

## **Action4 response Guidance and new Special conditions associated with the 13th Edition of the Code of Practice - A PhonepayPlus Consultation**

### **Introduction**

Action4 welcomes and thanks PhonepayPlus (PpP) for the opportunity to respond to its consultation entitled Guidance and new Special conditions associated with the 13th Edition of the Code of Practice - A PhonepayPlus Consultation on behalf of its members.

As a membership driven trade association representing commercial businesses operating within the non-geographic telephony sector, we are starkly aware that effective regulation is intrinsically linked to the good levels of industry and consumer trust and in turn a buoyant industry.

Our first comment in relation to the code and as to whether regulation is effective or not, is that the only real test must be if there is growth within the industry. This occurs when those that are charged to implement, interrupt and administer the code do so in a manner that is measured as to how they discharge these duties and the effects they have. Regulation must be fair and appropriate for those that consume Premium Rate Services and also for those that operate them.

Whether a system within a regulatory process is called prior permission or special conditions ultimately the effectiveness will only be seen if there is a buoyant growing industry and consumers have trust in services.

### **List of questions for consultation**

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.**

Changing how a system works without clear determination as to why and what you seek to achieve seems very much like changing for changing sake. You have not clearly defined what was ineffectual and what and why change was needed. Having personally been in the industry for 20 years I have seen much paper regulatory change. The real change will come with the regulatory authority fully understanding the industry from all angles and supporting growth within a pragmatic and sensible regulatory environment.

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

See above, anything can be written, spoken but implementation is the key much like political manifestos. Anything can be written in guidance or a manifesto but it is only in the implementation and the people who administer the regulatory regime that the key to a “good” industry is found

**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.**

In relation to due diligence and risk assessment firstly you as the regulator must recognise and appoint a body or bodies that the industry can rely on for advice in regard of compliance. It seems nonsensical that you want compliance but will not give advice yourselves nor suggest nor recommend any entity that can give advice on how to comply with DDRAC and its implementation via your code. The system is ambiguous and open to interpretation. Therefore it is easy to fail foul of. An example “**know your client**” how can I know my client if they have no trading history in this industry, should my members turn them away as a potential client? Sometimes in your code we think the words common sense and what is reasonable are lost. PpP will know of a recent case which Action4 were involved in, in regard of DDRAC, these changes would not have stopped nor helped our member’s decision. As having read these changes PpP would in that instance still failed to have given clear advise to our member in regard of ceasing the lines in the case and therefore the DDRAC changes are rhetoric in our opinion. Semantics and lip service will still not stop PpP failing to understand the industry they work within.

**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.**

Principle is great however the reality of only being able to afford to run a 3x1 advert and trying to place everything needed in that advert, indeed whether the information is in a text or a 5x1 or a TV advert there has to be a balance between the advertising or marketing message and the costing and customer information and the space and balance between the call to action and the terms and conditions. Who of you at PpP read the terms and conditions on website few of you we suspect we are humans and process what we want to. Surely instead of complex and detailed rules – we need common sense a member runs a 3x1 they should allow one third of that advert to state all the T&C’s and costing messages. Is that fair or should the rule be simply all information and costing messages should be readable and clear in portion to the advertising/marketing space available in a commercial setting.

**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.**

Customer complaints and the handling of such are clearly defined in law and perhaps as with this whole consultation on the code and special conditions should be this very simple principle. “The more complex you make a system the more complex the day to day working and administration will be”. The old system was one code with all its conditions in one place. The principle of complaint handling should be as entrenched in English Law. The consumer has the right to a fair and accurately described

“good/s” at a fair price and the right to a resolution if they feel that those good/s were poorly described or not delivered in a fit for purpose manner. Subjective and obtuse complex systems are that, if the customer did not get what they thought they should get and the SP agrees then the consumer should be re-funded by the level 2 and that is why the whole registration scheme was put in place so that the consumer’s knew who they were dealing with and could get a direct refund if needed and this was correctly asked for.

**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.**

Exceptions to how the code is operated may not ultimately help the industry or the consumer the old live multi party chat fund was bankrupted by services that operated under 10ppm. Clarity is the key to a successful industry.

**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.**

Whilst we welcome any and all attempts to have greater clarity the position as to an affiliate not holding any liability seems strange and opposed to the polluter pays principle. Ultimately it should be follow the money to establish who has sort to cause harm. We however welcome your recognition that you need to try and clearly establish the contractual position’s in 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.**

We believe that consumer privacy is paramount and but would again comment that implementation not just interpretation is the key to whether any changes will be effective.

**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.**

We again comment that implementation not just interpretation is the key to whether any changes will be effective. In terms of call warning at £10.22 how does this fit within the NCGS changes which are effective as of 1<sup>st</sup> July, dependent on the tariff the service is operated on, will change the time at which a caller has the services interrupted surely a cost warning at a number of minutes may be more effective and helpful to all parties, as long as this fits with the total call spend (spend cap) allowed. Perhaps 30 minutes would be reasonable the customer can confirm if they wish to continue by a positive affirmation either verbally or by pressing a button on their keypad. Our members advise us that many consumer feel that they are being conned

into spending more money when they are cut off and then have to phone back, they also may lose the opportunity to continue their call the people they were talking with. We are advised that callers to chat and psychic services get very annoyed when their call is interrupted so that they can receive a cost warning. We do support the termination of a call if the caller is not interacting.

**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.**

Whilst we welcome a move from any complex system and one that had an associated charge's such as prior permissions had. We comment again as per our response to question 1:- "Changing how a system works without clear determination as to why and what you seek to achieve seems very much like changing for changing sake. You have not clearly defined what was ineffectual and what and why change was needed. Having personally been in the industry for 20 years I have seen much paper regulatory change. The real change will come with the regulatory authority fully understanding the industry from all angles and supporting growth within a pragmatic and sensible regulatory environment."

**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.**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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?**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

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

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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 agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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.**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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 again raise the point of exceptions to the code such as DQ services in annexe C6. We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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.**

This amalgamation would seem simple any simplification in regard of the code and the way services and to be run and offered to ensure compliancy with the code is welcome.

**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.**

We welcome the new definition in relation to these services – we again raise the issue the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP. Also key in terms of bill shock will be the ability for the consumer to seek readdress directly from the company/entity that provided the service.

**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.**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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.**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP. We particularly welcome clarity that the consumer must have access to their spend levels.

**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.**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP. We particularly welcome more clarity in relation to consumers not being charged repeatedly by rogue operators.

**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?**

Yes we agree that there should be a separate set of special conditions for recurring donations, any further clarity for both the industry as to how operate services and for the consumer when using them is welcome.

**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.**

In light of the recent press coverage in relation to consumer being aggressively targeted by charities which will not help either the charity nor the PRS sector and therefore we believe that any further controls to ensure that consumers are genuinely donating and are clear as to why, what and when is welcomed.

**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.**

We agree that any further clarity in relation to how a service should operate is welcome but again stress the effectiveness of the changes will only be proved by implementation and operation both by the Level 2 and PpP.

**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.**

Changing how a system works without clear determination as to why and what you seek to achieve seems very much like changing for changing sake. You have not clearly defined what was ineffectual and what and why change was needed. Having personally been in the industry for 20 years I have seen much paper regulatory change. The real change will come with the regulatory authority fully understanding the industry from all angles and supporting growth within a pragmatic and sensible regulatory environment. We support the removal of costs in association with prior permission and seeking to clarify what operators should do. As always it will not be

those that try to always be compliant within the regulatory regime, that will cause the issues but those that may see the removal of a process in which the regulator is overtly made aware of the services that are intended to be operated that may cause real concern.

**Q26: Do you have a view as to whether any increased out payment 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.**

What we must bear in mind is whilst mobile services have been able to operate on higher cost pre-fixes as of 1<sup>st</sup> July so will fixed line operators. We welcome the reinforcement of clear messages in relation to cost at the front of HRPRS, one concern will be in relation to single drop charges and that the consumer will incur the full cost of the call whether they wish to continue or not. In relation to network preannouncement messages these were complex when the industry was just BT and CWC, please don't believe all you are told the capacity of either networks and CPE or the ability for joined up thinking, technically this can be done but a bit like unmetered access via red telephone boxes costing a £1 million 15 years ago, this is simply to complex a solution to crack a nut. PRS is a drop in the ocean to the revenues achieved by all major Telecom's companies in the UK.

We would not support an extension of the payment time from 45 to 60 days for the legitimate provider the extension may cause issues with cash flow and will this actually stop the preserved potential harm you are seeking to stop? We agree with your approach that those well-established operators should be viewed in a different light from new market entrants. Pragmatism and realism needs to be applied to the introduction of these new services.

## **Conclusion**

Knee jerk reactions to a Judicial Review may prove to be bolting the stable door after the horse has bolted. Our concern is that the whole process is becoming more and more about who has got the biggest lawyer/bank balance and less about whether real consumer harm has been committed. Whilst we agree that those who deliberately seek to defraud should have the book thrown at them the whole process is moving from what an ordinary level 2 can deal with and is firmly slanted to lawyers. We welcome anything that assists the process being easier and more cost effective for all. Whilst allowing real justice to be done.

We agree that all those involved in the industry must be aware of those reasonable measures to be able to operate. It is unreasonable to expect them to know every relevant law without becoming a lawyer. It is reasonable that they should have undertaken all reasonable due diligences in respect of their ability to run services. By having a complex and costly system you will stifle entrepreneurial spirit and the heavy handed approach to implementation of any rules or code may end up biting the hand that it is fed by.

Any industry that allows different rules for the few will eventually have issues, the broadcasters having met with Ofcom and got alteration to how the new costing message can be displayed in that medium is ridiculous for the consumer and unhelpful to the industry. Ambiguous rules and exemptions are unhelpful what are "network extras" this sounds a benefit not a cost you seek to protect the vulnerable and personally having had the privilege to work with this "class" of human – the rule of KISS is best. For those that do not know this anachronism – "keep it simple stupid". If the authority appointed by the secretary of state and appointed by law is c shifting that is no excuse for the regulatory

body they appoint not to kick back and define clearly what is a simple and clear message in regard of pricing for the consumer.

We are concerned in the light of the NCGS review as to what is a PRS and what and whom regulates and whilst the 2003 Act allows devolved powers to you if something looks like a duck and behaves like a PRS duck - then it most probably is a duck. A clear statement as to what is in your remit and what is not and also when you can intervene would help everyone. We fear without absolute clarity there will be more legal challenges.

As we continue to say PpP must always strive to offer effective, proportionate and best value regulation. Most of all provide effective regulation for all involved within the industry consumer, the Level one, Level two, and all involved in the value chain.