



The Premium Rate Association (PRA) welcomes the opportunity to respond to Ofcoms Consultation on Consumer Policy and hopes that its input will be regarded as constructive and useful.

### **The Questions**

#### ***1. Do you agree with the proposed distinction between citizen & consumer interests?***

Under the principal duties conferred upon it by the 'The Communications Act 2003' (The Act) Ofcom is obliged (a) to further the interests of citizens in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

As the term consumer is generally considered to refer to an individual who consumes goods and services generated within the economy it encompasses virtually everyone and therefore the idea of differentiating the 'consumer' from the 'citizen' on the basis of economic factors rather than political, moral or social considerations seems reasonable whilst also accepting the fact that a 'citizen' will also be a 'consumer' and will therefore occasionally experience a conflict of interests.

#### ***2. Do you agree with Ofcom's position on vulnerable consumers?***

We recognise that The Act & Universal Service Directive require Ofcom, in performing its duties, to give due consideration to protecting the interests of the vulnerable and those groups who are deemed disadvantaged.

Views on the interpretation of the term vulnerability have been sought whenever Regulatory bodies consult on any consumer related policy issue and one may be misled into believing that "the vulnerable" are a small minority group sitting on the periphery of society. If we accept the fact that "consumers" are not a homogenous group but differ as a consequence of disability or long term illness, ethnic origin, access to education, being older (over retirement age), or younger (under employment age), unable to keep up to speed with technical innovations (even those with internet access), physically remote from centres of population, the unemployed or on low incomes you are probably defining more than 70% of the population as 'vulnerable' and in fact it is probably true to say that everybody has been 'vulnerable,' in the literal sense, at some point in their life. Many of these groups will overlap and it has been estimated that the vast majority of consumers on low incomes will be members of more than one the above groups.

Those on low incomes suffer disproportionate losses when the market fails and are therefore, under Ofcom's definition of consumer, the most vulnerable. This group will also be more likely to be attracted by 'get rich quick opportunities' which are popular with scammers and will suffer most from fraudulent activity, furthermore

many of those on low incomes may not have had the same access to education as higher income groups so their ability to assimilate information regarding the operation of services and how to seek help may be limited.

It is therefore vitally important that consumer policy is built around servicing the needs of “the vulnerable” as they represent the majority of all consumers and their needs should be of paramount importance when designing websites or providing guidance documents. Currently regulatory information sources appear to be directed towards the needs of the educated or informed consumer and often fail to communicate in ‘plain English’. The Disability Rights Commission has produced a useful guidance document on the provision of web access which is ‘user friendly for all’ and this can be found on their website <http://www.drc-gb.org/>

***3. Do you agree with the high level objectives for consumer policy proposed above?***

We are pleased that Ofcom does not intend to take an isolationist stance with regard to its obligations and has stated its intention to work with other industry bodies and the industry itself to achieve its consumer policy aims. Ofcom needs also to accept that it has an interventionist role when other bodies fail to meet their own consumer or industry obligations resulting in issues being escalated to them for swift and appropriate action.

The list of factors which indicate when the overall objective has been met (3.61) seems appropriate as long as Ofcom is able to put mechanisms in place to actively measure whether these aspirations have been achieved.

***4. Do you agree that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators which should be used?***

Whilst we agree that it is important to establish indicators which monitor consumer interests we believe that the Consumer Policy Indicators listed in the Consultation document are far too simplistic.

Taken in isolation, the number of complaints received by Ofcom tells us very little regarding the health of the industry and fails to highlight ineffective or inaccurate recording processes. The emergence of a scam, such as the abuse of internet diallers, can cause a surge in complaints over a period of months and then reduce significantly when the harm has been addressed thus skewing the overall trend. Further analysis of the data and an explanation of the causes lying behind any abnormal trend are necessary in order to provide meaningful information for consumers or other parties who will be utilising the data.

Those consumers who direct their complaints to Ofcom represent only part of the story, any complaint data provided by Ofcom should be presented in a standardised format alongside complaint information from ICSTIS, Otelco and

CICAS. Further information regarding the number of complaints resolved, the number being referred back to the network operator, those going to ADR, those resulting in sanctions etc. would also be useful in understanding the bigger picture.

As far as raising awareness on the right to receive a Code of Practice and the availability of a Complaint Handling Procedure is concerned Ofcom should work with communication providers to ensure that they make best use of the communication media at their disposal to bring these issues to the consumers' attention. Providers could use websites for consumers who have on-line billing and bill alerts for those who receive postal bills in order to publicise these subjects and the Ofcom consumer policy indicators on these topics would then serve as a useful indicator of how effective the selected medium or media was for providing consumer information.

We have no further comments regarding the proposed Competition or Consumer Empowerment indicators.

***5. Do you agree that Ofcom should publish an annual report on the Consumer Interest?***

Yes we agree that publishing an annual report would potentially be useful as long as the points raised in response to Question 4 are incorporated, namely, that an analysis of the indicators is provided at a greater level of detail incorporating figures and findings from related bodies.

Additional information would help in the understanding of trends behind figures as organisations tend to define and record complaints differently, maybe by liaising with other consumer bodies an agreement on the standardisation of the method by which complaints/queries are logged could be achieved.

Ofcom would need to take a pro-active approach towards publicising the existence of the annual report so that consumers become aware of where help can be obtained.

The publication of details regarding the nature of scams can become something of a double edged sword as, apart from providing useful information for consumers and the media , it can also flag up scamming opportunities to those operators who wish to exploit vulnerable consumers!

***6. Do you agree with the characteristics identified of effective consumer protection?***

In order to have "*well designed regulations governing supplier behaviour which provide an appropriate level of protection without undue burden*", one has to be able to clearly define the roles of those suppliers who feature in the value chain. As far as Premium Rate Services (PRS) are concerned it is essential to define clearly and unambiguously who's who in the value chain and what their respective customer liabilities are.

The value chain for PRS involves a variable number of suppliers involved in the delivery of a service to a customer and the roles of those suppliers can vary depending on whether the services are delivered over a mobile or fixed line network. For fixed line services the chain can include the network which originates the call (OCP) with whom the customer has a contractual relationship, the service provider (SP) or service bureau (SB), a provider of information (IP) and a network which terminates the call (TNO) any of whom could be responsible, to a greater or lesser extent, for 'consumer harm'.

An added dimension within the mobile industry is the role of the Aggregator who sits between the network operator and the content provider but does not have the characteristics of the traditional SP even though current regulation treats their role as being the same and therefore attracting penalties and liabilities which are inconsistent with their function. We have recently been involved with an issue whereby a licensed 'Live 1 to 1' operator, classified as an SP within the fixed line market, who has met all their obligations with regard to compensation scheme & trust fund contributions and operated legitimately for a number of years, was financially penalised when they offered exactly the same service via the mobile market within which the SP role was determined to be undertaken by an Aggregator sitting higher up the value chain who were not licensed themselves!! Unless work is undertaken on this issue, as a matter of urgency, many offending parties will go unpunished and an undue burden of responsibility will be placed upon those who are not responsible for the consumer harm.

An example of the lack of clarity regarding the roles of those in the value chain can be found in footnote (35) to 4.40 - a paragraph which hardly meets the plain English criteria necessary for the protection of the vulnerable consumer! Whilst we accept that differing circumstances can lead to a single operator occupying more than one role in the value chain it is vital that a means of simplifying the definitions is found in order to provide adequate protection for the consumer and a better understanding within the industry of where the consumer obligations lie thus allowing the regulatory burden to fall where most appropriate.

The proposed introduction of consumer interest tests before providing telephone numbers to repeat offenders in the Premium Rate market, as outlined in Ofcoms Telephone Numbering Consultation, is to be welcomed but it is unfortunate that it is only now, after so much consumer harm has been done, that Ofcom has been willing to recognise that by controlling the entry mechanism into the market consumer detriment can be minimised.

More work needs to be done by Ofcom to pro-actively provide access to information on rights & risks especially for those who are vulnerable, the majority of whom would not be aware of or make use of information sources such as the Ofcom website.

Ofcom stresses the importance of having an effective complaints handling procedure in order to provide effective consumer protection, a position which we thoroughly endorse as it supports a view we have been expressing since 1998. In an ideal situation the contracting parties, (the consumer & OCP) resolve issues between themselves, however when this fails to reach a satisfactory conclusion a

secondary level of support, such as the ISCTIS helpline, is necessary to provide consumer assistance. ICSTIS handled over 10,000 calls a month at the peak of internet dialler scams, a large number of which were repeat calls by consumers who were unable to get through at first attempt as the complaint handling procedure was at the point of collapse. Learning from this example Ofcom must ensure that if they raise awareness of complaint handling procedures that processes are in place to deal adequately with the increased call volumes wherever they may be directed.

The PRA has been proposing a central industry helpline and which would be able to provide relevant information in answer to general number checks and enquiries. This would require service provider registration and funding from the OCP's to operate, but would also remove some of the operational burden from OCP's.

### ***7. Do you agree with the assessment and priorities for rights & regulations?***

Whilst we support the view that it is desirable to reduce the time it takes to deal with new consumer protection issues it is essential that the actions taken by the Regulator are not 'knee jerk' and an appropriate level of consultation takes place with the industry so that providers not implicated in any wrong doing have an opportunity to make adjustments to their work practices. The recent emergency notice issued by ICSTIS, which required certain services operated on the 0871 number range to stop advertising within 72 hours of the notification, forced many providers into a 'breach of procedure' situation as they were not given sufficient time to change advertising schedules with their publishers.

The PRA is also supportive of the concept of developing an early warning system by encouraging complaint handling organisations to share information about the volume and type of complaints received. This system would probably have had a positive impact had it been in place when the rogue dialler activity was beginning to raise its profile however it was able to cause a significant level of consumer harm before the industry became aware of the problem due to lack of consolidated information. The PRA had already alerted ICSTIS, prior to the major abuse taking place, to the fact that removing the need for a prior permission certificate from internet dialler services would create problems.

The principle of fast tracking regulatory change could offer some advantages for the industry but it is essential that an appropriate level of consultation takes place before changes are implemented and that the changes made offer the least intrusive regulatory solution ensuring that the need for intervention is based on evidence and is proportionate to the perceived harm.

The PRA welcomes a review of the principles of self and co-regulatory regimes and any proposal to incentivise adherence to self regulation. Those who provide services within the premium rate market are predominantly responsible individuals who have a vested interest in ensuring that the market develops a reputation for honesty, reliability and providing value. Self regulation may not be sufficient in itself but can certainly complement any co-regulatory regime and be more effective in

addressing consumer detriment at an early stage than statutory intervention. Fast track regulatory changes must avoid the pitfall of shifting consumer harm to other less regulated services as was exemplified with changes to live multi-chat regulations which diverted rogue operator activity to the international audiotex market.

We fully support the view that the impact of regulation should be targeted at offenders and be flexible enough to adapt to changes in market conditions and welcome the opportunity to provide input to a review of the General Conditions when initiated by the Regulator however we wish to reiterate that it is essential that the roles of the various players in the Premium Rate value chain are adequately defined so that those who cause harm are penalised and not the unfortunate middlemen who have limited control over offenders.

***8. Do you agree with the assessment and priorities regarding consumers' awareness?***

Any activity which raises awareness of issues which have the potential to cause extreme consumer detriment is to be welcomed especially if it allows the consumer to be proactive in protecting themselves from harm.

It is important that the most effective communication route to the consumer is identified as the most vulnerable are least likely to be aware of the traditional information routes. Consumers also need to be made aware of the differing roles of the various consumer bodies and under what circumstances they would contact one or the other.

The Regulator needs to be wary of being too reliant upon the national press to give a fair and objective view of issues gathered from Competition Bulletin Board as there is often a tendency to sensationalise issues, especially those connected with the premium rate market, to the detriment of the industry operators the majority of whom are responsible and compliant. The Press happily accepts revenue by advertising the same services which it condemns and cannot therefore always be relied upon to be balanced and objective. Occasionally raising consumer awareness can give rise to some unexpected consequences as was experienced when awareness of the internet dialler scam was raised by BBC's Watchdog resulting in the generation of so many calls to ICSTIS that the whole complaint handling system was on the point of collapse.

***9. Do you agree with the assessment and proposed priorities regarding complaint handling and redress?***

When a consumer has an issue their priority is to have it dealt with rapidly and effectively by whatever means are at their disposal. If the Regulator is going to raise its profile with the consumer, raise awareness of ADR schemes and of other complaint handling bodies they will need to consider the impact of doing so. The ADR scheme is generally a last resort for the consumer, by the time they have

reached this point they will already have been dissatisfied with the treatment of their complaint by the fixed or mobile operator with whom they have a contractual relationship, therefore the Regulators priority should be to ensure that the industry improves its initial handling of complaints to minimise those that require referral. Whilst we accept that Ofcom is not always the appropriate point for receiving a consumers complaint they should endeavour to minimise consumer 'bounce' and find ways of recording whether calls redirected to other bodies have been picked up (issue an Ofcom reference number to the complainant to be quoted when speaking to another Agency?).

***10. Do you agree with the assessment and priorities regarding monitoring and enforcement?***

Monitoring ,collating and reviewing complaints made to consumer bodies is irrelevant if you cannot enforce consumer rights or enable improvements in the consumer experience or reduce consumer harm. Ofcom does not have a good reputation as an enforcement body, often claiming that desired changes are outside its remit or are the responsibility of other organisations .Efficient escalation procedures from other bodies (ICSTIS etc.) may partly remedy this deficiency when taken together with enhanced rights under EU law and a more flexible regulatory regime arising from modifications to the General Conditions.

Experience show that public awareness of ICSTIS is relatively low and the first port of call for a consumer with a concern about their bill will be the OCP. This coupled with the hugely increased demand on the ICSTIS Contact Centre mean that it is important that OCP staff can deal with as many straight forward enquiries and number checks as possible, leaving ICSTIS to deal with issues of consumer harm.

***11. Do you agree with Ofcom's approach to the provision of consumer information?***

Whilst accepting that Ofcoms role should generally be 'light touch', only initiating regulatory intervening where absolutely necessary, we would expect Ofcom to offer greater clarity on the circumstances under which they would take over a complaint from the co-regulatory body as this is ill defined in the consultation document.

We believe that Ofcoms intention to provide access to a single reliable source of information on their 'Consumer Advice' page will be a useful consumer resource especially if it will assist consumers to make decisions regarding the choice of communication provider on the basis of services offered, Quality of Service records and comparative price data. We are disappointed that Ofcom has not outlined any special provisions for 'vulnerable' consumers who have least access to established information sources.

**12. Do you agree with Ofcom's conclusion on consumer awareness of suppliers and services?**

Current evidence, quoted by Ofcom, indicating that consumer awareness of the availability of alternative suppliers and their services is at the 86%-97% level (depending on market) seems to concentrate on legacy services alone. The Regulator needs to provide a consumer protection strategy which is 'future proofed,' reflecting levels of knowledge and understanding of new technology initiatives such as converged network solutions, VoIP etc. which potentially could become a significant source of consumer harm and detriment if consumers are unaware of the nature of the services offered and the limitations of the technology. Ofcom's position of leaving consumer information on new technologies 'to the market' is not satisfactory.

**13. Which of the options on comparative price information, if any do you favour? Are there other options Ofcom should consider?**

Logically Option 4 appears to be the most desirable as it offers a single point of information for the consumer and should therefore be easier to promote. The fact that the site will have formal Ofcom 'Approval' will give it added credibility and help boost consumer confidence.

On a point of caution, if this 'single source' option is adopted it is essential that the information provided offers complete, comprehensive & objective data ensuring that no one supplier or technology is unfairly promoted to the detriment of another.

**14. What is your opinion about these ideas for generating awareness about price comparison information?**

In a fast moving competitive environment where, virtually on a daily basis, providers enter and exit the market and new technologies, delivering enhanced services traditionally provided by legacy suppliers, vie for consumer attention an annual price comparison report would be of little use and could unfairly distort the market by indicating that certain suppliers offer more competitively priced services than those which would be currently available.

**15. Do you agree with our proposed approach regarding the Quality of Service initiatives?**

It is essential that any information provided by suppliers on their Quality of Service performance is comparable, accurate, objective and current. This will be especially relevant for mobile communication providers who are voluntarily 'self providing' information which, if presenting the companies performance in a very favourable light, could deliver significant commercial advantage.

**16. Do you agree with our proposed approach regarding switching processes?**

We note Ofcom's intention to issue a separate consultation on switching and have no further comment to make at this time.