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PhonepayPlus The new PhonepayPlus Code of Practice A PhonepayPlus Consultation

Submission by mBlox

1. Introduction

mBlox is pleased to have the opportunity to comment on the PhonepayPlus (PpP) new draft Code of Practice.

We welcome the main thrust of the new Code and specifically endorse the four major elements that have been proposed;

- The establishment of a principles-based core Code supported by flexible Guidelines
- Distribution of responsibility for compliance along the value chain
- The commitment to make more use of the Track 1 (informal) procedure in dealing with possible breaches
- The establishment of an Industry Registration Scheme.

In addition to the issues raised in this response to the specific questions asked by PpP in the Consultation, there are also other issues which are key to ensuring that the proposed changes actually have the desired effect. These are outlined below.

Whilst we welcome the proposed changes, given the fact that they are so different to all that has gone before them, they must necessarily be accompanied by changes within the PpP organisation. By this we mean the people who administer and use the Code on a daily basis must also undergo a similar paradigm shift in their way of working as this will engender the spirit of cooperation and engagement with industry that is necessary to make the new Code function effectively. We welcome an understanding of how PpP intend to manage this change to the culture and processes that have been build up around the 11th Code, including the plans for the transitional arrangement between the 11th and 12th Codes.

We also seek greater clarity about how Tribunal decisions taken under the 11th Code will relate to the new principles-based regime.

A theme that runs through our response to the specific questions is that of a need for an objective compliance assessment. This must be utilised both during an initial investigation stage and by a Tribunal.

A principles-based Code is likely to bring to the fore differences between subjective and objective views of services and behaviour, we are keen to see consistency of interpretation that allows all parties to review services with a good understanding of what is expected under the Code. To resolve this tension, we suggest that the standard for PpP to employ wherever subjective interpretation is required is that:

The test should be objective and transparent and take into account:

- The nature of the service
- The service mechanic
- The likely interpretation of the reasonable consumer where that consumer is the anticipated or intended recipient of or audience for that service.

We believe it is essential that clear and consistently applied criteria are used to determine whether a service is compliant in order to minimise breaches and the potential for unjust outcomes.

Areas where we believe application of these tests is particularly important include:

- Invasion of privacy
- Cause of harm or distress
- Vulnerability.

We are concerned at the absence of proposals for formal procedures to maximise certainty, understanding and consistency of approach between the Executive, Code Compliance Panel (CCP) and the industry. As we move into new uncharted waters it is essential that we all have a clear understanding of what is expected and are also able to predict how a service would be viewed by the CCP with a high level of certainty.

We urge PpP to reconsider the proposal that compliance advice not be regarded as binding on decisions by Tribunals as to whether a breach of the Code has occurred. Where a company has in good faith followed official guidance and specific advice of a regulator it flies in the face of natural justice for the same regulator to hold that its actions are in breach of that regulator's Code. As a minimum, we would expect any sanction on such a breach to be waived or very substantially mitigated.

We are also concerned, that where providers have in good faith exercised their freedom not to follow compliance advice, they have been subject to additional sanctions if subsequently found to be in breach of the Code. Not only does this act as a perverse disincentive to seeking advice which is not in the best interests of compliance, it also undermines the concept of a principles based Code which should allow for flexibility in fulfilling obligations under the Code. In this regard, the objectivity tests mentioned above should also come in to play, alternatives to compliance advice or Guidance that were made in good faith based on the information that was reasonably available at the time but didn't work should not be treated in the same way as flagrant breaches. Any other way of working undermines the concept of a principles based Code as in reality it would be prescriptive.

Given that Code infringements can result in a fine of up to £250k per breach we would welcome a clearer understanding of how they are set and on what basis. From the cases available on the PpP website it is far from clear that the evidential burden to prove a breach is sufficient to allow fines of such magnitude. In conversations with clients as well as other in industry, this uncertainty has been cited as having an adverse impact on confidence levels within the industry resulting in declining levels of investment in the UK market.

Finally, mBlox wishes to register its support for the AIME submission to this public consultation.

2. mBlox

mBlox is the world's largest mobile transaction network specializing in providing operator connectivity and mobile billing capabilities to businesses around the globe. We are the intermediary between businesses and mobile operators managing the delivery and billing of mobile content and mobile services. Mblox does not directly contract with end users for mobile content services and does not create or provide the premium SMS/MMS message.

3. Consultation Questions

Q1 – *Do you agree with the proposals around how Governance arrangements are taken forward? If not, why not?*

Yes, but we believe that these should also incorporate the Formal Framework Agreement with Ofcom.

Q2 – *Do you agree with these proposed terms and definitions? If not, why not?*

We are concerned that the terms are back-to-front. If the starting point of the new Code is the expected consumer outcomes, the terms should also reflect the value chain from a consumer perspective, with the level one provider being the one most closest to the consumer tracking back through the value chain. This would mean that what PpP currently propose to be a level one provider should be level two and vice versa. In addition, we have concerns that the proposed labeling will not reflect the reality of who has control of any given aspect of a service. This should be dealt with on a case by case basis reflecting the agreement between parties as to who had responsibility and who was acting as an agent, there should also be clear guidance as to how PpP will objectively measure this.

Q3 – *Are you aware of any premium rate delivery chains where the proposed distinction between Level 1 and Level 2 providers will be problematic? Are there other factors that we need to consider in relation to the distinction between Level 1 and Level 2 providers in a premium rate delivery chain?*

As per our comments to Q2 above, we suggest that responsibility for Level 1 and Level 2 activities needs to be determined on a case-by-case basis to reflect the realities of the service and the contractual relationships between the parties. If this is not the case, we will only have succeeded in moving the pinch point in regulation rather than truly allocating responsibility throughout the value chain.

Q4 – *Do you agree with the proposal to convert Section 7 of the 11th edition of the Code into Service-Specific Guidance and to allow the creation of new Service-Specific Guidance, subject to appropriate consultation? If not, why not?*

Yes. We believe that this approach will contribute to increasing the future-proofing of the Code, this can further be enhanced by moving some of the remaining prescriptive rules, e.g. details on pricing information into Guidance.

Q5 – *Do you have any comments on the draft Service-Specific Guidance attached at Annex C? Please set out any comments you have and the reasoning behind them.*

We will respond to the draft Guidance when the full suite is released for Consultation. In the interim we do have some general comments.

A principles-based Code is likely to bring to the fore differences between subjective and objective views of services and behaviour, we are keen to see consistency of interpretation that allows all parties to review services with a good understanding of what is expected under the Code. To resolve this tension, we suggest that the standard for PpP to employ wherever subjective interpretation is required is that:

The test should be objective and transparent and take into account:

- The nature of the service
- The service mechanic
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We believe it is essential that clear and consistently applied criteria are used to determine whether a service is compliant in order to minimise breaches and the potential for unjust outcomes.

Areas where we believe application of these tests is particularly important include:

- Invasion of privacy
- Cause of harm or distress
- Vulnerability.

Additionally, at para 4.46, the Consultation states that '*If the CCP determines that a provider took no action to comply with the Code, or that the actions the provider took as an alternative to the Guidance did not deliver the same standard of consumer protection, then the behaviour is likely to be regarded as serious and will be reflected in the sanction*'. There needs to be a distinction between alternatives that were made in good faith but didn't work and no attempt to cover the risk, again the objective test referred to above would be beneficial in this regard.

Q6 – Do you agree with the proposal to convert Statements of Expectation that support the 11th edition of the Code into General Guidance to industry, and to allow the creation of new General Guidance subject to appropriate consultation? If not, why not?

Yes, as Guidance notes can be changed and issued quickly reflecting changing circumstances they should also reduce dependency on the prior permissions regime. As per our comments above, they should also increase certainty, which will help stimulate innovation and investment.

Again, the suggested objective test outlined above should be applied to interpret the guidance and, as we would expect Tribunals not to be able to uphold breaches (or levy sanctions) where they accept that a provider has fully complied with the relevant Guidance. Failing that, we would like to see a formal commitment that compliance with Guidance will be an insufficient defence only in exceptional circumstances and subject to full documented explanation.

**Q7 – Do you have any comments on the draft General Guidance to industry regarding due diligence, risk assessment and control attached at Annex C?
Please set out any comments you have and the reasoning behind them.**

As per Q5 above, we will respond to the draft guidance when the full suite of guidance is consulted on later in the year. However, in the interim below are a few comments for consideration.

We are very concerned with the insertion of a provision expecting Level 1 providers to ensure that Level 2 providers have the financial strength to meet potential sanctions. We do not view this as appropriate for role of a Level 1 provider and view it more as the preserve of the regulator – perhaps as part of the registration scheme. We also note that, if there is a requirement of for sufficient financial strength it may be construed as an unfair barrier to entry.

As with all Guidance, the expectations of PpP need to be as clear as possible so that all sectors of the industry understand what level of due diligence and risk assessment will be regarded as reasonable. It is clear from the draft, that a level of record-keeping / evidential burden will be placed on those performing due diligence, in order to prevent unnecessary complications further down the line it is essential that PpP make clear what is required in this area. Given these requirements, we feel that PpP need to balance what can reasonably be undertaken and the onus for compliance that the Guidance places on industry and this burden must be proportionate to the risk. There is a concern

that if the administration of due diligence system is too costly to operate, it may squeeze out smaller low volume level 2 providers.

Given the nature of "reasonable control", not all services can be reviewed regularly as risk-based sampling is the only practical way of exercising ongoing control. Evidence of appropriate procedures should therefore relate to the Level 1 provider's testing and control of all or similar services and not just the service in question.

In terms of the drafting itself, there appears to be some over-lap between due diligence requirement – checks made on a prospective client and the continual checks that are made to a current client and the service(s) they offer. This should be amended in order to enhance the clarity of the Guidance.

Q8 – Do you agree with the proposal to convert the Help Notes and Tribunal notifications that support the 11th edition of the Code into Compliance Advice (or "compliance updates")? If not, why not?

Yes.

Tribunal notifications touch on the issue of precedent, given that we will be working within the realm of a principles based Code, there is a danger in formalising this process any more than is currently the case. The danger is that the Tribunal make a decision based on facts specific to a case but it is the decision that becomes 'law' and then gets applied to all following cases. It is necessary to distinguish between general principles that are established by a Tribunal and decisions that are based primarily on specific circumstances. All cases must be viewed on their merits rather than purely on precedent.

Q9 – Are there any other areas where Service-Specific Guidance or General Guidance to industry is necessary? Please state any areas you have identified.

We echo the AIME suggestion for Guidance on the use of the words 'free' and 'bonus'. We also maintain that there should be a general requirement for Guidance to be consistent with that provided by other regulatory bodies where there is overlap.

Q10 – Do you agree with the proposals around how responsibility for Part Two of the Code would be applied? If not, why not?

Yes, however when deciding who is considered Level 1 and Level 2, PpP need to have regard for the contractual structure that has been agreed between the two parties.

Q11 – Do you agree with the proposed Outcome and supporting Rules around Legality? If not, why not?

No. It is far from clear what eventualities these rules are meant to cover. It is unnecessary for the Code to state that premium rate service must comply with the law as this is the case regardless of the Code. Questions of law and whether or not it has been broken must be dealt with by the relevant authorities.

Q12 – Do you agree with the proposed Outcome and supporting Rules around Transparency and Pricing? If not, why not?

We have no further comments to add to those covered by the AIME response.

Q13 – Do you have a view as to whether there is a need to issue Guidance that interprets how Rule 2.2.6 (around pricing proximity to the means of access) is applied where secure mechanisms for phone-payment are used to purchase a PRS?

See above.

Q14 – *Do you agree with the proposed Outcome and supporting Rules around Fairness? If not, why not?*

We agree with the Outcome and 2.3.1.

2.3.2 The test for this must be objective and relate to a reasonable consumer in the target market.

2.3.3 This provision does not take into account unauthorised use (particularly by minors), theft or misdialling. We also suggest that the question of what is acceptable as evidence of consent is reviewed as the current situation is unclear and creates a presumption against the provider even where no real evidence can be brought to show that no consent has been given.

2.3.5 This rule has no relevance to fairness.

2.3.6 The purpose of this rule is not clear given that there are already daily limits etc in place, additionally, the requirements of this rule are too onerous particularly for smaller providers. Given that pricing etc must be clear before a consumer can use a service, users of services must retain responsibility for ensuring that they do not make excessive use of the service. In this instance, 'excessive' will be subjected and must be for the individual user to decide.

We suggest that 2.37 – 2.3.12 should be relegated to Guidance notes to allow for these to be updated as required without the need for a full Code consultation.

Q15 – *Do you agree that the spending caps and thresholds for reminder messages, set out at Rule 2.3.12a-d, are appropriate? If not, then please suggest alternative levels, and please provide the evidence you have to support them.*

As per above, spending caps and the thresholds for reminder messages must be amendable to meet changing economic situations. We would also suggest that PpP conduct research to ascertain the where current levels should be set.

Q16 – *Do you agree with the proposed Outcome and supporting Rules around Privacy? If not, why not?*

Yes in relation to the Outcome and 2.4.1, as with earlier comments about legality, 2.4.2 – 2.4.4 are already covered by the law and therefore should not be replicated in the Code.

Para 5.74 (the last bullet) – 5.7.7 seem to limit the options allowed by PECR, which permits a mobile number entered on a website to constitute a soft opt-in. Premium services should not be different to any other industry in this regard.

Q17 – *Do you agree with our assessment that consumers benefit from being clearly informed that their data may be used for marketing and being given an opportunity to opt in to this? If not, why not?*

As per above, we believe the current requirements from PECR are sufficient to safeguard consumer interests.

Q18 – *Will Rules 2.4.4 and 3.6.2 of the proposed new Code deliver clarity to consumers when they opt in to a service? If not, why not?*

As per above. Moreover, PpP acknowledge at para 5.76 of the consultation that 'the consumer is unlikely to remember entering his/her number into a website,' given that this is the case they are also not likely to remember the additional information provided either.

Q19 – *Do you agree with the proposed Outcome and supporting Rules around Avoidance of harm? If not, why not?*

As per earlier comments there is a requirement for an objective test in relation to this Outcome.

2.5.4 would appear to go beyond the requirements of the law and should not be an area for PpP to develop policies above those required by law.

Q20 – *Do you agree with the proposed Outcome and supporting Rules around Complaint handling? If not, why not?*

We agree with the Outcome.

Q21 – *Do you agree with the proposals around the level of responsibility Network operators and Level 1 providers should take in regard to their direct clients' handling of consumer complaints (paragraph 3.1.1d of the draft Code)? If not, why not?*

mBlox are involved with the ILP working group that is looking at this area and believe that once that work stream has been completed, it should represent best practice in this area.

Q22 – *Do you agree with the proposals around technical quality? If not, why not?*

Yes, but as with previous answers there is a requirement for an objective test, a distinction should also be made between technical glitches that are unforeseen but addressed when discovered and providing a service that was never of the correct technical standard.

Q23 – *Do you agree with the proposals around internal risk control (paragraph 3.1.5 of the draft Code)? If not, why not?*

We agree in principle with 3.1.5, a more substantive response will be forthcoming when PpP consult on the Guidance.

Q24 – *Do you agree with the proposals in regard to due diligence, risk assessment and control (paragraphs 3.1.1a, 3.1.7 and 3.3.1 of the draft Code)? If not, why not?*

We agree with the proposals and suggest that the objective test highlighted earlier be applied in this area. These requirements must also be proportionate so that they are not out of line with any potential risk.

Q25 – *Do you agree with the draft General Guidance around due diligence, risk assessment and control set out at Annex C? If not, why not?*

Please see earlier comments in relation to question 7. We will respond to the draft guidance when the full suite of guidance is consulted on later in the year.

Q26 – *If you have a preferred option (a, b, or c) in regard to the application of risk assessment and control to Network operators, then please state that preference, along any reasoning you may have.*

Option b as this is consistent with keeping responsibility for premium rate services through the value chain.

Q27 – *Do you agree with the proposals about Directions? If not, why not?*

The issue of refunds could benefit from further clarity. We assume that the refunds would be to be paid from retained revenue. If this is the case, how is this to work in practice what the retained revenue is not sufficient to cover the total amount to be refunded?

Additionally, 3.2.3(c) of the draft Code would appear to contradict the principle of regulating at the point of harm, under what circumstances would a Level 1 provider be instructed to pay refunds on behalf of a Level 2 provider and if the investigation shows that the Level provider complied with their own obligations, why should they bear the additional costs of administering a refund?

Q28 – *Do you agree with the proposals about Contracts? If not, why not?*

Yes. What is considered 'relevant documentation' should be clarified in Guidance so that MNOs and Level 1 providers understand what information PpP deem relevant to the performance of contractual due diligence.

Q29 – *Do you agree with the proposed Code rules around the Registration Scheme? If not, why not?*

We broadly support the AIME comments on this question. We have additional concerns however that the benefits of the registration scheme will be greatly reduced if providers cannot rely on the information contained in the register. We believe that PpP should make some checks to verify the information being provided whether that is in the form of spot checks or some other mechanism can be agreed at a later date. But if providers are required for example to double check company data with companies house, it will mean that there is no real value add to industry for the additional costs being incurred by the registration scheme. We suggest that further discussions take place with industry to resolve this issue. We also seek clarity that these rules will apply only to new clients.

Q30 – *Do you agree that these are the appropriate risk factors and measures to use when drawing up a framework for assessing which services should be required to register? Do you have any further suggestions on criteria we should consider?*

We believe that **all** providers of controlled PRS services should be required to register. Any proposed exemptions should be based on criteria set out in the Framework Analysis included in the final statement of the Ofcom Review of PRS.

Q31 – *Do you agree that 087 services should be exempt from the requirement to register? If not, why not?*

Whilst 087 services are considered controlled PRS their providers should be required to register. Any general principle of exemption should be open to all services on the same basis and criteria.

Q32 – *Have we captured the correct mandatory information to include on the Registration Scheme to meet our regulatory objectives and assist businesses in carrying out due diligence on their contracted partners? Is there other mandatory information we should require registrants to provide?*

See earlier comments in relation to Q29.

Q33 – *Do you agree that the publication of breaches should be limited by a period of time? Do you agree that three years for a Track 2 breach and five years for an Emergency procedure are appropriate timeframes?*

Yes. Will there still be a searchable database of Adjudications as is currently the case or will this be replaced solely by the register?

Q34 – *Do you have a view on whether breaches from the 11th edition of the Code should be matched across to the proposed registration database, and/or how this could be best achieved? If so, please provide it, along with any supporting evidence.*

We believe that breaches from the 11th Code will be relevant for due diligence under the new Code, however there are issues in terms of how the mapping is completed and who will they be mapped against, for example cases brought against the service provider under the old regime would be brought against the Level 2 provider in the new regime. We suggest that breaches under the 11th Code are clearly marked and easily distinguishable so that they can be viewed in context.

Q35 – *Do you have a view on whether open investigations against Level 2 providers should be flagged to other parties registered with PhonepayPlus, and/or how this can be best achieved? If so, please provide it, along with any supporting evidence you have.*

Yes, we believe that this should be the case in order to allow due diligence to be made with all pertinent facts, this should be flagged from the point when a breach letter is received by the provider. The flag must be removed within a working day of the breach not being upheld.

Q36 – *Do you support mandatory registration of all Network operators, Level 1 providers and Level 2 providers of eligible services? If not, why not?*

Yes.

Q37 – *What do you consider to be an appropriate fee for registration? Do you agree that the Registration Scheme should be funded by fees or should its cost be incorporated into the general industry levy that funds PRS regulation?*

We support full funding by cost-based fees as this will make the registration scheme more accountable. We believe that a lower annual fee should be paid to cover running costs. With regard to the appropriate charge for registration we believe that it is too early to talk of registration costs at a time when the costs of administering the costs are unknown.

As per Q29, we believe that there must be some value add to industry from the registration scheme, if as currently proposed, PpP do not validate any of the data, it will provide nothing more than can currently be found out by a providers own due diligence checks.

Q38 – *Do you agree with the proposals around registration of service details? If not, why not?*

Broadly speaking yes. The scheme needs to provide enough information for providers to perform adequate due diligence – see earlier and also information for consumers who are looking for information about a particular service.

Q39 – *Do you agree with the proposals around withhold and retention of payments? If not, why not?*

The extension of the 30-day rule throughout the value chain will have an adverse impact on small companies who depend on the cash flow that it provides. In this context it should be for level 1 providers to take a commercial judgement as to whether or not to retain this money. If the money is not retained, the level 1 provider should be liable for the amount that otherwise would have been retained – this will ensure that a sound and balanced view is taken.

Q40 – *Do you agree with the proposals around Data Protection? If not, why not?*

These obligations are already covered by other enforcement agencies who are empowered to deal with such issues. PpP should not take a view as to whether a service has complied with these obligations but should rather ensure that it's own Code is complied with.

Q41 – *Do you agree with the proposals around Network operator responsibilities? If not, why not?*

Yes.

Q42 – *Do you agree with the proposals around Level 1 and Level 2 provider responsibilities? If not, why not?*

Yes. PpP must have regard to the individual circumstances when deciding what level a provider is in regard to a specific service.

Q43 – *Do you agree with the proposals around Prior Permission? If not, why not?*

In principle, yes, but we request clarity on which types of service will need Prior Notification or Prior Consent. We suggest that there be a presumption in favour of the former.

We would like clarity as to what factors a Tribunal will consider where Prior Consent is being sought.

Q44 – Do you agree with the proposals around PhonepayPlus' investigations? If not, why not?

4.2.4 and 4.2.5 of the draft Code flies in the face of the right to remain silent. They also place an absolute duty on providers to provide PpP with any information that might be relevant, whether requested or not. This is excessive as well as impractical and will encourage providers to overload PpP with every piece of information on a service for fear of being held in breach by failure to supply information.

PpP must acknowledge the time, resource and expense that is incurred by industry in responding to RFIs. This being the so, we would expect PpP to request information that is relevant to a case rather than being too broadly defined in an effort to capture as much information as possible.

We also believe that there needs to be a formal undertaking by PpP, perhaps in the form of guidance, to adhere to agreed timescales for investigations, this is both in the initial building of case through all the steps of the process. The current position, allows too much leeway in pursuing cases that are clearly not in breach, if a case cannot be made within the set time, then it must be closed with no further action. The process must also take into account the lack of complaints by end users, as well as the proportion of complaints when compared to users of a service as this goes towards showing how the service is perceived by the public. A case that has not caused any complaints (or very few), must not be viewed in the same way as a case that has led to much actual consumer harm.

PpP must establish what is required of a Level 1 provider under 4.2.3(f) & (g) as well as what level of evidence is necessary to fulfil these requirements.

Q45 – Do you agree with the proposals around the Track 1 procedure? If not, why not?

Yes, in principle, but we are keen that there is a fully transparent triage process.

Q46 – Do you agree with the proposals around the Track 2 procedure? If not, why not?

We believe that PpP should use the implementation of the new Code as an opportunity to rebalance the liabilities with process, enhance its service commitment to industry and provide objectivity and transparency that will instil confidence in both consumers and the industry alike.

We are concerned that the current standard procedure does not afford providers the opportunity to adequately represent themselves in what is in essence a paper procedure and yet has potential liabilities of up to £250,000 per breach and personal barring. It is true that there is the opportunity to appeal CCP decisions, however the administration charges and costs incurred in revisiting the process are both considerable and non refundable regardless of the decision. This is inequitable as well as unjustifiable.

From discussions with clients and potential clients, the lack of service level agreement between industry and PpP and lack of objective tests for liability give rise to genuine insecurities regarding the process and fairness. This has had a negative impact on the investment in PRS in the UK with clients consciously choosing not to enter, or to withdraw from the UK market.

As per comments to Q44, all procedures need to be underpinned by Service Level Agreements (SLA) from PpP.

Q47 – Do you agree with the proposals around the Emergency procedure? If not, why not?

No, publication of EPs should be only to registered parties given that an EP is taken against a party who has not yet been found guilty of a breach.

Q48 – Do you agree with the proposals around adjudications? If not, why not?

As mentioned previously, guidance should be binding on Tribunals, i.e. if a provider can establish that it has fully complied with Guidance it should not be open for the Tribunal to find a breach. We believe that an objective test must be utilised when reaching a decision based on the evidence provided, given the current potential liabilities the evidential burden for the Executive in proving a breach is too low.

Q49 – *Do you agree with the proposals around reviews? If not, why not?*

We welcome these in that any party may now seek a review. However, we are concerned that administrative costs are high (and increasing) and that this can discourage a provider from pursuing its case. We also question why there is a presumption against the suspension of sanctions during a review as this does not seem equitable.

Q50 – *Do you have an opinion on what time limit should be imposed (except in exceptional circumstances) for seeking a review after publication of a Tribunal's decision? If so, please state it.*

The 30 day limit seems adequate and fair.

Q51 – *Do you agree with the proposals around sanctions and refunds? If not, why not?*

We have concerns about the proposal for 'automatic' refunds given the fact that the ability to achieve these is not universally available. The services that are most likely to give rise to such a direction are those of no intrinsic value and yet these are most likely to be delivered by rogue providers who would be unlikely to comply with such a direction in any case.

We also suggest that if this option is taken forward, the use of such a sanction is carefully prescribed in order to ensure it is only used in appropriate circumstances. We would also like further clarity around the criteria for choosing the auditor under 4.8.2(k).

Q52 – *Do you agree with the proposals around the administrative charge? If not, why not?*

Yes.

Q53 – *Do you agree with the proposals around oral hearings and appeals? If not, why not?*

We approve of the proposal to relegate this material to Code Annexes. We would like to use this as an opportunity to enshrine some of the points for which we have already argued separately, e.g. a SLA for oral hearings, right to present a case face-to-face, etc.

Q54 – *Do you agree with the proposals around publication of decisions? If not, why not?*

Yes.

Q55 – *Do you agree with the proposals around delegation of powers? If not, why not?*

Yes.

Q56 – *Do you agree with the proposals around definitions? If not, why not?*

No. 5.3.8(b) does not include promotion as one of the responsibilities of a Level 2 provider. The definition also allows no room for the reality that there may be more than one Level 2 provider involved in a single service.

Q57 – *Do you agree with the proposals around Annexes? If not, why not?*

Broadly yes. However what is the justification for raising costs under para 11 of Annex 3 given that the consultation proposes to keep all other limits as they are currently?

Q58 – *Do you agree with this assessment of parts of the 11th edition of the Code that should be withdrawn completely going forward? Please list any specific provisions that you feel should be preserved in some form, and provide your reasons.*

We are happy to see coverage of the word 'free' withdrawn from the Code but need Guidance notes that are consistent with other regulators, as mentioned in response to Q9. The reasoning for the removal of the 50p exemption suggests that the issue of 087 services needs to be examined in more detail – see further below.

Q59 – *Do you agree with PhonepayPlus' assessment and proposals around how the new Code will be interpreted in respect of 087 services? If not, why not?*

We are content with this for the present but wonder whether the question of whether 087 should be classified as controlled PRS should be revisited given the fact that there are to be treated differently to other services that meet the same classification.

Q60 – *Do you agree with our assessment that now is not the right time to review our funding model? If not, why not?*

We agree that now is not the time but we want to agree a timetable for early examination of funding and costs, particularly as a new process and culture should emerge with the new Code. We also expect to see costs falling back into line with industry turnover rather than comprising a growing overhead.

Q61 – *Are there any other areas of change within the proposed new Code that carry an impact that you feel we should consider? If so, please provide them, along with any evidence you have of the likely impact.*

We believe that now is an appropriate time for an examination of the size, proportionality and impact of fines.

Q62 – *Do you agree with our assessment of the potential impact caused by the proposed new Code? If not, then please provide any areas of consideration you feel we have missed, and any supporting evidence for them.*

Yes.

4. Conclusion

mBlox is committed to working closely with PpP to ensure that there is a proportionate, appropriate and effective regulatory regime in place for the provision of Premium Rate Service in the UK and our comments are made constructively.

If any clarification to our response is required or if we can be of any further assistance please contact Martin Romer at +44 (0)7906 625 276 or martin.romer@mblox.com