

## **Action4 response The Thirteenth Edition of the Code of Practice A PhonepayPlus Consultation**

### **Introduction**

Action4 welcomes and thanks PhonepayPlus for the opportunity to respond to its consultation entitled The Thirteenth Edition of the Code of Practice A PhonepayPlus Consultation on behalf of its members.

As a membership driven trade association representing commercial businesses operating within the non-geographic telephony sector, we are starkly aware that effective regulation is intrinsically linked to the good levels of industry and consumer trust and in turn a buoyant industry.

Our first comment in relation to the code is that most of whether regulation is effective or not is in the implementation of the code and those that administer this. Regulation must be fair and appropriate for those that consume services and for those that operate them.

### **List of questions for consultation**

Q1. Do you agree with our graduated approach to caps on live services and the proposed points of intervention? Please evidence your response.

We welcome an increase to the spending cap, but are still minded to say that ultimately the consumer should have the ability to decide what and where they wish to spend their money. For live adult services having to call back again could be disruptive to the quality that a consumer may experience ultimately positive affirmation that they wish to continue the call even, by being asked the question “you have now spent £45 do you wish to continue” may be more helpful. Also spending caps will ultimately mean nothing when the mobiles charge more money for contacting a call. You say you are not to change the caps to virtual chat and subscription services due to high levels of complaints in relation to text so the fixed line operators are penalised because of the mobile operators yet again.

Q2. Do you agree with the new consolidated mechanism being introduced at 3.12 to govern spending caps and our proposal to sit the monetary values outside the Code? Please evidence your response.

Yes we agree with this approach.

Q3. Do you have any comments regarding the changes being proposed to the definitions listed above in response to Ofcom’s NGCS review?

We have no comments to add.

Q4. Do you agree with our proposed changes to Rule 2.2.1? Please evidence your response.

We agree with the proposed change, although in light of the changes from the NCGS ask that PpP now list those codes they believe that they regulate.

Q5. Do you agree with our proposed change to Rule 2.2.7? Do you agree with our intention to retain the level at which point this requirement is triggered at £3.83 plus VAT? Please evidence any response.

Our issue with pricing is that although they will be an access charge and a service charge the consumer will only have real clarity on the service charge and not the access charge. Surely it should be that the level 2 must state the service charge to their service, they will not know the access charge.

Q6. Do you agree with our proposed change to the vulnerability provision? Please evidence your response.

As we have said often vulnerability is a highly subjective matter. What makes one person vulnerable may not make another. In applying the code only common sense can be the test. We have seen recent cases where level 2's have been held accountable as to having sought out older participants when they have advertised in a national newspaper which has a wide readership. The fact is that older people have responded not because of the advert being biased towards an older age range. We agree with the change but it will be the implementation of the code that tests if it is appropriate.

Q7. Do you agree with our intention to amend Rule 2.6.2 to make it more flexible and outcomes-focused? Please evidence your response.

Yes we agree with this intention.

Q8. Do you support the intention to maintain a one-off cap on children's services at £3? Please evidence your response.

As we have previously stated call caps are subjective, children are normally given their phones by their parents and it the parents who either allow a top of credit or pay the bill. The key to the use of children's services is education on behalf of the parents to the child and compliance by the child. We agree to maintain this cap however do believe that if a level 2 can demonstrate a reason for an increase this should be looked at via prior permission's (special conditions)

Q9. Do you support the introduction of a cumulative cap on children's services? And if so, should this be set at £12, £20 or an alternative amount per month? Please evidence your response.

As we have previously stated call caps are subjective, children are normally given their phones by their parents and it the parents who either allow a top of credit or pay the bill. The key to the use of children's services is education on behalf of the parents to the child and compliance by the child. We believe that £20.00 per month is the better of the two options but again say that in reality warnings should be sent as to the amounts spent and then positive affirmation sought if the consumer child or not wants to spend more.

Q10. Do you agree with the proposed changes to allow for greater flexibility to exempt services or providers from registration? Please evidence your response.

As there has always been a requirement to register with PpP we have seen that the registration scheme was required. Exemption for charities that have a trading arm and are commercial entities seems bizarre. Whilst for small companies with very low turnover

the need to pay may lead to non registration. Greater flexibility is always welcomed. What would also be welcomed is that the industry can view who are registered.

Q11. Do you agree with our proposed change to Paragraph 3.3.3 (b)? Please evidence your response.

We agree with this amendment.

Q12. Do you agree with our proposed change to the requirement to register numbers? Please evidence your response.

Why can this not be within 5 working days.

Q13. Do you agree with the changes we propose to the Track 1 and 2 procedures? Please evidence your response.

We agree with these changes.

Q14. Do you agree with the proposed change to 4.4.6 (now 4.4.7) to ensure the effective retention of revenue made from harmful services and prevent abuse of the review and oral hearing processes? Please evidence your response.

Whilst we can see the merit off retaining revenues the difficulty will be when a company requires those revenues to trade and when they are not in fact guilty of the breeches raised. In normal court a defendant is punished after conviction not prior. It will also depend on the proportionality how will you judge what sums to direct to be held? If the sum is to large you may stop the ability of a company to trade.

Q15. Do you support the changes proposed to 4.5.3? Please evidence your response.

Why two working days this presumes that the Level 2 is available at all times and has access to both lawyers and resources to be able to respond within this time frame. Is 5 working days not more realistic?

Q16. Do you agree with the changes being proposed to reviews? Please evidence your response.

We agree with the proposed change.

Q17. Do you support our intended changes to oral hearings? Please evidence your response.

Our concern is that the whole process is becoming more and more about who has got the biggest lawyer and less about whether real consumer harm has been committed. Whilst we agree that those who deliberately seek to defraud should have the book thrown at them the whole process is moving from what an ordinary level 2 can deal with and is firmly slanted to lawyers. We welcome anything that assists the process being easier and more cost effective for all. Whilst allowing real justice to be done.

Q18. Do you agree with the changes to the appeals process? Please evidence your response.

We welcome the increase in the amount that can be sought to £100,000 however in real court a judge can determine what level of costs can be awarded. Would it be sensible to

ask a court judge to determine since your process becomes more and more determined by your lawyers?

Q19. Do you agree with the changes planned to 1.7.2, 5.2.1 and 5.3.8 (c)? Please evidence your response.

We agree with these changes although their ability to be enforced may be determined by high court.

Q20. Do you agree with our proposed change to Annex, paragraph 3.1? Please evidence your response.

Whilst we agree with this we hope Ofcom's see fair more budgetary information than the industry does.

Q21. Do you agree with our new approach to existing prior permissions regimes? Please evidence your response.

We agree that greater flexibility is welcomed although bonds may be a prohibitive factor to a person or company entering the market place.

Q22. Is the process of implementing the new regime clear?

Yes this is clear.

Q23. Do the three illustrative examples attached to this consultation at Annex 2 help explain how we intend to implement this new system?

Annex 2 and Annex B seem to set out clearly how you will consider and work with the services you have chosen to illustrate. However we would note in Annex 2 the following points:-

*“the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over;”* How can a Level 2 know that a caller is over 18?

*“Callers not being charged twice for services they have already received”;* Surely this should be that callers are not charged more than once.

Q24. Are the 24 special conditions fit for purpose? Have we missed anything?

They appear at this point to be fit for purpose but only time will tell

Q25. Do you agree with the insertion of this Rule at 2.1.4? Please evidence your response.

We agree that all those involved in the industry must be aware of those reasonable measures to be able to operate. It is unreasonable to expect them to know every relevant law without becoming a lawyer. It is reasonable that they should have undertaken all reasonable due diligences in respect of their ability to run services.

Q26. Do you agree with the changes to 4.8.2? Please evidence your response.

In principle we agree although much will depend on what is an acceptable level of audit. If this is cost prohibitive this may present problems.

Q27. Do you agree with the change being proposed to the naming of individuals provision? Please evidence your response.

We are concerned and have seen real evidence of where this is an on-going case and Ofcom have named individuals even though an oral hearing has not yet taken place. We agree with the change to the clause but the operation of naming an associated individual should only occur after every PpP and legal avenue have been exhausted for the level 2.

Q28. Do you agree with the proposed change to 4.9.3? Please evidence your response.

We agree with this amendment.

Q29. Are there other areas of change that we have not considered here but should? If so, please provide appropriate evidence of the likely impact of the change.

We do not believe that there are any other areas for consideration at this time.

Q30. Do you agree with our assessment of the potential impact of the changes proposed to the Code in this consultation? Please provide appropriate evidence to support any assertion.

Whilst we welcome some of the suggested changes not all may have the desired effect as detailed above.

Q31. Do you have any comments about the contents of this document? To you agree with our overall approach to the thirteenth edition of the Code? Have we neglected anything?

The key will be in the implementation not the precise wording. Re code compliance in light of the consumer rights directive is it still wise to use a 0845 number for the purpose of future proofing would a PSTN not be more sensible or to state "this call will cost you xppm plus your phone company's access charge". Also in relation to Annex 2 there are 2 points that we notice:-

*"the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over;"* How can a Level 2 know that a caller is over 18?

*"Callers not being charged twice for services they have already received";* Surely this should be that callers are not charged more than once.

As we continue to say PpP must always strive to offer effective, proportionate and best value regulation. Most of all provide effective regulation for all involved within the industry consumer, provider, and all involved in the value chain.

