

A Review of PhonepayPlus' Regulatory Framework

Q1: Do you agree with our view that the current Code of Practice offers sufficient flexibility to address barriers to growth in the PRS market, without reducing consumer protection?

In the view that PhonepayPlus has a process in place which allows providers to formally request exemptions of Code provisions, Docomo Digital feel that the current Code of Practice does offer sufficient flexibility and that PhonepayPlus are open to exploring alternative ideas, providing the objective of any exemption of the Code can be met by means other than by strict adherence to a Code provision.

Q2: Are there barriers to growth which exist in legislation and regulation other than the PhonepayPlus Code? Please identify them along with any arguments or evidence you have as to why a change would be desirable.

Docomo Digital feel that the current restrictions of PSD1 regarding DCB as well as lack of awareness and understanding of the network exception is limiting the potential for providers to innovate and launch new services.

In addition, looking ahead to the future and more specifically, PSD2, Docomo Digital believe the lack of clarity has harboured genuine fears amongst existing and potential stakeholders, particularly in relation to new/stricter regulatory bodies such as the FCA and the potential criminal implications in instances of a severe breach. With much greater clarity and guidance, it will help to eradicate unnecessary fears and thereby encourage growth in this sector. To minimise barriers to entry the governing legislation(s) will need to be clear as to what will apply, the order of precedence, ease of access/understanding/registering and to its best ability; avoid any overlap, conflict and confusion.

Furthermore, Docomo Digital feel that PSD2, as it is currently perceived, is too restrictive in terms of DCB and the categories it covers i.e. ticketing, transportation and parking. We believe the industry would benefit more if the categories were broader and open to more products and services. It seems nonsensical to apply regulations around the purchase of a bus ticket but not a cup of coffee.

With regards to the price caps, £50 per day & £300 per month, it is our view that rather than applying a generic provision, the limit should be set in-line with a consumer's credit limit and payment history similar to that of an overdraft or credit card. Consumers should have the flexibility to lower the limit as well as have an opportunity to increase it subject to financial checks. Docomo Digital also believe both the market and consumer would benefit more if the limit was subject to charges incurred via DCB only and not inclusive of call, SMS, MMS and data charges.

Docomo Digital are keen to understand if PhonepayPlus, whether goods or services such as ticketing fall under its remit or not, can assist in the launch of pilot schemes around DCB prior to the implementation of PSD2?

If so, we believe this will serve greatly in understanding the responsibilities and challenges which lie ahead.

Q3 – Do you agree with the Taxonomy of Risk Characteristics proposed above as objective assessment criteria? Please give reasons, including for any changes or additions you would like to propose.

Docomo Digital feel that the elements of the proposed Taxonomy are both obvious and sensible choices given the provisions and expectations outlined in the 14th Edition of the Code and accompanying guidance. At this stage, Docomo Digital have no further suggestions in terms of adding to the list but believe PhonePayPlus should be flexible in adapting it as time goes on.

Q4 – Do you agree with our proposed Risk Assessment Process? Please give reasons, including for any changes or additions you would like to propose.

On the whole, the proposed Risk Assessment, albeit vague in places at this stage, seems sensible and in-line with the proposed Taxonomy. The only concern Docomo Digital have is how long this process will take and whether it is or will remain realistic for PhonepayPlus to thoroughly review what could potentially be a high number of services.

Q5 – Do you agree with the conclusions of our application of the new Risk Assessment Process to existing Special Conditions regimes, and the proposals to remove the current regimes around Consumer Credit and Remote Gambling regimes? Please give reasons, including for any changes or additions you would like to propose.

Docomo Digital agree that it makes sense to remove Special Conditions that are already covered by other regulations relevant to the service or category, providing that the regulations ensure an equal or enhanced level of consumer protection than that of the Special Conditions being removed. If they do, then it seems sensible to remove duplication in order to reduce the regulatory burden.

Q6 – Do you agree with our proposed Exemptions process? Please give reasons, including for any changes or additions you would like to propose.

Docomo Digital broadly agrees with the proposed Exemptions process. We are of the view that to grant generic, market wide exemptions on a broad scale alone, would not be a sensible approach and would go against the very principles which underpin this project. With this in mind, Docomo Digital agree that Exemptions which are limited to individual parties is a necessity in order to encourage true innovation and growth.

However, Docomo Digital does have concerns over whether PhonepayPlus' default approach should be to consider a generic exemption based on an individual request as outlined in step 2. Docomo Digital feel that this may discourage providers to revolutionise through the introduction of new platforms, technologies and service models, in light that other providers will benefit having done very little in terms of contributing to its innovation.

Docomo Digital understand that in order for the market to grow and move forward it takes an industry wide effort to make this happen. However, we also feel that exclusivity could be granted for an extended period before making it a generic exemption or allowing other providers to take part in a pilot scheme. This is so providers who are actively taking steps to transform and grow the market have an opportunity to not only test, analyse and improve any proposed solution, but to benefit from it.

Q7 – Do you have any comments on, or suggested additions to, our list of areas where we might consider exemptions in the near future?

Rule 3.5.1 – the “30 day rule”

Docomo Digital understand the need to have such a provision in place and feel it is a required measure to prevent providers operating scam services, then quickly leaving the market. If the same objective can be met and controlled via alternative means while reducing the withhold period, then Docomo Digital would view this as a positive step in removing barriers to entry.

It is our view that for DCB to become a competitive payment method in the future it will need to follow other standard payment methods where revenue is paid within 2 to 3 days of the transaction being completed; 5 to 7 at an absolute maximum. Docomo Digital feel that any longer may deter new merchants entering the market.

Special Condition RDS3 – As relates to Recurring Donation Services

Docomo Digital agree that this would aid in lessening the regulatory burden and could be applied in instances where the sums being donated are small. However, we would suggest keeping the reminder at 3 months for larger donations where the risk of financial harm is greater.

App Stores

Although Docomo Digital agree with the removal of the Child Spending Caps we also feel that there is room for improvement in the current self-applied limit. It is our view, as it stands, that it offers too much flexibility in terms of increasing and removing the cap as well as a risk for it to be missed altogether. For example:

- How and where to set the spending cap is not immediately made clear to the consumer and could easily be missed.
- Due to misjudgement, there is a risk that a consumer could set the limit higher than what they can actually afford to pay.
- A vulnerable consumer, who due to circumstance, could make an uninformed decision to remove the spending cap altogether.

With the above in mind, Docomo Digital would suggest working to improve the self-applied limit to further decrease the risk of potential financial harm.

Level 1 provider taking responsibility for compliance with various Code provisions on behalf of Level 2 provider.

Docomo Digital believe that this would be a positive step, depending of course, on the level of responsibility that would be placed on the L1. While Docomo Digital see this as an opportunity for L1's to enhance the service they offer, and for L2's to focus more on providing quality services which serve to benefit both the consumer and the market place, it is important that it serves the purpose from which it is intended rather than resulting in a simple shift of liability.

Should self-regulation come into effect, it is important to consider what L1's can reasonably control. For example, advertising controls should be the direct responsibility of the L2 as although L1's can apply measures to capture and remove non-compliant flows, they cannot control completely how or who the L2 may choose to promote their service. We therefore feel it would be unfair to hold the L1 directly responsible should an L2 be found to be advertising inappropriately, purposely or not.

Q8 – Would a map of the digital payments regulatory landscape, setting out the intersecting remits and scope of different regulators, be of value? Please provide the rationale behind your answer.

The issue with understanding the landscape, scope and remits of different regulators may not necessarily sit with those who have been operating in the industry for an extensive period of time. However, those who are new of thinking of entering the market place may find understanding this to be a challenge and could result in them choosing not to enter the market. Docomo Digital therefore feel that a map of the regulatory landscape would be of value and would aid both new and existing providers in better understanding who is responsible for what and where certain remits overlap.

Q9 – Would a joint working group of regulators, to consider and provide a joint response to questions of regulatory overlap, be of value?

Docomo Digital see no reason why this would not be of value. It falls in-line with PhonepayPlus' aim to help and work with providers so that they can better serve the industry. Having a joint working group which reviews new business models, plans and proposals from which industry members can seek accurate and informed responses can surely only aid innovation and growth.

Docomo Digital fully support this idea and hope to see it come to fruition.

Q10 – Which regulators should we invite to take part in such a group, and why?

Docomo Digital feel the current list is sufficient and has nothing further to add.

Q11 – We would welcome any comments on the scope and approach of a joint monitoring capability

The idea of a joint monitoring initiative, in theory, is a fantastic idea and something which Docomo Digital feel is a much needed requirement. However, although Docomo Digital are supportive of the idea, it does present some immediate concerns/questions, some of which we have noted down below:

1. How will it be funded?
2. Will the initiative consist of just the MNO's, Monitoring Partners and L1's or will the scope be broader?
3. How do you plan to resource and address what could potentially be a large volume of non-compliant consumer journeys?
4. What steps will be taken to prevent rival companies purposely targeting their competition?
5. How can you ensure the legitimacy of all submissions? i.e. that screengrabs have not been altered to appear non-compliant?
6. If requested, how can you ensure submissions remain anonymous?
7. How can you ensure an equal contribution from everyone involved?