



BT Comments on PhonePayPlus' Discussion Paper on 12th Code of Practice

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Response to Questions

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

Yes.

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

Yes, agree, it reduces the opportunity for loopholes that might be exploited in the wording of detailed rules and allows parties involved to be flexible on how they meet the requirement without necessarily being in technical breach.

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

No

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

Yes, there is an ILP/PP WG looking at compliant handling at the moment which supports the themes here.

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?

Yes, this doesn't appear to differ from the principle of directing an NO to withdraw a PRS number for a non-prior permission service. Again where the input could be used in a variety of services there needs to be a view on whether the problem applies to all services or not.

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?

Yes, depending on their role and responsibility they own for their contribution. May be some issue over how this works in cases where say an IP offers an input to a host of different SPs services.

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?

Yes

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?

Yes, if anyone takes revenue from the PRS industry they have individual responsibility (respective to their input) for end-consumers welfare. Any failure on their part should not be transferable to an upstream party that had no knowledge or played no part in that failure.

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?

This should drive compliance throughout the supply chain and therefore Consumers should enjoy a greater level of trust in services generally. Where suppliers are currently providing genuine input there should not be that much of an increased burden aside from ensuring what they contribute presently actually meets the formal requirements that impact on them.

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

In general yes, but needs to be balance against what can reasonably be expected of due diligence upstream such that the easily accessible upstream player isn't always the target of PPP action simply because the downstream player has disappeared.

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

A registration scheme that lists all players, with contact details and the service they provide, along with access to relevant prior permissions would be a big step forward. The CoP could provide the obligation that to operate in the market registration is required. There may also be benefit in linking this to the AIT process which in itself is an abuse of PRS.

If anyone registering considered that there might be a data protection issue certain information could be provided directly to PPP for them to enter into a secure area of the database. It would also be worthwhile having links to other consumer protection information such as Ofcom's numbering allocation

consumer protection test and PPPs own adjudications list and barred supplier list. There needs to be an easy method for consumer to access all information that would be of interest to them.

If PPP intend the database to also be a listing of “approved entities” that takes the database in quite a different direction and brings with it related process issues of approval schemes, which can be costly and time-consuming to manage.

On quite another point if registration included an inappropriate number for provision of the service e.g. 070 personal number, then that could be kicked back immediately on the basis that the number is not appropriate for a PRS service.

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?

Perhaps a reduced sanction to the more co-operative players who are subject to a breach investigation, similar to the conditions in the Competition Act where those who work with the Competition authority can have their penalty reduced. Perhaps some play could be made of the reduction in levy to legitimate players as a result of fines collected would also demonstrate that those subject to fines are “subsidising” the compliant players.

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

Yes.

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

Yes.

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

If all players are subject to the CoP and have a responsibility for compliance where it is the case that more than one player in the chain has breached the CoP then it is only right that the sanction against that player is appropriate for the breach they have caused. There is potential for increased work for the panel but ultimately costs would be covered by increase in fines and administration costs. Once this is known and understood by industry it should lead to greater compliance and maybe a slightly stronger hand by upstream players on their downstream partners. Maybe difficult to enforce where parties downstream of the SP are not based in the UK (which is an increasing trend for Information Providers). In those cases would it be appropriate that

PRS regulation stated that wherever in the supply chain a UK based party contracts with another that has no UK base, then in cases of default by the overseas party, the UK party carries the liability for any failure on the part of that overseas entity.

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

From a consumer point of view the logic would be to have the refund via their bill, in the way they incurred the initial charge. However, that places a burden on Originators where they are not at fault, and indeed they would not even hold the revenue from that service to meet the cost of refunds. It may also be the case that the responsible party at fault is downstream of the SP in which case what element of the total cost incurred by the customer would be due to a refund. How would that money find its way back to the customer in a way that the customer understood what had been happening if they themselves were not one of the customers who complained about the service.

The time period to qualify for a refund would also be crucial, a breach could have been in existence for years such that retention of outpayment at a late stage in proceedings would not "fund" the refund by the OCP. It could also be the case that the SP or the responsible downstream party no longer traded.

Perhaps it may help with disputes and transparency if there were maximum duration for a call allied to the maximum call cost such that the network dropped the call on time-out as well as value. This would certainly help with "hung call disputes", a customer being charged for a long call where the terminator has no record of such call but the originator has billed it.

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?

If a party subject to a fine doesn't intend paying then short of court action there's not much will encourage them to pay. Additional fine for non-payment isn't a deterrent in those cases. Ofcom might investigate what legal powers it has under the Communications Act to take action via the courts and whether that power could be devolved to PPP for PRS regulation.

Should the 12th code implement the requirement for Directors etc. to register then they could be included in the barred list being as well as companies. NOs would then be directed to refuse to supply PRS service to any organisation where that name is involved.

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?

AIME have done a lot of work on this which seems sensible, though before terminology is agreed the activities within the supply chain need to be determined. Names are a secondary issue to understanding the part played by each party and indeed where a party takes on more than one role.

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