

Representing the Communication Services Industry



Phonepay Plus: The New Code of Practice consultation

FCS response- July 2010

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Introduction

The Federation of Communication Services, FCS, is the communication services industry trade association. FCS welcomes the opportunity to respond to the consultation on behalf of FCS members that deliver PRS services; they include originating and terminating operators and numbering providers. A full list of FCS members is available on our website- www.fcs.org.uk

The code has been thought through in much detail and shows the considerable body of work that has been undertaken prior to the consultation.

Regulatory principles

The consultation period coincides with the publication of the new coalition Government policies for regulation, which emphasise minimising regulation. The coalition agreement says:

We will cut red tape by introducing a 'one-in, one-out' rule whereby no new regulation is brought in without other regulation being cut by a greater amount.

We will impose 'sunset clauses' on regulations and regulators to ensure that the need for each regulation is regularly reviewed.

FCS has looked at the consultation on the New Code with the coalition views in mind.

If the New Code places new obligations on business then under the new rules these should be scrutinised by Government or the Better Regulation Unit to ensure compliance with current Government policy. In the Governance statement PhonePay Plus says that it is a public body at law, but not a designated public body for such purposes as Freedom of Information, or Legislative and Better Regulatory Reform. We believe that such obligations should apply to PhonePay Plus so that companies within the PRS sector have confidence in the rigor of the code and transparency is demonstrated.

There are possibly two areas in the New Code that might warrant such closer scrutiny:

- New obligations on very small CPRS providers to join the registration scheme, which appears to go outside the "one-in, one-out" rule as applied to those businesses
- The requirement on "all parties [to] carry out a reasonable risk assessment and control of any party with whom they contract"- "the party that has subcontracted .. must show due diligence, and maintain control of its clients on an ongoing basis". Maintaining control appears to be a new obligation not matched by an outgoing regulation.

We suggest that when these Better Regulation checks are complete, a note to that effect is included in the New Code

The National Audit Office published a report on Regulatory Impact Assessments, RIA, on 1 July 2010; [Assessing the impact of proposed new policies](#); demonstrating good and bad examples of RIAs for new regulations. It may be valuable if PPP considers the impacts on all businesses in the PRS value chain and publishes these as a separate report

During discussion at the PPP New Code workshop in London on 24 June questions were asked about the regulatory overlap between PPP, the code and other regulatory bodies, including the Information Commission. These were clarified and it would be helpful if a note could be added to the Code to explain the relationship for example in Part 1

The New Code

The New Code is moving in the right direction by considering outcomes and placing a focus on bad behaviour. In this response FCS seeks to identify areas requiring further clarity.

For many businesses it is the detail within the Guidelines that will affect their operations. Many companies are keen to see the Guidelines, respond to their content and then observe the final outcome of the Guidelines consultation prior to adapting their own processes. All companies will need time to implement both the code and the guidance. If the final version of the code and guidance are published in final format in November companies will only be able to implement the new rules with any legal certainty from that date. They are unlikely to be ready by January 2011 and may require up to 6 months to change their contracts and internal processes. We suggest that the timetable for implementation is amended to take these implementation phases into account. A RIA would identify these constraints.

On completion we strongly encourage Phonepay Plus to publish clear and short summaries of the code to assist those market players who are new to regulation.

Registration scheme

The Registration Scheme for players in the PRS value chain was obligated by Ofcom in the PRS Scope Review statement, October 2009. We believe that for the scheme to be successful it should be proportionate for the size of the company involved. The PRS value chain ranges from major telcos such as BT to individuals or partnerships that provide content. Each should be assured that the scheme is applied fairly for them.

In our view the registration database should not include details that are not currently in the public domain, such as the Companies House register. But for unincorporated entities simpler data sets appear to be more appropriate.

The database is simple in format with password entry for companies to update their information. In these straitened economic times prices of supply are keen and an off the shelf database should be obtained at minimum cost. This will demonstrate PPP's intention to minimise costs to industry.

We support the proposal to exempt companies in the 0871 sector from registration

List of questions in the document

The consultation seeks answers to 62 questions. We have not sought to answer all of them but have made comments where we wish to express a point of view.

Q1 – Do you agree with the proposals around how Governance arrangements are taken forward? If not, why not?

As set out above we believe that for coherence and transparency the rules associated with Better Regulation and Freedom of Information should be applied to Phonepay Plus

Q2 – Do you agree with these proposed terms and definitions? If not, why not?

Q3 – Are you aware of any premium rate delivery chains where the proposed distinction between Level 1 and Level 2 providers will be problematic? Are there other factors that we need to consider in relation to the distinction between Level 1 and Level 2 providers in a premium rate delivery chain?

Q4 – Do you agree with the proposal to convert Section 7 of the 11th edition of the Code into Service-Specific Guidance and to allow the creation of new Service-Specific Guidance, subject to appropriate consultation? If not, why not?

Sector specific guidance is helpful and we support the mechanism of consultation prior to implementation; in common with other consultations we would expect the responses to consultations to be published.

Q5 – Do you have any comments on the draft Service-Specific Guidance attached at Annex C? Please set out any comments you have and the reasoning behind them.

Q6 – Do you agree with the proposal to convert Statements of Expectation that support the 11th edition of the Code into General Guidance to industry, and to allow the creation of new General Guidance subject to appropriate consultation? If not, why not?

Q7 – Do you have any comments on the draft General Guidance to industry regarding due diligence, risk assessment and control attached at Annex C? Please set out any comments you have and the reasoning behind them.

Q8 – Do you agree with the proposal to convert the Help Notes and Tribunal notifications that support the 11th edition of the Code, into Compliance Advice (or “compliance updates”)? If not, why not?

Yes

Q9 – Are there any other areas where Service-Specific Guidance or General Guidance to industry is necessary? Please state any areas you have identified.

Q10 – Do you agree with the proposals around how responsibility for Part Two of the Code would be applied? If not, why not?

Q11 – Do you agree with the proposed Outcome and supporting Rules around Legality? If not, why not?

Q12 – Do you agree with the proposed Outcome and supporting Rules around Transparency and Pricing? If not, why not?

Q13 – Do you have a view as to whether there is a need to issue Guidance that interprets how Rule 2.2.6 (around pricing proximity to the means of access) is applied where secure mechanisms for phone-payment are used to purchase a PRS?

Q14 – Do you agree with the proposed Outcome and supporting Rules around Fairness? If not, why not?

Q15 – Do you agree that the spending caps and thresholds for reminder messages, set out at Rule 2.3.12a-d, are appropriate? If not, then please suggest alternative levels, and please provide the evidence you have to support them.

Q16 – Do you agree with the proposed Outcome and supporting Rules around Privacy? If not, why not?

Q17 – Do you agree with our assessment that consumers benefit from being clearly informed that their data may be used for marketing and being given an opportunity to opt in to this? If not, why not?

Q18 – Will Rules 2.4.4 and 3.6.2 of the proposed new Code deliver clarity to consumers when they opt in to a service? If not, why not?

Q19 – Do you agree with the proposed Outcome and supporting Rules around Avoidance of harm? If not, why not?

Q20 – Do you agree with the proposed Outcome and supporting Rules around Complaint handling? If not, why not?

Q21 – Do you agree with the proposals around the level of responsibility Network operators and Level 1 providers should take in regard to their direct clients' handling of consumer complaints (paragraph 3.1.1d of the draft Code)? If not, why not?

Q22 – Do you agree with the proposals around technical quality? If not, why not?

Q23 – Do you agree with the proposals around internal risk control (paragraph 3.1.5 of the draft Code)? If not, why not?

Q24 – Do you agree with the proposals in regard to due diligence, risk assessment and control (paragraphs 3.1.1a, 3.1.7 and 3.3.1 of the draft Code)? If not, why not?

Q25 – Do you agree with the draft General Guidance around due diligence, risk assessment and control set out at Annex C? If not, why not?

Q26 – If you have a preferred option (a, b, or c) in regard to the application of risk assessment and control to Network operators, then please state that preference, along any reasoning you may have.

Q27 – Do you agree with the proposals about Directions? If not, why not?

Q28 – Do you agree with the proposals about Contracts? If not, why not?

Q29 – Do you agree with the proposed Code rules around the Registration Scheme? If not, why not?

Q30 – Do you agree that these are the appropriate risk factors and measures to use when drawing up a framework for assessing which services should be required to register? Do you have any further suggestions on criteria we should consider?

Q31 – Do you agree that 087 services should be exempt from the requirement to register? If not, why not?

Yes.

Q32 – Have we captured the correct mandatory information to include on the Registration Scheme to meet our regulatory objectives and assist businesses in carrying out due diligence on their contracted partners? Is there other mandatory information we should require registrants to provide?

As noted above we think there should be a proportionate sub set of data for sole traders or partnerships.

Q33 – Do you agree that the publication of breaches should be limited by a period of time? Do you agree that three years for a Track 2 breach and five years for an Emergency procedure are appropriate timeframes?

Q34 – Do you have a view on whether breaches from the 11th edition of the Code should be matched across to the proposed registration database, and/or how this could be best achieved? If so, please provide it, along with any supporting evidence.

Q35 – Do you have a view on whether open investigations against Level 2 providers should be flagged to other parties registered with PhonepayPlus, and/or how this can be best achieved? If so, please provide it, along with any supporting evidence you have.

Q36 – Do you support mandatory registration of all Network operators, Level 1 providers and Level 2 providers of eligible services? If not, why not?

Q37 – What do you consider to be an appropriate fee for registration? Do you agree that the Registration Scheme should be funded by fees or should its cost be incorporated into the general industry levy that funds PRS regulation?

We would encourage Phonepay Plus to be as efficient as possible within its own administration and a single invoice and fee is more preferable to all concerned. The cost of the registration database should be incorporated into the general industry levy. The fee should be proportionate to cost of the database, which we believe should be a minimum. Very tiny PRS companies might even be exempted from payment providing their data is up to date

Q38 – Do you agree with the proposals around registration of service details? If not, why not?

Q39 – Do you agree with the proposals around withhold and retention of payments? If not, why not?

Q40 – Do you agree with the proposals around Data Protection? If not, why not?

Q41 – Do you agree with the proposals around Network operator responsibilities? If not, why not?

Q42 – Do you agree with the proposals around Level 1 and Level 2 provider responsibilities? If not, why not?

Q43 – Do you agree with the proposals around Prior Permission? If not, why not?

Q44 – Do you agree with the proposals around PhonepayPlus' investigations? If not, why not?

Q45 – Do you agree with the proposals around the Track 1 procedure? If not, why not?

Q46 – Do you agree with the proposals around the Track 2 procedure? If not, why not?

Q47 – Do you agree with the proposals around the Emergency procedure? If not, why not?

Q48 – Do you agree with the proposals around adjudications? If not, why not?

Q49 – Do you agree with the proposals around reviews? If not, why not?

Q50 – Do you have an opinion on what time limit should be imposed (except in exceptional circumstances) for seeking a review after publication of a Tribunal's decision? If so, please state it.

Q51 – Do you agree with the proposals around sanctions and refunds? If not, why not?

Q52 – Do you agree with the proposals around the administrative charge? If not, why not?

Q53 – Do you agree with the proposals around oral hearings and appeals? If not, why not?

Q54 – Do you agree with the proposals around publication of decisions? If not, why not?

Q55 – Do you agree with the proposals around delegation of powers? If not, why not?

Q56 – Do you agree with the proposals around definitions? If not, why not?

Q57 – Do you agree with the proposals around Annexes? If not, why not?

Q58 – Do you agree with this assessment of parts of the 11th edition of the Code that should be withdrawn completely going forward? Please list any specific provisions that you feel should be preserved in some form, and provide your reasons.

Q59 – Do you agree with PhonepayPlus’ assessment and proposals around how the new Code will be interpreted in respect of 087 services? If not, why not?

In our view a review of 0871 regulation should be conducted first and this question posed at a later date. In our view the current regulation of 0871 is overkill and is ignored by many of the companies involved. Our members delivering numbering services have seen a decline of up to 80% in the 0871 market following regulation by Phonepay Plus. In their view this regulation has almost killed off a perfectly reasonable service to end user businesses, particularly for SMEs.

Q60 – Do you agree with our assessment that now is not the right time to review our funding model? If not, why not?

We believe that in common with all aspects of Government, agencies and industry, PhonePay Plus must review its funding model and reduce its budget. It is clear from Phonepay Plus own research that the PRS market is declining; it is unclear what role regulation plays in this outcome.

Q61 – Are there any other areas of change within the proposed new Code that carry an impact that you feel we should consider? If so, please provide them, along with any evidence you have of the likely impact.

Q62 – Do you agree with our assessment of the potential impact caused by the proposed new Code? If not, then please provide any areas of consideration you feel we have missed, and any supporting evidence for them.

As mentioned above we believe that a full regulatory impact assessment on players within the value chain should be carried out.