



ITV plc response to PhonepayPlus Consultation on Vulnerability Guidance

Introduction

ITV plc welcomes the opportunity to respond to the PhonepayPlus Consultation on Vulnerability Guidance and agrees with the need to protect vulnerable users and assist the industry by providing guidance to providers to help them interpret the code.

At ITV we remain committed to avoiding harm to all consumers of our premium rate services, including the more vulnerable. For example, we do not provide any premium rate services that are targeted at under 18s, and we believe that we take a best practice approach to signaling charges and other important information in a clear and prominent manner in all our promotional messaging.

Question 1: Do you consider the proposed vulnerability guidance helpful and effective in supporting providers meet Rule 2.3.10 of the Code? (Please provide examples to support responses)

In general we welcome guidance which, through practical examples, gives PRS providers a better understanding of how PhonepayPlus is likely to assess whether rule 2.3.10 of the Code has or has not been met.

However, when it comes to an assessment of who may constitute a vulnerable user, in light of the removal of a requirement for providers to have intent to cause harm, we have concerns that the approach of having a one size fits all list of vulnerable users for a broad range of PRS providers may be problematic and considerably widens the scope of 2.3.10 of the Code (as compared with the 12th Code). We elaborate on this in our response at Question 3. In addition, because it is challenging, if not impossible, to determine a consumer's vulnerability at the point the consumer interacts with their service we consider that it would be helpful to flag which services may appeal more to certain groups of vulnerable users than others. Again we go into this in further detail below in our response to Question 3.

Question 2: Do you consider the proposed Vulnerability Guidance to be fair and proportionate? (Please provide examples to support responses)

Whilst we do welcome guidance on how to avoid breaching 2.3.10 of the Code we do think that there is still a lack of clarity and specificity within the guidance which means it is not yet fair and proportionate.

In addition, we feel in general that the removal of the requirement of intent on behalf of the provider within the rule itself and the shift instead to a retrospective assessment of whether harm has been caused to a vulnerable user has made it harder for guidance in this regard to be fair and proportionate. That said examples of 'unfair advantage' where given in the example table do seem to indicate an element of intent may be required for 'unfair advantage' to have occurred. If anything further elaboration on the intent element within the guidance would be helpful to clarify how intent operates within the test of 'unfair advantage'.

Question 3: Is our definition of a vulnerable consumer clear? Please provide an explanation to support your response.

We feel the inclusion of the first example of a vulnerable user (i.e. those who speak English as a second language) may not be appropriate. For example, you may have a user who speaks English as a second language but whose grasp of the English language is impeccable. In this situation it would seem unnecessary for them to be considered a vulnerable user but if using this guidance they would be automatically be deemed so. We would therefore propose removing this example of a vulnerable user. In addition, we would propose that it be made clearer in the guidance how it is that a consumer's vulnerability has given rise to the unfair advantage.

In addition, we feel that it may be helpful to define which particular PRS services might be linked and/or problematic to certain vulnerabilities. For example, a payday loan service could be a potentially harmful service for those with long-term financial hardship but are unlikely to be a potentially harmful service per se for those who are young or elderly. Likewise, psychic services may be potentially harmful and more appealing to those who have recently suffered bereavement but again may be less likely to be harmful per se to those who have suffered long-term financial hardship.

Question 4: Does the explanation of unfair advantage and reasonable foresight clarify our expectations of providers? Please provide an explanation to support your response.

With regards to unfair advantage, as mentioned in our response to question 2, some of the examples of unfair advantage seem to suggest that some level of intent is required by PRS providers. It would be helpful to have further elaboration on this. For example it would be good to have further examples of how a provider's behavior might be specifically targeting a vulnerable user in a manner that is contrary to the code.

In addition, in the table that analyses the hypothetical examples of unfair advantage it would be helpful in the examples where the consumer has not been taken unfair advantage of, if the guidance could be more unequivocal as to whether they have or have not been taken advantage of. This is particularly important given these examples are likely to be ones that providers will rely upon on to try to assess whether their service is compliant. And whilst there is fairly clear reasoning as to why consumers have potentially been taken unfair advantage of in the hypothetical scenarios, in the examples where there is no unfair advantage the reasoning as to why it not an unfair advantage is less clear.

Finally, further example scenarios within the table would also be welcomed.

ITV

May 2016