#	Respondent	General Comments	Q1: Allocation Criteria	Q2: Interim Measures	Q3: Removal of Emergency Procedure
1	AIME	1) We would like to see the practice of using complaint statistics balanced against transaction volumes and benchmarked against similar statistics for compliant services. We would expect complaint narrative that is refuted by robustly verifiable logs to be discarded. 2) There are delays and complications discussed with the establishment of jurisdiction. Some EU providers have reported raids on their premises after their country regulator received communication from PhonepayPlus. We would encourage the use of the registration database to resolve jurisdictional questions when a provider first enters the market. It may be permissible in EU law for a provider to waive their right to non-UK jurisdiction as part of the registration process.	We agree with this proposal on the understanding that the primary criteria is to resolve the apparent breaches using informal or Track 1 procedures as a priority and Track 2 in exceptional circumstances. The allocation criterion is highly subjective and requires senior management oversight to ensure correct allocation. PhonepayPlus should build a “graded measures” assessment test into its internal procedures and indicate if they have applied this test to every case.	If applied fairly, proportionally and with the default line to uphold the human rights of the entities involved, then this proposal may be more effective and will result in fewer cases needing to be reviewed by the Tribunal. However excessive fines and “double whammys” described earlier will negate this efficiency and the majority of cases will request Oral Hearing. It is vital also that small providers with limited funding should not be forced to accept an interim measure just to escape the potential cost of an Oral hearing. We note that a proposal has been made to allow the provider to lodge a bond with PhonepayPlus as a substitute for the surety of a network withhold so that the providers cash-flow remains unaffected during a Track 2. We cannot see reference to this in Part 4 of Code 14.	We note that the Emergency Procedure (discussed at 2.6) will be replaced with a CAT decision on service suspension based on a recommendation from the executive and board. This is largely identical to the EP. The name is changed (which is more important than it might seem). Attempts will be made to contact the provider … in most circumstances. However, the CAT can still suspend a service concerned even when the provider has already taken corrective steps to mitigate the identified consumer harm. And, the scope of suspensions may be too broad. For example, if the promotion of a service warrants suspension, but there is no evidence to suggest that an existing subscriber base is affected, how will PPP ensure that legitimately gained business remains unaffected?
2	BMCM	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.	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”.	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.	Yes, assuming that the correct criteria is followed
3	Buongiorno		Agree. Setting out allocation criteria at a high level will essentially mean that the criteria already used for track allocation will be documented. This will help to ensure that there is more clarity, certainty and consistency in how track allocation decisions are made.	Agree. Since network operators can only retain revenue for 30 days and breach letters that need to be issued in order for interim measures to be granted (such as withholding payment) often take longer than 30 days, there needs to be a procedure in place to ensure that providers aren’t able to receive pay and then later avoid accountability for their actions. This change would ensure that a greater level of accountability is able to be reached at an earlier stage for providers who may otherwise take advantage of such a situation.	Agree. Being that one of the recommendations made following the review related to ensuring greater transparency and certainty, removing the Emergency procedure would definitely provide more certainty in regards to how the process should work. It would also help in simplifying the process as the changes to the Track 2 procedure will essentially remove the need for the Emergency procedure.

#	Respondent	General Comments	Q1: Allocation Criteria	Q2: Interim Measures	Q3: Removal of Emergency Procedure
4	IMImobile	1) In the selection of the CAP members it is important that individuals are appointed who: a) are capable of forming an independent view b) b. remain capable of forming an independent view throughout the period of their employment c) c. have the requisite knowledge and understanding and experience of mobile payments and mobile digital services to reach an informed determination; and d) 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. 2) 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.	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.	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).	Yes, the current Emergency procedure should be removed from the Code but see caveat in Question 2 response.
5	ITV	In response to the consultation, ITV is responding only to Question 8			

#	Respondent	General Comments	Q1: Allocation Criteria	Q2: Interim Measures	Q3: Removal of Emergency Procedure
6	UKCTA	We welcome the opportunity to comment briefly on the proposed 14th code of practice. Overall we support PhonepayPlus in reviewing the investigation and adjudication procedures with a view to improving independence of controls, transparency, fairness, proportionality and consistency. The proposed, more streamlined investigation and adjudication process should reasonably result in improved investigative efficiency and a reduction in costs.			
7	Vodafone	Whilst agreeing with the majority of the proposed changes to PhonepayPlus' 14th Code of Practice, Vodafone believes that the interests of parties having a business relationship with the investigated provider should be embedded in the investigations and adjudications procedures proposed in the Code. Specifically, Vodafone believes that all parties along the Value Chain which have a business relationship with the investigated providers should be informed promptly of the seriousness of breaches, the level of consumer harm caused, and the interim measures which PhonepayPlus is planning to implement.	At present, the criteria to support the PhonepayPlus Executive team in allocating complaints to either a Track 1 or a Track 2 investigation are not documented. Whilst the PhonepayPlus Executive team bases its decisions on consistent criteria, Vodafone supports PhonepayPlus decision to formally document the factors on which a case is allocated to a Track 1 or Track 2 investigation procedure. Vodafone agrees with the allocation criteria defined by PhonepayPlus. Nevertheless, as the withdrawal of the requirement for prior permission and the alterations to guidance on DDRAC imposed by the amendments of the 13th Code of Practice emphasize the importance for all parties along the Value Chain and in particular Network Operators and Level 1 providers to have a robust risk assessment process, Vodafone believes that the grounds on which complaints are allocated to a Track 1 or a Track 2 procedure should be communicated to all players in the Value Chain having a commercial relationship with the investigated party. This would help industry members to understand the implications of compliance and act accordingly.	Vodafone agrees with PhonepayPlus' proposal to build an automatic consideration of whether a suspension is necessary into each Track 2 investigation, rather than in the Emergency Procedure. Vodafone understands the general criteria for the internal panel of senior executives and PhonepayPlus Board members making an initial recommendation as to whether to suspend a service, and to give the possibility to providers to agree to the recommended suspension or seek to negotiate alternative suspension terms. Nevertheless, Vodafone believes that not only the investigated provider but also all parties dealing with such provider in the Value Chain should be informed by the Investigations team of the initial findings and level of breaches caused by the provider. Vodafone also believes that organisations contracting with the investigated party should be informed of PhonepayPlus' recommendation to suspend a service as soon as possible throughout the process. This would help Network Operators and Level 1 providers to pay or withhold Revenue Share from the Level 2 operator, on the basis of the seriousness of the breach and, in general, it would raise a greater possibility of ensuring that there are funds available for consumer redress where a P-CAT determines a breach.	Vodafone agrees with PhonepayPlus' proposal to remove the Emergency Procedure from the investigations, adjudications and appeals procedures contained within the 14th Code of Practice, as long as Interim Measures, suspensions and withdrawals are considered at an early stage within all Track 2 Investigations, and Network Operators and Level 1 providers are promptly informed of the recommendations made by the Investigation team. This would reduce the risk that a provider would transfer monies beyond reach or receive an imminent, sizeable out-payment in respect of a service under investigation and raise a greater possibility of ensuring that there are funds available for consumer redress where a P-CAT determines a breach.

#	Respondent	Q4: PCAT Review of Witholds & Suspentions	Q5: Warning Notices	Q6: Independent Decision Making Panel	Q7: Removal of Appeals & Oral Hearings
1	AIME	Barring situations where immediate action is necessary, we expect a case that is presented to the CAT for suspension to include details of the efforts made to contact the provider and if not sufficient (best endeavours), then we would expect the CAT to reject the service suspension. We would also like to see a procedure that prevents suspensions from being issued late on a Friday without a support structure to quickly reverse decisions that would have otherwise been available during working days. The process detailed at 2.9 allows a downgrade of a Track 2 to a Track 1 or even cancellation of investigation if the situation allows, usually through new information becoming available. We would like to see the procedure also releasing any withholds and suspensions automatically without the necessity for the provider to seek this. We do not agree with the name P-CAT in particular as it is never used in the Code and also gives the impression of PhonepayPlus influence over it. We do agree with the need to provide a review process, but we have identified an area where the independence of one Tribunal from another is compromised.	Subject to our concerns around forcing a provider to accept the Warning Notice as they may be unable to fund an Oral hearing, we believe that this can create operational and economic efficiencies. Our concerns will need assessment after a few months of real-life implementation and as such, we propose a six monthly review at ILP for the first two years and then annually.	We fully support the concept of an independent panel and believe there are other factors that will provide the comfort of independence to the industry. Independence of one tribunal from another, independence of influence from PhonepayPlus executive, documentation of all conversations regarding a case is essential and the ability for provider's information that will be, by necessity, routed through the executive to be passed without alteration to the Tribunal members – ideally passed by the provider directly to the Tribunal. We also believe that the Tribunal will need to be able to access relevant expertise on a particular matter to ensure that a provider is never compromised by inaccurate assessment of complex operating environments. We would encourage CAP and CAT as the two acronyms but also note that "CAT" is not used in the Code Part 4 wording. The proposed CAP does not contain any members of the PPP Board (or executive) which will aid the perception of independence of each CAT formation. We expect that the process will be also refined to ensure that any review of a CAT decision is performed by different members of the CAP and that in each CAT there will be at least one legally qualified person.	We believe that a mechanism for review must remain and have proposed two potential methods. In the case of a CAT finding that is incorrect due to an error of law, an error of fact or material flaws in the arguments provided, but the provider does not wish, or cannot afford, to take the case to a Judicial Review, we would like to see some mechanism for the provider, industry or PPP to review the case with the aim of overturning errors that can be proven, without recourse to the expense of a legal challenge. We suggest one of the following potential solutions. A) A provider (or a member of the ILP) can lay out their case for a review and the complete CAP performs both a regular assessment of all cases and a detailed assessment of the providers / ILP review request. If the complete CAP approves a review, the case is heard fresh by a differently formed CAT. This CAT can overturn some or all of the previous adjudication. B) A board member can be asked by the provider or by any member of the ILP to review a particular adjudication and if that board member agrees that an error may have occurred, then the provider is granted a case review together with the Board members findings. C)
2	BMCM	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.	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?	Yes.	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"
3	Buongiorno	Agree. Should new information come to light, B! is in support of providers having the ability to challenge any decisions relating to withholding payment or suspension. This is especially due to the severe detriment and/or irreparable damage that providers can suffer when such decisions are wrongly made.	Agree. Would mean more opportunity for settlement and more clarity on what the issue is/extent of it at an early stage. Discussions can take place before any binding decision is made which will encourage co-operation.	Agree. As this proposal stems from the concern that it is not fair for appeals to be heard by the same body that initially heard the original matter, this would be a good idea. It would help to give providers more confidence in the appeals process and greater assurance that decisions are being made in a fairer manner and not derived from pre-conceived opinions.	Agree. Removal of the post-adjudication and Oral Hearings would simplify the process and make it more efficient. However, the benefits of having both options will still be maintained – oral representations can still be made.

#	Respondent	Q4: PCAT Review of Witholds & Suspentions	Q5: Warning Notices	Q6: Independent Decision Making Panel	Q7: Removal of Appeals & Oral Hearings
4	IMImobile	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.	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?	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; and c. have the requisite knowledge and understanding and experience of mobile payments and mobile digital services to reach an informed determination; 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.	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.
5	ITV				

#	Respondent	Q4: PCAT Review of Witholds & Suspentions	Q5: Warning Notices	Q6: Independent Decision Making Panel	Q7: Removal of Appeals & Oral Hearings
6	UKCTA	All parties in the PRS value chain who have a business relationship with the investigated provider therefore have a legitimate interest to be informed promptly of the seriousness of the breach, the level of consumer harm allegedly caused, and the interim measures which PhonepayPlus is planning to implement. This would also reduce the risk that a provider transfers monies beyond reach or receive an imminent, sizeable out-payment in respect of a service under investigation. It would also increase the chance that there are funds available for consumer redress where PPP concludes that a breach of the code of practice has occurred.	We do believe that the interests of all parties having a business relationship with the investigated provider should be embedded in the proposed revisions to the investigation and adjudication procedure. The concern is that the recent withdrawal of the prior permission requirement coupled with the changes to the due diligence guidance have exposed network operators and level 1 providers to greater liability for any breaches by level 2 providers.		
7	Vodafone	Vodafone believes that decisions around withholds should be subject to the same level of robustness as decisions around suspensions. Consequently, as per Vodafone's explanation in response to Question 2 of this Consultation, Vodafone believes that all parties dealing with the investigated provider in the Value Chain should be promptly informed of any decision made by PhonepayPlus' Internal panel of Senior Executives and Board Members around withholds at the same time in which the investigated provider is able to agree to a recommended withhold or seek to negotiate an alternative withhold level. Should the investigated provider challenge the initial decision to withhold the service, Vodafone agrees with PhonepayPlus' proposal of delegating to the P-CAT the decision of reviewing the proposed withhold notice. Nonetheless, in circumstances where there are important public interest reasons why it is necessary to suspend a service, and/or withhold revenue without any delay, Vodafone strongly believes that the P-CAT should approve a 'without notice' suspension or issue an immediate without notice withhold. This is particularly important when the breach results in a serious level of consumer harm, or if there is a real risk that a provider would transfer monies beyond reach or receive a payment in respect of a service under investigation.	Vodafone understands PhonepayPlus' rationale for building a process which allows the investigated party to settle breaches at an early stage of an investigation, without recourse to Tribunal hearing. Vodafone agrees with PhonepayPlus' proposal to increase transparency throughout the investigation process, allowing providers to be able to discuss individual breaches and/or sanctions once a Warning Notice is issued, but prior to any consideration by a P-CAT. This would allow providers to make a fully informed decision on whether to accept, challenge, or seek a settlement in respect of each of the recommended breaches and sanctions in respect of the case.	Vodafone agrees with PhonepayPlus' proposal to establish a new body (the Code Adjudication Panel, or "CAP") from which members of individual decision-making Tribunals (P-CATs) will be drawn, so that investigated parties can be represented by a decision making panel which retains the right mix of commercial, technical, consumer-based, legal and adjudicatory expertise, whilst being independent from both PhonepayPlus and the PRS providers.	Vodafone supports PhonepayPlus' proposal to simplify appeals, removing the current post-adjudication review, oral hearing, and IAB Appeal Hearing, leaving the P-CAT hearing and decision as the final stage in the investigation process before a provider can proceed to a judicial review.

#	Respondent	Q8: Removal of IAB	Q9: Immediate Commencement of Code 14	Q10: Impact Assessment
1	AIME	The current Independent Appeals Body hearing does not provide the level of recourse that a provider may be seeking and is inexperienced. As such it is ineffective and the process was criticised in the JR. We believe however that a review process must be in place that can overturn an incorrect decision by the tribunal and provide damages without necessity for litigation. We are very concerned as discussed above about the lack of an independent review process after a Tribunal decision or the ability to re-open a case if there was sufficient concern whether justice had been applied correctly, proportionally or fairly.	We believe that the providers who potentially will be put through the new procedure should be given the choice. It is not the gift of industry to determine the process that an individual provider will go through. Under current (estimated) case load, it should not take much time to finalise cases being built under Code 13.	
2	BMCM		Yes in principle but we are not sure how this can actually happen in practice.	
3	Buongiorno	Agree. Since the IAB is rarely used (not since 2011) B! supports this decision. In order to make processes simpler, it is necessary to remove steps which are no longer needed and provide little or no added benefit such as this.	Agree that this would provide a much greater benefit to providers as the processes will be more simplified and effective.	Agree. Although there may be additional administrative costs (as outlined) in relation to the introduction of Warning notices, the fact that this could lead to early settlement would in fact save providers costs in the long run.

#	Respondent	Q8: Removal of IAB	Q9: Immediate Commencement of Code 14	Q10: Impact Assessment
4	IMImobile	See response to Q7.	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.	The impact should be to streamline process and reduce adjudication/resolution timeframes.
5	ITV	of appeal against findings of the Tribunal so that providers are not forced to commence potentially unnecessary and expensive judicial review proceedings in order to have a finding reviewed. It is entirely possible for the Tribunal to make a mistake or for new evidence to come to light, and it is entirely proper for a regulator to cater for that eventuality (and having a fit-for-purpose appeals mechanism does not imply any lack of faith in the original Tribunal). In the consultation document PhonepayPlus accepts that having an appeal route offers a cost effective opportunity to challenge the process which preceded it. The fact that the existing IAB route has not been used since 2011 does not support the view that there should be no avenue of appeal; it simply suggests that the IAB was not the ideal form for the appeals process to take. Replacing the IAB with an alternative appeals route which has cross-industry support strikes us as the obvious course of action.		

#	Respondent	Q8: Removal of IAB	Q9: Immediate Commencement of Code 14	Q10: Impact Assessment
6	UKCTA			
7	Vodafone	Vodafone agrees with PhonepayPlus' decision to simplify the investigation and adjudication procedures by removing the current Independent Appeals Body (IAB) hearing from the process which, in fact, has not been used since 2011. Vodafone believes that this would improve efficiency and reduce costs involved in the process. In addition, the proposed process would also build in greater robustness and give providers greater opportunity for discussion with the Executive prior to a P-CAT hearing. In addition the provider will be able to make oral representations during any P-CAT consideration.	Vodafone agrees with PhonepayPlus' proposal to set out transitional arrangements which will allow the 14th Code of Practice and associated procedures to apply retrospectively to all existing complaints and investigations, including all breaches raised under the 13th Code. Vodafone believes that this would allow dealing with ongoing investigations following a simpler and more robust process, based on increased fairness and simplicity thanks to greater separation between those involved in the investigation the decision makers.	Vodafone agrees with PhonepayPlus' assessment of the qualitative benefits derived from the proposed process.Vodafone believes that a formal definition of the criteria via which complaints are allocated to a Track 1 or Track 2 investigation would increase transparency throughout the investigation process, and allow Network operators and Level 1 providers to assess future clients' history of compliance, having a clearer understanding of the level of consumer harm and the seriousness of breaches that a client might have caused. This is key under the revised DDRAC regulation from PhonepayPlus' 13th Code of Practice where, as prior permission is no longer required, Network operators and Level 1 providers will need to carefully manage services to be compliant with the Special Conditions. Furthermore, the alterations to guidance on DDRAC, emphasizing the purpose of each part of the risk assessment process, also prompt Network Operators and L1providers to work with industry members to understand the implications of compliance and act accordingly. A clearer definition of the criteria via which PhonepayPlus identifies and defines the seriousness of breaches will facilitate the industry in better understanding the implications of compliance.Vodafone agrees with PhonepayPlus' proposal to offer an opportunity for providers to settle a Track 2 investigation by agreement; this would increase the simplicity and efficiency of the investigation and adjudication process. Similarly, issuing a Warning Notice is expected to lead to a reduction in the number of overall cases going forward to a P-CAT hearing and therefore to an overall reduction in the length of the investigation and adjudication process. Vodafone agrees with the proposal of removing the Emergency Procedures, and replace them instead with the possibility of adopting interim measures for a small number of Track 2 cases, being implemented earlier in the process than is currently the case. Nevertheless, Vodafone believes that all parties along the Value Chain which have a business relationship with the investigated providers should be informed promptly of the seriousness of breaches, the level of consumer harm caused and the interim measures which PhonepayPlus is planning to implement. This would reduce the risk that a provider would transfer monies beyond reach or receive an imminent, sizeable out-payment in respect of a service under investigation and raise a greater possibility of ensuring that there are funds available for consumer redress where a P-CAT determines a breach.