

PhonepayPlus Consultation - 14th code of practice

Provided by Remote Games Limited, Eyegames Limited, Xinion Limited

Summary

Remote Games Limited, Eyegames Limited, Xinion Limited are all businesses, formed under BMCM Digital Limited.

Remote Games Limited, Eyegames Limited, Xinion Limited are all providers of phone paid services in the UK and are registered Level 2 services providers with PhonepayPlus.

BMCM Digital Limited has been involved with many PhonepayPlus meetings and workshops for many years, increasing its involvement in the last 2 years.

BMCM Digital Limited is keen to contribute its thoughts to the phone paid market, with the intention of helping create a safe and innovative market place for all parties to operate within.

BMCM Digital Limited view the changes suggested to the PhonepayPlus code of practice, to create the 14th code of practice on the whole positive and welcomes the majority of the changes suggested, but has some concerns – mostly around the removal of the current appeal process.

Contained in this document are the more detailed comments of BMCM Digital Limited addressing the specific questions PhonepayPlus raise in their consultation document.

It is understood that PhonepayPlus often invites industry to discussions on responses to consultations, in order to get more detail. If this is the case on this occasion BMCM Digital Limited would welcome the opportunity to partake in such as session.

BMCM Digital Limited Comments

Q1 – Do you agree with the proposal to set out allocation criteria at a high level within the Code?

Yes. PPP could and should introduce a concept where breach history is considered, but in a common sense manner – e.g. if ABC Ltd traded and 10 years ago had a breach, it would seem sensible to treat this as PPP would treat a “no breach history”.

Q2 – Do you agree with our proposal to consider interim measures automatically, and at an earlier stage, in all Track 2 cases?

Yes, in principle. PhonepayPlus need to be able to demonstrate reasonableness in the decisions made. Withhold of revenue can seriously effect a business, especially a small company in its short term trading ability. Equal consideration must be declared, confirming the criteria required to release the withhold, e.g. what triggers the withhold to be paid to the Level 2 provider.

Q3 – Consequent to Q2, do you agree with our proposal to remove the Emergency procedure from the Code?

Yes, assuming that the correct criteria is followed

Q4 – Do you agree with our proposal to introduce a P-CAT review of its decision to withhold revenue or suspend a service if the provider requests it?

Yes, but on a wider note, to withhold to make refunds seems logical however it feels that to use the withheld revenue to pay a fine might be unlawful. If the imposition of a fine is enough to put a company into liquidation, then it seems that standard processes should begin, whereby an administrator carves up the assets amongst all creditors.

Q5 – Do you agree with our proposal to issue a Warning Notice to providers, setting out both breaches and sanctions in advance of any P-CAT consideration, in order to allow the potential for the case to be resolved prior to a hearing?

Yes but justification for the fine needs to be included – and it is important timeframe expectations are made clear to allow for the provider to respond. A wider concern here is that that PhonepayPlus could exploit this process; a small provider might have to accept an unfairly high charge as the cost of appeal / progression is too much.

In addition, what is the process to agree the wording attached to a sanction?

Q6 – Do you agree with our proposal to establish a new decision-making panel capable of bringing independent judgement to bear, from which PhonepayPlus Board Members will be excluded?

Yes.

Q7 – Do you agree with our proposal to remove post-adjudication reviews and Oral Hearings?

No. To take a review to the next level will be a costly legal process that is not really an option for most – so it leaves the balance of power in the early stages in PPP hands. Can OFCOM provide a solution here?

PhonepayPlus should consider an providing to industry clear visibility of how PPP determine the fine size, and other sanctions; the fine should not be based purely on revenue of “service”

Q9 – Do you agree with our proposal to set out transitional arrangements that allow the new Code procedures to apply from the commencement date to all

investigations, and/or complaints or monitoring which commenced under the 13th Code?

Yes in principle but we are not sure how this can actually happen in practice.