

Three  
Star House  
20 Grenfell Road  
Maidenhead  
SL6 1EH  
United Kingdom

T +44(0)1628 765000  
F +44(0)1628 765001  
Three.co.uk



PhonepayPlus  
Clove Building  
4 Maguire Street  
London SE1 2NQ

**NON-CONFIDENTIAL**

24 October 2013

Dear Jonathan

**Hutchinson 3G UK Limited (Three) response to PhonepayPlus' Call for inputs on revisions to its Code of Practice.**

Three is grateful for this opportunity to respond to PhonepayPlus' call for inputs and contribute to this important debate around the function of PhonepayPlus' Code of Practice. Three's response consists of some general comments and then answers where appropriate to the specific questions set out in the Call for Inputs. Three's response also complements the input of the Mobile Broadband Group to this subject.

As one of the UK's leading Communication Service Providers and the largest carrier of mobile data, Three has good experience of both the use of premium rate numbers in a range of contexts as well as the use of mobile phones as payment devices.

Three is clear that the involvement of industry and other informed stakeholders in the early stages of policy development, and in particular the early incorporation of expert knowledge and experience in the formation of regulatory policy is a welcome step and should be firmly embedded in PhonepayPlus' practice.

Three believes that such engagement with the industry and other stakeholders can only bring real benefit to the quality of PhonepayPlus' regulatory policy making, helping to ensure that future revisions to its Code of Practice are not only grounded in economic and market realities but also provide a robust framework for growth and innovation in a market that is of increasing importance to both business and consumers alike.

Three recognises that this is a call for inputs and that the final detail of revisions to the code will not be fully developed for some time. We have therefore sought to ensure that

our comments are as brief as possible and will save more detailed comments for what will be a full response to the later consultation.

Three recognises that wider consideration of how payments made through a mobile device and the regulatory regime that governs that payment is beyond the scope of this call for input. However, it is important that PhonepayPlus starts to lead this debate. The current dual system of regulation with some types of payments falling under the regulatory jurisdiction of the Financial Services Authority, and others to PhonepayPlus is untenable, particularly as the difference in the payment means as well as the regulatory applicable regime is rarely clear to the consumer.

Three believes that the current system leads to confusion and could undermine confidence in this nascent but important market. This would be bad for both consumers and for the industry and may stifle important growth and innovation in the use of mobile devices as a vehicle for payments. Three urges PhonepayPlus to take determined action and lead this debate to ensure that this does not happen.

### **Response to specific questions**

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

Three agrees with the overall approach to the review of the PhonepayPlus Code of Practice. In fast paced and dynamic markets it is important that regulatory developments not only keep pace with that change, and particularly, the growth of innovative, new services, but provide both a framework for future growth and certainty for investment. The periodic review of the PhonepayPlus Code of Practice is therefore both appropriate and welcome, as is the engagement at an early in the development of proposals, with the industry.

This review will also provide an excellent opportunity for PhonepayPlus to reflect on and account for the proposed changes arising from Ofcom's review of non-geographic numbers and to make minor changes that could improve the usefulness of premium rate services and the overall regulatory framework.

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

Three has no comments to make in response to this question.

#### **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.**

It does not seem to Three that PhonepayPlus has overlooked any particular aspect of Ofcom's on-going work on non-geographic numbers. However, we urge PhonepayPlus to continue to have close regard of Ofcom's work and ensure that the final iteration of the PhonepayPlus Code of Practice takes full account of Ofcom's final decisions on non-geographic numbers.

**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?**

Three believes that it is time to re-visit transactions limits and spending caps, particularly around children services. It is clear to Three that these could be raised sensibly and proportionately, perhaps within the context of a capped amount per month. This would be in line with the recent OFT report and consultation on the draft principles for purchases by children.

The current £3 transaction limit has been in force for 16 years and is becoming progressively more limiting in terms of the available price points for premium rate services that are primarily for children.

Three agrees with the MBG that the relevant benchmark for setting the upper limit could be the Halifax Annual Pocket Money survey.<sup>1</sup> In 1997 average weekly pocket money was £1.67, roughly half the £3 transaction limit. In 2012, average pocket money is estimated at £5.98. On a *pro rata* basis, this data would support a transaction limit of roughly £10 (enough, for example, to purchase a digital download of Cinderella from a content portal).

**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?**

*Regulatory Complexity*

As we noted above, the current dual system of regulation with some types of payments falling under the regulatory jurisdiction of the Financial Services Authority, and others to PhonepayPlus seems to Three to be untenable as a regulatory model going forward. Three is concerned that differences in the payment means as well as the regulatory applicable regime is rarely clear to the consumer and that this will undermine consumer faith in mobile as a means of payment, which will in turn restrict growth and innovation in this market. Three calls on PhonepayPlus to lead this important debate and help bring real clarity to the current regulation.

*Complaints handling*

Three agrees that it should be acceptable for service providers to offer alternative ways of being contacted – either by telephone or on-line. It is more important that any offered support is efficient and effective than it is to be specific about the means of contact. However, Three suggests that there needs to be some guidance around the appropriateness of some forms of contact and how that contact means is signposted, as, this may result in consumers contacting the customer services of their mobile network operator where it might be difficult if not impossible to provide appropriate levels of support or resolve issues.

---

<sup>1</sup> [http://www.lloydsbankinggroup.com/media/pdfs/halifax/2012/0809\\_Pocket.pdf](http://www.lloydsbankinggroup.com/media/pdfs/halifax/2012/0809_Pocket.pdf)

## *Registration*

Three supports the possibility for exemptions from registration to different classes of registrant, where the basis for exemption is objective, consistent and proportionate.

## *Cumulative spending caps*

As set out above Three believes that it is time to revise upwards the maximum transaction value for children's services, based around a monthly cap built around the billing cycle, and set at a limit approximately 4 times the maximum transaction value.

### **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?**

Please see our response to Q5.

### **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?**

Three is supportive of PhonepayPlus' intention of optimising the principle of polluter pays. It is important that the small minority of businesses who offer substandard services and who are responsible for regulatory breaches meet the cost of that regulation. However, Three urges that PhonepayPlus makes real efforts to ensure optimising the polluter pays principle does not bite unnecessarily or vicariously on the Mobile Network Operators. Vicarious regulation through the MNOs is not the same thing as polluter pays.

It is also to note that Three already takes action to ensure that monies can be recovered from vendors in the event of a regulatory breach: Three withholds revenues to be paid to vendors for a minimum of 30 days.

## *Investigation processes*

Three sees some merit in PhonepayPlus' proposal for an amendment to the definition of cases eligible to Track 1 procedures. This would allow for the possibility for more minor breaches to be dealt with through Track 1.

Three also favours the proposal that the Track 2 procedure could 'start' earlier than the formal commencement date of a full investigation, with the concomitant benefit that formal 'withhold' notices can be issued to Level 1 providers at an earlier stage. This would ensure that monies would be held back in the system sooner, which could be used to pay fines more effectively and, if appropriate, refund consumers.

However, we do not support the suggestion mooted in paragraph 4.11 that sanctions might be imposed by a body other than the Tribunal. Like the other network operators. Three has always supported the current structure whereby the Tribunal is functionally

separate from the board and executive. It is Three's view that the Tribunal should remain as the only party able to impose financial sanctions on PRS providers.

Three urges PhonpayPlus to make sure that it consults fully with the industry on how this will work in practice – what will be the evidential threshold to trigger a formal withhold? What will be a reasonable amount to withhold, and other practical matters?

**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.**

Three has no comments to make in response to this question.

**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?**

Three has no comments to make in response to this question.

Lastly, it goes without saying that if PhonpayPlus is to achieve the best outcomes when addressing these issues, it is vital that it works closely with other relevant regulators, particularly with Ofcom, to ensure alignment and consistency and that desired outcomes in the communications sector are not undermined by interventions made by other regulators.

If it would be useful, Three would be very happy to provide further information in relation to the points raised in this response. We would of course be happy to discuss any of the matters raised here in person if that would be of assistance.

Yours sincerely

Simon Miller –  
Regulatory and Consumer Policy Manager