

Communications Consumer Panel response to PhonepayPlus' Call for Inputs in relation to the review of its Code

Introduction

The Communications Consumer Panel welcomes this opportunity to contribute to PhonepayPlus' Call for Inputs in relation to the review of its Code.

The Call for Inputs paper helpfully details the areas of the Code of Practice that PhonepayPlus are considering amending to ensure it continues to provide effective consumer protection:

- Amendments resulting from Ofcom's forthcoming legal instruments on Non-Geographic Call Services (NGCS);
- Changes to ensure the Code is future-proofed for current and future market developments;
- Technical amendments to Parts Three and Four of the Code; and
- Improvements to support the principle of 'polluter pays'.

We understand that responses to the Call for Inputs will frame and shape PhonepayPlus' thinking in preparation for a formal Code consultation scheduled for 2014.

The Panel is an independent body of eight experts who work to protect and promote people's interests in the communications sector. We were established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and small businesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of small businesses, which face many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively.

Following the alignment of the Advisory Committee for Older and Disabled People with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Spending caps

We agree that it is appropriate for the approach to both Code and non-Code based spending caps¹ to be reconsidered to ensure that appropriate consumer protection is in place whilst regulation remains proportionate and does not stifle innovation.

We acknowledge that protection for vulnerable consumers has been the rationale for spending caps with a forced release, as well as recognising that a telephone provides the means of access to essential services. If that access is lost as a consequence of not being able to pay a high bill there will be ramifications beyond the bad debt itself, causing the consumer to lose a means of contact with other (essential) services. We also recognise that an argument can be made that adult individuals should be free to spend what they choose on services such as sexual entertainment and live entertainment services - although such services could be seen to have addictive elements to them. This said, we agree that PhonepayPlus' overriding priority is to protect consumers (whilst recognising the dynamics of the market and the impact of other payment mechanisms for services). In reconsidering spending caps therefore we would urge that great care be taken and that close attention be paid to the priority of consumer protection - especially vulnerable consumers.

Services that are of particular attraction to children are, of course, different in nature and we believe that there are good arguments for the imposition of a cumulative cap in this area. We share PhonepayPlus' concern that bill shock for children can and does arise outside of these spending cap controls through large cumulative spends over a set period on, for example, in-app purchases or competition voting; and that younger consumers may undertake a number of repeat purchases without realising that they have incurred large charges for the bill payer. The Panel submitted its views to the OFT's investigation into children's online games earlier this year. Our response can be found at <http://www.communicationsconsumerpanel.org.uk/downloads/OFT-June-2013.pdf>. Generally, we would encourage close coordination between PhonepayPlus and other relevant authorities and in this case would urge particularly close liaison with the OFT in this area as the review develops.

It is vital that policy and regulation are evidence based. The Panel will be extremely interested to see the results of PhonepayPlus' consumer research in this area, particularly since the total call cost caps have not been revisited for 16 years - a period over which technology and access to a plethora of services has developed immeasurably.

Means to complain

We note that the twelfth edition of the Code ensures consumers are made aware of a means to complain should they need to and that under Rule 2.6.2, Level 2 providers are required to "...provide a proportionate complaints process which is easily accessible

¹ (Rules 2.3.12 (a) and (b) which set out total call spending caps on sexual entertainment services and services that are particularly attractive to children and other spending caps which are outside the Code - for example to live entertainment services, such as psychic services)

through a non-premium rate UK telephone number ... [which is] effectively publicised.” The rationale for this provision was to ensure that some consumers were not excluded or discouraged from complaining and/or seeking redress due to the absence of a non-PRS complaints helpline. We believe this remains the position. The Panel strongly supports the need for clear complaints policies and procedures that are easily accessed. We would also urge providers to enable calls about complaints to be free, or cost neutral, to complainants.

We acknowledge recent changes in technology, market developments and consumer behaviour. Although some consumers may now prefer to complain to a service provider via other means eg. email or text, these can be provided in addition to telephone support should a provider wish. In our view, a good range of contact methods should be available to consumers including telephone, email and post. We would have significant reservations about removing the requirement for a non-premium rate UK telephone number ... [which is] effectively publicised. This, we believe, could result in a de facto removal of consumer choice. Our recent research *Going round in circles? The consumer experience of dealing with problems with communications services* found that for many consumers, the preferred contact method with communications service providers was via telephone. Problems can be described in detail and clarification given immediately, in addition to the consumer knowing for certain that the provider is aware of their issue. Our research, which includes recommendations that may be useful in the context of PhonepayPlus’ forthcoming consultation, can be found [here](#).

We also agree that it is appropriate to consider:

- whether paragraph 3.3.3 (b) of the Code - which allows PhonepayPlus to enforce the relevant terms of any contract under the Contracts (Rights of Third Parties) Act 1999 - should be amended to ensure that it covers contracts formed in and governed by foreign jurisdictions;
- reviewing the effectiveness of the investigations processes;
- reviewing the effectiveness of the current sanctions regime;
- whether Paragraph 4.8.2 (i) can be changed to place the onus on the provider, if a Tribunal deems a general refund to complainants to be necessary; and
- whether to refine the reviews, oral hearing and appeals procedures.

We do not feel that it is the Panel’s role to comment in detail on PhonepayPlus’ funding arrangements - but we do see the value in the “Polluter Pays” approach and we welcome the consideration of how the Code can be strengthened to assist with overall cost of regulation; incentivised compliance; and better outcomes for consumers in respect of a trusted and thriving PRS sector.

We look forward to responding to the detailed consultations in due course.