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Mr David Levitt,
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Dear David,

Spoke welcome the opportunity to respond to the current Guidance consultation process. We would like to respond with some comments on the following proposed section:

Annex B3 - Enabling Consumer Spend Control, in relation to rule 2.3.6 of the Code

Spoke manage a large number of competition and voting services, and there are several areas that concern us greatly in relation to these types of services and the possible impact of the proposed Guidance.

Q.5: Do you consider the proposed new Guidance on enabling consumer spend control to be helpful, in particular providing an insight into the requirements set out in Rule 2.3.6 of the Code?

We believe the new Guidance on enabling consumer spend control does not help for many services where promotional material is very clear and prominent, and therefore where consumers are already aware of the cost of interacting with premium rate services. The key concern is the measurement of excessive use; as it stands it has the potential to set a benchmark which is way too low and result in further technical requirements which are both costly and impractical. Please see below for further detail on this.

In summary, the proposed methods do not appear to be relevant for the types of services we manage. There are specific services mentioned as examples within the Guidance, which suggest the proposed Guidance may be more relevant to those or has been devised with those services in mind. However, in applying these proposals across the board we feel it would have a very negative effect on a number of levels – as outlined below – for services where there is little risk in the first place.

Q.6: Are the options given in the Guidance relating to methodology for identifying ‘excessive use’ suitable in offering PRS providers assistance with the development of tools that comply with Rule 2.3.6 of the Code? Please explain any concerns and provide alternative options based on your knowledge and experience.

The main sections of Annex B3 relating to this question that we would like to comment on are:

Section 2 - What constitutes an ‘excessive use’?

We accept the premise around bill shock and the need to mitigate risks to avoid this for consumers. However, we do not believe the proposed measurement of excessive use is helpful or practical.

The proposed Guidance section (2.4 and 2.5) is quite clear in advising what the benchmark should be, above which a flag is raised suggesting potential excessive use. The Guidance recommends a method using the modal average. If we understand this correctly, the mode is the most frequent occurrence in a data set. As an example, if a service has 10 votes from five users with the frequencies (number of votes per person) of 1, 2, 2, 2, 3 then the modal average is 2. If the proposed Guidance is followed then use becomes excessive if it is 50% higher than this level. In this example it would be 3, and under this method three votes would potentially be considered excessive use. We do not consider any circumstances where someone who votes 3 times as opposed to 2 is ‘excessive use’; this is someone who is merely voting very slightly more than the average. The word ‘excessive’ would seem to be more applicable if the user is voting or entering a competition maybe 50 or 100 times above the modal average, not 3, or in % terms 2500% or 5000%, not 50%.

In a recent large scale voting event, the modal value was 1 vote, which would mean that anything above 1.5 votes per person would potentially be classed as excessive use. The breakdown of categories in terms of how many times people interacted is actually much more complicated and around 40% of the total number of individual users voted above the modal average. This means that under the proposed measurement a significant proportion would be potential excessive users, which clearly suggests the measurement is not suitable. A lot of individuals interact a lot of times; this is very common and the number of people who subsequently complain regarding the cost of their calls is almost negligible.

Point 2.6 does recognise that this recommendation is flexible. However, in suggesting a very specific method to calculate a benchmark, we are concerned this will lead to a lot of uncertainty in terms of which services this applies to. It feels very unfair to recommend such a specific measurement and then state that it is flexible – the degree from which the recommended benchmark can be deviated from is completely subjective and open to interpretation.

In addition, setting the benchmark so low would mean the process of monitoring this would become very onerous, and potentially intrusive for users. If this method is used our recommendation is that this is set at least 2500% above the modal average, not 50%.

Section 3 - How to mitigate the risks associated with excessive use

On a more general note, use of the wording (3.2) in the Guidance of “PhonepayPlus would suggest...” and “...providers could implement...” and “PhonepayPlus would recommend that...” in effect makes the listed requirements mandatory; if service providers interpret that a service does not require, for example, spend warnings, it would subsequently be incredibly easy for PhonepayPlus to find a fault should an issue arise and the listed mitigating controls not be in place.

The result of what appear to be mandatory requirements means that the management of monitoring processes, and subsequent actions required which result from the low benchmarks suggested, will become increasingly and unreasonably onerous for service providers in terms of service management and technical requirements (some of which such as ceasing billing at certain levels and real-time monitoring may not be technically possible or cause network problems).

Our suggestion is to continue to be able to apply the existing types of monitoring to our services. These consist of service capping, regular reporting on interactions above a certain level for subsequent investigation, and use of platform tools such as 'repeat caller analysis' reporting on specific services where we know there will be large volume activity.

Q.7: Are the suggested means of providing information to consumers effective and does the Guidance equip PRS providers to comply with this requirement under Rule 2.3.6 of the Code?

For the reasons set out above, we feel the requirements resulting from the proposed Guidance would result in a significant increase in the need to contact consumers. Subsequently, this will mean a great deal of intrusion on users should they be contacted as a result increased monitoring of use. On the rare occasions that we have had to contact users to discuss the level of spending on services, it is often received with a negative response with the implication that we shouldn't be contacting them as they know exactly what they are doing. While we are not suggesting that this shouldn't happen (as this reaction is not always the case), by setting the level of 'excessive use' so low, it is possible this type of negative response will become normal rather than infrequent. From a data protection point of view, it feels like users should only be contacted when absolutely necessary where there is significant and obvious risk.

I hope you find these comments helpful as part of your process and we look forward to the outcome of the consultation. Please do not hesitate to contact us should you have any questions regarding our response.

Yours sincerely,

Tom Hines

Media Services Director, Spoke