



AVP Monitor response to the Ofcom consultation on the Amendment to the PhonepayPlus Code of Practice (11th Edition)

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AVP Monitor – 16.1.08

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AVP Monitor welcomes the opportunity to respond to the Ofcom consultation on whether it should approve the PhonepayPlus Code of Practice (11th Edition) to reflect revised governance arrangements, as proposed by PhonepayPlus in March 2007.

AVP Monitor was established in 2007 and has over 25 years combined experience of regulating premium rate services in the UK. We provide a variety of services, including independent compliance advice and the bespoke monitoring of premium rate services for mobile and fixed line network operators, aggregators/service providers, content providers and broadcasters. Our aim is to ensure that all promotional material and content comply with relevant Codes and legislation, including the PhonepayPlus Code of Practice.

AVP Monitor welcomes and supports the introduction of a Code Compliance Panel which will have dedicated responsibility for the adjudicatory function within PhonepayPlus. The creation of a Panel whose sole purpose is the enforcement of the PhonepayPlus Code should ensure a continued move towards establishing a truly efficient, consistent, transparent and objective decision-making process, allowing the Board, reduced in number from 12 to 10, to focus on operational, strategic and policy matters.

While welcoming the new governance arrangements, we are keen to understand how the distinction between the Board and Code Compliance Panel will be managed and maintained in the long term. PhonepayPlus has stated that there will be an initial need for common citizenship, pending the completion of a training programme for the Code Compliance Panel members, and during which time, Board members will sit on Tribunals.

PhonepayPlus has further stated that ultimately, it intends that there be a complete separation of Board and Code Compliance Panel work, but that isolated instances, such as absence or illness, may require the attendance of Board members at a Tribunal. In terms of flexibility, once the period of common citizenship is at an end and the Code Compliance Panel is in a position to carry out its role effectively, the pool from which Tribunal members can be drawn will reduce from 12 to 6, with the effective loss of the availability of 6 Board members.

The attendance of Board members at Tribunals is set out at Section 8.1 of the proposed changes to the PhonepayPlus Code and would appear to be at odds with a stated intention of effecting a complete separation between the operational and adjudicatory functions within PhonepayPlus, which is the ultimate and desired aim. Additionally, retaining Board members as Tribunal members, even for isolated instances, would require ongoing training to ensure that the purpose behind the creation of the Code Compliance Panel can be assured, namely, effective working, consistency, transparency and objectivity.

With reference to the provision of summary updates, we suggest that a general overview of PhonepayPlus adjudicatory work could be provided on a more frequent basis than only as part of the Board's annual report. The work and achievements of the Code Compliance Panel will be of particular interest to the industry.

The Formal Framework Agreement between Ofcom and PhonepayPlus, published on 5 December 2007, appears to constitute a marked change in the status of PhonepayPlus from that of independent regulator, to an agency of Ofcom. Under the Communications Act 2003, Ofcom is the body with overall responsibility for regulating premium rate services and has the power to approve PhonepayPlus Board and Chief Executive appointments, as well as the ability to issue directions to

PhonepayPlus on certain matters of particular importance or relevance, which PhonepayPlus agrees to be bound by.

AVP Monitor asks that in the interests of clarity, the language and terms used to reflect both the changes to the PhonepayPlus governance arrangements and the change in status of PhonepayPlus, as set out in the Framework Agreement between Ofcom and PhonepayPlus, are clear and consistent.

In summary, AVP Monitor supports Ofcom's proposal to approve the amendments to the PhonepayPlus Code of Practice (11th Edition). We also look forward to working with PhonepayPlus on the implementation and ongoing work of the Code Compliance Panel.

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