

Title:

Ms

Forename:

Victoria

Surname:

Russell

Representing:

Organisation

Organisation (if applicable):

M Law LLP

Additional comments:**Question 1: Do you consider Ofcom should approve the draft PPP thirteenth Code of Practice in its current form? Please provide an explanation to support your response.:**

No we do not. We direct Ofcom to our response to the PhonepayPlus consultation, in which we have raised many principles of law which we believe need to be addressed and reflected in the proposed Code of Practice before it is accepted.

In particular though we would like Ofcom to engage with the following key points before any approval of the thirteenth Code of Practice:

1. The maximum fining powers of the Executive. We have previously queried with Ofcom the Executive's right to impose fines in excess of £250k (see M Law's letter of 5 November 2012, and Nick Beresford's response of 29 November 2012), on the basis that its maximum fining powers apply on a per case basis, rather than per breach. Ofcom previously indicated that there was indeed an open question of interpretation of the legal position but it was not willing to make a pronouncement in such regard. It is not fitting that the Executive purports to wield powers, when the statutory body from whom the Executive derives those powers is unconvinced that it has the right to do so. Plainly such an open question needs to be resolved, and the correct forum for such resolution is by way of this consultation.
2. The recent Ordanduu case, in the Queens Bench Division, raised serious concerns as to the legal processes which the Executive had in place, the Judge referring to them as 'byzantine'. Indeed in the three year existence of the 12th Code, not one case was brought to the Independent Appeal Board. Rather than address these concerns, making access to justice and adherence with Article 6 rights more pronounced (in making more accessible a right to independent appeal) the Executive has made the process even more stretched, through

making the paper-based hearing stage obligatory (whereas previously a provider could skip the paper hearing and go straight to the Oral Hearing). We believe Ofcom needs properly to engage with the procedures and listen to the increasingly vocal concerns of the industry. The process is not working as it stands, and it is not for Ofcom blindly to further entrench the current position.

3. Why is Ofcom divesting itself of its responsibility to approve the PhonepayPlus budget? It is our strong belief that the budget of the Executive be subject to appropriate balances and checks, which Ofcom can provide.

Question 2: If the draft Code were to be approved by Ofcom, what period of time do you consider would be appropriate before the thirteenth Code of Practice became enforceable by PPP? Please provide an explanation to support your response.:

N/A