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Date: 24 November

**Re: Guidance on application-based payment in support of the  
PhonepayPlus Code of Practice Consultation**

Dear Duncan

mBlox welcomes the opportunity to respond to PhonepayPlus' ("PpP")  
consultation on application-based payment ("apps").

**Introduction**

An initial review of the draft Guidance Note shows that there is duplication  
of information contained within other Guidance Notes. If the intention is  
that this Guidance Note should be a "one-stop shop" for app developers  
(which is sensible), then that should be made clear.

In particular we welcome attempts to provide further clarity around the  
level required of consent as it applies to apps, as this is the area that  
causes the most concern from clients who wish to engage in this area of  
PRS.

Many of the concerns raised in the consultation are not limited to  
apps but apply equally to other types of PRS, this being the case we  
would suggest that there is consistency in application of the Code. In the  
recent PpP response to the "A Communications Review for the Digital  
Age", PpP state that "*Regulation, where appropriate, needs to develop in a  
manner that is platform and technology neutral, protecting consumers  
while allowing the UK digital economy to thrive.*" It appears from some of  
the consultation comments as though a higher burden is being placed on  
apps, which is inconsistent with the above sentiment and ought not to be  
the case.

**Comments on draft Guidance and Consultation questions.**

Definition of an App:



“a payment made in respect of a premium rate service, that is made through a software application which is accessed (either through download or by alternative means without permanent storage of data on the device) via a website using a PC, handset or other device (such as a tablet).”

mBlox: This is quite a wide definition and could cause confusion as to the scope of the Guidance Note (e.g. would it include online accounts with the potential to purchase via PRS), we would welcome further clarity on this point.

9. Where consumers make payment before they access an application, either as a one-off payment or a subscription, then it is important that they are given all information, including the price, which is likely to influence their decision to purchase before they consent to purchase. The following information should be considered key:

mBlox: The list under this sections mirrors section 1.3 from the GENERAL GUIDANCE NOTE – Promotions and promotional material, however the last bullet is new. It is unclear why there should be a difference between charges agreed to via an app or via standard PRS, we suggest that the Guidance be amended to reflect the current standard.

15. Some applications, such as those which allow electronic access to a newspaper or other journal, may be accessible on more than one device – e.g. PC, mobile phone, tablet, etc. Where this is the case, the consumer should be clearly informed about which devices their payment allows them to access content on (if it is not all devices).

mBlox: Again, it is unclear why this additional requirement should be placed on apps as distinct from standard PRS given that content purchased in that way can also be accessed on more than one device. From a practical point of view, it would make more sense for the starting point to be that content is available on the device payment was taken from unless it is stated otherwise.

16. In addition, it should be made clear if there are any devices which cannot support access to the service, in order to ensure that consumers do not purchase a service that is not then technically compatible with the device they intend to use to access it.

mBlox: As with any content purchased via PRS, it is important that consumers are aware of any compatibility issues, this is not limited to apps. However, given the proliferation of devices it is more feasible for merchants to provide compatibility information in respect of those devices that have been checked rather having a list of every device on the market.

18. The consumer must be in no doubt before they opt into a service as to when they will begin to be charged, and be given a clear method of exit before charging commences. If both of these have been clearly provided



before the consumer consents to the free trial, then there is no need to remind the consumer before charging commences;

mBlox: We welcome this as it allows merchants to provide flexible offerings to consumers without having to bombard them with repetitive information.

21. With this consideration in mind, PhonepayPlus sets out the following (non-exhaustive) methods around the provision of pricing and other key information when consumers purchase via an application which would be likely to be considered acceptable:

a) Consumers are informed of the price of purchase each time they are presented with an extra purchase option/item. Once a purchase option/item has been selected, they must confirm payment in an auditable way and be sent a clearly worded receipt for the purchase. While we would not expect consumers to be informed of customer contact details on each occasion, they must have previously been clearly informed;

mBlox: Whilst we accept that this is indeed best practice and would encourage merchants to follow this approach, the requirement of a receipt for one-off purchases is not included in the current Guidance Notes. For the sake of consistency, this requirement should be removed or noted as best practice. The important element should be – as will all PRS – that the consumer has enough information to make an informed decision and there should be auditable proof of that decision. These comments apply equally to paragraph 23 as this is also not required by previous Guidance.

#### Virtual currency

mBlox: This whole section is not specific to apps and has much wider reaching consequences which is not consistent with current Guidance. If PpP have concerns about these areas, we suggest that a specific Guidance Note be consulted on so that all interested parties are aware and can comment on it. We are also concerned that some of the suggestions go beyond the scope of PpP's remit and therefore should not form part of the Guidance.

28. d) Consumers of virtual currency bought using PRS should be able to switch their method of payment, where other methods are available, easily and without undue complication;

mBlox: Whilst it is true that this would be welcome, it is not clear what element of the Code this point would be underpinning. All that can be required is that consumers should have a clear way of ending their PRS payment should they so wish.

We are concerned that Paragraph 28(e) sets out good practice around the subsequent promotion of services that can be purchased using virtual



currency previously purchased via PRS. As we understand it, the subsequent use of virtual currency falls outside of the scope of Controlled PRS and as such cannot be subject to PpP Guidance.

29 - Records are taken and maintained by a third-party company which does not derive income from any PRS.

mBlox: We suggest that where it can be proven to PpP's satisfaction that such records cannot be created without consumer involvement, or tampered with in any way, once created there should be no further requirement for an independent third-party.

30. - The dialling of PRS numbers without the consumer's knowledge or permission;

mBlox: We believe the key point here is without the consumer's knowledge or consent of the charges. In order to comply with the Code, a consumer must have given informed consent to the charges, once this is received it should not matter if the mechanic used is an MO in the background – as long as the consent is auditable.

32. Such a mechanic, while potentially verifying that consent to purchase came from the consumer's handset if properly encrypted, does not always provide complete protection from unauthorised charges. Where consumers have accessed an application from which it is relatively easy and quick to make repeat purchases, there have been instances of accidental unauthorised purchases being made through mobile devices accessed by children, or others, which the owner of the handset themselves did not consent.

mBlox: We would expect this paragraph in the Guidance to contain the same sentence as the next paragraph namely "*would also consider the degree of culpability of an affected consumer in not protecting their password or controlling access to their phone account.*" Whilst it is true that there is a requirement to prove consent to charges, the burden should be no greater than it would be for a traditional MO opt-in, which is easily accessible by children or others who are given access to a handset. There must be a responsibility on the handset owner to protect their equipment, and where it is clear that there was auditable consent from the handset that should suffice.

33. PhonepayPlus would additionally recommend (by way of best practice) that regularly accessed applications be protected by a requirement to enter a password each time the application is re-opened.

mBlox: Mandating this even as best practice could interfere with the consumer experience because once included in Guidance, the burden will be on a provider to explain to a Tribunal why they did not follow it. There is a balance to be struck here between protecting consumers from



unauthorised use of their handsets and allowing those consumers who have proper control of their equipment to have a smooth experience. We would suggest that best practice should follow current web log in options and offer the consumer the choice to “remember me” or not, that way a consumer who is not in full control of the handset can require log-in each time without inconveniencing other the experience of other consumers.

33. - We would expect providers to offer refunds where unauthorised use was clear.

mBlox: The regulator should not be advocating refunds where the service was fully compliant with the Code. If the only issue is unauthorised use of a handset, consumers must have a responsibility to secure their equipment.

Q1. Do you agree with this definition? If not, why not?

mBlox: Please see earlier comments.

Q2. Do you agree with the diagram which sets out different developer payment options at paragraph 2 of the proposed Guidance? If not, why not?

mBlox: Yes, we agree.

Q3. Are there any other areas of risk that you feel this Guidance should identify and address? If so, then please suggest them, and provide any supporting evidence you have as to the risk they pose and how to resolve it.

mBlox: We believe that all areas have been covered, however, as per our earlier comments these risks are equally valid for all types of PRS rather than being unique to apps and Guidance should be applied in a technology neutral way.

Q4. Do you agree with our proposed expectations around key information where a service can be accessed on more than one device? If not, why not?

mBlox: Please see earlier comments.

Q5. Do you agree with our proposed expectations around application-based payment services using a ‘freemium’ model? If not, why not?

mBlox: As per our earlier comments, we agree and welcome this approach.

Q6. Do you agree with our proposed expectations around pricing and key information for ‘in-app’ purchases? If not, why not?



mBlox: As per our earlier comments, we are concerned with the additional requirements that appear to be placed on apps. We suggest that this Guidance Note should be consistent with current Guidance Notes.

Q7. Do you agree with our proposals around virtual currency? If not, why not?

mBlox: No we disagree with the proposals – please see earlier comments. Whilst we recognise the issues that have been raised by the research carried out for PpP, we believe that the proposals extend beyond the scope of controlled PRS and are therefore beyond this Guidance Note.

Q8. Do you agree with our proposals around password protection? If not, why not?

mBlox: Please see earlier comments. We believe that auditable consent to the charges is the key requirement, the method of levying that charge is not as important as long as the consumer is clear that it will appear on their mobile bill. We do not believe that the Guidance goes far enough in addressing the point of unauthorised usage and the responsibility of the owner. Where consent can be shown from the handset, there should be no regulatory suggestion of a refund – this should be left as a commercial choice for each provider.

Q9. Do you agree with our proposals around technical quality? If not, why not?

mBlox: Yes, we agree.

Q10. Is there any consideration or evidence, especially around other methods of exiting or suspending PRS charging on an application-based service, that we should be aware of before we make changes to existing guidance in respect of methods of exit from application-based services? Please supply any evidence you have.

mBlox: The first criteria should be that the consumer has a clear understanding of what is required to prevent further charges in advance of consenting to those charges.

We believe that there should be a section in the Guidance Note to capture this issue if current Guidance is amended. The STOP command should be available to consumers in relation to either a subscription service or to prevent receipt of marketing. Where charges relate to one-off usage, the consumer has it within their gift to prevent further charges.

## **Conclusion**

In conclusion, we believe that apps should not be treated differently to other types of PRS in respect of what they need to achieve for compliance





under the Code. By that we mean, they should have the same requirements for transparency, auditability of consent, complaint handling etc, the Code should be applied in a technology neutral way. The main difference between an app and other PRS is the level that is required to prove informed consent, once this has been achieved, the fact that the charge was initiated via an app should be irrelevant. Finally, there are elements of the Guidance that appear to stretch beyond the meaning of controlled PRS and as such should be removed from the Guidance.

These comments are intended as part of our ongoing constructive dialogue and we welcome the opportunity to discuss these issues with you further if that would be of benefit. In the meantime, please do not hesitate to contact me if I can provide further clarity about any of the points raised.

Yours sincerely,

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