



BT's response to PhonepayPlus consultation document:

“Guidance to Support PhonepayPlus’ Proposed New Code of Practice”

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Comments can be addressed via e-mail to

Graham Pottie

Chief Operating Officer - BT Agilemedia

BT plc

Email: graham.pottie@bt.com

Mobile: 07850 208370

Address:

PP 6.39

Faraday Building

1 Knightrider Street

London EC4V 5BT

Executive summary

BT agrees with the proposed PhonepayPlus approach to provide guidance on which behaviours are needed to meet the outcomes within the Code, but we have some comments both on the general principles and PPP's questions (see section 1 below) and on the specific guidance notes themselves (see annex 1 below).

Our main comments are:

- In a number of cases (e.g. on the Conduct Live Sex Services), much of the draft Guidance note seeks to create new rules, some of which are lifted from s 6 of the 11th Code. They are inappropriately expressed to appear mandatory.
- Where something is a definition or a mandatory requirement, it should be within the Code rather than the Guidance. The Guidance should guide industry players on how to interpret the requirements and not itself introduce new rules.
- It is clear that, even if the Guidance is not binding for the tribunal, following the Guidance will be a mitigating factor in the tribunal's decision. It would be helpful to clearly set the same approach for any further Guidance provided by the PPP Compliance Advice Team, whose guidance should be taken into the utmost account where an investigation takes place.
- Some additional definitions are needed, as set out in our response. We consider the sections on definitions should be placed within the Framework.
- While a number of the draft Guidance notes are clear, in our view a number require re-working. In many cases, for example, it would be helpful to make it clear what specific rules the Guidance note is referring to. Moreover in some instances it is not clear what actions a provider should take in case of high risk/non compliant service. Our specific comments are set out in Annex 1.
- In some cases the Guidance does not provide sufficient information. Please see our response to question 2.
- In some cases the obligations imposed are disproportionate and too onerous for some of the players involved in the provision of PRS. It is not appropriate for the Network Operator to monitor the industry beyond reasonable due diligence prior to contract commencement and reasonable monitoring to manage identified risks thereafter. It is not appropriate to ask to the Network Operator to police the market on behalf of the PPP. For example, it is wholly disproportionate to require promotion material to be reviewed by others in the value chain than by those who actually promote the service.
- We suggest renaming 'Lower Cost services' to 'Guidance on Services costing no more than 10p +vat.'
- It's not clear why there are no draft Guidance notes in a number of areas e.g. Contact and Dating services, Consumer Credit services.

This response reflects BT's view. Our response can be treated as non-confidential

Section 1: PhonepayPlus Guidance - BT Response to PPP consultation questions

Q1 – Will the language used in the Guidance be clear to the majority of those involved in PRS provision? If not, why not? Please include any specific suggestions you have for clearer drafting.

No.If something is either a definition of a term used or a mandatory requirement, it should be in the Code itself rather than in non-binding guidance.

Mandatory requirements should be reworded as Guidance on how to comply with the Code by reference to the Outcomes and not introduce rules by the back door.

Where Guidance is provided on specific applications of the code, for it to be useful and effective for industry it should refer to all the relevant parts of the Code which need to be considered under the specific Guidance.

For example:

Conduct of Live Services Guidance

- 5.1 & 5.2 are not correct as the controls only relate to sexual Entertainment Services (see code 2.3.12) rather than all live services. These two paragraphs should be added to 6.3.
- It's not clear what the distinction is between a chatline and a live service so the guidance should make this clear. Alternatively PhonepayPlus should include a definition of Live Services in the Code.
- Para 11 has detailed requirements relating to call recording. Eg. All recorded calls must be time and date stamped and tamper proof. Again there is no requirement in the Code so an indication of where this obligation comes from or the basis of PhonepayPlus authority in this area would be helpful.
- 9.1 All providers of light Entertainment Services and multi party chat are required to join the PhonepayPlus compensation scheme. If such a rule is mandated then it should be in the Code and not in the Guidance.
- Annex A to the Guidance is a list of approved recording equipment suppliers but the concept of such equipment having to be PhonepayPlus 'approved' is not within the code.

Fundraising and other charitable promotions/ and Quiz TV

The language is too mandatory - see below.

The Guidance on **Definitions of those involved in providing PRS** should be retitled 'Definitions and Responsibilities of those involved in providing PRS' and the Guidance on Due Diligence should be merged. It is currently confusing as it includes some responsibilities and some definitions so is neither one or the other. See below.

Promotions etc – p3 – the table uses the expression 'network extras' –there is no consumer awareness around such a term. Suggest 'Network access' or 'network call charges' are more meaningful expressions.

	<p>Lower Cost services –it would more meaningful to say ‘087x requirements’ See further points in Annex 1 below</p>
<p>Q2 – Is the level of information provided in the Guidance sufficient? If not, why not? Please include any specific suggestions you have.</p>	<p>No.</p> <p>3.1.3(b) of the 12th code references a requirement relating to marketing and promotion material. The Guidance on Definitions of those involved in providing PRS should make it clear what this means in relation to each party in the value chain. There is no guidance on what is appropriate action of others in the value chain if a level 2’s marketing material is non compliant – should service be suspended?</p> <p>There is no Guidance in Advice Services on how to deal with services where there is no recognised accreditation body - eg Diet services/ Life Coaching/ technical services etc. Guidance should be provided on Consumer credit Services and Sexual entertainment services as a separate note.</p> <p>No Guidance on how to round prices - include in the Promotions section?</p> <p>Consumer refunds This should not be focussed so much on sanctions from the tribunal but on remedying consumer harm at an earlier stage.</p> <p>There is no Guidance on Prior permissions, how to deal with a refusal and how others in the value chain should respond if this is not available or if it is withdrawn.</p> <p>See further points in Annex 1 below</p>
<p>Q3 – In your opinion, will any of the expectations set out in the Guidance be likely to cause difficulty to the majority of providers, or cause confusion? If so, please give any reasons or evidence you have. In particular are there technical barriers to following Guidance we have not already acknowledged?</p>	<p>It is inappropriate to expect the Network Operator to monitor the industry beyond reasonable due diligence prior to contract commencement and reasonable monitoring and reaction to manage identified risks which might damage the industry. It is not acceptable to put upon the Network Operator the duty to control and police the market on behalf of PPP who alone has the authority to do that. So while it is reasonable for the Network Operator to check the registration of its customer before the contract commencement, it is not appropriate for it to constantly check the renewal of registration of any customers during the contract life. It is equally inappropriate to expect those in the value chain to approve/ review marketing material (6.2 of Due Diligence Note). Guidance should be that having clear, accurate material which presents the required information to a consumer in advance of incurring any charges should be a defence to a complaint around this. It should be for the tribunal to be satisfied on the sufficiency of marketing material if there is a complaint and not a</p>

	<p>routine cost burden on another supplier in the value chain. The Network Operator has no authority to legitimately prevent a Content Provider to offer its service on the basis of a subjective assessment of its promotional material. The responsibility for inappropriate marketing/promotional material should entirely sit with the people who promote the service.</p> <p>In the Public Information Services Guidance – this strays into social policy and we consider it is inappropriate guidance to seek to control the content of services beyond the powers of PhonepayPlus.</p> <p>See points in Annex 1 below</p>
<p>Q4 – Do you have any other specific comments on the content of the Guidance notes? Please clearly state the title of the Guidance and page references where appropriate</p>	<p>See further points in Annex 1 below</p> <p>Privacy and Consent to charge should be separate notes. Promotions and Promotional material – it should be clear that compliance with the Guidance will be taken into account if there is any complaint.</p>
<p>Q5 – In your view, would the current requirement for risk assessment and monitoring of Level 2 clients, contained within draft Guidance on ‘Due diligence and risk assessment and control’, be disproportionate to the level of risk involved? Please provide evidence of current practice in relation to identifying and controlling risk with direct clients.</p>	<p>There should be a more pragmatic approach. As said in our response to Q3, it is completely disproportionate to require promotion material to be reviewed by others in the value chain. Where there is a complaint then the Provider should need to only demonstrate at the point of complaint that promotion material was compliant.</p> <p>Ongoing monitoring is impractical and not cost effective. Monitoring by the Network Operator should be limited to unusual traffic profiles and things appropriate to the network role in the value chain. Reviewing promotional material is completely inappropriate to the network role and not commercially viable as it requires new expertise increasing costs and can change randomly throughout a contract/ no objective criteria.</p>
<p>Q6 – At present, the ‘Due diligence’ Guidance does not contain any requirement or recommendation to check passports of directors of prospective clients. Is it appropriate to recommend this in some form? If so, please provide any view you have as to what form.</p>	<p>See further points in Annex 1 below</p> <p>If it is not possible to independently verify provider supplied data through UK Companies house or other registries, then guidance on what other evidence would be sufficient (eg passports), would be appropriate as well as Guidance on Due diligence on foreign based providers.</p> <p>Guidance could also include provision to take additional checks if Call Payments are to be made to a different account than the person named in the SP Registration.</p>
<p>Q7 – Should the section around free trial periods, contained within Guidance on ‘Promotions and promotional material’ be revised so that, if the consumer is clearly informed at the</p>	<p>Moving from a free trial period to a chargeable service without further opt in is a model prevalent in the market for magazine subscriptions, changing bank accounts etc so provided :-</p>

<p>beginning of a trial period, then it is acceptable to charge without further opt-in as long as charging commences as soon as the free trial is over? Please provide any evidence you have.</p>	<ol style="list-style-type: none"> 1. It is clear up front that the chargeable period will follow on from the free trial, and 2. It is clear before the chargeable element arises how to exit before charges are incurred. It should also be clear how to cancel a chargeable service/ subscription after a customer opts in other than by hanging up. <p>- then we do not object to this model.</p>
<p>Q8 – At present, Guidance does not recommend that providers take steps to be able to recognise a consumer’s intent to exit, even when they have not sent ‘STOP’ or another correct keyword. Should this be the case and, if yes, how might this be achieved?</p>	<p>We would agree that providers must recognise and respond to any clear indication of a consumer’s intent to exit irrespective of whether key words are used. Given the volume of complaints in this area providers should make more effort to interpret a range of cease commands.</p>
<p>Q9 – Should Guidance on ‘Subscription services’ contain a recommendation to send an initiation message containing stipulated information, as per Paragraph 7.12.4 of the 11th Code? If not, why not?</p>	<p>We agree. This could come under the outcome “transparency and pricing”.</p>
<p>Q10 – Should Guidance on ‘Subscription services’ be in line with requirements around text and font size contained in providers’ contractual obligations with Mobile Network Operators?</p>	<p>As long as it is guidance and not mandated, the inclusion of an illustrative examples of minimum standard set of text and font size requirements would be acceptable if this was intended to show how the outcomes of transparency and fairness could be met.</p> <p>Guidance could alternatively suggest that a small text size or a font which was difficult to read would not be appropriate and would be regarded as an attempt to mislead consumers particularly if a consumer complaint was that they couldn’t read the small print. As long as it is Guidance and not mandated, the inclusion of an indicative minimum standard set of text and font size requirements could be acceptable but in a multimedia environment this depends on the medium and the distance it is viewed from.</p>

Annex 1

PhonepayPlus 12th code – Response on Consultation on Guidance Notes:-

If the intention of the guidance notes is to advise industry on how to be compliant, we consider they need to be more illuminating and in many instances less prescriptive as they are non binding. All definitions should be removed and placed in the Framework.

The Disclaimer on the Role of Guidance should be at the end of each guidance note.

The following comments are by reference to each Guidance note.

1 Definitions

In addition to points above, definitions are needed for:

- Internet Dialler Software – this was defined in the 11th code but not in the 12th?
- Live Services - this was defined in the 11th code but not in the 12th. The definition shouldn't be in the Guidance note but in the Framework part of the Code.
- Lower Cost numbers – it would more meaningful to change this expression to 087X numbers
- Multi party chat
- Entertainment services
- Live Entertainment services.

And the following should be amended in the Framework section:-:

- Sexual Entertainment Service – this is also defined in the Conditions issued under S120 of the Telecoms Act 2003, this definition should follow the same format as Chatline services.

2 Annex D: General Guidance

2.1 Definitions of those involved in providing PRS

2.1.1 Rename this Guidance as '**Definitions and Responsibilities of those involved in providing PRS**' to reflect the content and include the Due Diligence Guidance to make it complete.

- 2.1.2 Further guidance is required under 5. **Responsibilities** as this is the only Guidance note that addresses the generic responsibilities of the parties:-
- Provide Guidance on what Rule 3.1.1 (a) means by 'in the context of their roles' and 'services with which they are concerned' – it is not clear how far down the value chain this extends – is it limited to just the party with whom they contract and those elements which they are responsible for providing? Is it only when triggered by a risk assessment?
 - Include reference that registration must be renewed annually (Rule 3.4.1) as this is new.

- Where a level 1 or 2 is not registered as required by Rule 3.4.1, reference 3.3.2 of the code stating that others must not contract with them.
 - How would others in the delivery chain know that a provider had allowed their registration to lapse? Who is at fault if a lapsed provider continues to operate in a chain? It is not practical for other parties to be responsible for policing the PhonepayPlus registration rules.
- 2.1.3 The Guidance in 5.2, 2nd bullet refers to a blanket requirement to monitor the actions of all clients, but this should reflect the Overall guidance note to Support the Code (3.31) which provides that for clients with whom they directly contract, “risk assessment and control recommends reasonable steps in the event of identified risk”. This ensures the burden is more manageable as it limits it to identified risks. The Guidance should reflect this.
- 2.1.4 The Guidance should also reference the 30 day withholding rule which applies to Network operators (Rule 3.5.1); the Data Protection obligation in 3.6; Prior Permission in 3.10 – guidance on whether parties can rely on publication on the website of PhonepayPlus as evidence this has been obtained and if it is likely there will be a delay in publication, and what alternative evidence is acceptable. Also some guidance is needed on impact of not having this in relation to others in the value chain or if this is withdrawn, how this will be communicated.
- 2.1.5 There is no definition of ‘exempt services’ – this should be clear in the definitions and also in this Guidance note.
- 2.1.6 In 4.6 Reseller voice based PRS. A reseller as the name implies, does not actually physically provide service but acts as a sales agent for the Network Operator. So the statement “The next provider in the delivery chain is a reseller, who then relays the call onto another provider who is responsible for the promotion/operation/content of the service” is not correct. An alternative is for it to read “... who arranges the provision of service for another provider who is responsible for....”
- 2.1.7 We would also suggest there is a direction given by PhonepayPlus under 3.2 that AIT and self dial, except for reasonable testing, is prohibited as behaviour intended to perpetrate fraud in the industry and mislead network operators and Level 1 providers. It also damages industry revenue and profits, so can have knock-on consequences of increasing end user charges.

2.2 Due diligence and risk assessment and control on clients

The point on 3.1.1 is made above. This note should reflect the General guidance note which refers to ‘reasonable monitoring limited to taking reasonable steps in the event of identified risks’. See also our response to Q3.

If PhonepayPlus do not agree the removal of the obligation to vet marketing material and service content etc, we would seek guidance that this is limited to where there is an identified risk and is not required across all customers at all times.

2.2.1 Para 3.1.3 of the code

- The requirement to assess risks in respect of the ‘promotion, marketing and content of the PRS services they provide or facilitate’ could imply an obligation on the Network operator to review the ‘promotion, marketing and content’ of the Level 2 even though they contract with the Level 1 simply because the network is ‘facilitating’ the service. This is too onerous for a Network operator dealing with high volumes of customers to do so on a per customer basis. It is for PhonepayPlus to police the industry not the network operator – and this should be qualified in the guidance to make it clear that ‘3.1.3 means that it will only be necessary for the Network operator to review a Level 2’s ‘promotion, marketing and content’ where it is

reasonably felt that *'there is significant likelihood that consumer outcomes of the Code will not be met'* and that assessment of the items in 3.1.3 (b) isn't required for all 'parties with whom they contract'.

2.2.2 We have the following comments on the bulleted points in 3.2 - effective Due Diligence:

- As part of suggestions for Due Diligence – reference to parent/ holding companies should be removed as there is no generic commercial right of redress against them. Also reference to undertakings re shadow directors should be removed as a generic requirement and perhaps should only be indicated as necessary where there has been a breach history.
- It is not really appropriate to get details of bank accounts in advance – customers are pretty good at providing correct bank information as part of set up post contract signature. The guidance should perhaps suggest that any bank account is in the same name as the Customer.
- For foreign nationals or Foreign registered Corporate's additional guidance is required on what constitutes Due Diligence – is it sufficient to ask a foreign company for a copy of their local corporate registration as evidence of incorporation plus a copy of their last filed accounts/ or financial statement if it is a new company and scanned copies of passports?
- Where the service Provider is not a registered company or charity, it would be reasonable to ask for some form of ID check but this could be either a passport, or a Drivers Licence together with a recent utility bill and details of the bank account into which any out payments are to be paid –this should also be in the service provider's name.

2.2.3 In 4.5 – it would be useful to have some guidance of the preventative controls or restrictions which would be appropriate. It is not clear why an 'extensive breach history' would not be sufficient for a customer to fail their due diligence? Guidance on what would be sufficient for a customer to fail would be useful.

2.2.4 Modify 5.1 to reference the exemption of providers of lower cost services or include this in a new definition of 'exempt services'.

2.2.5 6.2 Informing P of any spikes in traffic (or other practice) which may suggest or indicate potential customer harm could be interpreted as including informing them of suspected AIT. It's not clear how reporting to PhonepayPlus helps manage a risk? We suggest this is amended to recommend that network operators monitor for spikes in traffic and abnormal traffic patterns and make reasonable investigation to identify and prevent consumer harm or damage to the industry.

2.2.6 6.12 reads as if the responsibility is only to advise a party you are contracting with to register rather than any failure to register being a reason for failing Due Diligence. It should be unequivocal that you can only contract with parties who are registered. PhonepayPlus should send notification to CPs if registrations are not renewed.
6.4 frequency of testing – it is not feasible to test thousands of numbers periodically..= The Network Operator does not police the SPs on PPP's behalf.7.3 suggests lack of control or appropriate risk assessment can be regarded as a serious or very serious breach of the Code. We suggest that it cannot be, as only the breach of the main obligation from its owner (for example the lack of registration or the inaccurate promotion material) can be regarded as a serious breach while the lack of control has to be regarded as a less serious breach.

2.3 Lower-cost services (including 0871/2/3)

2.3.1 Rename – as above to '**Guidance on 087X numbers**'

- 2.3.2 We suggest this note is introduced by explaining that services on 0871/2/3 are within the Communications Act 2003 definition of Controlled premium rate services and therefore regulated by PhonepayPlus.
- 2.3.3 Reference all the 087 numbers and how they are treated by PhonepayPlus
- 2.3.4 Reference that 08 numbers cannot be used for SES
- 2.3.5 This note doesn't reference the authority under the Code which supports para 4.1. - the exemption from registration, and this should be cited.
- 2.3.6 The definition in the first paragraph should also be included in the Framework definitions and it should be clear whether Lower cost services are also 'exempt services'.
- 2.3.7 4.2 in this note could be improved by including Guidance for network operators - in an annex if necessary, as this must be reasonably generic and consistent for all network operators and it supports the principle of transparency and fairness.
- 2.3.8 Defined by reference to ex vat prices.

PhonepayPlus should give guidance on failure to register a prior permission type service.

2.4 The Conduct of Live Services

- 2.4.1 In our opinion, this note is not well drafted and it makes no reference to what part of the Code it is giving guidance on or what the authority underlying the note is, unlike the other notes. It appears to just lift and shift chunks of S. 6 of the 11th Code and needs to be modified to have a softer tone more in keeping with Guidance. It should also refer to how the Outcomes should be delivered in the context of live services.
- 2.4.2 Much of the Guidance seeks to create new 'rules', some of which are lifted from s 6 of the 11th Code and are inappropriately expressed to appear mandatory:-
 - 3.1 requires information sources to be explained, details and relevance of qualifications etc – this would be more meaningful if the principle was that such services should be legal, should be fair - not mislead, and avoid harm, and the guidance pointed to providing this information in order to achieve those objectives.
 - 4.1/2 All Live Services must give the name of the provider and pricing information on connection. The requirement is for the information to be given 'before the decision to purchase is made' Code 2.2.1 – does not require this to be given on connection – merely before a decision to purchase is made. This could be in promotional material. The guidance could be covered in a softer tone by referencing the Code 2.2 Outcome dealing with Transparency and Pricing and give guidance only.
 - 5.1 & 5.2 are not correct and as the controls only relate to sexual Entertainment Services (see code 2.3.12) rather than all live services – these two paragraphs should be added to 6.3.
 - 6.3 & 6.4 & 11 states that all calls to the service must be recorded but this is not required by the rules. We therefore object to this. The rationale is presumably to obtain evidence to make it easy to investigate complaints and for the administration of the compensation scheme. The guidance also specifies recording equipment which must be able to monitor the CLI of each caller. This should be redrafted as guidance on the kind of evidence which would be appropriate before a tribunal rather than being mandated.
 - 7.1 states that live premium services are only allowed to be used by callers who are over the age of 18 . This is not what the rules say and this should be changed as again it is only applicable to sexual entertainment services.

- 9.1 All providers of light Entertainment Services – and multi party chat - are required to join the PhonepayPlus compensation scheme. This requires lodging a bond with a financial institution which can be between £12k-17k. Claims against this can be made by consumers to PhonepayPlus and if not settled can be referred to an independent adjudicator. This is not required under the Code and if such a rule is required then it should be in the Code and not in the guidance.
- 11 has detailed requirements relating to call recording. Eg.All recorded calls must be time and date stamped and tamper proof. Again there is no requirement in the Code so an indication of where this obligation comes from or what drives this would be helpful.
- Annex A to the Guidance is a list of approved recording equipment suppliers but the concept of such equipment having to be PhonepayPlus 'approved' is not within the code.

2.4.3 The guidance purports to introduce two terms which are not in the Code – these are 'Live services' and 'Live entertainment services. But such definitions are non binding unless in the code so it is recommended they are included in the Framework definitions.

2.4.4 It's not clear what the distinction is between a chatline and a live service so the guidance should make this clear or PhonepayPlus should include a definition of Live Services in the code. There was a definition in the 11th code and there is one in the Conditions for PRS services A live service was defined as conversation with a real person – 11.3.233. And chat is used as part of the description of live services Please make this clear.

2.4.5 We recommend this note is restructured along the following lines:-

- Authority from the Code which the Guidance is giving guidance on in the context of Live Services
- Definitions
- Generic Advice on Live Services
- Specific advice on Live services in the following areas:
 - Entertainment Services: with the following subsets together with reference out to any service specific guidance on:-
 - Sexual Entertainment and non sexual entertainment services
 - Chatlines and Multi chat
 - Live Psychic/ tarot
 - Non entertainment/ Advice Services: with the following subsets together with reference out to any service specific guidance on:-
 - Advice services, including Professional advice or expertise: by persons with recognised qualifications eg
 - Legal and Financial
 - Midwifery
 - Technical
 - Lifestlye – diet/ nutrition/
 - Counselling - by persons with no recognised qualifications
 - Employment
 - Lifestyle – personal coach
 - Public Information

2.4.6 The guidance references out to the website to check if Prior Permission is required but a list of these could be included in the Guidance. (We are still waiting for the list to be published and it will form a new Annex in the code)

2.4.7 We recommend that PhonepayPlus creates a separate Sexual Entertainment Services Guidance note or a separate section within this note, specific to this area which has a number of additional rules.

2.4.8 We recommend that 3.2 and 5 in the Guidance note on Undue delay is also repeated in this guidance so it is comprehensive.

2.5 The Avoidance of Undue Delay

This note is clear and well drafted.

2.6 The Appropriate Use of Number Ranges

2.6.1 This note is clear and well drafted.

2.6.2 This needs prices adjusted to be VAT exclusive.

2.6.3 However, it is quoting rules about how numbers must be used: SES can only be provided on these ranges. So why isn't it in the code? Why is such extra guidance required?

2.7 Promotions and Promotional Material

2.7.1 This note is clear and well drafted but with the potential for the VAT changes to create odd price points it would be useful if guidance could be included on how promotional messages could round these for example; to the nearest whole penny.

2.7.2 There was a concession in 5.7.5 of the 11th Code to exempt services under 50p from all PhonepayPlus requirements on pricing information and it is not clear why this has been dropped in the 12th code. There should be lighter requirements around promoting Lower value services.

2.7.3 It would be useful to draw attention to 2.2.7 of the code and give specific guidance on how prices promoted on TV for services should be managed – e.g. perhaps referencing out to the BCAP code.

2.7.4 Why introduce “proximate” and risk causing confusion when “very near to” would do just as well.

2.8 Privacy and consent to charge

2.8.1 This note provides guidance on how robust verification of consent can be obtained and gives guidance on both soft and hard ‘opt in’. However the language is more mandatory than advisory and should be modified. The guidance relates also to consent to purchase whether through a website, a mobile, text or PRS and giving consumers the ability to stop marketing messages.

2.8.2 Network operators are distanced from the consent process where this is managed by the Level 2 so will not have access to the evidence of the consent to PRS charge - ref 3.4/ 7.1 so we recommend this is modified to be clear that this is a requirement of the Level 2 and that they must provide this evidence if required by the Network Provider to resolve a consumer network bill query and the network operator can withhold Outpayments where there is failure to do so.

2.8.3 We recommend a softer tone more in keeping with a guidance note.

2.9 Method of exit from a service

This note is clear and well drafted.

2.10 Consumer refunds

This note should also provide guidance on best practice where:-

- refunds are due to consumers from the Network provider due to technical quality failure, and
- where refunds are due from the Level 2 where there is no tribunal involvement.
- How does the SP work out what the caller originally paid for the call? Will they need to see the callers itemised bill? This is not practical in 28 days where large volumes are concerned.

2.11 Complaint-handling process

This note is clear and well drafted.

3 Annex C: List of Service-Specific Guidance

There should be a Guidance note on Sexual Entertainment Services or at least sub headings in other relevant guidance notes since many of the rules are specific to this area and it is an area where a large number of services are provided.

Annex C: List of Service-Specific Guidance:

- Betting tipster services
- Competitions and other games with prizes
- Directory enquiry services
- Employment, employment information and business opportunity services
- Virtual chat services
- Subscription services
- Quiz TV
- Public information services
- Fundraising and other charitable promotions
- Children's services
- Advice services

3.1 Betting tipster services

This guidance should allude to relevant Outcomes/ Rules.

3.2 Competitions and other games with prizes

This guidance should allude to relevant Outcomes/ Rules – i.e. Legality/ fairness etc. It also needs to change the mandatory tone to one of guidance.

It is also recommended that the advice limits itself to the PRS element and does not stray into the Gambling commission area.

3.2 Please note that if no time is provided, the service is presumed to close at midnight on the day of the promotion.

3.3 Directory enquiry services

This guidance should allude to relevant Outcomes/ Rules – i.e. Legality/ fairness etc. It also needs to change the mandatory tone to one of guidance.

3.4 Employment, employment information and business opportunity services

3.4.1 This is a new Guidance note. It strays into giving advice on things beyond the Code and should simply reference out to compliance with the Employment Agencies Act 1973 which seems to contain the obligations but they are not enforceable by PhonepayPlus.

3.4.2 PhonepayPlus presumably gives this guidance by reference to the code outcome of 'legality' and this is the hook which should be used in the note.

3.4.3 This guidance would be improved if it referenced the Outcomes and Rules it is giving guidance on, and how they relate to the subject matter.

3.5 Virtual chat services

3.5.1 Adjust prices to be VAT excl.

3.5.2 This guidance would be improved if it referenced more the Rules which relate to the subject matter.

3.5.3 The reasonableness of the steps referred to in 3.6 seems to depend on the size and available resource of the provider. An example of the kind of ratio of intervention/ moderators to simultaneous callers would provide useful guidance.

3.5.4 In relation to 3.7. 2nd bullet, we suggest this also references evidence of training being delivered to new staff and refreshed from time to time and compliance with training also verified from time to time.

3.5.5 Again the tone in 6 is rather mandatory so should reference the relevant rules.

3.6 Subscription services

This note is well drafted and only needs to reflect VAT changes.

3.7 Quiz TV

3.7.1 This Guidance note lifts and shifts much of the 2007 'Call TV Quiz Services Review: A Revised Statement of Expectations' which was binding on the PRS industry. It is very prescriptive and would be more appropriate within the 'Rules' if the intention is for the various measures to be binding. E.g. 'If the information crawls or scrolls across the screen, it should not be off-screen for more than 60 seconds at a time.'

3.7.2 This guidance would be improved if it referenced what Rules it is giving guidance on or reference out to the BCAP and ASA codes if this is where the rules derive, then the guidance can hook into the 'Legality' outcome.

3.7.3 The guidance should then be illustrative of the level of service required to achieve this, rather than being prescriptive.

3.7.4 Include guidance on how Call cost warnings can be given when no CLI is provided – 3.5 or remove this exemption as presumably the person will still be online and be verbally given the warning.3.5 should either read "no more that £10 spent in each calendar day" instead of "no less than.." or be redrafted. "3.5. Call cost warnings should be provided to all callers (other than where the number is withheld) **once they reach** £10 spent in each calendar day."

- 3.7.5 It should also reference the guidance on Promotions and promotional material and illustrate how that advice would apply in the context of Quiz TV.
- 3.7.6 VAT changes are not referenced – do we need the daily max spend level increased?

3.8 Public information services

This is a new Guidance note.

- 3.8.1 Public information services are defined in the guidance but all definitions should be in the Code and not in the non binding guidance notes.
- 3.8.2 If the harm the guidance note is seeking to mitigate is to prevent bogus services keeping callers online to run a scam then it should be drafted more clearly to address this as it could currently restrict a legitimate business.
- 3.8.3 This guidance would be improved if it referenced what Rules it is giving guidance on. PhonepayPlus appear to be making quite a rigid interpretation.
- 3.8.4 For example the Rule in 2.3.2 only says ‘Premium rate services must not mislead or be likely to mislead in any way.’ The Guidance then seems to considerably extend this and is very prescriptive where it states:-
- 3.1. *Consumers should be provided with relevant information to make an informed decision before entering into a service. If the same information being offered by a premium rate service is available elsewhere, free of charge, by a government department or other publicly funded body, then the consumer should be made aware of this information in a clear and prominent way.*
- 3.8.5 This guidance could perhaps be redrafted to suggest that service providers promoting their Public information services, including via search engines, where there is no significant added value, who:-
- procure greater prominence in search engines than the Government Department whose information they were providing information on, or
 - in some way imply an authority from that Govt department, or
 - fail to inform that the information is freely available elsewhere ,
- would constitute misleading the public.
- 3.8.6 This guidance could be merged with the General Guidance on Advice Services.

3.9 Fundraising and other charitable promotions

- 3.9.1 This guidance would be improved if it referenced what Rules it is giving guidance on. Perhaps the note has again been lifted and shifted from the 11th code s 7.9 and the language has not been modified.
- 3.9.2 This Guidance does not necessarily warrant a separate sheet and could be incorporated as a section within the General Guidance on Promotions. It should be re drafted to reference the prime outcomes of ‘Legality’ and ‘Transparency and Pricing’ rather than prescriptive statements.
- 3.9.3 In the context of Legality, SP’s should be referred to the need to comply with the relevant legislation relating to charitable donations and charitable promotions although agree it would be helpful to summarise what these are and provide links to the relevant bodies who provide up to date guidance on requirements – eg Charity Commission/ Gambling Commission.
- 3.9.4 In relation to Transparency this could outline the kind of things which should be transparent – i.e. how much of the cost actually goes to the beneficiary, who the beneficiary is etc. as required by the Charities Act and the need for a solicitation Statement

3.9.5 We don't consider it's appropriate that PhonepayPlus recommend a charity shortcode. This is biased against landline numbers and has no regulatory justification.

3.10 Children's services

3.10.1 It would be helpful if this stated the Rules which this Guidance relates to. For example, the following code Rules have particular application in the context of Children's services but are not referred to:

Para 2.3.3 Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent.

Para 2.3.5 Premium rate services must not be of a nature which encourages unauthorised use by non bill-payers.

Para 2.3.9 Premium rate services must not directly appeal to children to purchase products or take advantage of children's potential credulity, lack of experience or sense of loyalty.

Para 2.5.8 Premium rate services aimed at or likely to be particularly attractive to children must not contain anything which a reasonable parent would not wish their child to see or hear in this way.

Para 5.3.14 "Child" or "Children" means a person/people under 16 years of age.

3.10.2 The guidance could be improved to give guidance on the following:-

Para 3.1. All promotional material in relation to children's services should clearly indicate that the bill-payer's permission is required and should specify whether any age restrictions apply.

... but it provides no guidance on what would be sufficient to validate that bill payers permission has been obtained? For example, should SP's ask to speak to the bill payer to confirm their consent? Should they challenge a child before any charge is incurred. Do different levels of interrogation apply for different PRS activities – i.e. for PRS voting in the context of a broadcast TV show before 9pm weekdays/ 10pm weekends not require a challenge on the basis that a child is likely to be watching with their family and therefore the bill payer? Before 5pm, can it be assumed the bill payer is at work for example so greater effort is needed to understand how permission was obtained?

3.11 Advice services

3.11.1 Again this guidance would benefit from referencing the Rules which provide the authority for the guidance. Presumably the relevant Rules include:-

2.5.1 Premium rate services must not cause or be likely to cause harm or unreasonable offence to consumers or to the general public.

2.5.3 Premium rate services must not encourage or be likely to encourage consumers to put themselves or others at risk.

And

2.1.1 Premium rate services must comply with the law.

And

2.2.1 Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.

- 3.11.2 Para 3.1 and 4.2 both detail requirements relating to promotional material so would be better placed in that Guidance note.
- 3.11.3 Para 5.1 purports to define professional advice services, but definitions should be binding and included within the code. The definition should also be broader to take into account people who give advice across a broader range of areas – for example, Life Coaches, Alternative Medicine Practitioners, IT professionals; Nutritionists; where linking with a professional body may not be appropriate.
- 3.11.4 Para 5.3 –doesn't provide sufficient guidance on the evidence to be provided. Merely confirming a qualification isn't evidence. Many people are quite capable of giving sound advice based on long experience rather than a certificate and this should also be taken into account. In the context of a PRS call what type of evidence would be satisfactory? This should also be dealt with as part of getting Prior Permission and should not have to be re established on a per call basis.
- 3.11.5 Para 5.4 Doesn't take account of those professionals where there is no industry body – eg IT professionals.
- 3.11.6 Para 5.5 – It's not clear what rule this relates to. If the purpose is to cover claims for bad advice, then it would be more appropriate for this to be dealt with through the bond scheme as part of Prior Permission registration.
- 3.11.7 The Guidance is too specific in relation to just the 3 areas of Legal Advice and Counselling services and should be more generic to apply to all advice services.
- 3.11.8 There are many restrictions under the FSA on giving financial advice yet this is not referenced so the note is incomplete if it is intended to target specific disciplines which include Financial Services.

4 No Guidance notes on:

- 4.1.1 It is not clear why there is no guidance on the following or reference to these specific areas in general guidance notes. A bridging note to explain why these are not included or where guidance can be found would be helpful.
- 11th Code 7.4 Contact and Dating services?
 - 11th Code 7.7 Consumer credit services
 - 11th Code 7.10 Pay-for-product services –Payforit
 - 11th Code 7.11 Sexual entertainment services