

Code of Practice

Code for Premium Rate Services

Approved under Section 121 of the Communications Act 2003

Code of Practice 2015

(Thirteenth Edition)

PhonepayPlus

As approved by the Office of Communications for the purposes of Sections 120 and 121 of the Communications Act 2003 on 1 July 2015

This Thirteenth Edition of the Code of Practice came into force on 1 July 2015

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Part one – About PhonepayPlus

1.1

Introduction to PhonepayPlus

PhonepayPlus is an enforcement authority with responsibility for enforcing this Code of Practice, which regulates the use of premium rate services (PRS). Our aim is to provide a safe environment for consumers using PRS and a fair, proportionate and robust regulatory regime for industry. This Code of Practice, our thirteenth, is based on over twenty years' experience of regulating this market and we have refined the Code to focus on the underlying principles of consumer protection to achieve a regulatory regime that gives greater clarity and more flexibility to providers of PRS.

1.2

Scope of the Code

1.2.1

The Communications Act 2003 (“the Act”) provides Ofcom with the power to approve a Code for the purposes of regulating PRS and Ofcom has approved this Code under Section 121 of the Act. Certain providers of PRS are obliged, pursuant to the Condition set by Ofcom under the Act and Section 120(3)(a) of the Act, to comply with directions given by PhonepayPlus in accordance with its Code of Practice for the purpose of enforcing its provisions.

1.2.2

The Condition set by Ofcom applies to controlled premium rate services (“CPRS”), the definition of which is contained within Part Five of this Code. The definition of CPRS is a subset of the definition of PRS contained in the Act. Insofar as the particular PRS is not within the definition of CPRS, this Code applies to it but compliance is voluntary.

1.3

Providers of premium rate services

PhonepayPlus regulates through the imposition of responsibilities on providers of PRS. Three categories of providers are defined in Part Five: essentially these are Network operators, Level 1 providers (who form part of a premium rate value chain) and Level 2 providers (the end provider of the service). A provider of PRS may fall within more than one of these categories.

1.4

Independence

1.4.1

PhonepayPlus operates in an entirely independent manner. All members of the Board of PhonepayPlus are appointed in their individual capacities. Apart from a minority of members who are appointed on the basis of their contemporary industry knowledge, no member of the Board may have any commercial interest in the premium rate sector.

1.4.2

Any Board member with such commercial interests will take no part in the adjudication process.

1.4.3

Board members constitute a minority on Tribunals that adjudicate on the provisions of the Code, and no more than one Board member may sit on such a Tribunal.

1.5

Guidance and advice

1.5.1

Part Two of the Code sets the outcomes expected by PhonepayPlus and the rules with which providers must comply. To assist PRS providers, PhonepayPlus will also publish non-binding Guidance to accompany the Code. This Guidance will inform providers about how the required rules will be expected to apply to the provision of PRS, both generally and in relation to specific service types.

1.5.2

Guidance is intended to assist those involved in the provision of PRS to comply with the Code; it does not form part of the Code. Compliance with Guidance will be taken into account in the consideration of any alleged breach of the Code and/or the setting of sanctions, as set out further in Part Four below. The extent to which a party attempted to comply with the Code by any alternative methods will also be taken into account.

1.5.3

Guidance may be amended from time to time on reasonable notice and following appropriate consultation.

1.5.4

PhonepayPlus may from time to time issue and/or amend non-binding compliance advice concerning any provisions of the Code.

1.6

Confidentiality

Confidential information (such confidentiality being judged on an objective basis) received by PhonepayPlus will be kept in confidence by PhonepayPlus and will not be divulged to any third party other than PhonepayPlus employees, officers, professional advisors and Ofcom or other proper authority without consent (such consent not being unreasonably withheld or delayed). PhonepayPlus may divulge confidential information if it is necessary for it to do so in order to discharge its responsibilities under the Code. Confidential information may also be disclosed in response to a request from a regulator or other lawful authority, or shared with law enforcement agencies for the purpose of investigating fraud or other offences, or if it enters the public domain or becomes lawfully available from a third party free from any confidentiality restriction.

1.7

Reach of the Code

1.7.1

Save as is provided below, this Code applies to all PRS which are accessed by a user in the United Kingdom or provided by a Level 1 or Level 2 provider which is situated in the United Kingdom.

1.7.2

Some PRS may also be ‘information society services’ in which case enforcement of the Code will be subject to Directive 2000/31/EC. This is further set out in Part Five below. These services are typically PRS which are available on the internet.

This Code is approved by the Office of Communications (Ofcom) for the purposes of sections 120 and 121 of the Communications Act 2003.

This Code was notified in draft to the European Commission in accordance with Directive 98/34/EC as amended by Directive 98/48/EC.

General, compliance and media enquiries

Switchboard	020 7940 7474
Web	www.phonepayplus.org.uk
Compliance Team	compliance@phonepayplus.org.uk
Media Office	020 7940 7440 pressoffice@phonepayplus.org.uk

Part two – Outcomes and Rules

2.

Required outcomes and rules relating to all premium rate services

The outcomes which PRS are expected to achieve are set out below. They are followed by sets of rules which have to be complied with.

References to a PRS or services in this Code include all aspects of a service including content, promotion and marketing and any technical matters including those relating to delivery and quality of sound or picture.

Level 2 providers have responsibility for achieving these outcomes by complying with the rules in respect of the provision of the relevant premium rate service. All Network operators and Level 1 providers involved in providing PRS must take all reasonable steps in the context of their roles to ensure the rules are complied with¹.

2.1

Legality

Outcome

“That PRS comply with the law.”

Rules

2.1.1

PRS must comply with the law.

2.1.2

PRS must not contain anything which is in breach of the law, nor omit anything which the law requires.

2.1.3

PRS must not facilitate or encourage anything which is in any way unlawful.

2.1.4

PRS providers and relevant individuals engaged in the provision of a service must hold all licences, permissions and qualifications required by law.

2.2

Transparency and Pricing

Outcome

“That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

1. See Part 3 below and in particular paragraphs 3.7 and 3.8

2.2.1

Consumers of PRS must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.

2.2.2

Promotional material must contain the name (or brand if part of the name) and the contact details of the Level 2 provider of the relevant PRS except where otherwise obvious. If the contact details include a telephone number, it must be a UK number and not at premium rate.

2.2.3

PhonepayPlus may specify categories of promotions in respect of which promotional material must contain reference to the Level 2 provider's registration with PhonepayPlus and its registration number. PhonepayPlus shall publish a list of any such specified categories on its website.

2.2.4

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

2.2.5

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

2.2.6

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

Rules relating to pricing

2.2.7

In the course of any promotion of a PRS, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.

2.2.8

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

2.2.9

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

2.3

Fairness

Outcome

“That consumers of PRS are treated fairly and equitably.”

Rules

2.3.1

Consumers of PRS must be treated fairly and equitably.

2.3.2

PRS must not mislead or be likely to mislead in any way.

2.3.3

Consumers must not be charged for PRS without their consent. Level 2 providers must be able to provide evidence which establishes that consent.

2.3.4

PRS must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.

2.3.5

PRS must not be of a nature which encourages unauthorised use by non bill-payers.

2.3.6

Level 2 providers must take reasonable and prompt steps to identify excessive use of its service or services by any consumer and to inform the relevant consumer of that usage.

2.3.7

Level 2 providers of sexual entertainment services must take all reasonable steps to discourage use by non-bill payers and to prevent use by those under 18 years of age.

2.3.8

Level 2 providers of virtual chat services must take all reasonable steps to discourage use by non-bill payers and to prevent use by those under 18 years of age. However, non-sexual entertainment text and picture-based virtual chat services may be used by those aged 16-17 provided that no advertising for the service has occurred in media where the target audience is below 16 years of age.

2.3.9

PRS must not directly appeal to children to purchase products or take advantage of children's potential credulity, lack of experience or sense of loyalty.

2.3.10

PRS must not be promoted or provided in such a way that it results in an unfair advantage being taken of any vulnerable group or any vulnerability caused to consumers by their personal circumstances where the risk of such a result could have been identified with reasonable foresight.

2.3.11

Where the means of termination is not controlled by the consumer there must be a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.

2.4

Privacy

Outcome

“That PRS do not cause the unreasonable invasion of consumers’ privacy.”

Rules

2.4.1

Level 2 providers must ensure that PRS do not cause the unreasonable invasion of consumers’ privacy.

2.4.2

Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent. If consent is withdrawn the consumer must not be contacted thereafter. Where contact with consumers is made as a result of information collected from a PRS, the Level 2 provider of that service must be able to provide evidence which establishes that consent.

2.4.3

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

2.4.4

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

2.5

Avoidance of harm

Outcome

“That PRS do not cause harm or unreasonable offence to consumers or to the general public.”

Rules

2.5.1

PRS must not cause or be likely to cause harm or unreasonable offence to consumers or to the general public.

2.5.2

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

2.5.3

PRS must not encourage or be likely to encourage consumers to put themselves or others at risk.

2.5.4

PRS must not promote or facilitate prostitution.

2.5.5

PRS must not induce and must not be likely to induce an unreasonable sense of fear, anxiety, distress or offence.

2.5.6

Level 2 providers must ensure that their services are not promoted in an inappropriate way.

2.5.7

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

2.5.8

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

2.5.9

Where PRS involve the possibility that two or more consumers might be able to exchange contact details or make arrangements to meet, then clear advice should be given regarding appropriate safeguards, in line with any generally available police advice.

2.6

Complaint handling

Outcome

“That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily.”

Rules

2.6.1

Level 2 providers must ensure that consumers of their services are able to have complaints resolved quickly, easily and fairly and that any redress is provided quickly and easily.

2.6.2

Level 2 providers must provide an appropriate and effective complaints process which is free or low-cost.

2.6.3

Consumer complaints must be handled promptly at all stages within a process which is clear to the consumer.

2.6.4

Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner.

2.6.5

Consumers who remain dissatisfied with the handling of their complaint must be informed that they may complain to PhonepayPlus and be provided with its contact details.

2.6.6

Level 2 providers must provide upon request to PhonepayPlus such information that allows examination of how they have handled any consumer complaint.

Part three – General Responsibilities

3.1

All Network operators, Level 1 and Level 2 providers must:

3.1.1

ensure that PhonepayPlus regulation is satisfactorily maintained by:

- (a) taking all reasonable steps in the context of their roles, including the adoption and maintenance of internal arrangements to ensure that the rules set out in Part Two are complied with and the outcomes achieved in respect of all PRS with which they are concerned, and
- (b) carrying out their own obligations under the Code promptly and effectively, and
- (c) taking all reasonable steps to prevent the evasion of, and not to undermine, the regulation of PRS, and
- (d) taking all reasonable steps to ensure that consumer complaints are resolved quickly and fairly and that any redress is provided quickly and easily.

3.1.2

have regard to the funding provisions which are set out in Annex 1 to the Code and comply with such provisions where so required.

3.1.3

assess the potential risks posed by any party with which they contract in respect of:

- (a) the provision of PRS; and
 - (b) the promotion, marketing and content of the PRS which they provide or facilitate
- and take and maintain reasonable continuing steps to control those risks.

3.1.4

act on any direction, instruction, notice or request for information given by PhonepayPlus in pursuance of its duties as a regulator. Where PhonepayPlus specifies a timeframe for action or response that timeframe must be adhered to or an extension promptly requested in writing setting out clear reasons. Any such extension will be granted only in exceptional circumstances.

3.1.5

not engage or permit the involvement in the provision of PRS of a Network operator, Level 1 or Level 2 provider and/or associated individual in respect of whom a sanction, which has been published, has been imposed under paragraphs 4.8.2(f), (g) or (h) or any previous version of those provisions so as to enable such person to operate in breach of that sanction.

3.1.6

carry out reasonable monitoring of PRS provided by any Level 1 or Level 2 provider with which they have contracted.

3.1.7

use all reasonable endeavours in the context of their roles to ensure that all of the PRS with which they are involved are of adequate technical quality, including the mechanisms used to deliver services to and to enable exit from services by consumers.

3.2

Directions

3.2.1

Any direction, instruction, notice or request for information issued by PhonepayPlus will be effective immediately upon being sent by fax or email to a fax number or email address provided by the relevant PRS provider for registration with PhonepayPlus. If a direction, instruction, notice or request for information is sent by PhonepayPlus by first class pre-paid post to an address provided by the relevant PRS provider for registration with PhonepayPlus, then it will be effective on the second working day after posting.

3.2.2

When directed to do so by PhonepayPlus all Network operators and Level 1 and Level 2 providers shall immediately:

- (a) terminate access to such PRS and/or numbers as PhonepayPlus may specify;
- (b) terminate access to all numbers that are allocated to any specified Level 1 or Level 2 provider;
- (c) terminate access to some or all numbers over which a specified PRS or type of service may be operated.

3.2.3

When directed to do so by PhonepayPlus all Network operators and Level 1 providers shall immediately:

- (a)
 - (i) retain such amount of money as PhonepayPlus may require out of monies payable by any Network operator or Level 1 provider to a Level 1 or Level 2 provider until permitted by PhonepayPlus to do otherwise, or
 - (ii) retain some or all money payable to a specified Level 1 or Level 2 provider in respect of certain numbers or PRS (as may be specified) until permitted by PhonepayPlus to do otherwise, or
 - (iii) retain all money payable to a specified Level 1 or Level 2 provider until informed by PhonepayPlus that it may do otherwise;
- (b) pay over to PhonepayPlus such an amount of money retained pursuant to 3.2.3(a) or withheld pursuant to paragraph 3.5 below, as PhonepayPlus may require in order to satisfy outstanding fines and/or administrative charges, such payments to be made within 30 days of such direction;
- (c) pay refunds on behalf of Level 1 or Level 2 providers when so required by PhonepayPlus in accordance with paragraph 4.9.1 or 4.9.2 below.

3.3

Contracts

3.3.1

All Network operators and Level 1 providers must perform thorough due diligence on any party with which they contract in connection with the provision of PRS and must retain all relevant documentation obtained during that process for a period that is reasonable in the circumstances.

3.3.2

In connection with the provision of PRS which are not exempt services (see paragraph 3.4.2 below), Network operators, Level 1 and Level 2 providers must only contract with other Network operators, Level 1 or Level 2 providers which are registered with PhonepayPlus.

3.3.3

Such contracts must include provisions that:

- (a) each party is bound to comply with the Code and any directions made by PhonepayPlus in accordance with it, and
- (b) by reference to section 1 of the Contracts (Rights of Third Parties) Act 1999 (or where the contract is not governed by English law, any other relevant law having equivalent effect) PhonepayPlus may directly enforce the relevant term(s) of that contract.

3.3.4

Any breach of these provisions concerning the obligations of Network operators and Level 1 and Level 2 providers in respect of contracts will be regarded as very serious Code breaches.

3.4

Registration

3.4.1

Before providing any PRS all Network operators, Level 1 and Level 2 providers must register with PhonepayPlus subject only to paragraph 3.4.3 below.

3.4.2

PhonepayPlus may make exemptions from the duty to register in accordance with paragraph 3.4.3.

3.4.3

PhonepayPlus may identify particular categories of Network operators, Level 1 or Level 2 providers and the circumstances in which the duty to register will not apply to them (“the exemption”).

3.4.4

Network operators, Level 1 and Level 2 providers who provide a PRS that operates within an exemption under paragraph 3.4.3, are not, in relation to that service, required to register with PhonepayPlus.

3.4.5

PhonepayPlus will publish on their website a full up-to-date list of exemptions.

3.4.6

Registration will require the provision of such information as PhonepayPlus may from time to time require for the purpose of efficient and effective regulation of PRS.

3.4.7

Information provided to PhonepayPlus for the purposes of registration must be updated as soon as practicable.

3.4.8

Registration must be renewed annually or at intervals determined by PhonepayPlus.

3.4.9

PhonepayPlus will make a reasonable charge for such registration and for annual renewal of registration. PhonepayPlus will set the amount of the charge, giving reasonable notice to interested parties. All Network operators, Level 1 and Level 2 providers who wish to register must pay the charge.

3.4.10

All breaches and sanctions imposed under the Code (this edition and any previous editions) on any Network operator, Level 1 or Level 2 provider will be linked to that Network or provider's registered details together with any relevant information arising from adjudications concerning associated individuals or any other relevant information which is publicly held.

3.4.11

Certain categories of information held on the PhonepayPlus Register under this provision will be accessible at any time by relevant parties or regulators and any law enforcement agency with a legitimate interest.

3.4.12

A registered party which is not providing any PRS or is providing a PRS which operates only within an exemption may de-register at any time but their details will continue to be held by PhonepayPlus for a reasonable period.

3.4.13

PhonepayPlus may make clear on the Register any sanction imposed under the Code (this edition and any previous editions) and any failure to renew registration within such period as PhonepayPlus may reasonably require and may identify any director partners or other associated individuals involved.

3.4.14

Numbers

- (a) Level 2 providers must, within two working days of the service becoming accessible to consumers, provide to PhonepayPlus relevant details (including any relevant access or other codes) to identify services to consumers and must provide the identity of any Level 1 providers concerned with the provision of the service.
- (b) PhonepayPlus will include all such details on the PhonepayPlus register and those details will be available to be checked directly by consumers.
- (c) Whenever the information provided under sub-paragraph 3.4.14(a) above changes, the updated information must be provided to PhonepayPlus within two working days of the change.

3.5

Withhold

3.5.1

Network operators shall not make, and shall withhold, payments due to any provider for a period of at least 30 days after the use of the PRS to which the payments relate.

3.5.2

Where PhonepayPlus so directs, in accordance with the provisions of this Code, payments must be retained for a period in excess of 30 days.

3.5.3

Any Network operator who pays money to any provider, contrary to the obligation to withhold payments pursuant to paragraph 3.5.1 or after receipt of a direction by PhonepayPlus to retain money from that provider, may be directed by PhonepayPlus to pay to it an amount no more than the amount of the fines, administrative charges or refunds that have not been paid by, or on behalf of, the provider when due without prejudice to any other action which might be taken by PhonepayPlus against that Network operator.

3.5.4

The amount payable by the Network operator to PhonepayPlus under paragraph 3.5.3 shall be no more than the amount that should have been withheld or retained by the Network operator in accordance with the Code.

3.6

Data Protection

3.6.1

All Network operators, Level 1 and Level 2 providers:

- (a) must make a notification to the Office of the Information Commissioner under the Data Protection Act 1998 and must, in their notification:
 - (i) disclose PhonepayPlus as the potential recipient of personal data; and
 - (ii) state that data collected from consumers may be used by PhonepayPlus for regulatory purposes.

- (b) must not give any undertaking to consumers, suppliers, other Networks Operators, Level 1 or Level 2 providers or others which could preclude any information being given to PhonepayPlus in confidence. Level 1 and Level 2 providers must warn consumers that any data collected may be passed to PhonepayPlus.

3.6.2

Services which involve the collection of personal information, such as names, addresses and phone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to consumers the purpose for which the information is required and may be used in the future. The service must also identify the data controller (if different from the Network operator, Level 1 or Level 2 provider) in any different use to which the personal information might be put and give the consumer a clear opportunity to prevent such usage.

3.7

Responsibilities of Network operators

3.7.1

Prior to commencement of any PRS Network operators must supply PhonepayPlus with such information as it may require and which will establish that the Network operator meets the criteria necessary to be recognised as a Network operator for the purposes of the Code.

3.7.2

If a Network operator provides any part of a PRS which directly impacts on consumers, whether in respect of its promotion or otherwise, the Network operator shall be responsible for compliance with the rules and obligations set out in this Code in relation to the functions it performs in respect of that PRS.

3.7.3

If pursuant to an investigation carried out under Part 4 of the Code PhonepayPlus considers that a Network operator is involved in a breach of the Code in relation to its own functions in respect of a premium rate service then PhonepayPlus may raise a breach of the Code against that Network operator and proceed against it. It shall be treated in all respects concerning that breach of the Code as though it was a Level 2 provider.

3.7.4

Number Exportation

- (a) Network operators must maintain a record of premium rate numbers which, having been allocated or exported to them, are exported by them to another Network operator or over which they cease to have control for any reasons.
- (b) Network operators must supply to PhonepayPlus on request without any delay in relation to any number to which paragraph 3.7.4(a) applies, the name of the Network operator to whom the number has been exported or who has control over it and, if known, the name of the Level 2 provider.

3.8

Responsibilities of Level 1 providers

3.8.1

If a Level 1 provider provides any part of a PRS which directly impacts on consumers, whether in respect of its promotion or otherwise, the Level 1 provider shall be responsible for compliance with the rules and obligations set out in this Code in relation to the functions it performs in respect of that PRS.

3.8.2

If pursuant to an investigation carried out under Part Four of the Code PhonepayPlus considers that a Level 1 provider is involved in a breach of the Code in relation to its own functions in respect of a PRS then PhonepayPlus may raise a breach of the Code against that Level 1 provider and proceed against it. It shall be treated in all respects concerning that breach of the Code as though it was a Level 2 provider.

3.9

Responsibilities of Level 2 providers

3.9.1

Before promoting or providing services, Level 2 providers must have readily available all documentary and other evidence necessary to substantiate any factual claims made. This material, together with a statement outlining its relevance to the factual claim in question must be provided without delay if requested by PhonepayPlus.

3.9.2

Where certain premium rate number ranges, shortcodes or other means of access to services have been designated by either Ofcom or a Network operator for use only for particular purposes or for the provision of particular categories of service, or where Ofcom or a Network operator has restricted certain premium rate number ranges, shortcodes or other means of access to services from being used for particular purposes or for the provision of particular categories of service, those number ranges, shortcodes or means of access must not be used in contravention of these restrictions. Ofcom's designations will have precedence over any issued by a Network operator.

3.10

Prior Permission

3.10.1

PhonepayPlus may require that particular categories of service must not be provided without its prior written permission. PhonepayPlus will give reasonable notice of such requirement and the category of service to which it applies, and will publish a full list of such service categories on its website from time to time.

3.10.2

Prior permission may be refused or granted by PhonepayPlus subject to the imposition of additional conditions following consideration of all relevant factors including the compliance record of those concerned with the provision of the service. Prior permission may be withdrawn or varied upon reasonable grounds and with notice in writing.

3.10.3

If a party who has applied for prior permission is not satisfied with any aspect of the determination made by PhonepayPlus it may apply to the Chair of the CCP for a review of the determination.

3.10.4

- (a) Where a Level 1 or Level 2 provider can demonstrate to the satisfaction of PhonepayPlus in relation to a particular service that any objective of the Code can be adequately satisfied by means other than strict adherence to the Code provisions, PhonepayPlus may give prior written permission (which may be given subject to conditions) for the service to be provided by such alternative means. Such permission may be withdrawn or varied by PhonepayPlus subject to the giving of reasonable notice.
- (b) Where PhonepayPlus considers following reasonable consultation that any objective of the Code can be adequately satisfied by means other than strict adherence to the Code provisions it may issue a Statement of Application which will set out such alternative means and any conditions applicable. A Statement of Application may be withdrawn or varied by PhonepayPlus on the provision of reasonable notice.

3.10.5

Whenever PhonepayPlus grants permission under sub-paragraph 3.10.4 (a) it will publish on its website prior to the permission taking effect the details of the permission, the relevant parts of the Code to which it applies and any conditions attached to it, but shall not be required to publish commercial confidential information.

3.10.6

A breach of any condition imposed in connection with prior permission granted by PhonepayPlus in accordance with the Code shall be a breach of the Code.

3.10.7

PhonepayPlus may require the payment of reasonable charges in respect of dealing with applications for prior permission.

3.11

Special conditions

3.11.1

Where PhonepayPlus is satisfied there is or is likely to be a risk of:

- (a) a significant level of consumer harm; or

- (b) unreasonable offence to the general public, arising from a particular category of premium rate service (“a high risk service”), it may impose conditions (“special conditions”) for the purpose of ensuring compliance with the Code’s outcomes. The conditions which may be imposed are the conditions set out in Annex 2 and any related conditions which are necessary for the proper functioning of those conditions.

3.11.2

Before imposing any conditions under paragraph 3.11.1 PhonepayPlus will consult with relevant stakeholders and consider their representations where made within the period specified for comment. In urgent circumstances and notwithstanding paragraph 3.12.4, PhonepayPlus may carry out the consultation after imposition of the special conditions and, within a reasonable period, consider whether or not the conditions should be maintained, amended or removed in light of any consultation responses.

3.11.3

Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the special conditions. A breach of any special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code.

3.11.4

Upon determining to attach special conditions to a category of high risk services PhonepayPlus shall forthwith publish on its website a description of the relevant category of high risk service and the special conditions which will apply.

3.12

Specified Service Charges and Durations of Calls

3.12.1

PhonepayPlus may, in relation to the service categories set out in paragraph 3.12.2 below, specify:

- (a) the service charges which may be spent per call or calls taken together in any 24 hour period or monthly billing cycle,
- (b) the duration permitted for a call or calls to a service in any specified time period,
- (c) the actions which must be taken at specified intervals, or after specified service charges or call duration have been reached, including but not limited to:
 - (i) The provision of a spend or call duration reminders;
 - (ii) The immediate termination of the service after provision of a spend or call duration reminder unless the consumer positively confirms a wish to continue to use the service;
 - (iii) The immediate termination of the service.

3.12.2

The service categories to which paragraph 3.12.1 refer are:

- (a) Sexual entertainment services;
- (b) Virtual chat services;
- (c) Live entertainment services (including sexual entertainment services);

- (d) Chatline services;
- (e) Remote gambling services;
- (f) Professional advice services;
- (g) Counselling services;
- (h) Subscription services;
- (i) Services aimed at, or which should have been expected to be particularly attractive to children; and
- (j) Any services in respect of which special condition (d) at Annex 2 of the Code has been imposed.

3.12.3

Any service charge, call duration, action or advertised cost under paragraph 3.12 must be fair and proportionate.

3.12.4

Before any such amounts, call duration, action or advertised cost is specified under paragraph 3.12, PhonepayPlus will consider all factors that are relevant and within its reasonable contemplation, and will consult relevant stakeholders and consider every representation about the proposal that is made to it within the period specified for comment.

3.12.5

Any reference to compliance with the rules or obligations under this Code shall include compliance with all specified amounts, call durations and actions set by PhonepayPlus under paragraph 3.12.1. A breach of any specified amount, duration or action set under that paragraph shall be a breach of the Code.

3.12.6

PhonepayPlus shall publish a full list of all such specified amounts, call duration and actions and the service categories to which they relate on their website.

Part four – Investigations, Procedures and Sanctions

4.1

Tribunals

Details concerning the Code Compliance Panel ('CCP') and Tribunals are set out in 'Code Annex 3: The Code Compliance Panel and Tribunals' which is published on the PhonepayPlus website.

4.2

Investigations

4.2.1

PhonepayPlus will consider, and where appropriate investigate, all complaints which it receives, provided the complaint is made within a reasonable time from when it arose.

4.2.2

PhonepayPlus monitors PRS, and may initiate an investigation itself where there appears to be a breach of the Code.

4.2.3

During an investigation PhonepayPlus may direct any Network operator, Level 1 or Level 2 provider (referred to in this section as a party) to disclose, subject to the confidentiality provision set out in paragraph 1.6, and within a time period which PhonepayPlus may specify, any relevant information or copies of documents. This may include, but is not limited to:

- (a) call volumes, patterns and revenues;
- (b) details of numbers allocated to any relevant party;
- (c) details of any services operating on any specified premium rate number, shortcode or other means of access;
- (d) evidence of consumer consents;
- (e) evidence of consumer complaint handling;
- (f) evidence of due diligence;
- (g) evidence of risk assessment and control;
- (h) arrangements between Network operator and PRS providers;
- (i) arrangements between any PRS providers and any other relevant party.

4.2.4

A party must not knowingly or recklessly conceal or falsify information, or provide false or misleading information to PhonepayPlus (either by inclusion or omission).

4.2.5

A party must not fail to disclose to PhonepayPlus when requested any information that is reasonably likely to have a regulatory benefit in an investigation.

4.2.6

Taking into account the severity of the consumer harm alleged, and the breach history of the party or parties concerned, PhonepayPlus will decide whether to use the Track 1, Track 2 or the Emergency procedure when conducting an investigation.

4.2.7

Where breaches are raised against more than one party as part of the same investigation, PhonepayPlus is not obliged to use the same investigation procedure for each party involved. It will decide the most appropriate procedure to use on a case by case basis, based on each party's involvement and history.

4.2.8

During or following an investigation, PhonepayPlus may raise breaches of the Code against any party it considers to be involved in breaching the Code.

4.2.9

If further relevant information comes to light during the course of an investigation, and the case has not yet been placed before a Tribunal, PhonepayPlus may change the investigation procedure used, or withdraw an allegation of any or all breaches, at its discretion. If the investigation procedure is so changed PhonepayPlus shall allow adequate time to the party concerned to deal with the matter.

4.3

Track 1 Procedure

In appropriate cases, including where an apparent breach of the Code has caused little or no consumer harm or offence to the general public, PhonepayPlus may in its discretion use the Track 1 procedure.

Factors including the seriousness of the apparent breach and the case history (including any previous use of the Track 1 procedure) of the party under investigation ('the relevant party') will be taken into account when deciding whether the Track 1 procedure should be used.

In the event of the Track 1 procedure being used, the following will occur:

4.3.1

The relevant party will be contacted and informed of the apparent breach. PhonepayPlus will provide the relevant party with a set of actions which it believes is necessary to remedy the breach and prevent any repetition together with a deadline for the actions ('the action plan'). PhonepayPlus may invoice the relevant party for its reasonable administrative costs.

4.3.2

If the action plan is accepted, the relevant party must demonstrate to PhonepayPlus that it has been followed and the breach remedied on or before the deadline. If this is not done PhonepayPlus will assume that the breach has not been remedied and the Track 2 procedure may be invoked.

4.3.3

Where the relevant party does not agree to any part of the action plan (including the deadline), it must clearly set out its disagreement in writing within five working days of receipt by it of the action plan. PhonepayPlus will consider such representations and may decide to alter the action plan as a result. If no agreement can be reached, the Track 2 procedure may be invoked.

4.3.4

If the relevant party disputes that a breach has occurred, the Track 2 procedure may be invoked.

4.3.5

PhonepayPlus will keep a record of the use of the Track 1 procedure. A Tribunal may take into account the previous use of the Track 1 procedure if considering any breaches by the same or any connected party in the future.

4.4

Track 2 Procedure

When PhonepayPlus receives or initiates a complaint, the Track 2 procedure will usually be used:

4.4.1

PhonepayPlus will provide the relevant party with all necessary information about the alleged breach or breaches of the Code. This will include details of any service and/or promotional material and will refer to the relevant provisions of the Code.

4.4.2

The relevant party will be given a reasonable period of time in which to respond and provide any information requested. A response will normally be required within 10 working days. In exceptional circumstances PhonepayPlus may set a shorter or longer time limit but it will never be less than one working day, nor longer than 15 working days.

4.4.3

If the relevant party fails to respond within the required period, PhonepayPlus will proceed with the case on the assumption that it does not wish to respond.

4.4.4

PhonepayPlus will prepare a report of its allegations and investigation including any responses from the relevant party, together with relevant supporting evidence, which will be placed before a Tribunal to adjudicate on the matter.

4.4.5

The relevant party will be notified by PhonepayPlus of the date of the Tribunal consideration, and entitled to make informal representations to on that date in person in order to clarify any matter.

4.4.6

At any point during the course of the Track 2 procedure, PhonepayPlus may direct a Network operator or Level 1 provider to retain any outstanding payment relating to the service in question from the relevant party.

4.5

Emergency Procedure

4.5.1

Where an apparent breach of the Code has taken place which is serious and requires urgent remedy, PhonepayPlus may use the Emergency procedure. In such circumstances, there shall be the following procedural stages:

- (a) PhonepayPlus will conduct an immediate preliminary investigation.
- (b) On completion of its preliminary investigation, PhonepayPlus shall (unless there are important public interest reasons to the contrary) use its best endeavours to notify the relevant party of its initial findings and invite that party to make representations to PhonepayPlus. If PhonepayPlus decides to proceed, it will notify the three members of the CCP of its findings and of the representations, if any, provided by the relevant party. Where it has not been possible or appropriate to notify the relevant party prior to notifying the three members of the CCP, PhonepayPlus will use its best endeavours to provide the three members of the CCP with all facts material to its decision including any material which it considers might reasonably have been relied upon by the relevant party. The three members of the CCP notified will decide whether the situation is sufficiently serious and urgent to warrant the use of the Emergency procedure.
- (c) If all three people agree on the use of the Emergency procedure, PhonepayPlus will use its best endeavours to inform the relevant party that its service appears to be in breach of the Code and that the Emergency procedure is being used. PhonepayPlus will, as far as is deemed appropriate and proportionate, also take the following actions:
 - (i) Direct the relevant party to suspend the service immediately.
 - (ii) Direct any relevant Network operator or Level 1 provider to retain any payments outstanding in respect of the service under investigation.
 - (iii) Direct any relevant Network operator or Level 1 provider to bar access to the relevant service or numbers immediately if the party under investigation cannot be contacted or does not immediately suspend the service.
 - (iv) Publish its use of the Emergency procedure in such manner as it sees fit.
- (d) Once the service has been suspended, PhonepayPlus will provide the relevant party with all necessary information about the alleged breaches of the Code. This will include details of the service and/or promotional material and will refer to the relevant sections of the Code.

- (e) The relevant party will then have five working days in which to respond and provide any information requested. In exceptional circumstances, PhonepayPlus may set a shorter time limit.
- (f) All relevant information, including any response from the party under investigation, will be placed before a Tribunal as soon as is reasonably practicable after the relevant party has responded, or the deadline for response has passed.
- (g) The relevant party will be informed by PhonepayPlus of the date of the Tribunal consideration and entitled to make informal representations to it on that date in person in order to clarify any matter.

4.5.2

Review of Emergency procedure

- (a) Within two working days following the making of a direction under paragraph 4.5.1(c), or at any time prior to adjudication in the event that new information comes to light suggesting that the use of the Emergency procedure is not appropriate, the relevant party may apply to PhonepayPlus for an urgent review of the use of the Emergency procedure in the particular case.
- (b) The application for review must be made in writing, must include any supporting evidence and must set out:
 - (i) the grounds on which the relevant party considers that the Emergency procedure should not have been used and/or;
 - (ii) the grounds on which the relevant party considers that access to the service or numbers should no longer be prevented.
- (c) Subject to any requirement for further information, a Tribunal will consider the matter within two working days of receipt of an application for review and will decide, through whatever process it decides, whether the prevention of access to the services or numbers should continue pending completion of the normal Emergency procedure process, or whether access should be permitted to some or all of the services or numbers concerned, and if so upon what, if any, conditions. The Tribunal may also decide whether the Emergency procedure should be changed to a Track 2 procedure and/or whether PhonepayPlus should direct any relevant Network operator, Level 1 provider or Level 2 provider to cease retaining any payments outstanding in respect of the service under investigation.

4.6

Adjudication

4.6.1

The Tribunal will make a decision as to whether the Code has been breached on the basis of the evidence presented to it. When considering whether there has been a breach of the Code, a factor the Tribunal may take into account where relevant is the extent to which the relevant party followed any relevant Guidance published by PhonepayPlus. Relevant parties will be informed in writing of the outcome of the case. A full reasoned decision (the 'Tribunal decision') will be prepared and provided to the relevant party. The relevant party will be informed of its right under the Code to apply for a review and/or an oral hearing. The Tribunal decision will be published on the PhonepayPlus website, and in any other way that PhonepayPlus shall determine.

4.7

Reviews

4.7.1

Tribunals may, at their discretion, review any determinations made in respect of applications for prior permission, adjudications, sanctions and/or administrative charges.

4.7.2

The relevant party or PhonepayPlus may request a review by setting out in writing the grounds for a review. Except where new information, not reasonably available at the time of the original determination, has come to light, a request for a review must be made within 10 working days of the publication of the relevant determination, or the sending to the relevant party of the prior permission decision or the administrative charge invoice. In any case, except in highly exceptional circumstances, a request for a review must be made within 30 days of the publication of the relevant determination, or receipt of the prior permission decision or the administrative charge invoice.

4.7.3

Where the application for a review is in respect of a determination made by a Tribunal, it must raise a new issue of fact or law that was not reasonably available at the time of the original Tribunal or demonstrate that the Tribunal came to a decision which was so unreasonable that no reasonable Tribunal could have reached it.

4.7.4

Having received a request for review, the Chair of the CCP (or other legally qualified member of the CCP) will consider the grounds of the application and decide whether the review is merited. If it is decided that the review is merited, a Tribunal will carry out a review of the relevant decision(s) as soon as is practicable.

4.7.5

The enforcement of sanctions imposed pursuant to an adjudication is not automatically suspended by written notice requiring a review. The relevant party may apply in writing to the Chair of the CCP setting out the grounds on which the sanction should be suspended. Unless the Chair (or other legally qualified member of the CCP) considers that there are exceptional reasons in the particular case to grant the application, he will only do so if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. If a relevant party has not been granted a suspension of sanction and has failed to comply with any sanction, the Chair (or other legally qualified member of the CCP) may stay the review.

4.8

Sanctions

4.8.1

Once a Tribunal has determined that the Code has been breached, PhonepayPlus will put before it any breach history of the party in breach, any previous sanctions imposed, the revenue earned from the service or services and any other relevant information. This will include, but is not limited to, the extent to which the party in breach has followed any relevant Guidance published by PhonepayPlus and/or the extent to which the party in breach attempted to comply with the Code by any alternative methods. A Tribunal will generally consider failure to comply with Guidance combined with failure to consider alternative methods to comply with the Code to be a serious aggravating factor. Following Guidance will be considered a mitigating factor.

4.8.2

The Tribunal can apply a range of sanctions depending upon the seriousness with which it regards the breach(es) upheld. In considering the seriousness of the breaches and determining the sanctions to impose the Tribunal will have regard to any prevailing sanctions guide that has been published by PhonepayPlus. Having taken all relevant circumstances into account, the Tribunal may impose any of the following sanctions singularly or in any combination in relation to each breach as it deems to be appropriate and proportionate:

- (a) require the relevant party to remedy the breach (including requiring a party to register in the PhonepayPlus Register if it has not previously done so);
- (b) issue a formal reprimand and/or warning as to future conduct;
- (c) require the relevant party to submit some or all categories of service and/or promotional material to PhonepayPlus for compliance advice or prior permission for a defined period. Any compliance advice given must be implemented within a specified period to the satisfaction of PhonepayPlus and a reasonable administrative charge for such advice may be charged to be paid to PhonepayPlus;
- (d) impose a fine not exceeding the maximum amount permitted by law on the relevant party to be paid to PhonepayPlus;
- (e) require that access is barred to some or all of the relevant party's services or numbers for a defined period, or until compliance advice has been implemented to the satisfaction of PhonepayPlus, and direct any Network operator, Level 1 or Level 2 provider accordingly;
- (f) prohibit a relevant party and/or an associated individual found to have been knowingly involved in a serious breach or a series of breaches of the Code from providing, or having any involvement in, specified types of service or promotion for a defined period;
- (g) prohibit a relevant party and/or an associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from providing, or having any involvement in, any PRS or promotion for a defined period;
- (h) prohibit a relevant party from contracting with any specified party registered (or which should be registered) in the PhonepayPlus Register save on specified terms or at all for a defined period;

- (i) require that refunds are paid within a specified time period to all or any specified group of consumers who claim a refund, for the full amount spent by them for the relevant service or for a specified lesser amount, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made;
- (j) require in circumstances where there has been a serious breach of the Code and/or serious consumer harm, or unreasonable offence to the general public that refunds for the full amount spent or a specified lesser amount are paid within a specified time period to all or any specified group of consumers who have used the service, regardless of whether they have claimed a refund;
- (k) require the relevant party to submit to a compliance audit carried out by a third party approved, and to a standard prescribed, by PhonepayPlus, the costs of such audit to be paid by the relevant party. Such an audit must be completed and the recommendations implemented within a period specified by PhonepayPlus.

4.8.3

Where refunds have been ordered under paragraph 4.8.2(j) they shall be credited directly to the consumer's account with his or her originating communications provider. Where there is no such originating communications provider account, consumers must be notified of their right to a refund and be given an easy method of obtaining the refund. Where it is not technically or legally possible to notify consumers of their right to a refund, PhonepayPlus may direct the relevant party to donate an amount of money equivalent to the refunds to an appropriate registered charity selected or approved by PhonepayPlus. Evidence must be provided to PhonepayPlus that refunds have been made or payment to the selected charity has been made.

4.8.4

All breaches upheld and sanctions imposed against a Network operator, Level 1 or Level 2 provider under Track 2 or the Emergency procedure will be noted on the PhonepayPlus Register and will be available to public scrutiny.

4.8.5

The failure of any relevant party to comply with any sanction within a reasonable time will result in:

- (a) PhonepayPlus issuing a direction to a Network operator, Level 1 or Level 2 provider to suspend access to some or all premium rate numbers, shortcodes and/or any other means of access to services or other codes allocated to the relevant party until full compliance with the sanction(s) has been achieved. Such suspension would also include any premium rate numbers, shortcodes or other means of access to services, or other codes allocated during the period of suspension; and/or
- (b) a further breach of the Code by the relevant party, which may result in additional sanctions being imposed; and/or
- (c) PhonepayPlus taking such other action as it is entitled to do by law.

4.8.6

If a Network operator fails to comply with a sanction direction issued following the process set out in this Part (including any appeal to the Independent Appeals Tribunal) PhonepayPlus may (without prejudice to any other action available to it) refer the matter to Ofcom in accordance with Section 120 of the Act for it to take such action as it shall see fit.

4.8.7

If a Tribunal considers that it may wish to make a prohibition under sub-paragraph 4.8.2(f), 4.8.2(g) or 4.8.2(h) in respect of any associated individual, PhonepayPlus shall first make all reasonable attempts to notify the individual concerned and the relevant party in writing. It shall inform each of them that any of them may request an opportunity to make representations in person to the Tribunal and of the right of any of them (or PhonepayPlus itself) to instead require an oral hearing.

4.9

Refunds

4.9.1

Where a Tribunal has directed a relevant party to pay refunds to consumers, either under paragraph 4.8.2(i) or 4.8.2(j), and the relevant party can satisfy PhonepayPlus that it cannot do so without recourse to money which has been retained by a Network operator or Level 1 provider in response to a PhonepayPlus direction ('a retention'), then it may pass a list of consumers to whom refunds are due to the party which holds a retention, which will then make the payments due from the retention. In such cases, the relevant party will be responsible for any reasonable administration costs which the party who has a retention may incur. Those costs may be deducted from the remainder of a retention after all refunds are made.

4.9.2

If a relevant party fails promptly to pay refunds in response to a PhonepayPlus sanction, PhonepayPlus may (without prejudice to other action) direct a Network operator or Level 1 provider which holds a retention to make refunds from the retention. In such cases, the relevant party will be responsible for any reasonable administration costs which the party with a retention incurs as a result of making payments on its behalf. Those costs may be deducted from the retention after all refunds are made.

4.9.3

The obligation on any party holding a retention to make refunds on behalf of a party in breach of the Code shall end if PhonepayPlus has not issued a direction as set out in paragraph 4.9.2 by four months after the completion of the adjudication process, provided that any reasonable time for any appeals has also passed.

4.9.4

If funds from a retention remain following the payment of all refunds, or after the four month period mentioned above, it must be used to pay in whole or in part any outstanding PhonepayPlus fines or administrative charge owed by the party in breach.

4.10

Administrative charge

4.10.1

A relevant party found to be in breach of the Code may be invoiced for the administrative and legal costs of work undertaken by PhonepayPlus ('the administrative charge').

4.10.2

Non-payment of the administrative charge within the period specified by PhonepayPlus will be considered a breach of the Code and may result in further sanctions and/or legal action.

4.10.3

PhonepayPlus may instruct a relevant Network operator or Level 1 provider to retain revenue, and/or not to provide further numbers, until the administrative charge is paid.

4.10.4

PhonepayPlus may direct the relevant Network operator or Level 1 provider to pass any previously retained funds to it up to the value of the administrative charge owed.

4.10.5

If a relevant party considers that an administrative charge invoiced to it is excessive it may challenge the level of the administrative charge by requesting a review in accordance with the process set out at paragraph 4.7 above.

4.11

Oral Hearings

4.11.1

A relevant party or PhonepayPlus can require that an oral hearing by a Tribunal takes place whenever PhonepayPlus has made an allegation that the relevant party has breached the Code or within 10 working days of the sending of a Tribunal decision to the relevant party. The matter will then be considered afresh.

4.11.2

An oral hearing may also be required by a relevant party following a review (applied for or carried out) in respect of prior permission or the attachment of conditions, to it or in the circumstances set out in paragraph 4.8.7 above.

4.11.3

Details of the procedures governing oral hearings are set out in ‘Code Annex 3: The Code Compliance Panel and Tribunals’ which is published on the PhonepayPlus website, and in Guidance which is also published on the PhonepayPlus website.

4.12

Appeals

4.12.1

Level 1 and Level 2 providers, applicants for prior permission, associated individuals and Network operators (‘appellants’) may, after an oral hearing at which the appellant or his representative has appeared, appeal to the Independent Appeals Body (‘IAB’) against Tribunal decisions and adjudications (other than any adjudication by consent).

4.12.2

PhonepayPlus may also appeal to the IAB against Tribunal decisions and adjudications (other than any adjudication by consent).

4.12.3

Appeals may be made on the following grounds:

- (a) The disputed decision was based on error of fact;
- (b) The disputed decision was wrong in law; or
- (c) The Tribunal exercised its discretion incorrectly in reaching its decision.

4.12.4

The powers and procedures of the IAB are set out in ‘Code Annex 4: The Independent Appeals Body’ which is published on the PhonepayPlus website.

4.13

Publication of Decisions

All adjudications, whether reached by written or oral process, will be published by PhonepayPlus and may identify any party. Adjudications will be published on the PhonepayPlus website and in any other way that PhonepayPlus shall determine.

Part five – Framework

5.1

Delegation of powers

5.1.1

The Board may delegate its powers to employees of PhonepayPlus and/or the Code Compliance Panel ('CCP') as it sees fit. Delegated powers may not be sub-delegated.

5.2

Reach of the Code

5.2.1

'Information society services'

- (a) Some PRS may also be 'information society services' (see definition at paragraph 5.3.22 below). Information society services are required to be regulated in accordance with Directive 2000/31/EC on Electronic Commerce ('the E-Commerce Directive'). The Code may be enforced in respect of such services when the Level 1 or Level 2 provider responsible for the provision of those services under the Code is:
 - (i) established in the United Kingdom; or
 - (ii) established in another EEA member state, and the services are being accessed or may be accessed from within the United Kingdom.
- (b) If a Level 1 or 2 provider's establishment and provision of such services fall within paragraph 5.2.1(a)(ii) above, the Code may only be enforced where the conditions set out in Article 3.4 (read, as appropriate, in accordance with Article 3.5) of the E-Commerce Directive are satisfied.

5.2.2

Nothing in the Code shall be construed as requiring any person, or as enabling PhonepayPlus to require any person, to provide any information in circumstances where:

- (a) the requiring of that person to provide information would be, or
- (b) the making of provision in the Code for PhonepayPlus to be able to require that person to provide that information would have been, contrary to Directive 2000/31/EC including Article 15 thereof.

5.3

Definitions Framework

5.3.1

'Premium rate service' has the meaning set out in Section 120 of the Communications Act 2003 ("the Act").

Subsection (7) provides:

"A service is a premium rate service if:

- (a) it is a service falling within subsection (8);
- (b) there is a charge for the provision of the service;

- (c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
- (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.”

Subsection (8) provides:

“A service falls within this subsection if its provision consists in:

- (e) the provision of the contents of communications transmitted by means of an electronic communications network;
- (f) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.”

Subsection (14) provides:

“References in this section to a facility include, in particular, references to:

- (g) a facility for making a payment for goods or services;
- (h) a facility for entering a competition or claiming a prize; and
- (i) a facility for registering a vote or recording a preference.”

5.3.2

‘Controlled premium rate service’ has the meaning set out in and is to be construed in accordance with the Condition issued by Ofcom under Section 120 of the Act effective from time to time. At the date of publication of this Code the Condition provides that ‘Controlled premium rate service’ means:

“a premium rate service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:

- (i) until the Effective Date, the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; or
- (ii) from and including the Effective Date, the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;
- (iii) the service is obtained other than through a Special Services Number, or a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);
- (iv) the service is a Chatline Service;
- (v) the service is Internet Dialler Software operated; or
- (vi) the service is a Sexual Entertainment Service.”

5.3.3

‘General conditions of entitlement’ means the general conditions set by Ofcom pursuant to Section 45 of the Act which are applicable at the material time.

‘Total metering and billing system’ has, for the purposes of this Code, the same meaning as in Condition 11 of the general conditions of entitlement.

‘A lead network’ means an electronic communications network provider who is obliged to obtain approval for its total metering and billing system in accordance with Condition 11 of the general conditions of entitlement.

5.3.4

Subject to paragraphs 5.3.5 and 5.3.6 below, ‘Network operator’ means, for the purposes of this Code in respect of any PRS, a person who falls within Section 120(10) or Section 120(11) of the Act and:

- (a) who is a lead network; or
- (b) has a direct network connection and has direct billing arrangements in respect of that connection with the lead network; or
- (c) through arrangements made with a lead network, provides electronic communication services to the public and bills the public directly, and can perform or can require the performance of all the obligations that are set out in Section 3 of the Code; or
- (d) if no-one falls within (a), (b) or (c) above, the Network operator shall be the person who falls within Section 120(10) or (11) and, in respect of the PRS or services in question, provides or has, in the reasonable opinion of PhonepayPlus, the closest or most substantial connection with the provision of the communications network used for the provision of the premium rate service.

A direct network connection exists when a person provides switching equipment (to currently accepted industry standards), which by interconnection arrangements made between that person and the lead network, enables the conveyance of signals between the lead network and that person.

5.3.5

If a PRS is provided which is accessible only through the use of VoIP technology or in any other form so that, in respect of that service, there is no Network operator identifiable under paragraph 5.3.4 above, then the Network operator, for the purposes of this Code, is the person who provided the facility through which the user gained access to the service.

5.3.6

If the primary function of a person is to aggregate or collate content of services for third parties and/or acquire network access through wholesale arrangements which it then provides to third parties on a retail basis, that person is a Level 1 provider for the purposes of this Code and is not a Network operator, unless there is no other Network operator identifiable who is involved in the provision of the relevant premium rate service.

Level 1 and Level 2 providers

5.3.7

Any person who falls within Section 120(9)(a)-(d) or Section 120(10) or (11) of the Act who is engaged in the provision of a PRS (“the relevant PRS”) and who is not a Network operator in respect of that service may be a Level 1 and/or Level 2 provider.

5.3.8

- (a) A Level 1 provider is a person who provides a platform which, through arrangements made with a Network operator or another Level 1 provider, enables the relevant PRS to be accessed by a consumer or provides any other technical service which facilitates the provision of the relevant premium rate service.
- (b) A Level 2 provider is the person who controls or is responsible for the operation, content and promotion of the relevant PRS and/or the use of a facility within the PRS.
- (c) In respect of any relevant PRS where PhonepayPlus considers there to be a material doubt whether a person involved in any way in the provision of the service and/or who receives directly or indirectly any part of the charges made to the consumer for provision of the relevant PRS is a PRS provider falling within (a) or (b) above PhonepayPlus shall determine whether that person is a PRS provider and whether the person is a Level 1 or Level 2 provider with reference to Guidance which it shall issue from time to time.

General

5.3.9

‘Associated individual’ is any sole trader, partner or director or manager of a premium rate service provider, anyone having day to day responsibility for the conduct of its relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act, or any member of a class of individuals designated by PhonepayPlus.

5.3.10

‘Board’ means the board of directors of PhonepayPlus.

5.3.11

‘Call’ means any communication which passes through an electronic communications network whether initiated by a user or initiated by or facilitated by a PRS provider and ‘caller’ shall be construed accordingly.

5.3.12

‘Chair of the Independent Appeals Body’ is the person, being a qualified solicitor or barrister of not less than 10 years’ standing, appointed to be Chair of the Independent Appeals Body.

5.3.13

‘Chatline service’ has the meaning set out in the Condition issued by Ofcom under Section 120 of the Act effective from time to time.

5.3.14

‘Child’ or ‘Children’ means a person/people under 16 years of age.

5.3.15

‘Compliance audit’ is the process of thorough examination of the internal procedures a PRS provider has in place to ensure that its obligations under the Code are complied with.

5.3.16

‘Connected company or person’ means any company or person connected within the meaning of Section 839 Income and Corporation Taxes Act 1988.

5.3.17

‘Counselling service’ means a service whereby a caller is seeking advice in relation to a personal problem such as marital, relationship, emotional and other such personal problems. The service may consist of actual advice as to the personal problem or information as to where the caller may obtain advice.

5.3.18

‘Data controller’ means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed (as set out in the Data Protection Act 1998).

5.3.19

‘Electronic communications network’ has the meaning given to it in Section 32(1) of the Act.

5.3.20

‘Electronic communications service’ has the meaning given to it in Section 32(2) of the Act.

5.3.21

‘Independent Appeals Body’ is a body of persons, independent of PhonepayPlus, appointed to hear appeals after an oral hearing has taken place in respect of Tribunal decisions and adjudications (other than any adjudication by consent).

5.3.22

‘Information society services’ are any services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services (as defined in Article 1.2 of Directive 98/34/EC as amended by Directive 98/48/EC), subject to the exceptions set out in the Directive.

5.3.23

‘Live entertainment service’ means a service which allows the caller to speak live with a live operator or one or more other consumers for entertainment purposes, including, but not limited to, one-to-one Chatline (sexual or non-sexual), psychic or tarot services.

5.3.24

‘Ofcom’ is the Office of Communications. References to Ofcom and to any statutory authority or other regulatory body include any replacement successor bodies.

5.3.25

‘Person’ means any natural or legal person.

5.3.26

‘Personal data’ means data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual (as set out in the Data Protection Act 1998).

5.3.27

‘Personal information’ is any information about a person, including but not limited to names, addresses, telephone numbers, other contact details, occupations and other personal details.

5.3.28

‘PhonepayPlus’ means the employees of PhonepayPlus save where the context otherwise requires.

5.3.29

‘PhonepayPlus Register’ is the online database maintained by PhonepayPlus which contains such information about PRS providers as PhonepayPlus may require for the purpose of efficient and effective regulation of PRS.

5.3.30

‘Premium rate service provider’ means any Network operator, Level 1 or Level 2 provider.

5.3.31

‘Professional advice service’ means a service that consists of the provision of specialist advice to consumers, that is, advice which requires knowledge and skill obtained through extensive study and specialised training (including, but not limited to, that required of doctors, lawyers, vets and accountants) and in relation to which membership of a professional body is normally required.

5.3.32

‘Promotion’ means anything where the intent or effect is, either directly or indirectly, to encourage the use of PRS, and the term promotional material shall be construed accordingly.

5.3.33

‘Remote gambling service’ means a PRS which enables gaming or betting to take place remotely, that is delivered at a distance electronically or by voice telephony not including prize competition services or betting tipster services.

5.3.34

‘Retention’ is an outstanding payment due to a Network operator, Level 1 or Level 2 provider which has been retained by a Network operator, Level 1 or Level 2 provider in response to a PhonepayPlus direction. ‘Retain’, ‘retaining’ and ‘retained’ shall be construed accordingly.

5.3.35

“Service Charge” has the meaning set out in the Condition issued by Ofcom under section 120 of the Act effective from time to time.”

5.3.36

‘Sexual entertainment service’ has the meaning set out in the Condition issued by Ofcom under section 120 of the Act effective from time to time.

5.3.37

‘Special condition’ means a condition imposed under paragraph 3.11.1.

5.3.38

‘Special Services Number’ means a UK telephone number beginning 08.

5.3.39

‘Subscription services’ are services which incur a recurring premium rate charge.

5.3.40

‘VAT’ means value added tax at the rate applicable from time to time.

5.3.41

‘Virtual chat services’ are not live conversation services but enable two or more users to exchange separate messages, whether by recorded voice, text or pictures, while engaged in the service.

5.3.42

‘Withhold’ refers to payments held by a Network operator or Level 1 provider in accordance with the 30 day rule, as set out in paragraph 3.5.1.

Annex one – General Funding Arrangements

1. General provisions

1.1

Information obtained by PhonepayPlus under these provisions shall be confidential, save that PhonepayPlus may share it with Ofcom to the extent that is reasonable for the proper regulation of PRS.

1.2

For the purposes of these funding provisions, the following definitions shall apply:

- (a) 'Outpayments' are sums payable by Network operators to Level 1 or Level 2 providers in respect of revenue generated by PRS.
- (b) 'Revenue' is the sum received by a Network operator in respect of or attributable to the provision of a PRS, gross of any sum that may be due to third parties arising out of the provision of the said service.
- (c) 'Financial year' means the financial year of PhonepayPlus as set from time to time, which at the date of publication of this edition of the Code is 1st April to 31st March.
- (d) 'Own service' is any PRS provided by a Network operator operating as a Level 2 provider itself or through any associated company or any connected company or person.

1.3

The provisions of the Code apply to this Annex. In particular the General Responsibilities in paragraphs 3.1.4 and 3.1.5 of the Code are applicable to the funding provisions of this Annex.

2. Timetable

2.1

PhonepayPlus will publish a timetable for its annual budgetary and forecasting procedures as set out below. It will specify the dates by which various activities should be carried out by Network operators and/or PhonepayPlus.

2.2

PhonepayPlus may, upon giving reasonable notice to interested parties, vary some or all of the dates set out in the timetable.

3. Budget and activity plan

3.1

As far as is practicable, by 31 December each year, PhonepayPlus will publish a proposed budget and activity plan for the forthcoming financial year for wide consultation and scrutiny.

3.2

Having considered the comments received under paragraph 3.1, PhonepayPlus will review and then present its proposed budget and activity plan to Ofcom for comment and approval.

3.3

PhonepayPlus will then announce its proposed budget, specifying the amount it intends to collect ('the Budgeted Figure') for the forthcoming financial year through the levy, as defined below, having regard to its available and required reserves.

4.

Forecasting

4.1

Network operators may provide PhonepayPlus by the date specified in the timetable with a forecast of the value of outpayments (gross of the levy – see Section 5 below) to be made by the relevant Network operator and of any own service revenue anticipated during the forthcoming financial year and such forecast shall be used for calculating levy payments under paragraph 6.2 below.

4.2

In the absence of a forecast in accordance with paragraph 4.1 above, or by agreement PhonepayPlus will issue a direction to the Network operator requiring the provision of a forecast and/or may make its own forecast of the outpayments likely to be made by the relevant network operator and of own service revenue during the forthcoming financial year. This will be based on such information as PhonepayPlus may have concerning the Network operator's outpayments and own service revenue in previous years, information received from other Network operators and PhonepayPlus' own knowledge of the market and the industry.

4.3

Own service revenue forecasted will be multiplied by the industry standard outpayment margins as determined by PhonepayPlus in order to identify the Network operators' receipts as a Level 1 or Level 2 provider for the purposes of this Annex ("own receipts").

4.4

Where a Network operator has provided PRS over its own electronic communications network or service for a period longer than 3 months in the first financial year of service provision, PhonepayPlus will forecast for the following financial year the outpayments likely to be made and the likely level of own service revenue by reference to the revenue likely to be generated by such services multiplied by the industry standard outpayment margins as determined by PhonepayPlus.

4.5

Where a Network operator intends to provide PRS over its electronic communications network or service and has not previously done so or has not done so for more than 3 months in the current financial year, no forecast will be made and payment of the levy will be made in accordance with paragraph 6.4 below.

5. Levy

5.1

PhonepayPlus will determine the proportion of every outpayment and own receipts that need to be retained and paid to PhonepayPlus ('the levy'). PhonepayPlus may from time to time vary the rate or rates at which the levy is set to ensure that it continues to receive adequate funding to carry out its activities as the regulatory agency for PRS.

5.2

PhonepayPlus will advise Network operators (in writing) and other interested parties (by publication on its website) of the levy to be applied to outpayments from time to time and issue directions accordingly. The levy will be expressed as the proportion of each outpayment and own receipt that must be retained (e.g. 0.XX pence per £1).

5.3

Following receipt of notification under paragraph 5.2 above, Network operators must inform everyone to whom they make outpayments of the level at which the levy has been set and that they (the Network operator) will deduct the levy at source from every outpayment that is made and pay the deducted amount to PhonepayPlus.

5.4

Network operators are responsible for deducting the levy notified under paragraph 5.2 from every outpayment that they make. Where a Network operator fails to deduct the levy, the Network operator will remain liable to PhonepayPlus as though it had in fact deducted the levy.

6. Payments

6.1

In accordance with the timetable, PhonepayPlus will advise each Network operator whose outpayments and/or own service revenue for the forthcoming year have been forecast under paragraph 4 of this Annex, of the total amount that the Network operator is expected to collect in the forthcoming financial year by the application of the levy notified for the time being under paragraph 5.2 ("its contribution").

6.2

Each Network operator's contribution will be calculated by multiplying its forecasted outpayments and own service receipts for the forthcoming year by the applicable levy for the time being (e.g. £1,000,000 x 0.XX).

6.3

Upon being advised of its contribution by PhonepayPlus pursuant to paragraph 6.1 above, a Network operator must pay its contribution to PhonepayPlus by 12 equal monthly instalments payable by the last day of each month commencing on the following 31st March. Wherever possible, Network operators should arrange to make payments by electronic transfer.

6.4

Where a Network operator falls within paragraph 4.5 above the Network operator will, during the balance of the first financial year of service provision, make monthly payments to PhonepayPlus calculated by multiplying its actual outpayments each month by the applicable levy.

6.5

All invoices provided by PhonepayPlus to Network operators will add a charge for VAT where appropriate at the applicable rate.

6.6

All Network operators must provide PhonepayPlus with quarterly reports upon the actual levels of outpayments that they are making as soon as is reasonably practicable following 30th June, 30th September, 31st December and 31st March in each year.

6.7

Network operators may, in exceptional circumstances, seek PhonepayPlus' agreement to a recalculation of their forecasts and the consequential payments required of them under paragraph 6.3 above.

7.

Late payment

7.1

If a Network operator fails to pay to PhonepayPlus monies due in accordance with the timescales set out in this Code and/or in accordance with directions issued by PhonepayPlus, the Network operator will be liable to pay interest in respect of such monies at the rate of 3% above the prevailing base rate for the time being of HSBC plc from the date on which the relevant payment became due.

8.

Adjustments

8.1

At the end of each year and in any event by no later than 30th April, Network operators must provide PhonepayPlus with a statement of the actual aggregate outpayments that they have made, and the revenue that they have received in their capacity as a Network operator and their own service revenue during the preceding year. The statement must identify all cases in which the Network operator has provided PRS in respect of which there is no identifiable outpayment (see paragraph 10 of this Annex). Where it has supplied no such services, the Network operator must state this in the statement.

8.2

Following receipt of the statement referred to in paragraph 8.1 above or an auditors' report pursuant to paragraph 9.1 below, PhonepayPlus will determine in respect of each Network operator the aggregate amount that ought to have been collected pursuant to paragraph 5.4 above and the aggregate amount that has been paid pursuant to paragraph 6 of this Annex by that Network operator.

8.3

Where a Network operator's payment to PhonepayPlus based on forecast outpayments exceeds actual outpayment levels, the Network operator will be entitled to have the excess amount repaid. PhonepayPlus will recalculate this sum based on information provided under paragraph 8.2 above.

8.4

Where PhonepayPlus concludes, pursuant to paragraph 8.2, that a Network operator ought to have collected an amount in excess of that actually paid to PhonepayPlus, the Network operator will be liable to PhonepayPlus for the difference which will be payable forthwith on demand.

8.5

PhonepayPlus will not make a calculation pursuant to paragraph 8.2 in respect of a Network operator which has not provided a declaration of its actual outpayments for the entire financial year pursuant to paragraph 8.1 above.

9.

Auditors

9.1

The PhonepayPlus auditor for the time being ('the Auditors') have the power to request from a Network operator direct confirmation by audited statement of the actual level of outpayments it made and the actual revenue it retained in respect of PRS supplied by it as a Network operator during any relevant period. Such audited statement may be provided (by arrangement) by the Auditors, or by a Network operator's auditors who must provide such a statement within such reasonable time as the Auditors may request and/or PhonepayPlus may direct.

9.2

Network operators will not be subject to a request under paragraph 9.1 above more than once in every four years, save where previous audited statements have revealed significant inconsistencies or where information provided to or obtained by PhonepayPlus or the Auditors may give the Auditors cause for concern.

9.3

A Network operator or a Network operator's auditors shall, at the request of the Auditors, supply such further information and/or explanation of such matters as the Auditors may consider necessary to satisfy themselves as to the accuracy of the Network operator's figures in such a format as may be prescribed (including by further statement).

9.4

If an auditors' report obtained under paragraph 9.1 above indicates that the actual outpayments made by a Network operator during the relevant year were different from those declared under paragraph 8.1 above, the Auditors will make such adjustments as are necessary pursuant to paragraph 8.

9.5

If the Auditors advise it to be necessary for the proper administration of this part of the Code, PhonepayPlus may direct that a Network operator subjects itself to assessment by an agreed independent auditor for the purpose of establishing whether the Network operator has fully complied with its obligations under this part of the Code. The costs of any such assessment shall be borne by PhonepayPlus unless the independent auditor concludes that the Network operator was not in all material respects complying with its obligations under this part of the Code or where the independent auditor was unable to reach any conclusion because of non-co-operation by the Network operator, in which case the costs will be borne by the Network operator.

9.6

Where an audit conducted under paragraphs 9.1 or 9.5 above has revealed material inconsistencies in the information previously supplied to PhonepayPlus by a Network operator, PhonepayPlus may take enforcement action under the Code.

10.

No identifiable outpayment

10.1

Where PhonepayPlus has received notification under paragraph 8.1 above that a Network operator has supplied service(s) for which there is no identifiable outpayment, it may direct the relevant Network operator to explain the reasons for the lack of any identifiable outpayment(s) and/or to supply details of the level of revenue it has generated in respect of those services.

10.2

If PhonepayPlus considers it appropriate to do so, it will direct the Network operator to treat the revenue it has generated in respect of such service(s) or such a portion of that revenue as PhonepayPlus may determine as though it were in fact an outpayment.

Annex two – Special Conditions

1. Special conditions

1.1 The conditions referred to in paragraph 3.11.1 are:

- (a) requirements as to contractual arrangements and the management of roles across a chain of providers in relation to a high risk service;
- (b) requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers;
- (c) requirements to ensure that there is an adequate technical quality to the provision of the high risk service;
- (d) the specification of maximum service charges, length of calls and specified action to be taken once those limits have been met;
- (e) specified action required in order to and as a consequence of verifying or a failure to verify the age of callers;
- (f) steps to be taken to ensure that a high risk service is not used by or promoted in such a way as to make it particularly attractive to persons under the age of 18 years old or younger;
- (g) the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over;
- (h) promotional material aimed at persons aged 18 or younger not to be displayed or presented in close proximity to or within promotional material aimed at adults;
- (i) required recording equipment of voice based high risk services and the use and standard of that equipment;
- (j) the retention of such recordings and their provision with related information to PhonepayPlus;
- (k) information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);
- (l) Callers not being charged more than once for services they have already received;
- (m) the provision of defined information to PhonepayPlus and the intervals at which it is to be given and the manner to which it is provided;
- (n) requirements for caller agreement before a high risk service proceeds before the caller is charged;
- (o) membership of professional bodies, training and supervision to have been and be undertaken and qualifications, licences and insurance required to be held by relevant providers or relevant individuals engaged in the provision of the high risk services and the evidence of such that may need to be provided to PhonepayPlus;
- (p) compliance with the requirements of relevant regulators and professional bodies;
- (q) the monitoring of the use of high risk services and in particular the information to be given to callers and action to be taken in the course of such monitoring;
- (r) PhonepayPlus' access to premises in order to monitor the compliance of a high risk service with the Code and any relevant special conditions;

- (s) facilitate the carrying out by PhonepayPlus or an approved third party of an audit of compliance of a high risk service with the Code and any relevant special conditions;
- (t) the retention of revenue generated from a high risk service;
- (u) the lodging with PhonepayPlus, prior to commencement of a high risk service, of a legally binding document (“a bond”) by which a third party guarantees a relevant provider’s payment of sums, as security for meeting compensation claims in relation to unauthorised use of the service;
- (v) the relevant provider’s handling and payment of such claims and the ceasing of a high risk service if one or more claim is not paid in accordance with an award made by a legally qualified member of the CCP (the process for which may be set out in the condition);
- (w) requirements as to callers’ rights to refunds and information to be provided to callers in relation to refunds;
- (x) providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

Annex three – The Code Compliance Panel and Tribunals

1. Code Compliance Panel

1.1

PhonepayPlus has established a Code Compliance Panel (“CCP”) which comprises:

- (a) The Chair of the CCP who is a qualified barrister or solicitor with not less than 15 years relevant experience; and
- (b) Two legally qualified members who are qualified barristers or solicitors with not less than 10 years relevant experience; and
- (c) Up to ten lay members with adjudicatory experience; and
- (d) Up to three members of the PhonepayPlus Board entitled to undertake adjudicatory functions.

1.2

The Chair of the CCP is appointed by the PhonepayPlus Board, and reports to the Board on the work of Tribunals. The legally qualified members and lay members are appointed by the Board in consultation with the Chair of the CCP.

1.3

The PhonepayPlus Board has delegated to the CCP the function of undertaking adjudications or reviews of adjudications (including a review of any sanction or administrative charge imposed) in respect of alleged breaches of the PhonepayPlus Code of Practice currently in force (‘the Code’) and reviews of determinations made by PPP in relation to prior permission, including the imposition of conditions upon which prior permission is granted.

2.

Tribunals

2.1

A Tribunal consists of three members comprising:

- (a) The Chair of the CCP or such of the two legally qualified CCP members as he shall nominate (who shall sit as Chair of that Tribunal); and
- (b) One person drawn from the lay members of the CCP and one person drawn from the PhonepayPlus Board members of the CCP.
- (c) The Tribunal may consist of two lay members of the CCP sitting with the Chair of that Tribunal and no PhonepayPlus Board member if the Chair of the PhonepayPlus Board so consents in any particular case.

3. Oral Hearings

3.1

Any relevant party may, by notice in writing, require that an oral hearing be held:

- (a) after a review (applied for or carried out) in respect of prior permission or the attachment of conditions to it;
- (b) where the party has received communication from PhonepayPlus alleging a breach or breaches of the Code
- (c) in respect of any adjudication made by a Tribunal without an oral hearing; or
- (d) where it is the Tribunal's intention to prohibit a relevant party or associated individual from involvement in or promotion of any or all service types for a defined period, or from contracting with another party (see paragraphs 4.8.2(f), 4.8.2(g), 4.8.2(h) and 4.8.7). Oral hearings may be applied for in accordance with paragraphs 4.11.1-4.11.4. Where such an application is made under paragraph 4.11.1 the relevant party shall demonstrate that there are exceptional circumstances which warrant an oral hearing

3.2

Within any written application for an oral hearing, the relevant party must provide details of the allegation or relevant decision and set out clearly the applicant's case in respect of it.

3.3

Such written notice may be provided to PhonepayPlus at any time up to 10 working days after receipt of a decision, or at any time prior to an adjudication where the oral hearing is required following an allegation of a breach of the Code.

3.4

Oral hearings shall take place before a Tribunal appointed for the purpose.

3.5

The relevant party is entitled to appear at the oral hearing in person or to be represented. PhonepayPlus will attend the oral hearing to present its case and may instruct a representative to act on its behalf.

3.6

The enforcement of sanctions imposed pursuant to an adjudication is not automatically suspended by written notice requiring an oral hearing. The relevant party may apply in writing to the Chair of the oral hearing Tribunal ('the Chair') setting out the grounds on which the sanction should be suspended. Unless the Chair considers that there are exceptional reasons in the particular case to grant the application, he will only do so if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to any risk of public harm. If a relevant party has not been granted a suspension of sanction but has failed to comply with the sanction, the Chair may stay the oral hearing.

3.7

The Chair shall give such directions as he considers necessary for a fair and speedy hearing.

3.8

If the relevant party is neither present nor represented at the hearing, and the Tribunal has no cause to believe there is good reason for the relevant party's absence, the matter shall be determined by the Tribunal as it sees fit in the absence of the relevant party.

3.9

Where a relevant party or associated individual, as the case may be, applies for an oral hearing but the relevant party or associated individual fails, without good cause, to appear (in person or through a representative) at an oral hearing which is properly established, then the oral hearing Tribunal may make such finding as it considers fit.

3.10

The Chair shall generally conduct the pre-hearing process and the hearing itself as set out in the guidelines published on the PhonepayPlus website. However he shall have the power to conduct the pre-hearing process and the hearing as he sees fit according to the interests of justice, including deciding to adjourn the hearing.

3.11

The Chair may require the provision of security by the relevant party for the administrative charges of PhonepayPlus.

3.12

The Chair shall have the power to strike out a case in the event of serious or persistent failure to comply with case management directions which have been ordered.

3.13

The Tribunal shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the applicant (or PhonepayPlus as the case may be) the source of that information, provided that the other party is given a reasonable opportunity to rebut its substance.

3.14

A sound recording shall be made of the oral hearing. Recordings will be made available to PhonepayPlus and the applicant.

3.15

An oral hearing shall be conducted in private, unless the applicant or PhonepayPlus otherwise requires. If an oral hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

3.16

The oral hearing Tribunal shall decide the matter entirely afresh. For the avoidance of doubt, the Tribunal:

- (a) may impose a greater or lesser sanction than that originally imposed;
- (b) may reverse a decision to issue or refuse a prior permission;
- (c) may set such conditions on a prior permission as it sees fit;
- (d) must agree to impose such sanctions, prior permission and/or conditions, and administrative charges or otherwise dispose of the matter as may be jointly agreed by PhonepayPlus and the applicant and which has been agreed by the Chair of the CCP or, if he is unavailable, by one of the legally qualified CCP members ('adjudication by consent').

3.17

The Tribunal shall, as soon as is practicable after the hearing, provide a reasoned written decision. All decisions will be published by PhonepayPlus and may identify any Network operator, Level 1 or Level 2 provider concerned.

Annex four – Independent Appeals Body

1

Appeals

1.1

A relevant party (in this Annex referred to as an ‘appellant’) may, after an oral hearing at which the appellant or its representative has appeared, appeal to the Independent Appeals Body (‘IAB’) against decisions and adjudications (other than any adjudication by consent) of the Tribunal (in this Annex referred to as the “Tribunal”).

1.2

PhonepayPlus may appeal to the IAB against Tribunal decisions and adjudications (other than any adjudication by consent).

1.3

Appeals may be made on the following grounds:

- (a) the disputed decision was based on error of fact,
- (b) the disputed decision was wrong in law, or
- (c) the Tribunal exercised its discretion incorrectly in reaching its decision.

1.4

In order to institute an appeal, the appellant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB (‘the Clerk’) within 20 working days of the issue of the Tribunal adjudication or determination which is the subject of the appeal.

1.5

The notice of appeal must be accompanied by:

- (a) the written adjudication;
- (b) the case bundle used at the Tribunal oral hearing;
- (c) a security deposit of £5,000 or an application (to be determined by the Chair of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction;
- (d) a description of any new evidence upon which the appellant intends to rely and which, for good reason, was previously unavailable;
- (e) if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the Tribunal adjudication, the appellant must also provide an application (to be determined by the Chair of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

1.6

If an appellant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and PhonepayPlus has refused to permit a further oral hearing, the appellant may apply to the Chair of the IAB to request him to require that PhonepayPlus holds a further oral hearing.

1.7

The procedures which follow are those laid down by the IAB and are under its control.

2

The procedures of the Independent Appeals Tribunal

2.1

The IAB is able to hear any appeal lodged with the Clerk to the IAB ('the Clerk') in accordance with the provisions of paragraph 4.12 of the Code.

2.2

The Clerk shall forthwith, upon receipt of the notice of appeal, provide a copy of it and of the accompanying documents to the Chair of the IAB ('the Chair') and to PhonepayPlus.

2.3

In the event that an appellant was, for good reason, unable to attend a Tribunal oral hearing but the oral hearing proceeded in his absence, then the appellant may apply to the Chair of the IAB. The Chair shall obtain the views of the Chair of the hearing panel in writing, or in a hearing at which the appellant may also attend. The Chair may require that PhonepayPlus provides a further oral hearing. The Chair shall have the discretion to award the costs of the application.

3

The Appeal Tribunal

3.1

Upon receipt of a notice of appeal, the Chair shall appoint an Appeal Tribunal, consisting of three members, to deal with the appeal. The Chair or Deputy Chair (if any) shall be the Chair of the Tribunal ('the Tribunal Chair').

3.2

If the appellant has applied for a waiver or reduction in respect of the provision of the required security deposit and for the appeal to proceed despite the notice of appeal having been lodged out of time, then as soon as reasonably practicable, the Tribunal Chair shall convene a hearing at which any such application shall be considered and at which PhonepayPlus may be heard.

3.3

In respect of an application for a waiver of the requirement to provide the security deposit, the Tribunal Chair shall waive the deposit (or reduce the required level of security) if he determines that there appears to be plain merit in the grounds of appeal and that exceptional hardship will result from the requirement that the security be provided.

3.4

PhonepayPlus shall be entitled to apply to the Tribunal Chair for a determination that the appeal should not be permitted to proceed unless the security deposit is increased to a higher level and/or that a sum is lodged as security for costs. The Tribunal Chair may make such a determination entirely at his discretion.

3.5

In respect of an application for an appeal to proceed despite having been made late, the Tribunal Chair shall grant such application if he is satisfied that, in all the circumstances, it is fair to do so and he may impose such conditions as he sees fit as to the further conduct of the appeal or as to lodgment of security for costs.

4.

Suspension of sanctions

4.1

The enforcement of sanctions imposed by PhonepayPlus is not automatically suspended by the provision of a notice of appeal. An appellant may apply to the Tribunal Chair, by written application to the Clerk, setting out the grounds upon which the sanction should be suspended. The Clerk will forthwith provide a copy to the Tribunal Chair. Unless the Tribunal Chair considers that there are exceptional reasons in the particular case to grant the application, he will do so only if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. He shall seek the views of PhonepayPlus on those matters prior to making a decision and may convene a hearing to deal with such applications.

4.2

If an appellant has not been granted a suspension of sanction, and has not complied with the sanction imposed, the Tribunal Chair may stay the appeal on the application of PhonepayPlus or on his own volition. Appeals stayed for more than six months shall be automatically struck out and may not be recommenced.

5

Representation

5.1

The appellant shall be entitled to appear before the Appeal Tribunal in person and be represented.

5.2

PhonepayPlus shall attend as respondent to any appeal before the Appeal Tribunal and may instruct a representative to act on its behalf.

6

Pre-hearing process

6.1

The Tribunal Chair may, at his own discretion, or upon the application of either party to the appeal, convene a conference of the parties at which he may give such directions as he considers necessary for the fair and speedy hearing of the appeal.

Such directions may include, for example, directions for:

- (a) the admission of facts before the hearing
- (b) the disclosure of documents
- (c) the provision of expert reports
- (d) the exchange of written statements
- (e) the preparation of agreed bundles of documents

(f) the submission and exchange of outline arguments.

6.2

Directions may be given as to the date by which such actions shall be taken.

6.3

For the avoidance of doubt, the Chair shall have the power to make directions for disclosure of documents and any other directions relating to evidence as though the appeal was a first hearing of the matter which is the subject of the appeal.

6.4

Not less than 10 working days before the date of the hearing of the appeal, the Clerk shall send written notice of the day, time and place of the hearing of the appeal to the last known address of the appellant and to PhonepayPlus.

6.5

Within five working days of receipt of the notice specifying the date of the hearing, both the appellant and PhonepayPlus shall each inform the Clerk in writing of whether they intend to appear at the hearing and the name of any person who will be representing them at the hearing.

7

The hearing

7.1

The appellant shall outline the grounds of his appeal and call such witnesses and refer to such documents as he is entitled to do.

7.2

PhonepayPlus shall then be entitled to respond to the case put by the appellant and to call such witnesses or present any written statements or other documents.

7.3

The appellant shall then be entitled to address the Appeal Tribunal.

7.4

A witness in person may be cross-examined by the other party in the appeal.

7.5

A witness who has been cross-examined may be re-examined.

7.6

The Tribunal Chair may question any witness at any time.

7.7

The Tribunal Chair shall have the power to vary any of these procedures at any time and to adjourn the hearing if satisfied that it is in the interests of justice to do so.

7.8

If the appellant is neither present nor represented at the hearing and the Appeal Tribunal has no cause to believe there is a good reason for the appellant's absence, the appeal may be dismissed.

8

Confidential information

The Appeal Tribunal shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the appellant (or PhonepayPlus as the case may be) the source of that information provided that the appellant (or PhonepayPlus) is given a reasonable opportunity to rebut its substance.

9

Recording

A sound recording shall be made of the proceedings before the Appeal Tribunal. Recordings will be made available to PhonepayPlus and the appellant.

10

Public hearing

An appeal hearing shall be conducted in private, unless the appellant or PhonepayPlus otherwise requires. If an appeal hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

11

Costs of hearing

The Appeal Tribunal shall make such award for costs of the parties as it considers reasonable and proportionate, subject to a maximum of £30,000 (inclusive of disbursements and VAT). In addition, the Appeal Tribunal shall award the costs of the provision of the Tribunal as it sees fit, subject to a maximum of £25,000 (inclusive of VAT).

12

Powers of the Appeal Tribunal

12.1

The Appeal Tribunal shall consider all documentation and evidence produced at the Tribunal oral hearing and may, at its discretion, rehear any witness called before the Tribunal oral hearing and hear new evidence which for good reason was not available at the Tribunal oral hearing.

12.2

The Appeal Tribunal may:

- (a) Confirm, vary or rescind an adjudication or determination or any part of it made by a Tribunal and substitute such other finding as it considers appropriate.
- (b) Confirm, vary or rescind any sanction imposed by a Tribunal pursuant to its adjudication. For the avoidance of doubt, the Appeal Tribunal may impose a greater sanction (or sanction direction) than that imposed by a Tribunal, provided that such a sanction could have been imposed by a Tribunal.
- (c) Confirm, vary or rescind the imposition of an administrative charge made by PhonepayPlus.

13

Decision and publication

The Appeal Tribunal shall, as soon as is practicable after the hearing, provide a reasoned written decision. This written decision shall be published by PhonepayPlus.

14

Further appeal

There is no further appeal through PhonepayPlus' procedures or those of the IAB.



PhonepayPlus  

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