

Response to the BIS call for evidence on EU proposals on Alternative Dispute Resolution (ADR)



Table of Contents

About PhonepayPlus.....	3
General comments.....	4
Response to specific questions.....	6
Contact details	8

About PhonepayPlus

PhonepayPlus is the independent regulator of premium rate services (PRS) in the UK. These are added-value services which are charged above a standard rate to a consumer's phone bill or pre-pay account. Some current and popular examples of PRS include voting in TV shows and charitable text donations.

We regulate PRS using a Code of Practice, which is approved by Ofcom. This sets out the rules with which all providers of PRS must comply in order to provide a safe environment for consumers including children. The Code requires, amongst other things:

- Clear and accurate pricing information;
- Customers are treated fairly and equitably; and
- Complaints are resolved quickly and any redress is provided quickly and easily.

Our goal as a regulator is that everyone should be able to use PRS with absolute confidence. Where providers break our Code, we have a range of powers to investigate and address consumer harm including the ability to ban an organisation from operating a service and issue fines of up to £250,000 per breach.

We focus on pre-emption and prevention of consumer harm through closer engagement with industry and consumers and take robust action to tackle emerging risks, rather than just deal with harm after it has occurred. This approach to regulation provides for increased consumer confidence, decreasing complaint levels which are essential to support market growth and innovation.

General comments

PhonepayPlus welcomes the opportunity to respond to BIS' call for evidence on EU proposals on ADR. In our response, we wish to highlight our experience in regulating PRS, giving swift and effective protection for consumers and delivering a fair and proportionate regulatory system that allows the industry to innovate and grow.

We wish to make clear that whilst PhonepayPlus does not fall under the definition of an ADR entity, as set out in Article 4(e) of the draft ADR Directive, we do have a range of powers to resolve consumer complaints which may be considered to be comparable to those of an ADR provider in terms of effectiveness and securing the best outcomes for both consumers and providers. We also have powers to deal with structural market failures in PRS for the benefit of all consumers, and the industry, which go beyond dealing only with disputes under ADR.

Protecting consumer and complaints resolution

PhonepayPlus' Complaints Resolution Team is responsible for assessing all types of potential non-compliance and uses procedures both within and outside of our Code of Practice to quickly resolve complaints where harm is not significant, thus avoiding the need to go through a lengthy investigative process. The Team works with providers to enable them to resolve complaints directly and provide refunds to individuals.

Since 2010, during the Team's first full year of activity, we have secured redress for over 4,600 consumers and directly intervened to obtain over £30,000 in refunds. Furthermore, we were able to successfully deal with 80% of informal cases within 10 working days.

Resolving low-level consumer harm informally for the majority of consumer complaints allows PhonepayPlus to focus enforcement activity on more significant breaches of our Code.

Formal investigations and sanctions

In cases where the harm is more significant or where the provider is not co-operative in providing redress, then a formal investigation procedure can be opened. Under the formal procedure, an independent Code Compliance Panel Tribunal assess whether breaches of the Code have occurred and decides on the appropriate sanction(s) to impose. These can include, amongst others:

- The requirement to remedy the breach (by taking specific action to prevent re-occurrence of the breach and further harm);
- The requirement to refund complainants in a suitable manner including blanket refunds in particularly serious cases;
- The ability to bar an organisation from operating a service; and
- The ability to prohibit an organisation from providing or being involved in premium rate services generally.

In cases of an immediate and significant threat of consumer harm, PhonepayPlus can initiate an 'Emergency Procedure', which can result in a service being removed from the market immediately (within 48 hours), while a full, formal investigation is launched as soon as is practicable.

Those subject to PhonepayPlus adjudications (carried out by Code Compliance Panel Tribunals) ultimately have a right of appeal to a further independent body, the Independent Appeals Body (IAB).

We also have the ability (where appropriate and permitted by law) to block merchants from other EU territories operating in the UK as all transactions that currently take place in the PRS market are performed through the public switched telephone network (PSTN) and are therefore subject to regulation by PhonepayPlus. This reduces the risk that consumers will need to seek redress from a merchant which is not bound in any way by the law in their country.

PhonepayPlus has worked in the past with the police where the law has been broken and other regulators such as the Information Commissioner's Office and the Gambling Commission, to ensure that the most appropriate competent authority deals with the case, thus avoiding a 'double jeopardy' situation from arising.

Response to specific questions

We have only responded to those questions where we have relevant expertise from which to comment.

Question 3: Do you think that the “chargeback” process and/or processes used to resolve claims made under Section 75 of the Consumer Credit Act should be considered as a form of ADR? If not, do you think consumers would (or should) be more likely to use “chargeback” or make claims under Section 75 of the Consumer Credit Act where this is available, rather than using ADR to resolve a dispute? Why?

Whilst we broadly welcome the “chargeback” process, the current lower exemption cash price limit of £100 required for Section 75 of the Consumer Credit Act to apply, appears arbitrary. This is increasingly evident in terms of an emerging digital content market place where consumers are making purchases below this threshold remotely and without the ability to sample or validate the quality of the content before they pay for it.

As the digital content market grows the government may wish to consider whether there is a wider case for reform in this area to ensure consumers are adequately protected when buying digital content online.

Question 4: What do you think of the proposed scope of the Directive? Where do you think there are gaps, if any, in the provision of ADR currently in the UK? Can you provide any estimates on how much public subsidy, if any, would be required to ensure ADR of the required standards is available for all consumer disputes?

The rapid change in mobile technology, and the increasing adoption of smartphones, means that more and more consumers, including children, are using their mobile phones to purchase digital content. This form of transaction is typically and loosely defined as a micropayment, of which PRS is one, where digital content, can be purchased for a small sum of money.

Our experience of regulating PRS has taught us that innovation and technology can move faster than most consumers – or their children’s – ability to grasp the consequences of their purchase decisions. If consumers are left confused or disempowered, then this will reduce confidence in the market and stifle competition and growth.

Therefore, we believe it is essential that the government understands, in the context of these proposals, the potential risks to consumers in the fast-moving digital micropayment market

and considers whether we have the corrective regulatory framework in place to protect consumers and support growth in these new and emerging services.

For more information, contact:

Sarwar Khan, Senior Public Affairs Executive, PhonepayPlus

Email: skhan@phonepayplus.org.uk

Tel: 020 7940 7408



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February 2012