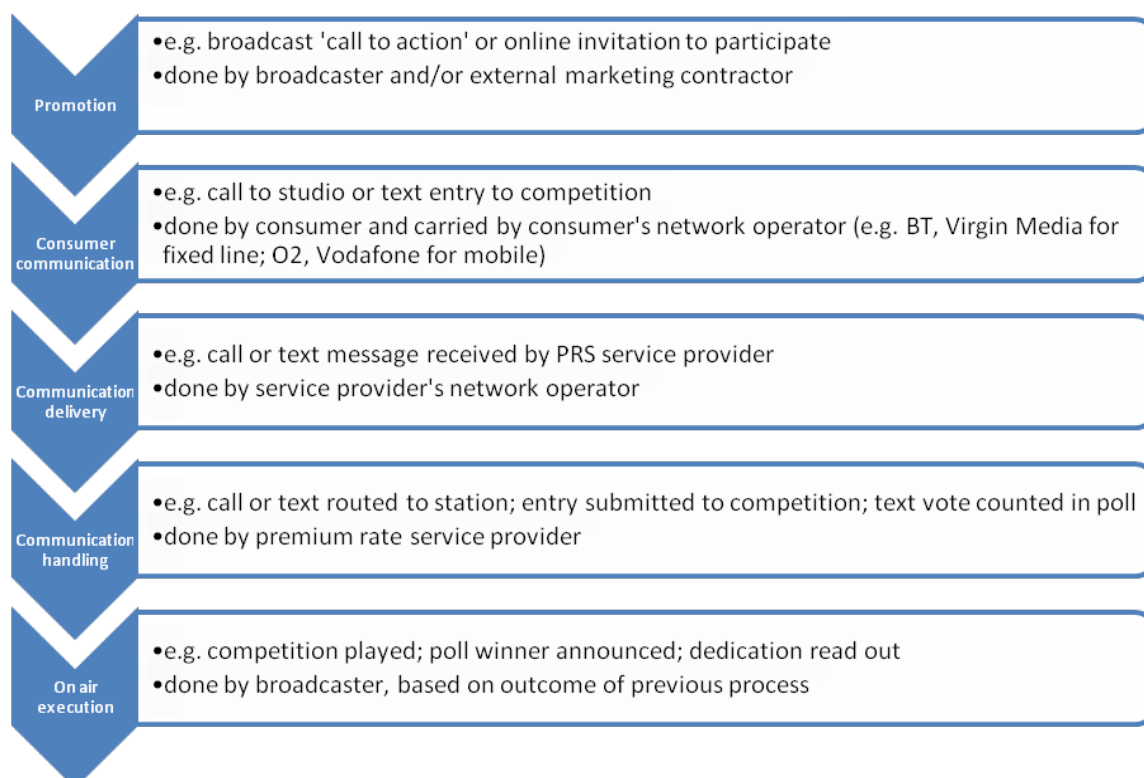
However, a listener who interacts with a radio station via PRS is no longer just part of a wider audience – they become individual consumers, with rights and expectations that derive from the cost to them of their interaction. This creates obligations for the station to ensure that listeners understand the costs they will incur, receive the service they believe they are paying for and are able to obtain redress in the event of a fault.

Radio stations using PRS should apply the principles of transparency, honesty and fairness. These principles apply in all station activity, from planning to production to broadcast and in all dealings with both the audience as a whole and listeners individually. In applying these principles, and ensuring regulatory compliance, stations should ensure they have given due attention to all of the following aspects:

- Technical standards and relationship with service provider
- Planning and production
- Presentation and output
- Complaints and fault resolution
- Advertising, sponsorship and promotion.

THE PREMIUM RATE VALUE CHAINS

Premium rate activity is often complicated, involving multiple parties in a 'value chain' – a chain of processes and intermediaries – between the consumer and the broadcaster. A typical value chain may look like this:



It is Ofcom's intention to make stations responsible and accountable for the entire value chain, subject to consultation later in 2009. This is likely to require stations to ensure they have adequate oversight of the arrangements they put in place to manage interaction with listeners. In particular stations should be aware of their responsibility for the entire value chain – including those aspects managed by third party contractors. This Code is intended, in part, to advise stations on how they can meet this obligation.

Within radio stations, there is a further value chain that deals with the internal processes involved in creating, planning and executing a premium rate feature. A value chain for a sponsored premium rate competition, for example, might look like this:



Stations are responsible for ensuring that there is effective communication between all parties along this chain, in both directions, and that all parties understand the regulatory obligations that apply to them.

CODE OF PRACTICE

1. Technical Standards and Relationship with Service Provider

Principle: Broadcasters should apply due care in the selection of premium rate service providers.

- 1.1 As far as possible, broadcasters should satisfy themselves that their service provider understands the regulatory obligations that apply to both broadcaster and service provider, and has the technical competence both to meet its obligations and assist the radio station in meeting theirs.

Principle: Broadcasters should ensure that they manage the relationship with their service provider.

- 1.2 Broadcasters should ensure they know who is in the entire process chain (including network operators, service providers, aggregators and other intermediaries) and ensure, as far as possible, that each is technically competent and capable of ensuring regulatory compliance. Stations should ensure, as far as is reasonably possible, that for each stage of the value chain that involves one party dealing with another, those dealings are governed by written contracts or agreements that provide for the clear identification of liability in the event of fault or failure.
- 1.3 The relationship between broadcaster and service provider should be a contractual one and should ideally include a service level agreement, or equivalent, with the following provisions:
- immediate notification by either party to the other of any fault identified, whether or not a consumer complaint or query is received
 - contact details, including out-of-hours contacts, in the event of an emergency or a major fault requiring urgent investigation
 - minimum performance standards detailing timescales within which reported faults must be addressed and resolved
 - process for correctly identifying party at fault wherever they may be in the value chain
 - procedures for ensuring that the party at fault is liable for the payment of any refunds or financial penalties.
- 1.4 Broadcasters should ensure that their service provider collects and maintains data of all calls or messages received on a premium rate to enable the provision of accurate usage data in the event of a fault or investigation, and identification of affected consumers if refunds need to be offered.

Principle: Broadcasters should ensure that their own technical systems and process are robust, regularly checked and that they facilitate fault-finding.

- 1.5 Broadcasters should ensure that technical systems are routinely and regularly checked. Premium rate voice lines should be called at appropriate intervals by a member of station staff to ensure that calls are answered and routed correctly, that any interactive voice response (IVR) systems are working correctly, and that calls are being charged as advertised. Text (SMS) lines should be tested to ensure that keywords are working correctly, that messages are being routed to the correct destination and that the correct charges are being applied.
- 1.6 Broadcasters are advised, when launching new premium rate features, new numbers or introducing new keywords, to ensure that robust testing of technical systems and on air mechanics takes place prior to launching the feature on air.
- 1.7 Broadcasters should ensure that they have procedures in place that allow them to identify when faults occur, wherever within the value chain the broadcaster can reasonably be expected to detect them, even if no consumer has made a complaint. Such faults should include unexpectedly low volumes of interaction, or unusual patterns in interaction, which might suggest a problem in communication delivery at some point in the value chain; unexpectedly high volumes of incorrect or unusable messages, which might suggest a problem with either the delivery mechanism or listeners' understanding of the mechanic; extremely high message volumes which might strain the capacity of systems in the value chain; an external threat to the station's own technical systems; a failure, not previously detected, to broadcast or

publicise correctly all the information required for the relevant feature or competition; a major failure within any of the broadcasters' systems that are critical to the execution of the premium rate feature, such as power, telecommunications lines, switchboards or computer networks. They should also ensure that procedures exist and are communicated to all relevant staff for responding to identified faults and ensuring, when faults occur, that staff and listeners are swiftly informed as appropriate.

- 1.8 If a fault is identified in a system not under the direct control of the broadcaster, procedures should be in place to ensure swift communication by station staff with whoever is responsible for the faulty system and rapid resolution of the fault.
- 1.9 Where premium rate services are used in competitions – whether run or promoted on air, online or via any method – broadcasters should ensure that their technical systems are capable of providing evidence that the selection of contestants and/or winners has been random or, where the competition is clearly advertised with some other non-random selection process, that that process has been applied fairly and consistently with the published rules. Such evidence should be capable of being audited and verified by a third-party auditor or appropriate regulatory body (see also rule 3.9).
- 1.10 Broadcasters should ensure that their technical systems are secure and, as far as possible, capable of resisting external attempts to manipulate or disable them (such as hacking or denial of service attacks) and of any virus or other malware designed to disrupt their use.
- 1.11 Broadcasters should ensure that any data collected and stored on individual consumers are stored securely, are used solely for the purpose to which the consumer has consented, and in all other respects are used in a manner consistent with the Data Protection Act 1998 and any other laws or regulations that apply to such data.

2. Planning and Production

Principle: New premium rate activity should require authorisation by senior management.

- 2.1 The use of premium rate services for the first time is a significant business decision that can involve significant financial cost in both implementation and ensuring regulatory compliance. Such a decision should be made by a designated Director of the Board of the licence-holding company (or an appropriate equivalent). In making such a decision, the designated Director (or equivalent) should satisfy themselves that they fully understand the practical and financial implications of using premium rate.
- 2.2 The use of existing premium rate lines for a new feature should normally require the approval of a senior manager within the relevant station or groups of stations.

Principle: Broadcasters should consider regulatory and compliance issues at all stages of the planning and production of any feature that involves premium rate services.

- 2.3 Planned features using premium rate services should be detailed in writing before the feature is launched on air, in order to provide a clear paper trail in the event of an investigation. The written details should include:

- the name of the station(s) on which the feature is to be aired
- the times and dates of the feature, including both its overall duration and the times of on-air executions
- the nature and purpose of the feature (e.g. prize competition, poll, commercial promotion, etc.)
- the mechanic
- for competitions, the method(s) of entry
- the method of charging and the cost per call or text
- the method of selecting calls or messages or, for competitions, of selecting entrants and winners
- the rules and terms & conditions that apply to participation, highlighting any significant elements such as restrictions on eligibility to participate
- for competitions, full details of the prize
- a presenter script.

2.4 These written details of the feature or competition should be circulated to all staff involved in the feature, including those in programming ad presentation, production, sales and S&P, marketing, online and technology, as appropriate. It is recommended that circulation is by email, or some other method that provides a record of who has received the information and when, in case of an investigation.

3 Presentation and Output

Principle: pricing information should be clear and prominent.

3.1 For premium rate features where the likely call or text cost exceeds 50p, or where children are likely to participate, the PhonepayPlus Code of Practice requires that information **MUST** be given with each on-air execution, and in all promotional references to the feature, whether on air, online or in any other form. It is strongly advised, where it is mandatory to give cost information, that the feature is scripted and that presenters are instructed not to deviate from the script, in order to ensure that accurate and clear information is given with every on air execution, as required.

3.2 For premium rate features where the likely call or text cost is 50p or less and children are not likely to participate, providing cost information is not mandatory, but it is recommended as good practice that cost information be provided from time to time.

Principle: stations shall treat their listeners in a spirit of honesty, integrity, accountability and openness, and adhere to the RadioCentre Principles of Editorial Trust.

3.3 Broadcasters should not, either through live presentation or pre-recorded production, do anything to encourage excessive or needlessly repeated entry in a premium rate feature or competition in a way that is designed to increase station revenues and which will also have the effect of significantly increasing the cost to a listener.

3.4 All premium rate communication should be received and processed in some way. Even if the message is simply a greeting to the presenter, and there is no particular expectation that the message will be broadcast, it should still be received and handled by someone in the radio station. It is not acceptable for any premium rate message to be received by a radio station but then left unread.

3.5 All paid-for messages should be give equal treatment to all others.

- 3.6 Broadcasters should be honest about what listeners can expect to get if they send in a premium rate message. For example, if listeners are invited to send, via premium rate, a message to be read out on air, or a request for a song to be played on air, then their message must have some chance of being considered to be read or to influence song selection.

Principle: As with all competitions, those conducted via premium rate should be fair and transparent.

- 3.7 It should be clear to listeners which methods of entry are available to them. Where there are multiple routes of entry, none should be favoured over others in the selection of contestants or winners.
- 3.8 Listeners should clearly understand the mechanic of any competition, including any entry requirements and any tasks or challenges they will be required to perform in order to win.
- 3.9 Where winner or contestant selection is random, this should be stated clearly, and the selection process genuinely and demonstrably random. Where winner or contestant selection is intentionally not random this should also be clearly stated, and the criteria on which contestants or winners will be picked should be made clearly and prominently known. Broadcasters should not claim to be using a non-random selection method when, in fact, they are – for example claiming that ‘the one-hundredth caller will be chosen’ when, in fact, a random caller will be chosen. Stations should have systems in place that allow them to prove what winner selection method was used, and prove that it was used fairly and in accordance with the published rules (see rule 1.9).
- 3.10 Where random winner selection is used, nothing should be done that changes the odds of being selected depending on the time or date of entry – such as providing additional clues, or changing the frequency or number of entries taken – unless it is clear from the start of the competition that this is how the competition mechanic will work.
- 3.11 Competitions should not be unfairly manipulated solely in order to control the time at which a prize is won – either by extending the duration of the competition to increase its exposure, or curtailing it in order to resolve a competition within a pre-determined time-span. If it is stated that the competition could be won in any one of multiple executions over a prolonged time-span, then that must genuinely be the case – even if the prize is won in the first execution or, ultimately, not at all.
- 3.12 All competitions should have written terms and conditions, which should be available on the station’s website and on demand from the station. Important terms and conditions – such as significant restrictions on eligibility to enter, eligibility to win, or on the availability of the prize – should be made particularly prominent, and the most significant should be broadcast on air as part of the promotion for the competition. To reduce the risk of dispute, stations are advised to make listeners aware of competition terms and conditions on a regular basis.
- 3.13 Competitions should have a clearly stated closing date and time. Once advertised, this time should not change. Stations should ensure that they have the systems and personnel in place to close a competition precisely at the time stated so that all entries received afterwards will not be eligible to win. Presenters should ensure that listeners are made aware when the closing time is approaching, and when it has been reached, so that no one is encouraged to enter after the closing time has

passed. Stations are advised to have a contingency plan in place for any competition in case insufficient entries are received to complete the competition and award the prize. Any such contingency plan should be consistent with the published rules of the competition and stations should ensure that those rules include the possibility of the contingency plan being put into effect, detailing the circumstances in which that would happen.

- 3.14 No winner should be selected prior to the closing time of a competition, unless it is clear from the broadcast promotion that there will be multiple winners selected over a long period of time during which entries can still be submitted.
- 3.15 Premium rate features should not normally appear in pre-recorded or automated output, unless as part of a long-running competition or feature where there is no expectation of an immediate outcome, and entries or messages received will be given the same treatment and have the same chance of winning as those received during live output. Where content is repeated on air, or made available online or by some other time-shifted mechanism, invitations to participate in premium rate features should be removed or edited in such a way as to make clear that such participation is no longer possible.
- 3.16 Premium rate competitions must comply with the provisions of the Gambling Act 2005, in particular those that relate to prize competitions, lotteries and betting. Stations are advised to seek legal advice on this issue.

4 Complaints and Fault Resolution

Principle: All complaints about premium rate services, whether received from a regulator or a member of the public, shall be investigated thoroughly and fairly.

- 4.1 Broadcasters must make available a non-premium rate form of communication available to consumers who wish to complain about a premium service.
- 4.2 Broadcasters should keep comprehensive, written records of any investigations carried out, and ensure that they communicate fully with relevant service providers to gather data, and identify and resolve any faults.
- 4.3 Broadcasters must comply fully with any requests for information from any relevant regulatory body including Ofcom, PhonepayPlus, the Advertising Standards Authority, the Gambling Commission or the Information Commissioner's Office. Where the focus and scope of a regulatory investigation is clear, broadcasters should seek to disclose any and all relevant information, whether or not it has been directly requested.
- 4.4 If a complainant is not satisfied with a station's response to a complaint about a premium rate feature or, in any case, if the station is responding a second time about the same complaint, the station should inform the complainant of their right to take their complaint to the appropriate regulator.

For complaints about the on-air execution of a premium rate feature, or any other broadcast aspect of the feature, complaints should be made to:

Ofcom
 Riverside House
 2a Southwark Bridge Road
 London

SE1 9HA

Tel: 0300 123 3333
Textphone: 0300 123 2024
Tel (Welsh): 020 7981 3042
Web: <http://www.ofcom.org.uk/complain/progs/>

For complaints about other consumer aspects of premium rate activity, including billing, station website promotion and service delivery and quality, complaints should be made to:

PhonepayPlus

Freepost
WC5468
London
SE1 2BR
Tel: 0800 500 212
Text: 020 7407 3430
Web: http://www.phonepayplus.org.uk/numberchecker/ComplaintForm_Numbercheck.asp

For complaints about display advertising of a radio station's premium rate features, or about spot advertising running on the station for a client's premium rate activity, complaints should be made to:

The Advertising Standards Authority

Mid City Place
71 High Holborn
London
WC1V 6QT
Tel: 020 7492 2222
Textphone: 020 7242 8159
Web: http://www.asa.org.uk/asa/how_to_complain/

For complaints about possible misuse of personal data, including the use of data for marketing purposes without consent; concerns about data security or privacy; or failure to disclose to an individual the data held on them, complaints should go to:

The Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 08456 30 60 60
Web: <http://www.ico.gov.uk/complaints.aspx>

For complaints that a premium rate feature might constitute illegal or unlicensed gambling activity, such as a lottery or betting, complaints should go to:

The Gambling Commission

Victoria Square House
Victoria Square
Birmingham
B2 4BP
Tel: 0121 230 6666

Web: <http://www.gamblingcommission.gov.uk/Client/detail.asp?ContentId=296>

- 4.5 Stations are reminded to keep safe audio recordings and any other documentary evidence relating to any complaint received from a listener or consumer. It is an Ofcom requirement that recordings of output that has been complained about are kept for a minimum period of 42 days **from the date of the last communication with the complainant**, irrespective of the date of broadcast.

Principle: Broadcasters should be able to identify, locate and rectify faults anywhere in the value chain, regardless of whether or not a complaint is received.

- 4.6 If a broadcaster identifies a fault in a feature using premium rate, whether or not a complaint has been received, the broadcaster must immediately determine if the feature or competition can be completed fairly and without any detriment to any existing or future paying participant. If completion of the competition is not possible, the broadcaster should abort the feature, make any appropriate announcements on air, and offer full refunds to those who have already paid to participate.
- 4.7 Where a feature is aborted and refunds offered, announcements should be made on air and on station websites. Stations should monitor the uptake of refunds, and make further announcements if it appears that previous messages have not been received by consumers.
- 4.8 Serious faults or potential breaches of either the Ofcom Code or the PhonepayPlus Code – including any incident that involves offering refunds to significant numbers of consumers, any repeated errors, or any incident that may be the result of deliberate misconduct by any person or persons anywhere in the value chain – should be notified immediately to the most senior level of management in the company, as well as to both Ofcom and PhonepayPlus.

5 Advertising, Sponsorship and Promotion

Principle: All advertising or promotion for premium rate services – whether run by the station or by another party – should adhere to the principles of honesty, integrity and transparency.

- 5.1 Broadcasters should observe the provisions in the Ofcom Code requiring separation and transparency for advertising premium rate features. Premium rate services that have no on-air component, and cannot therefore be considered programming or programme-related material, must not be promoted in editorial or programming time.
- 5.2 Broadcasters should seek to assure themselves that advertisers promoting premium rate services are offering services that are legitimate, legal and fair and that they have taken the necessary steps to ensure regulatory compliance. Advertisements for premium rate services should comply with the Broadcast Committee of Advertising Practice (BCAP) Radio Advertising Code and include all necessary cost information as well as enabling listeners to contact the advertiser via a non-premium rate, UK-based form of communication.
- 5.3 It is a requirement of the BCAP Code that advertising for premium rate services must be centrally cleared by the Radio Advertising Clearance Centre prior to broadcast. Broadcasters should ensure that any such clearance is current and that any applicable conditions have been satisfied in the final version of the advertisement.

- 5.4 In the promotion of their own premium rate features, broadcasters should ensure that all messages, whatever their form or delivery platform, are transparent, compliant and consistent with each other.