



Vodafone response to Ofcom's Approval of Phone-paid Services Authority's Code of Practice (fifteenth edition)

1. Vodafone agrees that at this stage Ofcom is only able to offer provisional approval of the new edition of the Phone-paid Services Authority's ("PSA") Code of Practice for regulating Premium Rate Services.
2. Whilst Vodafone understands that Ofcom is seeking to consult on the narrow question of whether the Code meets the seven legal tests under section 121(2) of the Communications Act 2003 (the "Act"), we do not believe Ofcom can decide on these questions until the PSA consultation is completed.
3. In particular, we do not see how the requirement under section 121(2)(f) of the Act, *"that these provisions are proportionate to what they are intended to achieve"*, can be satisfied before the PSA concludes its deliberations in relation to the following:
 - a. Regulatory approach.

Vodafone requires clarification on the matter of Supervision and the introduction of Thematic reviews with no published guidelines or trigger points. We see the undefined phase of "potential harm" as conferring powers of review that are not proportionate. Further the PSA reserves the right to appoint "skilled persons" of their choosing to conduct pen tests. In Vodafone's view "skilled persons" should be appointed from a list so as not to create an outcome in the PSA's favour based on selection bias.
 - b. Due diligence.

We are satisfied that the PSA's intention is to only require Due Diligence Risk and Control to be conducted on directly contracted parties, but one reading of the current drafting suggests wider Network Operator responsibilities. Were this to be the case the Code fails its proportionality test.
 - c. Customer Care.

The Code must be clearer on who has primary responsibility. The contract for Premium SMS, Charge to Bill, Voice shortcodes and Premium (long dial) Voice services is between the customer and the service provider. The service provider must explicitly be given primary responsibility for customer care. This does not change current processes or reduce Vodafone's responsibilities, but rather ensures that the provider of the Premium Rate Service is incentivised to invest in suitable customer service levels. This is a wholly proportionate approach.

If the expectation is for this responsibility to be assumed wholly or primarily by the Network Operator through the adoption of Ofcom's definition of a complaint then the provision would, in the context of Vodafone's current low complaint volumes to the PSA, be entirely disproportionate.
 - d. Renewal of subscription services.

These measures disadvantage Vodafone and other Network Operators in comparison to other forms of payment which do not have such strict regulation.



e. Transitional arrangements.

Vodafone is discussing concerns in this area with the PSA based on the fact that changes to the Code become significantly easier going forward.

4. Vodafone acknowledges that the legal tests under which Ofcom is considering the Code are appropriate, but requests that Ofcom does not seek to confirm its provisional approval until or without the full completion and consideration of PSA's conclusions.

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