



Vodafone's Response,

**The Fourteenth Edition of the Code of Practice
A PhonepayPlus Consultation**

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Executive Summary

Vodafone welcomes the opportunity of commenting on Part 4 of PhonepayPlus Code of Practice, and specifically the investigations, adjudications and appeals procedures contained within it.

Vodafone supports PhonepayPlus in reviewing the investigation and adjudication procedures on the grounds of improved independence of controls, transparency, fairness, proportionality and consistency. Vodafone also believes that the proposed, more streamlined investigation and adjudication process might result in improving the efficiency and cost effectiveness of the investigations carried out by PhonepayPlus, reducing the complexity and the number of steps involved in the current process.

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. This would be key for the ongoing development of the robust risk assessment process followed by Network Operators and Level 1 providers, following 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. This would also facilitate Network Operators and Level 1 providers in clearly assessing prospect clients' history of compliance.

Furthermore, a transparent flow of information across the companies which, in the Value Chain, have a business relationship with the investigated party 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. It would also raise a greater possibility of ensuring that there are funds available for consumer redress where a P-CAT determines a breach.



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

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:

- The level of harm caused by the apparent breaches;
- Whether the apparent breaches have caused offence to the general public (this criteria, however, seems too broad and Vodafone would require PhonepayPlus to clarify it further);
- The seriousness of the breach;
- Whether the provider has taken effective steps to remedy any consumer harm and ensure that the service does not have potential to cause any such harm or offence;
- The breach history of the party under investigation;
- Whether the apparent breach is of a nature that can be addressed through any given enforcement procedure.

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.

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

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

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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.

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

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.

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?

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

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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.

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?

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.

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?

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.

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

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.



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

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.

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?

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.

Q10 – Do you agree with our assessment of the potential impacts both on PhonepayPlus and providers? Do you have any further information or evidence which would inform our views?

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 L1

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providers 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.