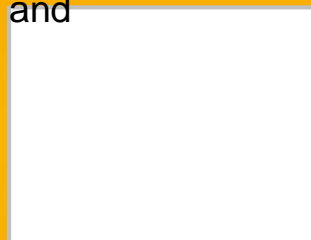




## IMImobile Europe Limited Response to PPP Guidance and Special Conditions Consultation.

**Date:** 17 June 2015  
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Dear PhonepayPlus,

IMI Mobile (Europe) Limited (“IMI”) welcome the opportunity to respond to the PhonepayPlus (“PPP”) Consultation on the 13<sup>th</sup> Code of Practice, Guidance and Special Conditions.

Thank you for the short extension provided. IMI confirm that they have participated in the industry consultation process managed by the Association of Interactive Media and Entertainment and support the more detailed points made in that associations response.

Material to the effectiveness of this regulated environment and the future of premium rate as a payment mechanism for consumers is the manner in which the drafted regulation is enforced. The inadequacy of Section 4 of the Code has been made apparent through judicial process. IMI looks forward to working with PPP in redrafting a compliant, meaningful and effective Section 4. More importantly however, IMI supports PPP in its efforts going forward to develop, implement and manage improved process. Only through consistent and credible management of the regulatory process will PPP and the industry achieve regulatory certainty, effective consumer protection and future investment in the utility that is premium rate.

IMI wishes to respond specifically in relation to the consultation question posed by PPP.

**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.**

In principal IMI agrees with initial determinations and fully support the wider strategic thinking of the matters set out in the table. In particular IMI considers that significant consideration needs to be given of the ‘Consumer refunds’ Guidance or its proposed appearance within the Investigations and Sanctions Procedure document. The ability to automate refund processes on a cross network basis is problematic. There are both technical and administrative barriers to overcome in this process. In addition there is in all cases an associated cost. The cost of manual refunds to consumers is significant and may be considered in certain scenarios disproportionate when considering broader consumer remedies.

A priority for ‘broader consultation’ must be children’s services and vulnerable consumers. It is clear that many enforcement processes are a result of inappropriate access and use of premium rate services by consumers who are children or who may be considered

'vulnerable'. Rarely is the concern one of redress, most providers respond quickly to remedy the financial loss to such consumers. However, great controversy arises where the determination of vulnerability of an individual is left to the interpretation of the PPP tribunal. This is unnecessary. Many regulators recognise and define their understanding of 'vulnerable' and such definitions should be applied consistently across consumer regulation. Further the nature of the service, its marketing environment and the intentions of the provider must be clearly defined in order to remove much of the subjectivity exercised when considering whether a service was targeted at children. Similar considerations must be given to what may be considered 'attractive' to children. The broader consideration must take into account social media environments and other media policy and regulations (for example OFCOM, broadcasting and advertising restrictions) so that providers of PRS are treated equally to other media providers. There must be certainty in the mind of the consumer and promoter as the consequences of marketing and engaging with a service in all environments.

**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.**

The addition of the '**All risks identified**' section is unhelpful and so broad as to be unworkable. PPP should provide additional information as to how it would expect Level 1 providers to go about recording and documenting a thought process that goes as far as attempting to deal with **all potential risks** when setting out a risk assessment action plan. IMI consider this to be an impossibility and PPP should not be setting impossible expectations. Such a suggestion would almost certainly be considered disproportionate regulation also.

Similarly on Page 4 and in Para. 3, the document discusses '**All risks identified**' again and discusses what is required. This has the effect of raising the current bar in relation to DDRAC process higher than the previous Guidance and does not meet the 'reasonable steps' requirement that the Code rule sets.

The Guidance appears to move from stating that providers should be identifying **all possible risks** to '**the extent of risk assessment and control being proportionate** to where the provider sits in the value chain.

In summary, this section is confusing, inconsistent and requires revision.

In addition, IMI would find it useful to have some Guidance detailing the expectations placed on Level 1 providers responding to instances of misleading consumer journeys leading to Level 2 provider's services.

In relation to the specific draft Guidance, the matter of 'whistle blowing' is now governed by legislation. It seems inappropriate for a regulator to suggest the requirement that companies 'encourage' whistle blowing. Rather it would seem more appropriate for PPP to merely state that an action plan may include an effective whistle blowing process.

**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.**

Page 3 (Para 2.6 and 2.7) – cross promoting another service within a service message and placing the words 'Advert' or Promo'. The Guidance currently permits these within "messages that carry a PRS charge".

The MNOs require that any text message promotion of a service must be free of charge; therefore if the Guidance says it can be contained within a service message then providers will fall foul of the MNOs by attempting to follow that. Therefore unless PPP will be consulting with MNOs on a rule change on their part the Guidance should keep to "free or access messages".

Page 4 (Para 3.2) - Given that £1.50/msg is acceptable, would it not now be sensible to stop ruling out 50p/min. IMI believe consumers understand that as clear cost information.

Page 4 (Para 3.4) – This paragraph is unhelpful as it expresses imprecise requirements. PRS is a payment mechanic and it is a priority that there is absolute transparency and clarity as at the point of purchase. This is the stage in the transaction process that requires most precise regulation and rule sets. Such rule sets are provided by the Code and prescriptive technical requirements of the operators (for example, PayforIt). Requirements (albeit set as best practice) for pricing at every stage multiplies the opportunities for consumer confusion, misleading promotions and vulnerability for providers. It results in unreliability and often fails to protect the consumer as the 'polluter' suffers no effective redress. PPP should look to impose absolute clarity in cost information at the point of



purchase and have mechanisms in place to enforce this and redress for the consumer where providers fail. Phrases in Guidance such as **“but not to do this would not necessarily be considered a breach of the PhonepayPlus Code of Practice”** are entirely unhelpful towards achieving regulatory certainty.

The Consumer Contracts Regulations could be cross referenced to enable Level 1 providers assist PhonepayPlus in driving improved prominence of cost information as they may dictate the clarity of information that consumers view to ensure their full knowledge of a financial commitment.

PPP is referred to the AIME detailed response in respect of further drafting points in this draft Guidance document.

**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.**

IMI's main concern regarding this Guidance document is that throughout it assumes that consumers who complain should be entitled to redress (a refund) even when they have knowingly consumed the service and the evidence overwhelmingly supports that. Many providers already give consumers refunds in an attempt to simply protect their brand image from being painted in a bad light online and this document could provide some acceptance that a refund is not always the right course of action and that it is at this point in the consumer journey that PhonepayPlus be the point of contact for the consumer. The primary emphasis should be on providing the consumer with information pertaining to the service used, the costs and where necessary complaint management and finally redress.

Paragraph 1 envisages recourse to 'an objective third party' – who is this intended to be? Can PPP please provide further clarity as to what the intention and practical implementation of this is?

Page 5 (Para 3.2 last bullet) – The Guidance document confirms that if the consumer is not satisfied with the manner in which the Level 2 provider has resolved their complaint then the Level 1 provider should get involved with a proposed resolution. Perhaps the Guidance could note that a proposed resolution may be an explanation that no refund will be possible

and their last route of contact should now be PhonepayPlus. It cannot be right that resolution is a refund in all cases.

IMI believe that the Guidance could benefit from some additional information for how MNOs should be handling calls from consumers. Consumers inevitably contact their MNO in relation to charges that appear on their phone bills. PPP have a principal role in providing specific Guidance to the MNO's as to how they should be managing such calls. This contact has a material impact on the consumer experience, the roles and responsibilities of other parties in the supply chain and the cost of and resource available to PRS customer services and regulation. It appears that the lengthy, consumer journey often starts from a lack of knowledge on the part of the MNO customer service teams handling PRS calls.

**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.**

IMI find the proposed revisions helpful. One minor amendment that could be considered is on Page 4 (Para 2.2) – PhonepayPlus could consider replacing the word 'raised' with 'considered'.

**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.**

This is a lengthy Guidance document that could benefit from being split into two separate documents "Privacy and Consent to Market" and "Consent to Charge". IMI consider that this would assist all providers within the value chain in understanding how they achieve the Code Outcome relating to 'Privacy'.

The two parts cover different aspects of the consumer interaction with a service. The Consent to Charge document could be used to tie in very closely to the Consumer Contracts Regulations and use the same language for the point when consumers purchase over the internet.

There still remains some confusion within the industry over what is a promotional text message and what is an operational service message. The Guidance could perhaps make this clear.

**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.**

The industry requires express clarification as to what services are specifically considered virtual chat services. There has been much dialogue between industry and PPP that has attempted to confirm the relevant distinctions, for example it was agreed in November 2014 that AQA services could NOT be defined as virtual chat – no written confirmation of this has however been released by PPP and the industry position remains uncertain. Similarly psychic services may exhibit certain characteristics of virtual chat.

Virtual chat requires clearer definitions– for example ‘user/consumer’ and ‘operator’ and ‘provider’ should be expressly defined in relation to virtual chat. The 12th Code currently (for example) relies on the definition of ‘operator’ falling within ‘provider’. There is no definition of ‘user’.

The Guidance notes state: *“in practice, virtual chat services will consist of messages exchanged either between two consumers, or between a consumer and an operator, and might be delivered on a variety of platforms...”*

Given the liabilities attributed to providers, who manage and control the activities of the operators, it would entirely inappropriate to consider consumers in this context to include operators. There must be clear definition of roles and the responsibilities that then stem from these roles.

In addition of course the technical operation of an AQA service is quite different to that of a virtual chat platform.

Also the age restrictions imposed on virtual chat are unnecessary for AQA services.

Shoehorning services into regulatory service definitions is not effective regulation and should not be permitted simply because different types display some similar characteristics.

Page 3 (Para 2.7) – It may be beneficial to PhonepayPlus and industry to make a small addition:

“...how operators are being trained in practice **and supervised**”. IMI’s experience suggests PhonepayPlus investigation team would not only look at training undertaken but would also expect that a Level 2 provider implements on-going checks as to how operators handle consumer expectation, specifically that they are not misleading.

IMI consider that throughout the Guidance document that jumping between the price caps of £10.22 and £8.52 didn’t make it particularly easy to understand and perhaps this could be given some consideration if it is trying to get at the same £10 cap. Current drafting is inconsistent.

Page 4 (Para 3.3) – Given the constraints on key information being presented within promotional material and the need to ensure cost prominence, IMI do not agree that the recommendation should be to include both pieces of information bullet pointed in Para 3.2. This requirement is both disproportionate and unnecessary.

Finally, IMI believe the Guidance should take the opportunity to spell out again that the use of 07 long numbers is likely to be misleading and should not be used for promoting services, particularly when reconnecting with a consumer after the £10 limit and within the one month time period that would not require a text to contain all cost information again.

IMI remains committed to working positively with PhonepayPlus to achieve increased compliance across the industry and in doing so it is hoped that the above response is well received and strongly considered when re-drafting amendments to the Guidance. Thank you again for the short extension and IMI remain available should PhonepayPlus wish to seek further input on any of the points made within this response.

Kind regards

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