



Vodafone's Response,

**PRS Development through outcomes-focussed regulation:
a Review of PhonepayPlus' regulatory framework.**

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Executive Summary

Vodafone welcomes the opportunity of responding to PhonepayPlus' consultation on the review of the Regulatory Framework for the development of the Premium Rate Services' market.

Over the past 5 years, the Premium Rate Service market has declined by 16% (from £816m to £686m). Decline is particularly visible in "traditional" market areas, such as directory enquiry, adult services and voice Premium Rate Service. Vodafone believes that the existing situation of declining revenues and margins, and flat regulatory costs is not sustainable, and agrees with PhonepayPlus that the market for Premium Rate Services still presents opportunities for growth against which Mobile Network Operators, Level 1 and Level 2 providers have a shared interest.

To achieve an effective, outcomes-focussed regulation, Vodafone proposes the implementation of:

1. An enhanced PhonepayPlus' registration programme.

The current registration programme is no longer functional: the Premium Rate Service number checker and Shortcode information no longer suffices to monitor the state of the market and give consumers confidence on their purchase of services of a Premium nature. Vodafone believes that merchants should register each web presence or entity or brand which is live in a charge to bill environment with a from and to date. Without this change, identifying services causing consumer harm is difficult. All services should be searchable by use of search engines to either deliver websites or access to T&Cs

2. An enhanced consumer protection mechanism.

PhonepayPlus should use this information to ensure that consumer risks are prevented wherever possible and adequately controlled by a combination of:

- Payments regulation
- Communications regulation
- Approval of self-regulatory scheme rules, that is approval of the flows recognised by operators for the purchase of Premium Service, so that merchants can only deliver a user experience that ensures there is no misunderstanding of what is being agreed to.

3. Remote journey monitoring.

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PhonpayPlus should undertake a program to remotely monitor journeys for the purchase of Premium Rate Services to ensure that they comply with the Code of Practice. This would allow PhonpayPlus to have a process in place to prevent sharp practices before the latter affect consumers and businesses which ultimately bear the risks for ongoing non-compliance of a Level 2 Provider. PhonpayPlus should be able to issue warnings to all elements of the value chain and should not withhold notice of consumer harm to gather further evidence.

4. Easy access to information on Premium Service Providers' history of compliance.
Alongside implementing sufficient controls to prevent consumer harm across the industry (through remote journey monitoring), Vodafone believes that Network Operators/Level 1s should be able to access more information on providers' history of compliance (for example, through a database containing details on the Track 1 and Track 2 investigations, the Premium Rate Service Company Legal Entity and Owner) – ultimately, Network Operators are key to foster competition in the Premium Rate Services space, however the lack of information on a L1 or L2 history of compliance acts as a barrier, especially given that under PhonpayPlus 14th Code of Practice Network Operators are ultimately responsible for ensuring the clients' compliance.
5. Vodafone is disappointed that PhonpayPlus has chosen to not to follow through the logic of the taxonomy of risk which delivers a good measure of risk and higher risk services but then fails to define what could be considered to be low risk.
The basic premise of the consultation is to remove barriers to growth BUT at the same time not to give the "compliant polluters" the opportunity to create harm.
The implication is that Level 2s will push Level 1s to approach PhonpayPlus to ask for exemptions for services which are considered to be risk services whereas if the taxonomy of risk was used to identify characteristics of services where risk was controlled, large companies already making services available over other payment mechanisms, considered purchases, low cost one-off purchases, e-ticket offerings for live entertainment, low cost transport.
Further to this the ability of the Mobile Network Operators to rebut applications for the use of the new Principle based flow without support of the taxonomy of risk to give guidance is problematic.
6. Level 2 providers operating services through an app store aka the "Google exemption".
Using the so-called Google exemption, PhonpayPlus may propose to divert the regulatory risk from the "risk adverse" large brand considering entering the Premium Rate Service space, to the



Level 1. PhonepayPlus should look to craft the Google exemption so that a Level 1 can apply directly to PhonepayPlus. Furthermore, if and when a Merchant swaps L1s, there is formal process similar to swapping shortcodes, i.e. a letter of release and a letter of acceptance between Merchant and Level 1s and between Level 1s to PhonepayPlus. It is important that industry has clear guidelines on the services that stand a realistic chance of being granted an exemption

These proposals are addressed in further details in response to each question of this Consultation.

Vodafone welcomes the opportunity to discuss the content of this Consultation with PhonepayPlus in further details.



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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?

The Premium Rate Services market has changed at a fast pace over the last 30 years, constantly adapting to the development of new network, handsets' technology and digital marketing practices around it. For instance, the original fixed line, voice-based services were succeeded by text-based services which are, in turn, being overtaken by video-rich online services in the present market. In turn, size of the market has also changed significantly, reflecting the changes in service types outlined above. Whilst the market in 2015-16 was stable at an estimated £671.8 million, this followed five years during which the market had declined from £816 million down to £686 million. This decline is generally attributable to longstanding areas of the market – such as voice-based Premium Rate Services, adult, and directory enquiries – facing competition from alternatives which are either free (e.g. the facilities on most smartphones to look up numbers and addresses) or paid via credit/debit cards.

Vodafone believes that the existing situation of declining revenues and margins, and flat regulatory costs is not sustainable, and agrees with PhonepayPlus that the market for Premium Rate Services still presents significant opportunities for growth, against which Mobile Network Operators, Level 1 and Level 2 providers have a shared interest.

For example, areas of the Premium Rate Services' market such as giving, gaming, gambling, music and video content are continuing to grow strongly year-on-year. In addition, over the last year mobile operator billing grew by 55%, with expectations that a similar level of growth (51%) will be repeated in 2016-17 but it should be noted that Mobile Network Operators mandates transferring traffic from Premium SMS forms part of this growth. Whilst the UK is one of the world's leading e-commerce nations with over 23 million consumers having tried operator billing in one form or another, unfortunately growth of the Premium Rate Services' market has been offset by a number of obstacles, such as:

- Low consumer awareness and engagement – branding is weak;
- Complex payment experience driven by riskier service types;
- No standard payment product across the market – integration costs can be high;
- Complex, multi-level compliance and regulatory framework.



In light of the market structure outlined above, Vodafone understands the need for PhonepayPlus to adopt a regulatory approach which acts efficiently and effectively to prevent consumers' detriment whilst also supporting sustainable market growth.

However, whilst agreeing with PhonepayPlus' view that the current Code of Practice offers sufficient flexibility to address barriers to growth in the Premium Rate Services' market, Vodafone believes that the implementation of minimum levels of regulations may not always be fit for purpose in protecting consumers from harm. Over the last year only, PhonepayPlus carried out 25 adjudications against Premium Rate Service providers, most of them arising directly from consumers' complaints to PhonepayPlus and therefore signposting to clear evidence of consumer harm.

In the attempt of reforming the current Regulatory framework for the market of Premium Rate Services, Vodafone believes that PhonepayPlus should revisit its Code of Practice to enhance ways of protecting consumers from harm. This can be done by:

1. Revising the registration procedures.

PhonepayPlus' registration programme is no longer functional: the PRS number checker and short - code information no longer suffices to monitor the state of the market and give consumers confidence on their purchase of services of a Premium nature. Vodafone believes that merchants should register each web presence or entity brands which is live in a charge to bill environment with a from and to date.

2. Defining a low and high risk services Taxonomy.

A risk-based approach would allow industry stakeholders to streamline their own self-regulation. This is both through giving industry a clearer assessment of whether a service category is higher or lower risk, and also through the potential for Special Conditions to adopt similar, but more outcome-based, requirements to those which currently sit in self-regulation. A risk based approach would also allow PhonepayPlus to facilitate the uptake of low – risk services through, wherever suitable, the provision of exemptions, whilst implementing additional controls over higher risk services. In order to achieve this outcome, however, PhonepayPlus should clearly define high risk and low risk Premium Rate Services – something which is currently lacking from the risk Taxonomy in the Consultation.



3. Agreeing in principle with self-regulatory scheme rules (i.e. the Payforit recognised flows).
PhonepayPlus' agreement with Payforit scheme rules for the purchase of Premium Service would allow merchants to deliver a clear and transparent¹ user experience, consistent across different service types.

4. Implementing a remote journey monitoring mechanism.
Currently, the four Mobile Network Operators (MNOs) work to provide strong levels of consumer protection within the market by setting common rules for providers utilising Payforit, a joint secure payment system. Mobile Network Operators also monitor the services offered over their networks to ensure these rules are adhered to. In addition to this, PhonepayPlus has a small scale in-house monitoring facility, handles consumers' escalated complaints and uses the outcomes of in-depth investigations to carry out adjudications as and when necessary.

Vodafone recognises that each of these monitoring efforts are often to the same end – to protect consumers by ensuring compliance with recognised outcomes. Vodafone proposes that PhonepayPlus and the MNOs join their efforts in undertaking remote journey monitoring for the purchase of Premium Rate Services, to ensure that providers comply with the PhonepayPlus' Code of Practice and, where applicable, Payforit scheme rules. In practice a notice from the Regulators remote monitoring service would remove the Level 2 push back on Mobile Network Operators' cards which allows them to argue that card came from "X Mobile Network Operator" so they only correct the journey on that particular Mobile Network.

5. Protecting consumers by managing dormant subscriptions.
PhonepayPlus recognises that marketing consent degrades overtime and limits marketing to 180 days. This implies that consumers who have not responded to a marketing contact in 180 days are removed from the Premium Rate Service Provider's marketing database. Vodafone believes that PhonepayPlus should introduce a rule to reflect this principle in long term subscription services. Merchants should be obliged to record the number of times their customers engage with a service and terminate any subscription where no interaction has been recorded for 120 days from the last engagement with the service. Exemption from this rule would be crafted for services provided on an annual basis and that can prove automatic updates to the customer.

¹ For instance, Premium SMS flows which rely only on online MISDN entry box and online PIN entry box are not a sufficient mean via which MNOs can track users' engagement and consent to charge.



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.

As outlined in PhonepayPlus' Market Report, significant areas of growth for the Premium Rate Services market are:

- Specific services, such as gaming, gambling and giving.
- Operator billing and the introduction of e-Ticketing as allowed in the Payments Services Directive 2, which comes into force in 2018.

E-Ticketing is not recognised as a payment method under Payments Services Directive 1, currently into force. Vodafone believes that PhonepayPlus' role is key to influence the Financial Conduct Authority that e-tickets fall under the Limited Network Exemption under Payments Services Directive 1. The FCA's rapid acknowledgment and recognition of e-Ticketing as a payment mechanism would allow Mobile Network Operators to build a market for e-ticketing during 2016 and 2017, before Payments Services Directive 2 (and, with it, thresholds for both individual purchases and cumulative purchases across a month) is enforced.

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.

Vodafone agrees with the Taxonomy of Risk Characteristics proposed by PhonepayPlus (included, for convenience, below) as objective assessment criteria for classifying low and high risk services.

Risk Characteristic	Examples
Financial Harm	<ul style="list-style-type: none"> • High one-off cost • High cumulative cost
Passing Off	<ul style="list-style-type: none"> • Unauthorised use of trusted brands or marks • Misleading representation of trusted brands or marks • Lack of Professional Qualifications or Membership
Uninformed Consent	<ul style="list-style-type: none"> • Confusing consumer journey • Complexity of proposition • Overall presentation lacks clarity
Unauthorised Consent	<ul style="list-style-type: none"> • Lack of appropriately robust consent to charge • Lack of appropriately robust consent to data use • Inadequate technical systems lead to charge without consent
Vulnerable Groups	<ul style="list-style-type: none"> • Underage access • Lack of allowance for needs of vulnerable • Targeting of vulnerable
Unreasonable Offence	<ul style="list-style-type: none"> • Indecent – e.g. sexual • Offensive or menacing – e.g. disability, gender, race, religion, sexuality • General – e.g. pro-anorexia

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Nevertheless, Vodafone believes that the Taxonomy could be improved further by including the complexity of the payment journey amongst the risk characteristics. In fact, although the heading “confusing customer journey” is a general catch all, Vodafone has gathered significant evidence of affiliate marketers and/or merchants having introduced a greater number of steps into a consumer’s journey from first discovering an offer to completing a purchase, to obfuscate the purpose of eliciting a subscription from the customer. PhonepayPlus needs to define how many steps are required between a service being advertised and the first payment page for a customer to complete a purchase – in Vodafone’s view, any customer journey requiring more than 4 interactions is too complex. Low risk services will jump directly from a banner advert to offer page with the option to proceed to the payment pages. Risk and High Risk services will introduce multiple steps.

Further to this, the uniformed consent should specifically call out the lack of customer awareness that the customer journey will end in a phone-paid service. If the customer journey above has 10x steps before the page and not one of those pages before the payment experience has overtly acknowledged that this journey will result in a request for payment then the customer expectation has been incorrectly set.

PhonepayPlus should overtly require all marketing journeys to indicate the fact that this a phone paid service.

Where the Risk Assessment demonstrates that particular categories of service – e.g. specified content, set of promotional practices, payment or other operational mechanic – present a higher level of risk than normal, Vodafone supports PhonepayPlus in setting clear regulatory expectations to target those risks, and underline that with robust monitoring and enforcement.

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

Vodafone agrees with PhonepayPlus’ proposed Risk Assessment Process, however it believes that it can only be effective upon definition of a high risk and a low risk service. For convenience, the Risk Assessment Process has been articulated below:

- Step One - PhonepayPlus will identify risks within service category according to the Risk Taxonomy provided in answer to Question 3. If there are no risks, then the process is at an end.

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- Step Two - PhonepayPlus will evidence whether any risks is present in the service category, and to what extent. If binary risks² are present, they are automatically considered a higher risk; other risks will need to be evidenced as to whether they are “lower” or “higher” along the spectrum. Again, a definition of “low” and “high” risk services is needed.
- Step Three – PhonepayPlus must assess whether the risk is suitably controlled, either through a market-based solution or a solution undertaken as a pilot in collaboration with the regulator. If a market-based solution or pilot is reasonably likely, then PhonepayPlus would work with industry to implement this with a plan to review the benefits after a defined period of time.
- Step Four – Where risks don’t appear to be suitably controlled, PhonepayPlus would develop and consult on appropriate Special Conditions to target identified risks and undertake robust controls to monitor and minimise such risks.

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.

Vodafone agrees with PhonepayPlus’ proposal to remove the current Special Conditions regime around Consumer Credit and Remote Gambling, being this largely a duplicate of similar requirements set out by the Financial Conduct Authority and the Gambling Commission respectively. However Vodafone is surprised that PhonepayPlus intends to keep the Gambling expenditure cap in isolation. It would seem the ideal opportunity to align the Gambling cap to £45 of the other service levels in the “Notice of Specified Service Charges”.

² As per the Risk Taxonomy, some aspects of the risk characteristic will be binary, some will operate on a spectrum. For example there is either a risk that underage consumers could access content which is barred to them, or there is not. Similarly a service which offers professional advice or counselling either has properly qualified individuals to offer that advice, or it does not and automatically carries a higher risk that consumers will be given incorrect or unsuitable advice.



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

Vodafone agrees with PhonepayPlus' exemption process and invites Ofcom to clarify³ the process by which Exemptions from specific Code provisions or Special Conditions will be considered, identifying service types and risk profiles to which such exemptions could be granted.

It is important to note that, whilst exemptions are generally thought of as being granted to lower risk services in relation to dis-applying Code provisions, PhonepayPlus is also able to consider removing a service category or sub-category from the requirement to comply with an existing Special Condition, as long as there is sufficient evidence to demonstrate that the higher risk can be controlled effectively by other means.

Of course, given that the provision of exemptions is aimed at removing barriers to growth and innovation in low risk services or in any other areas where services are effectively controlled, the provision of guidance on exemptions requires a clear definition of what classifies as a low and high risk service. Vodafone invites PhonepayPlus to work with industry on the development of clear Performance Indicators (KPIs) for understanding what classifies as a low and high risk service. In absence of such definition, it would be difficult to direct Premium Rate Service providers towards the exemption and, therefore, to remove barriers to grow in low-risk, high potential areas.

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

Vodafone believes that exemptions should also be granted to Premium Rate Service providers offering e-ticketing - an emerging option for payment of services, virtual goods, and even some physical goods⁴. At present these low risk services are only rarely paid for through operator billing in the UK, however they will present a significant opportunity for growth for the market once Payment Service Directive 2 comes into force in 2018. Vodafone believes that exemptions based on defined low risk should be transparent for industry and by not publish a definition to low risk exposes PhonepayPlus and Mobile Network Operators alike to legal action from Level 2s. (Once again, Vodafone stresses the need for the Financial Conduct Authority's rapid acknowledgment and recognition of e-Ticketing as a payment mechanism under the

³ Within the Code of Practice

⁴ E-ticketing include low risk services such as transport and theatre/cinema ticketing, road tolls, car parking., (e-money licence only)



Limited Network Exemption definition - this would allow Mobile Network Operators to build a market for e-ticketing during 2016 and 2017).

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.

Vodafone recognises that, as the market for digital payment has converged, the regulatory landscape is becoming increasingly variegated and fragmented with a number of different regulators having different remits and objectives which can intersect as the market changes. Aware that the regulatory landscape will be constantly evolving according to the markets' dynamics, Vodafone would appreciate PhonepayPlus' efforts in providing industry with a high level engagement map of the digital payments' regulatory landscape.

Equally, Vodafone would welcome PhonepayPlus and other digital payment services regulators to work in tandem to ensure that regulation is carried out by the organisation best placed to do so. In taking such a proactive approach to regulation, Vodafone would welcome being regularly updated by regulators on cross-industry meetings as well as on the most relevant point of contacts which will take the lead where new service categories or mechanics lead to overlapping jurisdiction.

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

Vodafone appreciates PhonepayPlus' proactive engagement with other regulators where there are issues of overlap, or indeed potential gaps in regulation. Whilst PhonepayPlus' lead relationship is with Ofcom, Vodafone recognises the importance of PhonepayPlus' close working relationship with the ICO, ASA and FCA around issues of data protection and marketing consent, promotion, and payments security respectively. Vodafone believes that these working relationships may be improved even further through the recurrence of joint meetings with other regulators and industry to discuss how to approach issues of common interest.

In particular, Vodafone urges PhonepayPlus to hold meetings with the FCA and HM Treasury in relation to:

- The recognition of e-ticketing under the Limited Network Exemption of Payment Services Directive 1.
- The implementation of the revised European Payment Services Directive and specifically of set spending thresholds for the purchase of Premium Rate Services.

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

Vodafone would welcome PhonepayPlus' collaboration with several industry stakeholders, depending on the topics and issues under consideration. The biggest issues Vodafone is assisting to in the market for Premium Rate Services, currently are:

High level description	Issue	Industry regulators with whom a joint working group would be beneficial
Regulatory Barriers to Growth	<ul style="list-style-type: none">Lack of acknowledgement from the FCA that e-ticketing falls under the Limited Network Exemption in PSD1;Credit thresholds on PRS spending on PSD2.	PhonepayPlus could influence FCA on the importance of rapidly acknowledging e-ticketing under PSD1 and provide guidance on the implementation of spending caps required under PSD2.
Consumer Protection	Vodafone is assisting to a number of non-compliant affiliate marketers and/or merchants' journeys.	Vodafone proposes that the evidence of non-compliant advertising gathered by PhonepayPlus and Mobile Network Operators through remote journey monitoring is shared with ASA, alongside a joint plan of action to minimise any advertising which does not comply with ASA regulation.

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

At present, each Mobile Network Operator and PhonepayPlus engages in their own individual monitoring of consumers' journey for the purchase of a Premium Rate Service. PhonepayPlus has an in-house monitoring facility, whereas Mobile Network Operators (and in some cases, Level 1 payment aggregators) engage specialist monitoring companies.

Vodafone recognises that each of these monitoring efforts are to the same end – to protect consumers by ensuring compliance with recognised outcomes. Consequently, Vodafone invites PhonepayPlus to enhance its journey monitoring capability, and establish a monitoring programme auditing over 100k customer journeys per month across all networks, from which both PhonepayPlus and the Mobile Network Operators can draw consistent information on Premium Rate Service providers' compliance.

It's Vodafone belief that a joint remote monitoring capability should have three functions:

- To alert the value chain to rogue inappropriate marketing journeys so that any consumer harm is immediately stopped. (Above a notice from the Regulator concerning misleading journeys is far more powerful than from a lone Mobile Network Operator.)

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- To collect evidence for the Code Adjudication Panel, Law Enforcement agencies, as well as Mobile Network Operators so that Revenue Share payments can be promptly withdrawn in case of an Emergency procedure.
- To deliver timely intelligence to the Mobile Network Operators /Level 1 community on rising threats based on empirical evidence backed by detailed registration information.

Ultimately, defining the balance of a joint monitoring capability is essential.

- PhonepayPlus should perform the majority of the task and advise the retained Mobile Network Operators "Audit Houses" of their finds on a weekly daily basis and by this it will demonstrate to industry that Premium Rate Services are being regularly and systematically assessed to prevent consumer harm and promptly rectify any evidence of non-compliance. Vodafone does not believe that Mobile Network Operators should be relieved of their Due Diligence requirements but in code it should acknowledged that by participating in the joint monitoring program that this significantly contributes to their requirements.
- The joint monitoring should not over-look the fixed line services. From Vodafone's experience it is difficult to get the Level 1/Level 2 community in this area to take notice of cards served on services found to be non-compliant as the value-chain does not see Vodafone as a meaningful authority in this area.