

Direction to Talkline Communications Ltd to immediately suspend the provision of premium rate services provided by it

Issued by the Office of Communications (“Ofcom”) under section 124(2) of the Communications Act 2003

As originally issued, this document contained a 7 page Direction and a 23 page Explanatory Statement. This version of the document includes only the 7 page Direction. The Explanatory Statement contained information of a sensitive and/or confidential nature and is not being placed on Ofcom’s website at this time.

Issued: 16 December 2005

Part 1

Direction under section 124 of the Communications Act 2003

The relevant legislation

1. Pursuant to **section 120 of the Communications Act 2003** (“the 2003 Act”) Ofcom has the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions under this section that bind the persons to whom they are applied.
2. Pursuant to subsection (2), conditions under that section may be applied either – (a) generally to every person who provides a premium rate service; or (b) to every person who is of a specified description of such persons, or who provides a specified description of such services. The phrases “a premium rate service” and “person who provides a premium rate service” are defined in subsections (7)-(14).
3. Pursuant to subsection (3), the only provision that may be made by conditions under that section is provision requiring the person to whom the condition applies to comply, to the extent required by the condition, with - (a) directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and (b) if there is no such code, the provisions of the order for the time being in force under section 122.
4. Ofcom has exercised its power under section 120 to set conditions by publishing a notification, pursuant to section 48(1) of the 2003 Act, of a condition regulating premium rate services (“**the PRS Condition**”). Article 1 of the PRS Condition provides as follows:

The Communications Provider shall comply with:

 - (a) *directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and*
 - (b) *if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.*
5. The power to approve a code is provided for by **section 121** of the 2003 Act. The currently applicable approved code is the Tenth Edition of the code issued by the Independent Committee for the Supervision of Standards of Telephone Information Services (“ICSTIS”) (“the ICSTIS Code”), which was approved on 23 December 2003. ICSTIS is the Enforcement Authority which has the function of enforcing the ICSTIS Code.
6. **Section 124(1)** of the 2003 Act provides that Ofcom may give a direction under that section to a communications provider where Ofcom is satisfied:

- (a) that the provider is, or has been, in serious and repeated contravention of conditions set under section 120 of the Act (“the PRS Condition”);
 - (b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 (as applied by section 123) or both, to secure compliance with the contravened conditions has failed;
 - (c) that the giving of directions is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions; and
 - (d) that the giving of the direction is required for reasons of public policy.
7. **Section 124(2)** of the 2003 Act provides that Ofcom may give a direction under section 124 to a communications provider where Ofcom is satisfied:
- (a) that the provider is, or has been, in contravention of conditions set under section 120 of the Act in respect of a premium rate service;
 - (b) that the circumstances of the contravention make it appropriate for Ofcom to suspend or restrict the provision of premium rate services provided by the contravening provider without the conditions set out in subsection (1) being satisfied; and
 - (c) that in those circumstances the giving of the direction is urgently required for reasons of public policy.
8. **Section 124(3)** provides that a direction made pursuant to section 124 is to take one of two forms:
- (a) a direction to the contravening provider to secure the suspension of the provision of premium rate services provided by him; or
 - (b) a direction requiring him to secure compliance with restrictions, set out in the direction, on the provision of such services.
9. **Section 124(4)** provides that a direction under that section:
- (a) must specify the services to which it relates; and
 - (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
10. **Section 124(7)** provides that, if Ofcom considers it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under section 124 or modify its conditions.
11. **Section 124(8)** provides that sections 102 and 103 apply in the case of a direction under section 124 as they apply in the case of a direction under section 100, but as if references in section 103(1) to an electronic communications network or electronic communications service were references to a premium rate service.
12. Accordingly, the procedure set out in **section 102 (1)-(5)** applies in relation to the giving of a direction under section 124:
- (1) *Except in an urgent case, OFCOM are not to give a direction under section [124] unless they have—*

(a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and

(c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.

(2) That period must be one ending not less than one month after the day of the giving of the notification.

(3) As soon as practicable after giving a direction under section [124] in an urgent case, OFCOM must, provide the contravening provider or contravening supplier with an opportunity of—

(a) making representations about the effect of the direction and of any of its conditions; and

(b) proposing steps for remedying the situation.

(4) A case is an urgent case for the purposes of this section if OFCOM—

(a) consider that it would be inappropriate, because the contraventions in question fall within subsection (5), to allow time, before giving a direction under section [124], for the making and consideration of representations; and

(b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

13. Further, pursuant to **section 103** (as applied by section 124(8)):

(1) A person is guilty of an offence if he provides [a premium rate service], or makes available any associated facility—

(a) while his entitlement to do so is suspended by a direction under section [124]; or

(b) in contravention of a restriction contained in such a direction.

...

- (3) *A person guilty of an offence under this section shall be liable—*
- (a) *on summary conviction, to a fine not exceeding the statutory maximum;*
 - (b) *on conviction on indictment, to a fine.*

The Direction hereby given by Ofcom

14. Ofcom now gives the following direction in the exercise of its powers under section 124 of the 2003 Act:

Ofcom hereby directs Talkline Communications Ltd (“Talkline”) (whose company registration number is 05037166) to immediately secure the suspension of the provision of premium rate services provided by it.

15. Pursuant to section 124(4), **this direction takes effect for an indefinite period.**
16. The phrases “a premium rate service” and “person provides a premium rate service” are defined in section 120 (7)-(14) of the 2003 Act. Ofcom’s direction (which is the form of direction specified in paragraph (a) of section 124(3) of the 2003 Act) is to be read and interpreted in accordance with those definitions. Section 120 (7)-(14) is reproduced below:

(7) *A service is a premium rate service for the purposes of this Chapter if—*

- (a) *it is a service falling within subsection (8);*
- (b) *there is a charge for the provision of the service;*
- (c) *the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and*
- (d) *that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.*

(8) *A service falls within this subsection if its provision consists in—*

- (a) *the provision of the contents of communications transmitted by means of an electronic communications network; or*
- (b) *allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.*

(9) *For the purposes of this Chapter a person provides a premium rate service (“the relevant service”) if—*

- (a) *he provides the contents of the relevant service;*
- (b) *he exercises editorial control over the contents of the relevant service;*
- (c) *he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;*

- (d) *he makes available a facility comprised in the relevant service;*
- or
- (e) *he falls within subsection (10), (11) or (12).*

(10) *A person falls within this subsection if—*

- (a) *he is the provider of an electronic communications service used for the provision of the relevant service; and*
- (b) *under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant service or of the use of his electronic communications service for the purposes of the relevant service.*

(11) *A person falls within this subsection if—*

- (a) *he is the provider of an electronic communications network used for the provision of the relevant service; and*
- (b) *an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).*

(12) *A person falls within this subsection if—*

- (a) *he is the provider of an electronic communications network used for the provision of the relevant service; and*
- (b) *the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).*

(13) *Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.*

(14) *References in this section to a facility include, in particular, references to—*

- (a) *a facility for making a payment for goods or services;*
- (b) *a facility for entering a competition or claiming a prize; and*
- (c) *a facility for registering a vote or recording a preference.*

17. Accordingly, the effect of this direction is to require the suspension of *all* provision of premium rate services by Talkline falling within section 120 (7)-(14) of the 2003 Act *irrespective of the number ranges on which those services are provided*. The effect of this direction is not, therefore, confined to premium rate services provided on the '09' number range, but also includes any premium rate services provided on the '07' or '08' number ranges.
18. **Failure to comply with this direction is a criminal offence (see paragraph 13 above). Ofcom will work to secure the prosecution of any person who**

- commits an offence under section 103 of the 2003 Act (whether as the principal offender or as an accessory).**
19. **This direction has been given pursuant to section 124(2) of the 2003 Act.** Ofcom is satisfied:
- (a) that Talkline is, or has been, in contravention of the PRS Condition;
 - (b) that the circumstances of the contravention make it appropriate for Ofcom to suspend Talkline's provision of premium rate services without the conditions set out in section 124(1) being satisfied; and
 - (c) that in those circumstances the giving of this direction is urgently required for reasons of public policy.
20. In addition, **this direction has been given under the “urgent case” procedure provided for by section 102 of the 2003 Act** with the consequence that Ofcom has not followed the procedures set out in section 102 (1) & (2). The present case is an urgent case because the conditions set out in section 102 (4) & (5) are satisfied. In that regard:
- (a) Talkline's contraventions of the PRS Condition have resulted in, or create an immediate risk of, serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities;
 - (b) by reason of (a), Ofcom consider that it would be inappropriate to allow time, before giving this direction, for the making and consideration of representations in accordance with the “non-urgent case” procedure in section 102 (1) & (2); and
 - (c) Ofcom has therefore decided to act under the “urgent case” procedure.
21. Pursuant to section 102(3), **Ofcom invites Talkline to make representations about the effect of the direction and any of its conditions, and propose steps for remedying the situation.** Representations may be made in writing at any time to David Stewart, Director of Investigations, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA; fax 020 7783 4103; email david.stewart@ofcom.org.uk. If Talkline also wishes to make representations orally, Talkline should contact Ofcom in writing in the manner described suggesting appropriate dates for a meeting.
22. **The reasons for Ofcom's decision** to give this direction under section 124(2), and to give it under the “urgent case” procedure in section 102(3), of the 2003 Act are set out in the Explanatory Statement which accompanies this Direction.

David Stewart
Director of Investigations

16 December 2005