



**0871, 0872 and 0873 Services:
A Statement of Application**

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Executive Summary

The 0871 number range is a sub-set of Number Translation Services (NTS) where call charges from BT lines are generally above 5 pence per minute and can be up to 10 pence per minute. 0871 calls involve a form of micropayment which is usually shared with a third party. The 0871 number range has a variety of uses from some forms of entertainment to telephone helplines, interactive ticket booking lines, holiday and flight booking services, as well as many other applications.

On 19 April 2006, Ofcom, the communications regulator, published its policy statement on NTS, entitled *NTS – A Way Forward*. That document, which is available from the Ofcom website at www.ofcom.org.uk, sets out a number of changes that it has decided to make to the regulation of NTS. These changes include putting the regulation of the 0871 number range within PhonepayPlus' regulatory remit, as well as removing the regulatory support for revenue share on the 0870 number range.

Ofcom stated that it had two particular objectives in extending premium rate services regulation to the 0871 number range:

- to increase the level of consumer protection provided for calls to these numbers,
- to improve pricing transparency for 0871 calls.

Ofcom subsequently introduced the 0872 and 0873 number ranges to provide additional capacity for future demand as the supply of 0871 numbers was approaching exhaustion. These ranges will, therefore, also be brought within the PhonepayPlus regulatory remit. We refer to these ranges as 087X numbers below, although for the avoidance of doubt, it is not intended that 0870 numbers will come within PhonepayPlus' remit.

On 25 April 2007, ICSTIS issued a public consultation, seeking views on its proposals on how it would regulate the 087X number range. That consultation closed on 28 June 2007, by which time a large number of responses had been received. This document discusses those responses and sets out our application of the PhonepayPlus Code of Practice to the 087X number range.

It is to be noted that, on 15 October 2007, ICSTIS was re-branded as PhonepayPlus.

It has been decided to implement this by the issue of a Statement of Application. This Statement is to be read alongside the Code of Practice and will have legal validity. **The purpose of the Statement is not to alter the provisions of the Code but to explain how PhonepayPlus will apply the existing Code provisions when considering issues relating to the 087X number range.**

Section 1 Background

On 19 April 2006, following extensive consultation, Ofcom published its policy statement on Number Translation Services (NTS), entitled *NTS – A Way Forward* (“the NTS document”). That document set out a number of changes which Ofcom decided to make to the regulation of NTS. In particular, Ofcom came to the following conclusions:

- *“0871 numbers should be brought within the current regulatory regime for PRS, which will, in effect, mean that services using the 0871 number range will have the same obligations as those using 09 numbers.”*
- *“ICSTIS has signalled its agreement in principle to extend the scope of its regulation through its approved Code to 0871 numbers and intends to consult on:*
 - *the provisions of its Code of Practice that should apply to 0871 numbers,*
 - *the funding mechanism, and*
 - *whether a new ‘brand’ should be adopted for 0871 regulation.”*

In order to bring the 087X number range within the scope of PhonepayPlus’ regulation, Ofcom intends to extend the definition of those services which are currently described as Controlled Premium Rate Services, as set out in Ofcom’s PRS Condition. We expect Ofcom to consult on this shortly following the publication of this document so that it is able to publish a statement on the consultation in Spring 2008. It is anticipated that PhonepayPlus will assume regulation of the 0871 number range shortly following that statement.

In early 2007, ICSTIS commissioned an independent market research exercise to ascertain the nature of the 087X market place as it stood at that time. This was conducted by Analysys Consulting. A copy of the report is available on the PhonepayPlus website and was published, together with our consultation.

On 25 April 2007, ICSTIS issued a public consultation, seeking views on its proposals on how it would regulate the 087X number range. That consultation closed on 28 June 2007. We received 641 responses, including 617 from members of the public. We are grateful to everyone who responded. The responses have provided us with important information to help us frame the application of regulation in this area. Where responses have not been provided on a confidential basis, they will be available for viewing on the PhonepayPlus website.

Throughout the period of consultation, and subsequently, members of the Executive have met with stakeholder groups to discuss the consultation and the proposals for regulation in order to gain a better understanding of the issues involved and to allow parties the opportunity of explaining further their responses and concerns. PhonepayPlus would like to thank all those who responded to the consultation and who have helped with our work.

Section 2

Responses

For the purpose of this paper, the responses have been categorised into two broad groups – industry and consumers. Where responses have not been provided on a confidential basis, they will be available for viewing on the PhonepayPlus website.

Industry

As was to be expected, responses have been received from a range of industry bodies, including trade associations and individual organisations. In general, industry responses expressed concerns that the proposals for regulation did not appear to be as ‘light touch’ as they would prefer. There were also concerns around our proposal to implement regulation by way of a Statement of Application rather than by a separate Code of Practice or by a change to the current Code.

The key areas of the Code which industry players felt were of concern to them in light of our proposals were: network due diligence; undue delay and pricing transparency. They also expressed concern over the categories of service that fall within the prior permissions regime, the details of the proposed funding regime and the branding of the then ICSTIS.

Consumers

As noted earlier, the vast majority of responses (617 in total) were received from parties acting as consumers. This was partly the result of a concerted consumer campaign. While it was clear that a number of respondents had simply submitted a standard response, this does indicate a body of public opinion the validity of which PhonepayPlus recognises.

In general, consumers felt that the proposed regulations did not go far enough in protecting the public from what they term ‘scams’. In particular, the key issues with which consumers were concerned were: allowing customer service numbers to be on 087X, undue delay, pricing transparency and disassociation with ‘traditional’ premium rate services.

A large number of respondents stated that they believed that it was not appropriate to use *any* premium rate number, including 0844 and 0845, as a customer service number and that a geographic numbering option should be provided.

Section 3

Assessment

As is to be expected, a number of issues were raised prior to, during and subsequent to the consultation by various stakeholders. These issues are dealt with below.

STATEMENT OF APPLICATION

Q1. Do you agree with our proposal to create a Statement of Application for the 0871 number range? If not, please provide your reasons and alternative suggestions.

The proposal to assume regulation of the 087X number range into PhonepayPlus' regulatory regime by directly applying the current Code of Practice in an unmodified form and issuing a Statement of Application was not well-received by the industry.

In general, there were two key concerns: that the system was not reflective of the fact that services operating on the 087X number range were not run on more expensive premium rate business models and the association of services operating on the 087X number range with other 'traditional' premium rate services.

In respect of this second point, Question 19 of the consultation specifically addressed the issue of association with 'traditional' premium rate services. PhonepayPlus believes that its recent rebranding exercise, together with its emphasis on regulation of 'phone-paid services', will go some way to shedding the image that its only role is to regulate more expensive premium rate services.

The pre-consultation research carried out by ICSTIS showed that there are some differences in the business models of services operating on the 087X number range. In particular, the key point is that many of the services derive their revenue from a non-premium rate source (e.g. a credit card payment) and that revenue share, where it exists, is used to offset the costs of running the telephone number, although a number of organisations do profit from this revenue share.

In contrast, the general response from consumers was that a Statement of Application was appropriate.

Having discussed this issue with various industry bodies, PhonepayPlus is confident that, despite the objections, the current Code of Practice is an appropriate model code for premium rate regulation, and is suitably flexible and purposive for application to the 087X number range.

A concern that some industry members had is that a Statement of Application, to be read alongside the Code of Practice, would be a complicated method of setting out regulation and may be confusing. A separate code for the 087X number range would, therefore, be preferable. However, this issue can be overcome by the provision of compliance advice from the PhonepayPlus Compliance Team. We will also consider issuing additional help notes if we identify common issues where written guidance would be of assistance.

A further concern raised by some industry members was that, by choosing to explain our application of the rules by the use of a Statement of Application, PhonepayPlus would be able to alter the application of those rules at short notice and without proper consultation. This is not PhonepayPlus' intention. Should it become necessary to make changes in the future, any proposed changes would be subject to stakeholder consultation and scrutiny.

It is anticipated that, when the Code is next revised, it will be done in a way that fully incorporates the issues for services operating on the 087X number range.

It has therefore been concluded that a Statement of Application should be created to apply to the 087X number range. A copy of this Statement is attached at Annex A.

Q2. Do you agree that the current application of Section 1 of the Code is appropriate to apply to the 0871 number range? If not, please give your reasons.

Responses to the consultation from consumers and industry bodies appeared to support the current application of Section 1 of the Code to the 087X number range.

It has therefore been concluded that there are no specific and unique changes to our interpretation of Section 1 of the Code of Practice that apply to the 087X number range.

NETWORK OPERATORS' DUE DILIGENCE

Q3. Do you agree that this is a fair and proportionate application of the network operators' due diligence requirements to the 0871 number range? If not, please give your reasons.

While consumer responses agreed with this proposal in general, a number of concerns were raised by industry. PhonepayPlus believes that these are significant and compelling.

The purpose of the due diligence provisions under paragraph 2.3.1 of the Code is to oblige networks to carry out sufficient due diligence so as to ensure that service providers fulfilled their obligations to PhonepayPlus.

It has been argued by industry that, in the context of the 087X number range, the requirements placed on network operators would be disproportionate, particularly in relation to their existing clients. Where a network has many thousands of small service provider clients who have very small levels of traffic, the cost of undertaking the due diligence checks may amount to more than the revenue generated by those clients.

Additionally, since many small clients do not generally receive revenue share, there is less incentive for them to run their services in a manner likely to cause consumer harm and, therefore, less need for full due diligence checks. Furthermore, where there is revenue share, the '30 day rule' under paragraph 2.3.2 would provide PhonepayPlus with the security required to withhold monies should a problematic service generate consumer harm.

Having discussed this issue extensively with stakeholders, PhonepayPlus is waiving the due diligence provisions under paragraphs 2.3.1(a), (b) and (c) for the provision of the 087X number range. The remaining provisions of paragraph 2.3.1 remain in application.

The waiving of this due diligence provision may be withdrawn for an individual network if, in the opinion of PhonepayPlus, the network's conduct and procedures for taking on new service provider clients is likely to lead to Code breaches which could otherwise have been avoided if the network had conducted due diligence in full as per paragraph 2.3.1 of the Code.

Should it become apparent that there has been a market failure with service provider conduct suggesting the need for this waiver to be withdrawn from all network operators, PhonepayPlus will consult with stakeholders prior to removing this waiver.

Paragraph 2.3.1(d), which relates to the retention of information collected and records of inquiries made and responses to those inquiries, will continue to apply in respect only of such information as network operators may have collected for their own purposes.

Paragraph 2.3.1(e), which relates to bringing the Code to the attention of service providers, and paragraph 2.3.1(f), which relates to satisfying themselves that service providers have adequate customer service and refund mechanisms, will remain in force for the 087X number range.

It has therefore been concluded that the provisions under paragraph 2.3.1(a), (b) and (c) will be waived in relation to the 087X number range, subject to review. The remaining due diligence provisions will remain in force for the 087X number range.

Q4. Do you have any further information and evidence regarding usual payment times?

Q5. Do you agree that this is a fair and proportionate application of a delayed payment mechanism to the 0871 number range? If not, please provide your reasons.

These questions were primarily addressed to industry stakeholders. From the responses received and discussion with industry, although some network operators have different payment times which will have to be altered, this will not be particularly onerous since the service providers that typically use the 087X number range do not rely on speed of outpayment.

The requirement for withholding outpayments by network operators to service providers for 30 days under paragraph 2.3.3 shall therefore remain applicable in all cases.

Q6. Do you agree that the current application of Section 3 of the Code is appropriate to apply to the 0871 number range? If not, please give your reasons.

The consumer responses were generally supportive of our proposal to adopt the current application of Section 3 in relation to the 087X number range. However, they did take issue with PhonepayPlus' intention to continue to allow 087X numbers to be used as a customer service number under paragraph 3.3.5 of the Code, noting it to be contradictory.

The industry did not agree that the whole of Section 3 of the Code was appropriate in its current application. In particular, they argued that the due diligence requirements were not proportionate.

PhonepayPlus considers that the responsibilities of service providers under Section 3 of the Code are proportionate and appropriate. In particular, the requirement for service providers to register with PhonepayPlus is a relatively simple and quick matter.

In relation to the provision of an 087X number as a customer service number for the purpose of section 3.3.5, PhonepayPlus has carefully considered this rule and decided that the objective of paragraph 3.3.5 can be met by means other than strict adherence to the Code. A notice to that effect is attached at **Annex B**.

This notice has the effect of enabling service providers to choose to include their customer service provision on an 087X number as long as a clear opportunity is provided to consumers to make a complaint about the premium rate service on that number and, if making a complaint, the consumer is informed that the cost of calling that 087X number will be fully refunded.

Alternatively, service providers may choose to use a non-premium rate number as set out in paragraph 3.3.5. Network operators may accept the provision of an 087X number for the purposes of paragraph 2.3.1(f).

The current application of Section 3 of the Code of Practice will therefore be applied to the 087X number range. Where service providers choose to use an 087X number for their customer service number under paragraph 3.3.5, they must provide a refund to the consumer for the cost of the complaint call.

Q7. Do you agree that the current application of Section 4 of the Code is appropriate to apply to the 0871 number range?

In general, both the consumer and industry responses were in agreement with this proposition.

There are no specific and unique changes to our interpretation of Section 4 of the Code of Practice that therefore apply to the 087X number range.

PRIOR PERMISSIONS

Q8. Do you agree that it is fair and proportionate to apply PhonepayPlus' current application of the prior permission regime under Section 5.1 of the Code to the 0871 number range? If not, please provide your reasons.

The general response from consumers was in agreement with this proposal. Some reservations were received from industry, particularly regarding the categories exempt from the regime. In principle, the proposal was accepted.

Following discussions with industry stakeholders, PhonepayPlus has concluded that most services operating on 087X numbers would fall within one of the service categories that are exempt from the prior permission regime. PhonepayPlus will be working with the industry over the coming months to inform providers about the requirements for prior permission and to identify any categories of service which may be inappropriately subject to prior permission and may, therefore, require new classes of exemption.

PhonepayPlus considers that advice, counselling and consumer credit services will have business models on the 087X number range that are sufficiently different from those charging up to £1.50 per minute and that it would be proportionate to make them an exempt category from the need to obtain prior permission to operate a live service. This will not exempt them from the need to comply with all general provisions of the Code and, if evidence emerges that leads us to conclude that these services are a higher risk than we have assessed, we will review this exemption.

In order to exempt business conference calling services from the prior permission requirements, PhonepayPlus intends to introduce a new category of service which is exempt from the prior permission regime – the 'business conference services' category. Such services will be defined as services in which two or more persons are enabled to simultaneously conduct a telephone conversation with each other, and where that conversation is chaired by a designated individual and is in furtherance of an existing or forthcoming business relationship.

For clarity, a list of the services exempt from requiring prior permission is attached at **Annex C**.

It has therefore been concluded that, with the additional service category exemptions outlined above, the current application of the prior permission regime is appropriate.

A copy of the list of exemptions from prior permission is attached at Annex C of this statement. It is anticipated that the vast majority of services operating on the 087X number range will either fall outside the prior permissions regime or be specifically exempt from it.

UNDUE DELAY

Q9. Do you agree that Option D is a fair and proportionate application of the undue delay requirements in paragraph 5.4.2 of the Code to the 0871 number range? If not, please provide your reasons and alternative preferred option. Additionally, please provide details of any other options you feel may be appropriate for PhonepayPlus to consider.

This was the key area where the consumer responses differed from PhonepayPlus' proposals. In short, the proposal was not to set a threshold time limit beyond which there would be a *prima facie* case of undue delay. Instead, it was proposed that complaints of undue delay would, initially, be treated as complaints of poor customer service. These would then be handled by the service provider in the first instance under its own complaints procedure. If the complainant has not received a satisfactory outcome within 30 days, PhonepayPlus will then consider the case on its merits.

It is worth noting the standard response submitted by the majority of the 617 consumers who responded to the consultation:

"No. You state that you have received significant complaints concerning 0871 numbers as has Ofcom and at this time Ofcom is currently investigating scams on 0870 numbers. Once 0870 loses it's (sic) revenue share, most companies/organisations are expected to migrate to 0871 and this means scam artists will also do this. What you propose is to basically not do anything about call queuing. It is not at all in the consumer interest but only in the interest of companies/organisations using these numbers.

It has been stated by ICSTIS that many companies/organisations will use 0871 not for the revenue share (which can be as much as up to 6p/min) but for the advanced network features. If this was true then companies/organisations would use other lower-rate non-geographic numbers like 0845 which offer some advanced network features, except in most cases revenue sharing isn't passed to the company instead being retained by the service provider to pay for the advanced network services.

Therefore, the primary interest in using 0871 is for the revenue share in addition to the advanced network features available but the difference is that many consumers currently aren't aware that 0871 is premium rate which is why many companies/organisations have already migrated to 0871.

Many companies/organisations would not dare move to 09x (not even at 15p/min) because in all likelihood they are aware that consumers are aware that 09x is a premium rate and that this would cause many complaints so instead they have opted for 0871 where revenue still exists but without consumer knowledge that they are in fact ringing a premium rate number (albeit at lower amounts) and according to your proposal, being able to gain revenue even whilst consumers are held in a queue. It's possible to be held in a queue for over 20minutes when ringing some companies on 0871 now. This equates to the company getting over £1 for every call they get that lasts 20minutes just being in a queue. If a company gets hundreds or even thousands of calls a day then this adds up over the month and year. Therefore there can be an incentive to keep callers waiting.

I believe that the extra revenue possible from 0871 numbers that this is used to ensure that us consumers aren't charged fro (sic) being kept on hold for undue delays and therefore consumers aren't charged fro (sic) being in a long queue. I don't believe that with the extra revenue possible from 0871 numbers that this would add any extra financial burden on to companies/organisations operating 0871 numbers.

If this is still not possible then how about an announcement when first rung that states when you are in the queue and how long it's estimated you'll be before being answered. This would allow us consumers to know in advance that they could be a long time and can choose to ring back later, etc. Again, this could be paid out of the revenue from the call they receive which ICSTIS believes is really only used for network features and not to gain revenue from the call."

Additionally, the vast majority of consumers expressed dissatisfaction with call delays and considered them to be a deliberate attempt to increase revenues.

It is clear that there is a body of public opinion surrounding this issue and that it is considered by the public to be a 'scam' from which they should be protected.

The industry responses generally agreed with the analysis of the issue as set out in the consultation document and agreed with the proposed approach.

PhonepayPlus believes that, while the proposed approach of dealing with complaints of undue delay primarily as customer service issues is sound, in the light of the strength of feeling of consumers and the cogency of their argument, we need to go further in order to protect the consumer.

PhonepayPlus will, therefore, adopt the proposed approach of treating complaints as customer service issues in the first instance, together with the approach propounded in the standard consumer response. Therefore, if the consumer and the service provider are unable to resolve their dispute within 30 days and PhonepayPlus undertakes an investigation, we will take into account any action taken by the service provider to configure their service so as to advise the customer of any delay and any consequential steps the service provider has taken to manage that delay when handling calls.

Where a breach of paragraph 5.4.2 has been upheld as the result of an unduly long queue time, it will be a strongly aggravating circumstance where the service has provided no or little information to the consumer regarding their position in the queue or the expected length of the waiting time. Furthermore, this may also constitute a breach of the fairness provisions under paragraph 5.4.1 insofar as it seems reasonable that the consumer should have been forewarned as to a likely delay.

It should also be noted that a delay may still be considered unduly long despite any measures taken to inform the customer of their position.

By adopting this approach, PhonepayPlus believes that service providers will be strongly encouraged to provide adequate information to their consumers so as to enable them to make an informed decision on whether to continue the call. It will still, however, allow service providers the flexibility to decide for themselves on the appropriate mechanism for minimising consumer harm for their own particular services.

Complaints of undue delay will therefore primarily be treated as complaints of poor service, to be taken up directly with the service provider. If no resolution has been reached within 30 days, PhonepayPlus will consider the complaint on its merits and will have regard to the actions of the service provider in advising the caller about any likely call delays.

PRICING INFORMATION

Q10. Do you agree that this is a fair and proportionate application of the pricing information requirements under Section 5.7 of the Code to the 0871 number range? If not, please provide your reasons.

One of the key purposes for PhonepayPlus' assumption of the regulation of the 087X number range was to increase the level of price transparency in order to ensure that consumers are aware of the cost to them. It is, therefore, no surprise that the general response from consumers was in agreement with this proposal.

Responses from the industry were supportive of the proposal to require them to make consumers aware of the price of calls. There were, however, some caveats.

Firstly, the industry had concerns about whether or not this means that there would be a requirement for printed information to be displayed on every page of, for example, a telephone directory or a catalogue. PhonepayPlus believes that this uncertainty can be resolved by referring specific queries to the Compliance Team.

The requirements of the Code are, however, straightforward on this issue. Where the number is published in printed form, or on the internet, PhonepayPlus expects that pricing information will appear alongside it. Where this is not possible, it is expected that pricing information will be communicated to the consumer by a short, distinct message at the start of the call. This message may be within the paid-for part of a call provided it is sufficiently concise.

There are some specific queries that PhonepayPlus has received regarding pricing and it is worth mentioning these here. In the case of white page listings, such as telephone directories, it is sufficient that the pricing information is shown in the introductory section of the publication where the general pricing information for different number ranges is shown. We do not expect that each 087X number will have the price information alongside it in the listing. Additionally, we do not expect pricing information to be displayed on business cards or other business-to-business communications, such as invoices. We do, however, expect the information to appear on invoices or letter-headed paper sent to consumers.

Secondly, there appears to be a degree of uncertainty over the application of the '50p rule' as set out in paragraph 5.7.5 of the Code:

"Premium rate services which do not generally cost more than 50 pence are exempt from all PhonepayPlus requirements on pricing information unless ..."

The paragraph then goes on to outline several exemptions. It should be noted that, as with all amounts referred to in the Code, the 50p threshold refers to the cost of a call from a BT landline.

As to the application of the rule, since it is Ofcom's express intention that there should be a greater degree of price transparency throughout the 0871 number range, PhonepayPlus considers that this pricing exemption should be construed narrowly.

Service providers should be aware that PhonepayPlus views "generally" as meaning "virtually universally". Accordingly, if there is more than an occasional caller paying more than a total cost of 50p, then pricing information must be provided. If service providers are in any doubt, they should provide pricing information. PhonepayPlus will take a serious view of the absence of pricing information which should have been included.

The current application of the pricing information requirements under Section 5.7 of the Code will therefore apply to the 087X number range.

Q11. Do you agree that it is appropriate to allow a three-month implementation period?

While the consumer responses were generally in agreement with this proposal, industry responses stated that a longer lead-in period will be required to ensure full compliance. Various time periods have been suggested in the responses.

PhoneyPayPlus considers that it is appropriate and necessary to allow a three-month implementation period between the publication of Ofcom's Statement, anticipated in Spring 2008, and the commencement of its regulation of the 087X number range. Where, outside that period, service providers have concerns that they are not able to include printed pricing information alongside their published numbers for whatever reason, they can ensure that their services are compliant with the Code by placing a short message at the start of the call.

PhoneyPayPlus is, therefore, asking Ofcom that there be a three-month interval between Ofcom issuing a Statement following its own consultation and the assumption of regulation by PhoneyPayPlus. If Ofcom decides not to grant this three-month period, PhoneyPayPlus intends to grant the extension itself.

From discussions with the industry, it is apparent that requiring a 'free-to-caller' pre-announcement is not a viable option due to hardware constraints at network level. Therefore, PhoneyPayPlus will allow that message to be within the charged-for part of the call provided it is sufficiently concise.

PhoneyPayPlus considers that it is appropriate and necessary to allow a lead-in period of three months for compliance with the provisions on pricing. Where service providers are unable to ensure that their printed information contains pricing information, they are able to ensure compliance by including a short message at the start of a call.

Q12. Do you agree that this is a fair and proportionate application of PhoneyPayPlus' scope of regulation in respect of the content of services provided on the 0871 number range? If not, please provide your reasons.

In general, both consumer and industry respondents agreed with this proposal.

Q13. Do you agree that the current application of Section 6 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

In general, both consumers and industry members agreed with this proposal. PhoneyPayPlus believes that it has addressed any concerns that industry stakeholders have over business conference services falling within the prior permission requirements by allowing an exemption for services of this type.

Additionally, PhoneyPayPlus believes that it is appropriate to waive the requirements under paragraph 6.3.1 for services operating on the 087X number range. These requirements are primarily aimed at the largely different types of service which traditionally use more expensive premium rate numbers.

PhoneyPayPlus will, however, keep this waiver under review and may withdraw it following appropriate consultation should issues become apparent which require these provisions to be in place.

PhoneyPayPlus is therefore granting permission for live services operating on the 087X number range to be exempt from the provisions of paragraph 6.3.1 of the Code.

Q14. Do you agree that the current application of Section 7 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

In general, both consumers and industry members agreed with this proposal. PhonepayPlus believes that it has addressed any concerns that stakeholders have over consumer credit services and professional advice services operating at up to 10ppm price points by allowing exemptions for services of these types.

Q15. Do you agree that the current application of Sections 8 to 11 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

In general, both consumers and industry members agreed with this proposal. However, there were some industry responses that suggested that the sanctions regime is disproportionate in relation to the lower risk of consumer harm on 087X numbers.

PhonepayPlus believes that the current sanctions regime is both appropriate and proportionate in relation to the 087X number range, given that factors such as intent and scale of detriment are considered when determining sanctions.

The current application of Sections 8 to 11 of the Code will therefore be applied to the 087X number range.

FUNDING

Q16. Do you agree that this is a fair and proportionate application of the funding model in Annex 1 of the Code to apply to the 0871 number range? If not, please provide your reasons.

Since this is not an issue which directly affects consumers, their responses were in agreement. Responses from the industry, however, were mixed, with at least one organisation stating that it does not believe that PhonepayPlus should apply a levy to them at all.

Where industry respondents disagreed with our proposals, it was over the method used to calculate the notional level of outpayment upon which the levy is based. In particular, it was stated that service providers rarely receive 60% of the total call revenue and, therefore, PhonepayPlus' estimate is wide of the mark.

Additionally, it has been stated that PhonepayPlus should place a greater emphasis on funding itself through fines on recalcitrant organisations using the 'polluter pays' principle. On this point, PhonepayPlus believes that it does already apply the 'polluter pays' principle on the basis that industry members each contribute to the aggregate risk of causing consumer harm, as well as each receiving the benefit of operating in a regulated market. Therefore, all should contribute to the regulation of the industry.

Regarding the calculation of the figure for the notional outpayment of 60%, PhonepayPlus has engaged in lengthy discussions with Ofcom and the industry, and has received substantial confidential information regarding actual levels of outpayments. PhonepayPlus is satisfied that its proposed notional figure of 60% is a fair and appropriate figure to apply to the 087X number range.

However, this is constantly under review and PhonepayPlus will take notice of any evidence that this is no longer an appropriate figure to use, especially during 2008 as the market goes through some change as a consequence of the regulations and Ofcom's decisions in respect of 0870 services.

It should be noted that the calculated total revenue is based on the revenue generated at BT landline rates (i.e. based on call charges of up to 10 pence per minute depending on the exact tariff) and not the actual industry total, which includes additional network charges by mobile operators and non-BT networks.

The application of the funding model as proposed will therefore be applied to the 087X number range. The exact levy that PhonepayPlus will apply will be announced during our normal budget timeline.

Q17. Do you agree that this is a fair and proportionate method of collection of the funding levy to apply to the 0871 number range? If not, please provide your reasons.

Q18. Do you agree that the minimum payment amount from each network operator should be £500 per annum? If not, please provide your reasons.

While consumers were generally silent on this matter, industry respondents were not in general agreement with the proposals raised and presented a number of alternative suggestions.

PhonepayPlus considers that, where networks only collect a relatively small amount of the levy from their service providers, PhonepayPlus will invoice them less frequently to ensure that the cost of collection is proportionate to the amount collected. It will not, however, waive the levy requirements.

There will not therefore be a minimum payment amount for network operators.

BRANDING

Q19. Do you agree that it is not appropriate for PhonepayPlus to create and promote a separate brand for regulation of the 0871 number range? If not, please provide your reasons.

The key consumer concerns in this area were that PhonepayPlus does not try to hide the fact that the 087X number range is premium rate and that numbers are not advertised as 'National Rate'.

Conversely, the key industry concern was that PhonepayPlus does not associate the 087X number range with other premium rate ranges, particularly sexual entertainment services operating on 09 numbers. The industry has been particularly vociferous on this issue and considers that PhonepayPlus, together with Ofcom, should take active steps to both brand and advertise the 087X number range as a separate entity.

However, for the reasons given in the consultation document, PhonepayPlus does not consider it appropriate to take such steps. In particular, PhonepayPlus believes that its recent re-branding and its shift in emphasis towards 'phone-paid services' will go some way to address concerns that services operating on the 087X number range will be regarded as 'traditional' premium rate services.

PhonepayPlus will not therefore create, advertise or promote a separate brand for the 087X number range.

OTHER ISSUES

Q20. Is there any other way in which PhonepayPlus' regulatory framework should be amended or otherwise so as to regulate the 0871 number range in a way that is fair and proportionate?

In general, industry stakeholders added nothing of substance to the comments they had already made in response to previous questions.

The standard consumer response contained the following in answer to this question:

"To discourage scams with missed phone calls/silent calls, ICSTIS should ensure that companies/organisations using an 0871 do not display via CLI (Caller Display Identity) their 0871 number. Instead, companies/organisations should use freephone or lower-cost number ranges. This would also save Ofcom having to investigate missed calls/silent calls (whether deliberate or not) as this is potentially in contravention of current Ofcom rules. Currently Ofcom rules state that companies/organisations making phone calls (sales etc) should not display any number costing more than the rate of an 0845 on CLI."

PhonepayPlus considers that the current Code provisions under paragraph 5.4 relating to fairness are appropriate to cover situations where users are unfairly encouraged to make calls to premium rate numbers, as in the scenario above.

PhonepayPlus notes that Ofcom's guidelines¹ permit the use of 08 numbers for presentation on CLI.

No further amendments therefore need to be made to PhonepayPlus' regulatory framework when assuming regulation of the 087X number range.

¹ Guidelines for the provision of Calling Line Identification Facilities and other related services over Electronic Communications Networks Version 2. This document is published on Ofcom's website at: www.ofcom.org.uk/telecoms/ioi/orp/cli/.

Section 4

Conclusions

From the pre-consultation research, the responses given to the consultation itself, and subsequent discussion with industry players and other bodies, PhonepayPlus has concluded that it is appropriate to issue a Statement of Application which, when read in conjunction with the current Code of Practice, sets out PhonepayPlus' regulatory requirements for the 087X number range.

PhonepayPlus appreciates that many parties involved in providing services on the 087X number range do not consider themselves to be providing premium rate services and, indeed, do not gain any revenue from using the numbers. A large number of these organisations will not have been regulated by PhonepayPlus before and may well find the volume and complexity of the regulatory framework to be a deterrent to continuing to operate in, or entering into, the market.

In order to alleviate these concerns, PhonepayPlus is undertaking a number of initiatives including a series of industry conferences and workshops, meetings with service providers and information providers, and providing compliance advice to firms that contact us with queries. We will also consider the need for Help Notes where it becomes clear that these will aid compliance.

Annex A

Statement of Application



STATEMENT OF APPLICATION

Background

This statement sets out PhonepayPlus' policy on the application of the Code of Practice (currently in its 11th edition) in relation to the 0871, 0872 and 0873 number ranges (collectively referred to as 087X numbers below).

Where number ranges are opened up in the future on 087X and designated by Ofcom as Controlled Premium Rate Services and are to be regulated by PhonepayPlus, references in this statement to 087X numbers shall also apply to those number ranges. For the avoidance of doubt, the statement will not apply to the 0870 number range.

This statement should be read in conjunction with, and is subject to, the Code of Practice and details the likely application of the Code by PhonepayPlus when considering complaints or advice in relation to 087X services. Where particular Code provisions are not addressed, there will be no change to PhonepayPlus' application of those provisions when applying them to the 087X number range.

Section 1: Introduction

This section sets out the principles of good regulation, to which PhonepayPlus expects to adhere when applying its Code. It also sets out the scope of the Code.

There are no specific and unique changes to our interpretation of Section 1 of the Code of Practice that apply to the 087X number range.

Section 2: Network operators

This section sets out the obligations of network operators under the Code. In particular, the requirements for due diligence checks and any withholding of outpayments are worthy of special note.

Under paragraph 2.3.1, network operators are obliged to carry out due diligence in respect of service providers before making their networks and/or services available to them. PhonepayPlus has the power in the Code to waive these requirements.

PhonepayPlus does, by this Statement of Application, waive the due diligence obligations on network operators set out in paragraphs 2.3.1(a), (b) and (c) in circumstances where the only premium rate services for which their network and/or services are made available to a service provider are limited to the 087X number range.

Paragraph 2.3.1(d) will continue to apply in respect only of such information as network operators may have collected for their own purposes.

Paragraph 2.3.1(e) will also continue to apply.

In the case of services operating on the 087X number range, PhonepayPlus considers that the obligations on network operators set out in paragraph 2.3.1(f) are complied with where the network operator obtains an undertaking from the service provider that such systems are in place.

The requirement on network operators to withhold outpayments to service providers for 30 days under paragraph 2.3.3 shall remain applicable in all cases.

Section 3: Service providers

This section sets out the general provisions and obligations relating to service providers.

It is to be noted that, under paragraph 3.3.5, service providers are obliged to have in place adequate customer service arrangements, including a non-premium rate UK customer service telephone number. Furthermore, under paragraph 2.3.1(f), network operators must satisfy themselves that service providers have in place a non-premium rate customer service telephone number.

PhonepayPlus has carefully considered the application of this rule to services provided on the 087X range. PhonepayPlus has decided that the objective of paragraph 3.3.5 in respect of requiring the provision of a non-premium rate number can be met by means other than strict adherence to the Code. A notice to this effect is attached at **Annex B**.

This notice has the effect of enabling 087X service providers to choose to include its customer service provision on 087X numbers provided the relevant conditions about call handling and full refunds are met. Alternatively, service providers may choose to use a non-premium rate number as set out in paragraph 3.3.5. Network operators may accept the provision of an 087X number for the purposes of paragraph 2.3.1(f).

Section 4: Information providers

This section sets out the obligation of information providers to comply with the Code. There are no specific and unique changes to our interpretation of Section 4 of the Code of Practice that apply to the 087X number range.

Section 5: General provisions applicable to all premium rate services

This section sets out the general provisions applicable to all premium rate services. There are several areas of this section which require particular note.

Prior permission

Under paragraph 5.1, certain categories of service may not be provided without having obtained prior permission from PhonepayPlus. A list of these categories is available from PhonepayPlus.

This requirement shall remain applicable to services provided on the 087X number range and, as a consequence, it is expected that most services provided on the 087X number range will fall within the published exceptions to this rule. PhonepayPlus has modified the list of exempted services to remove certain categories of service on 087X numbers that would otherwise be inadvertently subject to these requirements.

Undue delay

PhonepayPlus recognises that the provision of customer service can be 'demand-led' and that mismatches can occur between customer demand and available agents to take and handle calls. Recognising this problem, PhonepayPlus is keen to ensure that customers receive the best possible information about any delays that they may incur when accessing

a service in order that they may make an informed choice as to whether to continue with the call or take some other action. Where this information is provided, consumers may be more accepting of the situation than where they are provided with no information whatsoever and merely kept on hold.

There are numerous ways in which customer service can be structured to do this, including by offering the opportunity for an agent to call the consumer back at a more convenient time. However, we do not intend to take a prescriptive approach to this at this time.

The Code states, in paragraph 5.4.2, that “services must not be unreasonably prolonged or delayed”. Where PhonepayPlus receives complaints which may emanate from delay, it will refer the complainant back to the service provider with a direction to the service provider that, if the complaint has not been resolved within 30 days, PhonepayPlus is likely to open an investigation.

When investigating any such complaint about undue delay, PhonepayPlus will take into account any action taken by the service provider in the configuration of their service to ensure that the customer was advised of any delay and any consequential steps taken by the service provider to manage that delay.

PhonepayPlus considers that, where a breach of paragraph 5.4.2 has been upheld as the result of an unduly long queue time, it will be a strongly aggravating circumstance where the service has provided no or little information to the consumer regarding their position in the queue or the expected length of the waiting time. This may also constitute a breach of the fairness provisions under paragraph 5.4.1 of the Code insofar as it seems reasonable that the consumer should have been reasonably forewarned as to a likely long delay.

It should be noted, however, that a delay may still be considered to be unduly long despite any measures taken to inform the customer of their position.

Service providers are reminded that, under paragraph 3.3.5 of the Code, they are expected to have in place arrangements for considering claims for refunds where appropriate.

Pricing information

The provisions of paragraph 5.7 of the Code in relation to pricing transparency will apply in full.

It is to be noted that, as a result of the Distance Selling Regulations 2000, a supplier of goods or services that fall within the regulations is required to provide in advance the price and delivery costs of those goods or services.

PhonepayPlus considers that, since an explicit purpose of its assumption of the regulation of the 087X number range is pricing transparency, the exemption from pricing under paragraph 5.7.5 should be construed narrowly.

The rule says that services are exempt from pricing information requirements if they do not generally cost more than 50p. Service providers should be aware that PhonepayPlus views “generally” as meaning “virtually universally”. Accordingly, if more than an occasional caller is charged above a total cost of 50p, then pricing information must be provided. If service providers are in any doubt, they should provide pricing information. PhonepayPlus will take a serious view of the absence of pricing information which should have been included.

Regulation of the content of the service

Under Section 5 of the Code of Practice, PhonepayPlus will normally restrict itself to investigating complaints about poor service only where that does not directly relate to the primary purchase of goods or services.

Where PhonepayPlus declines to investigate a complaint because the matter relates primarily to the purchase of goods or services which are not premium rate services, it will direct the complaint to a more appropriate body if one is available and/or provide information to the complainant as to their rights.

Should PhonepayPlus receive a level of complaint about a particular service that indicates a risk of potential consumer harm, it may choose to commence an investigation into that service.

Section 6: Provisions relating specifically to live services

This section sets out various obligations associated with the provision of live services.

PhonepayPlus considers that, while a number of categories of live service are provided on the 087X number range, the majority of these will already fall within the exemptions from prior permission which have been recognised by PhonepayPlus.

Additionally, PhonepayPlus hereby grants permission for live services operating on the 087X number range to be exempt from the requirements of paragraph 6.3.1 of the Code.

Section 7: Additional provisions relating to specific categories of service

This section sets out various obligations associated with the provision of specific categories of service.

PhonepayPlus does not consider that there is anything unique about the 087X number range that would require a different level of regulation in this respect. There are, therefore, no changes to our application of Section 7 of the Code of Practice.

Sections 8 to 11

These sections set out PhonepayPlus' powers of investigation, adjudication and its terms of reference.

PhonepayPlus does not consider that there is anything unique about the 087X number range that would require a different application of these rules. There are, therefore, no changes to our application of Sections 8 to 11 of the Code of Practice.

Annex B

Notice in respect of paragraph 5.1.2(a) of the PhonepayPlus Code of Practice (11th Edition)



NOTICE IN RESPECT OF PARAGRAPH 5.1.2(a) OF THE PHONEPAYPLUS CODE OF PRACTICE (11TH EDITION)

Having given due consideration to the provisions of paragraph 3.3.5 of the Code, PhonepayPlus is satisfied that, in respect of services it regulates operating on the 087X number range, the objectives of that paragraph in requiring inclusion of a non-premium rate UK customer service phone number may be met instead by the provision of an 087X number when, on connection, the caller is:

- provided with the clear opportunity to make a complaint about the premium rate service operated on that 087X number or another 087X number operated by the same provider, and
- if making a complaint, informed that the cost of calling that 087X number for the purpose of making such a complaint will be fully refunded and is so refunded.

The operation of customer complaint services in respect of premium rate services operating on the 087X number range will be kept under review by PhonepayPlus and the permission hereby granted may be withdrawn by PhonepayPlus if it considers that the public interest so requires. Such withdrawal will be made only on reasonable notice.

A handwritten signature in black ink that reads "Alastair Graham".

Sir Alastair Graham
Chairman, PhonepayPlus

Annex C

Help Note: Live services – list of current exemptions from prior permission



HELP NOTE

LIVE SERVICES – LIST OF CURRENT EXEMPTIONS FROM PRIOR PERMISSION VERSION 2: OCTOBER 2007

Introduction

Paragraph 6.1.1 of the 11th Edition of the PhonepayPlus Code of Practice states that:

“No live services may be provided without prior permission from PhonepayPlus, save that PhonepayPlus may identify categories of live services which are exempt from the prior permission requirement. Such exemptions may be withdrawn or modified by PhonepayPlus at any time on reasonable notice and a list of exempt categories will be published by PhonepayPlus from time to time.”

Service providers are hereby given notice that the categories of live service listed below are exempt from the requirement for prior permission, unless they are charged at more than £1 per minute where the total cost of the call *can* exceed £30:

- live customer support services
- live directory enquiry (DQ) services
- live data capture services – these are services that take callers’ details so that a service or product can be provided following the premium rate call
- connection services for live conversation for UK end destinations only – these services include services enabling ‘cheap’ (typically 10ppm up to 60ppm) calls to hospitalised relatives and friends
- live classified advertisement services – these services usually take the form of data capture services
- live alarm services – these services usually involve calls being made to the police at a premium rate by alarm monitoring centres following receipt of notification that alarms have been activated
- live betting tipster services
- live advice services using non-087X numbers – these exclude ‘professional’ services such as those providing legal or medical advice, or services providing any type of counselling
- live advice (including advice on consumer credit) and counselling services using 087X numbers
- business conference services – these are services in which two or more persons are enabled to simultaneously conduct a telephone conversation with each other where that conversation is chaired by a designated individual and is in furtherance of an existing or forthcoming business relationship.

Providers of live services that fall into the categories set out above must still inform PhonepayPlus in advance of the services they intend to operate, the fact that they are considered exempt and the number ranges on which they operate. This can be done using the online registration forms available on the PhonepayPlus website.

If you are unsure as to whether your service requires permission or not, you are strongly urged to contact the PhonepayPlus Executive.

Further information

Contacting the Executive:

PhonepayPlus
Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7474
Fax: 020 7940 7456
Email: compliance@phonepayplus.org.uk
Web: www.phonepayplus.org.uk