



**RESPONSE FROM THE PRA TO THE PHONEPAYPLUS CONSULTATION ON
Guidance to Support the proposed new Code of Practice
January 2011**

Introduction

The PRA welcomes the opportunity to respond to the PhonepayPlus (PPP) consultation on the Guidance to Support the proposed new Code of Practice. Broadly we welcome the move towards an outcomes based Code which gets rid of the difficulty of setting absolutes, which disreputable providers will look to avoid, and avoids the problem of PPP trying to set down technical standards for compliance in an industry which is constantly evolving. We believe that this reflects the fact that the industry is stable and there are established and long-term players in it, who wish to see it grow and flourish.

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.

Whilst the language seems relatively clear for those with a good understanding of the industry and good education, it may not be overtly clear to those who are not in those positions. We favour plain English and absolute clarity, we trust that anyone who feels they do not understand the language could come to PPP for clarification and therefore on balance we do not have specific issues with the phraseology used.

Q2 – Is the level of information provided in the Guidance sufficient? If not, why not? Please include any specific suggestions you have.

In reality the only way to absolutely determine if the information is sufficient and helpful is for this to be determined once the Code is launched and in operation. There may be confusion with the price warnings in light of the recent VAT increase.

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?

Definitions of those involved in providing PRS, this seems confusing, and it may be helpful to give examples using the names of some well known companies and identify what they are in terms of level 1, level 2 and then affiliates. For instance: BT, ITV, and their content provider (current SP) who is who and whom would be considered an affiliate. Currently the wording for someone who is trying to enter the PRS market would seem baffling without such an explanation.

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.

Specific points:- **on competitions and other games with prizes** (page1) it would be helpful to insert the word reasonable after Further so that the sentence reads "Further reasonable information should be made available to consumers upon request".

On **DQ** Guidance note how will PPP be aware if a DQ provider is revenue sharing?
Also 5.1 Consumers should not be connected to a service or number that they have specifically said that they do NOT want.

In **Virtual chat guideline** you say that 3.7 mitigating factors may be if a Level 2 has signed to PpP news alerts - should this be across all services and not just limited to virtual chat?

Subscription services should cost warnings not be at £18.00 as this is divisible by 4 (i.e. the 4 times the £4.50 subscription limit) and one could assume that most subscription services do not have a prior permission certificate?

Quiz TV 3.5 why do those callers who withhold their number not have to be given cost warnings?

Public Information Services 3.7 how can a provider avoid being ranked higher on a search engine if the engine itself ranks them as the highest? Also what happens if the organisation is in fact a government affiliate like an embassy that uses PRS? They will be ranked first whatever they do.

Due Diligence and Risk Assessment and control on Clients, whilst we whole heartedly support the duty of care that all contracting parties have and the obligations to their end customers, in reality some of the monitoring that is proposed on clients may be unreasonable, dependent on the size of the organisation. It is also difficult to see why affiliates may be excluded from regulation without clarity as to who they are.

Lower-cost Services 4.1 why are certain services exempted from registration based merely on cost? The original live one to one fund was bankrupted by services costing less than 10ppm. Exceptions leads to potential confusion.

Conduct of Live services 5.4 we are pleased to see the recognition that providers of live services can not be held accountable for varying network charges.
9.3 - if a provider's bond is lowered in year 2 of operation does the bond get repaid to them automatically or does the provider have to ask for a formal review?

(Small point on list of contacts for audio equipment Cathy Gerosa has not worked at Invomo for approximately one year).

Promotions and Promotional Material (including pricing information) 8.1, 8.2 and 8.3 the industry needs clarity as to who you will define as affiliates. Unless this happens there will be confusion and loop holes and the consumer will be the one to lose out

Definitions of those involved in providing PRS, this seems confusing and, as suggested above, we think it may be helpful use the names of some well known companies and identify what they are in terms of level 1, level 2 or affiliates.

Whilst we understand you are trying to seek to clarify roles, we do wonder how changing the names of the players involved will add anything. Indeed it may confuse issues and the real key is to follow the money chain. We would ask to have a formal definition of marketing affiliates; are these now TV companies and media owners i.e. publishers?. Can you please clarify how you would class a company that has no numbers, no content, no services, but provides consultancy and introduces parties so that services may be run. They may or may not receive a revenue share or could receive merely a flat fee.

Consumer refunds 3.4 "unsatisfactory quality" who will judge this? For instance if I complained that a sex call did not have the desired effect who would judge the quality and how?

Complaint-handling process 2.6.3 "within a process which is clear to the consumer" just a small point on this: what if the consumer is not a British national or does not have English as their first language should this not section not have a caveat which allows for such circumstances?

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.

Due Diligence and Risk Assessment and control on Clients, whilst we wholeheartedly support the duty of care that all contracting parties have and the obligations to their end customers, again we are concerned that some of the monitoring that is proposed on clients may be unreasonable dependent on the size of the organisation.

We note in relation to due diligence that this now has to be performed effectively both up and down the chain, it seems perverse that you are to set up a registration scheme but that a Network Operator, level one or level two provider that just checks this will not have performed due diligence, what then is the true purpose of the registration scheme, which in your tender document is likely to cost nearly a £1 million? Also in your due diligence checks it appears that focus is on limited companies what about sole traders? What criteria are to be used to establish the true identity and intent of the person asking for PRS numbers? Surely these are the key criteria for establishing who you are dealing with. How do I prove the person I speak with is the person taking the PRS numbers?.

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.

It is a good idea to check passports as anyone legitimate would provide this to a reputable company, however it is enforcing that Level 2s actually check that would be the problem.

Monitoring will be highly dependent on the size of the company involved and their infrastructure and due diligence must be clarified as to whether, for instance, you could carry out say the same level on a foreign entity.

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 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.

It would have been helpful if you had given a page number, however it is our opinion that as long as a consumer is aware of what they are consenting to enter into whether there is a cost or not then that is for them to decide.

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?

Stop should be the industry standard, however if a consumer is obviously indicating that they wish to leave a service and the SP does not act then it is reasonable to say a refund should be given.

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?

An initiation message should be sent where it is technologically possible and where it does not devalue the service provided.

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?

This would seem reasonable but it would need consent from the MNO's, are all MNO's contracts similar or the same?

As an overall point, we would be wary of allowing too many exemptions, as this can lead to confusion, what will make the Code and its application successful is the people who administer and enforce it.

Pricing concerns

In regard of pricing clarity we again ask that PPP supports us in seeking to get Ofcom to set a RRP for telephony.

Is it fair on industry or consumer that neither really know what they will pay as a consumer or be charging as a provider?

The thresholds and reminders are appropriate, but see comment above. A caller from a mobile could end up spending much more than £30, despite being given warnings as required.

You now say in relation to virtual chat, reminders must be given every £10 do you have to disconnect at £30 or not? Or can you run the services ad infinitum? We need clarity - different rules and pricing points will lead to confusion, why are subscription services limited to £20? The only exception should be children's services.

Conclusion

Whilst believing that PPP's new approach to regulation, evidenced by producing an outcomes based Code, supported by initiatives such as the new complaint resolution team are a recognition of a mature industry, and the correct way forward, we must have clarity as an industry to ensure Code compliance. We are concerned that introducing exemptions at an early stage will just lead to confusion. To truly stop consumer harm the administrators of any regulation must understand the industry they seek to regulate fully. PPP is a regulator first and a consumer protection body second, we trust that a new set of clear regulations will lead to an enhanced consumer experience with fewer finding cause to complain.