



15 July 2010

Jeff Loan
Ofcom
Floor 6
Strategy and Market Developments
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Dear Jeff,

Ofcom consultation: Approval of the PhonepayPlus Code of Practice ('the Code')

Thank you for the opportunity to respond to this consultation. Telefónica O2 UK Limited ('O2') supports the response of the Mobile Broadband Group ('MBG') but we also have some additional comments set out in our response to PhonepayPlus's consultation (enclosed). Ofcom should refer to that response for the full reasoning of why we feel unable to support the approval of the draft Code.

We believe that PhonepayPlus has taken the right approach to regulation, by proposing an outcomes-based Code, but we consider that more work needs to be done before Ofcom can be satisfied that it has discharged its own statutory duties to approve the Code.

In brief, our concerns are:

- i. The draft Code unduly discriminates against providers of services which do not cause or risk consumer harm, with particular reference to the requirements for mandatory registration and enhanced due diligence.

PhonepayPlus has attempted to avoid being discriminatory by exempting 0871 providers but has failed to exempt, or even consider the exemption of, any other parties in the premium rate sector. This demonstrates an inconsistent approach.

In its consultation paper, Ofcom considers that PhonepayPlus's approach is not unduly discriminatory because,

"We ...support PhonepayPlus taking steps to ensure that the requirement to register is only targeted at providers of those services that have a higher risk of causing consumer harm"¹.

¹ Consultation document; para. 4.24, p.22

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In our response to PhonepayPlus's consultation² we have set out examples of providers of services where there is no evidence of any consumer harm, let alone a higher risk, but who will still be required to register and comply with enhanced due diligence requirements.

- ii. The proposed rules increase regulation to the degree that it may reduce the competitiveness of the premium-rate payment mechanism in the wider micro-payment market. PhonepayPlus has not tested the impact of these proposals on promoting competition in the market³.
- iii. We consider that the impact assessment provided by PhonepayPlus is not sufficiently thorough to say, with any certainty, whether there will be a net benefit to consumers if the proposals are implemented. Without a proper assessment of all the impacts it is impossible to conclude that the provisions are proportionate⁴.

We would be happy to meet with Ofcom to discuss this response further.

Yours sincerely

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² Please see Figure 4 and paragraphs 43 – 50 of 'O2 response to PhonepayPlus New Code of Practice for Consultation'

i. ³ Please see paragraphs 25-30 of 'O2 response to PhonepayPlus New Code of Practice for Consultation'.

⁴ Please see paragraphs 56-65 of 'O2 response to PhonepayPlus New Code of Practice for Consultation'

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**TELEFÓNICA O2 UK LIMITED RESPONSE TO PHONEYPAYPLUS
NEW CODE OF PRACTICE FOR CONSULTATION**

PUBLICATION DATE: 24 MAY 2010
CLOSING DATE: 15 JULY 2010

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TELEFÓNICA O2 UK LIMITED RESPONSE TO PHONEPAYPLUS NEW CODE OF PRACTICE FOR CONSULTATION

Introduction

1. Telefónica O2 UK Limited ('O2') welcomes the opportunity to respond to PhonepayPlus's ('PpP') proposals for a new Code of Practice ('the Code') to regulate premium-rate services.
2. O2 supports the Mobile Broadband Group's ('MBG') response to this consultation document, but also wishes to offer some additional comments.
3. O2 has an interest in ensuring that the premium-rate market is in a position to offer exciting, innovative and trusted content to its 21 million customers, who in turn have a choice of mechanisms through which to make secure and safe micro-payments. We consider that these optimal outcomes will be achieved where there is:
 - a. a market which is diverse, competitive and responsible;
 - b. regulation which is proportionate and effective at protecting consumers where there is an identifiable market failure;
 - c. enforcement which is swift and targeted at those who deliberately seek to harm consumers;
 - d. rules which are easy to understand by both consumers and industry.
4. We agree that an effects-based Code will lay the right foundations to achieve these goals, and so we are supportive of PpP's vision. However, we have some concerns that all the practical implications and potential unintended consequences of the proposed rules and accompanying guidance have not been fully considered or assessed for impact.

Executive Summary

5. We agree with PpP's outcomes-based approach to premium-rate regulation and that mandatory outcomes should be set out in the Code. However we consider that each outcome should be comprehensive and clear enough to stand alone and capable of being applied equally to all premium rate services. We also recommend that Part 3 of the Code (Registration and Responsibilities) could equally benefit from an outcomes-based approach, if all those responsibilities can be objectively justified.



Outcomes only

6. As they stand, the draft outcomes rely too heavily on their supporting rules, implying they are not clear enough to be applied or enforced or effectively. As a result, the reasons for introducing a simple, flexible Code are lost in a multitude of detailed supporting rules.
7. These rules, arguably, do not add a great deal to their headline outcome. They are either too subjective (e.g. “*Paragraph 2.3.2 Premium rate services must not mislead or be likely to mislead in any way*”), are merely instructions for interpreting the headline objective (e.g. “*Paragraph 2.5.3 Premium rate services must not encourage or be likely to encourage consumers to put themselves or others at risk*”) or are relevant only to specific types of premium-rate service (e.g. *paragraph 2.3.12 a All sexual entertainment services must terminate by forced release when a maximum of £30 per call has been spent*”).
8. We encourage PpP to review the principal outcomes to ensure they are robust enough to be enforceable on their own merit. We further recommend that all the proposed supporting rules are either incorporated into the principle outcome or set out as supporting guidance only.

Simple and user friendly guidance

9. With a view to meeting the ‘Transparency’ principle of good regulation – to keep regulations simple and user friendly - we also recommend that all other sources of regulatory material (published compliance advice, helpnotes, precedent decisions and notices) are consolidated into service-specific guidance which should include illustrative best practice message flows and service models.

Focus on the problem

10. It is appropriate for PpP to focus its enforcement and regulatory resource on the principal commercial beneficiary of the premium rate service (i.e. the Level 2 provider). However it is not necessarily appropriate for PpP to assign increasing obligations of due diligence, risk assessment and monitoring to all other parties in the value chain without first determining whether all those relationships carry the same risk or require the same attention.
11. PpP demonstrates some appreciation for the fact that the enhanced due diligence requirements would be disproportionate in some cases, by proposing to exempt 0871 providers. We would like to see this approach applied consistently and in a non-discriminatory fashion to providers of other number ranges and shortcodes.
12. We observe that there appears to be some evidence to suggest that there are particular relationships in the premium rate value chain where it may be appropriate to require enhanced due diligence. We consider that those relationships are only between 3rd party aggregators and content providers, and fixed line terminating networks who allocate in 070 number ranges and 070 resellers or content providers.

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13. We do not see there is any evidence or justification for requiring more than the existing (11th Code) level of due diligence to any other commercial relationships which do not appear to have caused any complaints or consumer harm.

Drive growth and innovation

14. The proposed rules increase regulation to the degree that it may reduce further the competitiveness of the premium-rate payment mechanism in the wider micro-payment market. Mobile content provision has seen marked growth during an economic downturn but it is significant that that growth has not been mirrored in the premium-rate sector.
15. It is essential that PpP fully considers the impact of its proposed regulation on the future of the market and the sector's ability to compete against less restrictive forms of payment.

Risk assessment

16. Given that PpP's proposed approach calls for a marked shift, it is even more important to demonstrate that all relevant impacts have been considered and tested to ensure they are "*appropriate to the risk posed, and costs identified and minimised*".
17. PpP appear to have made some assumptions about the potential impact and costs to network operators and other parties in the value chain. PpP has not, for example, considered the cost to businesses who do not terminate traffic, of implementing expensive monitoring equipment in order to comply with the provision to identify 'excessive and unauthorised use' and take action (presumably in real time). We would expect the impact assessment to clearly identify the impact on all relevant operations, particularly those which rarely come to PpP's attention. Costs, such as these, should be identified and quantified in order to determine whether blanket regulation is necessary in all cases.

The approach to regulation

18. We have considered PpP's proposals against the standards by which they should be measured before being approved, namely s.121 Communications Act 2003, the principles of better regulation and the new Government's stated approach, summarised below.

Ofcom's approval

19. In deciding whether or not to approve the Code, Ofcom must comply with its statutory duties, including:
 - (i) that the provisions of the code are objectively justifiable in relation to the services to which it relates;

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- (ii) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
- (iii) that those provisions are proportionate to what they are intended to achieve; and
- (iv) that, in relation to what those provisions are intended to achieve, they are transparent⁵.

Better Regulation

20. The Better Regulation Taskforce summarises the five Principles of Good Regulation which it expects independent regulators to follow when introducing new proposals and evaluating old ones⁶:
- **Proportionate:** *Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.*
 - **Accountable:** *Regulators must be able to justify decisions, and be subject to public scrutiny.*
 - **Consistent:** *Government rules and standards must be joined up and implemented fairly.*
 - **Transparent:** *Regulators should be open, and keep regulations simple and user friendly.*
 - **Targeted:** *Regulation should be focused on the problem, and minimise side effects.*

The Government's approach

21. The new coalition government has set out in its programme for government, "*The Government believes that business is the driver of growth and innovation and that we need to take urgent action to boost enterprise...*"
- *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 end the culture of 'tick-box' regulation, and instead target inspections on high-risk organisations through co-regulation and improving professional standards."*⁷

⁵ Section 121 (2) d- g Communications Act 2003

⁶ <http://archive.cabinetoffice.gov.uk/brc/publications/principlesentry.html>

⁷ The Coalition: our programme for government,
http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf



Improving professional standards

22. O2 is proud to have worked so closely and constructively with PpP in the past, particularly over the last 18 months, especially in regard to our voluntary trial of service testing and monitoring third-party content. PpP has shown keen interest in our work and we hope to develop this relationship further in the future.
23. We have observed that PpP's recent, more open, approach to industry has, arguably, proven to be a significant motivator for improving content provider standards in the market (evidenced by the dramatic 62% reduction in mobile complaints year on year⁸). We suggest this, O2's monitoring work and the mobile network operators' proactive 'Red and Yellow' card scheme, provide good examples of parts of the market that are and can demonstrate responsibility to its customers. It also illustrates the value and impact of the regulator's informal interaction and influence, without the need for costly and disproportionate regulation.
24. We encourage PpP to continue in this vein, leaving formal regulation to act as a strong safety net, rather than a tightrope constraining innovation.

A diverse and competitive market

25. It is clear that there are many consumer benefits and protections that naturally result from a well-functioning, diverse and competitive market. We have observed that the premium-rate market has remained static and has not benefited from the growth seen by competing platforms which offer comparable value-added content, such as internet and mobile applications, for which there is currently no regulatory intervention and, interestingly, little evidence of consumer harm.
26. Given the similarities between the two markets, it may serve industry and PpP well to understand what the mobile application market is doing so differently such that innovation, growth and self-regulation is sufficient to win custom, trust and confidence. At the very least it presents an opportunity to learn whether over-regulation may have a restricting influence, preventing the market from growing and will ensure any inconsistencies across platforms are clearly identifiable and ironed out.
27. The PpP-commissioned ThinkTank report "The Current and Future Market for PRS" suggests that innovation is key:

"As in previous years, the single biggest reason why consumers are not using premium rate services is simply that they don't find the services on offer interesting. A major factor likely to drive further usage should therefore be innovation and

⁸ Complaints from Q3 2008/9 compared with Q3 2009/10 (4880 vs 1835). Source – PpP Quarterly Report Q3. <http://www.phonepayplus.org.uk/upload/QuarterlyReport2009-2010Q3.pdf>



development of new service offerings that are really compelling to end-users. By comparison, lack of trust is a far less substantial barrier to usage.”⁹

28. [X]. We are concerned that PhonepayPlus has not fully considered the impact of its proposals on this new generation of content providers, or how the growth of the PRS market may depend heavily on how well it can compete against other, arguably, simpler, easier and less stringently-regulated content platforms.
29. Given this demonstrable link between PpP regulation and the market it regulates, we would be reassured by a more substantial and thorough assessment of impact which demonstrates consideration of, not only the emerging developer community, but also the wider market, against comparable growth services.
30. Even if PpP chooses not to consider the market impact, it should still be concerned for the consumer detriment that could arise from inconsistent regulation across platforms. We can envisage circumstances in which two customers will purchase the same content, on the same platform, but choose different payment methods. One will be afforded general protection of consumer-legislation; the other a potentially different user experience and interaction (particularly if the service involves subscription charging), and regulatory protection – the result of which could even result in different prices.

Rules that are easy to understand

31. Today’s content developers, premium-rate or otherwise, are bright, creative and extremely diverse in background, size and resource, however they are all dependent on the speed and ease with which they will need to release their content into the market to beat the competition. We therefore welcome PpP’s acknowledgement that the sources materials for PRS regulation are too numerous, unnecessarily complex and confusing.
32. We agree that an effects-based model provides a good foundation for making regulation easier to understand and apply, and that the principal outcomes should be firmly embedded in the Code. However we consider that there is still some way to go to ensure that PpP properly achieves its ambition, to introduce simplicity both in substance and effect.
33. PhonepayPlus has made a good attempt at redesigning the sources of regulatory rules and advice but we fear, in practice, there has been little progress towards actual consolidation. We see from **Figure 1**, that there remain too many different ‘types’ of source material, many of which have simply been re-branded rather than reduced. As a consequence there remains ample opportunity for useful advice or guidance to inadvertently go amiss.

⁹ ‘The Current and Future Market for PRS’ ThinkTank Research Report – Feb 2010
<http://www.phonepayplus.org.uk/upload/Current-and-future-market-FINAL-Thinktank.pdf>

34. For illustrative purposes we have set out, below at **Figure 2**, a likely experience of a potentially new stakeholder who is deciding whether to add a premium-rate payment mechanic to his content, using the proposed source materials.

Figure 1

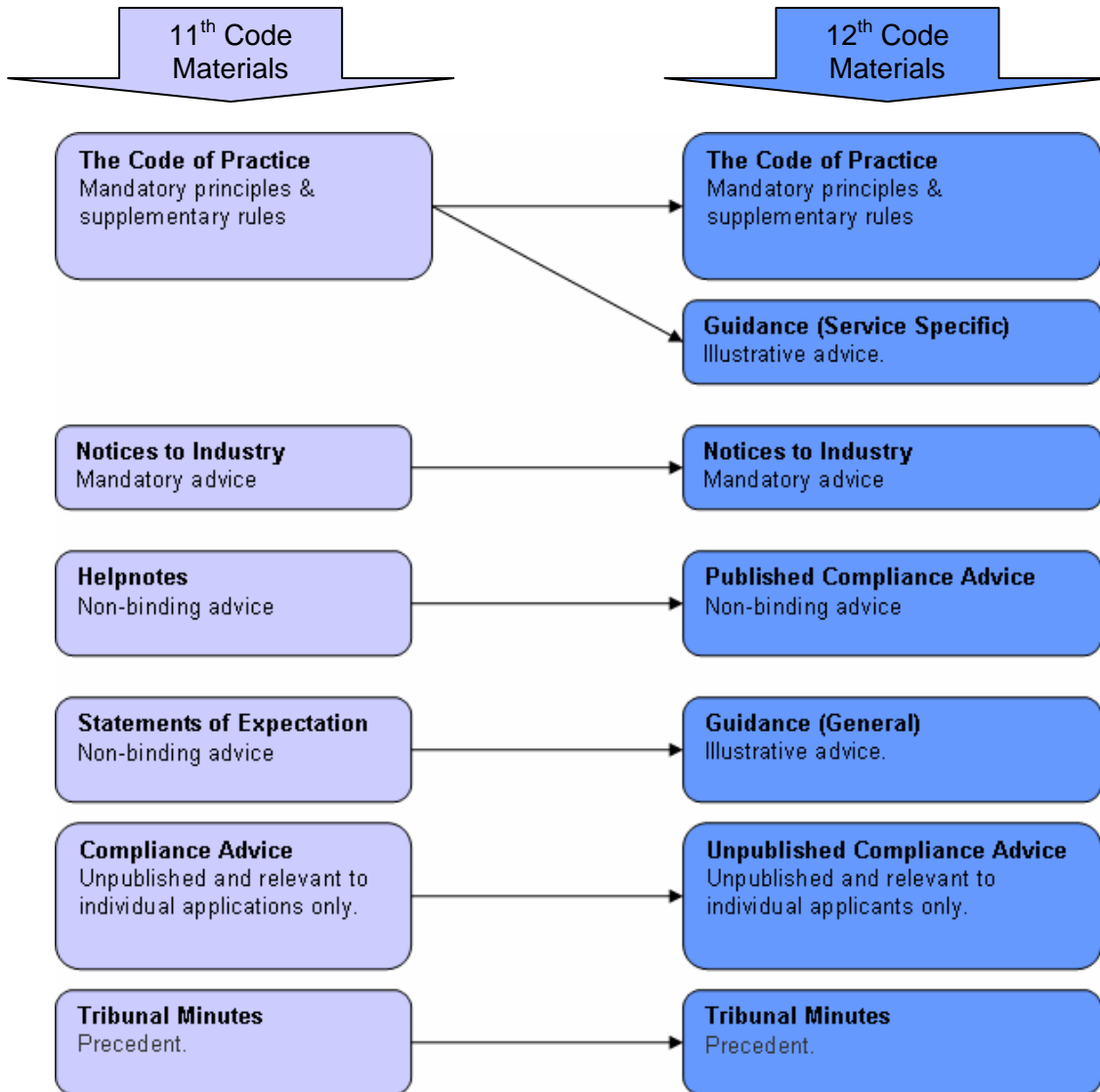


Figure 2



Illustrative stakeholder experience

Step 1: *Consult the Code to understand the headline outcomes. We envisage that a content developer with little time will go straight to Part 2 ‘**required outcomes and rules**’.*

Step 2: *Read through all 46 supporting rules picking out which ones may or may not apply to the content developer’s service model. We have observed that many of the supporting rules bear little direct relationship to the principle under which they sit or are only relevant to particular service types or marketing platforms, so it is likely that many of these rules will be irrelevant;*

Step 3: *Unfortunately Part 2 of the Code doesn’t direct the reader to the next relevant source of information. It is therefore possible that a busy provider who has to hand the Code and the Code alone, will have insufficient information to understand what guidance is available, whether it might be relevant to his service and where he can find it.*

Step 4: *Assuming this stakeholder has successfully discovered the proposed guidance, they would then filter through, what has been the suggested could be in excess of 30 pieces of guidance, to understand if one or more will apply to him.*

Step 5: *At this stage there has been nothing to alert the stakeholder to the existence of ‘Notices’ or published compliance advice, what they are, where they can be found and the fact that, in the former case, it may be used to introduce new mandatory rules which he should follow.*

Step 6: *Assuming that the provider is now equipped with the Code, relevant Guidance, relevant Notices and published Compliance Advice, he must then try and apply it. He may seek advice from PpP’s industry support team, but our experience is that this can sometimes be a lengthy process and that is only best applied once a service and marketing model has been designed. It is difficult for a developer to use industry support advice to assist during the design stage, and it may well be too costly to make significant changes thereafter.*

35. Our expectation is that the complexity of PRS regulation, both in its current and proposed forms, will deter an otherwise enthusiastic content developer from either entering the premium-rate market or from being confident that their service is fully compliant. In short, the advice is not available or fast enough to be of sufficient value to new developers. The alternative is that the service is designed and tested from a technical perspective, but then advice is applied which can result in more costly changes than may have been envisaged.



“Consolidate guidance into the fewest possible number of sources”¹⁰

36. We are confident, however, that the proposals are moving in the right direction, though we suggest here some alternative suggestions to increase simplicity and ease of application.

The Code

37. One, more pragmatic, approach would be to ensure that the Code offers a comprehensive, clear source of the overriding key principles and outcomes expected from all PRS services only and should be sufficient and clear enough to stand alone, but also act as a sign-post to relevant supporting information. The Code should identify and list the alternative sources of regulation that PpP intend to use, the weight that is applied to each of those sources, and where they can be found.

The supporting rules

38. We consider that the supporting rules currently set out in the Code can be re-assed to fit into one the following categories:
- a. **Rules which are mandatory and applicable to all services, regardless of service type of or method of marketing – we consider these should be drafted into the overriding outcomes.**

Example:

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”

This rule does not currently bear any direct relationship to the stated outcome that “*consumer of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made*”, as the prohibition of charging the cost of instructional service contacts is absolute, and therefore not likely to influence a decision to purchase, nor require any cost clarity.

If PpP consider that this provision to be significant enough to embed in the Code then, such a prohibition should be embedded in the key principles and outcomes of the Code. If the outcome can be achieved by means other than a blanket prohibition on instructional contacts, then it should be reserved for guidance.

¹⁰ Para.4.33a - key outcomes to be delivered by this consultation.



b. Rules which are set out how the leading outcome will be applied or interpreted – we consider these should be set out in supporting guidance

Example:

“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 clearly legible, visible and proximate to the telephone number. “

This provision merely expands on how the outcome requiring consumers to be “fully and clearly informed” will be interpreted. It therefore belongs in supporting guidance, not the overriding principles and the Code.

c. Rules which are related to specific service types or types of marketing.

Example:

“2.3.12a All sexual entertainment services must terminate by forced release when a maximum of £30 per call has been spent“

This provision is not mandatory across all services and therefore should not be embedded in the Code, which, we consider, should only set out the high level principles which apply in all circumstances. This provision is an interpretation of what PpP considers to be a ‘fair and equitable’ charge for users of voice call sexual entertainment services and consequently, it should be reflected in service-specific guidance only.

We are happy to discuss further with PhonepayPlus how we envisage the current rules, including Part 3 of the Code, can be re-distributed, to ensure that the Code remains the primary source of the key principles which apply to all services at all times, soundly supported by guidance.

39. We further recommend that all other source material - CCP minutes forming case precedent, helpnotes and published compliance advice, as well as lessons learnt from unpublished compliance advice – could all be consolidated into a comprehensive set of one-stop start-up guides for general service types, including illustrative message flows and service models. These will remain easy to amend, and update and minor changes could be subject to shorter consultation periods.
40. We would expect that each start up guide will summarise any relevant mandatory notices and include the most up to date case precedent from the CCP.

One-Stop Guides

41. We expect that this approach will encourage more compliance amongst start-up businesses who are under time pressures to get their content to market, but with insufficient resource to cross-reference multiple materials. A one-stop guide which

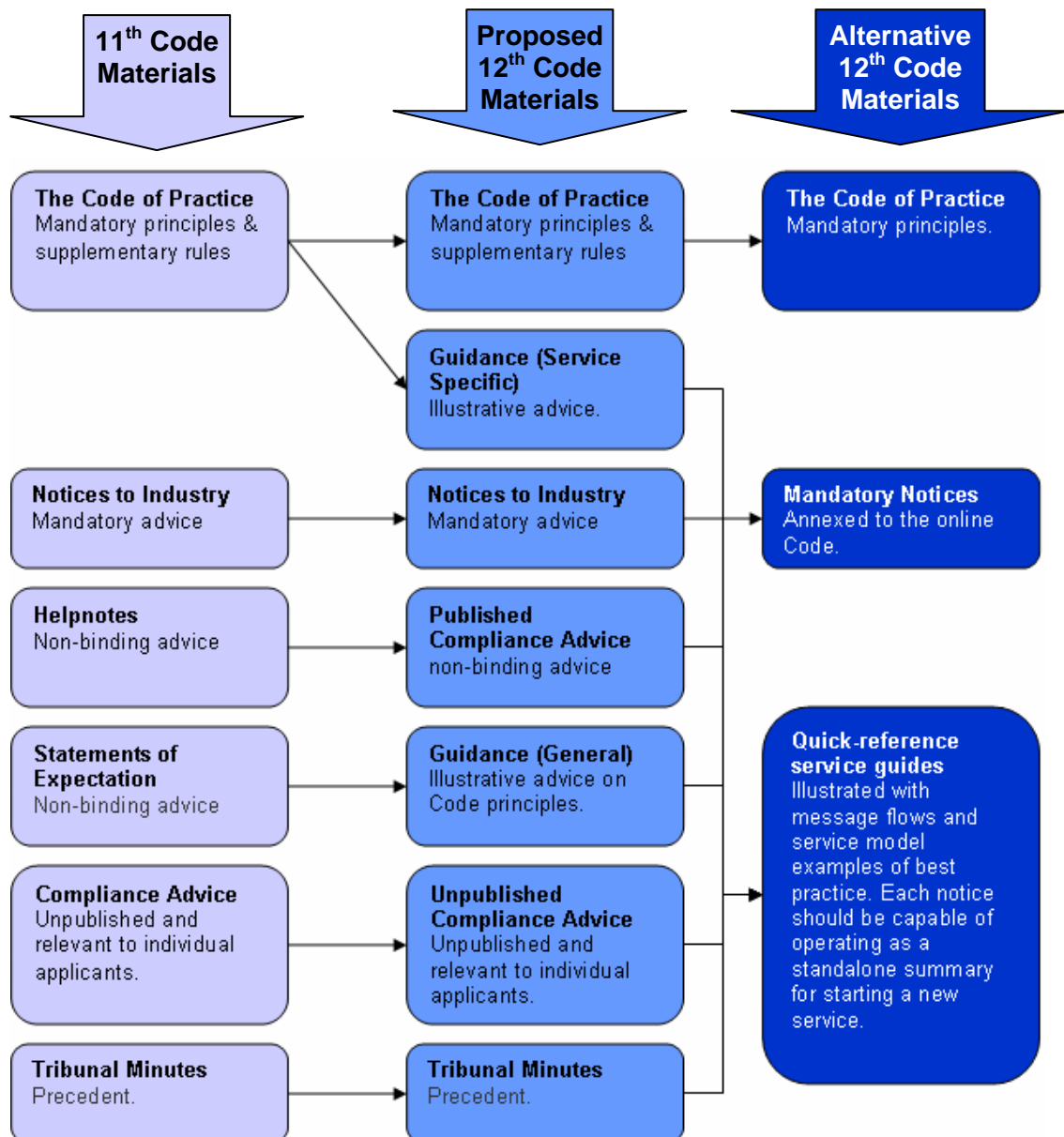
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covers all the key elements of compliance for a particular service type, including pricing transparency and permission requirements (or potential exemptions) and should be able to stand alone, and would make complex regulation more accessible and drive down unnecessary regulatory costs.

42. We consider our approach, set out in **Figure 3**, demonstrates that this approach will have a more pragmatic and dramatic effect on simplifying the Code and increasing clarity.

Figure 3





Remedies should be proportionate to the risk posed

43. PpP has proposed a step-change in regulation for PRS, which we support. But such a radical overhaul may have resulted in the creation of new regulatory obligations either unnecessarily or unintentionally, and without sufficient evidence to objectively justify their introduction.

44. For example, there are proposed obligations for all network operators, level 1 providers and level 2 providers to :

“3.1.3 - assess the potential risks posted by any party with which they contract in respect of:

- a. the provision of premium rate services; and*
- b. the promotion, marketing and content of the premium rate services which they provide or facilitate; and*

take and maintain reasonable continuing steps to control those risks”.

45. O2 has been assured, in Code workshops and consultation meetings, that PpP do not expect MNOs to have any additional responsibilities in practice, however we do not see how this provision accurately reflects that expectation.

46. The Code provides the legal basis on which regulation is imposed and should therefore be as clear and precise in setting out PpP’s intentions for regulation. Only in this way can PpP be confident that it has conformed to the ‘Transparency’ principle of good regulation. It should not serve as a ‘catch-all’ commitment, the application and enforcement of which is dependent on the discretion of the Executive.

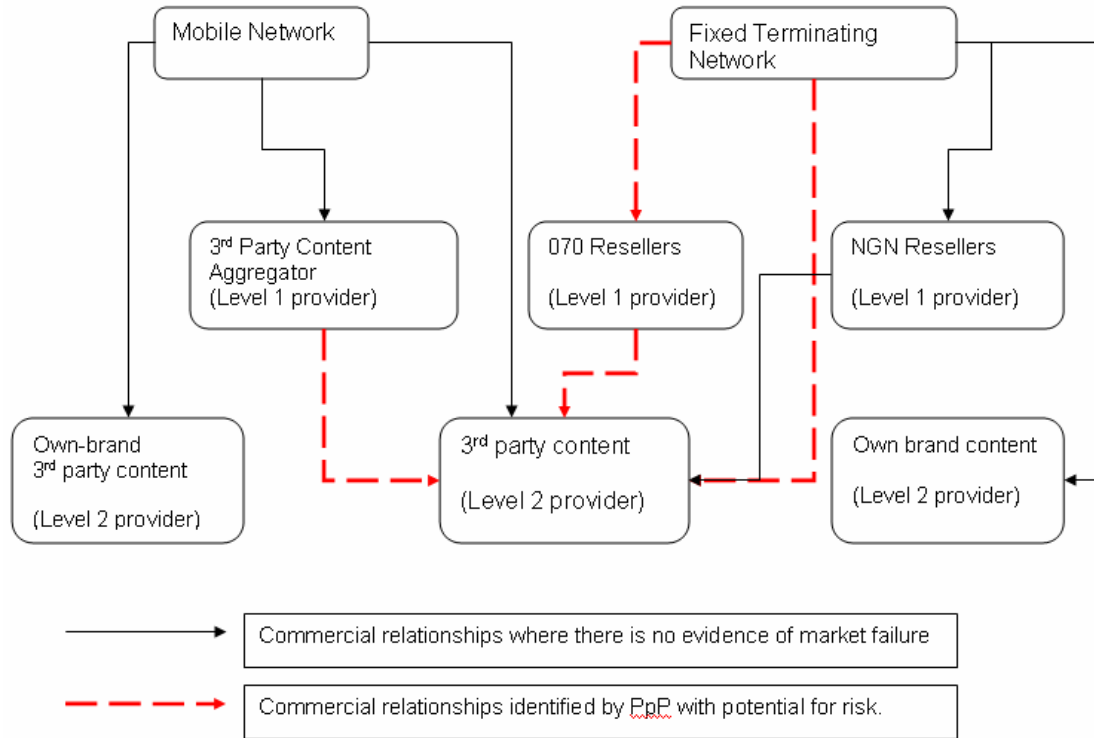
47. PpP has confirmed that they are satisfied with the voluntary steps taken by mobile network operators to protect their customers, specifically identifying the ‘Red and Yellow card Scheme’. We are therefore at a loss to understand the basis on which PpP consider it is objectively justifiable for PpP to codify and increase regulatory responsibility at this part of the value chain.

48. Looking at the evidence of past adjudications it is clear that the risk of consumer harm, in the mobile space, is in the relationship between Level 1 providers who have no consumer brand interests and 3rd party content providers (Level 2 providers), as we have set out in **Figure 4**.

49. It is incumbent on PpP to demonstrate that it is proportionate and objectively justifiable to apply an increased regulatory burden where no risks have been identified. PpP has already accepted that this is a sensible approach, by exempting networks and providers of 0871 services from this provision entirely.

50. It may be discriminatory for PpP not to apply the same considerations to other identifiable commercial relationships where the need for additional regulation is unsupported by evidence, perhaps even considering partial exemptions for particular elements of the provision.

Figure 4



51. PpP appear to have made an assumption that, where MNOs have made voluntary arrangements to minimise harm, that it would be acceptable, and of no impact, to codify those arrangements into formal regulatory obligations. We respectfully disagree.
52. Any formal regulatory requirement is likely to have some impact, as it imposes a new business risk. Currently, the voluntary arrangements made by MNOs rely on all companies sharing information on an ad hoc, but regular basis. The arrangements work because the burden is shared as a collective. The proposed provision, however, imposes a regulatory obligation upon each individual company which may give rise to duplication, inefficiencies and, it seems, cannot be discharged through collective arrangements.
53. We expect that new regulatory obligations should only be introduced where a failure has been clearly identified and should be in keeping with the current Government's expectation that regulation should be introduced cautiously, expressed in David Cameron's first speech as Prime Minister as follows:



“..... the most important change is our new ‘one-in-one-out’ rule for regulation. It’s simple: if you’re a Minister who wants to bring in a new piece of regulation, first you’ve got to find an existing one to get rid of.”

We cannot see that the ‘one-out’ part of this rule has been applied for mobile network operators in this context.

54. In summary we do not consider that there is sufficient evidence to justify the imposition of additional requirements on mobile network operators, beyond that required by the 11th edition of the Code, for:
- a. Mobile network operator and aggregator arrangements
 - b. Mobile network operator and ‘on portal’ content provider arrangements
 - c. Mobile network operator and third party billing arrangements only
55. Neither has PpP presented any evidence in the consultation that suggests that fixed terminating networks or resellers (other than those providing access to 070 number ranges) should be required to implement detailed due diligence and monitoring obligations beyond that currently required by the 11th edition of the Code.

Impact Assessment

56. PpP is correct to assert that “evolving *markets need an evolving regulator*”. However, whilst we accept that the proposed vision will give PpP “*greater scope to regulate flexibly and proactively*”¹¹ not enough consideration appears to have been given to whether the changes will lead to effective and supportive regulation, which offers long-term benefits for consumers and competition.
57. We would have wished to see a more thorough assessment of the benefits that PpP expects to obtain from the regulatory changes, compared against a full assessment of likely costs on current and future entrants to the market and the potential barriers that PpP’s proposed regulation is likely to raise.

Costs of monitoring and risk assessment

58. We refer, as an example, to paragraph 5.53 of the consultation document in which PpP’s explain that

*“.....we do expect [Level 1 providers] to block any usage that they feel is unauthorised in the course of their due diligence monitoring of each client.”*¹²,

and then go on to justify the impact of that expectation by relying on anecdotal evidence that:

¹¹ Para 13.1, p.84 Consultation Document

¹² Para 5.53 p.36 Consultation Document



*“a significant number of Level 1 providers, and an even greater number of the providers with the largest market share, already check their client’s promotional material[and] take steps to identify any unusual spikes in traffic or consumer complaints.”*¹³

59. We do not consider that this is a complete summary of the impact and is therefore inaccurate. The Impact Assessment fails to consider any impact on existing or new Level 1 providers for whom PRS is not a primary function of their business, but who do provide basic re-sale services of non-geographic numbers which may include some ‘09’ ranges.
60. PpP’s expectation would require all Level 1 providers, regardless of their primary function, to invest in the relevant monitoring equipment and the technical interface with the terminating network, to give them direct visibility of traffic terminating on a third party platform. PpP has not considered what these costs may be nor what alternative arrangements would be acceptable in circumstances where a reseller did not have this equipment.
61. If no alternative arrangements are feasible then monitoring costs need to be considered, at the very least, to give assurance that they do not impose a barrier to entry into the reseller market.

Time saved

62. In the consultation, PpP suggest that the likely impact of enhanced risk assessment duties for both networks and Level 1 providers would be negated because the costs of administering a documented assessment of risk for each clients would *“be offset by the time saved through changing the current investigations process to a model where PPP deals with the Level 2 provider”* (para.3.17).
63. Whilst we accept that this is an accurate assessment for some Level 1 providers, we believe that it applies only to those providers who have been the subject of, or at risk of, investigation of PpP Code breaches, many of whom do not fall within the basic reseller community.
64. Additionally, it is not envisaged that Network Operators will save any time from the proposed investigation procedures, as the role of the Network Operator remains, largely, the same as it did before in terms of facilitating enforcement action and we would therefore expect our duties to require much the same level of resource.
65. Consequently, PpP has failed to properly assess the impact on Networks and Resellers of imposing formal regulatory requirements to monitor services.

¹³.Para 13.14 p.86



Conclusion

66. We are confident that PpP is on the right path. But, we encourage it to go much further in laying the proper foundations to ensure that the drama of implementing a new regulatory model does not mask the need to stringently adhere to the principles of good regulation.
67. We are keen to work closely with PpP to support them in reaching their goals. We are happy to meet with the Executive and board members responsible for implementing the new Code and Ofcom to discuss this response further, should it be of assistance.
68. We look forward to continuing a successful co-regulatory relationship.

-END-