



Consumer protection test for telephone number allocation

including modifications to the application forms for 07,
08 and 09 numbers

Statement

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Contents

| Section | | Page |
|--------------|---|-------------|
| 1 | Summary | 1 |
| 2 | Introduction and background | 4 |
| 3 | Responses to the consultation and Ofcom's comments | 14 |
| 4 | Consumer protection test for telephone number allocation | 41 |
| Annex | | Page |
| 1 | List of respondents to the consultation | 52 |
| 2 | Impact Assessment | 53 |
| 3 | Guidelines: Consumer protection test for telephone number allocation | 69 |
| 4 | Legal framework and tests | 83 |
| 5 | Modifications to the 07, 08 and 09 application forms under section 49(4) of the Act | 88 |

Section 1

Summary

- 1.1 Ofcom is introducing new restrictions on the way that we issue telephone numbers to communications providers to ensure the best use of numbers and to better protect consumers from scams, fraud and other forms of abuse. This statement sets out our decision to implement the new consumer protection test for telephone number allocation and our reasons for doing so.
- 1.2 We are responsible for managing the UK's telephone numbers. It is our duty under the Communications Act 2003 ('the Act') to ensure that the best use is made of those numbers so that consumers can benefit from the services that they support. Scams, frauds and other abuses carried out by individuals and/or companies involving telephone numbers harm consumers' interests. Left unchecked, they can also threaten consumer confidence and damage the reputation of certain telephone number ranges and the legitimate services provided on those numbers. While it is important for the promotion of competition that communications providers have appropriate access to numbers, we must balance this with our duty to ensure the best use of numbers and to protect citizens and consumers.
- 1.3 The new test that we are introducing into our process for allocating numbers to communications providers will focus on the behaviour that uses numbers to cause *serious or repeated* harm to consumers. We will identify and publish lists of individuals and companies that have a history of using numbers to cause serious or repeated harm. We will not allocate telephone numbers in certain ranges to applicants who are on those lists.
- 1.4 The test will apply to numbers newly allocated by Ofcom to communications providers. However, in responding to our earlier consultation, many stakeholders supported a test of this nature applying more widely than Ofcom's allocation of numbers to include numbers sub-allocated and assigned by communications providers and resellers to their customers.
- 1.5 We have decided, at least initially, to permit providers to take a self-regulatory approach to introducing a similar consumer protection test into their own number assignment processes. We strongly encourage all providers to do so. Recognising that the costs of implementing the consumer protection test are likely to vary considerably between providers, introducing the test in this way allows each provider to apply the format that best suits their number assignment processes.
- 1.6 Communications providers may adopt our test as a model of how consumer protection could be incorporated into number assignment decisions. We are publishing lists of individuals and companies to whom we will not be allocating numbers to help them do so.
- 1.7 We will be monitoring progress to see if, as we expect, this approach proves to be sufficient. If it does not, we will consider whether additional regulation is required.

The consumer protection test consultation

- 1.8 We initially raised the idea of a consumer protection test for number allocation in our consultation document *Telephone Numbering – Safeguarding the future of numbers*

(‘the Numbering Policy Review’) in February 2006¹. A wide range of stakeholders supported the idea and agreed that more work should be done to develop the detail of any such test. After further work and discussions with various stakeholders, we set out our proposals for the consumer protection test in our consultation document *Consumer protection test for telephone number allocation* (‘the CPT consultation’) in May 2007.²

- 1.9 Respondents to the CPT consultation agreed that consumer protection should be taken into account at the time of number allocation and that information on past use of numbers should be considered as part of the allocation process. However, it was clear from responses that an obligation on all parties to apply the test in the manner proposed in the CPT consultation would be a significant burden for some communications providers.
- 1.10 Having carefully considered the consultation comments, we continue to believe that consumer protection considerations should form part of the decision-making process when we allocate numbers but have decided that the test as proposed in the CPT consultation should be revised. Details of the test to be implemented are set out below and in detail in this statement.

The revised Consumer Protection Test for telephone number allocation (‘the CPT’)

- 1.11 We will compile and publish two lists (known collectively as ‘the CPT Lists’). These will contain the names of individuals and companies to whom further allocations of numbers included in the scope of the test will not be made by Ofcom. Although we allocate numbers only to communications providers, the CPT Lists may also contain the names of non-communications providers who have used numbers to cause consumer harm and to whom communications providers and resellers are expected to refuse the assignment of numbers.
- 1.12 The ‘under assessment list’ is a list of individuals and companies that we are assessing to determine whether they have used telephone numbers in a way that has caused serious or repeated harm to consumers. The persons under assessment would usually have come to our attention by being subject to a decision made under consumer protection legislation by a relevant enforcement authority. If we are satisfied that the individual or company has used telephone numbers to cause serious or repeated consumer harm, they will be listed on the ‘number refusal list’ (see below). If not, the individual or company will be removed from the CPT Lists.
- 1.13 The ‘number refusal list’ is a list of individuals and companies that, following assessment, we are satisfied have used telephone numbers in a way that has caused serious or repeated harm to consumers in the past and to whom we consider that the allocation of further telephone numbers would not be the “best use” of those numbers. Inclusion on the list, and for how long, would depend on factors including the seriousness of the behaviour and the individual or company’s past history of using numbers to cause detriment to consumers.

¹ *Telephone Numbering - Safeguarding the future of numbers* consultation document published on 23 February 2006 available at <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

² *Consumer protection test for telephone number allocation* consultation document published on 17 May 2007 available at <http://www.ofcom.org.uk/consult/condocs/numberingcpt/>

- 1.14 We will publish the CPT Lists on our website. We strongly encourage all providers that assign telephone numbers to others to take best use of numbers and consumer protection into account when making assignment decisions and to refer to the CPT Lists for that purpose.
- 1.15 We will apply the CPT when allocating numbers in ranges with the strongest evidence of consumer abuse conducted through their use. As a result, the CPT will initially apply to 070 personal numbers; 087 (excluding 0870) special services higher rate numbers and 09 premium rate numbers. The CPT will not initially apply to 03, 056 or the remainder of the 08 ranges as proposed in the CPT consultation or any of the remaining number ranges in use. We will keep the number ranges included in the CPT under review.
- 1.16 We will introduce the CPT into our allocation process on 1 January 2009. From 11 December 2008, communications providers applying to us for the allocation of numbers in the 070, 087 (excluding 0870) and 09 ranges will need to complete the modified 07, 08 and 09 application forms which will be made available on our website from that date and supply the additional identification information that we require to determine whether the applicant is listed on the CPT Lists.³ The initial under assessment list, which will include individuals and companies that have been the subject of relevant enforcement actions during the previous twelve months, will be published on 1 January 2009 or shortly afterwards. The first 'number refusal list' will be published following assessment of the individuals and companies on the under assessment list.

³ Annex 5 of the statement includes the necessary notification for the modifications to the telephone numbering application forms for 07, 08 and 09 numbers required to bring the CPT into effect.

Section 2

Introduction and background

Introduction

- 2.1 As the authority responsible for managing telephone numbers in the UK, it is Ofcom's duty to ensure that "best use" is made of those numbers.⁴ As well as providing for the efficient allocation of numbers (so that they can be used for legitimate purposes), we consider that our duty also extends to taking reasonable steps to ensure that, where possible, the risk to consumers of scams, fraud and other abuses carried out by individuals and/or companies using certain types of telephone numbers is minimised.
- 2.2 We allocate numbers to a broad range of providers, who may in turn sub-allocate or assign numbers to their customers. These customers may be end-users of telephone numbers like individuals and businesses or they may provide content services (such as vote-lines, weather information, competitions, adult entertainment and so on) over telephone numbers. They may also be other providers who, in turn, sub-allocate or assign these numbers to their customers.
- 2.3 Currently, we consider requests for number allocation solely on grounds of technical requirement and justified demand for the numbers. We do not refuse numbers to applicants on the basis of any past history of causing consumer detriment through the use of telephone numbers. To ensure the best use of telephone numbers and to further the interests of consumers in avoiding scams, we are introducing a new test into our allocation process for certain number ranges. That test will take into account whether the individual or company applying for the numbers has a history of causing serious or repeated harm to consumers through the use of telephone numbers given the possibility of such behaviour recurring.
- 2.4 The test, called the 'consumer protection test for telephone numbering' (or 'the CPT'), will be applied by Ofcom using available information from authorities responsible for enforcing relevant consumer protection standards⁵, and in particular their decisions in relation to consumer protection legislation relevant to the use of telephone numbers (see Figure 2.1 for examples of relevant decisions). We will use this information to identify individuals or companies that may have engaged in harmful conduct through the use of telephone numbers.
- 2.5 As a first step, we will assess whether telephone numbers were central to the behaviour that resulted in the enforcement action. If it appears so, those persons will be placed on the 'under assessment list' while we consider whether we are satisfied that the individual or company has used telephone numbers in a way that caused serious or repeated harm to consumers. If we are satisfied that those persons have done so, they are placed on the 'number refusal list'.
- 2.6 We will not allocate numbers in ranges covered by the CPT to persons on either the 'under assessment list' or 'the number refusal list' (known collectively as 'the CPT Lists'). These number ranges are initially 070 personal numbers; 087 (excluding 0870) special services higher rate numbers and 09 premium rate numbers; these

⁴ Section 63(1) of the Communications Act 2003.

⁵ Relevant enforcement authorities include Ofcom, PhonepayPlus, the Office of Fair Trading, Trading Standards, the Crown Prosecution Service and the police.

being the number ranges with the most evidence of being used to cause consumer harm.

- 2.7 All communications providers and resellers who assign numbers to others may take a self-regulatory approach to introducing the CPT or an equivalent test into their number assignment processes to prevent numbers being given to those with a history of using them to cause consumer harm. The CPT Lists are published to make this process easier, as we will take on the task of identifying individuals and companies that have used numbers to cause serious or repeated harm to consumers in the past.
- 2.8 We will monitor providers' implementation of consumer protection in number assignment and whether 070, 087 (excluding 0870) and 09 numbers continue to be assigned to individuals or companies on our CPT Lists. If we find this to be the case, we may revisit the question of whether a formal requirement on providers to implement the CPT is necessary. However, we are confident that communications providers will take the past behaviour of individuals or companies into account when deciding whether to assign numbers in order to ensure their effective use and will use our published CPT Lists for that purpose.
- 2.9 This is a brief introduction to the CPT. This statement provides further information as follows:
- the remainder of this section sets out the background to the consultation on introducing the CPT and provides the reasoning as to why it is required;
 - Section 3 covers the questions asked in the consultation, summarises the responses to these and other issues, and provides our comments on the submissions;
 - Section 4 sets out the details of the CPT to be implemented, which has been modified significantly from that proposed in the consultation in light of responses;
 - Annex 1 lists the 18 respondents to the CPT consultation;
 - Annex 2 provides an impact assessment on the introduction of the CPT;
 - Annex 3 sets out the CPT guidelines;
 - Annex 4 provides the legal framework and tests; and
 - Annex 5 provides the statutory modifications to the numbering application forms for 07, 08 and 09 numbers necessary to bring the CPT into effect.

Background

The Numbering Policy Review

- 2.10 On 23 February 2006, Ofcom published the Numbering Policy Review, which set out a number of strategic principles intended to inform UK telephone numbering policy in the long term. That document also proposed a number of policy initiatives intended to address certain consumer concerns associated with telephone numbers.

- 2.11 The Numbering Policy Review identified risks to consumers associated with some number ranges and we noted how this has damaged consumer confidence and welfare. Our consumer research established that many consumers no longer trust certain telephone numbers (for example, services on some 08 numbers, premium rate services on 09 numbers and 070 personal numbering services).⁶
- 2.12 The Numbering Policy Review proposed a consumer protection test which would stop the supply of telephone numbers to those who have used them to cause repeated or serious harm to consumers. This proposal was aimed at increasing confidence and trust in UK telephone numbers as a whole by preventing numbers from being allocated for the provision of 'services' which result in consumer harm.
- 2.13 We recognised that any consumer protection tests introduced in relation to number allocation would need to be applied in an objective, transparent, non-discriminatory and proportionate manner.
- 2.14 The proposal for a consumer protection test was strongly supported in responses to the Numbering Policy Review.⁷ A common theme of the responses was that the test should be kept simple and that measures should be achieved at a reasonable cost and without additional layers of administration that do not add significant value. In particular, it was noted that the test should not duplicate existing measures.
- 2.15 There was consensus in submissions that rapid action would be required from Ofcom once consumer harm has been identified and that in order to be effective, the test would need to apply not only when we allocate telephone numbers to providers but also when providers assign numbers to their customers. Many stakeholders agreed that the test would need to adapt over time to counteract evolving technologies and new threats of consumer harm.
- 2.16 Responses on the consumer protection test proposal generally supported the concept on the basis that more work would be undertaken to ensure that the test would be as effective as possible and that loopholes were identified and avoided.

Consultation on the consumer protection test

- 2.17 Given the general support for developing a consumer protection test for telephone number allocation, we worked extensively with stakeholders to develop the proposals. We published the CPT consultation on 17 May 2007, setting out the reasons why we believe the test is necessary and how we thought the test might look.⁸ The consultation closed on 22 June 2007. Responses to the consultation⁹ are summarised in Section 3.

The test proposed in the consultation document

⁶ Numbering Policy Review: report of findings, 27 July 2006. Available at

<http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/futuresight/>

Numbering Policy Review: report of market research findings, 23 February 2006. Available at

<http://www.ofcom.org.uk/consult/condocs/numberingreview/research/>

⁷ Responses to the Numbering Policy Review consultation document published 23 February 2006 are available at <http://www.ofcom.org.uk/consult/condocs/numberingreview/responses/>

A summary of responses on the subject of a CPT is provided at paragraphs 3.40 – 3.46 of the Numbering Policy Review statement published on 27 July 2006

<http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/statement.pdf>

⁸ <http://www.ofcom.org.uk/consult/condocs/numberingcpt/>

⁹ <http://www.ofcom.org.uk/consult/condocs/numberingcpt/response/>

- 2.18 We proposed a test that involved us publishing the names of individuals and companies, including the directors of those listed companies, to whom numbers within the scope of the test may not be allocated. These individuals and companies would have come to our attention through the investigations of authorities enforcing consumer protection instruments. They would be persons that either:
- a) we were assessing as to whether they had used numbers to cause serious or repeated harm to consumers (the 'under assessment list'); or
 - b) we were satisfied had used numbers to cause serious or repeated harm to consumers (the 'number refusal list'). The period of time during which a party would be included on the number refusal list would depend on the seriousness and/or repeated nature of the behaviour leading to the original enforcement agency decision, with a minimum period of six months proposed.
- 2.19 Ofcom and all providers who sub-allocate or assign numbers to others would introduce due diligence processes to ensure that adequate information was gathered to identify applicants requesting numbers included in the scope of the test. This information would be compared to the names on the CPT Lists to ensure against allocations to an individual or company that was listed. Best practice due diligence processes were set out in the draft CPT guidelines.
- 2.20 We proposed that the CPT covered the 03, 056, 070, 08 and 09 number ranges, meaning that numbers in these ranges may not be allocated to individuals or companies on either the under assessment list or the number refusal list.
- 2.21 It was suggested that the obligations to implement the CPT would apply from the date the statement was published. The initial under assessment list would be published on the same day and would include individuals or companies which had been the subject of enforcement authority decisions in the preceding twelve months.

The need for a consumer protection test for telephone numbers

- 2.22 We believe that the introduction of a consumer protection test for telephone numbers is a justified and proportionate response to the need to increase the protection that consumers are given from the most serious and persistent forms of abuse conducted through the use of numbers. Specifically, the CPT:
- fulfils our legal duties in relation to telephone numbers to secure what appears to us to be best use of telephone numbers (set out in more detail below);
 - provides a targeted response to evidence that certain number ranges are being used to conduct harmful behaviour and that the reputation of those number ranges is being tarnished; and
 - complements existing regulation designed to protect consumers and initiatives underway in relation to consumer protection.

Ofcom's duties in relation to telephone numbers

- 2.23 The aim of the CPT is to ensure best use of telephone numbers and thereby to further the interests of consumers by protecting them from possible future harm resulting from the misuse of numbers. This goal will also enable us to fulfil our duties in relation to number allocation as set out below.

2.24 Ofcom has a number of duties in relation to numbering under sections 56 to 63 of the Act. In particular, section 63(1) requires us to:

“secure that what appears to Ofcom to be the best use is made of the numbers that are appropriate for use as telephone numbers; and encourage efficiency and innovation for that purpose.”

2.25 In fulfilling our duty under section 63, we should also take into account our general duties under sections 3 and 4 of the Act. As well as furthering the interests of consumers, the duties in sections 3 and 4 of the Act require us to act in a way that promotes competition by securing the availability of a wide range of communications services and, by implication, making available numbers on which such services can be provided. We have to balance these two sets of interests carefully and when there appears to be a conflict in fulfilling these duties, we must state why one interest is being promoted over another. However, we do not believe that there is a conflict in fulfilling our numbering and general duties in implementing the CPT, since maintaining consumer confidence in numbers underpins the wide availability of communications services on those numbers.

2.26 Consumer confidence has been undermined by the association of certain number ranges with scams and other forms of harmful behaviour. Examples are ‘missed call’ and fax-back scams on 070 numbers. These are unsolicited calls or faxes that induce the receiver to call or fax back in response to bogus messages or promises of enticing deals. The high call tariff will be costly for the caller and will generate revenue for the called party (in contravention of the National Telephone Numbering Plan (‘the Numbering Plan’) which prohibits revenue sharing on 070 numbers).¹⁰ Most providers would not want the number ranges they use to be associated with fraud or other activities resulting in a poor reputation with consumers. If providers avoid number ranges with a poor reputation, that resource will be under-utilised.

2.27 Even if this were not the case, where numbers are to be used to provide ‘services’ which subject consumers to serious or repeated harm, the need to protect consumers will outweigh the public policy benefits of ensuring that numbers are available without any restriction.

2.28 We believe that where an individual or company has a history of causing serious or repeated harm to consumers through the misuse of numbers by, for example, operating scams, allocating them further numbers would not be putting those numbers to “best use”. This is due to the possibility of that individual or company using new number allocations to cause consumer harm in the future.

2.29 Consistent with section 49 of the Act, we should not amend regulation, in this case modifying numbering application forms, unless the modifications are (with respect to the matters that they deal with)¹¹:

- proportionate;
- non-discriminatory;
- objectively justifiable; and

¹⁰ Details of our competition and consumer enforcement work and the role of our Investigations Team in investigating complaints into examples of consumer harm using telephone numbers such as ‘fax back’ scams and misuse of 070 numbers can be found in our *Competition and Consumer Enforcement Bulletin* available at http://www.ofcom.org.uk/bulletins/comp_bull_index/

¹¹ Section 49 of the Act deals with the test for giving, modifying or withdrawing directions, including directions on appropriate application forms. See paragraph A4.4 for the text of this section.

- transparent.

Annex 4 sets out how the CPT that we are implementing meets the legal tests under section 49 of the Act.

Evidence of consumer detriment and harm to the reputation of certain number ranges

- 2.30 Ofcom's consumer research shows that abuses targeted at consumers have done significant harm to the reputation of certain number ranges. Our research also shows that lack of trust and familiarity with certain number ranges, which can be exploited in scams, makes consumers less inclined to call them. This will have a wider effect across all service providers by discouraging consumers from using their services and reducing the likelihood of them making services available to consumers using those ranges where they would have done so.
- 2.31 On 23 February 2006, we published a document entitled *Numbering Review – Report of Market Research Findings*.¹² In that document we set out the results of research commissioned to assess attitudes and behaviours associated with telephone numbers among residential and business consumers. We believe that the findings of this report remain valid.
- 2.32 Research using focus groups showed that initial awareness of 09 numbers amongst residential and business consumers was limited. When prompted, however, 09 numbers were widely recognised as numbers used for chat lines or competitions. Impressions of premium rate services among both residential and business consumers were overwhelmingly negative and the companies that provided services using these numbers were generally perceived to be unscrupulous.
- 2.33 When asked in our research how likely they were to call numbers of different types, as many as 82 per cent of residential consumers stated they would be likely or certain not to call a number beginning 090. This research, together with findings from the focus groups suggests a general mistrust of services on 09 numbers.
- 2.34 Research also found a limited awareness of personal number services on 070 numbers and confusion over the likely cost of calling a number beginning with 08, apart from 0800 numbers which were generally understood to be freephone. Most said that they were likely or certain not to call 08 numbers; 78 per cent in the case of 0871 numbers.
- 2.35 Consumer sentiment about number ranges is also reflected in the number of complaints consumers make to Ofcom and PhonepayPlus.¹³ Between October 2006 and December 2007, Ofcom received 661 consumer complaints of misuse regarding 070 numbers and 622 complaints regarding 0871/2/3 numbers. These jointly accounted for three quarters of complaints received on misuse of numbers. During

¹² Published on Ofcom's website at:

<http://www.ofcom.org.uk/consult/condocs/numberingreview/research/marketresearch.pdf>

¹³ PhonepayPlus (<http://www.phonepayplus.org.uk/>) is the organisation (previously known as ICSTIS) that regulates phone-paid services in the UK. 'Phone-paid services' covers goods and services that consumers can buy by charging the cost to phone bills and pre-pay phone accounts. These are typically accessed by calling numbers prefixed by '09', although similar, and in some cases identical, services may also be accessed from numbers on other number ranges, including those prefixed by '08'. The PhonepayPlus remit currently covers 09, 118 Directory Enquiry numbers and SMS numbers. Ofcom has recently consulted on proposals to extend that remit to include 087 numbers (excluding 0870). See <http://www.ofcom.org.uk/consult/condocs/087prs/>

the same period, PhonepayPlus (to whom most consumer complaints on 09 numbers are referred) received 2562 complaints of number misuse.

Introducing the CPT to complement existing consumer protection regulations and initiatives

- 2.36 On 5 December 2007, we published a review of the arrangements between Ofcom and PhonepayPlus, including a Framework Agreement.¹⁴ In line with this framework, regulations set by Ofcom and PhonepayPlus should seek to work in a concerted way to protect consumers.
- 2.37 PhonepayPlus publishes and enforces a Code of Practice which contains the rules governing the content and promotion of premium rate services. The most recent edition of the Code of Practice took effect on 28 April 2008.¹⁵ PhonepayPlus investigates complaints under the Code of Practice and may fine companies, bar access to services and order refunds. They can also bar the individual behind a company from running any premium rate services under any company name on any telephone network for a set period.
- 2.38 The CPT will complement the work of PhonepayPlus in protecting consumers. We will use PhonepayPlus adjudications and sanctions as a trigger for individuals and companies that might have misused telephone numbers. This will help the work of PhonepayPlus as we can ensure that further numbers are not handed out to those we have identified as having misused numbers.
- 2.39 In addition to these specific measures that target numbering services, other more general instruments sanction abuse that is sometimes associated with telephone numbers. The Act includes provisions which allow us to take enforcement action for persistent misuse of a communications network or service, as well as prescribing enforcement action for contraventions of the General Conditions of Entitlement set by Ofcom under the Act.¹⁶ The General Conditions¹⁷ include rules about the allocation and use of numbers, the publication of pricing information and information relating to premium rate and number translation services. Cross-sectoral statutory regulations enforceable by Ofcom under Part 8 of the Enterprise Act 2002 include regulations covering misleading advertising, misrepresentation of pricing information, distance selling, TV advertising and privacy (use of telecommunications services for direct marketing purposes).
- 2.40 A consumer protection test for numbering will complement these existing regulations and consumer protection measures. We will look to notifications issued by Ofcom, PhonepayPlus directions and other enforcement actions to determine whether it would be in the interest of consumers to refuse the allocation of numbers to a particular applicant. The CPT is not itself an enforcement mechanism; rather it is a prevention measure to introduce a layer of scrutiny to the number allocation process to stop the allocation of telephone numbers in circumstances that would not constitute the “best use” of the numbers.

¹⁴ *A new framework for premium rate services regulation*. Available at <http://www.ofcom.org.uk/media/news/2007/12/nr20071205>

¹⁵ The 11th edition of the PhonepayPlus Code of Practice. Available at: http://www.phonepayplus.org.uk/pdfs_code/PhonepayPlus11CoP_Apr08v3.pdf

¹⁶ The regime governing persistent misuse is set out in sections 128 to 131 of the Act; the enforcement of conditions is governed by sections 94 to 104 of the Act.

¹⁷ A consolidated version of the General Conditions (published on 15 August 2007) is available at http://www.ofcom.org.uk/telecoms/loi/g_a_regime/gce/cvogc150807.pdf

Types of misuse behaviour that should be targeted by the CPT

- 2.41 We have identified two types of general misuse/abuse behaviour that we believe should be targeted by the consumer protection test:
- *direct misuse of a telephone number*, where serious or repeated harm to consumers is caused by using or adopting a telephone number contrary to numbering provisions. An example would be revenue-sharing on an 070 number which is contrary to the Numbering Plan; and
 - *indirect misuse of a telephone number*, where the use or adoption of telephone numbers is critical to the activity causing the consumer harm.
- 2.42 'Indirect misuse of a telephone number' would include, for example, premium rate scams, fraud and other activities which rely on duping consumers to call revenue-share telephone numbers. It would not include running a bogus charity which conned consumers into making credit card donations over a freephone number.¹⁸ In the latter case the type of number is incidental or at least not central to the method of consumer harm - the activity could have equally been carried out by requiring consumers to send their donations by cheque in the post, over the internet through a web credit card payment service, or through a call to a standard geographical number. However, if the 'donation' mechanism worked by conning the consumer into calling a premium rate number on the premise that revenue from the call would be donated to a charity, this would be the sort of indirect number misuse that the test is designed to address.
- 2.43 The main types of scams and fraud which we believe undermine or are likely to undermine consumer confidence in associated telephone numbers include:
- criminal offences involving number abuse, such as fraud;
 - false or misleading advertising of call rates, including for subscription services;
 - using numbers in a way that contravenes the Numbering Plan, such as revenue sharing on 070 numbers; and
 - scams, including the following examples that are associated with 09, 0871/2/3 and 070 numbers and any other scams that may emerge in the future:
 - fax-back and 'missed call' call-back scams;
 - 'prize' scams, which induce consumers to make lengthy calls to high tariff numbers in order to qualify for a 'prize' that is either never received, is different from advertised or there was no chance of winning; and
 - artificial delays on high rate numbers to create revenue for the called party.
- 2.44 This list is not exhaustive, and we intend to apply the CPT to other types of harmful behaviour that we might identify as involving the use of telephone numbers as they arise. In order that the test may better evolve over time, it will normally be triggered by rulings made under particular legislation and consumer protection instruments,

¹⁸ This illustrative example might well be unlawful under other consumer law and might well prompt action by agencies (including Ofcom).

rather than being linked to certain specific offences. In line with our general duties, we will approach this task on the basis of the need to be transparent, and this may extend to, for example, publishing findings or summaries via our website.

- 2.45 Having regard to the types of harmful activities that we believe are central to the purpose of the CPT, it is possible to identify enforcement actions that might bring individuals and companies to our attention for initial assessment under the test. This is a non-exhaustive list and we emphasise that a breach of one of these rules will not result in the automatic addition of the individual or company to either of the CPT Lists. It will simply bring that individual or company to our attention for initial assessment under the CPT.

Figure 2.1 Possible triggers for Ofcom assessment under the CPT

| Abuse/ misuse | Possible trigger of Ofcom assessment |
|---|--|
| Misuse of numbers, e.g. revenue-sharing in contravention of the Numbering Plan | A notification issued by Ofcom under sections 94 or 95 or a penalty imposed under section 96 of the Act for breach of the Numbering Condition. |
| Premium Rate Service abuse | <p>Certain adjudications by PhonepayPlus (under its standard or emergency procedure) for contravention of its Code of Practice;</p> <p>A notification issued by Ofcom under sections 94 or 95 of the Act or a penalty imposed under section 96 of the Act for breach of the PRS Condition.¹⁹</p> |
| Certain types of persistent misuse of an electronic communications network or service (excluding silent calls as the telephone number used to make the call is irrelevant. The behaviour does not involve a call back and the number is therefore not central to the behaviour) | A notification issued by Ofcom under sections 128 or 129 of the Act or a penalty imposed under section 130 of the Act for persistent misuse of an electronic communications network or service. |
| Misleading or deceptive conduct in relation to telephone numbers, e.g. misleading pricing information for an 08 number | <p>A notification issued by Ofcom under sections 94 or 95 of the Act or a penalty imposed under section 96 of the Act for breach of General Condition 14;</p> <p>An enforcement order made by or undertaking given by an individual or company to the Court, Ofcom, or other relevant authority under Part 8 of the Enterprise Act 2002.</p> |

¹⁹ The regulation of PRS is provided for in sections 120 to 124 of the Act. These provisions give Ofcom the power to set the PRS Condition for the purpose of regulating the provision, content, promotion and marketing of PRS. They also require communications providers to comply with directions given by PhonepayPlus under the Approved Code of Practice.

| | |
|--|--|
| Criminal behaviour that would be classed as number abuse, e.g. PRS scams | A criminal conviction, for example for fraud, theft or deception perpetrated by the misuse of telephone numbers. |
|--|--|

Section 3

Responses to the consultation and Ofcom's comments

- 3.1 We received 18 responses to the CPT consultation. A list of the respondents is attached at Annex 1 and the responses are available on our website at: <http://www.ofcom.org.uk/consult/condocs/numberingcpt/response/>.
- 3.2 The consultation document set out eight specific questions for respondents to answer. There were also additional issues that generated a number of comments and many chose to make more general observations in relation to the proposals set out in the consultation document.

Summary of general comments on the CPT proposals

- 3.3 Most respondents welcomed the principle of a consumer protection test for telephone number allocation, supporting the aims of the test to prevent consumer harm through telephone numbers and increase consumer confidence in the Numbering Plan.²⁰
- 3.4 A number of respondents recognised the test's importance as part of a package of measures collectively designed to reduce scams and other forms of consumer abuse through the use of telephone numbers, and that it would work best in combination with existing and additional consumer protection measures.²¹ Responses noted that the test needed to be formulated in a way that would allow it to adapt to new types of scams that may emerge in the future and not be linked to specific types of scams that have been perpetrated in the past. The test would only be effective if it is periodically reviewed to ensure that it keeps up with emerging situations.²²
- 3.5 Some respondents felt that introducing a number refusal list was a tough regulatory message and that we should first examine our number allocation policy and focus more intently on an applicant's ability or intention to offer the service for which they request numbers.²³ The Telecommunications UK Fraud Forum (TUFF) recommended that we introduce a much stricter regime for the way that we make initial allocations of numbers and argued that "Ofcom must be proactive in this area of allocation and be prepared to police the industry they regulate". COLT recommended that we consider allocating some number ranges directly to end users.
- 3.6 BT, Flextel, H3G and TUFF questioned the effectiveness of the number refusal period given that there would be no provision for automatic withdrawal of telephone numbers or service suspension alongside number refusal. BT, H3G, the Office of Fair Trading (OFT) and TUFF suspected that those on the number refusal list would simply continue to offer services using their existing stock of numbers.

²⁰ Those respondents were Cable & Wireless (C&W), the Federation of Communication Services (FCS), Flextel, H3G, PhonepayPlus, the Mobile Broadband Group (MBG), Network for Online Commerce (NOC), the Office of Fair Trading (OFT), T-Mobile and two consumers.

²¹ Those respondents were BT, PhonepayPlus, OFT, the UK Competitive Telecommunications Association (UKCTA) and the Telecommunications UK Fraud Forum (TUFF).

²² Those respondents were BT, C&W, FCS, PhonepayPlus, OFT and TUFF.

²³ Those respondents were BT, COLT, H3G, MBG, T-Mobile and TUFF.

- 3.7 While most respondents to the consultation supported the spirit of the test, many felt that the scope of the proposed test was too wide, making it disproportionately burdensome on providers involved in the sub-allocation and assignment of telephone numbers.²⁴ In particular, some respondents were concerned about the amount of number ranges that we proposed to include in the CPT, which would result in a heavy administrative burden on providers if obliged to check applicants' details against names on the CPT Lists.²⁵ Those respondents proposed that the numbers to be included in the CPT and refused to persons listed should only be those with revenue-sharing capabilities, given that these are the numbers most likely to be used to cause significant harm to consumers. BT and TUFF also argued that the proposed due diligence best practice processes would be highly onerous, due to the level of customer details required.
- 3.8 Many respondents felt that further detail was needed in order to fully understand how the CPT would work and clarity on a number of points was requested.²⁶ Also, there were concerns that the proposed period for the implementation of the test was unrealistic, and that the test could not be put into practice at the same time as the publication of the statement.²⁷

Ofcom's response to the general comments

- 3.9 We welcome the general support given to the CPT and are encouraged by providers' shared commitment to further the interests of consumers in the way that numbers are allocated and used.
- 3.10 We agree that the CPT should be seen as part of a package of measures to protect consumers when they call telephone numbers. The CPT focuses on only the most significant instances of consumer harm using telephone numbers and additional consumer protection initiatives are required to tackle other forms of consumer detriment. Other measures include the introduction of new rules to make it easier for consumers to find out the cost of calling 084 and 087 numbers, as we know that consumers have a very low awareness of the price of calling these numbers. Also, we have recently consulted on proposals to extend PRS regulation to 087 numbers (excluding 0870) to improve consumer protection and pricing transparency.
- 3.11 The CPT needs to be formulated in such a way that new types of abuse and scams can be dealt with appropriately. As such, the CPT will apply by reference to general rather than specific types of behaviour. In addition, we will keep under review how the test applies in practice to ensure it catches both current and emerging forms of harmful behaviour.
- 3.12 We accept the point made by a number of respondents, explicitly or by implication, that there is a significant impact upon a company or individual arising from being placed on a CPT List, and that we should exercise care in relation to the lists. The resulting inability to obtain new allocations from certain number ranges may affect that company or individual's ability to bring services to market. It is certainly not a measure that we could or should take unless we consider it to be a proportionate response to the risk of those persons causing further consumer harm through their use of telephone numbers. However, if an individual or company has used numbers to cause serious or repeated harm to consumers in the past, we would normally

²⁴ Those respondents were BT, C&W, NOC, TUFF and UKCTA.

²⁵ Those respondents were BT, C&W, Magrathea, NOC, TUFF and UKCTA.

²⁶ Those respondents were C&W, COLT, H3G, Magrathea and Thus.

²⁷ These concerns were expressed by BT, C&W, COLT, TUFF and UKCTA.

consider that placing them on the number refusal list is likely to be proportionate. Of course, each case will be judged on its merits.

- 3.13 As indicated above, some respondents felt that we should seek more evidence of an applicant's ability or intention to offer the service for which they are requesting the numbers and to monitor how the numbers are used in practice. We already carry out checks in relation to an applicant's technical ability to provide a service and investigate circumstances that are brought to our attention where numbers are being used inappropriately. We believe that taking previous behaviour in the use of numbers into account at the time of allocation will contribute to our consideration of whether an applicant is likely to use the numbers for legitimate services. We considered the direct allocation of numbers to end users as part of the Numbering Policy Review and we believe that this could be possible in the future when it is easier for networks to handle the routing of individual numbers rather than the current situation of routing numbers allocated in large blocks.
- 3.14 In terms of number withdrawal and service suspension, the specific circumstances under which we can take such action are set out in paragraphs 3.117 to 3.122. We recognise that the allocation of numbers in large blocks means that providers could continue to use their existing stocks of numbers during the time that they are on the CPT Lists. However, our current provisions for number withdrawal and service suspension reflect European legislation. It is currently not possible to extend the scope of these provisions as part of introducing the CPT.
- 3.15 We have given careful consideration to the comments received on the CPT process proposals and recognise that our proposals would have resulted in very different administrative impact and costs on providers depending on how they assign numbers. We have significantly adjusted the CPT in light of the concerns expressed. In particular:
- Ofcom will implement the CPT as set out in Section 4 of this statement and will publish the CPT Lists to aid providers in their consideration of consumer protection at the time of number assignment;
 - application of the CPT (or a comparable test to prevent the assignment of numbers to persons that have used numbers to cause consumer harm) will be a self-regulatory measure for providers. We have taken this approach following providers' support for the introduction of a consumer protection test for telephone number allocation but concerns over a prescribed process. We expect the self-regulatory approach to result in providers taking consumer protection into account when assigning numbers in a way that best suits their existing processes; and
 - number ranges with a substantial history of consumer complaints, scams and findings by enforcement agencies run a greater risk of being used to cause consumer harm in the future and, accordingly, the test has been confined (at least initially) to the 070, 087 (excluding 0870) and 09 ranges.
- 3.16 Further detail on the revised CPT is provided in our comments on consultation responses, and is set out in Section 4 and the CPT guidelines in Annex 3. We have aimed to clarify the issues that respondents have stated were unclear in the CPT consultation.

Responses to questions

- 3.17 We posed specific questions in the CPT consultation covering behaviour that can lead to number refusal; the CPT Lists; the proposed CPT process and implementation details. In this section of the document, we summarise the responses received to these questions and set out our comments.

Question 1: Behaviour that can lead to number refusal

Question 1: Do you agree that these are the conditions in which it is appropriate for Ofcom to refuse numbers to applicants in order to ensure best use? If not, please explain why not?

Background to Question 1

- 3.18 The consultation document identified two types of misuse/abuse that we believe should be targeted by the consumer protection test (see paragraphs 2.41 to 2.42 for further detail):
- direct misuse of a telephone number, i.e. causing serious or repeated harm to consumers through using or adopting a telephone number contrary to numbering provisions; and
 - indirect misuse of a telephone number where the use or adoption of a number is critical to the activity causing the consumer harm.
- 3.19 In addition, the consultation document set out a list of examples of the types of behaviour that we believe are central to the purpose of the test (see paragraph 2.43). We noted that the list was not exhaustive and would not prevent us from applying the consumer protection test to other types of harmful behaviour which we might identify as involving the use of telephone numbers. In order that the test may better evolve over time, we proposed that it would normally be triggered by rulings made under particular legislation and consumer protection instruments, rather than being linked to specific offences.

Responses to Question 1

- 3.20 Generally, respondents agreed that the list of conditions given in the CPT consultation under which it is appropriate for Ofcom to refuse numbers to applicants was a comprehensive but not exhaustive list. It was felt that scams which were designed to take advantage of relatively high call tariffs, wholesale termination rates and the ability to revenue share were the key factors in creating the conditions for refusing numbers. Responses stressed that the scale and scope of abuse must be reviewed regularly.²⁸
- 3.21 PhonepayPlus commented that some of the examples of consumer detriment provided in the CPT consultation, for instance web diallers, had largely been eradicated due to existing consumer protection measures. This emphasised the need for us to concentrate on the underlying tests that help to determine whether a service is causing serious or repeated consumer harm. In other words, the CPT should not be linked to specific offences but to general notions of consumer harm and be triggered through the rulings of authorities enforcing consumer protection

²⁸ These respondents were BT, C&W, COLT, FCS, Flextel, H3G, PhonepayPlus, Magrathea, NOC, OFT, T-Mobile, Thus and TUFF.

instruments. The PhonepayPlus *Sanctions Guide*²⁹ was a useful example of this approach in practice.

- 3.22 COLT believed that some of the examples of consumer detriment were caused more by a lack of consumer understanding than deliberate misuse. In such cases, raising consumer awareness would be a more proportionate measure than the refusal of numbers. COLT felt that targeted consumer research was required to understand fully the degree and causes of consumer harm that resulted from the misuse of telephone numbers.
- 3.23 In considering the conditions, C&W, COLT and UKCTA questioned whether the CPT would merely duplicate existing consumer protection measures, in particular PhonepayPlus's regulation of 09 numbers, and therefore provide minimal additional consumer protection in return for placing a heavy administrative burden on providers.
- 3.24 C&W and NOC pointed out that regardless of the conditions, telephone numbers should not be refused to any individual or company until such time as any appeals process had been completed in respect of the enforcement decision that brought the individual or company to our attention. UKCTA requested confirmation of our approach to an appeal of the original decision made by the enforcement authority.

Ofcom's response to comments on Question 1

- 3.25 We welcome the general agreement on the types of behaviour that could lead to an individual or company being placed on the number refusal list and we will keep to the principles of 'direct' and 'indirect' misuse of a telephone number. We agree that the list of possible triggers is not exhaustive and that we need to keep it under review to reflect experience and developments.
- 3.26 The aim of the CPT is to stop numbers being given to those that have previously caused the most serious and repeated forms of consumer harm through the use of telephone numbers. It is based on a general assessment of whether a service is causing serious or repeated consumer harm rather than on specific types of offences. We will make use of rulings of authorities enforcing consumer protection instruments and consider their classification of the seriousness of the behaviour where relevant. For instance, PhonephonePlus, which is likely to be the main source of assessment triggers, indicates factors such as the severity of the breach of their Code of Practice, the level of harm caused and the prior history of the service provider concerned when making their adjudications.
- 3.27 We agree that the CPT is not designed to address all aspects of consumer protection in the use of numbers. Indeed, ensuring that consumers are well-informed is an ongoing goal for Ofcom. This is particularly evident in the area of tariff transparency, and we have recently consulted on measures to improve this for 0870 numbers.³⁰ The intention of the CPT is to provide a mechanism for Ofcom to refuse the allocation of telephone numbers from ranges commonly used to cause consumer detriment to those individuals or companies with a history of seriously or repeatedly misusing numbers. It also provides a model for providers in their implementation of a consumer protection test for telephone number allocation.

²⁹ http://www.phonepayplus.org.uk/pdfs_guidelines/Sanctions_Guide_20080408.pdf

³⁰ <http://www.ofcom.org.uk/consult/condocs/0870calls/>

- 3.28 We have investigated consumer complaints to understand the level of harm caused through misuse of numbers. We have also conducted substantial research to understand consumers' general perception of numbers and will keep this under review. This will help to ensure that we continue to understand the causes of consumer harm and that the CPT remains targeted at the appropriate number ranges.
- 3.29 As set out in paragraphs 2.36 to 2.40, the CPT is designed to complement existing consumer protection measures. In implementing the CPT, we have acted in accordance with our principle of "operating with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required"³¹ by seeking to avoid increasing the regulatory burden, at least in the first instance. Having carefully considered the responses to the consultation, we have been impressed by providers' willingness to embrace a test that considers consumer protection at the time of number allocation and assignment. By permitting a self-regulatory approach providers are encouraged to adopt measures, or adapt existing measures, to take previous behaviour into account when considering applications for numbers and fit this into their number assignment processes in a way that does not increase the regulatory burden.
- 3.30 We have considered the suggestion that an individual or company should not be placed on either CPT List until the completion of any appeals processes relating to the enforcement decision that brought them to our attention. However, in order for the CPT process to be workable and prevent numbers from being allocated to those who have misused them to cause consumer harm in the past, we consider that once an enforcement decision has been made, it is final until such time as it is reviewed or overturned by the authority that made the decision. If a decision that led to an individual or company's placement on either CPT List is overturned, we will re-assess at the individual or company's request in the light of the new circumstances and would be likely to remove them from either list (unless, for example, other enforcement decisions had been made against the individual or company since the decision that led to their placement on the list). The general procedure and grounds for removal of a party from the number refusal list are set out in Section 4 (see paragraphs 4.32 to 4.36) and in the CPT guidelines in Annex 3.

Questions 2, 3 and 4: Period of number refusal

Question 2: Ofcom has proposed two options for the period of number refusal: a set period of time, such as 12 months; or a period of time to be determined by Ofcom on a case-by-case basis, having regard to the seriousness of the harmful behaviour but with a minimum period, such as 6 months. Which option do you believe is more appropriate?

Question 3: Do you agree that 6 months is an appropriate and effective minimum time period for number refusal or do you think the minimum period should be longer/shorter? Explain why.

Question 4: Do you agree that the factors set out in the draft guidelines at Annex 6 (of the CPT consultation) are appropriate in deciding how long to refuse numbers to an applicant? Are there any other factors that you believe that Ofcom should take into consideration?

³¹ Ofcom's regulatory principles are published on our website at <http://www.ofcom.org.uk/about/sdrp/>

Background to Questions 2, 3 and 4

3.31 We proposed two options in the CPT consultation for the period of time that an individual or company should remain on the number refusal list:

1. A set period of time for all offenders. For example, 12 months, with an escalating period for repeat offenders, e.g. 24 months for second time on the list, etc. This option keeps the process as 'automatic' as possible in order to simplify its application; it is transparent and the consequences of causing serious or repeated harm to consumers through telephone numbers are clear; or
2. A period of time to be determined by Ofcom on a case-by-case basis, having regard to the seriousness of the harmful behaviour but with a minimum period as a starting point. This option would allow flexibility for the time to be proportionate to the behaviour that led to the decision to refuse numbers to the individual or company.

3.32 In the CPT consultation, we favoured the second option. We suggested a minimum period of six months in all but exceptional circumstances, as a shorter period would be ineffective in preventing consumer harm from reoccurring.

3.33 A proposed non-exhaustive list of relevant factors to be taken into account when deciding the appropriate time for appearing on the number refusal list was included in the draft CPT guidelines. The general criteria were:

- the seriousness of the behaviour that led to the assessment;
- the extent and seriousness of any previous behaviour involving the use of telephone numbers to cause harm to consumers;
- the extent to which any harm to consumers was caused by a third party or any relevant circumstances beyond the control of the individual or company being placed on the number refusal list; and
- the need to ensure that the period of refusal provides sufficient protection to consumers.

3.34 After determining a refusal period on the basis of the general criteria detailed above, there would be consideration of any other factors specific to the individual case that might justify increasing or decreasing the number refusal period.

3.35 Proposed factors tending to lead to an increase in the number refusal period included in the draft CPT guidelines were:

- the continuation of the harmful behaviour after notification by Ofcom, PhonepayPlus or another relevant body;
- the extent to which senior management knew or ought to have known that the harmful behaviour was occurring or would occur; and
- the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent harmful behaviour by the individual or company.

- 3.36 Proposed factors tending to lead to a decrease in the number refusal period included in the draft CPT guidelines were:
- co-operation with any investigation into the behaviour carried out by Ofcom, PhonepayPlus or another relevant body;
 - the extent to which the individual or company has taken steps in advance to identify and mitigate external factors that might result in harm to consumers; and
 - the extent and timeliness of any steps taken to end the harmful behaviour and remedy any consequences of that behaviour.
- 3.37 The draft CPT guidelines further proposed that having had regard to any representations made by the individual or company and having considered the factors listed above (to the extent that they apply) and any other circumstances relevant to the particular individual or company under assessment, we would determine an appropriate and proportionate period of time for the individual or company to remain on the number refusal list.

Responses to Questions 2, 3 and 4

- 3.38 All respondents agreed with the second option - the period of time that a party is on the number refusal list should be determined on a case-by-case basis in proportion to the seriousness of the harmful behaviour carried out; whether the party has repeatedly caused consumer harm; and the likelihood of the party causing harm in the future.
- 3.39 Most respondents supported a minimum period for refusal that should be sufficiently long to have some effect. There was general support for this period to be six months.³² BT and TUFF argued that a longer period would be required if the CPT was to be effective, otherwise the party would simply continue to use their available stock of numbers. A minimum period of 18 or 24 months was suggested by TUFF and BT respectively. NOC felt that a minimum of six months may not be appropriate in all cases and that mitigating circumstances should be taken into account. Magrathea believed that six months should be the standard period, with the time increased or decreased according to the circumstances of the behaviour. One consumer thought that the minimum period should be one month. The other consumer thought that the period of number refusal should be set on a case-by-case basis with no minimum period. The OFT was concerned that stockpiling of numbers would render the minimum period ineffective.
- 3.40 There was general agreement with the proposed non-exhaustive list of relevant factors to be taken into account when setting the period of time for appearing on the number refusal list. They were recognised as being consistent with the factors taken into account in PhonepayPlus determinations. However, H3G and Thus argued that if time periods are to vary, it is essential that a fair and transparent process for establishing the period exists, including an indication of the length of time likely to be associated with various types of behaviour.
- 3.41 The OFT suggested that we take into account whether the individual or company under assessment had previously been involved in serious consumer harm through activities not involving telephone numbers.

³² Those respondents were C&W, COLT, FCS, Flextel, H3G, MBG, T-Mobile, Thus and UKCTA.

- 3.42 H3G proposed a probation period following the end of the number refusal period, during which time further harmful behaviour could result in re-listing.

Ofcom's comments

- 3.43 Given the support in the consultation responses, we will determine the period of time that an individual or company is on the number refusal list on a case-by-case basis taking account of the seriousness of the harmful behaviour carried out and any prior harmful conduct.
- 3.44 In all but exceptional circumstances, the minimum period for being on the number refusal list will be six months. We have not set a maximum period. We will adopt the indicative list of factors to be taken into account when setting the period of time and will keep these factors under review.
- 3.45 A formal probation period would not add to the assessment process as an individual or company would be placed on the under assessment list should they be subject to an enforcement action where numbers were central to the behaviour regardless of whether they had been on the number refusal list previously. However, the fact that the party had recently been on the number refusal list would be taken into account as part of the assessment.
- 3.46 We have considered the suggestion that we take into account previous behaviour unrelated to the use of telephone numbers that has caused consumer harm. However, we believe that this would evolve the CPT beyond the original concept and would in practice be unworkable due to the difficulty in getting a comprehensive assessment of all possible relevant behaviour and enforcement findings.

Questions 5 and 6: publication of the number refusal list

Question 5: Do you agree with our proposal to place the number refusal list on the publicly accessible part of the Ofcom website or do you think it should be limited to a closed user group, for instance by password protection?

Question 6: Do you see any reasons why the number refusal list should be restricted to providers and other number assigners/ sub-allocators? What do you believe are the foreseeable abuses of the list?

Background to Questions 5 and 6

- 3.47 In the CPT consultation, we proposed to publish up-to-date copies of the CPT Lists on the numbering pages of the Ofcom website. We would include an email subscription service to provide subscribers with automatic notification of updates to the CPT Lists.
- 3.48 In terms of access to the list, two possible options were presented in the CPT consultation:
- password-protect the list and provide the password only to communication providers, as is the current procedure for numbering application forms. Providers may also need to give the password to all those to whom they sub-allocate numbers and who further sub-allocate or assign the numbers; or
 - publish the list on the publicly accessible part of the numbering pages on the Ofcom website.

- 3.49 The CPT consultation considered that in practical terms, for the proposed system to work successfully, it would be necessary to provide easy access to the CPT Lists for all persons that assign numbers. This suggested that we make the lists publicly available.
- 3.50 We considered whether making the lists publicly available might risk them being used by third parties for purposes which we do not intend them being used for. However, on balance, we proposed that the lists be made publicly available for reasons of practicality and transparency.
- 3.51 It was proposed that the CPT Lists contain details of individuals as well as companies who have been found to have used telephone numbers to cause serious or repeated harm to consumers. In the consultation, we also proposed that directors of a company placed on the number refusal list should also be listed. This is to take account of individuals with a track record of causing consumer harm moving from company to company or setting up new companies in an attempt to undermine the effect of the CPT.

Responses to Questions 5 and 6

- 3.52 Virtually all respondents agreed that the number refusal list should be published on Ofcom's website.³³ They considered that the reasons for widely publishing the number refusal list outweighed any potential concerns regarding its publication. It was also noted by some that there should be one source of information and that the under assessment list should also be made publicly available.
- 3.53 Respondents argued the following reasons for making the CPT Lists publicly available:
- a) to ensure accessibility to all those in the number supply chain.³⁴ It would be unworkable for the password to be given to all those who require access and for it to remain confidential;
 - b) the 'name and shame' aspect of publishing the list may have a deterrent effect on those considering carrying out activities that may harm consumers through the use of telephone numbers.³⁵ This would be consistent with PhonepayPlus' publication of the 'barred service provider list'³⁶ and may be of interest to consumers; and
 - c) BT noted that the details of those to be denied numbers would almost certainly be in the public domain through the initial enforcement decision which triggers Ofcom's assessment under the CPT, and as such confidentiality is unlikely to be a major issue.
- 3.54 Only NOC suggested that the list should be password protected and restricted to a closed user group. It considered that the information contained in the lists was sensitive and that those on the CPT Lists still have the right to trade. Information on the lists could be used to competitors' advantage.

³³ Those respondents were BT, C&W, COLT, FCS, Flextel, H3G, Magrathea, MBG, T-Mobile, Thus, TUFF, UKCTA and two consumers.

³⁴ Those respondents were BT, C&W, OFT, Thus and TUFF.

³⁵ Those respondents were BT, C&W, Flextel, H3G, Magrathea, OFT, Thus, FCS, TUFF and two consumers.

³⁶ http://www.phonepayplus.org.uk/communications_providers/adjudications/barredspas.asp

- 3.55 C&W requested that we publish the number refusal list in a clear, concise and consistent manner. The format needs to be easy for providers to download and incorporate into their systems. C&W and UKCTA requested visibility of the lists' format ahead of the first list being published, as this would be useful for incorporating it into business processes.
- 3.56 C&W, COLT, NOC and UKCTA expressed strong concerns over the publication of sufficient information to identify individuals within data protection regulations. C&W noted that without a sufficient level of detail, it would be very difficult to identify phoenix companies, referring to the situation where a company is sanctioned for causing consumer harm but the individuals behind the company simply start a new company. We were requested to consider further how this would work in practice. H3G, however, noted that sufficient information to identify individuals was published by PhonepayPlus as part of their 'barred service provider list'.
- 3.57 On the matter of including the names of company directors on the CPT Lists, the OFT agreed that it is of critical importance to apply the CPT not only to the company but to its directors as well. OFT also argued that any individual who is able to influence the day-to-day running of company, or is involved in or aware of the harmful conduct of a company, should be potentially eligible to be placed on the CPT Lists. However, COLT was concerned that the need to identify individual company directors would increase the administrative burden and could cause delays in Ofcom's assessment process.

Ofcom's comments

- 3.58 We welcome the support for making the CPT Lists publicly available on our website. Easy reference to the CPT Lists is important to help providers in their adoption of the CPT or similar test to avoid supplying numbers to individuals or companies that have misused numbers in the past.
- 3.59 Although we allocate numbers only to communications providers, the CPT Lists may also contain the names of non-communications providers who have used numbers to cause consumer harm and to whom communications providers and resellers are expected to refuse the assignment of numbers.
- 3.60 We will make the under assessment list and number refusal list easy to navigate and download from our website. To help providers prepare for the introduction of the CPT, we plan to make the format available on our website ahead of the publication of the first CPT Lists.
- 3.61 In terms of the data protection issues raised, the Data Protection Act 1998³⁷ ('the DPA') concerns the processing of personal data. Where personal data are processed in relation to the CPT, the DPA will apply. Persons placed on the CPT Lists will be identified by their name, home address and date of birth, which constitutes personal data. Information relating to an individual's use of telephone numbers might contain sensitive personal data, e.g. criminal convictions.
- 3.62 Ofcom is able to "process" (including storing and disclosing) such information on the basis that processing personal data is necessary for "the exercise of any other functions of a public nature exercised in the public interest by any person"³⁸; and

³⁷ Data Protection Act 1998 available at http://www.opsi.gov.uk/Acts/Acts1998/ukpga_19980029_en_1

³⁸ schedule 2, section 5(d) of the DPA

processing sensitive personal data is necessary for “the exercise of any functions conferred on any person by or under an enactment”.³⁹ We are therefore able to publish the necessary personal data in the CPT Lists to ensure the best use of numbers and promote consumer protection, and to that effect allow providers to refer to the CPT Lists when considering requests for number assignment and to identify the relevant individuals.

- 3.63 We maintain the importance of including the names of directors of a company on the under assessment list at the same time that we list the company in an attempt to avoid those individuals forming phoenix companies and using them to obtain new number allocations.
- 3.64 Other individuals that have an influence on the day-to-day running of the business may also be liable for assessment under the CPT. This includes an individual associated with running a company but who is not listed as a director (sometimes known as a ‘shadow director’). In some cases, the enforcement action might specifically mention an individual who was instrumental in the practice that resulted in consumer harm. In such cases, we would assess that individual’s role. They would, of course, be given the opportunity to make representations setting out the reasons why they ought not to be listed, as would company directors.
- 3.65 We have further considered the regulatory burden that would be placed on providers of collecting sufficient identification information to make reference to the CPT Lists when assigning numbers, particularly if providers observed our suggested ‘best practice due diligence’ guidelines (see paragraph 3.67). We understand from responses that providers can best implement the CPT (or a comparable consumer protection test) if they can adapt the test to suit their own number assignment procedures. While we are not prescribing the process for consulting the CPT Lists, we maintain that such action is important and encourage all who assign numbers to others to take consumer protection into account and make use of the CPT Lists that we will publish for that purpose. Adoption of own processes to verify applicants’ identities should allow providers to reduce the administrative burden of this task. We do not believe that the processes that we shall be putting into place to verify directors’ details will cause delays to our CPT List assessment process.

Question 7: CPT process

Question 7: Do you have any comments on the process proposed by Ofcom?

Background to Question 7

- 3.66 In the CPT consultation, we proposed the basic process for communications providers to follow when assigning numbers in accordance with the CPT. The proposed process involved us maintaining and publishing the under assessment list and the number refusal list. Ofcom and all parties who sub-allocate or assign numbers would consult the lists and ensure that they do not give numbers from ranges included in the scope of the CPT to any company or individual listed.
- 3.67 We further proposed that providers implement the necessary processes to satisfy themselves whether or not the applicant is on either CPT List as they see fit. Although we did not propose any formal rules as to the checks that should be conducted, we did suggest that ‘best practice due diligence’ would normally involve:

³⁹ schedule 3, section 7(1)(b) of the DPA

- requiring the provision of the following information from the number applicant:
 - full name of the individual or company;
 - full address of the individual or company;
 - in the case of a limited company, an official document or recent Companies House search showing its registered number and the name, date of birth and home address of each of the directors, as well as identification documents to corroborate the name, address and date of birth of each director;
 - in the case of an individual, sufficient identification so as to enable the sub-allocator to compare the individual's name, address and date of birth to the individual names on the CPT Lists;
 - in the case of an unincorporated entity, details of the business or partnership name as well as identification (as above) of the partner(s) or individual sole trader responsible for the business;
- the provider making sufficient enquiries as to fully satisfy themselves that the information provided by the number applicant is accurate; and
- the provider retaining the application form and copies of the identification documents provided by the applicant along with a record that the staff member processing the application has checked this information against the CPT lists. This may range from simply requiring the processing staff member to check a box to indicate that the list was consulted, to filing along with the application form a dated print-out of the lists as at the time the application was made.

Responses to Question 7

3.68 While most of the communications providers that responded to the consultation supported the overall concept of the CPT, some objected to the prescriptive measures and significant administrative burden that the proposed test would place on providers who sub-allocate and assign telephone numbers.⁴⁰ They argued that the proposed test was more complicated than Ofcom envisaged and would not be as straightforward to implement as suggested. We were asked to minimise the administrative burden, otherwise the costs and inconvenience would certainly outweigh any conceivable benefits.

3.69 These concerns were largely linked to the beliefs that:

- the scope of the proposed test was too wide in terms of the number ranges that we proposed to make unavailable to those on the CPT Lists;
- the best practice due diligence processes suggested in the draft CPT guidelines would be unmanageable; and
- there were a number of issues that required clarification and guidance which was not provided in the CPT consultation or the draft guidelines.

3.70 Specific concerns raised on the proposed form of the CPT were that:

- it was impractical for providers who sub-allocate a large amount of numbers to implement such a broad test due to the huge amount of data on companies and individuals that would need to be gathered and analysed;

⁴⁰ Those respondents were BT, COLT, TUFF and UKCTA.

- it would be unmanageable for ranges where individual or small quantities of numbers were sub-allocated to a vast number of different providers. BT suggested that the test only be applied by a provider when they sub-allocate numbers in significant volumes, for instance where 100 numbers are requested at one time;
- there was an overlap with PhonepayPlus regulations, which would duplicate the administrative burden with no additional benefit;
- it was not clear how a provider would be expected to show compliance with the test and prove due diligence or what data would need to be retained; and
- it was heavy-handed application to require existing customers who have caused no problems to notify providers of directors' details and subsequent changes to directors' details.

3.71 We had referred to the CPT as 'auto-proportionate' in that the lower the incidence of consumer harm facilitated through the use of telephone numbers, the fewer names would be on the number refusal list and the lower the administration costs expended by providers checking the list. However, COLT argued that the same due diligence checks would need to take place for each application for numbers included in the CPT regardless of the quantity of names on the lists.

Ofcom's comments

3.72 We welcome respondents' general support for a consumer protection test for telephone number allocation and providers' willingness to implement such a test in a form that does not create a significant administrative impact.

3.73 We have considered communications providers' concerns regarding the administrative burden that would be created by the proposed CPT. We recognise that the impact and costs arising from CPT implementation would vary considerably for different communications providers and resellers depending on a number of different elements, including the amount of number assignment transactions they make; the number of different parties with whom they make those transactions and the level of automation in their assignment processes. We cannot, therefore, reliably estimate the impact and cost to different providers of implementing the CPT.

3.74 Balancing providers support for a consumer protection test and their concern over the prescribed process, we have chosen to encourage a self-regulatory approach, at least initially, rather than create an obligation to implement a specific test. We have also modified the CPT that we will implement to introduce a more targeted test. We have done this in the ways set out below.

Ofcom implements the CPT and providers take a self-regulatory approach to implementing the same or comparable test

3.75 We acknowledge providers' support for the spirit of the CPT in their responses to the CPT consultation and trust that they will want to take the past behaviour of individuals or companies that have used numbers to cause serious or repeated harm to consumers into account when deciding whether to assign numbers. For not only is consumer protection at stake, but also providers' reputations if they give numbers to an individual or company that Ofcom has publicly stated should not be allocated or assigned further telephone numbers.

- 3.76 We believe that providers are best placed to work out the processes required to incorporate consumer protection into their number assignment processes. We encourage them to incorporate the CPT or comparable test into existing processes with as little cost and upheaval as possible. Self-regulatory application of such a test allows providers to vary their due diligence processes without undue concern as to how their chosen method could be shown to meet a specific obligation to implement the CPT.

Reducing the number ranges included in the scope of the CPT

- 3.77 We have reduced the scope of the CPT to cover the number ranges with the strongest evidence of being used to cause consumer detriment. The CPT will cover the 070, 087 (excluding 0870) and 09 ranges and not the 03, 056 and remainder of the 08 range as previously proposed (see paragraphs 3.104 to 3.114 for further explanation). This will reduce the administrative impact for providers when implementing the CPT or similar test, as fewer applications for number assignment need to be considered within the terms of the test.
- 3.78 Detailed guidance on the CPT Lists has been provided in the CPT guidelines (see Annex 3). The CPT guidelines will be kept under review and amended as required to provide further guidance in the light of experience.

Question 8: implementation of the CPT

Question 8: Do you have any comments on Ofcom's proposals regarding implementation?

Background to Question 8

- 3.79 In the CPT consultation, we proposed that the initial under assessment list would be published on the same day as the CPT statement and that the obligation on providers to apply the CPT to sub-allocations and assignments of numbers would also apply from that date.
- 3.80 We wanted to avoid creating a regulatory gap – a period during which, mindful of the forthcoming CPT requirements and the possibility that they might appear on a CPT List, certain individuals or companies would seek to obtain telephone numbers and cause consumer harm in the knowledge that applications for numbers would not be refused during that period.
- 3.81 In compiling the initial under assessment list, we proposed to consider any relevant enforcement decisions made during the previous 12 months as potential triggers for assessment. If we found that an individual or company had caused serious or repeated harm using telephone numbers, we proposed to take into account any detrimental behaviour involving the use of telephone numbers that the individual or company had caused during the 12 months before that (i.e. 24 months prior to our assessment under the CPT).

Responses to Question 8

- 3.82 A number of respondents argued that the proposal to implement the CPT at the same time as the publication of the statement would be impractical.⁴¹ It would not give providers time to introduce the necessary systems, change procedures and train

⁴¹ Those respondents were BT, C&W, COLT, NOC, TUFF and UKCTA.

staff to comply with their obligations under the test. These respondents felt that we had not fully considered the impact that the test would have on providers in terms of implementing the test or the time required between digesting the finalised details set out in the statement and complying with the obligations.

- 3.83 C&W, COLT and UKCTA argued that an implementation period of three months would be required to put the necessary changes into place. BT and TUFF felt that at least six months would be a more appropriate time-frame. It was not felt that a damaging regulatory gap would be created as a significant period of time had already elapsed since the CPT was first mooted in the Numbering Policy Review.
- 3.84 The FCS and the two consumers who responded to the consultation agreed with the proposal that the CPT should be implemented at the same time that the statement is published in order to prevent the exploitation of any delay between setting out the obligations and implementing the test.
- 3.85 C&W and UKCTA felt that although a gap between publishing the statement and introducing obligations on providers was necessary, this need not delay Ofcom's initial assessment of parties on the under assessment list or delay us refusing numbers to parties we would place on the number refusal list.
- 3.86 BT, NOC, TUFF and UKCTA stressed that the CPT should only be applied to applications for numbers going forward and sought confirmation that we would not require providers to retrospectively check all existing customers to determine whether any of them are on the CPT Lists when they are published or updated. If we did require retrospective action, this would be considered highly burdensome and would jeopardise good customer relations.
- 3.87 NOC thought that the introduction of the CPT would provide an opportunity for a 'clean slate' approach, and that all numbering applicants should be treated equally without recourse to any history of previous enforcement actions. However, it was recognised that there would be circumstances where a known history of abuse poses significant risks and should be treated accordingly.

Ofcom's comments

- 3.88 We have considered providers' concerns over the practicalities of implementing the specific proposals put forward in the CPT consultation and have taken this as further confirmation that implementation of the CPT should, at least initially, be a self-regulatory measure. While providers appear keen to take consumer protection into account, it is the prescribed process of doing so that has caused difficulties.
- 3.89 Ofcom's new application process will come into force three months after the publication of this statement on 1 January 2009. This period should give providers sufficient time to implement their CPT or similar test from the same date.
- 3.90 From 11 December 2008, communications providers applying to us for the allocation of numbers in the 070, 087 (excluding 0870) and 09 ranges will need to complete the modified 07, 08 and 09 application forms, which will be made available on our website from that date. The modified application forms will request additional identification information so that we can determine whether the applicant is listed on the CPT Lists. The modified application forms are published as an annex to this statement so that communications providers can see what information will be requested and prepare in advance.

- 3.91 The initial under assessment list will be published on 1 January 2009 or shortly afterwards. As proposed, it will include individuals and companies that have been brought to our attention as having used numbers to cause consumer harm during the preceding 12 months. When making the assessment, we will also take into account any relevant behaviour over the preceding 24 months. Assessing behaviour that occurred before the implementation of the test when compiling the initial under assessment list is appropriate to the extent that it provides an indication of whether that party might cause consumer harm in the future if allocated more numbers. It is important to recognise that being placed on the number refusal list is not a form of punishment for the past behaviour but a reaction to evidence that the individual or company has used numbers to cause consumer harm in the past and the concern that they may try to do so again in the future.
- 3.92 The CPT does not relate to the withdrawal of numbers or suspension of service if an individual or company to whom we have allocated numbers in the past is subsequently included on the under assessment or number refusal list. The CPT relates to the refusal to allocate any further 070, 087 (excluding 0870) or 09 numbers to persons while they appear on either list. We are not suggesting that providers should take consumer protection action retrospectively.

Other issues raised in response to the CPT consultation

- 3.93 In addition to the specific questions we raised in the CPT consultation, there were a number of other issues that generated comment by respondents. The main issues raised are addressed below.

Number ranges to be covered by the test

Proposals in the CPT consultation

- 3.94 The CPT will set out the ranges from which numbers will be refused to those individuals or companies that we place on either CPT List. In the consultation document, we proposed that these would be the 03, 056, 070, 08 and 09 ranges.
- 3.95 Our reasons for proposing that the CPT covered the 03, 056, 070, 08 and 09 ranges were:
- number abuse and misuse has historically tended to occur on the 09, 08 and 070 number ranges;
 - we were keen to ensure that the relatively new 03 range builds and maintains consumer confidence; and
 - we were cautious about scams moving to the 056 Location Independent service range.
- 3.96 Our reasons for proposing that the CPT did not cover the geographic (01/02) or mobile (071-075; 077-079) ranges were:

- revenue-sharing⁴² is not supported on these ranges, providing less incentive to run scams;
- we would not want to restrict individuals' access to geographic and mobile numbers without strong evidence that these numbers were being misused;
- there is a lack of evidence of consumer harm on these number ranges; and
- in practice it would be difficult to apply the test to these numbers as large quantities are made available to a huge number of providers and customers each year.

Mobile short codes (MSCs)

- 3.97 MSCs are 4-, 5- or 6-digit numbers common to the main UK mobile providers. They are often used in television and press campaigns, for example television talent and reality shows, where the viewer is invited to interact with the programme in some way, such as voting via text message.
- 3.98 MSCs are allocated by the mobile industry and not Ofcom. In response to demand for cross-network harmonised short codes, O2, Orange, T-Mobile, Vodafone and 3 formed the Short Code Management Group (SCMG), which manages the availability of short codes and agrees on guidelines relating to services operating on short codes under their management. These guidelines are published as the *Code of Practice for Service delivery of Common short-codes in the UK* ('the MSC Code of Practice').⁴³
- 3.99 Under the MSC Code of Practice, providers using MSCs are required to comply with the PhonepayPlus Code of Practice as well as other relevant legislation and industry codes as notified from time to time. Failure to ensure compliance with these codes and regulations may result in revenues being withheld, services being suspended and relevant MSCs being withdrawn from offending providers.
- 3.100 Given the existing self-regulatory measures, we did not propose to cover MSCs in the CPT as we believe that the existing approach is adequate.

Comments on number ranges included in the CPT

- 3.101 The issue that raised the most concern and feedback from respondents was in relation to the number ranges that we proposed to refuse to individuals and companies placed on the CPT Lists.
- 3.102 A number of respondents argued that the inclusion of certain number ranges, in particular those that do not support revenue-sharing, was disproportionate to the aims of the test and not based on evidence of consumer detriment.⁴⁴ Those respondents argued that number ranges should only be included in the CPT if they had one or more of the following characteristics which encourage misuse of numbers:
- high retail price;

⁴² Revenue-sharing is a micro-payment mechanism whereby the information provider takes a share of the charges paid by the caller of that number. It is used by businesses and public sector bodies that make services available to the public via a telephone number.

⁴³ Available from www.short-codes.com

⁴⁴ Those respondents were BT, C&W, Carphone Warehouse, COLT, Magrathea, NOC, Thus, TUFF and UKCTA.

- high termination rate and the ability to revenue share or create artificial inflation of traffic; and
- consumer confidence is at risk through a history of misuse and consumer detriment or a credible explanation that conditions for abuse are present.

3.103 Comments received on the inclusion of specific number ranges in the CPT were:

09 premium rate numbers:

- strong agreement that 09 should be included due to evidence of existing and potential for future consumer harm;⁴⁵
- logical to link to PhonepayPlus consumer protection regulation (although C&W, COLT, NOC, Thus and UKCTA questioned the value of duplicating effort); and
- additional administrative burden for providers would be low as due diligence requirements for 09 numbers already exist through PhonepayPlus regulations.

0871, 0872 and 0873 Special services higher rate numbers

- general agreement that 087 numbers (excluding 0870 which has a different tariff designation and far less evidence of being used for scams) should be included in the CPT.⁴⁶ The relatively high retail tariff and revenue share opportunities has led to a lack of consumer confidence in the range;
- Ofcom has recently consulted on the inclusion of 087 numbers (excluding 0870) in PhonepayPlus regulation.⁴⁷ It is therefore logical to include the range in the CPT (although C&W, COLT, NOC, Carphone Warehouse, Thus and UKCTA questioned whether this would mean an unnecessary duplication of regulation); and
- The Carphone Warehouse argued against the inclusion of 0871/2/3 as they would not welcome a further barrier to the sale of these numbers following the recent move to introduce PhonepayPlus regulations.

0870 Special services higher rate numbers

- BT and TUFF argued that the range should not be included in the CPT as it is not generally used for the type of abuse that the CPT is seeking to address; and
- BT, C&W, COLT, TUFF and UKCTA commented that Ofcom is working on separate regulatory measures to restore consumer confidence and tariff transparency in the 0870 range.⁴⁸ These include a proposal to repair the

⁴⁵ Explicit or implicit support for including 09 in the CPT was received from BT, C&W, Carphone Warehouse, FCS, PhonepayPlus, Magrathea, MBG, NOC, OFT, T-Mobile, TUFF and UKCTA.

⁴⁶ Explicit or implicit support for including 087 (excluding 0870) was received from BT, Magrathea, MBG, NOC, OFT and TUFF.

⁴⁷ *Extending Premium Rate Services Regulation to 087 numbers*, Ofcom consultation published on 2 May 2008 <http://www.ofcom.org.uk/consult/condocs/087prs/>

⁴⁸ *Changes to 0870*, Ofcom consultation published on 2 May 2008 <http://www.ofcom.org.uk/consult/condocs/0870calls/>

linkage between charges for 0870 calls and national calls to geographic numbers so that callers would normally pay no more to call an 0870 number than to call a geographic number. These measures should reduce the level of consumer harm on 0870 numbers and therefore their effect should be gauged before introducing the range into the CPT.

0843, 0844 and 0845 Special services lower rate numbers

- inclusion in CPT not generally supported; and
- there is little evidence of consumer harm of the type that would be tackled by the CPT (most consumer complaints are concerned with tariff transparency).

080 freephone numbers

- no support for the inclusion of freephone numbers as the charging arrangements provide no incentive for using such numbers for consumer harm.

071 – 075; 077 – 079 mobile numbers

- most respondents either agreed that mobile numbers should be excluded from the CPT or provided no comment; however
- H3G, MBG and T-Mobile argued strongly for mobile numbers to be included in the CPT. They were concerned that our mobile number allocation policy had allowed for allocation of mobile numbers to providers who were increasingly using the numbers for ‘non-mobile’ services such as international call forwarding, which exploit the arbitrage opportunities provided by high termination rates. It was argued that the use of mobile numbers for such services harmed consumers and would ultimately result in consumer confusion and the erosion of confidence in mobile numbers.

070 personal numbers

- there was general agreement that personal numbers should be included in the CPT due to the high level of scams that have been perpetrated using these numbers;⁴⁹ however
- COLT felt that consumer abuse could be tackled through the Numbering Plan and that the recent introduction of a tariff ceiling should be given time to take effect before 070 is introduced into the CPT; and
- Thus argued that if 070 caused consumer protection issues then inclusion in PhonepayPlus’ regulatory remit should be considered.

055 Corporate numbers and 056 Location Independent Electronic Communications Services

- respondents could see no justification for the inclusion of the 056 range in the CPT, given that it is a relatively recent innovation with no history of consumer

⁴⁹ Explicit or implicit support for including 070 in the CPT was received from BT, C&W, Flextel, Magrathea, MBG, NOC, TUFF, OFT and UKCTA.

harm through use of the numbers. Also revenue sharing was banned through the Numbering Plan;⁵⁰ and

- although BT did not support the inclusion of 055 or 056 numbers in the CPT, it commented that there was no logical justification for proposing the inclusion of 056 (which has revenue sharing banned) but not 055 (where revenue sharing is permitted).

03 UK-wide numbers at a geographic rate

- respondents were strongly against the inclusion of the 03 range in the CPT and could see no justification for the proposal;⁵¹
- 03 numbers had only recently been made available and there was no evidence or potential for consumer harm to be caused through use of the numbers;
- calls to 03 numbers were charged at the same rate as geographic numbers and therefore were highly unlikely to be used for consumer harm. 03 numbers should be treated the same as geographic numbers - as these were not proposed for inclusion in the CPT, nor should 03 numbers be included; and
- rather than increase consumer confidence in 03 numbers, BT and TUFF felt that inclusion in the CPT would tarnish its reputation by association with the test.

01/02 geographic numbers

- there was agreement that geographic numbers should not be included in the CPT; and
- as well as being unmerited, geographic number inclusion would be unmanageable due to the vast amount of numbers given to end-users every year.

Mobile short codes

- there were mixed views as to whether MSCs should be included in the CPT.
- BT, C&W, COLT, TUFF and UKCTA felt that compliance requirements should be the same for MSCs as they are for numbers from the Numbering Plan and it was irrelevant which organisation issues the numbers. Those respondents believed it was logical to include MSCs as they are part of PhoneyPayPlus' remit;
- COLT and UKCTA argued that consumer concern was as high for MSCs as for some telephone numbers included in the CPT and COLT referred to the PhoneyPayPlus Activity Reports for the level of complaints received on MSCs. UKCTA was also concerned that scams could migrate to MSCs; however

⁵⁰ Respondents that did not support the inclusion of 05 numbers in the CPT were BT, C&W, COLT, Magrathea, NOC, TUFF, the Carphone Warehouse and UKCTA.

⁵¹ Respondents that did not support the inclusion of 03 numbers in the CPT were BT, C&W, COLT, Magrathea, NOC, TUFF, the Carphone Warehouse, Thus and UKCTA.

- PhonepayPlus, MBG and T-Mobile believed that MSCs should not be included as self-regulation was sufficiently robust and there was no justification to change this approach at this time.

Ofcom's comments

3.104 We have given careful consideration to respondents' comments on the issue of number ranges to be included in the CPT and have found those comments useful in setting the appropriate scope for the test.

3.105 We agree with the generally held position that the inclusion of a number range in the CPT should be based on evidence of consumer harm being perpetrated on that range and the risk of such behaviour occurring in the future. We agree that the following characteristics can encourage misuse of numbers and that number ranges that share one or more of these should be considered for inclusion in the CPT:

- high retail price;
- high termination rate and the ability to revenue share or create artificial inflation of traffic; and/or
- consumer confidence is at risk through a history of misuse and consumer detriment or a credible explanation that conditions for abuse are present.

3.106 We have considered the arguments set out in the preceding paragraphs and decided, at least initially, that the CPT is limited to the 070, 087 (excluding 0870) and 090 ranges. However, we might consider expanding or reducing the CPT scope to include or exclude number ranges at a later date should this become necessary or appropriate.

Reasons why we are including the 070, 087 (excluding 0870) and 09 number ranges in the CPT

3.107 We are including the 09 premium rate number range as it has the most potential for being used to cause consumer harm:

- it has the highest retail price and the potential for large amounts of revenue share with service providers, creating conditions that encourage misuse;
- the range has a poor reputation with consumers, who commonly associate it with scams;
- PhonepayPlus received 2562 consumer complaints about 09 numbers during the period between October 2006 and December 2007;
- providers could take measures to check whether an applicant for 09 numbers is listed on the CPT Lists without it presenting a significant administrative burden as they already need to carry out due diligence to comply with the PhonepayPlus Code of Practice obligations; and
- there was strong support for including 09 numbers in the responses to the CPT consultation.

3.108 We are including 087 (excluding 0870) numbers as:

- the range has a retail price of 10p per minute (although can be higher) allowing for a significant termination rate, revenue sharing and the conditions where artificial inflation of traffic may occur. There is therefore the potential for consumer abuse;
- we received 622 consumer complaints of misuse of 0871/2/3 numbers between October 2006 and December 2007, making up 36 per cent of misuse of numbers complaints. The majority of complaints were about 'ring back' scams and suspected undue delay/call waiting. Silent calls also featured prominently in the number of complaints, but these are not targeted by the CPT;
- we suspect that the application of the CPT to other number ranges may result in the migration of scams to the 0871/2/3 ranges and we want to avoid this taking place;
- our concern about the level of consumer protection needed for calls to 0871/2/3 numbers (as well as the need to improve tariff transparency) has resulted in our proposals to include the range in PhonepayPlus' regulatory remit. It is therefore logical to include the range in the CPT; and
- there was support from respondents to include this range in the CPT.

3.109 We are including 070 numbers as:

- there has been a history of behaviour causing consumer harm on this range, including high retail prices and revenue share in contravention of the Numbering Plan;
- many consumers confuse these with mobile numbers, making them an easy target for scams;
- we received 661 consumer complaints of misuse on 070 numbers between October 2006 and December 2007, which was 39 per cent of the total of number misuse complaints. The majority of complaints were about 'ring back' scams and the use of 070 for premium rate type services; and
- most respondents to the consultation agreed that the 070 range ought to be included in the scope of the test.

Reasons why we are excluding number ranges from the scope of the CPT at this time

3.110 We have decided not to include mobile numbers as most of the concerns raised in the consultation responses related to the definition of 'mobile services' in the Numbering Plan and the allocation of mobile numbers to certain providers who are not mobile network operators. The definition of 'mobile services' is relatively wide, in that it may include not only mobile-to-mobile communications (such as mobile telephone calls and SMS) but also services that are offered to consumers using mobile devices (such as mobile multimedia services). A number of providers have in the past asked Ofcom to review the definition and have voiced their concerns again in response to this consultation. This issue is to be addressed as part of our Mobile Sector Assessment, which is considering whether the mobile sector delivers on the

needs of UK citizens and consumers and how regulation should adapt to reflect market and technological change.⁵²

- 3.111 We have decided not to include MSCs in the scope of the CPT as we believe that the self-regulatory approach is functioning well. The CPT Lists are available for the SCMG to take into account when allocating short codes and we encourage it to do so.
- 3.112 We have decided not to include 0870 numbers as we agree with respondents that this range is not generally used for the type of abuse that the CPT is seeking to address. Although we received 114 complaints between October 2006 and December 2007, making up nearly seven per cent of number misuse complaints received by Ofcom during that period, most of these concerned tariff transparency and annoyance at the type of service using a 0870 number, such as doctors' surgeries, rather than traditional scams. Our work on restoring the link between 0870 and geographic national rate suggests that it would be sensible to monitor the effectiveness of other measures before including 0870 in the CPT.
- 3.113 We have decided not to include the remainder of the 08 range, the 055 and 056 ranges, the 03 range or geographic numbers as the nature of these ranges does not encourage misuse (or at least not the type of serious or repeated consumer harm that the CPT is designed to address) and we do not have evidence of consumer harm caused through the use of these numbers.
- 3.114 The scope of the CPT will be reviewed periodically and if we see, for example, migration of scams to a particular number range that is not included, we will consider taking action to add that range to those covered under the test.

Number withdrawal and service suspension

- 3.115 In the Numbering Policy Review we considered whether it would be possible to establish a consumer protection test in relation to the withdrawal as well as the allocation of numbers and noted stakeholder support for such a proposal. However, there are significant legal and practical issues related to number withdrawal and service suspension, as well as a substantial risk that consumer harm could occur through the loss of numbers following number withdrawal.
- 3.116 Our current provisions for number withdrawal and service suspension reflect European legislation. In accordance with that legislation, the withdrawal of numbers by Ofcom may only take place in certain very specific circumstances as set out in section 61 of the Act. The provisions relevant to the CPT are contained in sections 61(3) and 61(4).
- 3.117 Under section 61(3), the withdrawal of a number allocation is authorised where:

“(a) there have been serious and repeated contraventions, by the person to whom the allocation is for the time being allocated, of the numbering conditions; and

⁵² We published the consultation *Mobile citizens, mobile consumers* on 28 August 2008 <http://www.ofcom.org.uk/consult/condocs/msa08/>. The consultation closes on 6 November 2008.

(b) it appears to OFCOM that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.”

3.118 Under section 61(4), the withdrawal of an allocation is also authorised where-

“(a) the person to whom the allocation is for the time being allocated is not a communications provider; and

(b) it appears to OFCOM that contraventions by that person of numbering conditions makes the withdrawal of the allocation appropriate.”

3.119 Section 61(8) of the Act determines that a contravention is “repeated” to the extent that:

“(a) in the case of a previous notification given to that person under section 94, OFCOM have determined for the purposes of section 95(2) or 96(2) that a contravention of a numbering condition did occur; and

(b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of numbering conditions;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different conditions.”

3.120 Similarly, under section 100 of the Act, we have the power to require the suspension of service provision for serious and repeated contraventions of conditions set under section 45 (including General Conditions) in certain specific circumstances only.

3.121 Section 100(1) of the Act states that:

“OFCOM may give a direction under this section to a person who is a communications provider or makes associated facilities available (“the contravening provider”) if they are satisfied -

(a) that he is or has been in serious and repeated contravention of conditions set under section 45, other than an SMP apparatus condition;

(b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 or both, to secure compliance with the contravened conditions has failed; and

(c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.”

3.122 Based on these provisions, repeated and serious breaches of the General Conditions may result in the withdrawal of numbers from the provider or the requirement for the provider to suspend services pursuant to section 61(3) or section 100(1) of the Act respectively.

Comments on number withdrawal and service suspension

3.123 BT, FCS, Flextel, OFT and TUFF were disappointed that we would not be strengthening our number withdrawal and service suspension processes to complement the effect of the CPT. BT, OFT and TUFF felt that without such measures, numbers could be stockpiled to be used during the period of number refusal. Service suspension would have the desired effect of curtailing existing services that have been proven to cause consumer detriment.

Ofcom's comments

3.124 As set out in paragraphs 3.117 to 3.119 above, the circumstances under which we may withdraw numbers without the consent of the current holder of the allocation are limited and exhaustively set out in the Act. We have considered the position and concluded that it is currently not possible to extend the scope of these provisions under existing European legislation (which is reflected in the provisions of the Act).

3.125 With respect to 09 numbers, measures already exist for PhonepayPlus to require the suspension of services for certain breaches of their Code of Practice. They have the power to impose bars on providers, relating either to the number range on which the service operates and/or a particular service type. We can similarly require the suspension of services for breach of the PRS Condition (relating to the PhonepayPlus Code of Practice) under section 124 of the Act.

3.126 As well as the circumstances under which we can withdraw numbers or suspend services described in paragraphs 3.117 to 3.122, we can use our enforcement powers under sections 94 to 96 and sections 128 to 130 of the Act to issue enforcement notifications to individuals or companies that have contravened the General Conditions or PRS Conditions, or misused networks and services. Enforcement notifications under sections 95 and 129 require the cessation of the contravening conduct and are enforceable by injunctions in civil court proceedings.

3.127 Action may also be taken by Ofcom, the Office of Fair Trading, Trading Standards or the police in relation to civil or criminal behaviour that may fall within the scope of the CPT. These actions may result in court remedies including fines, injunctions, undertakings, court orders and imprisonment.

3.128 In addition to the legal measures that exist to require the cessation and suspension of services of those who cause consumer detriment, other commercial measures also exist. Many providers that assign numbers also include clauses in their standard service contracts that allow for cancellation of the service (and use of the associated number) in the event that the number user contravenes the law or causes consumer detriment.

Appeals process and opportunity to make representations

3.129 The CPT consultation stated that we would notify an individual or company if we intended to assess them under the CPT and place the individual or company on an under assessment list whilst a decision is made. During this period, the individual or company being assessed would have an opportunity to make representations about why they should not be refused further telephone numbers under the CPT.

Respondents' comments on the opportunity to make representations and the appeals process

- 3.130 COLT, Thus and UKCTA requested guidance on how an Ofcom decision to place an individual or company on the number refusal list could be appealed. COLT sought clarification of whether a formal direction or determination would be issued by Ofcom to place the individual or company on the list, and was concerned that without a formal direction the decision could not be appealed to the Competition Appeal Tribunal (CAT).
- 3.131 COLT wanted to know how and from whom we would seek representations on whether a particular individual or company should be placed on the number refusal list.

Ofcom's comments

- 3.132 Individuals and companies that have been placed on the under assessment list will be notified. The notification will set out the reason(s) why we are considering placing them on the number refusal list, including the abuse/misuse that brought them to our attention; the framework within which we are making the assessment and the proposed timeframe for the decision.
- 3.133 The individual or company will be provided with an opportunity to make representations about any proposed decision to place them on the number refusal list. This opportunity is essential to ensure due process and a fair assessment for the company/ individual in question. We will not normally seek the views of third parties as to whether or not a particular individual or company ought to be placed on the number refusal list. Our assessment will be based on the enforcement decision (and the facts contained therein) that led to the assessment under the test, as well as the representations by the subject of the assessment.
- 3.134 The individual or company on the under assessment list will be notified of our decision following assessment. If we are to place the party on the number refusal list, there will be a further opportunity to make representations, this time in relation to the proposed listing and the proposed length of time of the listing.
- 3.135 When we conduct our assessment under the CPT, we will not re-open any previous enforcement decision that may have brought the individual or company to our attention for assessment, or make any determination as to whether or not the individual or company in question actually committed the harmful behaviour to which that decision related. This would undermine the existing enforcement measures by which the test may be triggered. The individual or company would have the right to appeal the original decision under the enforcement agency's own procedures.
- 3.136 Individuals or companies that are subject to a decision to place them on the number refusal list will be issued a notification of the decision and will have the right to appeal that decision to the CAT.⁵³ Such action would constitute a full appeal on the merits of our decision.

⁵³ The CAT is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy. Under United Kingdom law, the function of the CAT is to hear and decide appeals and other applications or claims involving competition or economic regulatory issues.

Section 4

Consumer protection test for telephone number allocation

Introduction

- 4.1 Having taken into account all the responses to the CPT consultation, we have decided to implement a modified version of the test compared to that proposed in the consultation. The impact assessment at Annex 2 provides further analysis on the benefits of implementing the modified test over the proposed test and other options.
- 4.2 This section explains the CPT in more detail. Further guidance is provided in the CPT guidelines at Annex 3.

Basic form of the test

- 4.3 We will identify individuals or companies that may have engaged in harmful conduct through the use of numbers by reference to decisions from authorities responsible for enforcing relevant consumer protection instruments.⁵⁴ Figure 2.1 has examples of relevant decisions.
- 4.4 We will conduct an initial assessment to determine whether telephone numbers were central to the behaviour that resulted in the enforcement action. If so, the individual or company (including the directors of the company) will be placed on the under assessment list while we consider whether we are satisfied that they have used telephone numbers in a way that caused serious or repeated harm to consumers. If we believe that to be the case, they are placed on the number refusal list.
- 4.5 While an individual or company is on either list, Ofcom will not allocate numbers in the 070, 087 (excluding 0870 numbers) and 09 ranges to them.
- 4.6 As well as applying the test ourselves, we are encouraging providers to include consumer protection in their own number assignment processes to ensure best use of numbers. We have set out the CPT that Ofcom is implementing as a model for how consumer protection can be taken into account when considering applications for telephone numbers. We are publishing the CPT Lists to assist providers in implementing their processes by clearly advising which individuals and companies should not be allocated or assigned further numbers in the 070, 087 (excluding 0870 numbers) and 09 ranges.

The assessment process for compiling the CPT Lists

The initial assessment

- 4.7 We have established procedures with a number of authorities who are responsible for enforcing relevant consumer protection law and regulation. These authorities include PhonepayPlus, the Office of Fair Trading, Trading Standards, the Crown Prosecution Service and the police. Under these procedures, the authorities will inform us of any enforcement actions that they have taken, or are about to take,

⁵⁴ Relevant enforcement authorities include Ofcom, PhonepayPlus, the Office of Fair Trading, Trading Standards, the Crown Prosecution Service and the police.

which involve the use of telephone numbers to cause consumer harm. We will also identify companies and individuals through our own investigations.

- 4.8 We have asked those authorities, where practicable, to notify us in advance of an impending action so that we can make an initial assessment as soon as the authority has made its decision. This is important for the effectiveness of the CPT, as a company or individual which has an action pending against them involving the misuse of telephone numbers may seek allocation of more numbers before they are assessed under the CPT.
- 4.9 Those who are the subject of an enforcement action will not automatically be added to either of the CPT Lists. It brings that individual or company to our attention for initial assessment to determine whether telephone numbers were central to the behaviour that led to the sanction. We will consider the facts of each case and if required, we will seek further information from the authority responsible. We will not contact the individual or company during the initial assessment process.
- 4.10 If we conclude that the use of telephone numbers was not central to the behaviour that led to the sanction, then the assessment is closed.
- 4.11 If we conclude, initially, that the use of telephone numbers was central to the behaviour that led to the sanction, then the individual or company is placed on the under assessment list so that the behaviour that led to the enforcement action can be assessed in more detail. If we place a company on the under assessment list, we will also place the company's directors on that list.

Placement on the under assessment list

- 4.12 In this case, we will notify the individual or company that they have been placed on the under assessment list and that we are considering placing them on the number refusal list. The notification will set out the basis for our initial assessment (generally the decision that brought the individual or company to our attention); the framework which we will use in considering whether they should be placed on the number refusal list; and the timeframe for the assessment process.
- 4.13 The individual or company may make representations about the notification and set out any arguments as to why they should not be placed on the number refusal list. They will also be informed that we will notify them of our proposed decision, at which point they will receive an opportunity to make further representations in relation to our proposed decision. We may ask that the individual or company answers specific questions on matters to help us in the assessment process, including points that may be unclear from the original decision that triggered our assessment.

Ofcom's assessment process

- 4.14 Our assessment will examine the behaviour that brought the individual or company to our attention and determine whether a) telephone numbers were central to the behaviour which resulted in the enforcement action; and b) we are satisfied that the behaviour caused serious or repeated harm to consumers.
- 4.15 We have identified two types of misuse/abuse where the use of telephone numbers is central to the behaviour and that we believe should be targeted by the CPT:
- *direct misuse of a telephone number*, where serious or repeated harm to consumers is caused through using or adopting a telephone number contrary

to numbering provisions. An example would be revenue-sharing on an 070 number contrary to the Numbering Plan; and

- *indirect misuse of a telephone number*, where the use or adoption of a specific type of telephone number is critical to the activity causing the consumer harm. Examples of such activities include ‘missed call’ and fax-back scams and fraud.

4.16 In general, the following factors indicate that the use of telephone numbers was central to the behaviour (although other factors may also be relevant):

- *the profitability of the behaviour was dependent on the revenue-sharing features of the numbers in question:*

Harmful activities such as premium rate service scams are generally carried out in order to generate revenue. Where telephone numbers are the source of the revenue being generated, for example through revenue-sharing arrangements, then we are likely to consider the telephone numbers as being central to the harmful behaviour; and

- *the behaviour was dependent on the functionality or other characteristics of the numbers in question:*

Where the functionality or some characteristic of the telephone number(s) in question, for example the ‘find-me-anywhere’ functionality of 070 numbers or the fact that 070 numbers are easily mistaken for mobile numbers, is necessary or assists in the harmful activity being carried out, then we are likely to consider the numbers as being central to the harmful behaviour.

4.17 In considering whether the individual or company in question has used numbers in a manner that has caused *serious harm* to consumers, we will have regard to the factors set out below:

- *whether the abuse was a criminal offence:* where an individual or company has been convicted of a criminal offence as a result of their use of telephone numbers, we will normally view this as a serious abuse;
- *consumer harm:* the greater the level of harm/detriment suffered by consumers, including the number of consumers affected as a result of the notified abuse, the more serious we are likely to consider the behaviour;
- *whether the abuse was targeted:* we will take into account whether the notified abuse was targeted at specific groups of people, particularly more vulnerable groups;
- *the number and range of abuses notified:* we will take into account the number of separate instances of abuse included in an enforcement decision;
- *whether the harmful conduct was deliberate:* we will consider the deliberate misuse of telephone numbers to be of greater seriousness than where any misuse resulted from incompetence or a lack of understanding of the relevant regulations;
- *steps taken to cease the harmful conduct:* we will take into account any steps taken by the individual or company to bring an end to the harmful behaviour

and to remedy the consequences of that behaviour prior to the individual or company being contacted by the relevant enforcement authority; and

- *the view of the enforcement authority on the seriousness of the behaviour that led to the sanction:* we will take into account any views provided by the relevant enforcement authority on the seriousness of the abuse as provided in their enforcement notification or otherwise supplied.

4.18 In considering whether the individual or company has used numbers to cause *repeated consumer harm* we will examine their behaviour over the previous 24 months and will consider the following factors as indications that repeated consumer harm has occurred:

- *prior listing on the number refusal list:* where Ofcom has previously found the individual or company to have used telephone numbers to cause serious or repeated harm to consumers;
- *previous notifications and adjudications:* where Ofcom, PhonepayPlus or another relevant authority has previously issued a notification or made an adjudication against the individual or company for harmful behaviour involving telephone numbers and that individual or company subsequently carries out more abuse that leads to the issuing of a further notification or adjudication for harmful behaviour involving telephone numbers;
- *previous convictions under criminal provisions or penalties imposed by a court in relation to civil proceedings:* where a court has previously made a finding against the individual or company for harmful behaviour involving telephone numbers; and
- *previous undertakings provided:* where an individual or company has previously given undertakings to the Court, Ofcom or another relevant authority under the Enterprise Act 2002 in lieu of enforcement action in relation to harmful behaviour involving telephone numbers.

4.19 Taking account of the factors above, any further information received and any representations made by the individual or company in question, we will determine whether we are satisfied that the individual or company has used telephone numbers in a way that has caused serious or repeated harm to consumers. If so, we will propose that the individual or company will be placed on the number refusal list.

4.20 If we are not satisfied that the individual or company has used telephone numbers in a way that has caused serious or repeated harm to consumers, we will notify them that they will be removed from the under assessment list and that we will not be placing them on the number refusal list in relation to the behaviour that led to that particular enforcement action.

4.21 When conducting this assessment, we will not re-open any previous enforcement decision that may have brought the individual or company to our attention, or make any determination as to whether or not they actually committed the harmful behaviour to which that decision related.

The period of time an individual or company is to remain on the number refusal list

4.22 The period of time that the individual or company should remain on the number refusal list ('the number refusal period') will be proportionate to the behaviour that led

to the decision to refuse numbers to the individual or company. We have developed a set of general criteria that we will consider when deciding the number refusal period and this will vary according to a range of considerations.

General criteria for setting the number refusal period

4.23 Generally the guideline number refusal period will be at least six months unless there are exceptional circumstances, as we believe that any shorter period would not be effective in protecting consumers. There is no maximum period.

4.24 We will first consider the following non-exhaustive list of factors in determining the number refusal period:

- the seriousness of the behaviour that led to the assessment;
- the extent and seriousness of any previous behaviour involving the use of telephone numbers to harm consumers;
- the extent to which any harm to consumers was caused by a third party or any relevant circumstances beyond the control of the notified party; and
- the need to ensure that the period of refusal provides sufficient protection to consumers.

4.25 After determining the number refusal period on the basis of the general criteria detailed above, we will then consider whether there are any other factors specific to the individual case that might justify increasing or decreasing the period.

Factors tending to lead to an increase in the number refusal period

4.26 These may include, but would not necessarily be limited to:

- the continuation of the harmful behaviour after notification by Ofcom, PhonepayPlus or another relevant authority;
- the extent to which senior management knew or ought to have known that the harmful behaviour was occurring or would occur; and
- the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent harmful behaviour by the individual or company.

Factors tending to lead to a reduction in the number refusal period

4.27 These may include, but would not necessarily be limited to:

- the extent to which the individual or company has taken steps in advance to identify and mitigate external factors that might result in harm to consumers;
- the extent and timeliness of any steps taken to end the harmful behaviour and remedy any consequences of that behaviour; and
- co-operation with any investigation into the behaviour carried out by Ofcom, PhonepayPlus or another relevant authority.

Final decision on the number refusal period

- 4.28 Having had regard to any representations made by the individual or company and having considered the factors listed above (to the extent that they are relevant) and any other circumstances relevant to the particular individual or company under assessment, we will determine an appropriate and proportionate period of time for the individual or company to remain on the number refusal list.

Placement on the number refusal list

- 4.29 If we are satisfied that the individual or company has used telephone numbers in a way that has caused serious or repeated harm to consumers, we will notify them that we are proposing to place them on the number refusal list and for how long the proposed number refusal period will last. The notification will set out the framework for the assessment process and the reasons why we reached that particular decision.
- 4.30 The individual or company may make representations to us in relation to the proposed listing on the number refusal list and the proposed length of time of the listing. We will consider any representations received from the individual or company on our proposed decision and then notify them of our final decision.

Appeals procedure

- 4.31 Individuals or companies that are subject to a decision to place them on the number refusal list have the right to appeal the decision to the CAT. That appeal would constitute a full appeal on the merits of our decision.

The process for removing an individual or company from the number refusal list

- 4.32 Once the number refusal period has elapsed, the individual or company will normally be removed from the number refusal list and notified of that fact.
- 4.33 If the individual or company has been the subject of an enforcement action during the period that they are listed on the number refusal list, and our initial assessment suggests that the individual or company has used numbers again to cause consumer harm, we will place them on the under assessment list and investigate the behaviour as normal.
- 4.34 If we are satisfied that the individual or company has caused serious or repeated harm to consumers, our decision that the individual or company should be refused numbers for a certain period of time may effectively extend the period of time that they are listed on the number refusal list. If this should be the case, the individual or company will be notified of our decision to extend the number refusal period and the reasons for our decision.
- 4.35 We will not generally reduce the period of number refusal once it has been decided as part of the assessment process. If an individual or company on the number refusal list has taken steps to cease the harmful conduct and remedy the consequences of that conduct, this will be taken into account when we initially determine the number refusal period. Once the assessment process is complete and the individual or company has been placed on the number refusal list, it will not be sufficient to only then take steps to remedy the potential for further harmful conduct. However, if there is a significant change of circumstances, for instance if a company is acquired by another company and new management is put in its place, we may be more likely to reconsider our decision in relation to the number refusal list.

- 4.36 Further, we consider that once an enforcement decision has been made by an authority, it is final until such time as it is reviewed or overturned. If a decision that led to an individual or company's placement on either CPT List is overturned, we will, on request of the individual or company listed on the number refusal list, re-assess in the light of the new circumstances and would be likely to remove them from the lists (unless, for example, other enforcement decisions had been made against the individual or company since their placement on the list).

Timescales for the CPT List assessment process

- 4.37 We recognise that individuals and companies will be unable to receive number allocations from Ofcom for the period that we are conducting our assessment, even if we ultimately determine that they should not be placed on the number refusal list, and that this could have some impact on a business that is reliant on new number allocations to provide services. To best alleviate these concerns, we will make assessments as quickly as possible, while ensuring sufficient time is provided to make an accurate judgement on the facts and to give the party being assessed time to make representations. However, if it becomes clear on investigation that the behaviour would not justify number refusal under the CPT, the individual or company may be removed from the under assessment list immediately.
- 4.38 In setting timescales for assessment under the CPT, we must have regard to the statutory timescales for determining numbering applications and for certain procedures that serve as triggers in relation to the CPT.
- 4.39 We have an obligation, pursuant to Article 5 of the Authorisation Directive and section 58(4)(b) of the Act, to allocate numbers within three weeks of receiving an application. It is conceivable that an individual or company who is placed on the under assessment list applies to us for a number allocation on the same day as the placement or at some point during the assessment process. In such case, the CPT assessment process would need to be finalised within three weeks of receipt of that application (or where additional information has been requested, on receipt of such further information) so that we can make a determination on the numbering application within the statutory timescale.
- 4.40 The indicative list of possible triggers for an assessment under the CPT (see Table 2.1) includes notifications under sections 94 to 96 and 128 to 130 of the Act. However, whereas we believe a notification under section 94⁵⁵ and section 128⁵⁶ may be an appropriate trigger for listing on the under assessment list, it would normally not be appropriate for the individual or company concerned to be placed on the number refusal list if they have subsequently complied with the requirements set out in the section 94 or section 128 notification.
- 4.41 It would normally be appropriate for the individual or company concerned to be placed on the number refusal list only if they do not comply with the requirements of the section 94 or section 128 notification and the non-compliance results in an enforcement notification under section 95 or section 129, or the imposition of a penalty under section 96 or section 130. Under section 94 and section 128, persons

⁵⁵ Section 94 of the Act concerns notification of contraventions of conditions. Under this section, Ofcom may notify a person that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition set under section 45 of the Act, and may require the person to comply with notified conditions and to remedy the consequences of notified contraventions.

⁵⁶ Section 128 of the Act concerns notification of misuse of networks and services. Under this section, Ofcom may notify a person that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications service.

notified of the contravention/misuse have one month to comply with the notice or to make representations. Further time is required for us to issue the enforcement/penalty notice. This may lengthen the time taken to assess whether the individual or company should be placed on the number refusal list.

- 4.42 Other timescales may need to be taken into account on a case-by-case basis, for example to accommodate any relevant procedures under Part 8 of the Enterprise Act. As the list of triggers is non-exhaustive, it is not possible to set a single timetable that will apply in all cases.
- 4.43 In light of the opposing requirements set out above, the timescales for assessment under the CPT need to be flexible. We have established a process timetable which will be followed as closely as possible for 'standard' assessment, while recognising that this may need to be adapted according to the specific circumstances of the case. The process would last approximately 47 days from when we are notified of the decision by the relevant authority. Further detail is provided in the CPT guidelines at Annex 3.

What does it mean for individuals and companies who are placed on the under assessment list?

- 4.44 Individuals and companies who are placed on the under assessment list:
- will be listed on a publicly available list showing that Ofcom is considering whether we are satisfied that the individual or company has used telephone numbers to cause serious or repeated harm to consumers;
 - will be refused the allocation of numbers from the 070, 087 (excluding 0870) and 09 ranges by Ofcom while they are on the list; and
 - are likely to be refused 070, 087 (excluding 0870) and 09 numbers by communications providers and resellers, as they have been encouraged to implement the CPT or comparable test to refuse the assignment of numbers to individuals or companies that are listed on the CPT Lists.
- 4.45 We will not allocate numbers from the 070, 087 (excluding 0870) or 09 number ranges to individuals or companies while they are placed on the under assessment list. However, we have a duty to consider applications from communications providers on the under assessment list as we have not, at that point, concluded our assessment on whether we are satisfied that the individual or company has used numbers to cause serious or repeated harm to consumers. Accordingly, any individual or company on the under assessment list may still apply to us for the allocation of numbers and we will be required to process that application within the time period specified in the Act. This is currently three weeks from receipt of the application or where additional information has been requested, receipt of that information. This has implications for the timescales for assessment under the CPT (see paragraphs 4.37 to 4.43 above).

What does it mean for individuals and companies who are placed on the number refusal list?

- 4.46 Individuals and companies who are placed on the number refusal list:

- will be placed on a publicly available list showing that Ofcom is satisfied that they have used telephone numbers to cause serious or repeated harm to consumers;
- will be refused the allocation of numbers from the 070, 087 (excluding 0870) and 09 ranges by Ofcom while they are on the list; and
- are likely to be refused 070, 087 (excluding 0870) and 09 numbers by communications providers and resellers, as they have been encouraged to implement the CPT or comparable test to refuse the assignment of numbers to individuals or companies that are listed on the CPT Lists.

How Ofcom will use the CPT Lists

- 4.47 When we receive an application for 070, 087 (excluding 0870) or 09 telephone numbers, we will check the applicant's details against the CPT Lists to ensure that the applicant (or where the applicant is a company, any of its directors) is not listed. The application forms for 07, 08 and 09 numbers will be modified so that they request sufficient information for us to identify the applicant and determine whether they are listed.
- 4.48 In order for us to adequately identify numbering applicants, including company directors, the relevant numbering application forms must be completed accurately, providing all requested identification information on the company, company directors and individuals as relevant. For companies, such information includes the company directors' name, address and date of birth. A copy of the Companies House 'Appointments Report' listing the directors of the company must also be provided with the first application that requests it and with subsequent applications whenever there has been a change to the Appointments Report. Individual applicants and those applying as part of a partnership or as a proprietor of an unincorporated entity, are also required to provide name, address and date of birth details.
- 4.49 The provision of false or inaccurate information (such as false director names or the omission of particular directors' names) on the numbering application forms may be a breach of the Numbering Condition and therefore subject to action from Ofcom under sections 94 to 96 of the Act.

Providers who assign or sub-allocate numbers are encouraged to consult the CPT Lists and not assign 070, 087 (excluding 0870) and 09 numbers to any individual or company listed

- 4.50 We have introduced the CPT into our allocation process to ensure that we do not give out telephone numbers in certain ranges to applicants who have a history of using numbers to cause consumer detriment, given that they may use numbers to cause further consumer harm. The effectiveness of our actions will be considerably increased if providers implement the same or comparable consumer protection test into their number assignment processes.
- 4.51 Providers assigning or sub-allocating telephone numbers are strongly urged to introduce a consumer protection test, in a format that suits their number assignment processes, which includes measures designed to stop the assignment or sub-allocation of numbers in the 070, 087 (excluding 0870) and 09 ranges to any individual or company that has misused numbers in the past to cause serious or repeated harm to consumers. To help providers identify such persons, we are

publishing the CPT Lists of individuals and companies to whom we will not be allocating numbers and to whom we expect providers to also refuse the assignment of numbers.

- 4.52 Our initial position is to allow communications providers to take a self-regulatory approach to considering the past behaviour of individuals or companies when deciding whether to assign them numbers and to use the CPT Lists for that purpose. We expect that providers will want to act on the information provided on individuals and companies that have a history of misusing numbers and will not want to give numbers to an individual or company that Ofcom has publicly stated should not be allocated or assigned further telephone numbers.
- 4.53 We will be monitoring the effectiveness of providers' measures and we may revisit the question of whether a formal requirement on providers to implement the CPT is necessary in the future, particularly if we find that numbers in the 070, 087 (excluding 0870) and 09 ranges continue to be assigned to individuals or companies on the CPT Lists.

Number ranges covered by the CPT

- 4.54 Ofcom will not allocate numbers from the 070, 087 (excluding 0870) and 09 ranges to any individual or company that is on the under assessment list or the number refusal list.
- 4.55 The scope of the CPT will be reviewed periodically and if we see, for example, migration of scams to a particular number range that is not included, we will consider taking action to add that range to those covered under the test. Similarly, if there is no longer evidence to suggest that a number range is being used to commit consumer harm then we will consider removing that range from the scope of the CPT.

CPT Guidelines

- 4.56 We have published a set of guidelines to provide clarity and transparency on how we will normally apply the CPT. They also explain what being placed on a CPT List means for individuals and companies. However, the guidelines have no binding legal effect.
- 4.57 The CPT guidelines bring together the details contained in Sections 3 and 4 of this statement in a freestanding document (and therefore contain some repetition of those two sections). In order to keep the guidelines effective, we plan to treat them as a 'living' document, reviewing and modifying over time to reflect experience and any changes in the way the CPT is applied. The initial version of the guidelines is at Annex 3 of this document and will also be published separately on our website.

Next steps for CPT implementation

- 4.58 We will introduce the CPT into our number allocation process on 1 January 2009. The modified application forms for 07, 08 and 09 numbers are published as an annex to this statement. They will be posted on the 'numbering applications' section of our website on 11 December 2008, three weeks prior to the CPT being launched, so that the necessary identification information is provided on applications that we process

from 1 January 2009 onwards.⁵⁷ Applications which take longer than three weeks to process due to the need for the applicant to supply further information will also need to supply the missing identification information in order for the application to proceed.

⁵⁷ Ofcom's numbering application forms are available at http://www.ofcom.org.uk/telecoms/loi/numbers/applying_num/number_apps_forms_link/
The forms are password protected.

Annex 1

List of respondents to the consultation

- A1.1 We received 18 responses to the CPT consultation. None of the responses were confidential and all are posted on our website at <http://www.ofcom.org.uk/consult/condocs/numberingcpt/response/>
- A1.2 Responses were received from the following organisations:
- BT
 - Cable & Wireless (C&W)
 - COLT
 - Federation of Communication Services (FCS)
 - FleXtel
 - H3G
 - PhonepayPlus (submitted under the former name of ICSTIS)
 - Magrathea
 - Mobile Broadband Group (MBG)
 - Network for Online Commerce (NOC)
 - Office Of Fair Trading (OFT)
 - T-Mobile
 - The Carphone Warehouse
 - Thus
 - Telecommunications UK Fraud Forum (TUFF)
 - UK Competitive Telecommunications Association (UKCTA)
- A1.3 Responses were received from two consumers under the headings of 'Consumer protection' and 'Telephone number allocation'.

Annex 2

Impact Assessment

Introduction

- A2.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 ('the Act').
- A2.2 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. 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. For further information about our approach to impact assessments, see the guidelines, *Better policy-making: Ofcom's approach to impact assessment*, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

The citizen and/or consumer interest

- A2.3 Ofcom's consumer research shows that consumers associate certain kinds of telephone numbers as being typically used to perpetrate telephone frauds and scams. This has tarnished the reputation of those number ranges and made consumers more wary about calling them.⁵⁸ Our research shows that residential and business consumers have overwhelmingly negative perceptions of 09 numbers in particular, and that many perceive the companies that offer services on these numbers to be unscrupulous. When asked in Ofcom research how likely they were to call numbers of different types, as many as 82 per cent of residential consumers stated that they would be likely or certain not to call a number beginning with 09, and over 70 per cent stated they would be likely or certain not to call a number beginning with 08.⁵⁹
- A2.4 Apart from the harm caused to the victims of telephone scams and frauds, such activities will also adversely affect both potential consumers of legitimate services on the same type of telephone numbers, as they are discouraged from using those services, and the providers of those legitimate services. As a consequence, providers may be reluctant to offer new services on number ranges that they think consumers distrust, thereby resulting in under-utilisation of the numbering resource.
- A2.5 This type of harmful behaviour also draws on the resources of enforcement agencies such as Ofcom, PhonepayPlus, the Office of Fair Trading, Trading Standards and the police. These agencies can stop the behaviour but there is currently no regime in place to prevent individuals or companies from accessing new numbers and starting up the same or similar 'service'.

⁵⁸ This research is set out in the document *Numbering Review: Report of Market Research Findings* as part of the Numbering Policy Review, and is accessible at <http://www.ofcom.org.uk/consult/condocs/numberingreview/research/>

⁵⁹ See particularly *Numbering Review: Report of Market Research Findings* figure 4.2, page 14, and the Numbering Policy Review, page 32.

Numbering Policy Review and Consultation on the Consumer Protection Test

- A2.6 In order to address this situation, the Numbering Policy Review⁶⁰ proposed introducing a test into the number allocation process which would consider consumer protection as well as number efficiency issues at the time of number allocation. The test would be designed to halt the supply of telephone numbers to those who have used them to cause repeated or serious harm to consumers in the past. The proposal for a consumer protection test was strongly supported in responses to the Numbering Policy Review and Ofcom took the decision that a consumer protection test should be implemented.⁶¹
- A2.7 We published our proposals for the consumer protection test in our consultation document *Consumer Protection Test for telephone number allocation* ('the CPT consultation') published on 17 May 2007. The CPT consultation set out the reasons why we believe that the test is necessary and how we thought that the test might look. The options for implementation discussed in the consultation are described in paragraphs A2.12 and A2.13 below. The consultation closed on 22 June 2007.

Ofcom's policy objective

- A2.8 As discussed in this statement, Ofcom has a number of duties in relation to telephone numbering under sections 56 to 63 of the Act. In particular, section 63 requires us "to secure that what appears to Ofcom to be the best use is made of the numbers that are appropriate for use as telephone numbers" and "to encourage efficiency and innovation for that purpose". The introduction of a consumer protection test for number allocation helps us to fulfil this duty by taking steps to reduce future instances of serious or repeated harm caused to consumers through the misuse of telephone numbers.

Benefits of a consumer protection test for telephone number allocation

- A2.9 Certain telephone scams and frauds may be prevented by considering consumer protection at the time of number allocation and assignment. In turn, this may lead to increased consumer confidence in certain telephone number ranges. This would benefit legitimate service providers to the extent that consumers might access their services using numbers that they currently choose not to dial due to concerns about being subjected to some form of telephone scam or fraud. This will maintain the appeal of telephone numbers to service providers and will ensure that they do not become an under-utilised resource.
- A2.10 Increased consumer confidence in telephone numbers may have a beneficial impact on industries that rely on numbers to operate but are currently affected by the harmful conduct of a small minority. The aim of the test will be to maintain the value of telephone numbers as a tool for providing services, thereby encouraging the best use of numbers.

⁶⁰ *Telephone Numbering- Safeguarding the future of numbers* consultation document published on 23 February 2006 available at <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

⁶¹ Responses to the Numbering Policy Review consultation published 23 February 2006 are available at <http://www.ofcom.org.uk/consult/condocs/numberingreview/responses/>
A summary of responses on the subject of a consumer protection test is provided at paragraphs 3.40 – 3.46 of the Numbering Policy Review statement published on 27 July 2006
<http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/statement.pdf>

A2.11 If a consumer protection element is added to the number allocation and assignment process, PhonepayPlus, Ofcom and other enforcement agencies are likely to see some reduction in the number of repeat offenders due to the unavailability of new telephone numbers to individuals and companies that have used telephone numbers to cause consumer harm in the past. This would free up resources that would otherwise have been dedicated to investigating, taking enforcement action, and dealing with complaints against these offenders.

Options considered in the CPT consultation impact assessment

A2.12 The impact assessment in the CPT consultation considered two options for a consumer protection test for telephone number allocation:

- Option 1 involved Ofcom and providers following certain due diligence processes to ensure that they did not allocate numbers in the 03, 056, 070, 08 and 09 ranges to any individual or company on the CPT Lists.
- Option 2 involved Ofcom and providers undertaking their own assessment of numbering applicants - in other words, 'pre-vetting' each applicant - to determine whether an allocation of 03, 056, 070, 08 or 09 numbers would constitute the best use of those numbers. Such assessment would be expected to take into account whether the applicant, and in the case of a company its directors, had previously used telephone numbers to cause serious or repeated harm to consumers before allocating numbers to the applicant.

A2.13 The impact assessment concluded that a test which involved the refusal of additional numbers in certain ranges to individuals or companies appearing on Ofcom maintained lists (Option 1) was preferable to a system of providers pre-vetting applicants (Option 2) as Option 1 was:

- relatively straightforward to apply both at the allocation and sub-allocation stage, in terms of checking the CPT Lists, and would not place as heavy an administrative burden on stakeholders as pre-vetting;
- able to provide guidance on the criteria Ofcom would normally follow in assessing companies and individuals under the test so that number users should know their obligations and the consequences of using telephone numbers in a way that is against the interests of consumers;
- clear for both number applicants and sub-allocating providers as to their obligations; and
- appropriate in allocating responsibility to Ofcom and not to providers to determine whether an individual or company should be refused numbers.

Options for consideration in this impact assessment

New options for assessment

A2.14 We have built on the impact assessment conducted in the CPT consultation by considering four additional options for implementing a consumer protection test for number allocation/assignment. The new options have taken into account responses to the CPT consultation and our revised views on how we should introduce the consumer protection test as set out below.

Ofcom to compile, maintain and publish the CPT Lists so that providers do not need to 'pre-vet' applicants

A2.15 We retain the position reached in the previous impact assessment that 'pre-vetting' is not a suitable option due to the administrative burden that it would place on all providers that assign or sub-allocate numbers to others. Given this, new options for implementation of the consumer protection test (apart from the 'do nothing' option) involve Ofcom compiling, maintaining and publishing the following lists (known collectively as 'the CPT Lists'), thus giving providers a reference point for individuals and companies to whom numbers within the scope of the CPT should not be assigned:

- the 'under assessment list' - a list of individuals and companies that we are assessing to determine whether they have used telephone numbers in a way that has caused serious or repeated harm to consumers; and
- the 'number refusal list' - a list of individuals and companies that, following assessment, we are satisfied have used telephone numbers in a way that has caused serious or repeated harm to consumers in the past.

Number ranges included in the scope of the CPT

A2.16 We have taken into account the views of respondents to the CPT consultation on the number ranges that should be included in the scope of the consumer protection test. We agree with the generally held position that the inclusion of a number range in the CPT should be based on evidence of consumer harm being perpetrated on that range and the risk of such behaviour occurring in the future. We agree that the following characteristics can encourage misuse of numbers and that number ranges that share one or more of these should be considered for inclusion in the CPT:

- high retail price;
- high termination rate and the ability to revenue share or create artificial inflation of traffic; and/or
- a risk to consumer confidence from a history of misuse and consumer detriment or a credible explanation that conditions for abuse are present.

A2.17 Taking these criteria into account, we have decided, at least initially, that the CPT should be limited to the 070, 087 (excluding 0870) and 090 ranges. More detail on why we have included these ranges and excluded others is set out in paragraphs 3.104 to 3.114 of the accompanying statement. Given this view, new options for consideration in this impact assessment are based on the CPT covering only the 070, 087 (excluding 0870) and 09 ranges.

The options for assessment

A2.18 Five options for the CPT are set out below. Option A is the 'do nothing' option. Options B, C and D are new options for assessment compiled in line with the considerations in paragraphs A2.15 to A2.17 above. Option E was put forward in the CPT consultation and is therefore not based on the post-consultation considerations in relation to number ranges included.

Option A: 'do nothing'

- A2.19 Under Option A, Ofcom would continue to consider applications for telephone numbers on technical and efficiency grounds and would not take the past behaviour of applicants into account. Providers may take whatever measures they see fit when considering applications for number assignment.

Option B: Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. Providers take a self-regulatory approach to implementation of the CPT or comparable consumer protection test

- A2.20 Under Option B, Ofcom would implement the CPT by refusing numbers from the 070, 087 (excluding 0870) and 09 ranges (these being the ranges with the strongest evidence of consumer abuse through their use) to individuals or companies on our CPT Lists.
- A2.21 All providers who assign 070, 087 (excluding 0870) and 09 numbers to others would take a self-regulatory approach to including consumer protection considerations in their number assignment decisions. They would be strongly encouraged to consult the CPT Lists when making decisions on applications for 070, 087 (excluding 0870) and 09 numbers and take whatever measures they consider necessary to identify whether applicants were on either CPT List and refuse the assignment of numbers if they were listed.
- A2.22 Option B is being considered as it provides a means of introducing consumer protection into providers' assignment considerations without prescribing how that should take place. This allows providers to implement the CPT or similar test in the way that best suits their number assignment processes.

Option C: Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. Communications providers and resellers are required to implement the CPT when sub-allocating or assigning 070, 087 (excluding 0870) or 09 numbers to other providers and resellers and to take a self-regulatory approach when assigning those numbers to end users

- A2.23 Under Option C, Ofcom would implement the CPT by refusing numbers from the 070, 087 (excluding 0870) and 09 ranges to individuals or companies on our CPT Lists.
- A2.24 All communications providers would have an obligation under a new Numbering Condition not to sub-allocate or assign 070, 087 (excluding 0870) or 09 numbers to another communications provider or reseller if it appeared on either CPT List. Providers would be required to exercise sufficient due diligence to identify such applicants. In addition, all parties would be encouraged to voluntarily consider the CPT Lists when further assigning those numbers to service providers or end users and to refuse 070, 087 (excluding 0870) or 09 numbers if the applicant was listed.
- A2.25 Option C differs from Option B through the requirement on communications providers and resellers not to assign or sub-allocate 070, 087 (excluding 0870) or 09 numbers to other communications providers or resellers on the CPT Lists rather than allowing for a self-regulatory approach to introducing consumer protection into the assignment process.
- A2.26 Option C is being considered as it provides a means of introducing an obligation on providers to exercise sufficient due diligence to consult the CPT Lists when

assigning numbers to communications providers/resellers but without the increased regulatory burden of implementing prescribed processes for the more transaction-intensive assignment of numbers to service providers/end-users.

Option D: Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. All who sub-allocate or assign numbers to others are required to refuse 070, 087 (excluding 0870) and 09 numbers to individuals or companies on either CPT List

- A2.27 Under Option D, Ofcom would implement the CPT by refusing numbers from the 070, 087 (excluding 0870) and 09 ranges to individuals or companies on our CPT Lists.
- A2.28 All providers would have an obligation under a new Numbering Condition not to sub-allocate or assign 070, 087 (excluding 0870) and 09 numbers to any individual or company on the CPT Lists. Providers would be required to exercise sufficient due diligence to identify such applicants.
- A2.29 Option D differs from Option B in that implementation of the CPT would be an obligation rather than a self-regulatory measure for providers. Option D differs from Option C in that the obligation covers all assignments of 070, 087 (excluding 0870) and 09 numbers and not only assignments made to communications providers and resellers.
- A2.30 We are considering this option as it provides a means of requiring providers to consider the CPT Lists when making all assignments of 070, 087 (excluding 0870) and 09 numbers and to ensure that sufficient due diligence is exercised to consult the CPT Lists.

Option E: Ofcom implements the CPT covering numbers in the 03, 056, 070, 08 and 09 ranges. All who sub-allocate or assign numbers to others are required to refuse 03, 056, 070, 08 and 09 numbers to individuals or companies on either CPT List.

- A2.31 Under Option E, Ofcom would implement the CPT as proposed in the CPT consultation and would refuse numbers from the 03, 056, 070, 08 and 09 ranges to individuals or companies on our CPT Lists.
- A2.32 All providers would have an obligation under a new Numbering Condition not to sub-allocate or assign 03, 056, 070, 08 and 09 numbers to any individual or company on the CPT Lists. Ofcom would provide 'due diligence best practice' guidelines on the identification information to be obtained from numbering applicants to ensure that numbers in specified ranges are not assigned to any listed individual or company.
- A2.33 Option E differs from Option B in that implementation of the CPT would be a regulatory obligation rather than a self-regulatory measure for all providers whenever they assign numbers from ranges included within the CPT. Option E differs from Options B, C and D in that it includes the 03, 056 and remainder of the 08 number ranges.

Assessment of the options

Option A: 'do nothing'

Potential benefits of Option A

- A2.34 This option safeguards against undue regulatory intervention in the way that communications providers and resellers conduct their business, assign numbers and carry out due diligence processes.

Impact of Option A

- A2.35 Option A would have no direct impact or costs as it represents no change to Ofcom's allocation processes, current regulatory obligations or providers' number assignment processes.
- A2.36 However, by 'doing nothing' we would not be implementing measures to help ensure best use of numbers, the protection of consumers or the integrity of the Numbering Plan. This may result in continued impact and costs for consumers and industry generated by scams, fraud and other forms of consumer abuse using telephone numbers.
- A2.37 There may also be resulting costs for communications providers who want to take consumer protection into account as a consequence of the 'do nothing' option. Without the publication of the CPT Lists, each communications provider wanting to take account of applicants' past behaviour in using numbers would need to undertake its own investigations and 'pre-vet' applicants. We looked at this option in the CPT consultation and concluded that the due diligence required for pre-vetting applicants would require a considerable investment of time, particularly for smaller providers. If we produce a centrally available list for reference by all interested parties, it would remove the burden on providers of individually pre-vetting applicants.

Potential risks of Option A

- A2.38 Option A risks giving a negative signal to consumers and industry that it is not necessary to take consumer protection into account when deciding whether to allocate or assign numbers. Our proposed action to reduce scams and fraud would not have been taken and consumer harm caused through the serious or repeated misuse of numbers could continue unchecked at the point of number allocation and assignment.

Option B: Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. Providers take a self-regulatory approach to implementation of the CPT or comparable consumer protection test

Potential benefits of Option B

- A2.39 Option B would introduce consumer protection considerations into Ofcom's number allocation processes. It would focus on refusing the allocation of further numbers from the ranges most commonly used to cause consumer harm to individuals and companies that have misused numbers in the past. As a result, fewer numbers would be allocated to communications providers who have previously used them to cause consumer harm and we would expect to see a reduction in the number of scams, frauds and other consumer abuses committed using telephone numbers. (This is also a potential benefit of Options C, D and E.)
- A2.40 Under Option B, Ofcom would not increase the formal regulatory burden on communications providers and resellers. This would be in line with our principle of seeking the least intrusive regulatory mechanisms to achieve our policy objectives. Instead, this option provides an opportunity for providers to take a self-regulatory

approach to improving consumer protection and to demonstrate to consumers and Ofcom that industry can be relied upon to conduct its business in a way that promotes consumer interests without the need for new regulation. If the self-regulatory approach proves unsuccessful and 070, 087 (excluding 0870) and 09 numbers continue to be assigned to persons on the CPT Lists, Option B would give us useful evidence and experience should we need to reconsider whether a regulatory obligation to implement the CPT is required.

- A2.41 Option B would allow all persons that sub-allocate or assign 070, 087 (excluding 0870) and 09 numbers to others to develop independently the way that they include consumer protection considerations in their number assignment decisions. This would be a pragmatic response to communications providers' concerns that an Ofcom prescribed process or 'best practice due diligence' guidelines would be highly burdensome and difficult to manage. Option B allows all providers to implement the CPT or comparable consumer protection test in a way that suits their number assignment processes and delivers the best results taking account of the costs involved. By having the opportunity to maintain/adapt existing measures or implement new processes, providers can reduce their administrative burden and costs.
- A2.42 The number ranges included in the scope of the test for Option B (and Options C and D) are those with the strongest evidence of being used for 'services' which cause consumer detriment. The administrative burden for Ofcom and providers is therefore targeted to address number use where consumer harm is most likely to occur.

Impact of Option B

- A2.43 Option B allows for consumer protection considerations to be adopted by providers in a way that suits their particular number assignment models. As a result, the impact and costs of incorporating consumer protection into the assignment process should be lower than if providers had been obliged to implement a particular form of test or observe certain due diligence procedures. This means that the impact of Option B should be lower in varying degrees than the impact of Options C, D and E.

Potential risks of Option B

- A2.44 Providers' responses to the CPT consultation showed a willingness to embrace a test that considers consumer protection at the time of number assignment. However, there is the risk that without an obligation to do so, the apparent support for the CPT does not materialise. Providers might ignore the CPT Lists and assign numbers without taking the past behaviour of applicants into account. The policy aims of the CPT would be realised in terms of Ofcom's number allocation processes but consumer interests would not be promoted in the further sub-allocation and assignment of numbers by others.
- A2.45 Option B could result in very different approaches from providers, with some implementing the CPT or similar test while others ignore the past behaviour of those who apply to them for numbers. This could result in individuals or companies on the CPT Lists that are intent on obtaining more numbers 'shopping around' communications providers and resellers until they find one that will ignore the CPT Lists and meet their request. A market for assigning numbers to those on CPT Lists might thus be created. The extent to which this was possible would depend on the degree to which providers adopt the consumer protection measures.

- A2.46 There would be a risk that scams may migrate to number ranges not initially included in the test. We would need to keep the ranges included under review. (This is also a risk for Options C and D.)

Option C: Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. Communications providers and resellers are required to implement the CPT when sub-allocating or assigning 070, 087 (excluding 0870) or 09 numbers to other providers and resellers and to take a self-regulatory approach when assigning those numbers to end users

Potential benefits of Option C

- A2.47 Like Option B, Option C would introduce consumer protection considerations into Ofcom's number allocation processes, resulting in fewer numbers allocated to communications providers who have previously used them to cause consumer harm and, we anticipate, a reduction in the number of scams, frauds and other consumer abuses committed using telephone numbers. (This is also a potential benefit of Options D and E.)
- A2.48 Regulatory intervention into communications providers' assignment processes would only extend as far as the assignment of numbers to other providers and resellers and not to the significantly larger amount of number assignment transactions that are made to service providers and other end users of 070, 087 (excluding 0870) and 09 numbers.
- A2.49 Like Option B, the number ranges included in the scope of the test for Option C are those with the strongest evidence of being used for 'services' which cause consumer detriment, thus targeting the administrative burden to address number use where consumer harm is most likely to occur. (This is also a potential benefit of Option D.)

Impact of Option C

- A2.50 Option C could have a considerable impact on the way that providers conduct their business and make decisions on number assignment to other communications providers and resellers. In order to ensure that the requirement not to assign numbers to any communications provider or reseller on the CPT Lists is met, providers would need to ensure that sufficient due diligence has been undertaken to adequately identify applicants, and may feel the need to observe best practice guidelines to protect themselves in the event of error. This is likely to have a greater impact on providers compared to Option B, where providers may develop independently the way that they include consumer protection considerations in their number assignment decisions.
- A2.51 We can not reliably estimate what the level of impact of Option C would be for providers, as it would vary considerably according to the amount of number assignment transactions each carries out, the number of different parties to whom they assign numbers and the level of automation in their assignment processes. This is a concern for Ofcom when considering an increase to regulatory obligations, particularly in the absence of clear evidence that the incremental benefits of this option over other options would be sufficiently large.
- A2.52 Although Option C does not require providers to meet a specific obligation to consider consumer protection when assigning numbers to service providers/end users, in practice the divide between communications provider/reseller and service

provider/end user of a number may not always be transparent and may be open to manipulation. This could create uncertainty for providers about the appropriate level of due diligence required to meet the obligation. Cautious providers may decide to include the CPT or similar test into all their number assignment processes so as to be certain that they meet the obligation. In this case, Option C would result in the same impact and risks as set out for Option D in paragraphs A2.60 to A2.63 below and the reduced level of obligation would not reduce the impact.

Potential risks of Option C

- A2.53 A partial obligation to consult the CPT Lists when assigning 070, 087 (excluding 0870) and 09 numbers, and the confusion that a potential two-tier approach might create, could be exploited by persons on the CPT Lists intent on obtaining more numbers. The result could be a shift in the profile of persons that misuse numbers from provider/reseller to service provider/end user if it was (or was perceived as being) easier to obtain numbers.
- A2.54 Consumer harm caused through the misuse of numbers is caused by end users as well as communications providers and resellers. This is evident in PhonepayPlus adjudications. It is therefore an arbitrary distinction to apply the CPT to communications providers and resellers and not to the service provider/end user of a number.
- A2.55 There would be a risk that scams may migrate to number ranges not initially included in the test. We would need to keep the ranges included under review. (This is also a risk for Options B and D.)
- A2.56 Option C risks imposing a regulatory obligation on providers as to how they must take consumer protection into account when assigning numbers to communications providers/resellers, when an alternative option (i.e. Option B) exists that could offer a less intrusive way of meeting our policy aims.

Option D: Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. All who sub-allocate or assign numbers to others are required to refuse 070, 087 (excluding 0870) and 09 numbers to individuals or companies on either CPT List.

Potential benefits of Option D

- A2.57 Like Options B and C, Option D would introduce consumer protection considerations into Ofcom's number allocation processes, resulting in fewer numbers allocated to communications providers who have previously misused them and, we anticipate, a reduction in the number of scams, frauds and other consumer abuses committed using telephone numbers. (This is also a potential benefit of Option E.)
- A2.58 Option D would ensure consumer protection is taken into account at the time of all 070, 087 (excluding 0870) and 09 number sub-allocations and assignments by making this a requirement on all who supply numbers from these ranges to others.
- A2.59 As with Options B and C, the number ranges included in the scope of the test are those with evidence of being used for 'services' which cause consumer detriment.

Impact of Option D

- A2.60 As with Option C, Option D could have a considerable impact on the way that providers conduct their business and make decisions on number assignment. In order to ensure that the requirement not to assign numbers to any individual or company on the CPT Lists is met, providers would need to ensure that sufficient due diligence has been undertaken to adequately identify applicants, and may feel the need to observe best practice guidelines to protect themselves in the event of error. This is likely to have a greater impact on providers compared to Option B, where providers may develop independently the way that they include consumer protection considerations in their number assignment decisions.
- A2.61 We can not reliably estimate what the level of impact of Option D would be for providers, as it would vary considerably according to the amount of number assignment transactions each carries out, the number of different parties to whom they assign numbers and the level of automation in their assignment processes. This is a concern for Ofcom when considering an increase to regulatory obligations, particularly in the absence of clear evidence that the incremental benefits of this option over other options would be sufficiently large. (This is also an impact associated with Options C and E)

Potential risks of Option D

- A2.62 Option D risks imposing a regulatory obligation on providers as to how they must take consumer protection into account when assigning numbers, when an alternative option (i.e. Option B) exists that could offer a less intrusive way of meeting our policy aims. (This is also a risk for Options C and E.)
- A2.63 There would be a risk that scams may migrate to number ranges not initially included in the test. We would need to keep the ranges included under review. (This is also a risk for Options B and C.)

Option E: Ofcom implements the CPT covering numbers in the 03, 056, 070, 08 and 09 ranges. All who sub-allocate or assign numbers to others are required to refuse 03, 056, 070, 08 and 09 numbers to individuals or companies on either CPT List.

Potential benefits of Option E

- A2.64 This is the most comprehensive option for incorporating consumer protection considerations into both Ofcom's number allocation and providers' number assignment processes. It requires all who supply numbers to others to refuse further numbers from virtually all non-geographic number ranges (apart from mobile numbers) to individuals or companies on the CPT Lists.

Impact of Option E

- A2.65 Option E imposes the greatest impact and costs for providers, affecting all persons who assign numbers to others when undertaking virtually all non-geographic numbering transactions (apart from mobile numbers).
- A2.66 Responses to the CPT consultation clearly set out providers concerns over the significant impact of this option, stressing that it would be too prescriptive and would create an unmanageable administrative burden. Providers were particularly concerned at the scope of number ranges included and argued that the impact

would be unjustified for ranges with no evidence of being used to cause consumer harm (e.g. 03, 056 and most of the 08 range).

- A2.67 We can not reliably estimate what the level of impact of Option E would be for providers, as it would vary considerably according to the amount of number assignment transactions each carries out, the number of different parties to whom they assign numbers and the level of automation in their assignment processes. However, it is clear that the relative impact would be higher for Option E than for the other options. This is a concern for Ofcom when considering an increase to regulatory obligations, particularly in the absence of clear evidence that the incremental benefits of this option would be sufficiently large.

Potential risks of Option E

- A2.68 Option E risks imposing a regulatory obligation on providers as to how they must take consumer protection into account when assigning numbers, when an alternative option (i.e. Option B) exists that could offer a less intrusive way of meeting our policy aims. (This is also a risk for Options C and D.)
- A2.69 Option E risks creating anxiety for providers if required to implement an obligation which, as some providers have informed us in their responses to the CPT consultation, could be hugely burdensome and possibly unmanageable.
- A2.70 This option risks creating an unnecessary administrative burden by including number ranges where we have insufficient evidence of them being used to cause consumer detriment (i.e. the 03, 056, 080, 084 and 0870 ranges). By including them in the scope, there is the risk of the administrative burden being too great for many providers to manage. Number transactions for the largest communications providers could run to hundreds per month.

Cost implications of the options

Estimating costs of a consumer protection test for telephone number allocation

- A2.71 There will necessarily be costs associated with the different forms that the consumer protection test could take. For Ofcom, there would be the costs of collecting and processing sufficient information to identify applicants and ensure that numbers are not allocated to any persons who appear on either of the CPT Lists. We would also incur the costs of implementing and monitoring the CPT, in particular costs resulting from compiling, maintaining and publishing the lists.
- A2.72 Communication providers applying for numbers from Ofcom would need to gather and supply additional identification information in their application forms so that we could check to see whether the applicant (and in the case of a company, its directors) were listed on either CPT List.
- A2.73 Providers implementing the CPT or similar test to check applicants against the published CPT Lists would incur the additional administrative costs of collecting and processing identification information from those who apply to them for the assignment of numbers and checking that identification information against the CPT Lists. The scale of these costs would vary considerably for all providers depending on:

- the form of the test implemented; and
- the number ranges covered;

and for each provider depending on:

- the amount of number assignment transactions each provider carries out;
- the number of different parties to whom each provider assigns numbers; and
- the level of automation in their assignment processes.

A2.74 Furthermore, because of extensive sub-allocation of numbers by communications providers, it is not possible to know the number of parties involved in this process across the UK. This means that getting reliable estimates of the costs across industry is not possible for two reasons. First, the wide variation in providers' business models means that we cannot be confident that any sample we focus on would be representative of the costs to the industry as a whole. Secondly, even if we were able to do this, given that the total number of parties involved in the allocation process is unknown, it is not clear by how much to scale up the finding based on a representative sample.

A2.75 We have factored this uncertainty into our assessment of the various options. While we have not ruled out options where we cannot have full knowledge of the costs involved to business, we have tended to favour options where we have a greater level of confidence about the costs involved. Where we are able to quantify the costs with a reasonable degree of accuracy we have done so, and where we are not, we have adopted a qualitative approach to the impact assessment.

A2.76 Due to the complex nature of number sub-allocation in the UK, we are only able to provide reliable cost estimates for our implementation of the CPT. These costs are set out below and would be common to Options B, C, D and E. However, they represent only one element of the cost of those options.

Costs resulting from Ofcom's implementation of the CPT: costs common to Options B, C, D and E

A2.77 We have estimated the costs for Ofcom's implementation of the CPT. These are our costs for compiling, maintaining, publishing and consulting the CPT Lists and communications providers' costs for gathering and supplying the required information in their number application forms so that we can sufficiently identify the applicant. These costs would be incurred for Options B, C, D and E as all these options involve Ofcom publishing the CPT Lists and seeking identification information from applicants in order to consult those lists.

Costs to Ofcom and communications providers of Ofcom implementing the CPT under Options B, C, D and E

Costs of compiling the CPT Lists

A2.78 We have estimated the cost to Ofcom of compiling the CPT Lists. We have based the estimate on:

- assessing an average of 25 individuals and companies per annum to determine whether numbers were central to the behaviour that brought them to our attention for assessment (i.e. the assessment prior to placing an individual or company on the under assessment list);
- assessing an average of 20 individuals and companies per annum to see if we are satisfied that they have used numbers to cause serious or repeated harm to consumers (i.e. the assessment prior to placing an individual or company on the number refusal list); and
- the initial under assessment list and number refusal list increasing costs for the first annum as they will consider enforcement actions over the preceding 12 months.

A2.79 Based on the above, our costs for creating the initial under assessment list and number refusal list are estimated to be approximately £28,000. The costs for maintaining and updating the CPT Lists are estimated to be around £27,000 per annum.

Ofcom's costs for checking number allocation applicants against the CPT Lists

A2.80 We have estimated the cost to Ofcom of processing the additional identification information to be supplied by communications providers on relevant numbering application forms. We have based the estimate on:

- Options B, C and D: applicants applying for 070, 087 (excluding 0870) and 09 numbers would be checked against the CPT Lists. We received 277 applications for those numbers in 2006 and 405 applications in 2007. We estimate that the number of applications will continue to increase each year;
- Option E: applicants applying for 03, 056, 070, 08 and 09 numbers would be checked against the CPT Lists. We received 403 applications for those numbers in 2006 and 601 applications in 2007. We estimate that the number of applications will continue to increase each year;
- we have allocated numbers in the 070, 087 (excluding 0870) and 09 ranges to approximately 250 different communications providers. There is no increase in the number of providers if we include those with 03, 056 and remainder of 08 number allocations, so our assumption on the number of providers is the same under each of Options B, C, D and E; and
- we have based our cost estimate on all 250 providers applying for numbers from the relevant number ranges during the initial year of CPT implementation and supplying us with the required identification information. Approximately half of those communications providers will need to update us with changes to the identification information each year. We estimate that there will be an additional 50 new communications providers applying for numbers each year.

A2.81 Our approximate costs for checking whether number applicants are listed on the CPT Lists are estimated to be:

- for Options B, C and D: £3,800 in the first twelve months; £2,700 for the following twelve months; increasing by around £200 per annum.

- for Option E: £4,200 in the first twelve months; £3,000 for the following twelve months; increasing by around £300 per annum.

Costs for communications providers applying to Ofcom to provide the additional identifying information requested on modified application forms

A2.82 We have estimated the additional costs for communications providers to apply for numbers from Ofcom. We have based the estimate on:

- the costs incurred in collecting, submitting and updating identification information on application forms. This information would be available within the company (e.g. company directors' date of birth and address) and once sourced, it would be to hand and would only require updating;
- for companies, supply of the Companies House Appointments Report listing the company directors at a cost of £1 per report on the initial application requesting its submission and on subsequent applications if the Appointments Report has been amended; and
- we have based our cost estimate on all 250 providers applying for numbers from the relevant number ranges during the initial year of CPT implementation and supplying us with the required identification information. Approximately half of those communications providers will need to update us with changes to the identification information each year. We estimate that there will be an additional 50 new communications providers applying for the relevant numbers each year.

A2.83 We estimate that the cost to industry would be approximately £3,000 in the first twelve months of CPT implementation and £1,500 in the following twelve months.

Conclusions on the impact assessment

A2.84 We strongly believe that the CPT should be incorporated into Ofcom's allocation processes. We also think it appropriate that we provide the reference point for identifying individuals and companies that have used numbers in the past to cause consumers serious or repeated harm. We have estimated the costs of this for Ofcom and industry (see paragraphs A2.78 to A2.83) and found these to be low. They would be considerably outweighed by the benefits resulting from not allocating numbers from specific ranges to persons that have misused numbers in the past.

A2.85 We have further considered which number ranges should be included in the scope of the CPT. We want to focus on those with the strongest evidence of consumer abuse through their use. Our reasoning on which number ranges this includes is set out in paragraphs 3.104 to 3.114. It is our view, and also the view of respondents to the CPT consultation, that these are the 070, 087 (excluding 0870) and 09 number ranges. There is insufficient evidence of consumer harm to include the 03, 056 and remainder of the 08 ranges, at least initially, in the scope of the CPT.

A2.86 We want to introduce consumer protection into providers' number assignment processes in a way that limits the administrative burden. We believe that favouring a self-regulatory approach rather than prescribing a particular process for all in the number supply chain will allow providers to adapt their current processes to do this without concern that they are not meeting the specifics of an obligation.

A2.87 Having considered the arguments set out in this impact assessment, as well as the responses to the CPT consultation and the information provided elsewhere in this document, we have concluded that the appropriate form of CPT to implement is Option B – ‘Ofcom implements the CPT covering numbers in the 070, 087 (excluding 0870) and 09 ranges. Providers take a self-regulatory approach to implementation’. At this point in time, we believe that this option best meets our objectives for taking consumer protection into account at the time of number allocation and assignment.

A2.88 The risks identified for Option B could be mitigated as follows:

- we expect providers to act on the information in the CPT Lists on individuals and companies that have a history of misusing numbers and we will continually support providers in the adoption of their own CPT or comparable consumer protection test by publishing the CPT Lists with sufficient information to identify applicants;
- the risk of providers not taking a self-regulatory approach to implementing the CPT or comparable test is reduced by providers’ knowledge that their reputations are at risk if they give numbers to an individual or company that Ofcom has publicly stated should not be allocated or assigned further telephone numbers.;
- we will be monitoring the effectiveness of providers’ self-regulatory measures and we may revisit the question of whether a formal requirement on providers to implement the CPT is necessary in the future, particularly if we find that numbers in the 070, 087 (excluding 0870) and 09 ranges continue to be assigned to individuals or companies on the CPT Lists or that a market for assigning numbers to those on the CPT Lists has been created; and
- we will keep the number ranges covered by the CPT under review and use evidence of consumer detriment when considering expanding or reducing the number ranges included in the CPT should this become necessary or appropriate.

Annex 3

Guidelines: Consumer protection test for telephone number allocation

Background

- A3.1 Ofcom has produced these guidelines to explain the implementation and operation of the consumer protection test for telephone number allocation ('the CPT'). They are intended to provide clarity and transparency on the process and are not legally binding.
- A3.2 We will normally follow these guidelines when applying the CPT although we will consider each case on its own merits. We will only apply this approach where it is appropriate to do so. In the event that we decide to depart from these guidelines, we will generally set out our reasons for doing so.
- A3.3 These guidelines will be updated as and when necessary and appropriate. They should be read in conjunction with the CPT statement published by Ofcom on 30 September 2008.

The consumer protection test for telephone number allocation

- A3.4 The purpose of the CPT is to provide a mechanism for refusing the allocation of additional telephone numbers from specified number ranges to individuals and companies that we are satisfied have used numbers to cause serious or repeated consumer harm in the past. We will publish and update lists of individuals and companies to whom Ofcom will refuse the allocation of numbers in the 070, 087 (excluding 0870) and 09 number ranges.
- A3.5 The processes for placing individuals and companies on the 'under assessment list' and the 'number refusal list' (known collectively as 'the CPT Lists') are provided in these guidelines. Details on how we will apply the CPT are also set out.

Section 1: Ofcom's process for placing a company or individual on the CPT Lists

How do individuals and companies come to our attention for potential assessment under the CPT?

- A3.6 We have established procedures with a number of authorities who are responsible for enforcing relevant law and regulation, in particular consumer protection regulations. These authorities include PhonepayPlus, the Office of Fair Trading, Trading Standards, the Crown Prosecution Service and the police. Under these procedures, the authorities will inform us of any enforcement actions that they have taken or are about to take that involve the use of telephone numbers to cause consumer harm. We will also identify companies and individuals through our own investigations.
- A3.7 We have asked those authorities, where practicable, to notify us in advance of an impending action so that we can make an initial assessment as soon as the authority has made its decision.

A3.8 Examples of the types of enforcement action taken by relevant authorities that are likely to trigger an initial assessment by us under the CPT are shown in the table below. This is an indicative non-exhaustive list of the types of harmful activities and corresponding enforcement actions that are likely to bring an individual or company to our attention.

A3.9 Those who are the subject of an enforcement action will not automatically be added to either CPT List. It will bring that individual or company to our attention for initial assessment under the CPT (see below).

Table 1: indicative list of possible triggers for Ofcom assessment under the CPT

| Abuse/ misuse | Possible trigger of Ofcom assessment |
|---|---|
| Misuse of numbers e.g. revenue-sharing in contravention of the National Telephone Numbering Plan ('the Numbering Plan') | A notification issued by Ofcom under sections 94 or 95 or a penalty imposed under section 96 of the Act for breach of General Condition 17 ('the Numbering Condition'). |
| Premium Rate Service abuse | Certain adjudications by PhonepayPlus (under its standard or emergency procedure) for contravention of its Code of Practice; A notification issued by Ofcom under sections 94 or 95 of the Act or a penalty imposed under section 96 of the Act for breach of the PRS Condition. ⁶² |
| Certain types of persistent misuse of an electronic communications network or service (excluding silent calls as the telephone number used to make the call is irrelevant. The behaviour does not involve a call back and the number is therefore not central to the behaviour) | A notification issued by Ofcom under sections 128 or 129 of the Act or a penalty imposed under section 130 of the Act for persistent misuse of an electronic communications network or service. |
| Misleading or deceptive conduct in relation to telephone numbers e.g. misleading pricing information for an 08 number | A notification issued by Ofcom under sections 94 or 95 of the Act or a penalty imposed under section 96 of the Act for breach of General Condition 14; An enforcement order made by or undertaking given by an individual or company to the Court, Ofcom, or other relevant authority under Part 8 of the Enterprise Act 2002. |
| Criminal behaviour that would be classed as number abuse, e.g. PRS scams | A criminal conviction, for example for fraud, theft or deception perpetrated by the misuse of telephone numbers. |

⁶² The regulation of PRS is provided for in sections 120 to 124 of the Act. These provisions give Ofcom the power to set the PRS Condition for the purpose of regulating the provision, content, promotion and marketing of PRS. They also require communications providers to comply with directions given by PhonepayPlus under the Approved Code of Practice.

We will conduct an initial assessment of the enforcement action to determine if the behaviour that led to the sanction may be relevant to the CPT

- A3.10 Once an individual or company comes to our attention through an enforcement action, we will undertake an initial assessment to determine whether telephone numbers were central to the behaviour that led to the sanction. We will consider the facts of each case and if required, we will seek further information from the authority responsible. We will not contact the individual or company during the initial assessment process.
- A3.11 If we conclude that the use of telephone numbers was not central to the behaviour that led to the sanction then the assessment is closed.
- A3.12 If we conclude, initially, that the use of telephone numbers was central to the behaviour that led to the sanction, then we will place the individual or company on the under assessment list so that the behaviour that led to the enforcement action can be assessed in more detail. If we place a company on the under assessment list, we will also place the company's directors on that list.

How do we decide whether the use of telephone numbers was central to the carrying out of the harmful behaviour which led to the enforcement action?

- A3.13 We have identified two types of misuse/abuse that we believe should be targeted by the CPT and that illustrate behaviour where telephone numbers are central to the carrying out of the harmful behaviour:
- *direct misuse of a telephone number*, where serious or repeated harm to consumers is caused by using or adopting a telephone number contrary to numbering provisions. An example would be revenue-sharing on an 070 number, which is contrary to the Numbering Plan; and
 - *indirect misuse of a telephone number*, where the use or adoption of telephone numbers is critical to the activity causing the consumer harm.
- A3.14 To illustrate indirect misuse of a telephone number, premium rate scams, fraud and other activities which rely on duping consumers to call revenue-share telephone numbers would be included in the CPT. Running a bogus charity which conned consumers into making credit card donations over a freephone number would not be included. In the latter case, the type of number is incidental or at least not central to the method of consumer harm - the activity could have equally been carried out by requiring consumers to send their donations by cheque in the post, over the internet through a web credit card payment service, or through a call to a standard geographic number. If the 'donation' mechanism worked by conning the consumer into calling a premium rate number on the premise that the cost of the call would be donated to a charity, this would be the sort of indirect number misuse that the test is designed to address.
- A3.15 In general, the following factors will be taken as an indication that the use of telephone numbers was central to the behaviour (although other factors may also be relevant):
- *the profitability of the behaviour was dependent on the revenue-sharing features of the numbers in question:*

Harmful activities such as premium rate service scams are generally carried out in order to generate revenue. Where telephone numbers are the source of the revenue being generated, for example through revenue-share arrangements, then we are likely to consider the telephone numbers as being central to the behaviour; and

- *the behaviour was dependent on the functionality or other characteristics of the numbers in question:*

Where the functionality or some characteristic of the telephone number(s) in question, for example the 'find-me-anywhere' functionality of 070 numbers or the fact that 070 numbers are easily mistaken for mobile numbers, is necessary or assists in the activity being carried out, then we are likely to consider the numbers as being central to the harmful behaviour.

Where we have found that use of telephone numbers was central to the carrying out of the harmful behaviour which led to the enforcement action, the companies or individuals are placed on the under assessment list

A3.16 Once the individual or company has been placed on the under assessment list, we will notify them that they have been placed on the under assessment list while we consider whether we are satisfied that they have caused serious or repeated harm to consumers through the use of telephone numbers.

A3.17 The listing of a company on the under assessment list will also result in the listing of the directors of that company on the under assessment list. The directors of the company will be assessed as individuals alongside the company when we consider whether we are satisfied that serious or repeated consumer harm has occurred through the use of telephone numbers.

A3.18 The notification will inform the individual or company:

- that we have placed them on the under assessment list and that we are considering whether they have caused serious or repeated harm to consumers, in which case we will propose that they be placed on the number refusal list;
- the reason why we are considering placing them on the number refusal list. This will generally be the enforcement action that brought the individual or company to our attention;
- the framework which we will use in considering whether they should be placed on the number refusal list (this will usually be a reference to the CPT statement and/or these guidelines and any sections therein which are relevant to the process);
- that they may make representations in respect of the notification and set out their arguments as to why they should not be placed on the number refusal list;
- that we will notify them of our proposed decision, at which point they will receive an opportunity to make representations on our proposed decision; and

- the proposed timeframe for the assessment process.

The individual or company placed on the under assessment list will be given the opportunity to make representations

- A3.19 The individual or company will be given the opportunity to make written representations in response to the notification of assessment and to set out their reasoning as to why they should not be placed on the number refusal list.
- A3.20 Written representations may be submitted to us in whatever form the individual or company wants to present the material and may cover whatever matters they consider to be relevant.
- A3.21 We may request that the individual or company answers specific questions on matters to help us in the assessment process, including points that may be unclear from the enforcement action.
- A3.22 We will only accept representations submitted by the individual or company under assessment (or their representatives) and we will not normally seek submissions from third parties.
- A3.23 Timescales for the submission of representations and responses to requests for information will be provided in the notification of assessment. This will generally be two weeks but may be shorter or longer depending on factors such as the complexity of the behaviour under assessment and whether we need to meet any overriding statutory obligations that would impact the timescale (see paragraphs A3.50 to A3.56 for further detail on this point).

We will assess the individual or company on the under assessment list to determine whether we are satisfied that they have used numbers to cause serious or repeated harm to consumers

- A3.24 We will assess the behaviour that resulted in the enforcement action being brought to our attention to determine whether:
- telephone numbers were central to the behaviour (taking into account the relevant factors listed in paragraphs A3.13 to A3.15); and
 - we are satisfied that the behaviour resulted in serious harm to consumers (taking into account the relevant factors listed in paragraph A3.25); and/or
 - we are satisfied that the behaviour caused repeated harm to consumers (taking into account the relevant factors listed in paragraph A3.26).

How do we decide whether the behaviour that led to the enforcement action constitutes 'serious harm' to consumers?

- A3.25 In considering whether the individual or company in question has used numbers in a manner that has caused *serious harm* to consumers, we will have regard to the factors set out below:
- *whether the abuse was a criminal offence*: where an individual or company has been convicted of a criminal offence as a result of their use of telephone numbers, we will normally view this as a serious abuse;

- *consumer harm*: the greater the level of harm/detriment suffered by consumers, including the number of consumers affected as a result of the notified abuse, the more serious we are likely to consider the behaviour;
- *whether the abuse was targeted*: we will take into account whether the notified abuse was targeted at specific groups of people, particularly more vulnerable groups;
- *the number and range of abuses notified*: we will take into account the number of separate instances of abuse included in an enforcement decision;
- *whether the harmful conduct was deliberate*: we will consider the deliberate misuse of telephone numbers to be of greater seriousness than where any misuse resulted from incompetence or a lack of understanding of the relevant regulations;
- *steps taken to cease the harmful conduct*: we will take into account any steps taken by the individual or company to bring an end to the harmful behaviour and to remedy the consequences of that behaviour prior to the individual or company being contacted by the relevant enforcement authority; and
- *the view of the enforcement authority on the seriousness of the behaviour that led to the sanction*: we will take into account any views provided by the relevant enforcement authority on the seriousness of the abuse as provided in their enforcement notification or otherwise supplied.

How do we decide whether the individual or company being assessed has repeatedly caused consumer harm through the use of telephone numbers?

A3.26 We will consider the history of the individual or company being assessed over the preceding 24 months and will take the following factors as indications that *repeated* consumer harm has occurred:

- *prior listing on the number refusal list*: where Ofcom has previously found the individual or company to have used telephone numbers to cause serious or repeated harm to consumers;
- *previous notifications and adjudications*: where Ofcom, PhonepayPlus or another relevant authority has previously issued a notification or made an adjudication against the individual or company for harmful behaviour involving telephone numbers and that individual or company subsequently carries out further abuse that leads to the issuing of a further notification or adjudication for harmful behaviour involving telephone numbers;
- *previous convictions under criminal provisions or penalties imposed by a court in relation to civil proceedings*: where a court has previously made a finding against the individual or company for harmful behaviour involving telephone numbers; and
- *previous undertakings provided*: where an individual or company has previously given undertakings to the Court, Ofcom or another relevant authority under the Enterprise Act 2002 in lieu of enforcement action in relation to harmful behaviour involving telephone numbers.

We will reach a decision following the assessment

- A3.27 Taking account of the factors above, any further information received and any representations made by the individual or company in question, we will determine whether we are satisfied that the individual or company has used telephone numbers in a way that has caused serious or repeated harm to consumers.
- A3.28 If we are satisfied that the individual or company under assessment has used telephone numbers in a way that has caused serious or repeated harm to consumers, we will propose that the individual or company be placed on the number refusal list and will consider a proportionate period of time for the individual or company to remain on the number refusal list (see paragraphs A3.31 to A3.37 below).
- A3.29 If we are not satisfied that the individual or company has used telephone numbers in a way that has caused serious or repeated harm to consumers, we will notify them that they have been removed from the under assessment list and that we do not propose to place them on the number refusal list in relation to that particular enforcement action.
- A3.30 When conducting our assessment, we will not re-open any previous enforcement decision that may have brought the individual or company to our attention, or make any determination as to whether or not the individual or company in question actually committed the harmful behaviour to which that decision related. This would undermine the existing enforcement measures by which the CPT may be triggered.

We will propose a proportionate period of time for the individual or company to remain on the number refusal list

- A3.31 If we are satisfied that the individual or company under assessment has used telephone numbers in a way that has caused serious or repeated harm to consumers and should be placed on the number refusal list, we will propose a period of time for the individual or company to remain on the number refusal list ('the number refusal period'). That period of time will be proportionate to the behaviour that led to the decision to refuse numbers to the individual or company. We have developed a set of general criteria that we will consider when deciding the number refusal period and this will vary according to a range of considerations.

General criteria for setting the number refusal period

- A3.32 Generally the guideline number refusal period will be at least six months unless there are exceptional circumstances, as we believe that any shorter period would not be effective in protecting consumers. There is no maximum period.
- A3.33 We will first consider the following non-exhaustive list of factors in determining the number refusal period:
- the seriousness of the behaviour that led to the assessment;
 - the extent and seriousness of any previous behaviour involving the use of telephone numbers to harm consumers;
 - the extent to which any harm to consumers was caused by a third party or any relevant circumstances beyond the control of the notified party; and

- the need to ensure that the period of refusal provides sufficient protection to consumers.

A3.34 After determining the number refusal period on the basis of the general criteria detailed above, we will then consider whether there are any other factors specific to the individual case that might justify increasing or decreasing the period.

Factors tending to lead to an increase in the number refusal period

A3.35 These may include, but would not necessarily be limited to:

- the continuation of the harmful behaviour after notification by Ofcom, PhonepayPlus or another relevant authority;
- the extent to which senior management knew or ought to have known that the harmful behaviour was occurring or would occur; and
- the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent harmful behaviour by the individual or company.

Factors tending to lead to a reduction in the number refusal period

A3.36 These may include, but would not necessarily be limited to:

- the extent to which the individual or company has taken steps in advance to identify and mitigate external factors that might result in harm to consumers;
- the extent and timeliness of any steps taken to end the harmful behaviour and remedy any consequences of that behaviour; and
- co-operation with any investigation into the behaviour carried out by Ofcom, PhonepayPlus or another relevant body.

Final decision on the number refusal period

A3.37 Having had regard to any representations made by the individual or company and having considered the factors listed above (to the extent that they are relevant) and any other circumstances relevant to the particular individual or company under assessment, we will determine an appropriate and proportionate period of time for the individual or company to remain on the number refusal list.

We will notify individuals and companies on the under assessment list of the outcome of our assessment

A3.38 If we are satisfied that the individual or company has used telephone numbers in a way that has caused serious or repeated harm to consumers, we will notify them that we are proposing to place them on the number refusal list.

A3.39 The notification will inform the individual or company:

- of our proposed decision to place them on the number refusal list and for how long the proposed number refusal period will last;

- the reasons why we are proposing that they should be placed on the number refusal list and for determining the number refusal period. This will generally refer to the enforcement action that brought the individual or company to our attention and the findings of our subsequent assessment;
- the framework which we used to decide whether they should be placed on the number refusal list and for determining the time period (this will usually be a reference to the CPT statement and/or these guidelines and any sections therein which are relevant to the process); and
- the timescales for making any representations to us in relation to the proposed listing on the number refusal list and the proposed length of time of the listing.

Following notification of our proposal to place the individual or company on the number refusal list, we will consider any representations received and make a final decision on the listing

- A3.40 We will consider any representations received from the individual or company on our proposal to place them on the number refusal list and the proposed number refusal period and will make a final decision on whether to implement our proposal.
- A3.41 We will notify the individual or company of our final decision. If we decide to list them on the number refusal list, the notification will set out the reasons for doing so and the number refusal period.
- A3.42 If we decide not to place the individual or company on the number refusal list, we will inform them of our decision and will remove them from the under assessment list.

Individuals and companies may appeal our decision to place them on the number refusal list by taking the decision to the Competition Appeal Tribunal

- A3.43 Individuals or companies that are subject to our decision to place them on the number refusal list have the right to appeal the decision to the Competition Appeal Tribunal (CAT).
- A3.44 Taking Ofcom's decision to place the individual or company on the number refusal list to the CAT would constitute a full appeal on the merits of our decision.

Our process for removing an individual or company from the number refusal list

- A3.45 Once the number refusal period has elapsed, the individual or company will normally be removed from the number refusal list and notified of that fact.
- A3.46 If the individual or company has been the subject of an enforcement action during the period that they are listed on the number refusal list, and our initial assessment suggests that the individual or company has used numbers again to cause consumer harm, we will place them on the under assessment list and investigate the behaviour as normal.
- A3.47 If we are satisfied that the individual or company has used telephone numbers to cause serious or repeated harm to consumers, our decision that the individual or company should be refused numbers for a certain period of time may effectively extend the period that they are listed on the number refusal list. If this should be the

case, the individual or company will be notified of our decision to extend the number refusal period. The notification will set out the length of the extended number refusal period and the reasons for our decision. The individual or company will be given the opportunity to make representations.

- A3.48 Generally, we will not reduce the period of number refusal once it has been decided as part of the assessment process. If an individual or company on the number refusal list has taken steps to cease the harmful conduct and remedy the consequences of that conduct, this will be taken into account when we initially determine the number refusal period. Once the assessment process is complete and the individual or company has been placed on the number refusal list, it will not be sufficient to only then take steps to remedy the potential for further harmful conduct. However, if there is a significant change of circumstances, for instance if a company is acquired by another company and new management is put in its place, we may be more likely to reconsider our decision in relation to the number refusal list.
- A3.49 Further, we consider that once an enforcement decision has been made by an authority, it is final until such time as it is reviewed or overturned. If a decision that led to an individual or company's placement on either CPT List is overturned, we will, on request of the individual or company listed on the number refusal list, re-assess in the light of the new circumstances and would be likely to remove them from the list (unless, for example, other enforcement decisions had been made against the individual or company since the decision that led to their placement on the list).

Timescales for the CPT List assessment process

- A3.50 We recognise the need to make assessments as quickly as possible as individuals and companies will be unable to receive number allocations during the period we are conducting our assessment, even if we ultimately determine that they should not be placed on the number refusal list. This could have some impact on a business that is reliant on new number allocations to provide services. To best alleviate these concerns, assessments will be as swift as possible while ensuring sufficient time is provided to make an accurate judgement on the facts and to give the party being assessed time to make representations. However, if it becomes clear that the behaviour would not justify number refusal under the CPT, the individual or company in question may be removed from the under assessment list immediately.
- A3.51 In setting timescales for assessment under the CPT, we must have regard to the statutory timescales for determining numbering applications and for certain procedures that serve as triggers in relation to the CPT.
- A3.52 We have an obligation, pursuant to Article 5 of the Authorisation Directive and section 58(4)(b) of the Act, to allocate numbers within three weeks of receiving an application. Accordingly, it is conceivable that an individual or company who is placed on the under assessment list applies to us for a number allocation on the same day as the placement or at some point during the assessment process. In such case, the CPT assessment process would need to be finalised within three weeks of receipt of that application (or where additional information has been requested, receipt of such further information) so that we can make a determination on the numbering application within the statutory timescale.

- A3.53 The indicative list of possible triggers for our assessment under the CPT (see Table 1 in paragraph A3.9) includes notifications under sections 94 to 96 and 128 to 130 of the Act. However, whereas we believe a notification under section 94 and section 128 may be an appropriate trigger for listing on the under assessment list, it would normally not be appropriate for the individual or company concerned to be placed on the number refusal list if that party has subsequently complied with the requirements set out in the section 94 or section 128 notification.
- A3.54 It would normally be appropriate for the individual or company concerned to be placed on the number refusal list only if they do not comply with the requirements of the section 94 or section 128 notification resulting in an enforcement notification under section 95 or section 129, or the imposition of a penalty under section 96 or section 130. This affects the timescales for CPT assessment. Under section 94 and section 128, the party notified of the contravention/misuse has one month to comply with the notice or to make representations. Further time is required for us to issue the enforcement/penalty notice.
- A3.55 Other timescales may need to be taken into account on a case-by-case basis, such as those in relation to procedures under Part 8 of the Enterprise Act. As the list of triggers is non-exhaustive, it is not possible to determine the relevant timescales for each case.
- A3.56 In light of the opposing requirements set out above, the timescales for assessment under the CPT need to be flexible. We have established a process timetable, with indicative timescales, which will be followed for 'standard' assessment, while recognising that timescales may need to be adapted depending on the specific circumstances of each case.

Table 2: indicative timescale for completion of a 'standard' assessment under the CPT

| Indicative timescales | Actions |
|-----------------------|---|
| Day 1 | Notification to Ofcom by relevant authority (where applicable). The relevant authority should notify Ofcom as soon as possible of the enforcement action, preferably in advance; if not, ideally within 1 to 2 days of the action being made. |
| Day 1-5 | Ofcom conducts the 'Initial assessment'. |
| Day 5 | The individual or company is notified that they have been placed on the under assessment list. Representations are invited. |
| Day 19 | Deadline for receipt of representations. |
| Day 20 – 33 | Assessment by Ofcom. |
| Day 33 | Ofcom reaches a draft decision. Notification of proposed decision and period of number refusal is sent to the individual or company concerned. |

| | |
|--------|--|
| Day 40 | Deadline for representations. |
| Day 47 | Decision and notification of decision. |

Section 2: The function and operation of the CPT Lists

We will compile, update and publish the CPT Lists on our website

- A3.57 The CPT Lists are the collective name for the under assessment list and the number refusal list. The under assessment list contains the names of individuals and companies that we are assessing as to whether we are satisfied that they have used numbers to cause serious or repeated harm to consumers; while the number refusal list contains the names of individuals and companies that we are satisfied have used numbers to cause serious or repeated harm to consumers.
- A3.58 We will compile, publish and update the under assessment and number refusal lists. Our process for adding and removing individuals and companies to and from the CPT Lists is set out in Section 1 of these guidelines
- A3.59 The CPT Lists are published on the publicly available section of our website. Access is via a link on our numbering pages:
<http://www.ofcom.org.uk/telecoms/ioi/numbers/>
- A3.60 We offer a free email subscription service to provide subscribers with automatic notification of updates to the CPT Lists. Providers can sign up for the notification system via our numbering webpage⁶³ to ensure that they are always aware of the latest version of the lists.
- A3.61 Modified CPT Lists come into effect from the day that they are published on our website to avoid a 'regulatory gap'. This means that Ofcom will not allocate numbers to individuals or companies on either list from the time the updated lists are published.

Who may be placed on the CPT Lists?

- A3.62 Individuals and companies that we are assessing or are satisfied have used telephone numbers to cause serious or repeated harm to consumers may be placed on the CPT Lists. This includes communications providers and non-communications providers.
- A3.63 We hold all company directors responsible for the actions of their companies and we list all company directors on the under assessment list at the same time as their companies. Company directors will be given the opportunity to make representations to Ofcom which will be taken into account when considering their role in the behaviour that led to the original decision and in deciding whether or not they should be placed on the number refusal list.
- A3.64 In addition, an individual associated with running a company but who is not listed as a director (sometimes known as a 'shadow director') could also be placed on the

⁶³ <http://www.ofcom.org.uk/telecoms/ioi/numbers/>

CPT Lists if we have grounds for believing that they were associated with running a company listed on the CPT Lists at the time that the behaviour occurred that led to the enforcement action.

A3.65 Individuals may also be placed on the number refusal list if they are found by a court, PhonepayPlus, Ofcom or other relevant authority to have committed number-related criminal offences or caused consumer harm in their personal capacities or are named as associated individuals of companies involved in using numbers to cause serious or repeated harm to consumers.

What does it mean for individuals and companies who are placed on the CPT Lists?

A3.66 Individuals and companies who are placed on the under assessment list:

- will be listed on a publicly available list showing that Ofcom is considering whether we are satisfied that the individual or company has used telephone numbers to cause serious or repeated harm to consumers;
- will be refused the allocation of numbers from the 070, 087 (excluding 0870) and 09 ranges by Ofcom while they are on the list; and
- are likely to be refused the assignment of further 070, 087 (excluding 0870) and 09 numbers by communications providers and resellers, as they have been encouraged to implement the CPT or comparable test to refuse the assignment of numbers to individuals or companies that are listed on the CPT Lists.

A3.67 We have a duty to consider applications for numbers from communications providers on the under assessment list as we have not, at that point, concluded our assessment on whether we are satisfied that the individual or company has used numbers to cause serious or repeated harm to consumers. Accordingly, any individual or company on the under assessment list may still apply to Ofcom for the allocation of numbers and we will be required to process that application within the time period specified in the Act. This is currently three weeks from receipt of the application or where additional information has been requested, receipt of such further information. This has implications for the timescales for assessment under the CPT (see paragraph A3.52).

What does it mean for individuals and companies who are placed on the number refusal list?

A3.68 Individuals and companies who are placed on the number refusal list:

- will be listed on a publicly available list showing that Ofcom is satisfied that the individual or company has used telephone numbers to cause serious or repeated harm to consumers;
- will be refused the allocation of numbers from the 070, 087 (excluding 0870) and 09 ranges by Ofcom while they are on the list; and
- are likely to be refused the assignment of further 070, 087 (excluding 0870) and 09 numbers by communications providers and resellers, as they have been encouraged to implement the CPT or comparable test to refuse the

assignment of numbers to individuals or companies that are listed on the CPT Lists.

Section 3: Ofcom's and provider's responsibilities in relation to the CPT Lists

How will Ofcom use the CPT Lists?

A3.69 When we receive an application for telephone numbers in the 070, 087 (excluding 0870) and 09 ranges, we will check the applicant's details against the CPT Lists to ensure that the applicant (and, if the applicant is a company, its directors) is not listed. The application forms for 07, 08 and 09 numbers request sufficient information for us to identify the applicant (and, if the applicant is a company, its directors) and determine whether they are listed.

What information do applicants need to provide to Ofcom when applying for 07, 087 (excluding 0870) and 09 numbers?

A3.70 In order for us to adequately identify numbering applicants, the relevant numbering application forms must be completed accurately, providing all requested identification information on the company, company directors and individuals as relevant. For companies, such information includes company directors' full name, home address and date of birth. A copy of the Companies House 'Appointments Report' listing the directors of the company must also be provided with the first application that requests it and with subsequent applications whenever there has been a change to the Appointments Report. Individual applicants and those applying as part of a partnership or as a proprietor of an unincorporated entity, are also required to provide name, address and date of birth details.

A3.71 The provision of false or inaccurate information (such as false director names or the omission of particular directors' names) on the numbering application forms may be a breach of the Numbering Condition and therefore subject to action from Ofcom under sections 94 to 96 of the Communications Act.

What should providers who assign or sub-allocate numbers to others do with the CPT Lists when they receive applications for 070, 087 (excluding 0870) and 09 numbers?

A3.72 Providers are expected to take consumer protection into account when considering applications for number assignment. They are encouraged to implement the same CPT or a comparable consumer protection test into their number assignment processes. We have published the CPT Lists to assist providers in taking reasonably practicable steps to secure effective use of 070, 087 (excluding 0870) and 09 numbers and we expect providers to consult the CPT Lists to ensure that they do not assign or sub-allocate numbers in the 070, 087 (excluding 0870) and 09 ranges to any individual or company while they are listed.

Annex 4

Legal framework and tests

The legal framework

A4.1 Ofcom regulates the communications sector under the framework established by the Communications Act 2003 ('the Act'). The Act provides, among other things in relation to numbering, for the setting of General Conditions of Entitlement relating to Telephone Numbers ('Numbering Condition') and sets out statutory procedures for the giving of directions (for instance, relating to numbering application forms) under conditions such as the Numbering Condition.

The numbering application forms

A4.2 Clause 17.9 of the Numbering Condition states that:

"When applying for an Allocation of Telephone Numbers, the Communications Provider shall:

- (a) use an appropriate application form as directed by the Director from time to time as he thinks fit;
- (b) provide such information as is required by such application form...."

A4.3 By virtue of the Transitional Provisions⁶⁴, references to the Director in the Numbering Condition should be read as references to Ofcom.

A4.4 Before making a change to an appropriate application form, Ofcom must satisfy the tests set out in section 49(2) of the Act as follows:

"A person must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is:

- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent."

Ofcom's general duty as to telephone numbering functions

A4.5 Ofcom has a general duty under section 63(1) of the Act in carrying out its numbering functions, including

⁶⁴ 'Transitional Provisions' means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

“a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and

b) to encourage efficiency and innovation for that purpose.”

General duties of Ofcom

A4.6 The principal duty of Ofcom to be observed in the carrying out of its functions is set out in section 3(1) of the Act as the duty:

“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.”

A4.7 As part of the fulfilment of these principal duties, it is Ofcom's responsibility to secure the availability throughout the UK of a wide range of electronic communications services and the numbering arrangements on which to offer those services, having regard to the interests of consumers in respect to consumer protection.

Duties for the purpose of fulfilling Community obligations

A4.8 In addition to its general duties and its general duty as to telephone numbers, when considering revisions to the numbering application forms, Ofcom must also take into account the six Community requirements in carrying out its functions as set out in section 4 of the Act. These include the requirement to promote competition in the provision of electronic communications networks and services and the requirement to promote the interests of European citizens.

Legal tests

A4.9 It is our duty, when making modifications to the numbering application forms, to show how we consider that the modifications comply with the legal tests in the Act.

A4.10 The modifications to the 07, 08 and 09 application forms require applicants requesting 070, 087 (excluding 0870) and 09 numbers to provide us with the information necessary to identify whether the applicant (or where the applicant is a company, any of its company directors) is listed on the CPT Lists.

A4.11 If an applicant (or where the applicant is a company, any of its directors) is listed on either CPT List, Ofcom will not allocate numbers from the 070, 087 (excluding 0870) and 09 ranges to that applicant. The modifications to the application forms are therefore to secure sufficient identifying information to bring the consumer protection test for Ofcom's allocation of telephone numbers into effect. As a result, the modifications help us in ensuring the best use of numbers, increasing consumer confidence in the Numbering Plan and reducing consumer harm by helping to protect consumers from possible future abuse through the inappropriate use of telephone numbers from the 070, 087 (excluding 0870) and 09 ranges.

A4.12 We are satisfied that the modifications to the 07, 08 and 09 application forms meet the tests set out in section 49(2) of the Act by being:

(a) **objectively justifiable** because the modification requests the additional information that we require to sufficiently identify numbering applicants and determine whether they are listed on the CPT Lists. We need to identify applicants in order to refuse telephone numbers from certain number ranges to those who have used numbers to cause serious or repeated harm to consumers in the past, and who may cause consumer harm in the future. Such action is designed to prevent further abuse and protect consumer confidence in legitimate services provided on the number ranges in question, thereby allowing us to make the best use of the telephone numbers available for allocation;

(b) **not unduly discriminatory against particular persons or against a particular description of persons** as all communications providers applying for numbers from Ofcom must adequately complete the same application forms when applying for the allocation of numbers.

It is necessary when a company applies for 070, 087 (excluding 0870) and 09 numbers that it supplies us with the requested identification information for company directors. This allows us to check whether the directors have been individually listed on either CPT List. Company directors may be listed on the CPT Lists to prevent the situation where a company is sanctioned for causing consumer harm but the individuals behind the company simply start a new company (a so-called 'phoenix company') to obtain new number allocations and cause further consumer harm. Company directors would be given the opportunity to make representations to Ofcom which would be taken into account when deciding whether they should be placed on the number refusal list.

Persons on the CPT Lists will not be subject to undue discrimination in the ability to receive number allocations from Ofcom, as only those who we are assessing or are satisfied have used numbers to cause serious or repeated harm to consumers through the use of numbers will be placed on the CPT Lists and refused numbers. The period of time on the list will be proportionate to the seriousness of the behaviour, taking other relevant factors into account;

(c) **proportionate** to what it is intended to achieve, which is to gather sufficient information on the applicant (and if the applicant is a company, its directors) to identify whether they are listed on either CPT List. If the applicant is identified as being on either list, numbers in the 070, 087 (excluding 0870) and 09 ranges will be refused. The reason for refusing numbers to those whom we are assessing or are satisfied have used telephone numbers to cause serious or repeated harm to consumers is to prevent those who may use numbers to cause further harm to consumers from being allocated more numbers by Ofcom. This will help to ensure the best use of numbers, increased consumer confidence in the Numbering Plan and the reduction of consumer harm in connection with the use of numbers. The modifications to the application form are a proportionate measure to allow us to implement the CPT; and

(d) **transparent** in relation to what it is intended to achieve insofar as the details of the CPT are clearly set out in this document and in the preceding consultation and the modifications to the application forms have been the subject of consultation. The details of the CPT will be updated as and when necessary through the published CPT guidelines.

A4.13 We consider that we are fulfilling our general duty as to telephone number functions as set out in section 63 of the Act in making the modifications by:

securing the best use of appropriate numbers, in that the modifications to the 07, 08 and 09 number application forms will provide us with sufficient information to adequately identify applicants and to prevent numbers in the 070, 087 (excluding 0870) and 09 number ranges being allocated by us to companies or individuals that have been found to cause consumer harm through the use of telephone numbers, thus ensuring that telephone numbers are not allocated to those who will not make the “best use” of those numbers; and

encouraging efficiency and innovation, in that the modifications will contribute to the allocation processes undertaken by Ofcom. They will ensure that numbers are used efficiently and are available to encourage innovation in services that further consumers’ interests rather than cause detriment. By ensuring that consumer confidence in number types is maintained, providers are more likely to put numbers to good use by using them to offer a range of services to consumers.

A4.14 We consider that the modifications to the numbering application forms are consistent with our general duties in carrying out our functions as set out in section 3 of the Act. We consider that our decision to introduce the CPT into our number allocation processes will further the interests of citizens in relation to communications matters by helping to protect them from potential future detriment by individuals and companies who have previously caused consumer harm through the use of telephone numbers.

A4.15 In making the modifications, we have also considered the Community obligations set out in section 4 of the Act. In our view, refusing the further allocation of numbers to individuals and companies that appear on the CPT Lists would support the first Community requirement to promote competition by helping to promote consumer confidence in certain number ranges. The modifications will also support the third Community requirement to promote the interests of all persons who are citizens of the European Union by putting into place measures designed to protect consumers from abuse through the use of telephone numbers in a manner that results in consumer detriment.

Modifications to the numbering application forms

A4.16 The CPT consultation proposed modifications to the application forms for 03, 056, 07, 08 and 09 numbers. As we have decided not to include 03 and 056 numbers in the scope of the CPT, we no longer need to modify those application forms.

A4.17 The proposed modifications to the numbering application forms included a requirement to provide documentation to support the information provided on individuals’ name, home address and date of birth. Suggested documentation was a copy of their birth certificate, passport or drivers licence.

A4.18 To keep the regulatory burden associated with the CPT to the minimum required to identify applicants, the only supporting documentation to be requested for the CPT is an up-to-date copy of the Companies House ‘Appointments Report’ listing the directors of the company with the first application that requests it and with subsequent applications whenever there has been a change to the Appointments Report. We will not require the supply of other supporting documentation, such as photocopies of directors’ passport or drivers’ licence, as was proposed in the CPT

consultation. The application forms for 07, 08 and 09 will be modified accordingly.

- A4.19 Applicants should understand, however, that the provision of false or inaccurate information (such as false director names or the omission of particular directors' names) on the numbering application forms may be a breach of the Numbering Condition and therefore subject to action from Ofcom under sections 94 to 96 of the Communications Act.
- A4.20 We have taken this opportunity to make an unrelated administrative amendment to the 08 and 09 application forms. This amendment relates to the historic convention of pre-setting tariffs for 100,000 number blocks in the 084 (excluding 0845), 087 (excluding 0870) and 09 number ranges. Communications providers were consulted on stopping this practice in February 2007. The proposal was accepted and from 30 April 2007 onwards, communications providers have been instructed to ignore the related information request in Section 5 ii) of the 08 application form and Section 5 iii) of the 09 application form. We informed providers that these sections would be removed during the next reissue of the application forms.

The modification to the Numbering Condition

- A4.21 The CPT consultation proposed new Numbering Condition 17.6A and 17.6B, which would have made it an obligation on communications providers not to authorise the adoption of telephone numbers by any individual or company on the CPT Lists.
- A4.22 As we have decided not to make the implementation of the CPT an obligation on providers, we no longer need to modify the Numbering Condition.

Annex 5

Modifications to the 07, 08 and 09 application forms under section 49(4) of the Act

Direction under paragraph 17.9(a) of the Condition

Whereas-

- A. paragraph 17.9(a) of the Condition provides that when applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall use an appropriate application form as directed by the Director from time to time as he thinks fit;
- B. by virtue of the Transitional Provisions, references to the Director in General Condition 17 should be read as references to Ofcom;
- C. for the reasons set out in the statement accompanying this Direction Ofcom are satisfied that the application forms in the Annex to this Direction are appropriate for use by Communications Providers when applying for an Allocation of 07, 08 and 09 Telephone Numbers;
- D. for the reasons set out in the statement accompanying this Direction Ofcom are satisfied that, in accordance with section 49(2) of the Act, this Direction is:
 - objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - not such as to discriminate unduly against particular persons or against a particular description of persons;
 - proportionate to what it is intended to achieve; and
 - in relation to what it is intended to achieve, transparent.
- E. for the reasons set out in the statement accompanying this Direction Ofcom are satisfied that they acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- F. a notification of a proposal to give this Direction was given under section 49(4) of the Act on 17 May 2007 (the 'Notification');
- G. a copy of the Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act;
- H. in the Notification and accompanying consultation document Ofcom invited representations about any of the proposals therein by 5pm on 22 June 2007;
- I. by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the Notification, with or without modification, only if-

- they have considered every representation about the proposal that is made to them within the period specified in the notification; and
 - they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- J. Ofcom received 18 responses to the Notification and accompanying consultation document and have considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document and these representations are discussed in Section 3 of the statement accompanying this Direction; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;

NOW, THEREFORE, OFCOM, PURSUANT TO PARAGRAPH 17.9(a) OF THE CONDITION, HEREBY DIRECT THAT-

1. for the time being:

- (a) the application form S7 in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of 07 numbering;
- (b) the application form S8 in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of 08 numbering; and
- (c) the application form S9 in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of 09 numbering.

2. in this Direction-

‘the Act’ means the Communications Act 2003;

‘Allocation’ shall have the same meaning as in the Condition;

‘Communications Provider’ shall have the same meaning as in the Condition;

‘the Condition’ means General Condition 17 of the General Conditions of Entitlement set by the Director on 22 July 2003 pursuant to section 45 of the Act by way of publication of a Notification pursuant to section 48(1) of the Act;

‘the Director’ means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

‘Ofcom’ means the Office of Communications;

‘Telephone Number’ shall have the same meaning as in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;

‘Transitional Provisions’ means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No. 1) Order 2003 and the Office

of Communications Act 2003 (Commencement No. 3) and Communications Act 2003 (Commencement No 2) Order 2003.

3. Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them. Otherwise, any word or expression shall have the same meaning as it has:
 - (i) in the National Telephone Numbering Plan published from time to time by Ofcom pursuant to section 56 of the Act;
 - (ii) if, and only if, it has no meaning ascribed as mentioned in (i) above, and only if the context so permits, in the Condition;
 - (iii) if, and only if, it has no meaning ascribed as mentioned in (i) and (ii) above, and only if the context so permits, in paragraph 1 of Part 1 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - (iv) and if, and only if, it has no meaning ascribed as mentioned in (i), (ii) and (iii) above, and only if the context so permits, in the Act.
4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
5. Headings and titles shall be disregarded.
6. This direction takes effect on 11 December 2008.

Signed by Daniel Gordon

Competition Policy Director

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

30 September 2008

Annex to Direction under paragraph 17.9(a) of General Condition 17

07, 08 AND 09 APPLICATION FORMS PUBLISHED AS SEPARATE ANNEX