

Developing the next PhonepayPlus code of Practice A PhonepayPlus Discussion Paper

MX Telecom Response

Summary Response

MX Telecom welcome the opportunity to participate in this Discussion Paper as well as PhonepayPlus' efforts to ensure the subsequent Consultation is as relevant and focussed as possible. Throughout the following response, there are repeated references to a Merchant Promoter Registration Scheme (IP Registration to use current terminology) as a means to protect consumers and to ensure they can use phone paid services with confidence. The adoption of a mandatory Merchant Promoter Registration Scheme, of the type herein detailed, represents the single largest opportunity to ensure consumers are safeguarded by introducing meaningful direct accountability. It is vital that the 12th Code does not overlook this huge opportunity to improve industry compliance such that consumer trust can be achieved and further innovation in this industry can be stimulated.

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

Whilst the majority of harms mentioned are accurate, there is significant overlap. For clarity, there is a need to ensure that each type of harm is distinct, such that multiple terms are not used to identify the same problem.

Under this assessment for example, a non-operative customer care function, under the assessment, constitute a breach of 5.8 of the 11th Code (factor 1), inconvenience and wasted time (factor 2) and a poor complaints handling procedure (factor 3).

Q2. Do you agree with our assessment, and the fitness for purpose of our suggested Outcomes and supporting themes? If not, why not?

The Outcomes and themes require further qualification in terms of reasonableness and proportionality, which will presumably be provided in the Consultation, before a proper assessment can be made as to their accuracy. Currently, certain aspects of the proposed Outcomes and Supporting Themes are very subjective:

- What constitutes unacceptable offence?
- Is inappropriate access by one person, despite all reasonable safeguards being in place, a breach of the theme that services should not be accessed by those for whom it is likely to be inappropriate?
- Reference to invasion of privacy is to how a consumer "feels" as opposed to any objective assessment of fact.

References to not charging a consumer without their consent are mis-categorised. Where a consumer is charged without their consent and the vendor imposes this charge wilfully, this constitutes illegal, fraudulent conduct and should be handled accordingly.

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

Perhaps as a Supporting Theme of a number of the proposed Outcomes, the operation of a mandatory Merchant Promoter Registration Scheme is a vital requirement, which has currently been omitted. If the premise of Merchant Promoter Registration is that Aggregators can only allow registered Merchants to provide services to consumers, and that ongoing Registration is conditional upon ongoing compliance with the PhonepayPlus Code of Practice/ CCP stipulated sanctions, a strong disincentive to non-compliance with all detailed Outcomes is provided.

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

This outcome should also include reference to any consumer request for information, rather than an enquiry constituting a complaint. Frequently, the lack of satisfactory information available to a consumer simply aggravates an enquiry into becoming a complaint.

As the body responsible for safeguarding consumers using Phone Paid services and the body to whom the majority of consumers contact in the event of a query or complaint, it is vitally important that PhonepayPlus are able to provide consumers with the information facilitating appropriate redress. In practice, this means that the PhonepayPlus Number Checker must be overhauled such that it can be relied upon as a first point of contact for consumers, PhonepayPlus and industry to check the customer care details associated with a particular service.

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

Yes, we agree with this policy.

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?

One of the fundamental causes of non-compliance has been the lack of accountability of Merchants for the services they provide. Prior permission for parties along the value chain is necessary as part of an effective Merchant Promoter Registration Scheme, such that responsibilities are applied on the correct parties and cannot be circumvented by simply moving to another connectivity provider.

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, an applicant's breach record is a factor that PhonepayPlus is entitled to consider. However, this must be within the context of other factors such as market share and percentage of complaints to users, such that a fair relative assessment can be arrived at.

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 agree that all participants in the value chain have responsibilities for compliance. However, it is not necessarily practical for all elements of the value chain to be regulated

by PhonepayPlus directly. A measure of responsibility must be applied through contractual means as well as through direct regulation. In particular, where there are several Information Provider's (as currently defined), including in the business model of Affiliate Marketing, an Information Provider should have two choices:

- 1) Only contract with third parties who are registered Merchant Promoters; or
- 2) Be the party responsible to PhonepayPlus for any downstream breaches.

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

Where such a change is introduced in tandem with a Merchant Promoter Registration Scheme which includes any PhonepayPlus-imposed conditions on doing business with a particular company, the main impact of these changes will be to introduce the direct accountability that has not been prevalent to date, has led to a third of all breaches being by repeat offending Information Providers and will cause massive consumer benefits in terms of being protected from non-complaint services.

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

If this refers to Reasonable Risk Assessment and Control, then we agree that all elements of the value chain have responsibilities to prevent consumer harm. In terms of the specific responsibilities detailed, knowledge of a client's breach history must be associated with that Merchant Promoter on a mandatory Merchant Promoter Registration database. The remaining responsibilities seem sensible but require further detail as will no doubt be provided during the full Consultation.

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

We believe a Merchant Promoter registration scheme represents the single most effective means of fostering compliant services and consumer protection. The concerns of circumnavigation by registering an alternative name are noted, and can be challenged through ensuring the information contained within the database is reasonably exhaustive and robust.

For the avoidance of doubt, Option F1 or Option F3, as defined by Ofcom in their recent Scope Review, would NOT produce any significant benefits. For the Scheme to be effective, it must incorporate the following:

- It must be mandatory for SP's and IP's (as defined under the 11th Code).
- It must capture information more detailed than simply an IP Name and Address to enable reasonable Due Diligence to be undertaken.
- It must be updated to reflect any Prior Permission, conditions and general sanctions applicable to an IP.
- SP contracting with IP's must be subject to any conditions associated with the IP by PhonepayPlus on the database (this could be enforced contractually by the Mobile Network Operators or PhonepayPlus).

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?

The Due Diligence Help Note and the AIME-produced Aggregator Best Practice Guide are two means by which co-operation with PhonepayPlus can be incentivised. Adherence to the requirements of such documents should enable the co-operation PhonepayPlus require because such adherence should contribute towards a discharge of that party's obligations under the Code.

We would also be interested in understanding any deficiencies that exist in the present system of Code requests for information and why these could not be continued to be applied.

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

We agree that greater flexibility is required to enable harm to be dealt with quickly and with general industry buy-in.

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

Yes, we agree with this proposal.

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

Whilst one could argue that the proposals may lead to more parties being involved in investigations in the short term, the improvements in direct accountability would mean that any increase in costs would be temporary, with greater long-term compliance leading to lower ongoing costs of enforcement.

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

This represents a significant shift from current policy, with far greater financial implications for affected Merchant Promoters. It would therefore need a corresponding increase in the certainty associated with decisions made by the Code Compliance Panel, that any non-compliance applied to all users of a service and a greater technical understanding of how services operate than is the case today, such that a decision can be arrived at with a level of certainty that cannot currently, reasonably, be the case.

Any consideration of increasing liabilities in the way proposed must therefore be addressed in this context. The potential severity of these proposals demands that the instrument of their application is subject to much higher standards than is currently the case. The lack of industry expertise applied to current cases is a significant contributor to this deficiency.

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.

30 days should be sufficient to enable any serious Code breaches to be identified. Any further time restrictions would have a serious, detrimental impact on cash flows which are already extremely lengthy.

The Merchant Promoter Registration Scheme will improve the effectiveness of fine collection by ensuring that companies and individuals are incentivised to pay fines if they

wish to operate services in future, with TCP's/ SP's disallowed from doing business with companies who have fines outstanding.

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?

We believe the terminology "PRS" to be outdated and inappropriate to cover services defined by PhonepayPlus as "phonepaid". This area needs to be given careful consideration to ensure the grossly misleading errors in terminology used to date, to the detriment of industry stakeholders and consumers alike, are not repeated. AIME has undertaken research in this area, the proposals within which we endorse.
