

PhonepayPlus - Code of Practice (12th Edition) Review

Response by FCS to the call for inputs issued on 12 September 2013

October 2013

Introduction

The Federation of Communication Services is pleased to have the opportunity of responding on behalf of its members to the PhonepayPlus call for inputs to the review of the 12th Code of Practice. We welcome the early opportunity to discuss the review with members of the Executive and the overall process plan to answer questions and resolve some potential issues in advance of a full consultation.

We believe that decision to move from a rules based to an outcomes based Code was the right one and that the 12th Code has been, on the whole, an effective tool in assisting PPP to regulate the industry. We note that the time is right to adjust some areas which may not have been running as smoothly was hoped.

S2 – NGCS

Spending caps

Q3 – Whilst PPP has picked up all the areas that will be affected by the NGCS changes, it is difficult to answer questions relating to specific price points that will be used as these are still being discussed by industry groups who themselves are awaiting the Ofcom statement due in November, which will provide guidance on selecting price points.

We note PPP's wish to enhance consumer protection under the new pricing regime, and trust that this will be supported by the NGCS review as consumer protection and understanding of charges are the main drivers of the proposed Ofcom changes.

Q4 – We believe that there is still a requirement for spending caps in certain areas and that PPP's current service types where these apply are still largely correct. Where services such as tarot are aimed at adults, and there are equivalent services that can be paid for by credit card, PPP should consider equality of price maxima across the payment mechanism.

S3 – Future Proofing

Complaints handling

The wording of 2.6.2 may well need to change as a result of the BIS proposals (along with the current regulations allowing the use of 0871 for complaints handling purposes). We note the proposals to allow a wider range of access methods for lodging a complaint; the key outcome required is that the consumer has an easy and low/no cost route to complain via a route that is easy to them. If this is by an access method other than a "non-premium rate number" then that should be acceptable.

Registration

We agree with PPP's proposals to be able to have more flexibility on registration, but would encourage PPP to look at ways of including parties that have so far escaped the net, such as affiliate marketers who have been behind so many breaches recently.

Q5 – We are not aware of any other provisions requiring review at this time.

Q6 – The FCS agrees with PPP’s proposals to continue to move towards outcomes based regulation.

S4 – Enforcement

Registration and Responsibility

The problem of enforcing the Code when providers are based abroad is not a new one; we understand that the usual process is that PPP approaches the regulator in the country of origin of the service provider to seek enforcement on its behalf under the rules that apply within that country.

Q7 – We are not comfortable about allowing the executive to impose sanctions on track 1 cases. This is giving a power to the executive way beyond anything previously held and could lead to inappropriate pressure being brought to bear on staff who do not have the protections and independence of the tribunal. A provider is clearly going to accept a “low” fine from the executive, rather than a full blown case and possible sanctions plus admin charge from the tribunal and may choose to “alert” the executive to problems in an attempt to circumvent the full adjudications process as soon it becomes aware of problems.

We welcome the proposal to have a case considered by a single member of the Tribunal in certain clearly defined track 2 cases.

Q8 –.We have not further comments at this time.

S5 – Polluter Pays

Q9 – We welcome continued effort to focus on the companies causing the problems and using fines and administrative charges from such cases to offset the levy.

If L1 providers are made responsible for defaults on fines imposed on their L2s (not just those where a direction has been made under 3.2.3b), this may reduce the number of situations where a L1 provider pays their L2s as soon as funds are received from the network. Hopefully if the case is likely to result in a fine PPP will have already asked the L1 to voluntarily withhold funds under the current procedure

If PPP could successfully collect all the fines due, the percentage paid by providers who cause no issues for PPP would be significantly reduced or even cease to exist. Perhaps in the meantime PPP could consider a “no claims discount” on repeat registrations for providers who have had no track 1 or track 2 issues raised in the previous year.

Conclusion

The FCS looks forward to commenting on the full consultation once it is published by PPP.