

Zamano’s response to Phonepay Plus 12th Code Green Paper.

There are a number of number of statements in the document that are open to interpretation that we think require further definition, plus we have made our own observations on some of the points being made. Please note that any comments relating to specific paragraphs below precede the question to which they relate and are in normal text, answers to questions raised by Phonepay Plus are in **bold**.

	Phonepay Plus	Zamano Response
Q1.	Do you agree with our broad assessment of the range of harms that may impact upon consumers? If not, why not?	Yes we agree
	Under Appropriateness: Page 10 Supporting Themes: Services, and their promotional material, must not cause serious or widespread harm to consumers	What is the definition of ‘widespread’. Also, is the list of supporting themes on page 10 & 11 the final list?
	Under Transparency: Page 11 Supporting Themes: Consumers must be clearly informed of the price of a service, the name and contact details of the provider, and any other information likely to influence their decision to purchase, before they incur a charge Services and their promotional material must not directly exhort children to purchase products or services, or take advantage of children Services must not take advantage of any vulnerable group, or any vulnerability caused to consumers by their personal circumstances Services must have a simple method of permanent exit of which the consumer is clearly informed prior to incurring any charge. This method of exit must take effect immediately upon the consumer using it. In certain circumstances PPP may prescribe that method of exit.	We feel the term ‘any other information’ is too broad We do not agree with the term ‘take of advantage of children’ as this would encompass every advert on TV What is the definition ‘vulnerable group’ - e.g. if someone is intoxicated and purchase mobile content, do they have a case for being vulnerable? We do not agree with the requirement to promote the method of exit before incurring a charge as this would allow customers to stop a service they may have received prior to being charged
	Under Privacy – Page 12 Supporting Themes: Providers of phone-paid services must not directly promote to consumers, or otherwise contact them, unless the consumer has previously purchased from them or otherwise given their express consent for such contact. Such express consent should be obvious to the consumer, and clearly auditable	We do not agree with the phrase ‘express consent’ as per ICO and PECR you do not have to have ‘express consent’

	Under Technical Quality – Page 12 Outcome: “That phone-paid services, and the mechanisms used to deliver them to consumers, are of adequate technical quality”.	What is the definition of adequate?
	Under Prior Permission – Page 13 2.13 It is our opinion that service types which carry specific risks to consumers should be subject to closer scrutiny, and adequate controls on that risk. For this reason we intend to retain the facility to require Prior Permission as part of the new Code.	The term “specific risks is not well enough defined and leaves open to PPPP to interpret what they would classify as a risk.
Q2.	Do you agree with our assessment and definition of Outcomes and supporting themes? If not, why not?	Yes we agree
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 we agree, however, we feel that on the subject of refunds consideration should also be given to the Network Operator share of the revenue. One suggestion would be to arrange refund through the Network Operator such as a credit SMS.
	Under Prior Permission – Page 13 2.15 An example of this would be the granting of Prior Permission to those wishing to provide subscription services costing more than £4.50 in any given 7-day period.	What about services where the <u>potential</u> cost is more than £4.50 per week – should these be included in prior permission?
Q5.	Do you agree that PPP 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 we agree
Q6.	Do you agree that PPP 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 with proof
Q7.	Do you agree that PPP is right to suggest that an applicants 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?	No as this would encourage clients to set up different companies and would lead to due diligence nightmares. Although if PPP were to consider an applicants breach history, they should also take into account nature and seriousness of breaches, action taken by applicant and their subsequent record.

	SMS Value Chain – page 16	The value chain stops at Information Provider and does not include sub IP's of the Information Provider, 3 rd party list providers or affiliate marketing companies. We firmly believe all parties in the chain should be responsible and liability should focus on those in the chain who are actually responsible for the particular breach.
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?	We do not entirely agree with this because we don't think that PPP go far enough in their assessment. There is no recognition of the responsibility of 3rd party list providers or advertising affiliate networks, and there are references to companies higher up the value chain i.e. further away from the consumer but there is no mention of who PPP are referring to in this instance. Furthermore, PPP put the burden of responsibility and ultimate liability on Service Providers who receive the smallest share of revenue in the value chain. Even the best due diligence process may not be enough to protect Service Provider's from some Information Provider associated breaches e.g. affiliate network issues.
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?	If list providers and ad networks became accountable then services would become more expensive and CPA's will rise which would lead to less consumer harm and marketing would become more appropriate and targeted.
	SMS Value Chain – page 18 3.12 Those further up the value chain who provide a service to the IP at the end of the chain, whether they are Information Providers (IPs), Service Providers (SPs), or Terminating Connection Providers (TCPs), we would expect to undertake a reasonable degree of due diligence, monitoring, and control in relation to their clients if this approach is to work. If they do not, then we feel it is right they should be held in breach of the Code as regards a systemic failing of compliance, and suffer penalties where appropriate	This paragraph is vague in terms of what PPP mean by 'reasonable degree of due diligence, monitoring and control. We would expect there to be a statement of expectations to accompany this.

	<p>SMS Value Chain – page 18</p> <p>3.13 Ultimately the possession of a connection to a phone-paid service is a fundamental benefit to all those who share revenue from it, be they TCPs, SPs, or IPs. So where a connection is sub-contracted to a client, we would expect the party which has subcontracted it to deliver the following outcomes</p>	<p>As mentioned in paragraph above there is no mention in the whole of section 3 of any liability being placed on companies further down the value chain.</p>
	<p>Due Diligence – page 18</p> <p>d) obtain undertakings from the client that no other party is operating in the capacity of a shadow director under the Companies’ Act if appropriate</p>	<p>Companies may want to, for many reasons other than matters regulatory, engage with a shadow director. This is none of our/PPP’s business and would raise the question whether it is legal to make decisions based upon shadow directors.</p>
	<p>Due Diligence – page 18</p> <p>f) verify that the client has a bank account within the EU – a suggested Code requirement</p>	<p>we do not agree with this – what about companies operating in other territories e.g. U.S. – we cannot force them into opening EU bank account.</p>
	<p>Reasonable Risk Assessment – page 19</p> <p>Under paragraph 3.19 To further facilitate this approach as part of the new Code, PPP is of the opinion that any party which sub-contracts a connection to a client should have a reasonable awareness of the potential risk that such a client, and the services they run, poses to consumers</p>	<p>It is impossible to monitor ad networks who are further down the value chain, however if the list of outcomes in paragraph 3.20 are what PPP means by ‘reasonable awareness’ then this would be acceptable.</p>
	<p>Reasonable Risk Assessment – page 19</p> <p>Also under paragraph 3.19 Further to this, PPP believes it is not unreasonable to expect TCPs, SPs, or IPs under certain circumstances, to take steps to monitor and control that potential risk.</p>	<p>We believe that there should be a more prescriptive list of what PPP means by ‘certain circumstances’.</p>
Q10.	<p>Do you agree with our analysis of the outcomes of Assessment and Control? If not, why not?</p>	<p>If the list of outcomes in paragraph 3.20 are the extent of what Phonepay Plus means by ‘reasonable awareness’ then yes we are in agreement.</p>
Q11.	<p>What thoughts do you have on our suggested approach to a registration scheme?</p>	<p>The success of any database is the ability to search on different criteria and fields. Is the suggestion that there would be two databases operating concurrently? Will there be any additional requirements for international companies, and could a registration number be given to all applicants on the database to use in promotions to aid traceability?</p>

Q12.	<p>What other suggestions do you have for how we could create greater incentives for providers to co-operate with PPP in the event of investigations?</p>	<p>That co-operation with PPP and use of a Due Diligence process are automatically used as mitigating factors and taken into consideration when any sanctions are being discussed. Also, there should be a willingness on PPP's part to take an informal approach to Information Providers and services that seem to be in breach and <u>give companies an opportunity to resolve first before launching an investigation e.g. a cease and desist letter</u></p>
	<p>Range of Investigations Procedures – page 23 4.11 In light of this, our initial opinion is that we should widen the scope of any informal procedure in order to make it more flexible. Such an approach would allow PPP to require that a problem is quickly resolved where no consumer harm has occurred, or to require that a provider accepts a minor breach, and a specific set of actions to be completed within a set time.</p>	<p>Why does a minor breach have to be raised? In this instance we believe there should be no breach raised and no publishing of breach as long as any issues raised by PPP were dealt with in agreed timeframe</p>
Q13.	<p>Do you agree with our proposed approach to reforming the Informal procedure? If not, why not?</p>	<p>Yes we agree</p>
	<p>Range of Investigations Procedures – page 24 4.15 It is also our opinion that the current Standard and Emergency Procedures should largely be retained. We would welcome stakeholders' views in this regard.</p>	<p>This is fine. however, if the investigation relates to a marketing issue, then we believe that only marketing - and not the service itself - should be suspended until the investigation has concluded.</p>
Q14.	<p>Do you agree with our proposal that our arrangements for Standard and Emergency procedures should be retained? If not, why not?</p>	<p>Yes we agree</p>
	<p>Range of Investigations Procedures – page 24 4.17 In an alternative example, it may be appropriate to use an Informal Procedure against an IP who had committed their first offence, but bring a Standard Procedure in respect of an SP, or even a TCP, if this was not the first example of inadequate risk control, or failure to learn from previous mistakes, on their part.</p>	<p>This approach disadvantages large aggregators with more clients (and therefore increases the chances of overall IP offences, Also the nature of breaches should be taken into consideration e.g. marketing whereby an SP has no direct responsibility.</p>
Q15.	<p>Do you agree with our approach and what regulatory impacts, costs and benefits do you foresee?</p>	<p>On the whole we agree with the approach, however, if SPs are continued to be held responsible for IP's who offend and fails to respond – where will liability cease?</p>

	<p>Requirement for Automatic Refunds – page 25</p> <p>a) Alternatively a requirement would exist for all consumers of a service to be informed, free of charge, that they are entitled to a refund and provided with an easy mechanism to claim it.</p> <p>b) That, unless inappropriate, the requirement to refund should extend to all those who have purchased a service, rather than just those who have complained to PPP or otherwise claimed a refund.</p>	<p>We strongly disagree with both paragraphs. 99% of consumers could be happy with a service, but in this scenario, 100% could be due a refund even if they have validly or pro-actively used a service – with which they are perfectly happy</p>
	<p>Requirement for Automatic Refunds – page 25</p> <p>4.24 Recent developments within the industry have proven to PPP that there are a number of relatively straightforward ways of contacting a consumer and giving them an access code to obtain a refund – either through a website or banking institution. As such we feel this practice should be embedded across the phone-paid market</p>	<p>This would be ok, but not in the context of 100% refunds, as stated above.</p>
<p>Q16.</p>	<p>What would be the costs and business impacts associated with such proposals? What consumer benefits do you think would accrue?</p>	<p>No allowance appears to have been made by PPP for the fact that an IP or subsequently an SP could be liable for 100% of a refund when they do not receive 100% of the revenue. Included in the cost are VAT at 15% and Network operator share – will this be excluded from refund, and this may well be on top of other financial penalty e.g. substantial fine. If an SP is ultimately held responsible, they receive just 5% of the revenue share but could be forced to give 100% refund. This also does not take into consideration those customers who have happily and pro-actively used a service – why should they be able to get a refund? Whilst this might seem an appropriate action where there has been an out and out scam i.e. where there has been no material benefit to the consumer, there are services where consumers have used or benefitted from a service, and in such cases we do not believe PPP should have the power to enforce 100% refund.</p>

	<p>Requirement for Automatic Refunds – page 25</p> <p>4.25 Whilst we accept that only a small minority of services will set out to deliberately deceive consumers, it is our opinion that where a service cannot possibly be operating in a compliant way then it is right to consider a full refund to all consumers. One such example of this would be the offer of a free IQ test, with a charged link to the results, where the charge is not stated to the consumer before they click the link</p>	<p>Whilst not condoning some instances of the IQ test, we need to be careful not to outlaw a perfectly valid marketing tool –i.e. the ‘hook’. Other industries use a hook to engage a customer’s attention <u>before promoting a product or service or price</u>, so why should the premium rate industry be any different? As long as price is stated before the call to action, it should be acceptable.</p>
	<p>Requirement for Automatic Refunds – page 25 & 26</p> <p>4.26 In circumstances where a service has caused consumer harm through intent or serious negligence, and in addition to any punitive sanctions imposed, PPP does not believe it is right that those involved with its provision should be able to keep any of the revenue which the service has generated. It is also our opinion that the requirement to pay back all of the revenue, in addition to a fine, will act as a considerable dissuasive factor for those who intend to cause consumer harm.</p>	<p>What is PPP’s description of ‘consumer harm’ – also where PPP states ‘it is not right that those involved should be able to keep any of the revenue...’ how far up the value chain does this go e.g. does it include TCP’s (Network Operators).</p>
	<p>Requirement for Automatic Refunds – page 26</p> <p>4.27 Where a service provider can be proven to have failed in respect of due diligence or risk assessment and control, it may be appropriate to require such a refund from them if an information provider defaults or is otherwise unreachable. We would welcome stakeholder comments.</p>	<p>We strongly disagree with this, as we have mentioned elsewhere, we do not see how a Service Provider can be held responsible for misdemeanors further down the value chain e.g. affiliate marketing.</p>
	<p>Q17. What thoughts do you have about improving PPP’s effectiveness of fine collection and do you have any specific proposals for how we could better secure fine collection through changes to the Code?</p>	<p>We do not agree with the extension of the current 30-day rule in terms of time, but are happy to consider SP’s implementation of an additional 30 days delay.</p>
	<p>Q18. Do you agree with PPP’ proposals for new terms in respect of the current terms “Service Provider” and “Information Provider”? If not, can you suggest alternative terms?</p>	<p>We would agree with the use of AIME’s terminology.</p>