

The new PhonepayPlus Code of Practice

UKCTA Response to PhonepayPlus
Consultation

Submitted to PhonepayPlus: 15th July 2010

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

Introduction

UKCTA members welcome the opportunity to comment on PhonepayPlus' proposed new Code of Practice. All of our members continue to be highly supportive of PhonepayPlus' work and welcome the direct engagement and workshops that have preceded the publication of this consultation.

On the whole our response is supportive of the proposals for the new PhonepayPlus Code of Practice and we welcome the development of a streamlined, more flexible approach. There are however a number of areas which have caused concern for UKCTA members. We have summarised the general concerns below before continuing to answer each of the questions in more detail.

Disproportionate regulation for fixed-line operators

It is widely accepted that the focus of the Premium Rate industry has shifted from fixed line services to those targeting the mobile consumer. This has been reflected in the various revenue, call volume and complaint statistics that PhonepayPlus has compiled over the period. Whilst the mobile sector has experienced a surge in complaint volumes (which appear to have since been brought under control) the fixed-line market has been flat in terms of revenues and with comparatively low levels of complaints. Indeed where issues have arisen they have been focussed on areas perceived to have been at the fringes of regulation, such as 070, and have been rapidly addressed by PhonepayPlus.

UKCTA members do not see this pattern altering in the near future.

With this context in mind there is concern therefore that some of the requirements PhonepayPlus seeks to introduce in the new code and to place upon Network Operators are entirely disproportionate to the level of consumer protection and industry benefit they will bring. Under the 11th Code Network Operators are expected to conduct a certain level of Due Diligence upon the companies with which they contract. To date it is our belief that the current rules have resolved many of the issues PhonepayPlus previously experienced when attempting to identify providers. The introduction of a compulsory registration scheme of all participants in the market and propagation of due diligence requirements to Level 1 providers will further strengthen this position.

UKCTA is concerned that the principle PhonepayPlus aspires to of an outcome based code is undermined by onerous requirements which extend far beyond the tipping point in any cost benefit analysis. PhonepayPlus' guidance note states that *"The outcome to be achieved is for any Network operator or Level 1 provider to be able to identify, in instances where consumer harm has occurred, the contracting party who may be responsible"*. This is an outcome which can be achieved through the collation of the information set out by PhonepayPlus, although paradoxically *"The collection of information does not, in itself, represent full due diligence"*. We acknowledge the additional requirement for the Network Operator to: *"satisfy itself that the contracting party has the financial strengths to meet its obligations in the event of sanctions arising from an upheld breach"*. With respect to the smaller providers in the industry, a requirement to be able to financially make allowance for full refunds to callers and potentially multiple fines of up to £250,000 at a time, would we suggest, remove a sizable proportion of the market in one fell swoop. At its fullest extent this is a clear barrier to business and a disproportionate requirement in light of PhonepayPlus' consumer protection powers to order full consumer refunds.

Business to Business Services

PhonepayPlus must recognise that not all premium rate services require the level of consumer protection afforded to consumers engaging in televoting, competitions or

other populist services. There are a number of business to business services on both 0871 and 09 which are offered by providers that require a much lower level of protection. The current regulations threaten to force all Network Operators down a route of consumer protection led regulation which is appropriate in the broadcasting and residential origination markets but which is entirely disproportionate in a corporate business market. UKCTA has experience from Ofcom's well-intentioned TopComm scheme of unjustifiably costly and disproportionate consumer protection regulation which proved to unduly onerous and place unacceptable burden upon many UKCTA members. We urge PhonepayPlus not to fall into a similar trap. Indeed we once again question whether 0871 should in fact be subject to all of the code requirements considering the apparent lack of formal breaches against services on this number range.

PhonepayPlus must recognise this distinction in terms of its proposals for due diligence, complaint handling and in particular the ongoing risk assessment of services.

Risk Assessment and Monitoring

Risk assessment obligations have been the most controversial aspect of PhonepayPlus' proposals. UKCTA members fundamentally disagree with PhonepayPlus' assertion that it is reasonable to expect Network Operators to monitor or control the activities of a company throughout the life of a contract when it may have provided the party with no more than network connectivity. To use a similar regulatory analogy, the FSA would not have reasonably expected to hold any Network Operator responsible for a breach of its regulations should insider trading have been committed on one of its lines. Similarly a Network Operator providing a mere conduit cannot reasonably be expected to be held responsible for the failure of a provider to comply with PhonepayPlus' Code.

UKCTA respectfully suggests that PhonepayPlus has underestimated the burden a requirement to carry out ongoing monitoring places upon Network Operators. It is

entirely possible that some operators with large origination businesses do carry out detailed monitoring on their customers, but we would suggest that in the termination market and in particular the business market this is much less widespread. Any monitoring of services that is carried out in this context is focussed upon high level variations of traffic often against multiple products and traffic streams. Premium rate services represent only a small fraction of the whole and traffic volumes of individual customers are largely inconsequential. Therefore PhonepayPlus' suggestion that it may be possible to identify traffic spikes on individual services and to inform PhonepayPlus of consumer harm is at best optimistic and at worst entirely unrealistic. As a result a requirement for ongoing monitoring of services should not be seen by PhonepayPlus as simply an extension of existing programmes but rather the imposition of an onerous and expensive mechanism for which UKCTA members are currently in no way resourced to meet.

PhonepayPlus has offered no form of evidence in terms of a cost-benefit analysis for such a disproportionate requirement and UKCTA cannot agree that it is in any way justifiable. Certain UKCTA members have expressed the opinion that the costs involved in complying with this requirement, on a product line with already fine margins are significant enough for them to consider withdrawing from the premium rate market entirely.

Implementation timescales

UKCTA members are concerned that the impression given at the PhonepayPlus workshops ahead of the Code consultation was that PhonepayPlus is intending to implement the new Code with only a short implementation period. This will be wholly inappropriate. There are a number of changes in terms of due diligence and more importantly the requirement for all of the members in the delivery chain to register with PhonepayPlus which will require a considerable amount of time to implement, particularly if retrospective application is required.

UKCTA is under no illusion as to the difficulties experienced in persuading all Service Providers (in today's terminology) to register with PhonepayPlus under the 11th Code – and this was a process which did not incur a cost. Evidence from trying to obtain PhonepayPlus details from Service Providers when premium rate services are ported between providers suggests this difficulty exists in pockets across the industry rather than with specific networks. We expect the requirement for all providers to register and to pay for the pleasure is likely to be a not inconsiderable task. UKCTA members are committed to facilitate this process however too short a timescale in which to contact customers and potentially to alter contracts in order to require registration with PhonepayPlus will leave Network Operators in the unenviable position of turning off active customers or risk being in breach of the new code. We ask whether there is any requirement for retrospective application of the new code upon existing customers both in terms of due diligence requirements and risk assessment? We estimate that at least a minimum of 6 months is required in order to cascade the necessary contractual changes through to providers, but that a 12 month period is more realistic to complete this work. If retrospective risk assessment were to be imposed this period could be even longer.

UKCTA would also like PhonepayPlus to clarify the situation should a provider fail to renew their registration with PhonepayPlus in subsequent years. It is our understanding that the Network Operator would be expected to disconnect the provider and to cease doing business with them. We would welcome PhonepayPlus guidance on how this process is to work. UKCTA members have no desire to become embroiled in payment disputes between providers and PhonepayPlus and request to know how they are to be informed of a provider's failure to renew registration and how PhonepayPlus intends to notify instructions for a provider disconnection.

Questions

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

UKCTA members are in favour of the plans to withdraw Governance arrangements from the PhonepayPlus code itself and to publish these as a separate governance statement. We agree that there is no need for changes to the board's makeup or treatment of risk to require a fundamental review of the entire Code. We do however welcome the continued reference to the relationship with Ofcom and PhonepayPlus' independent status which we view as being important inclusions.

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

UKCTA welcomes the recognition of the unique position played by Network Operators within the value chain and that they should be recognised as a category in their own right. As a concept the PhonepayPlus terms and definitions have always sat uncomfortably with the business models in the marketplace and the latest incarnation is no different as it still fails to reflect marketplace experience. We anticipate that the distinction between Level 1 and Level 2 operators is one which is likely to meet some resistance from those parties which acquire new responsibilities under the new code. However UKCTA believes that the exact definition is unimportant provided that PhonepayPlus is able to identify the root cause for any breach of the Code.

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?

It is likely that the definition that has been set out for Level 2 providers may in practice not be as all-encompassing as envisaged. We are sure that there will be cases where responsibility for the technical delivery and operation will be divorced from promotion and / or content. Similarly the numeric titles of the Level providers serves to mask the multiple resellers or providers which may operate in any one

supplier chain. However that does not change the intention of PhonepayPlus' new Code which is to pursue the breach to the party whose actions caused the issue. UKCTA fully supports this aim and believes that the definitions themselves and distinction between Level 1 and Level 2 providers are almost of secondary importance. As a breach is investigated it should become clear whether it has been caused by a Level 1 or a Level 2 provider and as long as PhonepayPlus is able to take action against the provider to ensure the breach is remedied or to apply the appropriate sanction, it little matters whether the provider is Level 1 or 2.

In practice PhonepayPlus will need to take a case by case view of each party's responsibilities.

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?

The general desire to streamline the current levels of guidance and to formalise the standing of such material is welcomed. We acknowledge the flexibility such an approach offers PhonepayPlus in terms of responding to new risks or unacceptable practice however we would caution that this is offset by allowing providers a similar level of flexibility in interpretation when seeking to follow the guidelines. The success of such an approach will rely heavily upon the effectiveness of the guidelines and a robust consultation process as these are developed. However some UKCTA members do have more fundamental concerns with the approach.

The majority of UKCTA members operate primarily as Network Operators in this market, whether at the originating, terminating (or indeed both) ends of the market. The 11th Code provided Network Operators with clear guidelines as to the requirements for individual services. This made it much easier for the Network to develop internal governance processes and to provide guidance to companies

wishing to run services as part of its due diligence process or indeed during the usual day to day relationship. The key advantage however was that for those services which a network found to be undesirable to carry on its network (whether clearly in breach of the Code or not) Section 7 provided the ideal benchmark against which to make such judgements.

In theory the removal of didactic rules from the new code will undoubtedly be favoured by those providers wishing to explore new services, but for the Network Operator it removes a compliance tool which served to support PhonepayPlus' aims. Guidance notes will provide a similar function to a degree, but the emphasis of the decision for the Network becomes much more one of judgement rather than fact.

In practice it appears the PhonepayPlus approach to guidelines has been to simply lift the current rules out of the Code and to reformat these as guidance. Such an approach is disappointing and risks creating confusion between the status of the Code and the Guidance. UKCTA would have preferred to have seen worked examples as an integral part of the guidance particularly as the prefacing text is clear that anyone not able to prove they have met the guidelines (or equivalent) will be in breach of the Code. In effect the Code has simply acquired a new form and Network Operators will be expected to make a judgement as to whether providers' arrangements are sufficiently robust to meet the same level of consumer protection. A judgement which will prove difficult if the Guidelines are too vague and insufficiently detailed; a judgement which in any case should not be incumbent upon the Network Operator.

Indeed considering the weight given to the Guidelines it is a little incongruous that compliance with the Guidelines appears to carry such little weight with the Tribunal. We recognise that the Tribunal can not fetter its discretion, but it should be clear how compliance is taken into account when cases are brought before the Tribunal.

PhonepayPlus is also seeking to introduce a proposal for an independent audit of compliance to be undertaken where breaches have occurred. UKCTA believes that such a sanction will be very difficult to introduce in a constructive and meaningful manner where the rules to be followed are not explicitly set out. UKCTA's experience of previous external audits in order to verify the financial returns submitted to PhonepayPlus was that this was a highly expensive and unsatisfactory process. In particular there was a disconnect between the professional opinion of the auditors as to what was feasible and the expectations of PhonepayPlus. The same scenario appears to be a risk in this instance where auditors would be expected to make an assessment against nebulous responsibilities and expectations. Any assessment will consequently be time and resource intensive and offer little benefit to PhonepayPlus or the company in question. We do not believe such a requirement to be justifiable in the absence of clear guidelines.

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.

It appears that the guidance provided in the Notes is a slightly condensed version of that previously available under section 7 of the 11th Code. As such UKCTA does not have any detailed comments to make on its content and we direct PhonepayPlus to the individual responses of our members and our comments to Q4 above.

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?

Yes, we agree that these proposals offer PhonepayPlus with a flexible means of reacting to emerging issues. We would caution however that the consultation process needs to take full regard of the impact any guidance to industry may have

upon existing processes. What may appear to be a simple change can require system development and revised processes. General Guidance should not be seen as a means of short-cutting the consultation process in order to be able to react to changing circumstances.

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.

We refer PhonepayPlus to our previous comments as to the disproportionality of the new due diligence and risk assessment requirements upon our members. We will not repeat these here, but rather confine our comments to the General Guidance provided in Annex C.

Concern has been raised regarding the need for networks to obtain details of all those involved in revenue share and details of the way in which they choose to use their numbers.

“Where a Network operator is intending to allocate a range of numbers to a client operating as a ‘reseller’ (i.e. a client who sells numbers onto another party and then takes a share of service revenue) as the Level 1 provider in the delivery chain, PhonepayPlus would expect as part of any risk Assessment and control for a written record to be kept, indicating what the numbers are being used for and by whom”.

In principle this is a nice idea, but in practice it is entirely unworkable and raises the spectre of a number of competition issues. Network Operators and their resellers actively compete with each other for business and individual End-Users. Any request by an UKCTA member to one of their resellers to request the reseller’s customer and end service details will quite rightly be met with a short response. Even if this information was forthcoming it is entirely outside the ability of Network Operators to maintain such data in a meaningful fashion. Furthermore there is no need for this requirement. PhonepayPlus is requiring all parties in the value chain to register with it. As a result PhonepayPlus will be able to identify providers and judge their compliance in its own right. The requirement for Network Operators to conduct the same task is an unnecessary, disproportionate duplication of effort.

UKCTA also questions the ability of Level 1 operators (primarily those resellers falling within this category) to comply with 3.1.7 to actually conduct any form of monitoring in their own right. It is likely that it is the Network Operator which will provide the monitoring facilities and again this is an onerous task which is being placed upon the Network Operator and one which is likely to cause costs to be incurred by the Level 1 operator.

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, we believe that the merger of these notifications into a single set of Compliance Advice would be clear and beneficial to industry.

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

UKCTA members are principally Network Operators and as such the principle compliance concern has been covered with the guidance in relation to due diligence. Comments specific to a member’s customer base will be made in any individual submission. In general however we do not see much requirements for guidance outside of that provided under the 11th Code of Practice.

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

Yes, UKCTA members welcome the clarification that breaches of the Code of Practice will be upheld against the source of the breach rather than upon the first provider in the value chain. Whether the breach has actually been caused by the Level 1, Level 2 or Network Operator needs to be considered in light of the

particulars of each case and anything which allows PhonepayPlus to target the root cause of the breach is fully supported.

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

UKCTA agrees with the general stipulation that premium rate services must comply with the law. We do however question the breadth of 2.1.3 and question whether PhonepayPlus is in a position to police or judge whether a service has facilitated or encouraged “*anything which is in anyway unlawful*”. The distinction between something which does or does not comply with the law is a clear distinction which PhonepayPlus is clearly able to make, however an attempt to judge whether encouragement is being given to something which is “*in anyway unlawful*” extends beyond the remit of the Premium Rate Service itself and we would respectfully suggest that PhonepayPlus may not be the best agency able to make such a distinction.

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

UKCTA agrees with the rules around transparency and pricing. We welcome the inclusion of the PhonepayPlus registration code upon all promotional material and believe that this will go a long way to ensuring that PhonepayPlus is able to easily identify a provider. It is also yet another example of why the due diligence, monitoring and control obligations being placed upon Network Operators are entirely disproportionate.

As a point of detail we would request that the phrase “...proximate to the means of access to the service..” is replaced with plain English, such as the explanation PhonepayPlus provides within the consultation document.

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?

If the wording in the code is provided in a clear manner we do not believe that there is any need to provide additional guidance.

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

UKCTA agrees with these proposals

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.

UKCTA notes that these levels are consistent with those in the 11th Code. We would suggest that their appropriateness should be considered as part of Ofcom's NGCS Review in the absence of a full review as to their appropriateness at this stage. We anticipate that many providers will argue for an increase to the rates, particularly in light of the forthcoming increase to BT's PRS Bad Debt Levy which will impact the revenues of many providers.

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

UKCTA agrees with these proposals, but notes that PhonepayPlus is best advised to merely reference the ICO legislation rather than to transpose it and to risk having to update the code if ICO updates their legislation.

We are also concerned that reading the draft code in isolation arguably gives Level 1 and Level 2 providers the opportunity to duck their responsibilities. If the aim is to reduce the volume of perceived “unsolicited” marketing, clause 2.4.4 should explicitly require providers to obtain consent for marketing (rather than just “provide clarity” around the use of customer data).

We congratulate PhonepayPlus’ work to forge closer working relationships in this area and we agree that a close working relationship needs to be maintained in order to prevent regulatory overlap in this area.

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?

UKCTA agrees that this is a laudable objective and one which we support.

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?

UKCTA agrees that these proposals deliver clarity when consumers opt in to services.

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

UKCTA agrees with these proposals other than the expectation that the Level 1 provider should be considered to be in any way responsible for monitoring the activities of the Level 2 provider. PhonepayPlus will be able to clearly identify and

act against any transgression by the Level 2 provider and should do so rather than expect Level 1 providers to act as a censor upon their behalf.

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

UKCTA looks forward to continuing to work with PhonepayPlus through the auspices of the ILP on this issue. We welcome the clear distinction that the complaint handling requirements apply to Level 1 and Level 2 providers. Network Operators and indeed resellers operating as Level 1 providers already comply with Ofcom obligations under the General Conditions in respect to complaint handling. PhonepayPlus needs to ensure that care is taken to ensure that there are no conflicting requirements between the two sets of obligations.

We fully support the intended Outcome and Rules related to Complaint Handling.

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?

UKCTA cannot agree that a Level 1 provider (or Network operator who contracts directly with a Level 2 provider) should step in if a Level 2 provider fails to meet its responsibilities in terms of complaint handling. This may be appropriate in a mobile environment or where a Network Operator has a large residential origination business, however it is entirely inappropriate for a business orientated terminating operator. As we have stated at the ILP this requirement is entirely disproportionate as it may require a Network Operator to intervene in a situation where it has no contractual relationship with the End-User making the complaint.

Network Operators are able to direct complainants as appropriate and may be able to suggest to a Level 2 provider that they need to comply with regulations more seriously, but it is entirely unrealistic to expect a third party to have an obligation to step in where a Level 2 provider is failing to meet its regulatory obligations.

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

UKCTA believe these proposals are reasonable, however PhonepayPlus needs to take care to fully understand the reasons behind any failure of technical quality before issuing breach notices. It is not in any parties interests commercially to fail to deliver a technically adequate service and care needs to be taken to distinguish between the unavoidable faults which do occur and a wilful decision not to provide an adequate service.

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

Whilst there is nothing wrong with the proposals on internal risk control in isolation we do have concerns regarding some of the elements PhonepayPlus is seeking to include under this requirement (see below).

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?

No UKCTA robustly opposes these requirements as we have set out at the beginning of our response. The requirements are disproportionate and unjustified in the context of the fixed market and we cannot support their introduction.

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?

We refer PhonepayPlus to our response to Q7.

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.

UKCTA has a strong preference for Option c unless there is a clear demonstrable need for individual operators to engage in a more rigorous programme of risk assessment i.e. a trend in compliance issues or serious lapses. This should be an initial step before any consideration is given to further intrusive measures such as external audits.

We have already set out why measures such as traffic monitoring are inappropriate requirements and we caution PhonepayPlus that not all mobile initiatives (e.g. the “Red and Yellow Card” scheme) are necessary or transposable to the fixed arena.

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

UKCTA is aware that certain members focussing on the business market have previously raised concerns with PhonepayPlus regarding the requirement to pay refunds directly to consumers when they are not geared up to do so. It is with some concern therefore that we view 4.9.1 of the Code as providing Level 2 providers with a means of placing the responsibility for these payments upon the Network Operator to satisfy from withheld revenues. We would like to see the option of PhonepayPlus administering such refunds (and recovering its costs) where a Network Operator has been requested to withhold revenues but does not have the billing mechanism to make small individual refunds.

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

UKCTA does not oppose the contract proposals but as noted above, the amendment of contracts to specifically bind parties to the new code may require contractual amendments. Retrospective application of such changes is estimated to take members up to 12 months to complete.

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

UKCTA fully supports the registration scheme. We have already raised our concerns in relation to the requirement to only contract with registered providers and the implications of providers failing to annually re-register. We welcome PhonepayPlus' guidance on this matter.

We would also ask PhonepayPlus to check the implications of retaining data on parties looking to de-register and question whether a limit to this retention has been considered from a data protection angle.

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?

Yes, we agree that PhonepayPlus has considered an appropriate selection of issues and objectives.

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

Yes we fully support this exemption. The lack of breaches against operators in this market and PhonepayPlus' ability to resolve issues informally demonstrates that this

area of the market poses a much lower level of consumer risk, even before the low price point is taken into account. Indeed UKCTA would argue that the Statement of Application approach utilised under the 11th Code should still apply under the new code for 087 operators and that full application of new code is not required.

This clearly demonstrates that the changes made to bring 0871 under the remit of PhonepayPlus in the first instance were disproportionate to the level of consumer harm caused on the ranges and were an expensive knee jerk reaction to media pressure.

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?

UKCTA is concerned that whilst the required information is satisfactory to provide a company history it is deficient in terms of the requirements needed to identify the individuals behind the company. In particular the requirement only for a nominated director, whilst Network Operators have currently been capturing all directors is a poor omission which suggests concern more with keeping the costs of the database low than it does providing a robust library of information to assist due diligence. UKCTA is concerned that the information proposed does not offer a robust due diligence guide which would benefit industry.

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?

We agree that this sounds a reasonable approach. Once these thresholds are reached we would be interested to understand whether the information is deleted from the database or simply prevented from being displayed.

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.

UKCTA agrees that this should be done and that the matching of breaches with company details represents one of the fundamental benefits of the registration scheme. To not do this would be to miss an opportunity to finally prevent phoenix companies from breaching the code and successful implementation should prevent a number of reoccurring issues within the industry.

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.

UKCTA agrees with this proposal.

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

Yes we fully support the requirement for all parties to register, with the exception of 087 services.

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?

The current indicative fee of £100 seems to be appropriate and we would be disappointed by any increase caused by spiralling IT implementation costs.

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

Yes UKCTA agrees with these proposals.

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

Yes UKCTA agrees that pushing the thirty-day withhold requirements down to Level 2 providers will be of benefit to the industry. It will also prevent Level 1 providers from coming under pressure for faster payments from level 2 providers and attempting to pressurise Network Operators for the same. A practice which we are led to believe is common. It is important that an industry standard for payment is maintained and that clear guidance is provided regarding the payment terms. Either the 30 day payment terms are a universal requirement across all providers of the services or it is enforced on a risk basis with providers able to make quicker payments on the understanding that they will be liable for any potential fines. PhonepayPlus must provide certainty as to what is expected in this regard.

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

Yes UKCTA agrees with these proposals subject to our previous comments about needing to update the Code should any changes in Data Protection regulation be made.

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

UKCTA agrees with the general high level proposals as set out in 3.7.1 to 3.7.4.

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

UKCTA agrees with these proposals

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

UKCTA supports the changes to the prior permission regime and the streamlining of applications which we assume will follow. We are pleased to note that existing prior permissions will continue to be valid.

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

UKCTA agrees in principle with the proposals, but we are concerned that investigations may start to take a scatter-gun approach to target all aspects of the delivery chain. If uncontrolled the result will be a bow wave of investigations against the industry which will be unhelpful for maintaining the industry co-operation necessary in order to target rogue providers.

PhonepayPlus should introduce an investigation process whereby a suspected breach is investigated and the investigation is only spread to other parties where there is clear evidence of their involvement or non-compliance anything less than this could be viewed as a fishing trip designed to make something 'stick' in the investigation or as a revenue generation exercise for PhonepayPlus.

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

UKCTA agrees with these proposals in theory and notes that they may need refinement once they are put into practice.

We would like to see a high-level schedule of charges in relation to administrative costs as we are aware from customers that administrative charges are often seen as an opaque charge which causes dissatisfaction.

We welcome the general polluter pays principle behind the charges.

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

UKCTA agrees with these proposals

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

UKCTA agrees with these proposals and welcomes PhonepayPlus' recognition of a key bone of contention amongst providers in terms of having an Emergency Procedure reversed and / or monies released.

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

UKCTA broadly agrees with these proposals but, while acknowledging the careful drafting of rule 4.6.1, we remain concerned that “relevant parties” will be penalised if they have failed to follow PhonepayPlus Guidance to the letter. The proposals represent a radical overhaul providing PhonepayPlus with significantly increased

powers of discretion to interpret and administer the code as it sees fit – particularly given the more general principles of the code itself. UKCTA members are concerned that in the event of an elusive rogue Level 1 or Level 2 provider operating a scam within the market PhonepayPlus will fall back on its principle to spread “responsibility across the delivery chain” in order to be seen to be acting and therefore will penalise the most accessible part of the chain i.e. the network operator.

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

UKCTA agrees with these proposals.

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.

UKCTA believes that either the current 30 or 60 day timescale are viable timescales.

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

UKCTA understands the rationale behind ensuring that consumers receive a full refund for the cost of their call from the offending provider and that the extra revenue penalty this imposes should act as a further deterrent to future breaches. This is a clear statement of expectation which prevents the situation where a provider attempts to recoup monies further up the chain for a service which has been clearly in breach of the code.

However we have some reservations about the practicalities involved in refunding *all* customers, even those that have made no complaint. Given the technical and administrative issues involved in identifying all of the users and organising how to

make the actual refunds, we're not convinced that this is a viable measure – particularly for high volume / lost cost services.

PhonepayPlus also needs to take into account the practice of using AIT procedures by BT to withhold revenues at the origination end in instances where they suspect a breach of the PhonepayPlus code. In such instances there may be an instance of double jeopardy where revenues may not have reached the provider which are now required to be paid out to consumers. In such instances we suggest that BT should be forced to refund its customers in such circumstances or release the monies to flow through to the provider.

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

UKCTA agrees with these proposals.

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

UKCTA agrees with these proposals.

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

UKCTA agrees with that there are no substantial changes to this section.

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

UKCTA agrees with these proposals.

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

UKCTA agrees with these proposals.

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

UKCTA agrees with these proposals.

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.

UKCTA agrees with these proposals.

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?

We welcome PhonepayPlus' recognition that 087 remains separate from 09 services in terms of impact and compliance under the new code. We ask that the Guidance makes 087 service requirements clear rather than risk being treated in the same manner as 09 services.

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

Yes, UKCTA agrees that the funding model should be reviewed at a later date once the registration scheme is embedded and full visibility is provided of all participants within the market.

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.

We believe that PhonepayPlus' impact assessment has covered all of the necessary areas.

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.

UKCTA does not agree with the impact assessment conclusions in relation to Network Operator risk and control. We have commented on these earlier in the document, but we find the impact assessment to be based on flawed assumptions and lacking in any empirical proof of the benefits to be gained from introducing an onerous disproportionate requirement. PhonepayPlus has based its monitoring conclusions upon the mobile industry. We acknowledge that mobile operators have been a focal point for PhonepayPlus work recently and that they do constitute a large proportion of ILP, however the mobile industry cannot be used as a simple proxy for the rest of industry.

A formal requirement to document assessment of risk across multiple providers and to tie this against ongoing service monitoring can not be simply offset by the time-saving it provides PhonepayPlus during investigations. This is overly simplistic and ignores fundamental basics. For UKCTA members these requirements would require additional resources to be employed; current monitoring processes would need to be altered in order to provide the granularity of individual services and in some cases due to the way networks have grown through acquisition it may require network monitoring development. These are a substantial burden upon the fixed line industry and are in no way offset by time saving in the investigation process. We

would also remind PhonepayPlus that the time saving to which they elude will almost certainly be delivered by the registration scheme and not by passing monitoring activity from PhonepayPlus to Network Operators and Level 1 providers.

We have commented elsewhere in the document in relation to the burden imposed by third party audits. Again we see no benefit consideration provided by PhonepayPlus' impact assessment and challenge whether this is actually a justifiable measure in anything but the most serious cases.