



BT's response to PhonepayPlus Guidance and new Special Conditions consultation

22nd May 2015

For the attention of

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1 Executive Summary

While there is a good deal of helpful Guidance and useful Special Conditions, there are a number of areas where we wish to comment on the proposed Guidance and Special Conditions.

In terms of the process, the previous method of providing existing documents with deletions, changes and additions clearly visible is much more straightforward and easier to understand and comment on.

In relation to the proposed HRPRS Special Condition, the effect of Ofcom's NGCS changes is to remove the hidden price inflation from non-BT originators (mainly mobile) and reduce prices across the industry transparently. As such, penalising service providers when customers are paying less than pre-NGCS does not make sense.

We see no positive value and many administrative and financial hurdles in the HRPRS Special Conditions which will discourage investment in new services. As it stands, it may require existing compliant Broadcast TV competitions and other services at current pricing to come up with Bonds and unnecessary administrative and technical changes and be treated as higher risk services despite the fact that customers are paying less than they were. As such we recommend its removal.

Ofcom's 2013 Statement made their view clear that no additional measures were justified.

There may be merit in having the options to require a bond, additional message or impose a longer outpayment retention in specific cases where there is evidence of harm or intent from individual L2s, but not as a blanket requirement.

For Low cost services, we believe that in certain circumstances, the proposed conditions may lead to unintended charges, and to avoid this there should be consideration for numbers that are not advertised after the 1st July.

We have noted a number of potentially confusing or unnecessary statements and references and have stated these against the relevant questions.

We share PhonepayPlus's desires to maintain a high level of compliance and reputation and encourage investment in new services and believe that, particularly in the months following 1st July, all parties need to maintain vigilance and ensure contractual compliance rather than assuming criminality and adding unnecessary and harmful conditions.

2 BT's Responses to 3 Year Plan Questions

Guidance: Q.1 to Q.9

Q.1: Do you agree or disagree with the initial determinations set out in the above table (pages 10-12)? Please provide reasons for your response.

No Comment

Q.2: What further changes to current guidance or additional guidance do you consider necessary in future? Please provide supporting evidence for your response.

No Comment

Q.3: Do you consider the proposed alterations to guidance on DDRAC to be helpful and effective for improving compliance standards and developing appropriate procedures to meet Code obligations? Please provide some evidence in support of your response.

We believe that the revised structure is easier to follow.

Q.4: Do you consider the proposed alterations to guidance on promotions to be helpful and effective for improving compliance standards and managing advertising campaigns in keeping with the Code? Please provide some evidence in support of your response.

Our comments are:

There seems to be a contradiction in Section 3 Pricing Information, where in 3.2 '50p/min' is cited as an example of an unclear description, whilst in 3.3 '£1.50/msg' is given as an example of expressing price in 'conventional terms'.

3.5 - Bullet point 1 is inappropriate post NGCS as the promotional obligation is for the Service Charge which is consistent across all providers. This should be removed.

3.6 - As above the NGCS environment removes the cost difference for Service Charge and this reference should be removed. The data charges point is still valid.

The table of Example Wording contains an example that is not appropriate to the NGCS environment with Service Charge pricing. The examples for Broadcast should be amended to be consistent with the other examples.

Also the example wording may not be consistent with agreed Ofcom wording. This needs to be addressed.

Q.5: Do you consider the proposed alterations to guidance on complaint handling to be helpful and effective for improving compliance standards and developing appropriate procedures to meet the relevant outcome in the Code? Please provide some evidence in support of your response.

We agree with the outcomes from effective complaint handling, with the intervention of L1 or Network Operator when they are aware being seen as a last resort.

Q.6: Do you consider the proposed alterations to guidance on lower cost services to be helpful and effective for improving compliance standards and understanding our approach to regulating these services? Please provide some evidence in support of your response.

We agree overall with the changes to the guidance on lower cost service. However we have noticed that the definition of lower-cost services has not been updated to take into account the new tariff principles and maximum prices as set by the NGCS statement. In fact the proposed text of the guidance still refers to a maximum charge for 087 numbers of 10ppm which is the current maximum charge for BT customers. We therefore propose that the first line of the paragraph 'What are the key points?' is amended as follows:

Lower-cost services are those where the service charge is no more than ~~10p per minute~~ **10.83 pence per minute or 10.83 pence per call, exclusive of VAT.**

This change would allow the guidance to be fully aligned with the new pricing rules set in the revised version of the National Numbering Plan and will avoid any confusion.

In 5.3, we propose that where an 084 or 087 number has been advertised with pre-NGCS pricing or no pricing information prior to the NGCS changes, the end Customer should be permitted to continue with the service on the number for the life of the publication where the number appears e.g. on the reverse of a Bank Card or within a brochure. We propose an in call announcement which provides the callers with a new number to use, but allows the call to continue at 084/087 rates if the caller elects to continue with the first call?

In some cases – basic NGCS services to live services - it is not technically possible to provide such an announcement. If service cannot continue to be provided on such numbers for the life of the earlier promotion, the alternative would be the cost of two calls for the customer - Changed Number Announcement and the second call. We do not believe this is in the customer's interest.

We believe that 8.1, 8.6 and 8.7 are all addressing the same point and propose that they be merged to avoid confusion.

Q.7: Do you consider the proposed alterations to guidance on definitions to be helpful, in particular providing an insight into the occasions when PhonepayPlus will make a determination under paragraph 5.3.8(c)? Please provide some evidence in support of your response.

Our only comment is on the example of a Small Charity (Example Two). This seems to infer that a small organisation is in some way exempt from L2 responsibilities even though they are promoting the PRS for their own benefit. As the Small Charity is clearly the driver and beneficiary, we would suggest that PPP remove this ambiguity.

Q.8: Do you consider the proposed alterations to guidance on establishing consent to be helpful and effective for improving compliance standards and developing appropriate procedures to meet Code obligations relating to PRS charges and privacy? Please provide some evidence in support of your response.

No Comment

Q.9: Do you consider the proposed alterations to guidance on virtual chat services to be helpful and effective for improving compliance standards and developing appropriate mechanisms to meet Code obligations? Please provide some evidence in support of your response.

No comment

Special conditions: Q.10 to Q.23

Q.10: Do you agree or disagree with our assessment of prior permission regimes and the proposed options relating to the transposition of provisions into the Special conditions framework under paragraph 3.11 of the 13th Code? Please provide evidence in support of your response, as appropriate.

While there may be some merit in PhonepayPlus having the option to impose a requirement for a bond or additional message or extended outpayment period on specific L2 providers where there is here is evidence of harm or intent to cause harm, we see no benefit in the blanket application of the conditions in the HRPRS Special Condition annex and it creates administrative and financial hurdles that will discourage investment and penalise existing services. This annex should be deleted.

Q.11: Do you agree with our assessment of this service type and the proposed set of Special conditions for Broadcast PRS? If not, why? Please provide evidence in support of your response.

BPRS2 – We do not agree with the assertion that it is acceptable to be charged for calls outside open times. Our view is that such charges raised for invalid call entries or votes should be an exceptional situation.

BPR3 – We are not aware of any red button premium rate calls, so recommend that this condition is removed.

Q.12: Do you agree with the proposed amalgamation of prior permission regimes and the proposed new structure for imposing Special conditions relating to live services? If not, why?

No comment.

Q.13: Do you agree with the proposed Special conditions for live services? If not, why? Please provide evidence in support of your response.

No comment.

Q.14: Do you agree with our proposal to abolish the previous prior permission regimes and create new Special conditions encompassing all HRPRS as set out in the proposed notice? If not, why? Please provide evidence in support of your response.

We disagree with the assertion that there is intrinsically greater risk because of different pricing levels. In the 13th Code, “higher risk services” are defined in terms of “a particular category of premium rate service” and not a particular price level. The relevance of £1.53 is also highly questionable as it has been wholly superseded in the Ofcom NGCS environment and is not based on evidenced harm. Additionally, Ofcom stated in the NGCS Statement in April 2013:

2.34 We also considered options for additional consumer protection measures on these number ranges, such as pre-call announcements (‘PCAs’). We considered, however, that at the SC caps proposed, such additional measures were unlikely to be necessary.

This is reinforced by 9.100 - 9.103 in the same Ofcom document including the statement:

9.103 We maintain our view, as set out in the July 2012 consultation, that no additional measures are justified at the level of the caps of £5 per call and £3 per minute cap for 09 calls. In particular, we believe that the existing PPP requirements are effective at protecting consumers.

As to the individual conditions, we believe that:

HRPRS1 As this relates to specific types of service, it is already covered in the Special Conditions for Live Entertainment and Chat Services.

HRPRS2 Ofcom has explicitly stated it believes pre-call announcement is not necessary. We believe that a pre-call announcement as proposed would actually cause bill shock unintentionally by not providing the customer with sufficient time to guarantee that they would not be charged. DQ services and many Basic Service Customers do not have the ability to add such a message to their service.

HRPRS3 There is no evidence that this would prevent harm where there is compliant monitoring and is likely to inappropriately brand services as high risk and discourage investment. There is no equivalent for PSMS or mobile charges at the same level.

HRPRS4 This already exists for Live Entertainment and Chat Services and other categories of service.

HRPRS5 There is no evidence that a different price level merits a financial and administrative penalty on otherwise compliant services. There is no equivalent for PSMS or mobile charges at the same level.

HRPRS6 There is an existing registration requirement for Number Checker to provide service, provider and pricing information for PRS numbers.

HRPRS7 as for HRPRS6

HRPRS8 and HRPRS9 are specific to Sexual Entertainment Services and do not relate to the price level in any way.

The HRPRS Special Condition as proposed may require existing broadcast TV providers and other service providers to provide a bond for services that have been running for over 5 years at their current prices with no significant harm. Given that mobile operators will not be charging excess pricing, the customers will actually be paying less on average than they were.

PSMS services have been available for a number of years at tariffs up to £30 without, as far as we are aware, significant consumer harm. These services have been provided without the conditions PPP propose for HRPRS and we therefore do not see the evidence or justification for tariff based punitive conditions. We are concerned with the implied link between tariff and risk as we are not aware of any evidence. What we seek is a regulatory level playing field between the fixed and mobile market in terms of premium rate services and associated consumer protections.

In addition, 118 services have been operating at higher rates for a number of years without the need to define the tariff areas that they operate in as 'HRPRS' or put in place bonds, extended outpayments or pre-call announcements. This adds further weight to our view that conditions should apply to service types or specific operators on the basis of evidence and not apply to services based on tariff alone. We would suggest that the term and category of 'Higher Rate PRS' be removed from the Special Conditions and if there are any services that require additional conditions when operating at tariffs above a price threshold then those conditions should be included in the conditions applicable to that service type.

Q.15: Do you agree with our assessment of this service type and the proposed set of Special conditions for ICSS? If not, why? Please provide evidence in support of your response.

Special Condition on Information, connection, and signposting services

- The definition of ICSS refers to 'Premium rate services ... that provide connection to specific organisations, businesses and/or services located or provided in the UK'. We propose that if the caller is in the UK and the premium rate number belongs to the UK Numbering Plan, the special condition on signposting should be applied regardless of the destination of the call.
- Special Condition ICSS 1 says "*The Search Engine Marketing (SEM) should therefore display a phrase which accurately describes the true nature of the service operated and promoted using the website to which the SEM links, such as "Premium rate connection service" or "Call connection service" at the beginning of the result displayed for a Type 1 ICSS; and for example "Premium rate assistance service" or "Information assistance service" for a Type 2 ICSS.*"

The phrases "Premium rate connection service" or "Call connection service" are meaningless. We propose something along the lines "this call will be connected at a higher charge than other publicly available numbers for the same service".

Allowing alternative phrases which are less informative dilutes the intention of the regulation – callers must be properly advised of the service price before they commit.

ICSS 10 covers the collection of confidential data/information by operators who do not have any contract with the end provider. In addition to the potential breach of terms and conditions of the end provider, we believe this carries the potential for fraud and reputational risk to the PRS industry and should be barred.

The paragraph relating to personal information should be amended as follows.

~~"Providers of ICSS who intend to collect confidential data/information (e.g. login passwords, PIN numbers etc.) should also clearly inform consumers as to their intended use of such information, and make clear that by providing such information the consumer may be breaching the terms and conditions of the organisation they have a protected account with, and that the ICSS provider may then have unrestricted access to the consumer's account including, where applicable, payment details. Consumer consent should then be obtained before any confidential information is used. Providers should~~ **not seek from consumers**

confidential data/information such as login, PIN numbers, etc. as the disclosure of such information may be in breach of terms and conditions of the organization which provides a protected account to the consumer. All confidential data/information that has been legitimately collected –thereafter should not be used the information for any other purpose or on any other occasion without further consumer consent being given. As soon as the purpose for collecting the confidential information has been achieved the information should be destroyed immediately and permanently.

Q.16: Do you agree with our proposal to continue to apply all Special conditions to all ICSS, including those operating on lower cost number ranges? If not, why? Please provide evidence in support of your response.

We agree as the opportunity for consumer harm is based on the operation of the service and not to the level of charges.

Q.17: Do you agree with the proposed amalgamation of counselling advice services within the broader scope of professional services, and the Special conditions proposed in relation to this category of services? If not, why? Please provide evidence in support of your response.

No comment

Q.18: Do you agree with our assessment of this service type and the proposed set of Special conditions for Pay per view services? If not, why? Please provide evidence in support of your response.

No comment

Q.19: Do you agree with our assessment of this service type and the proposed set of Special conditions for Call TV Quiz services? If not, why? Please provide evidence in support of your response.

No comment

Q.20: Do you agree with our assessment of this service type and the proposed set of Special conditions for Remote Gambling services? If not, why? Please provide evidence in support of your response.

No comment

Q.21: Do you agree with our assessment of this service type and the proposed set of Special conditions for Subscription services? If not, why? Please provide evidence in support of your response.

No Comment

Q.22: In light of the changes to the Code, do you agree with our proposal to introduce a separate set of Special conditions for subscription services where it is a Recurring Donation service? If not, why not?

No Comment

Q.23: Do you agree with our assessment of this service type and the proposed set of Special conditions for Recurring Donation service? If not, why? Please provide evidence in support of your response.

No comment

Q.24: Do you agree with our assessment of this service type and the proposed set of Special conditions for Voice-based, Text charged services? If not, why? Please provide evidence in support of your response.

No comment

Impact Assessment: Q.25 to Q.26

Q25: Do you agree with our assessment of the impact which proposed changes to Guidance, and Special Conditions Notices, will cause? If not, why? Please provide any evidence in support of your response.

We disagree with the Impact assessment on HRPRS Special Conditions for the reasons stated above and propose it is removed.

Q26: Do you have a view as to whether any increased outpayment withhold period for Higher Rate PRS should be 45 or 60 days, or a different length? Please provide any evidence in support of your response.

We disagree with the Impact Assessment for HRPRS Special Conditions for the reasons stated above and therefore do not believe any change in the withhold period is appropriate. This is supported by Ofcom's assessment of potential risk as stated above.

There has been no requirement for this for equivalent PSMS and mobile charges and we seek a consistent environment.

There may be some merit in PhonepayPlus having the option to impose an extended outpayment period on specific L2 providers where there is here is evidence of harm or intent to cause harm, but not as a blanket imposition.

We share PhonepayPlus's desires to maintain a high level of compliance and reputation and encourage investment in new services and believe that, particularly in the months following 1st July, all parties should maintain vigilance and ensure contractual compliance rather than assuming criminality and adding unnecessary and harmful conditions.