

Improving the consumer landscape & switching – Call for evidence

Response from PhonepayPlus

Date: 04 July 2016

Table of Contents

About PhonepayPlus.....	3
General comments.....	4
Response to specific questions.....	4
Contact details	6

About PhonepayPlus

PhonepayPlus is the independent regulator of premium rate services (PRS) in the UK. These are added-value services which are charged above a standard rate to a consumer's phone bill or pre-pay account. Some popular examples of PRS include voting in TV shows and charitable text donations, but increasingly PRS is a payment option for downloading or accessing apps and other digital content which can also be paid for by other means. Our vision is that anyone can use PRS with absolute confidence in a healthy and innovative market.

We regulate PRS using a Code of Practice¹, which is approved by Ofcom. This sets out key *outcomes* sought by consumers and the rules with which all providers of PRS must comply in order to provide a safe environment for consumers, and also takes into account consumer vulnerabilities. The Code requires, amongst other things:

- Clear and accurate information about cost, and any other factors likely to be key to a consumer decision to purchase;
- Consumers are treated fairly and equitably, and not misled in any way by the promotion or operation of a service;
- Consumers' privacy is respected, and their details are only used for marketing with informed consent
- Complaints are resolved quickly and any redress is provided quickly and easily.

Where providers breach our Code, we have a range of powers to investigate and address consumer harm including the ability to ban an organisation from operating a service and issue fines of up to £250,000 per breach in the most serious cases. However we focus on prevention and prevention of consumer harm through closer engagement with industry and consumers and take robust action to tackle emerging risks, rather than just deal with harm after it has occurred.

¹ Please note that we are in the process of launching a new PhonepayPlus Code of Practice (14th edition) on 12 July 2016. The current Code of Practice (13th edition) is available on our website here, where it will be replaced when the new Code comes into force: <http://www.phonepayplus.org.uk/business/code-of-practice>

General comments

PhonepayPlus considers that the Government aims and objectives set out in the BIS call for evidence paper are clear and helpful. We agree that competition within market sectors establishes *fairness* for consumers – one of our six *outcomes* set out in the Code of Practice². We also agree that consumers benefit when equipped with knowledge and the ability to understand their consumer rights, hence *transparency and pricing* is another key outcome in the Code.

We welcome the opportunity to consider the problems facing consumer engagement, with our focus being on the telecommunications sector. Our response explores the following needs:

1. Effective consumer advice at the point at which it is sought by consumers;
2. Consideration of research opportunities into consumer perceptions and engagement with services with the purpose of strengthening consumer advocacy;
3. Further incentives to address low take-up of ADR schemes within those parts of the telecommunications sector that are not mandated to sign up;
4. Better information for consumers to assist when making claims for redress, and the ability of regulators to order refunds where appropriate following enforcement activities in response to market issues.

Response to specific questions

We have only responded to those questions where we have a firm view, and the relevant expertise from which to form that view:

Answer to questions 1 & 2: *Are there problems with the current provision and routes to advice and information for consumers in these sectors? If so, what are these problems and how can provision be improved?*

PhonepayPlus considers that there is some evidence of problems. Complexity in the telecommunications market and the rapid advances in technology mean that new services are frequently entering the market. This means consumers use services provided in a variety of ways while the point of access is the same – for example, the smartphone or connected device, such as a tablet or smart TV.

Our experience is that consumers often lack awareness that companies other than their phone provider can charge them for services through their phone bills. This low brand awareness can lead to consumers approaching their phone providers for information and

² The six outcomes are *Legality, Transparency and Pricing, Fairness, Privacy, Avoidance of Harm, and Complaint Handling*, which are set out in Part Two of the Code of Practice – see link above in Footnote 1.

help relating to third party services. The phone providers need to have good information about the services being provided and to train their customer care teams sufficiently for them to be able to provide effective assistance to consumers. Our experience is that the performance of phone providers is variable in this respect.

PhonepayPlus requires premium rate service (PRS) providers to register themselves and their services. This information is then used to populate our Number Checker service to assist consumers to make contact with the PRS providers who may be better equipped to deal with their enquiries or complaints.

PhonepayPlus alongside Ofcom is working with phone providers, especially mobile network operators, to try and improve staff awareness at these companies to provide effective solutions to consumers when they seek advice and information.

Answer to questions 3 & 4: Are there problems with the way that consumers are represented in these sectors? If so, what are these problems and how can it be improved?

PhonepayPlus does not consider there to be problems with the way consumers are represented in the telecommunications sector, based on the fact Ofcom has established the *Communications Consumer Panel* (CCP)³. PhonepayPlus considers that the CCP plays a full and active role in tracking consumer issues and representing their interests.

Regulators should continue to look for research opportunities specifically targeting market issues and understanding consumer perspectives. PhonepayPlus has experience of receiving such evidence that supports our strategic objectives and policy proposals

Qualitative research is helpful for the portrayal of consumer engagement with services and adds weight to representations made by such panels, and indeed by complainants themselves. PhonepayPlus has commissioned research as part of its ongoing strategic objective to create a regulatory framework that establishes and maintains a healthy and innovative market. Without access to such information it would be harder to respond to consumer expectations and concerns.

Answer to questions 5 & 6: Are there problems with the current provision of ADR in these sectors? If so, what are these problems and how can provision be improved?

PhonepayPlus considers that there are some problems based on very low take up of ADR scheme membership from within the PRS industry. This issue seem to be based on the cost of using such schemes – industry feedback suggests the options available are not cost effective based on the typical transaction sizes seen in the PRS sector, where many transactions are less than £10 in value. The Annual Market Review 2015/16⁴ indicates an average revenue per user (ARPU) across UK premium rate services as £11.44 (excluding VAT).

PhonepayPlus has worked closely with both ADR entities approved by Ofcom to provide ADR services in the telecommunications sector, with an expanded role to take on PRS

³ <http://www.communicationsconsumerpanel.org.uk/>

⁴ We commission this research annually, with the report from *MobileSquared* due out in July 2016.

providers on a voluntary basis. We have made industry stakeholders aware of the legal changes and the objectives and the expectations derived from legislation.

Such engagement has increased industry members' awareness of consumer expectations as well. However, while the schemes remain voluntary, it is difficult to see incentives to increase take up of these ADR opportunities. Meanwhile, we continue to enforce the PhonepayPlus Code of Practice, which explicitly states PRS providers "*must ensure that consumers of their services are able to have complaints resolved quickly, easily and fairly and that any redress is provided quickly and easily*" (Rule 2.6.1 of the Code).

Answer to question 12: *What more can be done to get consumers their money back and give them information on a business' past performance when consumers have suffered detriment in these sectors?*

See the answer to questions 1 & 2 above. PhonepayPlus considers that better information assists consumers with making claims for redress in a timely and effective way. Regardless of how PhonepayPlus seeks to respond to market issues with investigations and other enforcement activities, we refer consumers to appropriate sources of advice and support.

PhonepayPlus Tribunals, which enforce the Code of Practice through their determination of alleged breaches and imposition of sanctions as appropriate, have powers to make various orders for refunds to be paid to affected consumers:

- (i) General refund sanctions – the power to order that refunds be paid to all those that complain in relation to the breaches of the Code that have been upheld by the Tribunal (Paragraph 4.8.2(i) of the Code).
- (ii) Universal refund sanctions – the power to order that refunds be paid to all consumers of a service, or a defined group of consumers affected by their use of the service, which operated in breach of the Code (Paragraph 4.8.2(j) of the Code).

There is flexibility in how these orders are made meaning Tribunals can target the harm caused to consumers, and apply fair and proportionate sanctions to the benefit of the affected consumers. PhonepayPlus publishes the Tribunal adjudications to give consumers and other stakeholders full visibility of the track record of PRS providers.

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