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### **PhonepayPlus 12<sup>th</sup> Code Consultation Response: July 2010**

The MDA reflects the common voice of the mobile data industry. The Association promotes the use and benefits of mobile data throughout industry and business in the UK. Press, regular industry conferences and seminars, and the operation of websites ([www.themda.org](http://www.themda.org) and [www.text.it](http://www.text.it)) help promote a high level of awareness amongst users and advisers, directly influencing operational management.

In addition, the Association provides a forum for members of the industry to meet and share information on technical and business issues.

#### **Consultation Questions**

The MDA and its members are generally in favour of the top-level areas for concentration and the methods proposed within the 12<sup>th</sup> Code of Practice consultation.

In its aim to 'futureproof' the regulation of Premium Rate Services, further clarification would be appreciated on regulator remit of services which are NOT directly phone-paid, or charged to mobile phone accounts, but which ARE conducted over mobile devices. Entering credit card details on mobile internet sites, using Paypal and purchasing on-devices via pre-registered bank accounts, as in the Apple model – will all become more prevalent methods of mobile payment with the emergence of various App Stores. Will this fall within the remit of the 12<sup>th</sup> Code?

The MDA's agreement may be presumed from those questions and responses omitted below.

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

Agreed. Industry and regulators must use consistent, widely known terms for each party in the value chain, avoiding misinterpretation. Regular use and education to industry bodies should eliminate confusion.

**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?**

There are issues in applying these to ALL scenarios, particularly where there is blur in the role of the aggregator's client / IP, which has no capacity to run the service and subcontracts its promotion to an affiliate.

**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?**

Agreed. But many paragraphs appeared to be specific to certain services and the introduction of industry standards could be valuable. The term, 'all reasonable steps' is vague, particularly in relation to a sensitive and issue like age verification. Is it possible to provide transparent examples of what are not 'reasonable steps' or acceptable?

**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?**

Agreed. However, the distinction between 'help notes' and formal guidance is liable to blur. Definitions and terms should be clarified.

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

A directory of precedents resulting from adjudications could help industry to set a foundation on which judgements are made, enhancing consistent application, transparency and useful guidelines when setting up services.

**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?**

This guidance would certainly be useful.

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

Again, transparent clarification and examples of consent and vulnerability could be useful: what IS consent and WHO is vulnerable?

**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?**

Agreed, subject to results of ILP meetings.

**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?**

PPP expects Level 1 providers to carry out reasonable assessment of the clients of their clients along the value chain but this is not always contractually possible. In many situations it is unfeasible to conduct a risk assessment of clients’ clients. But when providers are aware a client’s client is a potential cause of concern, there is of course a duty to manage that risk, which the registration scheme may be invaluable in supporting.

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

Agreed, but the value of a registration database may be limited if its data is not regularly verified either by PPP directly or by a third party. There are also implementation issues around efficacy and economics. Is industry paying for PPP to hire IT consultants to select IT developers?

Procedures need to be agreed so those using shared short codes can be effectively identified. If keywords are also entered onto the database, there needs to be consideration of potential keyword recycling across customers. Timings and the efficiency with which data is maintained will be critical here and there is a strong argument for shared short code ownership to remain with the Level 1 provider.

**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?**

Focus on individuals could be of benefit to industry. Where a company has had a red flag against it, this should follow for its directors if they form a new company. This data would be helpful for aggregators of any size when conducting due diligence and could be encouraged by the regulator.

**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?**

There should be no causal link between the time period when a breach is published, and whether the investigation began as an emergency procedure. Breaches are not

automatically more malicious for having been initiated as an emergency investigation. Technical faults can be instrumental.

A tally of breaches, especially if they are recorded within an isolated period of time, could be a more fair measure.

**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?**

Industry should be informed of the approximate cost of the registration database, the number involved in its implementation and ongoing costs in maintaining the data and ensuring it is current. Only with all this information will it be reasonable to give a judgement on how much it should contribute. However, it may be more manageable for it to be incorporated into the levy, with full transparency of any cost changes.

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

Agreed. There could be better clarification over what constitutes an emergency procedure, such as failure of a STOP command trigger. Again, this could help to negate potential problems at the early stage of service implementation.

**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.**

30 days should be sufficient

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

Given the proposed new sanction that all consumers need to be refunded, Mobile Network Operators (MNOs) need to be included in the refund processes.

Refund processes should be defined and communicated so limitations are clear, Level 2 providers know how to action a refund process, and complainants know, and are confident in, receiving a refund.