

# Response to the Code of Practice review by PhonepayPlus

24 October 2013

# PhonepayPlus Code of Practice review consultation

## Ombudsman Services' consultation response

Author	Mark Glover, Policy Manager
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## 1 Summary

### 1.1 About Ombudsman Services

The Ombudsman Service Ltd (Ombudsman Services) is a company limited by guarantee that provides ombudsman services for the energy, telecommunications, property and copyright licensing sectors, by appointment or approval from the relevant regulators. It was appointed by the Department for Energy and Climate Change (DECC) to be the ombudsman and investigation service for the Green Deal. We provide dispute resolution and redress to domestic consumers and micro-businesses. Established in 2002, Ombudsman Services now has around 8,500 participating companies and last year we resolved just under 28,000 complaints. The company employs around 170 people and has a turnover of just over £8 million.

Ombudsman Services complaints resolution service is free to consumers and costs the public purse nothing; it is paid for by the participating companies under our jurisdiction by a combination of subscription and case fee. The participating companies do not and should not exercise financial control over the company. Ombudsman Services' governance ensures that we are independent from the companies that fall under our jurisdiction. The more complaints there are about a company, the more the company pays, ensuring an incentive for the company to improve their customer service.

To help level the playing field between consumers and companies, we have a contact centre which provides information and helps those who have difficulty in making a

complaint. We achieve proportionality by providing alternative dispute resolution through different processes, from early resolution to Ombudsman Services decision.

With our sustainable funding model, independence and considerable experience we have the capacity and appetite to undertake further work.

## **2 Specific response to the questions**

### **2.1 Ombudsman Services response to the consultation**

#### **Q1. Do you agree with our overall approach to this Code review? If not, why not?**

Yes. Ombudsman Services believes that overall approach adopted by PhonepayPlus in its review of the code of practice is appropriate. We agree that there is no need for a fundamental revision of the code of practice. We also agree that the review should focus on the following areas;

- a) Amendments resulting from Ofcom's forthcoming legal instruments on NGCS
- b) Changes to ensure the Code is future proofed for current and future market developments
- c) Technical amendments to Parts Three and Four of the Code to streamline investigations and adjudicatory processes
- d) Improvements to support the principle of 'polluter pays'

#### **Q2. Is there anything else we should be considering?**

No, the scope of the review appears to be both logical and sufficient; there is nothing else that that needs to be covered.

#### **Q.3. Have we considered all implications of Ofcom's proposed NGCS changes on the Code of Practice? If not, please detail what we may have overlooked.**

PhonepayPlus appears to have covered in the review all the implications of Ofcom's proposed Non Geographical Call Service (NGCS).

Ombudsman Services welcomes the particular reference PhonepayPlus' makes in its proposed review the balance between protecting consumers and other payment methods. We welcome PhonepayPlus' intention to consider how consumer protection can be enhanced under the proposed pricing regime, as well as its intention to review if rule 2.3.12 (c) will need to be amended.

**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?**

As PhonepayPlus is aware, Ombudsman Services does not consider complaints in respect of premium rate services. As this is the case we are unable to provide any evidence on the application and level of spending caps to certain PRS services to protect consumers and we do not propose to respond to this question.

**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?**

Ombudsman Services is pleased to see that PhonepayPlus is considering the key areas of complaints handling, the registration of services and cumulative spending caps. These are in our view the most important areas of the code and we are unable to suggest any other areas that should be considered.

Ombudsman Services also suggests that in relation to the proposal to cap the charges for calls to certain services, it should be noted that there are data cap limits on roaming charges and government has suggested proposals to limit complainant's liability for charges when they lose their mobiles – spending caps seem to be on the rise. We see a number of complaints relating to customers unexpectedly running up bills they cannot pay and we do feel there is a need for protections.

**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?**

The general direction of regulation has been to become less prescriptive and focus more on the desired outcomes that a regulation is intended to achieve. Ombudsman Services welcomes the proposal attempts to future proof the revised code of practice by introducing an element of flexibility. The changes to become less prescriptive will enable PhonepayPlus to more effectively regulate what is a fast changing sector.

Ombudsman Services in particular welcomes PhonepayPlus' intention to consider amending rule 2.6.2 and its suggestion to make it more flexible to ensure that it can cope with future developments in the PRS. We also support requiring the companies to ensure that any complaints process would have to demonstrate how it would meet the outcome that requires redress to be both quick and easy.

We agree with the proportionality suggested in para. 3.9 which allows exemptions for particular categories.

**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?**

Yes, Ombudsman Services agrees with the proposal to review Track 1 and Track 2 procedures although we are unable to provide any suggestions how PhonepayPlus might amend them to reflect current usage, ensure consumer protection and optimise the principle of polluter pays.

**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.**

Yes, Ombudsman Services agrees with PhonepayPlus' general approach under the enforcement and technical review theme

**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 support the concept of the "polluter pays" principle, indeed Ombudsman Services operates along similar lines. We do not believe that those that consistently cause a problem should be subsidised by those companies that comply with the code and whose business practices do not give rise to complaints. We believe that the polluter pays principle acts as an incentive to companies to avoid generation complaints.

We also support PhonepayPlus' review of paragraph 3.5.1 to ensure that in the interests of fairness and equity rogue providers do not profit from serious breaches of the code.

**Lewis Shand Smith  
Chief Ombudsman**

24 October 2013