

Introduction

Action 4 welcomes the opportunity to respond to the PhonepayPlus (PpP) consultation on Code of Practice (12th Edition) Review Update.

We notice your objectives are:-

NGCS, future proofing, enforcement and technical review alongside the principle polluter pays.

Spending Caps

In relation to spending caps we welcome a higher point at which forced release must happen, however we are concerned in light of the higher price points of £3.00 and £5.00 which are shortly to be operational. A £45.00 forced release would mean a nine minute call at the cost of £5.00 per minute; it is hard to see how any content could be delivered within this time frame.

Also in light that the service provider does not know what the consumer is actually spending due to extra costs being applied via mobiles. Therefore they are disconnecting at the point they believe that the consumer has spent £30.00 when in reality the consumer may have a bill far in excess of this.

Whilst from June 2015 the service provider will know the service charge they will not know the access charge. So once again in reality they will not know for certain what the consumer has been charged on their bill.

Therefore would it be reasonable to consider an alternative that all calls must have positive affirmation from the callers that they wish to continue with the call and if this is not received then the call is disconnected.

Future Proofing

Complaint handling

We agree that the consumer should have a non-PRS route to be able to seek redress or to discuss issues with the provider of services.

As we suggested in our last response:-

“As PpP are not doubt aware BIS recently defined that no PRS telephone number could be basic rate and therefore using certain tariffs for consumer complaint lines

will become increasingly difficult. It may be better to state that all customer complaint lines must be on the lowest price point available.”

In light of PpP announcement on the 24th March that you deem 087 and 084 now to fall under your remit.

“PhonepayPlus today issues a Compliance Update that is relevant to all providers of premium rate services that use premium rate numbers (including 087 and 084 numbers) to operate customer helplines, and to the Level 1 providers and Network operators through which these helplines are provided.”

We understood you regulate 0871 and 09 and may regulate a number if this is being run under the definition of controlled PRS as defined via the communications Act 2003. Can you explain exactly how you believe 084x and 0870 fall within your remit under the CPRS definition.

Additionally please can you explain how you view s41(2) of the Consumer Rights Directive and why you are taking a stronger line, given it appears to allow the trader to refund the money for the call and therefore be complaint with the Directive?

Can you please be clear on exactly what pre-fixes can be used. The consumer rights directive says the below:-

“Help-line charges over basic rate

41.—(1) Where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts entered into with the trader, a consumer contacting the trader must not be bound to pay more than the basic rate.

(2) If in those circumstances a consumer who contacts a trader in relation to a contract is bound to pay more than the basic rate, the contract is to be treated as providing for the trader to pay to the consumer any amount by which the charge paid by the consumer for the call is more than the basic rate.”

Our interpretation of the above is that any pre-fix can be used as long as the consumer is refunded the difference between the cost of the chosen pre-fix and basic rate.

Spending Caps on Children’s Services

In principle we agree with the notion of a cumulative spend caps, but feel obliged to point out that a child’s activity is a matter for their parents and not one for regulation. We are not in any way saying that there should not be a limit more so that this should be largely defined by the parent if they are happy that their child spends more surely we should allow this to be possible. Certainly with the regard of pay as you go phones when a parent is monitoring spend by the requirement for them to load more credit to the mobile device.

Vulnerability

We agree that vulnerable consumers must be protected from anyone who seeks deliberately to target or gain advantage from them; however the difficulty we believe lies in the word itself. Just because a person is old does not necessarily make them less able or capable to reason and make a decision and humans or groups or types of humans may be in a vulnerable position due to outside forces such as debt.

Therefore I may be vulnerable today say through mental health difficulty but these difficulties may improve due to medications or through a new source of income in the case of the debt scenario. Therefore we agree that the definition here is very important as is the product being offered. For example if a service was being offered for example a cognitive therapy session for the mental ill and Mencap's database had been used, the cost of a registering call was £1.50pc but the value of the therapy £100 would a service provider be breached for offering the service?

In blanket advertising no service providers can know who is likely to view and respond to their marketing.

May we suggest "premium rate services must not deliberately target or seek to target consumers or groups of consumers who are obviously vulnerable with content that is likely to mislead, confuse or gain overt financial advantage"

Enforcement and technical Review

We welcome stream lining and reduction in costs in all areas of the code and its enforcement.

In relation to Track 1 cases we welcome your position in relation to imposing lower level sanctions but would want more clarity as to why and how administrative charges would be applied.

In relation to track 2 and when the process would begin and revenues withheld. We need further information; you do not indicate as to how much earlier you are normally aware of a potential breach and the actual sending of the breach letter being sent.

We welcome in theory the principle of less tribunal members as this should in turn mean less cost.

Prior Permissions and conditions for higher risk services

We agree that option c would seem a viable and appropriate change as long as this is clear and transparent as to the objective of a prior permission.

Reviews, Oral Hearings and Appeals

We agree with a review of the wording in rule 4.7.3 and that the current wording is potentially draconian.

In relation to the oral hearing process again anything that simplifies the process and limits costs whilst ensuring a fair outcome is welcomed.

In regard of the whole process whether this be administrative charges or appeal or oral hearing this should operate as it does in a court of law in that if a service providers is not guilty of the breach in question then PpP should pay the costs in relation to the case.

The process around administration charges should be reassessed. A regime where by you are accused of a "crime" can then go to oral hearing win partially at appeal but then still the only option is a review and by the person that made the original decision seems bizarre.

We believe reviewing why you bring a potential breach and how the company or operator is then treated through out the process to be worthwhile. Balance and checks at all stages are helpful.

We agree that the polluter should pay but only, as long as a company has the money to defend themselves if they do not this seems injustice in that even £25,000 let alone £100,000 today in a commercial environment is a lot of spare cash to find. This may prohibit a company's ability to properly defend themselves.

Definitions

Any further clarity of definitions is welcomed.

Polluter Pays

We support the principle that the polluter should pay again any further clarity is welcomed, as long as the true polluter in the chain is the one paying.

As we have said before "We agree with the polluter pays theory but how can the polluter pay when there is no official stance on market affiliates?"

We thank you for the opportunity for allowing us to respond to this document.