

Amendment to the PhonepayPlus Code of Practice (11th Edition)

As a result of the move to ADSL, the opportunities for dialler crime have been significantly reduced and the total number of complaints to PhonePayPlus (PP+) has been falling as a result. The dialler problem has not gone away, however, and the problems arising from unsolicited reverse charge WAP push and SMS messages, and from various types of fraud are as bad as ever. The recent revelations over TV based premium rate (exposed by a TV programme not by the regulators) suggest that fraud and theft were ubiquitous in this area of Premium Rate Services (PRS).

The fact that the same service providers (SPs) are regularly adjudicated against for the same offences and the fact that the companies behind the recent TV based frauds had a long and consistent history of misfeasance demonstrates that PP+ is quite unfit for purpose and that its Code of Practice (CoP) is hopelessly inadequate.

In the longer term, PP+ should be disbanded and its role taken over by a direct arm of Ofcom devoted to cleaning up the PRS sector rather than promoting its supposed virtues. In the shorter term, I realize that we shall just have to live with the status quo. Nevertheless, there are many changes that could be made to the CoP which - if acted upon - could play a significant role in reducing PRS crime.

Introduction to PhonepayPlus: Governance arrangements

Whereas PP+ expects Network Providers (NPs) to exercise "due diligence" by (for example) "Checking the PP+ website for any prior adjudications made against the service provider/information provider or individuals", there is no evidence that PP+ exercises such diligence when appointing board members. All three "Industry Representatives" would fail the test that PP+ specifies. PP+ board member Andrew Bud's company mBlox is adjudicated against almost monthly and another member of the PP+ board (not an industry member) stands accused (by Eckoh) of selling Eckoh the "winner selection process" that Eckoh later followed when it "misled" entrants to the "Richard & Judy" competition. PP+ agreed that "the offending procedures appear to have been in place at least since Eckoh took over the Competition" and yet this same PP+ board member now sits on the PP+ adjudication panel. Since (according to PP+) "the vast majority of [PRS] services are run responsibly", it should be very easy for PP+ to recruit industry board members with a record of integrity and honesty and there should be no question of recruiting non-industry board members whose integrity has been publicly compromised. Current PP+ policy on board membership cannot but send the "wrong message" to the PRS sector.

5.6 Internet dialler services

The CoP should outlaw these completely. Abuse is (almost) inevitable and has been widespread from the very beginning of this technology. Those at risk - those on old-fashioned dial up lines - are likely to be those who are least able to defend themselves against such threats and those who are least able to afford being stolen from in this way. They are also those (such as the elderly) who likely to suffer most if they refuse to pay and lose their phone lines.

5.2 Legality

While those who hide vital details in small print may be (merely) guilty of "mis-selling", those who steal using rogue diallers or unsolicited reverse charge SMS, and those who defraud the public using "parcel deliveries", "missed calls", and "competitions", are criminals. PP+ has a clear legal and moral duty to report such criminals to the police and the CoP should include a clause to this effect. The evidence is unequivocal in such cases since a complete electronic record is created of every stage of the fraud or theft. It would not take many jail sentences before the PRS sector reformed itself.

7.12 Subscription services

The CoP should include a clause that forces the PRS sector to allow phone users to opt out of all premium rate. Currently, phone users can opt out of SES and making 09 calls but not out of receiving reverse charge SMS and WAP. An opt-out facility would not only protect the consumers who opted out, but would provide a powerful incentive for the PRS sector to clean up its act and thereby discourage opt-outs.

The CoP should mandate a robust and verifiable opt-in mechanism for "subscription" services. As things stand, SPs may (and often do) claim that "subscribers" to reverse charge SMS opted in by ringing from a phone (not their own mobile) for which no records have been kept. The CoP should require SPs to keep verifiable details of opt-in and - when there is a complaint - those details should be checked against with ISP or Network Provider (NP) records. Failure or refusal to supply such records should be treated as admission of guilt.

8.7 Sanctions

The CoP should detail meaningful sanctions for repeat offenders. The adjudications published on the PP+ show that many PRS firms (mBlox and Opera being notable examples) are repeatedly fined for essentially the same offences. Although such firms are often barred in addition, the "bars" are meaningless when those firms are free to team up with a new Information Provider (IP) and continue with a particular fraud or mechanism for stealing money from phone users - at least until the next adjudication. In addition to reporting crime to the authorities, PP+ should publish an (indicative) sliding scale of penalties for Service Providers (SPs) that (for example) repeatedly send unsolicited reverse charge SMS. After repeat offences, such firms should be punitively fined

- so that the fine is greater than the sum of money stolen - and barred from sending any reverse charge SMS for a period of time.

The CoP should hold the SP fully responsible for issuing refunds ordered by PP+. Currently, PRS victims seeking refunds from SPs are forced to ring a series of 087 numbers in order to reach the IP. IPs sometimes then deny responsibility forcing the victim to chase up and down the "value chain" in order to obtain a refund - which will often be just a few pounds. Insisting that SPs accept refund claims and process them themselves would result in more refunds actually being paid and would serve as an incentive for SPs to clean up their act. SPs should also be forced to pay their refunds by restoring a mobile phone customer's balance rather than by sending out cheques and causing more

inconvenience for victims. [Ideally, the NPs should process complaints and refunds, but regulation of the NPs is beyond PP+'s remit. Alternatively, the model provided by "postwatch" could be followed and PP+ could deal with SPs on behalf of the complainant.]

10 Appeals

The CoP should allow PRS victims to appeal against adjudications. Currently, SPs can appeal twice against PP+ decisions. SP victims have no right of appeal against decisions that go in favour of SPs or against PP+ refusals to hold investigations.

Annex 1: Funding arrangements

The CoP should require the PRS sector to establish a fund to compensate PRS victims. Because PRS criminals are often based offshore or, even if UK based, go into liquidation after perpetrating a theft or fraud, premium rate victims are sometimes unable to obtain refunds ordered by PP+. If the PRS sector were forced to contribute to a fund which could be used to compensate PRS victims - even where the firms conduct the scam had disappeared - this would protect the public and serve as a powerful incentive for the PRS sector to clean up its act.

PP+ is currently funded from levies and fines. Since a proportion of the levies and all the fines represent the proceeds of crime, this provides a vested interest in PP+ maintaining the status quo. This state of affairs also provides a disincentive for PP+ to report premium rate crime to the police: if funds are officially recognized as the proceeds of crime, those funds will no longer be available to PP+. Finally, there is the moral question: "Is it ethical for a regulator to derive a significant part of its income from money that has been stolen from the public?"

This question goes beyond the scope of a CoP review and to the heart of PP+'s role. In the current situation, no responsible parent would allow their child to ring a PR number promoted in a TV show or download a ring tone; but we should be able to let our children do these things in the confidence that our children will not be ripped off. The replacement of PP+ with a body actually dedicated to stamping out fraud and theft will benefit not only the consumer but, ultimately, the industry itself.