

Mr David Levitt
Senior Policy Executive
PhonepayPlus
Clove Building
4 Maguire Street
London
SE1 2NQ

dlevitt@phonepayplus.org.uk

TELECOM2 RESPONSES TO PHONEPAY PLUS CONSULTATION

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

Telecom2 doesn't feel that spending reminders are appropriate and could contribute to "bill shock". While the principle behind them is accepted, in a significant number of calls they will be misleading because they are based on the cost from a BT landline. In our experience calls from mobiles, whose charges are significantly higher, form well over half of the calls to NGS numbers. The unbundling of charges for calls to NGS will only make this evident on the bills for the calls. Our experience from complaints from consumers is that they have difficulty locating information on charges for special services on the Mobile's price lists.

While we do not object to a positive opt in, it would have to be carefully worded to emphasise the above points. £30 may not be enough given the additional higher price points that are to be allocated.

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.

Telecom2 has no objection to Spending Caps being placed outside the code but would need some comfort that there will be adequate consultation prior to their being changed.

Subscription services are very different to the other services listed and so we would prefer them to be handled in a discrete part of the code.

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

Telecom2 have no objections to the revised definitions.

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

Telecom2 agree with the changes to Rule 2.2.1.

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.

Telecom2 has no objection to the proposed spend points but have a concern with the terms "audio/visual". This is very loose and open to an interpretation beyond Broadcast, we would like this ambiguity removed.

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

The definition of Vulnerable groups is loose and very wide and it is too easy to inadvertently and innocently breach this part of the code.

Because of this we feel there should be a dual approach. Where it is possible to show strong and convincing evidence of intent to exploit vulnerable people then it should be treated as a breach with all the sanctions that would apply. Where this level of proof is not available then it should not be treated as a breach and any sanctions limited to providing a refund of the service charge for any calls made by vulnerable people.

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.

Telecom2 welcomes the proposal to open up the means by which customer support may be provided as long as it is appropriate to the service. Notice that we use the term "support". Not all enquiries are complaints, this should be reflected in the wording of the code.

We would also like to see wording that directs enquiries direct to the level 2 providers customer support services.

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

Again, subject to adequate consultation on changes, we are happy for the cap to sit outside the code.

While we accept that ten pounds is too high, Telecom2 would like a higher limit on individual call charges to allow the current limit to be increased in line with inflation, say to five or six pounds. As with Vulnerability, we would like the term "services aimed at, or which should have been expected to be particularly attractive to children" to be tightened up, it is too subjective as it stands and open to many different interpretations.

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.

We agree with parent's view that the cumulative cap should be set at around the twenty pounds mark, possibly a little higher if the four times the one off cap suggestion is adopted.

Parental Opt in to higher charges would be useful but difficult for a level 1 or Level 2 provider to verify.

That said, the effectiveness of cumulative spending caps has to be called into question when there are so many providers and services unless the onus of enforcing the spending cap is placed on OCPs. Bill shock can still take place if the child uses a number of different services.

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

Telecom2 does not support this proposal. There is a very real danger that a provider may be seen to be less trustworthy if they aren't exempted from registration and this could affect their dealings with other providers as well as consumers. If there is a need for registration then it should be applied equally across all providers and services in any given category. If breaches do occur then it will make investigating them more difficult and will also make performing due diligence less effective.

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

Telecom2 support the proposed change to Paragraph 3.3.3 (b)

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

It is important that numbers are registered promptly to enable the number checker to be up to date and usable. To this end, we believe that two working days is the maximum that could be allowed.

It is noted that there is some inconsistency in the requirements for details of the level 1 provider to be provided. This needs to be resolved, either making it mandatory or optional on all documents. We aren't however convinced of the value of the inclusion of the level 1 provider's details. The consumer isn't generally concerned with this information and it is available to PPP from other sources.

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

It is good that there will be a greater emphasis on using the track one procedure by making it easier to implement in individual cases leaving the track 2 procedure to be used only where there is serious customer harm.

Whichever procedure is used we feel it is essential in the interests of fairness that the Level2 provider is given all the evidence so that they can make a defence before a decision is reached, resulting in less time and costs incurred by appeals.

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.

It is wrong to use the term harmful until the investigation is complete, doing so implies that the case has been decided before the investigation takes place.

The revised wording in itself would prevent the abuse of process mentioned but we are unhappy about a prolonged and possibly unjustified withhold being maintained to the extent that it endangers the existence of a provider, there needs to be an investigation into the possible harmful effects that might be caused by this action, including their being unable to afford legal advice where it was needed. There needs to be a process where a portion of the funds may be released in order to maintain the business and allow it to pay its debts.

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

While there is a need to encourage prompt and meaningful dialogue between PPP and providers in the event of an emergency procedure, Telecom2 cannot support this change. Implementing an emergency procedure will cause serious disruption to a provider, asking them to deal with this and obtain all the evidence needed to support a review within two days is not realistic, particularly when the provider may not have been presented with all the evidence supporting the decision to invoke the emergency process. Any decision on whether it was reasonable to expect evidence to be provided within this timescale will be subjective. Is there any evidence that providers are abusing the process in the way suggested to a significant level that requires such a change?

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

Telecom2 supports the changes to the review procedure except that the person who considers the grounds for the application should be independent of the CCP.

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

We are unable to support the proposed change to Oral Hearings. We would support sanctions being imposed where there was clear abuse of the Oral Hearing process but to limit them in the way proposed will limit a provider's access to justice. The Chair of the CCP is not the correct person to hear an application for an Oral hearing as they are not independent of the process.

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

Telecom2 has no objection to the name change.

We welcome the increase in the maximum costs that can be awarded to provider making an appeal.

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

Telecom2 have no objections to the revisions bringing clarity to the scope of UK PRS regulation.

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

Telecom2 doesn't agree with the removal of formal oversight by OFCOM and not replacing it with any other independent approval mechanism. This removes all accountability for spending and the processes and policies.

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

We agree with the new approach to the prior permission regime, the new regime will give greater flexibility and transparency.

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

The process of implementation as given in the consultation is clear but there are some ambiguities. In particular, it isn't clear what is meant by PRS category. Nor is it clear what will constitute a high risk service. How will the number of complaints will be used, will it be relative to the usage of a service or an absolute number?

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

The illustrative examples are a great help in explaining how the new system will be implemented.

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

The following conditions need further attention:

Special Conditions (h). "Close proximity" needs clarity, it isn't clear what this will mean in practice, particularly where on line marketing is used.

Special Conditions (j) Maximum and minimum retention periods need to be specified.

Special Conditions (r) The right of access to premises does not make mention of any notice period. There should be a reasonable notice period, no notice access is not appropriate except in cases of potential immediate harm to people or property, at which point other agencies should be involved.

Special Conditions (t) It isn't clear what this means, particularly in view of condition (U). If the withholds are only to be made in the case of investigations this should be made clear.

Special Conditions (v) implies that there will be a one member CCP. We are not happy with this concept and believe there should be more consultation on this specific aspect.

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

Telecom2 is happy with the principle that service providers should be in possession of the appropriate licences and qualifications but if they are required by law then there seems to be little purpose in including the rule.

If it becomes apparent in an investigation that there is a problem in this area it should be reported to the relevant professional body or licencing authority for them to deal with.

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

While Telecom2 agrees with the principle of targeted refunds we are concerned that if refunds are paid to caller's OCPs the OCPs will not pass these refunds on, as indeed is currently often the case where AIT credits are raised on OCPs. We would like to see the principle of passing the refunds to charity to be extended to OCPs where they do not pass on refunds to their customers.

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

Telecom2 has no objection to amending named individual to associated individual nor the other changes to this clause.

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

Telecom2 are happy with extending the period in which the direction for refunds can be made from three months to four months.

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.

The costs involved in responding to a breach allegation can be considerable, particularly for a small service provider. Where the breach is not upheld we would like to see a provision for all or a significant proportion of the costs to be awarded to the party being investigated.

The code and associated guidance are of necessity very long documents and we are aware from questions we are asked that they can be confusing and the required information can be hard to find. It would be helpful to small Service providers or those whose main business isn't telecommunications if there was an index and some sort of decision tree or similar guidance to reduce the number of inadvertent breaches of the code.

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.

Telecom2 have some concerns with the impact assessment.

The intervention at £15 will not give greater price transparency due to the wide range of and often very high access charges imposed by many OCPs. As stated above, we feel that the intervention will actually mislead callers and lead to bill shock.

We feel that when assessing breaches of rule 2.3.10, some account should be taken of the intent to take unfair advantage of vulnerable customers, if there is no intent then any sanctions imposed should be mitigated by this.

The greater emphasis on DDRAC processes is effectively a change that will increase level 1 provider's costs, they may well need to employ more staff. In order to recover those increased costs they may have to reduce the rates paid to level 2 providers and make the provision of services less attractive.

The sanctions imposed, in particular the fines, have increased to an extent where they are damaging the industry. While we accept the principle behind punitive fines they should not be so great as to jeopardise the viability of a service provider's entire operation or deter entry into the industry.

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

Telecom2 is happy with the overall approach to the thirteenth edition of the code and sees it as an advance in regulation of the PRS industry.