

PhonepayPlus 12th Code consultation

Q1. Do you agree with our broad assessment of the range of harms that may impact upon consumers? If not, why not?

2ergo response: 2ergo agree with the broad assessment of the range of harms that may impact upon consumers. If PhonepayPlus are to move to an outcomes based Code, and the aim is to limit these kinds of consumer harm, then it will be important that clear guidelines are provided for those areas of consumer harm which are more subjective, such as inconvenience, loss of reputation or dignity and anxiety or distress.

Q2. Do you agree with our assessment and definition of Outcomes and supporting themes? If not, why not?

2ergo response: 2ergo agree with the assessment and definition of Outcomes.

Q3. Can you identify any Outcomes for consumer that you consider we may have overlooked?

2ergo response: 2ergo are not aware of any further Outcomes which need to be considered.

Q4. Do you agree with our Outcome and supporting themes about complaints handling? Do you have any other suggestions?

2ergo response: 2ergo agree with the Outcome and supporting themes about complaints handling. However, it is important to ensure that consumer complaints are handled efficiently. Under the current process where a consumer approached PhonepayPlus either directly or as referred by their network operator, should an investigation, breach and adjudication then occur it can take a significant amount of time (over 9 months) from the consumer first making the complaint until PhonepayPlus tell the consumer that they should contact the IP/SP for a refund. This is clearly not in the best interests of consumers. A better approach would be for PhonepayPlus to pass any consumers on to the relevant information provider immediately so that the consumer's complaints can be resolved promptly. Should an investigation be necessary, this should not impact on the process for handling complaints.

Q5. Do you agree that PhonepayPlus is right to suggest that it should be able to revoke permission or consent where it is proven that Conditions have been breached and where such an action would be justified and proportionate? If not, why not?

2ergo response: 2ergo agree that PhonepayPlus should be able to revoke permission or authorisation where it is proven that conditions have been breached and such action is justified and proportionate. The key thing here is to ensure that the breaches are proven and not alleged, and also to ensure that suspension is proportionate- not all breaches are of similar severity and therefore suspension should only be used where there continues to be a significant risk of consumer harm.

Q6. Do you agree that PhonepayPlus is right to consider allowing parties along the value-chain to apply for prior permission when in a contractual relationship to provide a service?

2ergo response: 2ergo agree that parties along the value chain should be able to apply for prior permission to provide a service.

Q7. Do you agree that PhonepayPlus is right to suggest that an applicant's previous breach record is a factor that it is entitled to consider as part of a consideration of an application for permission or consent? If not, why not?

2ergo response: 2ergo agree that it is right to consider an applicant's previous breach record in determining whether to grant prior permission and what conditions to attach to such grant. However, it is important that PhonepayPlus do not consider simply how many adjudications

there have been, but look at the detail of what the breaches were for and the level of consumer harm that arose. It is also important to consider how recent the breaches were and what actions the applicant has since taken to avoid the recurrence of breaches- an applicant should not be punished forever for previous breaches.

Q8. Do you agree with our assessment that ALL participants in the value chain for delivery of phone-paid services have responsibilities for compliance? If not, why not?

2ergo response: 2ergo agree that all participants should have responsibility for compliance. Networks and Service Providers should be charged with performing due diligence on their clients and then ongoing monitoring of services, but it should be recognised that the Information provider is responsible for the service and therefore if there is a problem with a service it is the information provider who should be held accountable. It should no longer be the case that where the information provider refuses to cooperate or disappears the case simply moves up to the service provider. This will be aided by the reputational database which has been proposed. 2ergo would also like to highlight that there is often an additional link in the value chain of sub-aggregators or resellers who contract with the service provider and then sub-contract with various different information providers.

Q9. Such a change in approach may have differential impacts on different providers in the value-chain. What are these impacts likely to consist of and what business or consumer benefits do you think will arise?

2ergo response: 2ergo believe the proposed changes will reduce the burden on service providers of dealing with the administration of PhonepayPlus cases, allowing them more time to concentrate on monitoring the services that their contracted Information providers are running. It, along with registration for the reputational database, will also serve to make information providers more aware of their duties under the Code. As a result 2ergo believe that there will be less consumer harm resulting from these proposals.

Q10. Do you agree with our analysis of the outcomes of Assessment and Control? If not, why not?

2ergo response: 2ergo agree with the analysis of outcomes for Assessment and Control.

Q11. What thoughts do you have on our suggested approach to a registration scheme?

2ergo response: 2ergo is fully in favour of a registration scheme for all parties involved in the provision of PRS. However, we are concerned that PhonepayPlus have stated that they could make clear where there was a link between one company and another which had an outstanding debt to PhonepayPlus. 2ergo would like to see a database which allowed such linking of related companies, but we feel that it should only show links for actual breaches upheld. There may be any number of reasons why a particular penalty has not been paid, for instance if the company has entered liquidation, and that, of itself, is not a reason not to contract with a party.

Q12. What other suggestions do you have for how we could create greater incentives for providers to co-operate with PhonepayPlus in the event of investigations?

2ergo response: Currently there is a disincentive for both SPs and IPs to inform PhonepayPlus when there has been a breach, or a suspected breach, of the Code, in that PhonepayPlus have then used information provided by an SP or IP in an investigation which then leads to a fine. It is very important for PhonepayPlus to encourage a relationship with the industry where PhonepayPlus are more trusted. The proposed approach to regulation should assist in this aim.

Q13. Do you agree with our proposed approach to reforming the Informal procedure? If not, why not?

2ergo response: 2ergo agree with the proposed reform of the informal procedure and we welcome the increased flexibility that is proposed. We hope that this will allow for more efficient handling of cases (from the point of view of both time and cost) and ultimately better services for consumers.

Q14. Do you agree with our proposal that our arrangements for Standard and Emergency procedures should be retained? If not, why not?

2ergo response: 2ergo agree that the current procedures should be retained.

Q15. Do you agree with our approach and what regulatory impacts, costs and benefits do you foresee?

2ergo response: 2ergo agree with the proposed approach. We anticipate that the costs for service providers will reduce as a result of the approach as we believe that most harm is caused by information providers. The increased costs to be incurred by information providers would hopefully be mitigated to some extent by more frequent use of informal procedures where appropriate.

Q16. What would be the costs and business impacts associated with such proposals? What consumer benefits do you think would accrue?

2ergo response: 2ergo agree that refunds should be supplied to consumers in a straightforward manner. We feel that one call to a customer call centre where the consumer leaves their mobile and address details and the reason they believe they are due a refund should be sufficient. A cheque can then be raised. It is important, as previously mentioned, to ensure that complaint details are passed promptly to the information provider in order to ensure refunds are issued quickly, without waiting for an investigation to be completed and a case adjudicated upon. However, we are concerned at the proposal to inform customers of how to claim their refund. In general the only way to contact the consumer will be via their mobile phone. If they have already complained about e.g. unsolicited messages, a further unsolicited message, even one offering them money, is unlikely to be welcome, could be viewed as a scam and ultimately could be more damaging than the original source of the complaint. As with other subjective areas previously commented upon, 2ergo feel that guidance would be required on how PhonepayPlus determined that services had no intrinsic value or that promotions were misleading to **all** users.

Q17. What thoughts do you have about improving PhonepayPlus' effectiveness of fine collection and do you have any specific proposals for how we could better secure fine collection through changes to the Code?

2ergo response: 2ergo agree that it is important that refunds are made to consumers. However we do not feel it is appropriate the service providers who have failed to carry out suitable due diligence should then have to make refunds to consumers where the IP does not make the refund. If the service provider has failed in its due diligence then they should be fined. If an IP fails to make a refund to consumers then a refund must be given by another party in the value chain- this party, irrespective of whether they have themselves committed any breaches, should be the party that still retains funds out of which refunds can be made.

2ergo are aware of a number of occasions where PhonepayPlus fines have remained unpaid due to providers entering administration. If the proposals requiring SPs to perform due diligence on their clients are successful it will be entirely wrong for PhonepayPlus to pass a fine that is unpaid by an IP up the chain to the SP, as this will not be consistent with the principle of 'polluter pays'. Therefore we conclude that PhonepayPlus will have to expect an element of unpaid fines for as long as there is relatively little in terms of barriers to entry for IPs. However, where SPs are given notification of potential issues with IP's services as early as possible, this increases the opportunity for the SP to withhold funds that can then be

passed on to PhonepayPlus as (part) payment of any fine levied, once refunds have been made to consumers.

Q18. Do you agree with PhonepayPlus' proposals for new terms in respect of the current terms "Service Provider" and "Information Provider"? If not, can you suggest alternative terms?

2ergo response: 2ergo agree that the current terms are no longer appropriate. Of the suggestions for SP that PhonepayPlus make, we feel that the role of the companies who contract with the mobile network operators is most accurately described by the term Service Enabler, although we support the AIME proposals for naming of the value chain.