



Vodafone Response to PhonepayPlus Consultation: Guidance and new Special Conditions associated with the 13th edition of the Code of Practice

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Page 1 of 16



SUMMARY

Vodafone welcomes the opportunity to comment on PhonepayPlus' consultation on the Guidance and new Special Conditions associated with the 13th edition of the Code of Practice. Vodafone generally agrees with the proposals made by PhonepayPlus in the consultation. Nevertheless, a few points have raised concerns:

- The revised guidance on complaint handling - in particular the withdrawal of the requirement for PRS services to have customer support lines. Given the volume of complaints received by PhonepayPlus in the past two financial years¹, all PRS providers should provide a customer support line. Vodafone believes the original introduction of this requirement by PhonepayPlus promoted Level 2 customer service improvements. Service providers might also be able to support customers via other means, but these should be an addition to the provision of a phone-line number and not a substitute. Customers in need of support then have the right of deciding whether to use the phone line support number provided or to make contacts by other means – the mechanism through which to direct complaints should not be solely imposed by convenience of the service provider. Furthermore, allowing customers to choose between two or more means for making a complaint would be consistent with other regulation in the Telecoms sector. Vodafone draws PhonepayPlus' attention to the Ofcom Approved Code of Practice for Complaints Handling, whereby "A CP must have in place at least two of the following three low-cost options for consumers to lodge a Complaint:

- a 'free to call' number or a phone number charged at the equivalent of a geographic call rate;
- a UK postal address; or
- an email address or internet web page form."

In order to maintain a level playing field between all parties in the PRS value chain, there is no reason, particularly in light of continued complaint volumes, to disapply the requirement for a customer support number. Offering customers two or three points of contact with PRS providers for complaints handling would, effectively, extend the established Ofcom regime across the PRS market.

- The revised Guidance and Special Conditions regulating HRPRS numbers. Specifically, PhonepayPlus is suggesting:



- A longer retention period of up to 60 days;
- Requirement to provide a free call cost message at the start of the call;
- Requirement to lodge a bond; and
- Requirement to record and store calls.

Vodafone believes that these requirements are disproportionate and will act as a barrier to entry in the market: the extension of the retention period will prevent service providers from using important cash flow and, hence, from improving their services. Vodafone also disagrees with PhonepayPlus' argument on the feasibility of providing a free call cost message. This proposal requires further engagement with all of industry to better understand the proposals and their feasibility, particularly on fixed networks. Vodafone disagrees with PhonepayPlus' proposal not to distinguish between different tariff ranges for HRPRS. There is a wide variation between the potential for consumer harm in calls under £1.50 per minute (e.g. TV voting) and those priced significantly above this level. Proportionate regulation should reflect this difference with a lighter touch regulation applying at lower price points.

- Due diligence. The proposed withdrawal of the requirement for prior permission will pressure Network operators and Level 1 providers for the enforcement of Special conditions. To facilitate compliance with these requirements,

Vodafone welcomes the opportunity given by this consultation to express its position on these subject matters and make suggestions for the revision of these points.

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ANSWERS TO QUESTIONS

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.

Vodafone agrees with the approach undertaken by PhonepayPlus in defining its future approach to pieces of existing guidance that are not covered in the consultation. In particular, Vodafone appreciates the stream-lining of regulation in the Appropriate Use of Number ranges with existing Ofcom rules. Vodafone welcomes the upcoming opportunity to comment on those pieces of guidance which will be reviewed following this consultation.

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

As delineated in the PhonepayPlus Quarterly Operational Report, in Q4 of FY 2014-15, the key drivers for the large majority of complaints (70%) are competition and quiz services. A natural conclusion is that industry and PhonepayPlus need to review the current Guidance on Competition and Other Games with Prices. Current guidelines cannot be considered effective if they are failing to prevent consumer harm.

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.

Vodafone believes that the proposed alterations to guidance on DDRAC, emphasizing the purpose of each part of the risk assessment process², help industry members to understand the implications of compliance and act accordingly. Vodafone has adopted these obligations and established formal procedures to meet the requirements described in PhonepayPlus Code of Practice. A compliance programme is in place within the company which has an independent audit process and operates a proactive cross network card system alongside Level 1 and Level 2 providers who do not observe the regulation, in conjunction with a 24/7 incident management system. This prevents consumer harm rather than reacting to it. Vodafone urges PhonepayPlus to adopt its own procedures along a more proactive monitoring model.



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.

Vodafone agrees with the PhonepayPlus guidance on PRS promotion, which is complementary with Vodafone's independent in-house monitoring system, operating a screening process on promotions and advertising campaigns run by Level 1 and Level 2 providers.

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.

Given the very high number of complaints to PhonepayPlus³, Vodafone does not agree with the proposal to make telephone support lines non mandatory for PRS providers. All PRS providers should offer, alongside a compulsory phone line number, one or two additional means for accessing support services. Similar Ofcom regulation is already in place for complaint handling and should be extended for regulating the PRS value chain. Furthermore, if PayphonePlus feels obliged to make a dispensation for app stores, it must not allow adult and competition service providers, who generate the majority of complaints, to remove their telephone line support.

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.

Vodafone agrees with PhonepayPlus' guidance on lower cost services and considers it helpful for improving compliance standards across PRS providers. Nevertheless, the definition of lower cost services in the Guidance must be revised – the guidance should refer to phone lines costing £0.13 per minute (following the NGCS unbundling) and not to services charging £0.10 per minute.

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.



Vodafone agrees with the Guidance's proposed definitions, which are aimed at addressing areas of doubt or issues relating to sharing of responsibilities across the value chain.

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.

Vodafone welcomes the clarifications PhonepayPlus has made on respecting customers' privacy and establishing valid consent to charge and/or receiving marketing material.

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.

Vodafone agrees with PhonepayPlus provisions regarding Virtual Chat services.

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.

In principle, Vodafone agrees with PhonepayPlus' assessment of prior permission regimes through which PhonepayPlus maintains high levels of consumers' protection whilst removing the need for prior permission to be obtained before launching a service. Nevertheless, Vodafone believes that some of the Special Conditions need a complete review as to their applicability; the definitions of some services are vague and need improvement and the addition of new onerous conditions will act to suppress new growth areas, without increasing consumer protection. Furthermore, Vodafone believes that PhonepayPlus should have an automated system to allow newly made services to be recorded for PhonepayPlus' reference; the cease date when services are withdrawn should be recorded too.

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.

Vodafone is aware that the current conditions on Broadcast PRS have worked effectively, helping maintaining high compliancy standards across the sector. Vodafone therefore agrees with PhonepayPlus retaining the current standards and transposing them into the Special Conditions.

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Page 6 of 16



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?

Vodafone appreciates PhonepayPlus' effort to harmonize the existing prior permissions regimes around Live Entertainment Services and Multi-Party Chat Services into one special notice. Vodafone also understands that PhonepayPlus' proposal of new Special conditions relating to live services has been designed to avoid risks of underage usage or bill shock arising from the use of adult services or chat lines. Vodafone' systems have been set out to enable appropriate enforcement activities to comply with the regulations outlined in PhonepayPlus Code of Practice.

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

Vodafone agrees with the proposals.

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.

Vodafone has reviewed PhonepayPlus' proposals in detail and is concerned that PhonepayPlus has adopted a hard-line approach against the provision of services which are not yet available in the market and for which there is no evidence of consumer harm being caused. PhonepayPlus is suggesting:

- A longer retention period of up to 60 days;
- Requirement to provide a free call cost message at the start of the call;
- Requirement to lodge a bond; and
- Requirement to record and store calls.

Taken together, Vodafone believes that these requirements are disproportionate and will act as a barrier to entry in a new market from the start, before HRPRS are made available. In particular:

- Vodafone believes that the current 30 days retention period has worked very well since its introduction. Extending it up to 60 days will prevent service providers from using important cash flow. This will obstruct PRS providers from continuously improving their existing services or developing innovative ones to bring to the market.
- Vodafone disagrees with PhonepayPlus' argument on the feasibility of providing a free call cost message. Vodafone believes that it would be really difficult to introduce this functionality in a timely

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Page 7 of 16



fashion. This will be even harder if PhonepayPlus expects single charges or tariff ranges to be specified at the beginning of a call; further complications would arise if PRS providers changed tariff from time to time. In addition, Vodafone invites PhonepayPlus to consider that some calls may be carried across multiple networks (originating, transit and terminating network) before terminating. Vodafone therefore invites PhonepayPlus to provide evidence of the detailed work undertaken to assess the feasibility of this requirement and to hold technical working groups with the industry players.

- Vodafone does not believe that the requirements to lodge a bond and to record and store calls should be applied to all HRPRS services but rather just to those service types where there is evidence of consumer harm.

Vodafone is concerned by PhonepayPlus' proposal not to distinguish between HRPRS costing less than £1.54 per minute (the pay per minute limit) and those up to £3.60 per minute (the new service charge limit set by Ofcom). Vodafone does not believe that the potential for consumer harm is the same across such a wide range of prices. Vodafone therefore invites PhonepayPlus to execute a more proportionate regulatory assessment of HRPRS, taking into account that the pay per minute limits of £1.54 have been in the market for over 15 years. Even if, when the cap was introduced, a degree of future inflationary impact was ensured, Vodafone believes that today this cap should be in the region of £2.00 to £2.20. Vodafone therefore believes that the existing regulatory requirements should be rolled out to services offered on price points up to this updated ceiling. Over and above such a ceiling, there should be a stronger case for the imposition of more stringent regulation. Vodafone therefore believes that different approaches should be taken for regulating different rate-ranges of HRPRS, rather than the "one-size-fits-all" approach proposed by PhonepayPlus.

Finally, as from July 1st the regulation on HRPRS will come into effect, there is imposing new requirements now will make meeting the deadline for implementation very challenging.

To sum up, Vodafone believes it is important to guarantee the appropriate consumer protections for HRPRS; however, this should not prevent customers from fully benefitting of HRPRS and businesses from investing in the development of existing and new type of services.

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.

Vodafone is aware that a number of customers' complaints have been raised against Prior Permission Requirements on ICSS which were misleading consumers and failing to be transparent in information

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Page 8 of 16



provision before connecting callers to the service. Vodafone agrees with PhonepayPlus' definition of factors which may harm consumers, such as ICSS' promotional content on PRS websites, ICSS websites similarity with organizations' official websites (including government departments or other public services), ... Vodafone agrees that consumers should not be misled into calling ICSS and welcomes additional measures where there is evidence of harm; however it does not believe that simply imposing prior permission requirements onto ICSS numbers will stop misleading customers. The introduction of a public directory of PhonepayPlus registered and approved ICSS providers having a voice service is therefore suggested. This should be available and easily accessible online to be a point of reference for customers who are interested in ICSS.

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Page 9 of 16



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.

Vodafone agrees with PhonepayPlus' proposal to apply all special conditions to all ICSS including those operating on lower cost number ranges. As explained in the answer to Q15, Vodafone recognizes that ICSS might be misleading because of their similarity with organizations' official websites. Given the basic requirement of pricing transparency, Vodafone believes that it should be made clearer to consumers that ICSS are PRS. As customers have the right to be informed about providers of ICSS – as discussed in the response to Q.15, the publication of a service directory enquiry publishing free alternatives to ICSS could serve for this purpose.

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.

Vodafone agrees with the proposed amalgamation of counselling advice services with the broader area of professional services as the previously had an overlapping nature. Vodafone believes that adopting a closer connection between the Special conditions for professional services and counselling services should reduce the risks associated with the quality of advice given to consumers and consumers' inability to assess this before making the purchasing decision.

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.



Vodafone understands that in a constantly growing market for PPV services, this service type needs to be reviewed and re-defined. Vodafone agrees with PhonepayPlus' proposed definition of PPV as:

"Any PRS that charges for: each static image, webpage of static images, or video footage (either a clip or segment of a narrative or complete film) or webpage of video footage, which is streamed - or otherwise viewed - through a website or other browser provided by the service for that purpose."

Vodafone recognizes that, because of the nature of this service type, customers can get a very high bill in a relatively short period of service usage. To overcome this issue, PhonepayPlus requires PPV service providers to provide specific information at the commencement of the service. Vodafone believes that PhonepayPlus should store a searchable record of sites for consumers which needs to be updated whenever a new provider enters in the market or, vice versa, when a provider stops the PPV service offer. Vodafone believes that this should be a mandatory requirement for all providers of PPV services.

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.

Vodafone appreciates that live services involving consumers' participation hold a higher risk for consumer harm. Vodafone believes that the provisions put in place by PhonepayPlus are fit for purpose for managing these risks.

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.

Although Vodafone understands concerns on the harming potential of gambling activities on vulnerable consumers, the legislation currently in place effectively supports these services in the UK market. Vodafone also agrees with PhonepayPlus' further enforcement of the Code's rules, which now require all "PRS providers and relevant individuals engaged in the provision of a service [...] <to>hold all licences, permissions and qualifications required by law."

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.

Vodafone agrees with PhonepayPlus' definition of Subscription services, covering services which cost above £4.50 in any given 7-day period. This has been further regulated by the Payforit scheme, which

implements payment mechanics covering a range of payment methods (card payments, virtual currencies or e-money solutions). Whilst the availability of payment methods has improved transparency





on key information, it has also increased customers' expectations of receiving a receipt for digital purchases; Vodafone issues an SMS receipt to all customers of Subscription services and believes that PhonepayPlus should make it a mandatory requirement. Furthermore, if PhonepayPlus wants to acknowledge an email receipt as an alternative to the SMS option (which is an indisputable audit for mobile billing), that must be because the customer has an enduring relationship with the service provider.

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?

Vodafone agrees with the proposed introduction of a separate set of Special conditions for subscription services where it is a Recurring Donation service.

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.

Vodafone agrees with PhonepayPlus definition of Recurring Donation Services as:

"Premium rate services that are solely for the purpose of donating money on a recurring basis via a premium rate text shortcode to a charity or charities registered with the Charities Commission of England, Northern Ireland, Scotland or Wales".

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.

Vodafone agrees with the assessment of Voice-based, Text charged services. Vodafone believes that PhonepayPlus' current prior permission regime effectively mitigates the risks of Voice-based, Text charged service mechanics, which involve the disassociation of PRS payments with geographic numbers and the potential for misleading promotions. Vodafone therefore agrees with maintaining the same conditions for regulating these services.

Q.25: Do you agree with our assessment of the impact which proposed changes to Guidance, and Special conditions Notices, will have? If not, why? Please provide any evidence in support of your response.

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Vodafone appreciates that the majority of proposals outlined in the Guidance and Special conditions Notices will be re-designing or re-placing existing legislation only with minimal changes. Nevertheless, amongst the recently introduced proposals, the below notes are of particular concern for Vodafone:



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Page 14 of 16



- The revised guidance on complaint handling - in particular the withdrawal of the requirement for PRS numbers to have customer support lines. Customers needing support should be able to decide which mean to use to access the information they need, rather than being constrained by the choices of PRS providers.
- The Special Conditions on HRPRS; specifically:
 - o The requirement to provide a free message upon connection to HRPRS. Implementing the required capability and to play different messages per call charge or tariff range would obstruct Network Operators in being compliant with the set requirement in a timely fashion. Vodafone also invites PhonepayPlus to consider that some calls may be carried across multiple networks (originating, transit and terminating network) before terminating.
 - o The requirement to hold outpayments for more than 30 days. This might prevent PRS providers for investing in the development and improvement of their services, which, eventually, will badly impact customers' ability to fully benefit of the service provided.
 - o The extension of the requirement to lodge a bond and store calls to all providers of HRPRS. Vodafone believes that the requirement to store calls should be restricted to certain service types as is the situation today.
- The withdrawn requirement of DDRAC in enforcing the Code. As prior permission will no longer be required, Network operators and Level 1 providers will need to carefully manage services to be compliant with the Special Conditions. To facilitate compliance with these requirements, PhonepayPlus needs to provide easy access to bulk upload of automated services.

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.

Vodafone believes that a 30 days period has worked very well since its introduction; extending the outpayment withhold period for longer than 30 days will absolutely prevent new blue chip entrants into the market and will further discourage PRS providers from making investments in the development and improvement of their products; as a consequence, customer would not be able from benefitting of constantly improving services (which are the input and output of a competitive market) either. Imposing these requirements would further obstacle HRPRS providers, which are already facing the direct competition of credit card companies (outpaying in 3 days). As Vodafone hasn't seen any evidence of

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consumer harm which relates directly to the 30 days retention period, if PhonepayPlus wishes to extend the duration of the bond Vodafone would expect to see evidence of such harm, as well as a full cost-benefit analysis.



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Page 16 of 16