



Consumer protection test for telephone number allocation

Including a Notification of modifications to General
Condition 17 and Numbering Application Forms

Consultation

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Contents

Section		Page
1	Summary	1
2	Introduction	3
3	Rationale for a consumer protection test for number allocation	5
4	Proposed consumer protection test for number allocation	11
5	Number withdrawal and service suspension	32
Annex		Page
1	Impact Assessment	34
2	Responding to this consultation	42
3	Ofcom's consultation principles	44
4	Consultation response cover sheet	45
5	Consultation questions	47
6	Proposed consumer protection test guidelines	48
7	Notification of proposed changes to General Condition 17	57
8	Notification of proposed changes to Ofcom's Numbering Application Forms	60

Section 1

Summary

- 1.1 Ofcom is responsible for managing telephone numbers in the UK. Ofcom aims to ensure that the best use is made of telephone numbers, so that consumers can use telephone numbers with confidence and they can benefit from the services which numbers support. Scams, frauds and other abuses carried out by individuals and/or companies using certain types of numbers threaten consumer confidence and can bring all services offered on such numbers into disrepute. If consumers don't trust certain types of phone numbers they will be less inclined to call them. If consumers are not sure about calling them, Communications Providers ("Providers") will be less keen to provide services on them. This potentially downward spiral is not consistent with our duty to secure the best use of telephone numbers. As a result, we are introducing a new system where Ofcom will apply a test which considers whether giving telephone numbers to a particular applicant will be the best use of the numbers. In particular, we propose that numbers are not given out to applicants who have a track record of using numbers to cause consumer detriment.
- 1.2 This idea of a consumer protection test for number allocation was initially raised in Ofcom's consultation document *Telephone Numbering- Safeguarding the future of numbers* ('the Numbering Policy Review')¹ in February 2006. In response to this, a wide range of stakeholders said they were supportive of the idea of a consumer protection test, though it was agreed that more work would need to be carried out to develop the detail of any such test. In the Statement following the Numbering Policy Review ('the Numbering Policy Statement')², Ofcom undertook to work on the idea in discussion with stakeholders, with the aim of consulting later on a more detailed proposal.
- 1.3 Following discussions with various stakeholders, we now set out our proposals in this document for the consumer protection test for telephone numbering.
- 1.4 Section 3 sets out the rationale for the test including the types of activities that we think are adverse to the interests of consumers and that we believe can help us to identify those individuals and companies to whom we consider the allocation of numbers would not be the best use of those numbers. We also believe that it is proportionate that the test should focus only on those types of phone numbers where consumer confidence is more at risk like personal numbers beginning 070, special services beginning 08 and Premium Rate Services ('PRS') beginning 09.
- 1.5 Section 4 sets out our detailed proposals for a test in relation to number allocation. It comprises the creation of a system for identifying those individuals and companies to whom Ofcom believes the allocation of telephone numbers would not constitute the best use of numbers (i.e. those who have a track record of using numbers to cause serious or repeated harm to consumers). We propose to create and publish a list of such persons and require anyone (not just Ofcom) who supplies telephone numbers to others not to give numbers, other than everyday landline and mobile numbers, to those on the list for as long as they remain on it. We propose to give force to this requirement by modifying General Condition 17, the regulation which sets out

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

² *Telephone Numbering- Safeguarding the future of numbers* Statement published at <http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/>

obligations on Providers relating to the allocation, adoption and use of telephone numbers. Giving out numbers to those named on our list will contravene our regulation and could lead to enforcement action.

- 1.6 Section 5 addresses the proposal made in the Numbering Review and Statement that we might also introduce a consumer protection test in relation to number *withdrawal or service suspension* as a complement to the test relating to number *refusal*. We explain that we have considered the possible options for this type of test in more detail since the Numbering Statement was published, and believe that existing procedures for number withdrawal and service suspension, combined with the proposals in this document for a consumer protection test in relation to number allocation, will be sufficient to meet our objective of ensuring best use of telephone numbers.
- 1.7 This consultation runs until 5pm on Friday 22 June 2007. Ofcom aims to publish its conclusions in a statement in late July or early August 2007. If, after considering stakeholder responses to the consultation, we decide to implement a test along the lines proposed in this document, we intend to bring it into effect at the same time as the publication of our statement. We will also publish a list of individuals and/or companies that Ofcom will assess at that time to determine whether it would be the best use of numbers to allocate numbers to those parties.

Section 2

Introduction

Background

- 2.1 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 in this area.
- 2.2 One of the initiatives of the Numbering Policy Review dealt with current concerns regarding the potential for consumer harm associated with some number ranges. Ofcom's consumer research demonstrates that such harm and misuse of certain types of numbers has damaged consumer confidence and welfare. This can undermine consumer confidence for all services offered on such numbers. Many consumers no longer trust certain telephone numbers, notably Number Translation Services ('NTS'), PRS and personal numbers.
- 2.3 The Numbering Policy Review proposed to introduce a consumer protection test to cut off the supply of telephone numbers to those who cause repeated or serious harm to consumers. The aim of this proposal is to increase confidence and trust in UK numbering as a whole by introducing a test for allocating numbers to prevent them from being used to provide 'services' which result in consumer detriment.
- 2.4 The Numbering Policy Review included a specific example of such a test: Ofcom proposed to consider refusing future allocations of numbers in cases where someone has breached specific consumer protection standards more than once within the previous year. We said that such a test could reduce current levels of misuse of numbers, particularly by repeat offenders.
- 2.5 The Numbering Policy Review 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, and on a case-by-case basis. We invited stakeholders to respond on the principle of such tests and the general approach that Ofcom might take in order to meet these criteria. We noted in both the Numbering Policy Review and Statement that further work would need to be carried out on this proposal and that a separate consultation would take place later.
- 2.6 The Numbering Policy Review consultation closed on 4 May 2006.

Responses to the Numbering Policy Review

- 2.7 The proposed consumer protection test was strongly supported by all types of stakeholder in the consultation responses, both in relation to a test when allocating numbers and a test for withdrawing numbers.
- 2.8 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 work, such as that of ICSTIS³.

- 2.9 There was consensus that rapid action will be required from Ofcom once consumer harm has been identified and that in order to be effective, the test will need to apply not only when Ofcom allocates telephone numbers to Providers but also when Providers supply and transfer numbers to their customers.
- 2.10 Many stakeholders were concerned that the issue of number withdrawal was serious and needed a lot of careful consideration as it could have significant effects on consumers and Providers. For example, the withdrawal of a block of numbers allocated to a Provider could have a significant commercial impact on its ability to trade. Likewise such a withdrawal could have very serious consequences for those customers actually using the numbers as well as the wider public who might rely on the ability to call those numbers to access goods and services.
- 2.11 Although the responses included little speculation about the nature of potential future abuses, many stakeholders agreed that the test will need to adapt over time to counteract evolving technologies and new threats of consumer harm.
- 2.12 A number of stakeholders shared Ofcom's view that more work was needed to ensure that the details of such tests are right so that they can be as effective as possible and loopholes are identified and avoided.

The purpose of this consultation document

- 2.13 Since the publication of the Numbering Policy Statement on 27 July 2006, Ofcom has been working with stakeholders to develop and refine its plan to implement a consumer protection test for telephone numbering, and this document sets out in detail Ofcom's proposal.

³ ICSTIS, the Independent Committee for the Supervision of Standards of the Telephone Information Services, regulates the content, promotion and overall operation of all PRS through its Code of Practice. ICSTIS investigates PRS complaints and has the power to fine companies and bar access to services. For more information see www.icstis.org.uk.

Section 3

Rationale for a consumer protection test for number allocation

Ofcom's legal duties in relation to number allocation

- 3.1 Ofcom has a number of duties in relation to numbering under sections 56 to 63 of the Communications Act 2003 ("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
- “encourage efficiency and innovation for that purpose”.
- 3.2 Ofcom also has duties under sections 3 and 4 of the Act, which include the broad consideration of consumer interests. In fulfilling its duty under section 63, Ofcom should also take into account all of its 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 Ofcom 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. Ofcom has to balance these two sets of interests carefully and when there appears to be a conflict in fulfilling these duties, Ofcom has to state why one interest is being promoted over another. Ofcom does not believe that there is a conflict in fulfilling our duties in this case since maintaining consumer confidence in numbers underpins the wide availability of communications services on those numbers.
- 3.3 Consumer confidence has been undermined by the association of certain types of numbers with scams and other forms of harmful behaviour (for instance, 070 numbers with ‘missed call’ and fax-back scams).⁴ From a competition perspective, most Providers would not want to provide their services on telephone number ranges that are associated with fraud or other activities and which have a poor reputation with consumers. If Providers do not use number ranges which have a poor reputation with consumers, that resource will be under-utilised.
- 3.4 But even if this were not the case, we would argue that where numbers are used to provide ‘services’ which subject consumers to serious or repeated harm, the need to protect consumers will outweigh the requirement to ensure numbers are available without any restriction.
- 3.5 Therefore in keeping with Ofcom's duties under section 63 and sections 3 and 4 of the Act, Ofcom proposes to implement a consumer protection test to secure that the best and more efficient use is made of numbers.
- 3.6 Ofcom believes that where an individual or company has a history of causing serious or repeated harm to consumers through abusing numbers by, for example, operating scams, allocating numbers to such parties would not be the best use of numbers. This is because of the likelihood of that individual or company abusing new number allocations in the future.
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- 3.7 Any consumer protection test used to assess numbering applications will need to have several characteristics to fulfil legal requirements under section 47 of the Act. Basically, this means that any test would have to:
- proportionate;
 - non-discriminatory;
 - objectively justifiable; and
 - transparent.
- 3.8 We assess our proposals against each of these characteristics in detail in Section 4.
- 3.9 Further, Ofcom has the power under section 61 of the Act to withdraw allocated numbers in certain specified circumstances, in particular, “for the purpose of securing that what appears to Ofcom to be the best and most efficient use is made of the numbers”.⁵ Ofcom’s power of withdrawal is discussed in Section 5.

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

- 3.10 Ofcom’s current approach to number allocation policy essentially looks to the dynamics of competition to promote consumer interests by passing on the benefits of innovation and increased efficiency. We therefore allocate numbers to a broad range of Providers who in turn sub-allocate or assign numbers to their customers. These customers may be end-users of phone numbers like individuals and businesses or they may be service providers i.e. companies who provide services (such as vote-lines, weather information, competitions, adult entertainment and so on) over phone numbers. They may also be other Providers who, in turn, sub-allocate or assign these numbers to their customers.
- 3.11 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 types of numbers makes consumers less inclined to call them. This may affect the majority of service providers (who do not engage in activities which cause consumer detriment) by discouraging consumers from using their services and causes the under utilisation of certain types of telephone numbers. Repeated abuse also draws on the resources of enforcement agencies such as ICSTIS and Ofcom, which is a situation that could be avoided or reduced if those with a record of having perpetrated phone scams and fraud are prevented from receiving further allocations of numbers.
- 3.12 On the 23 February 2006 Ofcom published a document entitled *Numbering Review – Report of Market Research Findings*⁶. This document sets out the findings of extensive research commissioned by Ofcom to provide a comprehensive understanding of attitudes and behaviours associated with UK telephone numbers among residential and business consumers.
- 3.13 Whilst most consumers recognise the 0800 prefix as a freephone number, recognition of 084X and 087X prefixes is low. For example, only 15% of residential

⁵ Section 61(2)(d) of the Act

⁶ Published on Ofcom’s website at

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

consumers recognise 0844 and 33% recognise 0871. Call costs are also unclear to many consumers as is the fact that some of these numbers might involve revenue-sharing i.e. where the called party gets a share of the revenue from the calling party. In the case of 08 numbers, Ofcom has estimated the effect of low awareness of these numbers by calculating the welfare loss incurred by over-estimating call costs for numbers that begin 084 or 087. Ofcom believes that there is a welfare loss to the economy of approximately £323m each year on these calls as a result of consumers not knowing the actual charges.

- 3.14 When asked in Ofcom research how likely they were to call numbers of different types, as many as 82% of residential consumers stated they would be likely or certain not to call a number beginning 090. Both this research and findings from the focus groups suggests limited awareness of PRS (on 09), NTS numbers (on 08 other than 0800 freephone) and personal (070) numbers. These findings together suggest that consumers are less likely to call those numbers with which they are unfamiliar. Most said that they were also likely or certain not to call 08 numbers; 78% in the case of 0871 numbers.
- 3.15 Qualitative research using focus group techniques showed that initial awareness of 09 numbers amongst both residential and business consumers was limited. But when prompted, 09 numbers were widely recognised as numbers used for chat lines or competitions. Impressions of PRS amongst both residential and business consumers were overwhelmingly negative and the companies that provided services using these numbers were generally considered to be unscrupulous.

“They’re a total scam, I don’t know why they’re allowed, all they do is rip unsuspecting people off – have you ever been able to read the small print?”

“My sister who is 9 got stung for £28 by one company – my dad forced them to give the money back, which I’m amazed they did”

“Almost everyone I know has been stung by text companies who send you a text and even if you don’t open it you still get charged”

“They’re numbers to be avoided – there’s a terrible image associated with them, dishonest and preying on the innocent”

“09 numbers are the dangerous ones, so we should know about them”

- 3.16 Consumer complaints to Ofcom are another expression of the consumer sentiment on PRS numbers. For example, from January to October 2005 more than 2,000 consumer calls to Ofcom were made in relation to disputed PRS calls, making it one of the top ten consumer concerns raised with Ofcom.⁷ ICSTIS also handles PRS complaints, receiving around 1,000 complaints per month and between March and June 2006, imposed fines totalling over £500,000 on PRS providers who failed to comply with its Code of Practice⁸.
- 3.17 Therefore in keeping with its duties, as discussed above, Ofcom proposes to implement a consumer protection to secure the best use is made of telephone

⁷ See Figure 4.9 in the Numbering Policy Review

⁸ See http://www.icstis.org.uk/pdfs_news/IQSummer06.pdf

numbers by reducing the likelihood that they may be used in a manner that may cause consumer harm.

Existing consumer protection regulations and initiatives

- 3.18 Some measures already exist to prevent the misuse of premium rate and other numbers. ICSTIS regulates PRS, which 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', '070' as well as access codes. Those services accessed via SMS on mobile phones are often accessed via mobile short codes ('MSCs') starting with '8' or a '6'. Directory enquiry services (118xxx numbers) also fall within the definition of PRS for the purposes of the Act. While the PRS regulatory regime does not currently encompass services starting on '08' numbers, ICSTIS' remit will extend to the regulation of 0871 revenue-sharing numbers in early 2008.⁹
- 3.19 In considering the potential for consumer detriment associated with '09' numbers, it is relevant to consider the outcomes of Ofcom's 2004 review of PRS regulation. Its recommendations included (amongst others):
- greater traffic monitoring and information-sharing by communications companies;
 - Terminating Providers to provide ICSTIS with more detailed information on Service Providers and to take all reasonable steps to ensure information is accurate;
 - a requirement that no monies be paid to Service Providers until at least 30 days after a service is provided;
 - increasing the maximum fine that ICSTIS can impose for breaches of its Code; and
 - better provision for consumer refunds.
- 3.20 Since Ofcom's review, steps have been taken to implement these measures, including changes brought about through a new ICSTIS Code of Practice, which came into effect on 4 January 2007.¹⁰
- 3.21 In addition to these specific measures that target numbering services, other more general consumer protection instruments prohibit abuse that can be associated with allocated numbers. The Act includes provisions which prohibit the 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. The General Conditions 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

⁹ *Number Translation Services: A Way Forward- Final Statement* 19 April 2006
http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

¹⁰ *ICSTIS Code of Practice* 11th Edition, available at
<http://www.icstis.org.uk/publications/cop/default.asp>

advertising and privacy (use of telecommunications services for direct marketing purposes).

- 3.22 A consumer protection test for numbering will complement these existing regulations and consumer protection measures. We will look to Ofcom notifications, ICSTIS directions and other enforcement action to determine whether it will be the best use of numbers to refuse the allocation of numbers to a particular applicant. The tests are not intended to be a new enforcement mechanism, but a prevention measure to introduce a layer of scrutiny to the number allocation process to stop the allocation of telephone numbers in circumstances which would not constitute the best use of the numbers.
- 3.23 There was some concern expressed by a small number of stakeholders in their responses to the Numbering Policy Review that a consumer protection test for number allocation may no longer be necessary as problems such as the 'rogue Internet dialler' issue have subsided. However, we believe that a consumer protection test remains necessary because methods of harming consumers evolve over time, a recent example being the migration of the rogue dialler problem from the regulated 09 number range to the unregulated 0871 range. Ofcom proposes to put a mechanism in place to prevent these types of problems from developing, rather than having to adapt existing measures to deal with such problems as they arise.

Types of consumer detriment that harm the reputation of certain number ranges

- 3.24 The first step in developing the consumer protection test is to identify the types of consumer harm that have undermined or may be likely to undermine consumer confidence in certain number ranges.
- 3.25 In this regard, the Numbering Policy Review consultation document lists lack of pricing transparency on 08 and 09 numbers, disputed PRS calls, rogue internet diallers, misuse of 070 personal numbers, silent phone calls, TV prize scams and offences involving misuse of electronic communications networks and services.
- 3.26 Stakeholder responses to the consultation also referred to high rate PRS fraud, potential misuse of 06 and geographic numbers, 'missed call' call-back and fax-back scams, abuse of call ceilings, misuse of 0871 numbers, artificial delays to create revenue, mis-selling of 0845 and 0870 numbers and businesses forcing consumers to use higher rate non-geographic numbers.
- 3.27 We have identified two types of misuse/abuse that we believe should be targeted by the consumer protection test:
- *Direct misuse of a telephone number* i.e. causing serious or repeated harm to consumers or detriment 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. Therefore, premium rate scams, fraud and other activities which rely on duping consumers to call revenue-share telephone numbers would be included whereas, for instance, running a bogus charity which conned consumers into making credit card donations over a freephone number would not. 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. If the 'donation' mechanism worked by conning the consumer into calling a premium rate number on the premise that the costs of the call would be donated to a charity, this would be the sort of indirect number misuse that the test is designed to prevent.

3.28 Considering the objectives of the test and the types of harmful activities identified above, we have narrowed down the types of abuse identified in the Numbering Review and stakeholder responses to those kinds of abuse and misuse that we believe are central to the purpose of the test:

- False or misleading advertising of call rates, including for subscription services;
- Misuse of numbers, including failure to comply with call ceilings and use of revenue-share in contravention of the Numbering Plan;
- PRS or 070 scams including:
 - fax-back and 'missed call' call back scams;
 - rogue internet diallers;
 - 'prize' scams; and
 - creation of artificial delays on high rate numbers to create revenue; and
- Criminal offences involving number abuse, such as fraud.

3.29 The above list constitutes the main types of scams and fraud which we believe undermine or are likely to undermine consumer confidence in associated telephone numbers. This list is not exhaustive and will not prevent Ofcom 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 propose that it will normally be triggered by rulings made under particular consumer protection instruments, rather than being linked to certain specific offences (see paragraph 4.15 below).

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?

Section 4

Proposed consumer protection test for number allocation

The test proposed in the Numbering Policy Review

- 4.1 In the Numbering Policy Review and Statement, Ofcom gave an example of a test that could be used for number allocation. That test contained three conditions that we proposed could be attached to numbers allocated by Ofcom:
- **Condition 1:** All applicants for numbers should provide full contact details to Ofcom of the Providers to whom any numbers within their control are sub-allocated, transferred or ported, and advise those Providers of their obligations in using those numbers;
 - **Condition 2:** Numbers should not be provided to anyone who has a particular track record of persistent and/ or serious consumer abuse (it was noted that Ofcom could maintain a list of those who would fail this test);
 - **Condition 3:** Numbers should not be provided to anyone who has a particular track record of using numbers in a way that is not consistent with the requirements of the Numbering Plan.
- 4.2 There was some concern in stakeholder responses to the Numbering Policy Review that the conditions set out in the example were somewhat onerous, and particularly that Condition 1 would result in significantly increased administration, processes and costs for Providers. The relevance of Condition 1 was also questioned, particularly as there is no indication that significant delays are currently impeding investigations of consumer abuses. This is discussed further in the Impact Assessment in Annex 1.
- 4.3 After further consideration and consultation with stakeholders, we now propose a modified version of the example test set out in the Numbering Policy Review and Numbering Statement.

Basic form of the proposed test

- 4.4 Ofcom proposes to assess any individuals or companies who come to our attention as having used numbers to cause harm to consumers, particularly those who have breached certain existing consumer protection rules. Once an individual or company is brought to Ofcom's attention as having engaged in harmful number-related behaviour, we propose to assess whether, based on its history and the nature of the breach, that particular individual or company should be placed on a 'number refusal list'.
- 4.5 We propose to make the number refusal list available to at least all Providers who sub-allocate or assign numbers within the ranges covered by the consumer protection test. These Providers will be required to ensure that they do not sub-allocate or assign these numbers to the individuals and companies on the list. The test will be implemented through General Condition 17 which sets out requirements on Providers regarding the allocation, adoption and use of telephone numbers.

- 4.6 This form of the test is intended to be ‘auto-proportionate’. That is, the lower the incidence of consumer harm facilitated through the use of telephone numbers, the fewer names will be on the number refusal list and the lower the administration costs expended by Providers to check the list. On the other hand, if harm to consumers through telephone numbers starts to increase and more names appear on the list, more work will be involved by Providers to check each applicant for numbers to ensure they are not on the list. In this way, the regulatory obligations increase when there is a rise in the level of harm, but the obligations decrease when the harm decreases, so that the regulatory burden is always proportionate.

The “vetting” process

- 4.7 It has been suggested by some stakeholders that the consumer protection test for number allocation could operate as a “vetting” process to be carried out in relation to each new number applicant when their application is received. This process would operate in a similar way to the credit checks that banks conduct when consumers or businesses apply for loans, with the aim of identifying applicants whose profile suggests they are at risk of perpetrating consumer abuse in future.
- 4.8 Ofcom has carried out an Impact Assessment of this proposal, details of which can be found in Annex 1 below. We do not believe this “vetting” process would be workable for a number of reasons:
- It would be difficult, if not impossible to set out a clear list of criteria that could identify particular individuals or companies as potential abusers, apart from their having a previous history of causing harm to consumers. This is would be a subjective process and would cause uncertainty for number applicants and Providers alike;
 - The test needs to be applied not only by Ofcom but by sub-allocators of telephone numbers. We do not believe it would be fair to place an obligation on sub-allocating Providers (enforced by way of a General Condition) to conduct checks on applicants that could fail to identify future abusers even if it conducted the test with the strictest diligence;
 - Certain sub-allocating Providers may apply the test more stringently than others, which would allow people to ‘shop around’ to find a Provider that would allocate them telephone numbers even though they had been refused by others; and
 - In practical terms, the application of such a test would be very costly and time consuming both for Ofcom and sub-allocators.

The number refusal list process

- 4.9 We propose that Ofcom will administer a process of compiling a number refusal list. Any individual or company determined by Ofcom (through the process described in more detail below in paragraphs 4.15 to 4.21) to have caused serious or repeated harm to consumers through the use of (a) telephone number(s), will be placed on the number refusal list. Providers allocating, sub-allocating or otherwise assigning numbers will be required not to sub-allocate or assign telephone numbers to any listed individual or company.
- 4.10 In order for the number refusal list to work effectively, it will be necessary for Ofcom to act quickly once it becomes aware that an individual or company may have engaged in harmful conduct through (a) telephone number(s). The most obvious

source of such information will be enforcement authorities responsible for enforcing relevant consumer protection standards. Ofcom will need to have access to adjudications, enforcement notifications and court judgment lists or the relevant authorities (including ICSTIS, the Office of Fair Trading (the 'OFT'), Trading Standards and the Crown Prosecution Service) will need to inform us of any relevant decisions made in relation to consumer protection legislation.

- 4.11 As soon as an individual or company has been identified as having used (a) telephone number(s) in a way that may have caused serious or repeated harm to consumers, a procedure will be put in place to ensure that no numbers are allocated to that individual or company while Ofcom conducts an assessment of the individual or company under the consumer protection test. Without such a procedure, an individual or company wishing to engage in further potentially harmful activities would be able to exploit the assessment period to obtain new number allocations.
- 4.12 In order to ensure that all Providers are aware that numbers should not be sub-allocated to an individual or company whilst Ofcom conducts an assessment under the consumer protection test, we propose that the individual or company is placed, without prejudice, on an 'under assessment' list.
- 4.13 The under assessment list potentially raises some concerns due to the fact that the individual or company will be unable to receive number allocations for the period Ofcom is conducting its assessment, even if Ofcom ultimately determines that it would be the best use of numbers to allocate numbers to that individual or company. This could have some impact on a business that is reliant on new number allocations to provide services. To best alleviate these concerns Ofcom will undertake to conduct its assessments as swiftly as possible, and particularly as follows:
- If the behaviour in question is not number-related (see the guidelines in Annex 6 for more details), no assessment will need to be carried out. We will normally do this before putting anyone on a list but in some cases it might not be immediately clear so we will need to do so during our assessment;
 - Depending on the complexity of the particular situation, many assessments will be carried out very quickly. If it is immediately clear to Ofcom that the behaviour would not justify number refusal under the consumer protection test, the individual or company in question may be removed from the under assessment list immediately, or not even placed on the under assessment list at all. It is only the more complex situations that the assessment is likely to take more time;
 - If a number applicant applies directly to Ofcom for a number allocation while that applicant is on the under assessment list, Ofcom will be required to process the application within the time period by which it is bound under General Condition 17 to process number applications. This is currently three weeks from receipt by Ofcom of the application or any further information requested in relation to the application; and
 - In cases where the individual or company being assessed makes an application to a Provider for a sub-allocation whilst the individual or company is on the under assessment list, we would encourage the sub-allocating Provider to advise Ofcom of this fact so that our assessment may be expedited and the Provider informed of the result as soon as possible.

- 4.14 A related issue is whether the under assessment list should also apply to individuals or companies that are under initial investigation by Ofcom, ICSTIS or another relevant authority or the subject of civil or criminal proceedings. This approach would prevent the individual or company stockpiling telephone numbers in case of a decision against them. We do not believe it would be fair to refuse numbers to someone whom Ofcom, ICSTIS or another relevant authority did not reasonably believe had engaged in behaviour that harmed consumers. In extreme cases, this could even lead to malicious complaints being made against companies in order to damage their business whilst they are being investigated.

Application of the proposed test

- 4.15 Having regard to the types of harmful activities that we believe are central to the purpose of the consumer protection test (above at paragraphs 3.27 to 3.29), it is possible to identify a list of consumer protection enforcement actions that will normally be likely to bring individuals and companies to Ofcom's attention for assessment under the test. Below at Figure 4.1 is a non-exhaustive list of the types of harmful activities and corresponding enforcement actions that will be likely to bring an individual or company to our attention. We emphasise that a breach of one of these rules will not result in the automatic addition of the individual or company to the full list, but will simply bring that individual or company to Ofcom's attention for assessment under the consumer protection test.

Figure 4.1 Indicative list of possible triggers for Ofcom assessment under the consumer protection test

Abuse/ misuse	Possible trigger of Ofcom assessment
Misuse of numbers e.g. revenue-sharing in contravention of the National Telephone Numbering Plan	A notification issued by Ofcom under s94 or s95 or a penalty under s96 of the Act for breach of General Condition 17 (see below).
Premium Rate Service abuse	Certain adjudications by ICSTIS (under its standard or emergency procedure) for contravention of the ICSTIS Code of Practice; A notification issued by Ofcom under s94 or s95 or a penalty under s96 of the Act for breach of the PRS Condition (see below).
Certain types of persistent misuse of an electronic communications network or service (not silent calls)	An enforcement notification issued by Ofcom under s128 or s129 or a penalty under s130 of the Act for persistent misuse of an electronic communications network or service (see below).
Misleading or deceptive conduct in relation to telephone numbers e.g. misleading pricing information for an 08 number	An enforcement notification issued by Ofcom under s94 or s95 or a penalty under s96 of the Act for breach of General Condition 14; An enforcement order or undertaking given to the Court, Ofcom, or other relevant authority by an individual or company for breach of Part 8 of the Enterprise Act 2002
Criminal behaviour that would be classed as number abuse e.g. PRS scams	A conviction under UK legislation, for example for fraud, theft or deception perpetrated by the misuse of telephone numbers, for example by using the revenue-sharing capability of certain phone numbers.

- 4.16 When an individual or company comes to Ofcom's attention for assessment under the consumer protection test, the first question for Ofcom to consider is whether a telephone number was central to the carrying out of the harmful behaviour in question (as per the definition above in paragraph 3.27 and the guidelines in Annex 6, discussed further below). If a number allocation was not central to the carrying out of the behaviour in question, there will be no need to carry out an assessment under the test.
- 4.17 Once it is determined that the individual or company has potentially used (a) telephone number(s) in a way adverse to the interests of consumers, Ofcom will notify the individual or company of the fact that we intend to assess them under the consumer protection test and place the individual or company, without prejudice, on an 'under assessment' list whilst a decision is made. During this period Ofcom and other Providers will not allocate or assign any telephone numbers to the individual or company being assessed but the individual or company will have an opportunity to make representations about whether or not they should be refused further telephone numbers under the consumer protection test.
- 4.18 Ofcom will then assess the individual or company's behaviour, taking into account any representations made, to determine whether in all the circumstances we consider that the provision of further number allocations to the particular individual or company would be the best use of telephone numbers (i.e. whether the individual or company should be placed on the number refusal list). In carrying out this assessment we will generally consider the following criteria:
- In relation to the behaviour that led to the assessment under the consumer protection test, the seriousness of the behaviour.
 - We will also take into account the past history of the individual or company under assessment, considering:
 - whether the individual or company has previously been involved in other activities involving the use of telephone numbers that have resulted in harm to consumers (this will normally be publicly available information if the person or company has been the subject of any other enforcement action by relevant agencies including Ofcom and ICSTIS); and
 - if so, the extent and seriousness of the behaviour.
- 4.19 If Ofcom concludes that the individual or company under assessment has previously used telephone numbers in a way that has caused *serious or repeated harm* to consumers, this would normally be sufficient to satisfy us that the individual or company should be placed on the number refusal list.
- 4.20 When conducting this assessment, Ofcom will not re-open any previous enforcement decision that may have brought the individual or company to its 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 consumer protection test may be triggered. For instance, if ICSTIS has made a decision that Company X had engaged in misleading advertising of a PRS competition service, we would look at the conduct as set out by ICSTIS in its adjudication and ask whether that conduct would meet the criteria above, i.e. in all the circumstances does the behaviour of Company X justify refusing further telephone numbers to Company X in the interests of consumers? If Company X

disagrees with the original decision made by ICSTIS, it has the right to appeal that decision under ICSTIS' own procedures.

- 4.21 Ofcom has produced guidelines that it will normally take into account when applying the consumer protection test and assessing whether or not a company should be placed on the number refusal list, for how long they should be placed on the list and the numbers to which the company will be refused access. These guidelines are set out in Annex 6 and are discussed below.

Relevance of harmful behaviour

- 4.22 Prior to assessing whether an individual or company should be refused new number allocations, Ofcom will consider whether the use of numbers was central to the harmful behaviour. If the use of numbers was incidental and not central to the harmful behaviour, the individual or company will not be considered under the consumer protection test.
- 4.23 Ofcom believes that the following factors are likely to be indicative of whether the use of numbers was central to the harmful behaviour:
- *The profitability of the harmful behaviour was dependent on the revenue-sharing features of the numbers in question:* harmful activities such as PRS 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 Ofcom is likely to consider that the use of numbers is central to the harmful behaviour; or
 - *The carrying out of the harmful behaviour was dependent on the functionality of the numbers in question:* where the functionality of the numbers in question, e.g. the find-me-anywhere functionality of 070 numbers, is necessary or assists in the harmful activity being carried out, then Ofcom is likely to consider that the use of numbers is central to the activity.

Seriousness of harmful behaviour

- 4.24 As noted above at paragraphs 4.15 and 4.16, when making assessments under the consumer protection test, Ofcom will consider the behaviour that brought the particular individual or company to its attention. In most cases this will be an enforcement decision of Ofcom, ICSTIS, a court or other authority under relevant consumer protection provisions. In considering whether the behaviour in question ought to justify the refusal of telephone number allocations to the individual or company, Ofcom will normally consider whether the individual or company has used numbers in a manner that has caused serious or repeated harm to consumers. Ofcom will normally 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, Ofcom will normally view this as a serious abuse;
 - *Consumer harm:* the greater the level of harm/detriment suffered by consumers as a result of the notified abuse, the more serious Ofcom is likely to consider the behaviour;
 - *Extent of the detriment:* Ofcom proposes to take into account the number of consumers affected by the notified abuse and the duration of that abuse;

- *Whether the abuse was targeted:* Ofcom proposes to take into account whether the notified abuse was targeted at specific groups of people, particularly more vulnerable groups;
- *The number/range of abuses notified:* Ofcom proposes to take into account the number of separate instances of abuse included in an enforcement decision when assessing the behaviour in question;
- *Whether the harmful conduct was deliberate:* Ofcom proposes to 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; and
- *Steps taken to cease the harmful conduct:* Ofcom proposes to 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.

The past history of the individual or company under assessment

- 4.25 Ofcom considers that where there is evidence that an individual or company has repeatedly used numbers in a manner that has caused serious or repeated harm to consumers, there is a risk that allocating them further numbers will increase the likelihood of further consumer harm occurring.
- 4.26 When carrying out the consumer protection test assessment, Ofcom therefore proposes to consider the past history of the individual or company being assessed. We will normally have regard to the following factors:
- *Previous notifications and adjudications:* where Ofcom, ICSTIS or another relevant body has previously issued a notification or made an adjudication against the individual or company and that individual or company subsequently carries out a further abuse that leads to the issuing of a notification or adjudication.
 - *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.
 - *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.

How will we ensure that the test catches ‘phoenix’ companies that seek to conceal previous abuse?

- 4.27 As noted in the Numbering Policy Review and Statement, it is vital that the consumer protection test is able to identify those individuals and companies that seek to conceal previous abuses when applying for numbers. As pointed out by the Ofcom Consumer Panel in its response to the consultation, we must be able 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.

- 4.28 Ofcom proposes to refuse numbers to individuals (and their new companies) who have caused serious or repeated harm to consumers by holding all company directors prima facie responsible for the actions of their companies and placing all company directors on the under assessment list at the same time as their companies. 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.
- 4.29 Directors would be able to make representations that they had not been involved in causing serious or repeated harm to consumers, in which case Ofcom would need to consider the role of each director to meet its obligations of fairness, proportionality and non-discrimination. This decision would be based upon the facts set out in the Ofcom notification, ICSTIS adjudication or decision of another relevant authority or a court. In the absence of any persuasive evidence that a particular director had not been involved in or aware of the conduct, the director would normally be placed on the number refusal list in the event that the company is placed on the number refusal list after Ofcom's assessment.
- 4.30 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 number refusal list if Ofcom has grounds for believing he or she was associated with running a company that is placed on the number refusal list.
- 4.31 Individuals could also be placed on the number refusal list if they are found by a court, ICSTIS, 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.
- 4.32 The alternative to automatically listing directors is to place individuals on the number refusal list *only* when they had been personally held to have committed number-related offences or caused serious or repeated harm to consumers in their individual capacities, or named as individuals associated with harmful conduct by a company. The benefit of this approach is that it lessens the number of representations that Ofcom may have to consider from directors, which would speed up the assessment process and reduce associated costs to Ofcom.
- 4.33 The disadvantage of this approach is that it may not sufficiently deal with the problem of 'phoenix companies' as it requires enforcement decisions to specifically list the directors of the company that are involved in causing serious or repeated harm to consumers. This is the very problem with existing enforcement measures that the consumer protection test seeks to address: if enforcement decisions do not specifically achieve the suspension or barring of the individuals behind the companies that cause serious or repeated harm to consumers, they are generally free to set up new companies and begin again.
- 4.34 The relative costs and benefits of these two options are considered further in the Impact Assessment in Annex 1 to this document.
- 4.35 In order to ensure that the individuals behind corporate number applications are not on the number refusal list (regardless of the reason they were placed on the number refusal list), we propose to require corporate applicants to list all director details

(name, address, date of birth as per their company registration with Companies House) on their applications for number allocations (and sub-allocations). Identification documents and details of company directors from Companies House will need to be provided to verify the information on the application form. As noted in the Impact Assessment at Annex 1, the cost of obtaining this information could be placed on the number applicant by requiring the provision of a recent Companies House entry or an official document listing directors. These details will be checked against the individual names in the number refusal list. This will require:

- A change to Ofcom's number application form; and
 - Sub-allocating Providers to change their processes so as to require the provision of proof of relevant director details with applications for sub-allocation or number assignments.
- 4.36 Ofcom notes that the provision of false or inaccurate information (such as false director names or the omission of particular directors' names) on the number application form may, in itself, be a breach of General Condition 17 and therefore subject to action from Ofcom under sections 94 to 96 of the Act. Providers may also choose to take commercial action (such as cancellation of service contracts) if they discover that false information has been provided to obtain telephone numbers from them.

Data protection

- 4.37 The Data Protection Act 1998 ('the DPA') concerns the processing of personal data. Where personal data are processed in relation to the consumer protection test, the DPA will apply. For example, personal data such as name, address and date of birth of number applicants might be processed. Information relating to an individual's use of telephone numbers might contain sensitive personal data e.g. criminal convictions. Where applicable, Ofcom will adhere to data protection principles.

Number ranges to be covered by the tests

- 4.38 The consumer protection test will need to set out which number ranges will be refused to those individuals or companies to whom Ofcom considers the allocation of numbers would not constitute the best use of numbers. Though the harm in question may have been caused through a particular number range (e.g. 09), we need to recognise that the offender may migrate to a new number range and continue the same type of behaviour.
- 4.39 Number abuse and misuse has historically tended to occur on the 09, 08 and 070 number ranges. There was some concern raised by stakeholders that the 03, 06 and geographical (01 and 02) ranges also had the potential to be subject to abuse. In the Numbering Policy Review we proposed (at paragraph A5.30) to apply the tests to 03, 06, 07, 08 and 09 numbers to take into account the potential for future abuse on the new 03 and 06 ranges as well as the existing ranges.
- 4.40 In principal we believe that the test should apply to all numbers. However, given that revenue-sharing¹¹ is not supported on geographical and mobile telephone numbers, there is less incentive to run scams on these numbers. In practice these number

¹¹ Revenue-share is a micro-payment mechanism used by businesses and public sector bodies that make services available to the public via a telephone number, whereby they take a share of the charges paid by the caller of that number.

ranges are not often used to carry out the types of harmful activities that consumer protection test is designed to prevent. In addition, we would not want to refuse individuals access to geographical and mobile numbers without strong evidence that there was a risk of these numbers being misused.

- 4.41 We also believe that in practice it may be difficult to apply the test to geographical and mobile numbers. Large quantities of these numbers are made available to Providers and customers each year, so the application of such a test to these ranges would require significant additional administration on the part of Ofcom and Providers. The potential impact of this is discussed in more detail in the Impact Assessment contained in Annex 1 of this document (in particular paragraphs A1.38 to A1.40).
- 4.42 Given the lack of evidence in respect of the incentive and potential for consumer harm to be caused on geographic and mobile number ranges (both historically and in future), and the issues noted above and in particular the possibility of migration, we propose to limit the scope of the test for the time being to the ranges beginning 03, 056, 070, 08 and 09. We do not propose to cover the 06 number range at present as Ofcom does not currently allocate any such numbers¹². We do intend to consider any representations made by individuals or companies who are notified that they are to be assessed under the consumer protection test as to why the numbers refused to them should be limited to a sub-set of these ranges. This is discussed in our proposed guidelines at Annex 6
- 4.43 If we do decide to exclude geographic and mobile numbers from the scope of the test, Ofcom wishes to make clear that it reserves the right to expand the test to include these ranges at a later date should this become necessary and appropriate.

Mobile Short Codes

- 4.44 MSCs are 4, 5 or 6 digit numbers common to the main UK mobile operators. They are often used in relation to 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 by voting via text message.
- 4.45 MSCs are not allocated by Ofcom. In response to demand for cross-network harmonised short codes, O2, Orange, T-Mobile, Vodafone and 3 have formed the Short Code Management Group (SCMG), which manages the availability of short codes and agrees on guidelines related 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')¹³.
- 4.46 Under the MSC Code of Practice, Providers using MSCs are required to comply with the ICSTIS 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 withdrawn from offending Providers.

¹² In the Numbering Policy Review we proposed to migrate personal 'follow-me' services from the 070 range to a new 06 number range, and consequently proposed that a consumer protection test for number allocation could cover these new 06 numbers. After consultation, we decided not to open up the 06 range at this point in time and have reserved 06 for possible future use, subject to a review of demand for personal and 'individual' numbers to be completed by the end of 2007. See Section 6 of the Numbering Statement for more information.

¹³ Available from www.short-codes.com

- 4.47 Given the existing 'self-regulatory' approach of SCMG in relation to MSCs, we do not believe it is necessary to specifically cover MSCs in the consumer protection test as we believe that the self-regulatory approach is adequate.

Period of number refusal

- 4.48 There are two options in relation to 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, e.g. 12 months, with an escalating period for repeat offenders, e.g. 24 months for second addition to the list, etc; 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.
- 4.49 The advantage of the first option is that it 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.
- 4.50 The second option allows the penalty to be proportionate to the behaviour that led to the decision to refuse numbers to the individual or company. We believe that a minimum period should apply; otherwise the test would not be effective. Ofcom is proposing that the minimum period be six months in all but exceptional circumstances, as any shorter a period would be ineffective in preventing consumer harm from reoccurring.
- 4.51 Ofcom is proposing to implement the second option; however we invite stakeholders' views on this. We believe this option is more proportionate and allows us more flexibility to refuse numbers to repeat or serious offenders. This is discussed in our proposed guidelines in Annex 6.

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?

Number refusal guidelines

- 4.52 The period of time the individual or company should remain on the number refusal list ('the number refusal period') should be proportionate to the risk that the individual or company will use numbers to cause consumer harm in the future. Ofcom has developed a set of general criteria that it proposes to consider when deciding the number refusal period, if option 2 is implemented. These are set out in the proposed consumer protection test guidelines in Annex 6.

- 4.53 If option 2 is implemented, Ofcom will determine an appropriate and proportionate period of refusal for the allocation of telephone numbers by considering any representations made by the individual or company as well as any relevant factors in the consumer protection test guidelines and any other relevant circumstances. The individual or company in question will then be notified of Ofcom's final decision.

Question 4: Do you agree that the factors set out in the draft guidelines at Annex 6 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?

The opportunity to be removed from the number refusal list

- 4.54 Some stakeholders have suggested that there might be an opportunity for individuals or companies that have been placed on the number refusal list to prove to Ofcom that they have put in place procedures to ensure they will not cause further consumer abuse so that they may be removed from the number refusal list. If a company changes its procedures and staff, or implements a consumer protection compliance program and can demonstrate that it intends in future to run its business in a way which does not harm consumers, should Ofcom consider removing that company from the number refusal list?
- 4.55 We do not believe this approach will generally be appropriate. Whether or not an individual or company has taken steps to cease the harmful conduct and remedy the consequences of that conduct (and the extent and timeliness of such steps) will be taken into account when Ofcom initially determines the period of time for which the particular individual or company will be refused numbers. It will not be sufficient if an individual or company only takes steps to remedy the potential for further harmful conduct after the point that Ofcom has made its decision to refuse numbers to that individual or company. 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 period of time that the company should remain on the number refusal list.

Publication of the number refusal list

- 4.56 In order to ensure that all telephone number range holders have access to an up to date version of the number refusal list, we propose to publish and maintain an up-to-date copy of the list on the numbering pages of the Ofcom website. This part of the website includes an email subscription service which provides subscribers with automatic notification of updates to the numbering web pages and documents. This service could be used by number range holders to ensure any offline lists they may decide to maintain can be updated as and when the online list changes.
- 4.57 In terms of publication of the list, there are two possible options:
- Password-protect the list and provide the password only to Providers, as is the current procedure with the number application form. Providers may also need to provide the password to all those to whom they sub-allocate numbers who need to further sub-allocate or assign the numbers; or
 - Publish the list on the publicly accessible part of the Ofcom numbering website.
- 4.58 In practical terms, providing the list to those to whom Ofcom allocates numbers and requesting that they pass on the password to their sub-allocatees is in effect a

'publication' of the document. The class of people to whom the list of names will be communicated is limitless, and it could be successfully argued that the list is being 'published' even if it is only communicated to a very small class of recipients. It seems that, for the proposed system to work successfully as regards sub-allocatees, it is necessary to publish it.

4.59 We have considered concerns that if the number refusal list is accessible to the general public there may be a risk that the list could be used by third parties in ways that we do not intend it to be. However, on balance, we are minded to make the list publicly available, for the following reasons:

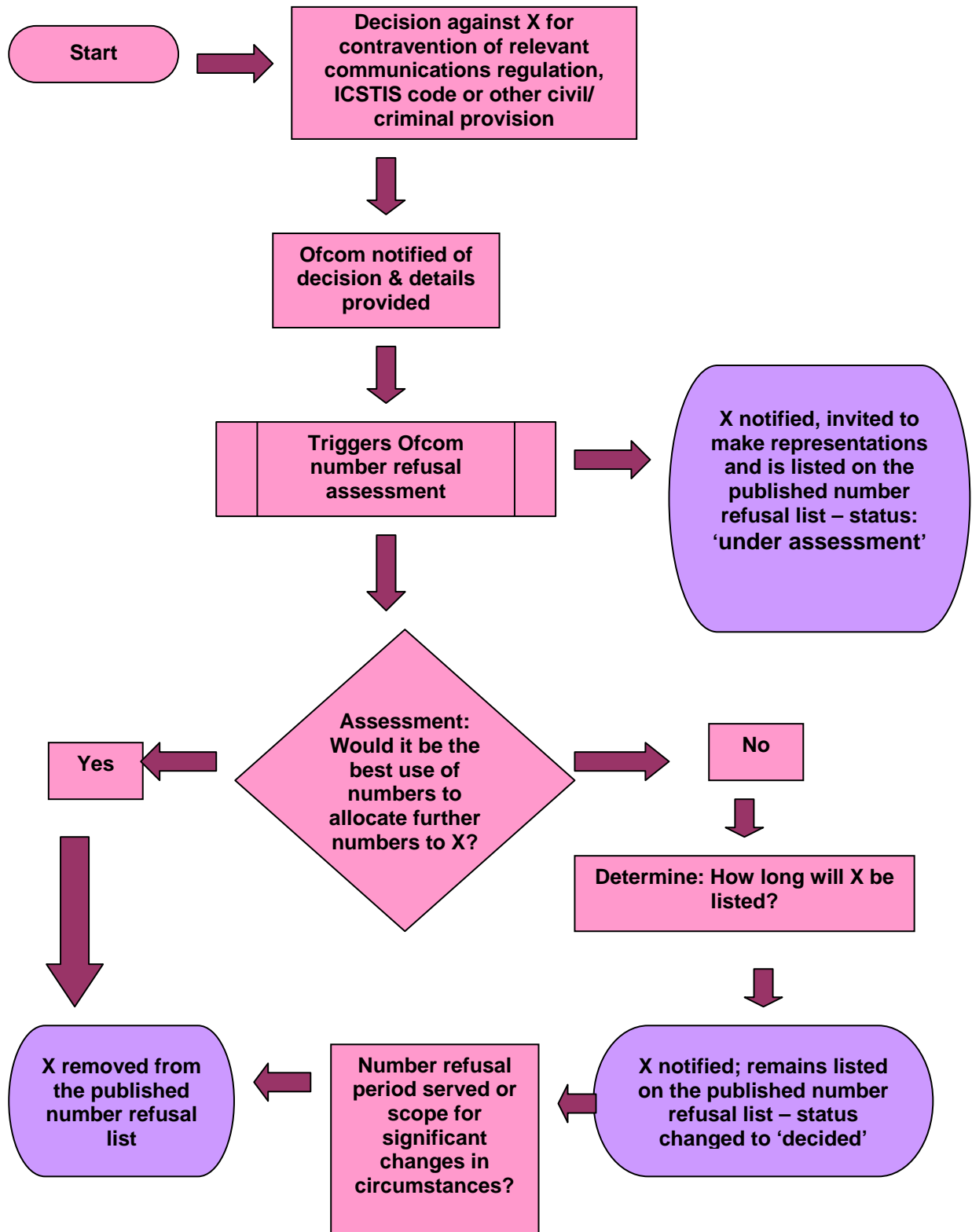
- the list will be transparent; this will be useful for sub-allocating Providers if they are questioned by users who have been refused numbers because they are on the list. The sub-allocating Provider can direct the user to the list and cite their legal obligation to refuse numbers in accordance with it;
- the wide publication of the number refusal list may have a deterrent effect on potential abusers who would be concerned to avoid the publication of their name on a list of those who have harmed consumers;
- in a situation where the individual or company on the list has provided false or outdated information to Ofcom and has not received correspondence advising it of Ofcom's decision to place it on the number refusal list, this is another means by which it may become aware of its addition to the list; and
- there are practical difficulties associated with ensuring that the password for the list is passed on down the chain of sub-allocation to each and every Provider that sub-allocates or assigns numbers. It is essential that all those who sub-allocate or assign numbers have easy access to the list in order to consult it before assigning numbers.

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?

4.60 A simple illustration of the proposed number refusal listing process is below in Figure 4.2.

Figure 4.2: Simple process flow diagram for proposed number refusal listing



The number allocation process

- 4.61 When we receive an application for a number allocation in the ranges covered by the consumer protection test, Ofcom will consult the number refusal list to ensure that neither the individual, company nor its directors are on the list. Should the individual, company or a director be listed, Ofcom will refuse to allocate the requested numbers to the applicant.
- 4.62 It is likely that Ofcom will introduce a 24 hour time delay between receiving and processing a number application, to leave enough time to be sure that any relevant consumer protection enforcement decisions against the applicant have been communicated to Ofcom.
- 4.63 As it is now, Ofcom will be bound by the time limit set down in General Condition 17 for the determination of all number applications. At present this period is three weeks from the date of receipt of the form or any additional information requested by Ofcom in relation to the application.

The number sub-allocation process

- 4.64 In order to ensure that the consumer protection test is as effective as possible it is essential that it applies to the sub-allocation as well as the direct allocation process, otherwise many individuals and companies responsible for causing consumer detriment will be able to continue to secure telephone numbers through sub-allocations from Providers. Ofcom proposes to impose a requirement on all Providers not to sub-allocate or assign telephone numbers within the ranges to which the test applies to any individual or company on the number refusal list.
- 4.65 It will largely be a matter for the Provider to decide on the processes it implements to ensure that it collects sufficient information from number applicants to safely satisfy itself as to whether or not the applicant is on the number refusal list. Ofcom does not propose to set down any particular formal rules as to the checks that should be carried out by Providers in carrying out this process. However, the list below sets out some 'best practice' due diligence procedures. These should assist Providers to ensure they have done all that could be expected of them, bearing in mind that if they sub-allocate numbers to individuals or companies on the list, they will prima facie be in breach of General Condition 17, and potentially subject to enforcement action by Ofcom. This action will be minimised if the Provider can show it has acted in accordance with the best practice procedures.
- 4.66 'Best practice due diligence' would normally involve:
- 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 confirm the name, address and date of birth of each director;

In the case of an individual, sufficient identification so as to enable the Provider to compare the individual's name, address and date of birth to the individual names on the number refusal list;

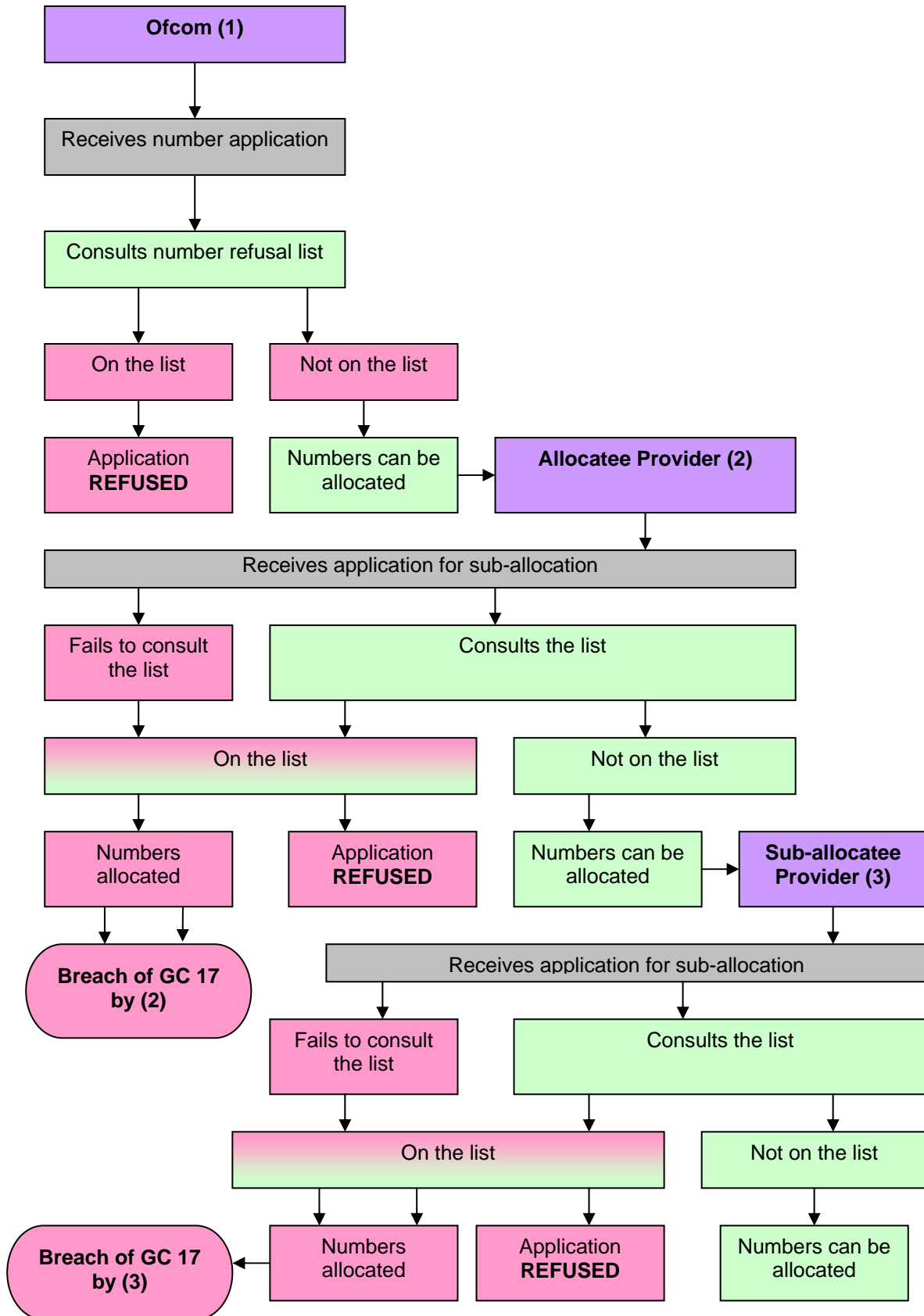
In the case of an unincorporated entity, details of the business or partnership name as well as identification (as above) of the partner(s) or individual sole trader responsible for the business;

- The Provider making sufficient enquiries as to fully satisfy itself that the information provided by the number applicant is accurate;
- 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 it against the number refusal list. 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 number refusal list as at the time the application was made.

4.67 Although the test we propose in this consultation document is in a form that we believe will have the least impact on Providers of any potential option (see the Impact Assessment in Annex 1), we do understand that the requirement to check the number refusal list will place some new administrative requirements on any Provider sub-allocating or otherwise assigning numbers. Ofcom plans to use feedback from stakeholders to develop a method of distributing the list that will best facilitate this process (including in relation to the file format and automatic email updates).

4.68 The process of applying the consumer protection test at the number allocation and sub-allocation stages is illustrated below in Figure 4.3.

Figure 4.3: Process flow for applying number refusal to (sub) allocations



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

How will the test be introduced?

- 4.69 Ofcom will consider all responses to this consultation in order to develop a finalised form of the consumer protection test which we will publish in a policy statement. Ofcom is setting a consultation period of five weeks. This is because Ofcom has already discussed the implementation of a consumer protection test in both the numbering review consultation and the numbering review statement. In addition, Ofcom's consultation guidelines (and the Act) state that we will usually allow at least a month for consultation on issues related to electronic communications networks and services.
- 4.70 Ofcom proposes that the obligation on Providers to apply the consumer protection test to sub-allocations and assignments of numbers will apply at the same time the policy statement is published.
- 4.71 At the same time as the statement is published, Ofcom proposes to publish its initial list of individuals and companies who are under assessment. The list will contain the names of any individuals or companies that have been identified by Ofcom (using the factors set out in this document) as having used numbers in a manner that has caused serious or repeated harm to consumers in the period of 12 months prior to Ofcom publishing its policy statement on the test. When assessing this behaviour in the context of the individual or company's history, Ofcom will also take into account any behaviour of a similar nature that the individual or company has carried out in the 24 months prior to the publication of the policy statement.
- 4.72 Ofcom is concerned to avert creating a regulatory gap – a period in which, mindful of these proposals, certain individuals or companies could continue to choose to cause consumer harm in the knowledge that applications for further telephone numbers would not or could not be refused. Ofcom therefore proposes to primarily consider any of the enforcement decisions shown in Figure 4.1 above made during the last 12 months, and will then also have regard to any previous behaviour of an individual or company occurring over the past 24 months.

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

Legal implementation

- 4.73 We propose to implement the requirement for Providers to refuse number allocations to those on the number refusal list (both the under assessment and final versions) through amendments to General Condition 17.
- 4.74 As explained above in Section 3, Ofcom has a number of duties in relation to numbering under sections 56-63 of the Act. Additionally, section 45 of the Act gives Ofcom the power to set general conditions and section 58 specifically allows the setting of conditions in relation to the allocation and adoption of numbers. This was the power upon which Ofcom set General Condition 17 in 2003. In order to modify this condition, Ofcom must comply with section 47 of the Act.

Section 47 – Test for setting or modifying conditions

- 4.75 As set out under section 47(1) of the Act, in modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:
- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (b) not unduly discriminatory against particular persons or against a particular description of persons;
 - (c) proportionate to what it is intended to achieve; and
 - (d) transparent in relation to what it is intended to achieve.

Proposal 1: General Condition 17.6A: obligation on Providers not to allocate numbers to those whom Ofcom is assessing with a view to refusing further number allocations (the ‘under assessment’ list).

- 4.76 The first proposal that Ofcom intends to implement is an obligation on all Providers not to allocate numbers to those whom Ofcom has indicated that it is assessing with a view to placing them on a number refusal list (those that are placed on the ‘under assessment’ list). Ofcom considers it extremely important that, in light of the statutory process that must be adhered to in withdrawing numbers, access to numbers is restricted during the assessment stage.
- 4.77 The proposed obligation meets the tests set out in section 47(2) of the Act being:
- (a) **objectively justifiable** because it would undermine the application and effects of a consumer protection test for numbering allocations if those that Ofcom, ICSTIS or another relevant authority has reasonable grounds to believe have used numbers to cause serious or repeated harm to consumers are able to ‘stockpile’ telephone numbers while Ofcom is considering refusing further numbers from them;
 - (b) **not unduly discriminatory against particular persons or against a particular description of persons** as all Providers will be required not to allocate numbers to those whom Ofcom is assessing. There is no risk of those whom Ofcom is assessing being unduly discriminated against because they will be able to obtain numbers from Providers or from Ofcom as soon as Ofcom has concluded its assessment in their favour;
 - (c) **proportionate** to what it is intended to achieve, which is increased consumer confidence in the Numbering Plan and the reduction of consumer harm in connection with the use of numbers. The intention of refusing numbers to those whom Ofcom is assessing is to prevent those who may use numbers to cause harm to consumers from accessing numbers in advance of any Ofcom decision to refuse further numbers to them; and
 - (d) **transparent** in relation to what it is intended to achieve insofar as the nature and obligations are clearly set out in this document for Providers.

Proposal 2: General Condition 17.6B: Obligation on Providers not to allocate numbers to those whom Ofcom has decided to place on a number refusal list.

- 4.78 The second proposal that Ofcom intends to implement is the imposition of an obligation on all Providers not to allocate numbers to those whom Ofcom has decided to place on a number refusal list.
- 4.79 The proposed obligation meets the tests set out in section 47(2) of the Act being:
- (a) **objectively justifiable** because refusing telephone numbers to those who have used numbers to cause serious or repeated harm to consumers and who are therefore likely to cause further consumer harm will prevent further harm to consumers and protect consumer confidence in legitimate services provided over the number ranges in question, thereby allowing Ofcom 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**, because all Providers will be required to refuse to allocate numbers to those to whom Ofcom has decided to refuse further allocations of telephone numbers;
 - (c) **proportionate** to what it is intended to achieve, which is to make the best use of the telephone numbers available for allocation through increased consumer confidence in the Numbering Plan and the reduction of consumer harm in connection with numbers. The intention is to refuse numbers to those who have used numbers to cause serious or repeated harm to consumers to prevent them from causing further harm to consumers and to consumer confidence in legitimate services provided over the number ranges in question; and
 - (d) **transparent** in relation to what it is intended to achieve insofar as the nature and obligations are clearly set out in this document and will be set out further in the Statement released in response to this consultation.
- 4.80 Ofcom's proposed modification to General Condition 17 can be found in Annex 7.

Changes to Ofcom's number application forms

- 4.81 In addition to changes to General Condition 17, the introduction of a consumer protection test for telephone number allocation requires a consultation on the consequential modification to some of Ofcom's number application forms.
- 4.82 In order to allow Ofcom to properly identify whether any director of a corporate number applicant is listed on the number refusal list, we will need to request details of each company director's name, address and date of birth. We also propose to require the applicant to provide adequate identification documentation to prove these details. Similarly, we will require identification documents for anyone applying for numbers in an individual capacity or as a partner or proprietor of an unincorporated entity. This information will only need to be provided to Ofcom with the first application an individual or company makes after the consumer protection test comes into force, unless the company directors have changed since a company's last application in which case the new director details will need to be provided.

- 4.83 As we are proposing to apply the consumer protection test only to numbers in the ranges 03, 056, 070, 08 and 09, the required changes will only be need to be made to the application forms relevant to these ranges.
- 4.84 The various legal tests and duties relating to the proposed test itself, and how Ofcom has complied with them, are set out in Sections 3 and 4 of this consultation. The proposed amendments to the application forms, on which we are now consulting, are set out in Annex 8.

Monitoring and enforcement

- 4.85 If Ofcom receives complaints about alleged non-compliance with General Condition 17 these will be handled in line with Ofcom's complaint handling guidelines¹⁴.
- 4.86 Under our proposal, a Provider who sub-allocates or assigns (a) telephone number(s) to an individual or company who is listed on Ofcom's number refusal list will prima facie be in breach of General Condition 17 and this may result in the Provider being the subject of enforcement action by Ofcom pursuant to sections 94 to 96 of the Act. Such action may in turn prompt an assessment of the Provider under the consumer protection test with a view to placing that Provider on the number refusal list if the sub-allocation or assignment of (a) telephone number(s) to individuals or companies on the number refusal list is considered sufficiently serious, or is repeated on a number of occasions. Under section 96 Ofcom also has the power to impose financial penalties for breach of a General Condition. As discussed in Section 5, in extremely serious cases, the sub-allocation or assignment of (a) telephone number(s) to companies or individuals on the number refusal list could result in the withdrawal of numbers or suspension of the services of the Provider.

¹⁴ Ofcom's current complaint handling guidelines, *Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives*, are published on its website at: http://www.ofcom.org.uk/bulletins/eu_directives/. Ofcom consulted on draft revised guidelines in July 2006 and the consultation period closed on 14 September 2006. The draft guidelines are available at <http://www.ofcom.org.uk/consult/condocs/enforcement/summary/>.

Section 5

Number withdrawal and service suspension

- 5.1 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. In the Numbering Statement we noted the stakeholder support for such a proposal, and also pointed out the possibility of introducing a complementary or alternative requirement for Providers to cease services on certain numbers for breaches of consumer protection tests. We noted the significant legal and practical issues related to this proposal given the substantial risk that consumer harm could occur through number withdrawal.
- 5.2 Having considered the possible options for this test in more detail, we believe that existing procedures for number withdrawal and service suspension, combined with the above proposals for a consumer protection test in relation to number allocation, will be sufficient to meet our objective of ensuring best use of telephone numbers.
- 5.3 The withdrawal of numbers by Ofcom may only take place in certain very specific circumstances. These are set out in section 61 of the Act. The relevant provisions to the consumer protection test are:

“(3) The withdrawal of an allocation is also 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
- (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

(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.”

- 5.4 Similarly, under section 100 of the Act, Ofcom has the power to require the suspension of service provision for serious and repeated contraventions of conditions set under section 45 (including General Conditions), as follows:

“(1) 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.”

5.5 Based on these provisions, repeated and serious breaches of the General Conditions, where there are no other effective remedial actions available to Ofcom, 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.

Withdrawal of numbers from service providers

A1.1 In terms of those number users who provide services over telephone numbers (who generally commit consumer abuse more often than Providers who are allocated numbers directly from Ofcom), Ofcom is satisfied that sufficient measures already exist for both Ofcom and ICSTIS to require the suspension of services to number users for breaches of consumer protection standards:

- ICSTIS has the power to impose bars on Service Providers, relating either to the number range on which the service operates and/or a particular service type. It can also place bars on network operators allowing PRS of a particular kind to run for a defined period of time. In 2006 ICSTIS imposed service bars of varying periods of time in over half its adjudications;
- As set out above, Ofcom has the power to require service cessation (section 100 of the Act) or withdraw numbers (section 61) in circumstances involving repeated and serious contraventions of the General Conditions. Ofcom can similarly require the suspension of services for breach of the PRS Condition (relating to the ICSTIS Code of Practice) under section 124 of the Act. In addition, Ofcom can use its enforcement powers under sections 94 to 96 and sections 128 to 130 of the Act to issue enforcement notifications to people or companies that it believes 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;
- Action may also be taken by Ofcom, the OFT, Trading Standards or the police in relation to civil or criminal behaviour that may fall within the scope of the consumer protection test for number allocation. These actions may result in court remedies including fines, injunctions, undertakings, court orders and imprisonment.

5.6 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 sub-allocate and 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.

Annex 1

Impact Assessment

Introduction

- A1.1 The analysis presented in this annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 ('the Act').
- A1.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A1.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is 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

- A1.4 Ofcom's consumer research shows that consumers associate certain kinds of telephone numbers as numbers that are typically used to perpetrate telephone frauds and scams. This has tarnished the reputation of those number ranges and made consumers more wary about calling them¹⁵. Ofcom's research shows that both residential and business consumers have overwhelmingly negative perceptions of 09 numbers in particular, and many consider the companies that offer 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% stated they would be likely or certain not to call a number beginning with 08.¹⁶
- A1.5 Apart from the harm caused to the victims of telephone scams and frauds, such activities may also adversely affect the majority of Providers (who use the same kind of phone numbers but who do not engage in this type of behaviour) by discouraging consumers from calling their numbers to access services. As a consequence, Providers are likely to be more reluctant to offer new services on number ranges which they think consumers distrust, thereby resulting in under-utilisation the numbering resource.

¹⁵ This research is set out in the document 'Numbering Review: Report of Market Research Findings' as part of the Numbering Review, and is accessible at <http://www.ofcom.org.uk/consult/condocs/numberingreview/research/>.

¹⁶ See particularly 'Numbering Review: Report of Market Research Findings' figure 4.2, page 14, and the Numbering Review, page 32.

- A1.6 This type of harmful behaviour also draws on the resources of enforcement agencies such as Ofcom, ICSTIS, the OFT, 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'.
- A1.7 Ofcom proposed last year, in its wide-ranging Numbering Policy Review, that this situation could be addressed through the adoption of a consumer protection consideration to the tests Ofcom currently applies to ensure the best use is made of telephone numbers. A clear majority of stakeholders, of different types, agreed with us. We therefore decided in July 2006 to establish consumer protection tests in relation to the allocation of numbers.

Ofcom's policy objective and rationale for intervention

- A1.8 As discussed above in Section 3 of this consultation document, Ofcom has a number of duties in relation to telephone numbering under sections 56-63 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 allows us to fulfil this duty, as it should ensure maintenance of public trust in telephone numbers so that their value and utilisation is not diminished by a loss of consumer confidence.
- A1.9 This impact assessment reviews the benefits associated with the introduction of a consumer protection test for telephone number allocation as outlined in Ofcom's Numbering Policy Review¹⁷. We then consider the most effective way of achieving the objectives of the policy by comparing two options for the form of the test, which we have discussed in some detail with interested stakeholders, in order to identify the most cost effective option.

Benefits of a consumer protection test for telephone number allocation

- A1.10 Certain telephone scams and frauds may be prevented through the operation of a consumer protection test for number allocation (both through the actual process of restricting number provision to past offenders, and through the deterrent effect on potential offenders), which may in turn lead to increased consumer confidence in the Numbering Plan. This would benefit legitimate service providers to the extent that consumers might access their services using telephone numbers which they currently choose not to dial due to concerns about being subjected to some form of telephone scam or fraud. In turn, this will maintain the appeal of telephone numbers to service providers and will ensure that they do not become an under-utilised resource.
- A1.11 A consumer protection test for telephone number allocation is likely to increase consumer confidence in the Numbering Plan which may have a beneficial impact on the UK premium rate industry and other industries that rely on telephone numbers to operate but are currently affected by the harmful conduct of a small minority. The effect of the test will be to maintain the value of telephone numbers as a tool for Providers to provide services, thereby ensuring the best use of numbers.

¹⁷ Ofcom's consultation on Telephone Numbering dated 23 February 2006 and subsequent statement of 27 July 2006 accessible at <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

A1.12 If a consumer protection element is added to the number allocation process, ICSTIS, 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 these offenders. This would free up resources that would otherwise have been dedicated to investigating, taking enforcement action, and dealing with complaints against these offenders.

Costs and risks

A1.13 There will necessarily be costs and risks associated with a consumer protection test. For Ofcom as well as Providers involved in sub-allocating numbers, there will be additional costs of conducting due diligence to ensure that numbers are not provided to applicants to whom Ofcom considers the allocation of telephone numbers would not constitute the best use of those numbers. The scale of these costs will depend on the form of the test imposed and the number ranges covered by the test. These issues are discussed in more detail below in relation to the two options for the form of the test.

A1.14 Ofcom will also incur the additional costs of implementing and monitoring the consumer protection test. Its role in the operation of the test will differ according to which form of the test is used. The different costs to Ofcom of the various forms of the test are also discussed below.

Possible options for the form of the consumer protection test

1.14.1 We have identified two main options for the form that the test could take and compare these in terms of indicative costs, practicality and risks.

Option 1: The current proposal: Ofcom will implement a requirement under General Condition 17 that Providers are not to sub-allocate or otherwise assign numbers to individuals or companies that are listed on Ofcom's number refusal list (and 'under assessment'] list). The list will contain the names of individuals and companies to whom Ofcom considers new telephone number allocation would not be the best use of numbers; i.e. those who have a history of using numbers to cause serious or repeated harm to consumers

This option is a further considered version of the test that was proposed in the Numbering Policy Review and Statement. As discussed above in paragraphs 4.1 to 4.3 of this consultation document, we now propose a modified version of that test which we believe removes the more onerous information-gathering requirements of the earlier proposal.

Likely impact and costs

A1.15 This option places a lower burden on sub-allocating Providers than option 2 (see below). All of the work involved in determining whether an individual or company should be refused numbers is carried out by Ofcom at the stage where the individual or company comes to its attention as having previously used telephone numbers to cause serious or repeated harm to consumers. Generally, this process will take place prior to the number application process, rather than as a part of it. The only new work that will be required of Providers will be the obligation to obtain sufficient identification information from applicants and check the names of companies and directors against a list prepared by Ofcom. This is not a heavy burden in terms of the amount of work that the Provider will need to comply with the proposed requirement under General Condition 17.

- A1.16 Under this option applicants may need to provide slightly more detailed contact information than they presently provide when applying for number allocations, though the impact of this is unlikely to be of significance and in many cases may not differ significantly from the information currently requested by Providers.
- A1.17 We will need to ensure that those with a history of using telephone numbers to cause serious or repeated harm to consumers are not able to obtain numbers between the time they are found to have engaged in the harmful conduct and the conclusion of Ofcom's assessment as to whether to place them on the number refusal list. Therefore once a decision has been made against a particular person or company by a court, Ofcom, ICSTIS or another relevant authority, that individual or company will need to be placed on the number refusal list in 'under assessment' form, until such time as the Ofcom assessment of the individual or company is complete. This will impact on applicants by preventing them from receiving number allocations for a short period of time, even if Ofcom concludes they should not remain on the number refusal list. The 'under assessment' list is necessary as without it there would be a loophole in the process. Ofcom would aim to minimise the impact of this situation by completing its reviews as swiftly as possible.
- A1.18 Most of the costs relating to the administration of this test are likely to be borne by Ofcom. Part of this cost will be incurred through the compilation and maintenance of the number refusal list (including the assessment of individuals and companies and carrying out company searches to identify directors, if they are to be listed).
- A1.19 Ofcom would also be required to apply the test at the allocation stage by checking each number applicant against the number refusal list. At present we already carry out a number of checks in relation to each applicant for number allocations. This additional requirement is unlikely to significantly lengthen this procedure.

Option 2: The consumer protection test is carried out at the same time as processing a number application: is the allocation of numbers to the applicant the best use of numbers?

- A1.20 This version of the test would require Ofcom or the sub-allocating Provider to evaluate each application for a number allocation when received, to determine whether the allocation of numbers to the applicant would constitute the best use of telephone numbers. Ofcom or the sub-allocating Provider would take into account whether the applicant or 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.
- A1.21 An even more comprehensive 'vetting' system could require the recipient of number applications to carry out an investigation of each applicant to determine whether the applicant would be *likely* to cause consumer harm in the future even if it had not done so previously. This could be based on such things as the size and financial standing of the company, corporate structure including number of shares issued, how long it had been active in the market and the type of service it was intending to provide over the number.

Likely impact and costs

- A1.22 This variation of the test would place a heavy burden on Providers, requiring them to carry out significant due diligence as part of their number assignment process. Depending on the Provider, this process would have to be carried out up to many thousands of times a month. Providers are now required under the ICSTIS 11th

Code of Practice to carry out quite substantial due diligence in relation to new PRS Providers, and many also carry out extensive due diligence in relation to new contracts for their own commercial reasons. Therefore the additional administrative impact of this proposal may not be significant for all businesses, though it may affect others quite considerably depending on how stringent their existing procedures are and whether they currently provide a high proportion of PRS numbers.

- A1.23 The costs to Providers of conducting the due diligence required under this form of the test could be considerable, particularly for smaller Providers. In addition there would be the extra costs to Providers in employee time spent carrying out the due diligence process. New processes would probably need to be put in place by many Providers to ensure compliance with the legal requirements introduced by the test. This would be likely to involve considerable legal expenses and possibly also additional resources to update existing IT systems, though given the new due diligence procedures now required for PRS under the ICSTIS Code, many service Providers could probably just extend the procedures they have put in place to comply with that Code to other services.
- A1.24 It is likely that the requirement to apply the consumer protection test to each number application would be supported by the risk of enforcement action for failure to apply the consumer protection test at the sub-allocation stage, which would increase the pressure on Providers to check out new number applicants as thoroughly as possible to avoid being penalised themselves.
- A1.25 In terms of Ofcom's own costs, this version of the test would require significant additional resources to apply the test to each new application for a direct number allocation. Standard checks are currently carried out by Ofcom's numbering team depending on whether the applicant is new or already registered with Ofcom. Ofcom requires certain information from first-time applicants as specified in the relevant application form. This information generally concerns whether the applicant technically requires telephone numbers and whether the proposed use is consistent with the Numbering Plan. Ofcom also carries out very basic background checks on applicants.
- A1.26 In addition to conducting these existing checks, if this form of test were introduced, Ofcom would need to apply the consumer protection test to each number application received. Based on 2006 figures, therefore, this could mean applying the test up to 1,250 times per year. However, in most cases it would be immediately clear that the applicant was not the type of individual or company who would fail the test, (e.g. they might be regular applicants whose history has already been checked) so these applications would be relatively straightforward and could be processed more quickly.
- A1.27 This option would impact on all number applicants due to the additional time that would be involved in processing number applications. It is likely that the application process would require the provision of a greater depth of information about the applicant, more akin to a credit application process. The procedure would no doubt become substantially more complicated and time-consuming than it is at present, which may add costs and delays for an applicant in carrying out its own business.

Risks

- A1.28 This option risks incorrect decisions being made by sub-allocating Providers due to incomplete information, commercial time concerns, or without reasonable grounds

that the applicant was a risk to consumers, so that some applicants may be wrongly allocated numbers, or legitimate service providers refused numbers without cause. There is an associated risk that those individuals or companies refused telephone numbers by one Provider will simply 'shop around' until they find a Provider whose application of (or failure to apply) the test, results in them supplying the numbers the individual or company is seeking.

- A1.29 There is a particular risk with this option that given the consequences of failure to apply the consumer protection test at the sub-allocation stage, Providers will be overly cautious in applying the test, thereby refusing numbers to many more individuals or companies than should strictly be refused according to the guidelines set out by Ofcom. This could have a detrimental effect by preventing number assignment to many legitimate businesses and risks raising barriers to entry to PRS and other markets and causing under-utilisation of numbering resources.
- A1.30 Given that the application of this form of the test is likely to differ according to who is applying it, there is a significant risk that it would create uncertainty for applicants as well as Providers in terms of their rights and obligations in relation to telephone number use and allocation.
- A1.31 Applying a set of tests to each number application when received is clearly very time consuming and costly for all involved. Although it is difficult to quantify in monetary terms, as the impact will differ depending on the sub-allocating Provider, it is evident that this option places a significant burden, both administrative and legal, on all sub-allocating Providers as well as Ofcom. There are also significant risks attached to this approach.

Recommendation: Option 1

- A1.32 Having considered the evidence set out in this impact assessment and in the body of this consultation document, Ofcom's preferred option is to introduce a consumer protection test for number allocation in the form set out in option 1. The costs of option 1, while difficult to quantify at this stage, are clearly significantly lower than option 2 in terms of practicality and administrative requirements on Providers. We believe the benefits of option 1, above option 2, are as follows:
- the test is relatively straightforward to apply both at the allocation and sub-allocation stage, in terms of checking the number refusal list, and does not place a heavy administrative burden on stakeholders;
 - Ofcom will provide guidance on the criteria it will normally follow in assessing companies and individuals under the test so number users should know their obligations and the consequences of using telephone numbers in a way that is adverse to the interests of consumers;
 - both number applicants and sub-allocating Providers will be certain as to their obligations; and
 - the responsibility for determining whether an individual or company should be refused numbers will fall to Ofcom and not Providers.
- A1.33 The true impact of the test will depend on the number ranges covered and the process we use to deal with company directors. The overall impact of this version of the test on stakeholders will depend on:

- a) Whether directors will be automatically placed on the number refusal list; and
- b) The number ranges covered by the test.

Placing directors on the number refusal list

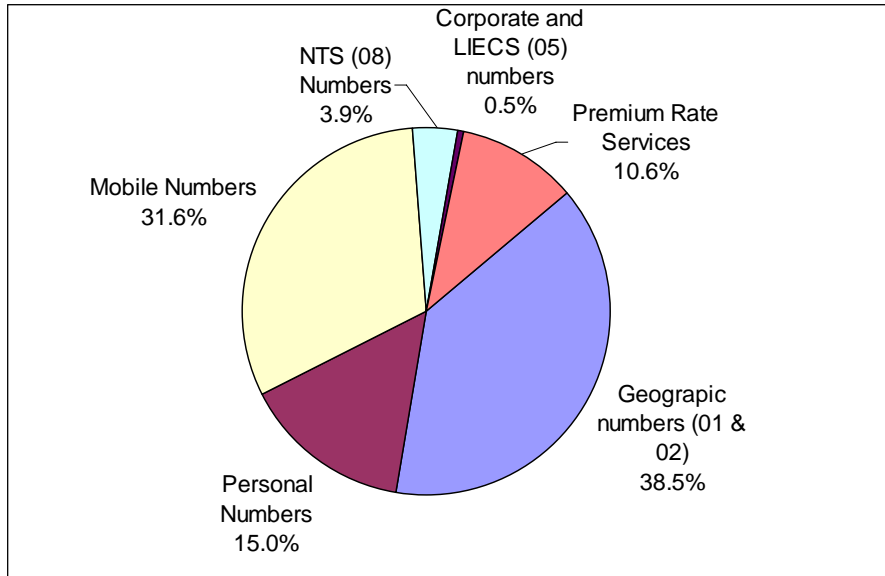
- A1.34 In this consultation, Ofcom proposes that the directors of a company placed on the number refusal list should also be listed automatically. The benefit of this approach is that it will prevent 'phoenix' companies from obtaining new numbers. If we do not list company directors, there is a risk that directors of companies on the number refusal list will circumvent the effectiveness of the consumer protection test by creating phoenix companies to apply for new number allocations and much of the benefit of the test will be lost.
- A1.35 This approach would require Ofcom and Providers to carry out company searches on each number applicant to determine who its directors are, in order to compare them to those on the number refusal list. However, this cost could be avoided by requiring the number applicant itself to provide a copy of a recent company search or an official document listing its directors with its application. Ofcom would also need to carry out a director search in relation to each company it decided to place on the list, in order to list the directors.
- A1.36 The other potential time and cost implication of this option would be that more directors may make representations to Ofcom during its assessment of the conduct that brought the company to its attention, that they had not known about or been involved in the activity and should therefore not be placed on the number refusal list. This could result in longer and therefore more costly assessment processes on Ofcom's part.
- A1.37 The alternative to automatic listing of all directors on the number refusal list is that we only place individuals on the list if they are specifically named as being involved in a harmful activity by the body making the enforcement decision that brings them to Ofcom's attention for assessment. This would avoid the cost to Ofcom of carrying out director searches in relation to all companies placed on the number refusal list. However, it would not avoid the need for Ofcom and Providers to obtain director details when processing number applications, as it would still be necessary to check if any of the applicant company's directors were listed as individuals.

The number ranges covered by the test

- A1.38 If those individuals or companies on the number refusal list were to be refused numbers in all ranges, the list would need to be checked in relation to every number (sub) allocation or assignment. If the list were to apply only to a narrower selection of number ranges, the list would only need to be checked in relation to applications for numbers in those ranges. Clearly therefore, the administrative requirements of applying the test will be dependent upon the number ranges it covers.
- A1.39 We have aimed to formulate the test in such a way as to minimise the administrative burden by focusing on those areas in which consumer abuse has proven more common. Therefore we have proposed (subject to the views of stakeholders) that the test cover all number ranges, except geographic telephone numbers (01 and 02) and mobile and pager numbers, which have generally remained free from the kind of harmful activities this policy seeks to address. Therefore the test would apply to 03, 056, 070, 08 and 09 numbers only, as the use of these number ranges have a greater likelihood for consumer harm occurring.

A1.40 Figure A.2 below contains a representation of the proportions of numbers allocated by Ofcom in 2006. This shows that by removing geographic and mobile telephone numbers, we could reduce the potential administrative burden of the test by around 70%.

Figure A.1: Proportion of numbers allocated by Ofcom, 2006



Annex 2

Responding to this consultation

How to respond

- A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 22 June 2007**.
- A2.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/numberingcpt/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 4), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email Warwick.Izzard@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Warwick Izzard
Competition Group
Ofcom
Level 4
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A2.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A2.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 5. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Warwick Izzard on 020 7783 4127.

Confidentiality

- A2.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A2.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A2.11 Following the end of the consultation period, Ofcom intends to publish a statement in late July/ early August 2007.
- A2.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A2.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 3.
- A2.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:
Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
- Tel: 0141 229 7401
Fax: 0141 229 7433
- Email vicki.nash@ofcom.org.uk

Annex 3

Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A3.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A3.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 4

Consultation response cover sheet

- A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

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

DECLARATION

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

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

Name

Signed (if hard copy)

Annex 5

Consultation questions

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?

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 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?

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?

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

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

Annex 6

Proposed consumer protection test guidelines

Although these Guidelines set out the approach Ofcom expects to take when applying the consumer protection test for telephone numbering, they do not have binding legal effect. Ofcom will consider each case on its own merits. We will only apply this approach where it is appropriate to do so and in the event that Ofcom decides to depart from these guidelines, we will generally set out our reasons for doing so.

Background

- A6.1 These Guidelines are published by Ofcom to provide clarity and transparency as to how it will normally apply the consumer protection test for telephone number allocation. Whether telephone numbers are to be refused, which telephone number ranges are to be refused and the period of refusal must be proportionate to the harmful behaviour of the individual or company in respect of whom number refusal is being considered.
- A6.2 Ofcom will normally follow these Guidelines when assessing whether it considers that in all the circumstances it would be appropriate, in order to ensure the best use is made of telephone numbers, to place a particular individual or company on the number refusal list for a particular period of time. These Guidelines also set out the factors that Ofcom will normally consider when determining the appropriate period of time that an individual or company should remain on the list. Ofcom will additionally have regard to any representations made by the individual or company to which it is considering refusing numbers.

The consumer protection test for telephone number allocation

- A6.3 The consumer protection test seeks to assess whether the further allocation of telephone numbers to a particular individual or company would in all the circumstances be the best use of telephone numbers. In making this assessment, Ofcom will consider evidence that the individual or company has previously used (a) telephone number(s) in a way that caused harm to consumers. In this context we will normally consider:
- the particular behaviour that brought the individual or company to Ofcom's attention for assessment under the consumer protection test; and
 - the past history of the individual or company in relation to the use of telephone numbers.
- A6.4 If Ofcom concludes that the individual or company under assessment has previously used telephone numbers in a way that has caused *serious or repeated harm* to consumers, this would normally be sufficient to satisfy us that the person or company should be placed on Ofcom's number refusal list. The number refusal list is made publicly available on Ofcom's website so that it may be accessed by all Communications Providers ('Providers') who sub-allocate or assign telephone

numbers within the number ranges covered by the consumer protection test¹⁸. These Providers are required to ensure that they do not sub-allocate or assign these numbers to the individuals and companies on the list. Ofcom will also refuse to directly allocate telephone numbers to individuals or companies on the number refusal list.

Prior to assessment: Whether a telephone number allocation was central to the harm caused to consumers

- A6.5 When an individual or company comes to Ofcom's attention for possible assessment under the consumer protection test (generally by becoming the subject of enforcement action by Ofcom, ICSTIS or another relevant authority), the first question for Ofcom will be whether a telephone number allocation was central to the carrying out of the harmful behaviour in question. If a number allocation was not central to the carrying out of the behaviour in question, there will be no need to carry out an assessment under the test.
- A6.6 In general, Ofcom is likely to consider that factors indicative of the number allocation being central to the notified abuse may include, but will not necessarily be limited to:
- *The profitability of the harmful behaviour was dependent on the revenue-sharing features of the numbers in question:* harmful activities such as PRS 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 Ofcom is likely to consider the telephone numbers as being central to the harmful behaviour; and
 - *The carrying out of the harmful behaviour was dependent on the functionality of the numbers in question:* where the functionality of the telephone numbers in question, for example the find-me-anywhere functionality of 070 numbers, is necessary or assists in the harmful activity being carried out, then Ofcom is likely to consider the numbers as being central to the activity.

The 'under assessment' list

- A6.7 Once it is determined that an individual or company has potentially used (a) telephone number(s) in a way adverse to the interests of consumers, Ofcom will notify the individual or company of the fact that we intend to assess them under the consumer protection test and place the individual or company, without prejudice, on an under assessment list whilst a decision is made. During this period Ofcom and other Providers will not allocate, sub-allocate or assign any telephone numbers to the individual or company being assessed but the individual or company will have an opportunity to make representations about whether or not they should be refused further telephone numbers under the consumer protection test.

Company directors and other individuals

- A6.8 Ofcom will hold all company directors prima facie responsible for the actions of their companies and place all company directors on the under assessment list at the same time as their companies. Company directors will be given the opportunity to

¹⁸ See the section 'Numbers to be refused', below, for more information on the number ranges covered by the test.

make representations to Ofcom which will be taken into account when deciding whether they should be placed on the number refusal list.

- A6.9 Directors may make representations that they were not involved in causing serious or repeated harm to consumers, in which case Ofcom will consider the role of each director in the behaviour under assessment. This decision will be based upon the facts set out in the Ofcom notification, ICSTIS adjudication or decision of another relevant authority or a court. In the absence of any persuasive evidence that a particular director was not involved in or aware of the conduct, the director will normally be placed on the number refusal list in the event that the company is placed on the number refusal list after Ofcom's assessment.
- A6.10 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 number refusal list if Ofcom has grounds for believing he or she was associated with running a company that is placed on the number refusal list.
- A6.11 Individuals may also be placed on the number refusal list if they are found by a court, ICSTIS, 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.

Assessment under the consumer protection test

- A6.12 Once an individual or company has been placed on the under assessment list, Ofcom will assess the individual or company's behaviour, taking into account any representations made by that individual or company, to determine whether in all the circumstances we consider that the provision of further number allocations to the particular individual or company would be the best use of telephone numbers (i.e. whether the individual or company should be placed on the number refusal list). In making this assessment, Ofcom will have regard to the factors discussed below.

The behaviour that led to the assessment of the individual or company under the consumer protection test

- A6.13 An individual or company would normally come to Ofcom's attention for assessment under the consumer protection test by being subject to an enforcement action by Ofcom, ICSTIS or another authority for infringement of relevant consumer protection laws.
- A6.14 Ofcom will look to the directions and findings of the particular enforcement agency and consider the nature of the behaviour the subject of the action. Ofcom considers that where a company or an individual has used (a) telephone number(s) to cause serious or repeated harm to consumers, the risk of similar abuse being carried out in the future and the harm it would cause justifies refusing that individual or company further number ranges.

In assessing the seriousness of an abuse, Ofcom will normally have regard to the following non-exhaustive list of factors:

- *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, Ofcom will normally view this as a serious abuse;
- *Consumer harm:* the greater the level of harm/detriment suffered by consumers as a result of the notified abuse, the more serious Ofcom is likely to consider the behaviour;
- *Extent of the detriment:* Ofcom proposes to take into account the number of consumers affected by the notified abuse and the duration of that abuse;
- *Whether the abuse was targeted:* Ofcom may consider whether the notified abuse was targeted at specific groups of people, particularly more vulnerable groups;
- *The number/range of abuses notified:* Ofcom proposes to take into account the number of different instances of abuse included in an enforcement decision when assessing the behaviour in question;
- *Whether the harmful conduct was deliberate:* Ofcom proposes to 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:* when assessing the level of seriousness of the abuse, Ofcom proposes to 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.

The past history of the individual or company under assessment

- A6.15 Ofcom will consider whether the particular individual or company under assessment has previously been involved in any other activities involving the use of telephone number allocations that have resulted in harm to consumers. A repeated use of telephone numbers in a manner that is contrary to the interests of consumers is more likely to lead Ofcom to conclude that the individual or company should be refused further number allocations for a period of time.
- A6.16 Normally such behaviour will come to Ofcom's attention if the individual or company has been the subject of other enforcement actions by agencies including Ofcom or ICSTIS. Ofcom will consider the nature and seriousness of any behaviour that has led to such actions and will normally have regard to the same factors it considers in relation to the behaviour that led to the assessment of the individual or company under the consumer protection test (see above).
- A6.17 When considering the past history of an individual or company being assessed under the consumer protection test, Ofcom will consider any behaviour by the company or individual over the previous 24 months. It will depend on the circumstances as to how much weight Ofcom will give to previous instances in which the individual or company was the subject of enforcement action. For instance, if the company or individual had previously engaged in the same type of behaviour less than 12 months ago, this would normally be more likely to influence us to place the individual or company on the number refusal list than an

enforcement action 24 months ago for entirely different behaviour.

ICSTIS Adjudications

- A6.18 We note that ICSTIS places responsibility for the content and promotion of PRS on 'Service Providers' ('SPs') even though, in practice, there will be circumstances where parties will be responsible for discharging certain obligations as an SP in relation to aspects of the provision of PRS which are, in fact, within the direct control of another person ('Information Provider' ('IP')). This may be the case, for example, where the SP in respect of a particular service acts as a reseller, aggregator or bureau which is providing a link between the Network Operator and the person actually providing the content of the service in question. In such cases, it may not be the SP who is responsible for the harmful behaviour in question.
- A6.19 In order to address this issue, the ICSTIS Code (11th Edition) contains provisions which would, in certain circumstances, allow ICSTIS to deal directly with an IP who would, as outlined above, typically be the provider of the content of a PRS, in relation to possible breaches of the ICSTIS Code. One of the conditions for this to occur would be that the IP was willing to accept full responsibility for the service in question, as well as for complying with any sanctions that ICSTIS might ultimately impose. If the IP was not willing to take responsibility for the service, or failed to comply with sanctions, then ICSTIS would still be able to revert to the default position of holding the SP fully responsible for its obligations as such under the Code.
- A6.20 We will use the ICSTIS adjudications for the purpose of the number refusal list which, as outlined above, under new Code provisions identify those parties responsible for the harmful conduct that arises in a particular case, which may be an SP or an IP, depending on the circumstances of the case. We will also normally take into account the party's involvement in the use of numbers that caused harm to consumers when assessing whether it is appropriate to place the party on the number refusal list.

Period of number refusal

- A6.21 Where it is concluded by Ofcom that an individual or company should be placed on the number refusal list, they will be refused numbers for a specified period of time. The period of refusal will vary according to a range of considerations and the representations made by the notified party.
- A6.22 In determining the period of number refusal, Ofcom will have regard to the following criteria and factors.

General criteria

- A6.23 The period of time that an individual or company is to be refused allocation of further numbers must be appropriate and proportionate to the risk they pose as regards the likelihood of future misuse of numbers and the potential harm to consumers that any future misuse may cause.
- A6.24 Ofcom is therefore normally likely to first consider the following non-exhaustive list of factors in determining the period of refusal:
- (i) the seriousness of the behaviour that led to the assessment;

- (ii) the extent and seriousness of any previous behaviour involving the use of telephone numbers to harm consumers;
- (iii) 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
- (iv) the need to ensure that the period of refusal provides sufficient protection to consumers.

A6.25 Generally the guideline period of number refusal will be at least 6 months unless there are exceptional circumstances, as we believe that any shorter period would not be effective to achieve the purpose of the consumer protection test.

A6.26 After determining a refusal period on the basis of the general criteria detailed above, Ofcom will consider whether there are any other factors specific to the individual case that justify increasing or decreasing the number allocation refusal period.

Factors tending to lead to an increase in the refusal period

A6.27 These may include, but would not necessarily be limited to:

- (i) the continuation of the harmful behaviour after notification by Ofcom, ICSTIS or another relevant body;
- (ii) the extent to which senior management knew or ought to have known that the harmful behaviour was occurring or would occur; and
- (iii) 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 refusal period

A6.28 These may include, but would not necessarily be limited to:

- (i) 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;
- (ii) the extent and timeliness of any steps taken to end the harmful behaviour and remedy any consequences of that behaviour; and
- (iii) co-operation with any investigation into the behaviour carried out by Ofcom, ICSTIS or another relevant body.

Final decision on the refusal period

A6.29 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, Ofcom will determine an appropriate and proportionate period of time for the individual or company to remain on the number refusal list.

Numbers to be refused

- A6.30 Ofcom's starting position is that any individual or company placed on the number refusal list should normally have requests for further allocations of 03, 056, 070, 08 and 09 refused for the duration of the period that they remain on the number refusal list.
- A6.31 Ofcom will, however, have regard to any representations made by individuals or companies when they are notified that they are subject to assessment under the consumer protection test as to why any number refusal should be limited to a subset of the number ranges identified in paragraph A6.30.

Opportunity to be removed from the number refusal list

- A6.32 Whether or not an individual or company who is placed on the number refusal list has taken steps to cease the harmful conduct and remedy the consequences of that conduct (and the extent and timeliness of such steps) will be taken into account when Ofcom initially determines the period of time for which the particular individual or company will be refused numbers. It will not be sufficient if a company only takes steps to remedy the potential for further harmful conduct after the point that Ofcom has made its decision to refuse numbers to that company. However, if there is a significant change of circumstances, for instance if the 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 period of time that the company should remain on the number refusal list.

Applying for telephone numbers from Ofcom

- A6.33 When Ofcom receives an application for telephone numbers in the 03, 056, 070, 08 and 09 ranges, it will check the number refusal list to ensure that the applicant is not listed. Corporate applicants will be required to provide evidence of their registered company name, address and registration number. This information need only be provided to Ofcom with the first application a company makes since the consumer protection test came into force, unless the company details (e.g. company name, address) have changed since the company's last application in which case the new details and supporting documentation will need to be provided.
- A6.34 In order to allow Ofcom to properly identify whether any director of a corporate number applicant is listed on the number refusal list, we require applicants to list each company director's name, address and date of birth and provide appropriate identification documents. We also require the applicant to provide official evidence in the form of a copy of a Companies House certificate or equivalent documentation to support this. Individual applicants and those applying as part of a partnership or as proprietor of an unincorporated entity are also required to provide identification documentation to prove their name, address and date of birth. This information need only be provided to Ofcom with the first application an individual or company makes since the consumer protection test came into force, unless any company directors have changed since a company's last application in which case the new director details will need to be provided.

- A6.35 Ofcom notes that the provision of false or inaccurate information (such as false director names or the omission of particular directors' names) on the number application form may be a breach of General Condition 17 and therefore subject to action from Ofcom under sections 94 to 96 of the Communications Act.

Data protection

- A6.36 The Data Protection Act 1998 ('the DPA') concerns the processing of personal data. Where personal data are processed in relation to the consumer protection test, the DPA will apply. For example, personal data such as name, address and date of birth of number applicants might be processed. Information relating to an individual's use of telephone numbers might contain sensitive personal data e.g. criminal convictions. Where applicable, Ofcom adheres to data protection principles.

Applying for telephone numbers from Providers

- A6.37 Providers assigning or sub-allocating telephone numbers are required not to assign or sub-allocate numbers in the 03, 056, 070, 08 and 09 ranges to individuals or companies on Ofcom's number refusal list.
- A6.38 Providers may require number applicants to provide them with certain information in order that they may sufficiently identify the applicant to determine whether or not that applicant (or, if the applicant is a company, any of its directors) is on the number refusal list.
- A6.39 Providers may also choose to take commercial action (such as cancellation of service contracts) if they discover that false information has been provided to obtain telephone numbers from them.

Information for Providers assigning or sub-allocating telephone numbers

- A6.40 Providers assigning or sub-allocating telephone numbers are required under General Condition 17 not to assign or sub-allocate numbers in the 03, 056, 070, 08 and 09 ranges to individuals or companies on Ofcom's number refusal list. Failure to comply with a General Condition may result in enforcement action being taken against a Provider by Ofcom under sections 94 to 96 of the Communications Act. Ultimately, Providers who have been the subject of enforcement action by Ofcom for serious or repeated breaches of General Condition 17 may themselves be placed on the number refusal list and unable to receive further allocations of numbers in the specified ranges.
- A6.41 It is largely a matter for the Provider to decide on the processes it implements to ensure that it collects sufficient information from number applicants to safely satisfy itself as to whether or not any number applicant is on the number refusal list. Ofcom has not set down any particular formal rules as to the checks that should be carried out by Providers in carrying out this process. However, the list below sets out some 'best practice' due diligence procedures. These should assist sub-allocating Providers to ensure they have done all that could be expected of them, bearing in mind that if they sub-allocate numbers to individuals or companies on the list, they will prima facie be in breach of General Condition 17, and potentially subject to enforcement action by Ofcom. This action will be minimised if the Provider can show it has acted in accordance with the best practice procedures.
- A6.42 'Best practice due diligence' normally involves:

- 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 number refusal list;

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 itself that the information provided by the number applicant is accurate;
- 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 number refusal list. 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 number refusal list as at the time the application was made.

Annex 7

Notification of proposed changes to General Condition 17

Notification of a proposed modification under section 48(2) of the Communications Act 2003

Proposal for insertion of a new General Condition 17.6A - Obligation on Providers not to allocate numbers to those whom Ofcom is assessing with a view to refusing further number allocations; and a new General Condition 17.6B – Obligation on Providers not to allocate numbers to those to whom Ofcom has placed on a number refusal list.

1. OFCOM in accordance with section 48(2) hereby make the following proposals for insertion of a new General Condition 17.6A and a new General Condition 17.6B on Numbering to incorporate obligations about allocation of numbers by Communications Providers;
2. The draft modification is set out in the Schedule to this Notification;
3. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraph 1 above is set out in the accompanying consultation document;
4. OFCOM considers that the modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to each of the proposed modifications;
5. In making the proposals set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 and of the Act and the six Community requirements in section 4 of the Act;
6. Representations may be made to OFCOM about the proposals set out in this Notification by **5pm on 22 June 2007**;
7. The modification shall enter into force on the date of publication of the final notification;
8. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.
9. In this Notification:
 - a. "the Act" means the Communications Act 2003; and
 - b. "OFCOM" means the Office of Communications; and

10. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
11. For the purpose of interpreting this Notification:
 - a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Act were an Act of Parliament.
12. The Schedule to this Notification shall form part of this Notification.

Signed by Neil Buckley

Competition Policy Director

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

17 May 2007

Schedule

Notification of a proposed modification under section 48(2) of the Communications Act 2003

Proposal for the insertion of a new General Condition 17.6A and a new General Condition 17.6B on Numbering

1. The following text shall be inserted in General Condition 17 after General Condition 17.11

Allocation of numbers by Communications Providers

- 17.6A A Communications Provider shall not authorise (either directly or indirectly) the Adoption of a Telephone Number by a person (or a company which that person is a director of) for such time as that person's name is included on the relevant part of the list (the "Under Assessment Number Refusal List") maintained on the Ofcom website indicating that Ofcom is assessing that person with a view to refusing to allocate further Telephone Numbers to that person.
- 17.6B A Communications Provider shall not authorise (either directly or indirectly) the Adoption of a Telephone Number by a person (or a company which that person is a director of) for such time as that person's name is included on the relevant part of the

list (the “Number Refusal List”) maintained on the Ofcom website indicating that Ofcom has decided not to allocate further Telephone Numbers to that person.

Annex 8

Notification of proposed changes to Ofcom's Numbering Application Forms

Consultation on the proposed changes

A8.1 In addition to changes to General Condition 17, the introduction of a consumer protection test for telephone number allocation requires a consultation on the consequential modification to some of Ofcom's number application forms.

The legal framework

A8.2 Ofcom regulates the communications sector under the framework established by the Act. The Act provides, amongst other things in relation to numbering, for the publication by Ofcom of the Numbering Plan and the ability for Ofcom to set General Conditions of Entitlement relating to Telephone Numbers ('Numbering Conditions'). The Act also sets out statutory procedures that apply when Ofcom wishes to make modifications to the Numbering Plan and the processes for the giving of directions under conditions such as the Numbering Conditions.

The numbering application forms

A8.3 Section 45 of the Act gives Ofcom the power to set conditions:

"(1) Ofcom shall have the power to set conditions under this section binding the persons to whom they are applied in accordance with section 46.

(2) A condition set by Ofcom under this section must be either –

(a) a general condition..."

A8.4 Section 58 of the Act provides examples of the type of general conditions that Ofcom may set about the allocation and adoption of numbers, including procedures that apply in relation to applications for allocations of telephone numbers.

A8.5 The General Conditions Notification that took effect on 25 July 2003 includes General Condition 17, which contains provisions relating to the allocation, adoption and use of telephone numbers. Clause 17.9 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."

A8.6 By virtue of the Transitional Provisions, references to the Director in the Numbering Condition should be read as references to Ofcom.

A8.7 Section 49 applies to directions and approvals that affect the operation of conditions set under section 45. 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 matters 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 the modification is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent."

A8.8 Section 49(4) further provides that:

"Before the direction, approval or consent is given, modified or withdrawn, a notification must be published –

- a) stating that there is a proposal to give, modify or withdraw it;
- b) identifying the person whose proposal it is;
- c) setting out the direction, approval or consent to which the proposal relates;
- d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;
- e) giving reasons for the making of the proposal; and
- f) specifying the period within which representations may be made about the proposal to the person whose proposal it is."

Ofcom's general duty as to telephone numbering functions

A8.9 Ofcom has a general duty under section 63(1) of the Act in carrying out its numbering functions:

"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

A8.10 In addition to its general duties as to telephone numbering functions, the principal duty of Ofcom to be observed in the carrying out of any 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.”

A8.11 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 numbering arrangements, having regard to the interests of consumers in respect to choice, price awareness, and consumer protection.

Duties for the purpose of fulfilling Community obligations

A8.12 When carrying out its regulatory functions such as considering revisions to the numbering application forms, Ofcom must also take into account the six Community requirements 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 not to favour one form of network, service or associated facility or one means of providing or making available such network, service or associated facility over another, as well as the requirement to promote the interests of European citizens.

Proposed modifications to number application forms

A8.13 In order to allow Ofcom to properly identify whether any director of a corporate number applicant is listed on the number refusal list, we will need to request details of each company director's name, address and date of birth. We also propose to require the applicant to provide adequate identification documentation to prove these details. Individual applicants or those applying as a partnership or proprietor of an unincorporated entity will also need to provide sufficient identification documents for the partners or individuals responsible for the running of the business. This information will only need to be provided to Ofcom with the first application an individual or company makes after the consumer protection test comes into force, unless the company directors or proprietor has changed since the applicant's last application in which case the new details and supporting documents will need to be provided.

A8.14 As we are proposing to apply the consumer protection test only to numbers in the ranges 03, 056, 070, 08 and 09, the required changes will only be need to be made to the application forms relevant to these ranges.

A8.15 The various legal tests and duties relating to the proposed test itself, and how Ofcom has complied with them, are set out in Sections 3 and 4 of this consultation. The proposed amendments to the application forms, on which we are now consulting, are set out below.

Notification of proposals under section 49(4) of the Act

Proposal for making a Direction under paragraph 17.9(a) of the Condition relating to modifications to the application forms for 03, 056, 070, 08 and 09 numbers.

1. Ofcom hereby makes the following proposal for a Direction to be given under paragraph 17.9(a) of the Condition.
2. The draft Direction is set out in the Schedule to this Notification.
3. The reasons for making the proposal and the effect of the draft Direction are set out in the accompanying consultation document.
4. Representations may be made to Ofcom about the proposed draft Direction until 5pm on 22 June 2007.
5. Copies of this Notification have been sent to the Secretary of State in accordance with section 50(1)(b) of the Act.
6. Except as otherwise defined in this Notification, words or expressions used shall have the same meaning as they have been ascribed in the Act.
7. In this Notification:
 - o "Act" means the Communications Act 2003;
 - o "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;
 - o "Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1994; and
 - o "Ofcom" means the Office of Communications.

Signed by Neil Buckley

Competition Policy Director

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

17 May 2007

Schedule

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 form in the Annex to this Direction is appropriate for use by Communications Providers when applying for an Allocation or reservation of Telephone Numbers;
- D. for the reasons set out in the Statement accompanying this Direction Ofcom are satisfied that 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 responses to the Notification and have considered every such representation made to them within the period specified in the Notification and accompanying consultation document and these representations are discussed in [Section] 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 S3 in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of 03 numbering;
- (b) the application form S56 in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of 056 numbering;
- (c) the application form S7 in the Annex to this Direction shall be used by Communications Providers when applying for an Allocation of 07 numbering;
- (d) 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
- (e) 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 General Condition 17 (entitled 'Allocation, Adoption and Use of Telephone Numbers') in Part 2 of the Schedule to the Notification published by the Director on 22 July 2003 under section 48(1) of the Act;
 - (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 the date it is published.

Signed by Neil Buckley

Competition Policy Director

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

17 May 2007

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

INSERT AMENDED NUMBER APPLICATION FORMS S3, S56, S7, S8, S9