

PhonepayPlus Code 14 Consultation Response

General comments:

IMI welcome the opportunity to respond to the PhonepayPlus consultation on the Fourteenth Code of Practice, in particular Section 4.

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1. IMI support the structural re-organisation of the enforcement process and in particular the formation of the CAP and P-CAT panels. In order to improve the confidence of the industry and broader investment community it is crucial that the regulatory enforcement offers clarity, transparency and impartiality.
2. In the selection of the CAP members it is important that individuals are appointed who:
 - a. are capable of forming an independent view;
 - b. remain capable of forming an independent view throughout the period of their employment;
 - c. have the requisite knowledge and understanding and experience of mobile payments and mobile digital services to reach an informed determination; and
 - d. continue to develop such knowledge and understanding in line with market developments and experience throughout their employment to ensure they remain capable of reaching informed determinations.
3. The narrative of the document needs amending in part to reflect that a breach of the Code is not a breach until such has been determined. In places, (for example paragraph 2.9) it may be inferred that the executive are capable of determining whether there has been a formal breach of the Code. The CAP/P-CAT members of PPP are the relevant party that make such determination unless the matter is otherwise agreed/conceded between the provider and PPP. Prior to this point the breach is a suspected, potential or alleged breach.

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

The allocation criteria, whilst broadly known to the current industry should be set out in the Code but more importantly the assessment against such criteria should be transparent, in writing and made available to all relevant providers.

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

Yes, IMI agree with the proposal to consider interim measures automatically at an earlier stage in all Track 2 cases. This will enhance consumer protection and facilitate settlement so supporting regulatory certainty and business stability.

However, IMI have a concern in relation to the suspension of business as determined by the executive and Board, albeit subject to subsequent ratification by the P-CAT. IMI appreciate the rationale stated in the document (paras 2.48 and 2.49) but consider that this system is broadly a relabeling of the Emergency Procedure. Due to the risk of reputational damage and loss of revenues, service suspensions should only be made by the P-CAT.

Additionally, the efforts made by PPP to contact the provider must be transparent and detailed in any decision making process. It should also be clear that PPP have made best efforts to contact the relevant provider, invariably the L2, (as opposed to just other providers in the supply chain – the L1 or MNO's).

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

Yes, the current Emergency procedure should be removed from the Code but see caveat in Question 2 response.

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?

IMI consider that service suspensions should be considered by a body capable of forming an independent view i.e. the P-CAT. IMI consider that decisions regarding service suspension should be made by the P-CAT (not executive and Board) unless expressly agreed by the provider.

All decisions that impact the businesses of the providers (throughout the supply chain) should be capable of having the consideration of the P-CAT, so withholding revenues should receive P-CAT review/ratification.

Withholding revenues does not, in the opinion of IMI require P-CAT prior approval as the thirty day out-payment requirement provides a time period for the provider to make representations or request P-CAT ratification.

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, subject to the caveats stated above regarding business suspension, IMI support the use of Warning Notices setting out alleged breaches and proposed sanctions. This facilitates consumer protection and encourages business continuity. The robustness of this process will be demonstrated by the genuine independence and scrutiny provided by the P-CAT of the Executive's recommendations. This cannot be a mere 'rubber stamping' exercise.

IMI is interested to understand more fully how the use of case resolution (settlement) by this means will be communicated to the industry and public. Clearly in some cases the industry may wish to learn from established precedents or experience of other providers/PPP. Can PPP confirm whether settlement and remedies reached using the Warning Notice will be broadly available or remain private between the relevant provider and PPP? If the latter is preferred, perhaps PPP will commit to providing regular Guidance updates or general notifications as to service formats/behaviours that it is managing and state remedies or requirements that may have followed as a result of this process?

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 but (as set out in general comments above):

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

There is no doubt that the current model of post-adjudication and Oral Hearings is flawed in many aspects and has proven unfit for purpose. To that extent IMI welcome their removal.

From the perspective of an L1 provider the new proposed process is welcomed and affords providers (who have strong, co-operative relationships with PPP) an iterative process enabling the opportunity for investigation, negotiation and settlement. Provided the committed transparency, independence and capability is genuinely delivered in practice the cause for appeal should be minimal.

However, it is clear that the ultimate recourse of judicial review is an inadequate route of appeal for most providers who are precluded due to the limited jurisdiction, considerable cost and length of time such process requires.

Q8 – Do you agree with our proposal to remove the current Independent Appeals Body hearing, on the grounds set out above?

See response to Q7.

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?

IMI agree that the new procedures are an improvement on current process and so should be adopted prior to formal ratification of the new Code and be applicable to current 13th Code cases.

Q10: Do you agree with our assessment of the potential impacts both on PhonepayPlus and providers?

The impact should be to streamline process and reduce adjudication/resolution timeframes.

Do you have any further information or evidence which would inform our views?