

Review of Ofcom's persistent misuse powers: Focus on silent and abandoned calls

Response from PhonepayPlus

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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 Practice, which is approved by Ofcom. This sets out 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.

General comments

PhonepayPlus considers that the proposed policy statement (Annex 5 to the Ofcom consultation) is effective in highlighting the various causes of persistent misuse and the effects they have on consumers. While the focus of the policy rightly deals with nuisance calls by focussing on silent calls and abandoned calls, the range of issues covered by the proposed statement is comprehensive. Where less commentary is set out in relation to some of the other potential misuse that may become persistent, PhonepayPlus offers feedback in this response targeted at improving clarity, while not seeking to alter the emphasis of the statement as a whole.

As a co-regulator responding to consumer concerns, PhonepayPlus recognises the challenges posed by cases of persistent misuse relating to number ranges such as 070 numbers. These can be summarised in the following way:

- 1) Persistent misuse takes place on numbers and services that fall both inside and beyond those covered by the PRS Condition, which identifies what constitutes a controlled premium rate service. The use of 070 numbers generally falls within the PRS Condition, however PhonepayPlus currently only engages its Code of Practice where there is evidence that the number range is being misused;
- 2) Identification of the communications provider or business behind the service or alleged misuse of numbers can be difficult because the value chain may be complex or opaque, there may be a lack of cooperation with investigations, and operational control of the service may be done remotely making it hard to trace;
- 3) Evidence as to the scale of issues is often limited where incidents go unreported. Those affected by the issues discussed in this consultation often deal with their frustration, anxiety or complaint without seeking assistance from others or approaching a regulator to report the matter. This is either because there is little or no financial loss suffered, or the nature of the calls make it difficult to seek assistance from the service provider;
- 4) As stigma becomes associated with particular number ranges, such as 070, call recipients do not engage with the services and where complaints are raised there is often a lack of information upon which a regulator can base an investigation.

In light of these challenges, it is important to have a clear policy relating to wider persistent misuse issues that is understood by communications providers and businesses, which may improve protocol for number allocation throughout a supply chain. Furthermore, a robust policy statement will benefit from effective enforcement activities where evidence of persistent misuse is shared with Ofcom.

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:

General comments in answer to question 6: *Do you agree with our provisional view that we need to make changes to the 2010 policy in order to address the causes and effects of persistent misuse in a more effective way?*

PhonepayPlus agrees with the approach being taken by Ofcom. There is evidence, as set out in the consultation paper, pointing to ongoing issues which regulations for the prevention of persistent misuse ought to address. By improving the policy statement, we envisage businesses and communications providers will be more aware of the causes and effects of persistent misuse resulting in greater efforts to tackle these issues. This is also likely to assist with consumer understanding.

In keeping with this approach it is important that there is sufficient clarity for businesses seeking to use the various number ranges available in the UK, such as 084, 087, 070, 09, etc.

Answer to question 11: *Do you have any information that would help to quantify further the potential costs and benefits of this proposal?*

We continue to handle contacts and complaints from consumers relating to 070 numbers. PhonepayPlus has a consumer support team that receives direct complaints from the public. Furthermore, we provide a number checker service on our website¹. This allows members of the public to check numbers they find on their phone bills or see in PRS text messages to identify who is charging them or operates the service.

Please find annexed to this response data showing complaints to PhonepayPlus relating to potential 070 misuse and the data indicating how often 070 numbers are input into the number checker tool. This data looks at the past three years, 2013-2015.

Answer to question 12(b): *Do you have any comments on our proposed changes to the policy in relation to persistent misuse arising from misuse of a CLI facility?*

As the regulator of controlled premium rate services, PhonepayPlus has received complaints over an extended period pointing to the monetisation of campaigns involving the persistent misuse of numbers. Both silent calls and abandoned calls have been used successfully to induce recipients to call PRS lines, having displayed such numbers through a caller line identification (CLI) facility.

¹ Number checker service found at: <http://www.phonepayplus.org.uk/about-us/number-checker>

As well as improving the definitions associated with the underlying malpractice of making silent calls and / or abandoned calls, it is appropriate and helpful for a section to be included on misuse of a CLI facility. PhonepayPlus notes the reference to “*premium rate or revenue sharing numbers*” at **paragraph 3.32** of the proposed policy statement. It may be appropriate to address the use of PRS lines as service identifiers in the preceding sub-section devoted to “*misuse of a CLI facility*”.

PhonepayPlus recognises some services may be identifiable via a PRS number (with reference to **paragraph 3.25** of the proposed policy statement), but the presentation of such a number using a CLI facility creates the risk of recipients calling the number back for a purpose other than making payment for a product or service. Businesses may be equipped to consider and respond to these risks if the policy on CLI facilities went further to highlight them in this section of the statement.

Answer to question 14: Do you have any further comments or views on other aspects of this consultation or the proposed policy set out in Annex 5 which are not covered above?

Building on previous comments, PhonepayPlus welcomes the inclusion of a sub-section devoted to “*misuse of allocated telephone numbers*”. From our experience of handling complaints associated with the misuse of 070 numbers and investigations into illegitimate revenue sharing arrangements for services operating on these numbers, PhonepayPlus would like the proposed policy statement to offer significant clarity to businesses. This is to prevent numbers with a designated purpose being allocated to businesses in error or without due care and attention to the intended purpose.

For controlled PRS, PhonepayPlus regulates the market through its Code of Practice, which sets out a general obligation on network operators, Level 1 providers and Level 2 providers (collectively known as ‘PRS providers’) to undertake due diligence and risk assessments of parties they contract with; and take steps to control risks posed by services. Looking at **paragraphs 3.33 and 3.34** of the proposed policy statement, PhonepayPlus considers greater clarity could be offered in relation to steps that ought to be taken when allocating numbers. This could reduce proactively the allocation of numbers, such as 070 numbers, to businesses who have no intention to use them for the designated purpose.

As stated in **paragraph 3.34** of the proposed policy statement, intermediaries “*could also be liable for persistent misuse where, for example, they are complicit in the misuse of the network or service*”. By adding further clarity around the steps that ought to be taken when allocating numbers, PhonepayPlus considers enforcement activities by Ofcom will be more effective regardless of the role played by the party under investigation.

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