

## BIS consultation on the Implementation of the Consumer Rights Directive 2011/83/EU

9 November 2012

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## General comments

PhonepayPlus, the UK regulator of premium rate services (PRS), welcomes the BIS consultation on the implementation of the Consumer Rights Directive (CRD). This submission supplements our response to the BIS consultation on clarifying consumer law in relation to the supply of goods, services and digital content in which we set out more general comments about consumer rights and protections. A copy has been attached for information.

We support measures in the CRD to build consumer confidence and improve transparency of information including the requirement for traders to provide non-premium rate helplines for post-contract queries. These principles are broadly consistent with PhonepayPlus' Code of Practice, which is focused on delivering the best outcomes for consumers and providing clarity to industry. In our experience of regulating PRS, we believe that clear and effective consumer protection is critical to building trust in services and which in turns drives growth and innovation in the market by giving businesses the confidence to invest.

We also consider that in addition to changes to legislation, greater thought needs to be given to how consumer regulations relating to digital content and services should be enforced. Although there is an existing framework for enforcing general consumer protection, which the Government has recently reformed, our experience is that oversight and enforcement relating to digital content and services can benefit from more specialised input, given the rapid developments in technology, the evolving nature of consumer harm and the relatively low price points. We believe that our experience regulating PRS is relevant and could help to contribute to a more effective oversight and enforcement regime and would welcome further discussion on this.

## About PhonepayPlus

PhonepayPlus is the independent regulator of PRS in the UK. These are in essence added-value services that consumers can purchase by charging the cost to their phone bill or mobile pre-pay account. Some current and popular examples of PRS include voting in TV shows, directory enquiries and charitable text donations.

Under the Communications Act 2003, Ofcom has strategic responsibility and accountability for the regulation of PRS. PhonepayPlus, which has been regulating the market since its introduction in 1986, has been appointed to carry out the day-to-day regulation using a Code of Practice, which is approved by Ofcom (the Code).<sup>1</sup> The Code gives us a range of powers to investigate and address consumer harm through robust sanctions including fines for breaches of the Code, such as those who run "scams". 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.

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<sup>1</sup> Formal Framework Agreement between Ofcom and PhonepayPlus:  
[http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/Corporate/Ofcom\\_PhonepayPlus\\_Framework\\_Agreement\\_December\\_2007.pdf](http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/Corporate/Ofcom_PhonepayPlus_Framework_Agreement_December_2007.pdf)

Rather than just dealing with harm and scams after they occur, we place emphasis on pre-emption and prevention of harm by working with industry to drive up standards in the market and by taking swift action to tackle emerging risks before they set in. This approach has reduced consumer harm and increased consumer confidence in the market, which is essential for investment and growth.

There are a number of advantages to having a regulatory body that specialises in digital micropayments. First, it means we have the experience, expertise and relationships to know the market and how it is developing. This is particularly important when it comes to dealing with emerging issues such as mobile malware. Secondly, it means that we act to prevent and resolve harm even on purchases with low price points.

## **Response to questions**

The focus of our response is on the basic rate customer helpline provision.

**Q8. Do you agree with our preferred option that delivery and passing of risk, express consent for additional payments and basic rate customer helpline provisions should apply to all healthcare goods and services and social services purchased by a consumer under a contract, and to package travel and timeshare contracts?**

PhonepayPlus supports the requirement under the CRD for traders to provide non-premium rate helplines for post-contract queries. As a regulator, we believe that consumers should be able to have complaints about existing contracts resolved quickly and easily. Where premium rate services are concerned, PhonepayPlus' Code of Practice already requires the provision of a proportionate complaints process that is easily accessible through a non-premium rate telephone number and which is effectively publicised to consumers.

We would make the following points in support of this position:

- That the goals of the directive and the consultation will only be achieved if consumers are willing and able to exercise the rights that the directive gives them.
- That consumers are likely to be deterred from exercising those rights if they have to call a premium rate number to do so. This is particularly the case where purchases are of lower unit value, such as they generally are for digital content and services, as consumers are more likely in such cases simply to absorb losses without complaining.
- Whilst there may be some costs to sellers in complying with this requirement – i.e. the loss of revenue share for those sellers currently operating a premium rate number for such purposes – in our view these costs are likely to be small. The requirement in our Code of Practice for providers of premium rate services to operate a non-premium rate helpline for complaints has generally been accepted and has not been a matter of concern to the industry, even amongst smaller providers.

**Q9. Do you have any evidence or data you can give us in support of your answer to**

We do not have specific data or evidence to support the above answer. However, it is based on our regulatory experience in premium rate, where, as set out above, we already have this requirement.

We also note the following data set out in the recent BIS consultation on clarifying consumer law:

*A recent survey by Consumer Focus found that of those consumers who experienced a problem with digital content, 46.8% requested redress and 40.3% complained to the seller, whilst 9.7% did not complain but stopped using that seller and 4.5% stopped using digital content altogether, a further 9.7% did nothing (see Chart 1). The main reasons that 32% of consumers did not take action were uncertainty about how to obtain redress (60%) and the low value of the download (40%).*

This supports the point we make above, that consumers of lower value goods and services (such as digital content) are less likely to complain because the benefit versus cost of them doing so is generally more marginal. Therefore anything that reduces the cost of complaining (as this proposal does) will make it more likely that consumers will exercise their right to complain.

The Consumer Focus data also helps to illustrate the wider cost if consumers do not complain – the cost being not just their own financial loss, but a wider reluctance to engage with that seller again or even to purchase that type of service again.

**Q10. We are not aware of problems which would indicate the need to extend these provisions to excluded sectors beyond those set out above (healthcare, social services, package travel and timeshare). Do you have any comments on this or other areas, including any not addressed in the proposals?**

We would welcome further clarification on the rationale for not extending the basic rate customer helpline provision to financial services and the gambling sector. We accept the rationale for not applying the directive as a whole to these sectors, given that they are subject to specific sectoral regulatory regimes. However, we are not clear whether this argument holds for this particular provision in the directive, given that the consumers of financial and gambling services will also benefit from being able to complain on a basic rate helpline and we are not sure if the sectoral regulatory regimes referred to will deal with this specific point.

In our experience, having elements of dual regulation is not necessarily a problem, as long as the overlap provides additional value and the regulatory regimes are mutually supportive. For example, consumer credit services provided by premium rate are regulated both by the OFT (who regulate the provision of the credit) and by ourselves (who regulate the premium rate element of the service).

**Q27. Are there any other issues or areas on which you would like to comment? If so, we would welcome your views.**

Point of clarification - regulation of 087 number ranges.

With reference to paragraph 43, page 38 of the consultation document, we would like to clarify that PhonepayPlus does regulate the 0871/2/3 number ranges which came under our framework in August 2009. We do not regulate the 0843 and 0844 number ranges.

**PhonepayPlus**

**9 November 2012**