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PhonewayPlus Consultation Response

Code of Practice (12th Edition) Review: A PhonewayPlus Call for Inputs

Q.1: Do you agree with our overall approach to this Code review? If not, why not?

We agree with the overall intention to improve the current (12th) Edition of the Code to ensure both better protection of consumer experience with PRS and development changes to the Code for the challenges of the new technologies and trends within the market.

Q.2. Is there anything else we should be considering?

As an L2 Provider we think that, apart from the consideration of the points raised within this Call for Inputs, the changes should also be considered for two other areas of PhonepayPlus work – Code Guidance and communications with L2 Providers.

Expanding the reach and example base of the current Guidance for the companies both experienced and new on the market should ensure a better understanding of the principles of the Code and general PP+ approach to analyzing and resolving of issues which may arise during the provision of the services. From our experience, an L2 Provider may experience some issues with addressing Guidance since, apart from disclosure of the principles of the Code, it does not contain enough examples of the best practices for each section referenced – a number of compliant examples with PP+ full service flow diagrams or promotion examples (both mechanics and wording) would ensure a much more better understanding for L2's (as many of them are not located in UK and are accustomed to a different set of regulatory principles).

Considering the mentioned changes to the communication methods with L2 Providers, the most important issue, in our experience, arises from not being able to receive direct and timely responses for queries sent concerning service-specific information or updates to the current PP+ view on the L2 operations. During our attendance of World Telemedia 2013 we spoke with Mr. Levack, PP+ Senior Policy Executive, on these issues and we proposed an idea of improving the current Due Diligence form on the PP+ website, to ensure that a responsible registrant might have a clear understanding of the current status of his business. This might include a list of all Information Requests, an introduction of some scale of “complaint threat”, an indication of the current level of consumer complaints and the one that is considered compliant by PP+ so a registrant may take proactive steps and perform changes to his services before they will inflict serious harm to the consumers. The information will be private and only accessible by the registrant via his account with PP+ so there would be no threat of making private business information open to public.

Q.3. Have we considered all implications of Ofcom's proposed NGCS changes on the Code of Practice? If no, please detail what we may have overlooked.

We do not have relevant comments regarding this issue.

Q.4. In light of new service charge caps being introduced on the 09 number range, what views and evidence do you have around the application and level of spending caps to certain PRS services to protect consumers?

We believe that reviewing the spending caps for children services or services attractive to children should be considered as a step to better protection of this vulnerable group of PRS users and decreasing the possibility of a bill shock. However when assessing what cap is appropriate, they should be reviewed in the context of other payment methods and in close work with relevant service providers who can describe the common user flow for such services and the consumer risks these services may contain.

On the other hand we believe that some changes should be considered on increasing the spending caps for sexual entertainment and other 'live' adult services, since, as mentioned in this document, *"consumers are adults who can choose how much money they want to spend on a service"*. Since some of our business interests lie in the dating services (an area strictly used and designed for adults) we often have to inform our customers that they are not able to use the service further based on the regulatory demands which leads to situation when users are disgruntled about the service and prefer not to use our services in the future, which affects our customer base and impacts on our Commercial objectives. The current 12th Code demands a £30 spending cap for 'live' SES, however credit card payments for similar services are not capped at this amount which leads to lost opportunities and revenue decrease for PRS market. Based on the average monthly payments by credit card users (from the information supplied to us by our partners) which usually is higher than 40-50 a month (subscription payments, features, additional services) we would propose a £50 spend limit for 'live' SES. This limit will both remove the restrictions to PRS which make them vulnerable to credit card competition in micropayments and ensure that the consumer can choose the payment option which would be more convenient for him – a credit card or a mobile phone.

Q5. Are there areas or provisions within the Code that are not fit for new market innovations and emerging trends that we have not identified in this document?

We do not have relevant comments regarding this issue.

Q6. Do you agree with our overall approach to continue to make the Code even less prescriptive and increasingly outcomes-based? Do you agree with our approach to the issues we have identified?

We agree with the declared approach to make the Code less prescriptive and increasingly outcomes-based, however we do not think that expanding Guidance with compliant examples of services will interfere with this approach.

Based on our expertise we would more than welcome those mentioned in clauses 3.5 and 3.7 changes to the possibility of alternative ways of providing customers with a most convenient form of complaints resolution process. Many of our customers prefer their complaints to be resolved via email correspondence, since actual phone calls are often not convenient due to environment or time of day.

We would also add that to consumers of adult services, whatever their content is, it is often inconvenient to have a phone conversation during the complaint process, both due to the private nature of this activity and to possible personal issues (anxiety, emotions or embarrassment due to discussing personal matters).

Therefore many of our users preferred an alternative to a phone conversation complaint handling procedure, usually in the form of email correspondence. However issues arise when supplying

customers with correct email address for complaints, as current rules dictate disclosure of only a free phone line and no other alternative ways. Therefore we are not able to provide our email address in the promotional or service messages which creates inconvenience for a large portion of our users.

Q 7. Do you agree with our proposal to review the Track 1 and Track 2 procedures? Do you have any further suggestions as to how PhonepayPlus might amend them to reflect current usage, ensure consumer protection and optimise the principle of polluter pays?

We agree with the general idea that the changes are needed to ensure Track 1 and Track 2 procedure fulfill their role in ensuring a better customer protection that should be reached with support and close cooperation with the industry stakeholders.

We believe that the general idea of clauses 4.11 and 4.12 of adjusting the Track 1 procedure would ensure both better customer protection and better due diligence of responsible L1 and L2 providers. If PP+ will widen its practice of contacting the responsible provider considered to be breaching some of the Code principles and working closely with him to ensure that the needed adjustments are implemented in shortest time possible, it will benefit both the consumers and industry stakeholders. We think that most of L2 providers would be glad to have direct contact with PP+ and will not object the minor sanctions within Track 1 should they be explained by PP+ and alternative complaint way found.

Adjusting Track 1 in this way will benefit all members of the PRS market, since consumers would receive better and more efficient protection from non-compliant services, stakeholders will be able to adjust their business without any issues and PP+ might reduce its money / time expenses on lengthy formal processes which could be resolved within Track 1 procedure with the same result.

We would also mention that, as said in this document, in order to ensure a better understanding and general agreement of the industry to these changes the Guidance should contain a detailed explanation of reach, possible sanctions and general conduct of the new Track 1 procedure.

We do not have any other relevant comments regarding this question.

Q.8. Do you agree with our general approach under the enforcement and technical review theme? Do you have any comments on the areas for consideration that we have identified? Are there potential amendments that we should consider but have not? If so, please detail the issue and provide relevant information if available.

We agree with the general approach to lessen the time / cost of the Track 2 Procedure and Oral Hearings. Also we are concerned about the proposition to lessen the Tribunal to 1 person instead of current 3, since we believe that any major decisions that are based on the Tribunal opinion on the presented evidence should be a subject to a qualified discussion between the Tribunal members. It may even be worthy of consideration that a Tribunal always has an Industry representative, as they will be better placed and have better technical understanding of how some services operate.

Also we believe that company under Tribunal's assessment should be given a choice to have 1 or 3 members of the Tribunal while understanding the associated costs.

Q9. Do you agree with the issues we are considering as part of the polluter pays theme? Are there any areas that we have missed?

We agree with the proposed change to ensure “polluter pays” overall strategy fulfills its goal and provides a better environment to compliant industry members and strengthens consumer faith in PRS market. However as part of the ‘Polluter Pays’ principle, then PP+ should consider ensuring Affiliate Marketers are also included within the scope of PRS Regulation as on occasions, they may be several steps away from direct contractual agreement with an L2 Provider and if they are breaking Marketing Rules and Guidance from PP+, they should be held responsible.