

Online form

Ofcom invites written comments on the questions raised in this consultation, to be submitted to Ofcom by **5pm on 8 July 2010**. Ofcom strongly prefers to receive responses in electronic format. This web form will allow you to indicate your data protection preferences and send your views to the team responsible for this consultation.

Cover sheet for responses

Basic Details

Consultation: Approval of the PhonepayPlus Code of Practice (12th Edition)

To (Ofcom contact): Jeff Loan

*Fields marked with * are required.*

Your details Title

Forename

Surname*

Representing*

Organisation (if applicable)

Email*

Confidentiality: What do you want Ofcom to keep confidential?

<input type="checkbox"/> Keep whole response confidential	<input type="checkbox"/>
<input type="checkbox"/> Keep name confidential	<input type="checkbox"/>

If you want part of your response kept confidential, which parts?

n/a	<input type="checkbox"/>
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Confidential Responses Only

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for

any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Ofcom may publish a response summary

Yes No

Declaration

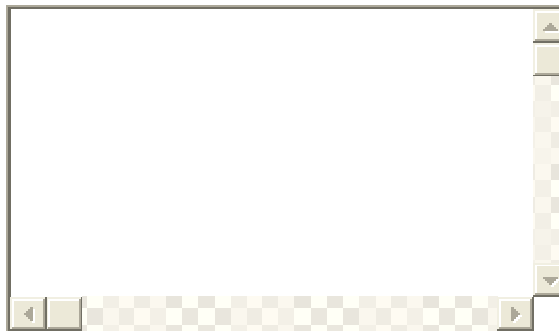
I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements.

I confirm that I have read the declaration*

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here:

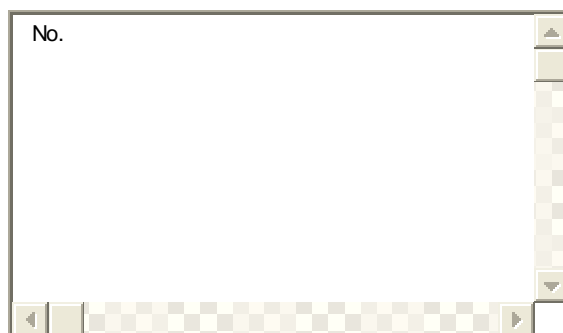
Ofcom should only publish this response after the consultation has ended

Additional comments

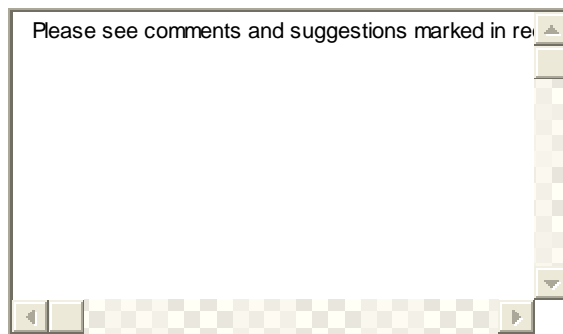


Questions

Question 1: Do you consider Ofcom should approve the draft PhonepayPlus 12th Code of Practice in its current form?



Question 2: If not, what changes do you consider need to be made to the draft Code?



Please see comments and suggestions marked in re

Question 3: If the draft Code were to be approved by Ofcom, what period of time do you consider would be appropriate before the 12th Code of Practice became enforceable by PhonepayPlus?



3 - 6 months

PhonepayPlus Code of Practice 2010 (Twelfth Edition)

1.5.2 Guidance is intended to assist those involved in the provision of premium rate services to comply with the Code; it does not form part of the Code. Compliance with Guidance will be taken into account in the consideration of any alleged breach of the Code and/or the setting of sanctions, as set out further in Part Four below. **Only in exceptional circumstances will compliance with Guidance not be considered sufficient to avoid being in breach.** The extent to which a party attempted to comply with the Code by any alternative methods will also be taken into account.

2.2 Transparency and Pricing

Outcome

“That consumers of premium rate services are fully and clearly informed of **key** information likely to influence the decision to purchase, including the cost, before any purchase is made.”

2.2.1 Consumers of premium rate services must be fully and clearly informed of **key** information likely to influence the decision to purchase, including the cost, before any purchase is made.

2.2.2 Promotional material must contain the name (or brand if part of the name) of the Level 2 provider of the relevant premium rate service and the non-premium rate UK contact telephone number of that provider. Where technically possible promotional material should also contain the relevant Level 2 provider's PhonepayPlus registration number. **This section will not apply if the Level 2 provider is an Ofcom licensed broadcaster.**

2.2.3 All written information which is material to the consumer's decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernable.

2.2.4 Where a premium rate service promotes or is promoted by a non-premium rate electronic communications service both services will be considered as one where, in the opinion of PhonepayPlus, it is reasonable to do so.

2.2.5 Unless a service is available 24 hours a day, its hours of operation must be stated in UK time on the promotional material.

Rules relating to pricing

2.2.6 In any promotion of a premium rate service, written or spoken or in any medium, the cost must be included and must be prominent, **and if visual then** clearly legible, visible and proximate to the telephone number, shortcode or other means of access to the service.

2.2.7 Any messages that are necessary for a consumer to access, use or engage with a service but are provided separately from the service itself must be free of charge.

2.2.8 Where promotional material is transmitted on television or in any other audio/visual format, pricing information must be clearly visually presented and spoken if the advertised cost of the service generally exceeds £2.

2.2.9 Where a service involves a consumer being charged for an international call this must be made clear in any promotional **or related** material.

2.3 Fairness

Outcome

"That consumers of premium rate services are treated fairly and equitably."

Rules [there is a need to consider moving some of the proposed Rules into Guidance, especially those which refer to what may be time-limited caps and thresholds]

2.4 Privacy

Outcome

"That premium rate services do not cause the unreasonable invasion of consumers' privacy."

Rules [much of this detail could be more simply replaced by reference to the need to comply with Privacy and Electronic Communications Regulations 2003]

2.4.1 Level 2 providers must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy.

2.4.2 Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent. If consent is withdrawn the consumer must not be contacted thereafter. Where contact with consumers is

made as a result of information collected from a premium rate service, the Level 2 provider of that service must be able to provide evidence which establishes that consent.

2.4.3 Level 2 providers must ensure that consumers' personal information is not collected without their consent or passed to any other person other than for the sole purpose of facilitating a refund to a consumer.

2.4.4 Where services involve the collection of any personal information such as names, postal and email addresses and telephone numbers, the purpose for which the information may be used must be made clear to consumers before the information is collected.

2.5 Avoidance of harm

Outcome

“That premium rate services do not cause harm or unreasonable offence to consumers **in general.**”

Rules

2.5.1 Premium rate services must not cause or be likely to cause harm or unreasonable offence to consumers **in general.**

2.5.2 Premium rate services must not promote or incite or be likely to promote or incite hatred in respect of any group or individual identified by age, disability, gender, race, religion or belief, sexual orientation or transgender status.

2.5.3 Premium rate services must not encourage or be likely to encourage consumers to put themselves or others at risk.

2.5.4 Premium rate services must not promote or facilitate prostitution.

2.5.5 Premium rate services must not induce and must not be likely to induce an unreasonable sense of fear, anxiety, distress or offence.

2.5.6 Level 2 providers must use all reasonable endeavours to ensure that their services are not promoted in an inappropriate way.

2.5.7 Level 2 providers must use all reasonable endeavours to ensure that promotional material **is not targeted at** those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful.

2.5.8 Premium rate services aimed at or likely to be particularly attractive to children must not contain anything which a reasonable parent would not wish their child to see or hear in this way.

2.5.9 **[move to Guidance]**Where premium rate services involve the possibility that two or more consumers might be able to exchange contact details or make arrangements to meet, then clear advice should be given regarding appropriate safeguards, in line with any generally available police advice.

3.6.2 Services which involve the collection of personal information, such as names, addresses and phone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to consumers the purpose for which the information is required and may be used in the future. Personal data may not be processed in any way unless the consumer has consented to that particular form of processing (e.g storing of personal data, sharing with third parties, marketing). The service must also identify the data controller (if different from the Network operator, Level 1 or Level 2 provider) in any different use to which the personal information might be put. **[This needs to be carefully assessed because of the impact on the length and complexity of the message to consumers/viewers, and where the CLI is only automatically collected for the purpose of enabling refunds, does this need to be stated?]**

Code Annex 3: Independent Appeals Body

1.4 In order to institute an appeal, the appellant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB ('the Clerk') within **30** working days of the issue of the Tribunal adjudication or determination which is the subject of the appeal.

1.5 The notice of appeal must be accompanied by:

- a. the written adjudication
- b. the case bundle used at the Tribunal oral hearing
- c. a security deposit of £7,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction
- d. a description of any new evidence upon which the appellant intends to rely and which, for good reason, was previously unavailable
- e. if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than **30** working days after the issue of the Tribunal adjudication, the appellant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.