

Consultation
The new PhonepayPlus Code of Practice
Submission
By Mobile Interactive Group Limited
10 July 2010



Mark Collins
Head of Industry Affairs
PhonepayPlus Ltd
Clove Building
4 Maguire Street
London
SE1 2NQ

RESPONSE BY MOBILE INTERACTIVE GROUP TO DRAFT 12th CODE

Dear Mr Collins,

Background

Mobile Interactive Group (**MIG+**) provides premium SMS services to a number of leading broadcasters, production companies and information providers as a **Service Provider** as defined under the 11th Code.

We write in response to your invitation to respond to questions on the draft 12th Code of Practice.

We have participated in the response to be submitted by the Association for Interactive Media and Entertainment (AIME) and generally endorse this response. However, we also submit this separate response in order to emphasise what we consider to be our key considerations on the 12th Code and as we take a different view to AIME on a few points.

Firstly, we have summarised our key points. Secondly, our tabular response below indicates only comments that are in addition to or contrary to the AIME response.

Yours sincerely

Richard Mann
Chief Operating Officer

Mobile Interactive Group Limited

Executive summary – key considerations, particularly with respect to L1 providers

- **Financial due diligence on L2 providers:** We are very concerned with the new insertion of the provision expecting L1 providers to ensure that L2 providers have the financial strength to meet potential sanctions. We assume this is a reaction to PPP's concern that fine recovery rates may drop under the new code but it seems to be a way to pass the "back-up" liability back to the L1 provider and therefore negate many of the principles of the new code. In any case, it is very unclear how the provision should be interpreted. If, for example, all L2 providers are expected to have a £250k credit limit as might be interpreted, this would immediately prevent a significant proportion of the industry from continuing to trade and create an enormous barrier to entry into the market.
- **Scope of reasonable due diligence and control:** We support the approach that a L1 provider has obligations in terms of due diligence and control under the new Code. However further clarification is required in terms of what level of evidence a L1 provider should be able to show to PPP in relation to any particular case. Given the nature of "reasonable control", it is necessarily the case that not all services will 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 L1 provider's testing and control of all or similar services and not just the service in question.
- **Whistle-blower policy:** To encourage self-disclosure of potential breaches, PPP should adopt a whistle-blower policy that does not penalise the party bringing a breach to PPP's attention provided that the notice to PPP is prompt, the breach is remedied swiftly and affected consumers are fairly treated.

Detailed comments

We only comment below on specific areas or questions where our view differs from that set out in the AIME response to PPP. Items highlighted yellow are those already references in the executive summary.

Ref	Section	Comment type in relation to AIME response	Comment
1.	Intro . intro comments	Addition to AIME response	The absence of a whistle-blowing policy appears to be a major oversight, particularly when there is more expectation on L1 providers to notify PPP of any concerns.
2.	Intro - Coping with change	Addition to AIME response	Further consideration of transitional arrangements between the 11 th Code and 12 th Code is required. In particular: <ul style="list-style-type: none"> • The impact on any open cases • The requirement for additional support and compliance advice through the transition • The willingness for PPP to treat initial cases as trial cases under the new regime
3.	Intro . Reminders for each £10 spent on Virtual Chat	Addition to AIME response	We consider that the requirement to re-opt in (2.3.12(c)) on a virtual chat service after every £10 spend needs further thought as this creates a very clunky consumer experience and would have a major negative impact on this type of service.
4.	Q5	Clarification to AIME response	While we support demoting the principles of section 7 into service specific guidance we note it is largely copied from the 11 th Code and we expect to see fresh, comprehensive advice for providers to work from. 12 th Code guidance should read as advisory not an echo of the prescription of its predecessor.
5.	Q7	Emphasis of point already included in AIME Response	Annex C %failure to meet the required standard+ We have concerns that %due diligence+of a L1 provider cannot reasonably be expected to test and monitor every service yet there is an implicit expectation in the guidance that a L1 provider would have to demonstrate adequate due diligence and control over any service that has been investigated for a breach. Due diligence and control should be approached using audit methodology whereby only a sample of service are tested where the sample size and frequency is determined based on initial risk assessment. It may therefore be that adequate due diligence and checks have been carried out (and can be evidenced) but checks happen not to have been done on the specific service in question. Evidence of L1 provider obligations should therefore relate to their processes in general and not necessarily to a specific problem service. If this is indeed the understanding shared by PPP, then the guidance should be more explicit in this area.
6.	Q7	Addition to AIME	Annex C %Due diligence+:

		response	The requirement is to retain documentation for a period that is reasonable in the circumstances+. There is no benefit in leaving this period open to interpretation and it should be specified by PPP in advance as in other disciplines.
7.	Q7	Addition to AIME response	Annex C Due diligence+ Clarification required on what is meant by verification of a client's bank account+
8.	Q7	Emphasis of point already included in AIME Response	Annex C Due diligence+ Stated outcome is for L1 provider to satisfy itself that the [L2 provider] has the financial strength to meet sanctions+. This requires significant further consideration and discussion. None of the example items required in due diligence allow an assessment of financial strength and it is unclear what is satisfactory financial strength. If the requirement is for all L2 providers to have a minimum £250k credit rating, we believe that the majority of Information Providers in the industry will fail the test. We are concerned that this is included in the draft as a knee-jerk reaction to PPP's concerns about collectability of fines from L2 providers and the process and implications have not been properly considered.
9.	Q7	Addition to AIME response	Annex C Risk assessment and control of L2 provider+ The requirement for a L1 provider to notify PpP immediately that spikes in traffic are detected is inappropriate. The L1 provider should first investigate (probably with the L2 provider) and then consider if a breach or risk of a breach has occurred. If so, engaging with PPP at that time is appropriate within the framework of an agreed whistle-blower policy.
10.	Q8	Addition to AIME response	Presumably a service can, for good reason, choose not to follow compliance advice in the same way that it can choose not to follow general guidance provided that it can demonstrate that the principles of the code are adhered to?
11.	Q9	Addition to AIME response	Additional areas PpP may want to consider Service-Specific Guidance would be General Guidance for Pricing (proximity and prominence) and Mobile Marketing.
12.	Q11	Disagreement with AIME response	We do not agree that it is helpful to resist PPP's with to be able to adjudicate against services on the grounds of legality. The PPP adjudication process should be swifter and more efficient than a judicial process and we believe that the authorities and the courts would prefer for issues to be dealt with by PPP on most occasions. We therefore do not support AIME's position on this point.
13.	Q12	Addition to AIME response	We agree that stating the brand instead of the legal entity name should be sufficient when it is reasonable to expect that the consumer is familiar with the brand.
14.	Q14	Addition to AIME response	We consider that rule 2.3.6 (excessive usage) is adequately covered by network operator £30 spend limits. Further spend limits and reminders would require an interpretation of what is excessive+and are therefore very subjective. Guidance on excessive+is required if this rule is to be adopted but, as stated, we do not consider further rules in this area are required, particularly in light of other reminder requirements for certain

			types of service e.g. virtual chat.
15.	Q15	Disagreement with AIME response	<p>Whilst we agree that the levels should be reviewed, we consider that the 12th Code should have the capacity to set such limits, but they should be set in general guidance so that they can be readily reviewed and amended.</p> <p>We support the existing subscription and child services levels and £30 forced release on SES but, as above, we do not support VTC reminders and re opt in.</p>
16.	Q25		Cross refer Q5
17.	Q16	Addition to AIME response	<p>With reference to (rule 2.3.11), we believe that the STOP command needs to remain universal, easy and uncomplicated. We would prefer that Guidance is very clear that the STOP command is expected.</p> <p>Should the STOP command not be technically possible this is a matter Phonepay Plus should be notified of (under 3.10.5a of the new Code) and advise upon to ensure the alternative method reaches the desired outcome (we have not seen an alternative opt out that is a sufficient replacement for the STOP command).</p>
18.	Q27	Addition to AIME response	<p>We support the directions on withholding revenue but would like to understand whether this option will be used more frequently than under the 11th Code. In our view, it is often helpful for PPP to issue an instruction for revenue to be withheld given that (a) the adjudication process is typically much longer than the minimum 30-day out payment period (b) it avoids a Level 1 provider having to make an arbitrary judgment on whether to withhold revenue on a pending adjudication</p>
19.	Q32	Addition to AIME response	<p>If the L1 provider is to accept an obligation to assess the financial risk of a L2 provider failing to pay any fines, the information collected on the database should be extended to facilitate such an assessment. Please cross refer to comments on Q7 (due diligence) above.</p>
20.	Q33	Disagreement with AIME response	<p>We agree with AIME's response that time limits are appropriate to keep published information relevant. However we see no problem with a full history of breaches to remain available in a searchable archive. Given that historical breaches will be referenced and searchable elsewhere on the internet than on the PPP website in any case, our preference is for all data to be retained in a coordinated fashion on the PPP database.</p>
21.	Q34	Disagreement with AIME response	<p>We do not believe that it is unfair or confusing for 11th Code adjudications to be carried forward. Clear explanation as to the different framework in place will assist the reader and the adjudication should be recorded against both Information Provider and Service Provider where relevant. As per our response to Q33 above, we prefer data to be searchable in a coordinated manner on the PPP website than in an unorganized fashion elsewhere on the internet.</p>
22.	Q35	Addition to AIME response	<p>We believe that alleged breaches should only be flagged to networks and L1 providers, not L2.</p>
23.	Q39	Addition to AIME response	<p>Given the current length of time taken to conclude adjudications,</p>

		response	we do not consider that a 30-day rule provides much protection. Increased use of specific withhold instructions on relevant pending adjudications should be considered.
24.	Q40	Disagreement with AIME response	As per Q11, we support the inclusion of references to other laws and regulations.
25.	Q44	Addition to AIME response	The absence of a whistle-blowing policy appears to be a major oversight, particularly when there is more expectation on L1 providers to notify PPP of any concerns
26.	Q44	Disagreement with AIME response	<p>We disagree that AIME should take comfort from relying on clause 4.2.5 enshrining the current position that information must be requested. We would expect PPP to specifically request any other information that may be relevant to our assessment+in every adjudication letter.</p> <p>Rather than requiring all possible relevant information to be provided, the policy should be that any additional information provided willingly should be considered and the fact of willing disclosure considered as a mitigating action where appropriate.</p>
27.	Q48	Addition to AIME response	Broader notification should only be done after notification to the relevant party adjudicated against.