

Carmen To
Ofcom
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

18 April 2016

Dear Ms To,

Consultation: Approval of the PhonepayPlus Code of Practice (14th Edition)

I write in response to your consultation regarding the draft PayphonePlus (“PPP”) Code of Practice. Ombudsman Service’s responses to the questions raised within it are set out below;

Q1: *Do you consider Ofcom should approve PPP’s 14th Code of Practice in its current form? Please provide an explanation to support your response.*

Ombudsman Services concurs with Ofcom’s provisional view; the draft Code does look to satisfy the seven criteria for approval set out in s.121(2) of the Communications Act 2003 (“the Act”). The changes look to have no impact at all with regards to criteria (a) “person with function of administering and enforcing”, (c), “funding”, and (e), “undue discrimination”.

With regards to criterion (b), “independence from providers”, we note the proposed creation of a Code Adjudication Panel (CAP). The rules with regards to the makeup of this panel look to be robust; it will consist of two senior lawyers and up to 13 lay members, all of whom will have no commercial interest in the premium rate service sector. We also note that PPP board members will be unable to sit on the CAP, and that the board, in any event, is subject to its own stringent rules to ensure independence. All in all, the checks and balances look to be appropriate to ensure the PPP’s continued independence.

We further agree that the draft Code looks to fulfil criteria (d) and (f) and that the Code, in its entirety, looks to be “objectively justifiable” and “proportionate”. The creation of new criteria within the Code to determine whether or not a case should be allocated to “track one” or “track two” looks to be manifestly better for procedural fairness. Further, the removal of the “emergency procedure”, which will effectively be subsumed into the “track two” process, also looks to constitute a proportionate simplification. Additional amendments, set out at paragraph 4.20 of the consultation document, all look to meet the relevant criteria.

With regards to criterion (g), “transparency” of the Code, we consider that the creation of new allocation criteria, as noted above, marks an enhancement. We note that the bulk of the provisions of the Code look to be unchanged and can see no evidence to indicate the amendments that have been made would have adverse consequences for the Code’s transparency or clarity.

Q2: *If the 14th Code of Practice were to be approved by Ofcom, do you disagree with PPP's view that a short implementation period would be sufficient before the Code becomes enforceable by PPP? Please provide an explanation to support your response.*

Ombudsman Services agrees that only a short implementation period should be necessary before the Code becomes enforceable for the reasons set out at paragraph 20.19-20.21 of the consultation document. Specifically, the modifications are relatively modest and by no means constitute a radical departure from the existing arrangements. Additionally, we note that the PPP has separately made stakeholders aware of the proposed changes and has consulted directly with them about them. As such, industry awareness ought to already be sufficient.

Q3: *Do you disagree with PPP's view that the revised Part 4 procedures should apply to all existing as well as new investigations from the date the 14th Code of Practice takes effect? Please provide an explanation to support your response.*

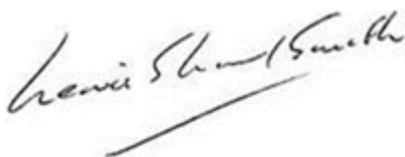
The proposed transitional arrangements look to be reasonable. We note it is intended that ongoing investigations, commenced under the existing Code, will be handled under the new procedure when it comes into force. On the face of it, this looks to be reasonable. Firstly, the updated process looks to be more streamlined and therefore of benefit to those involved in existing matters. Secondly, Ofcom advises that PPP will take adequate steps to update parties to the amendments. On this basis, we see no reason to conclude parties will suffer detriment.

We also note that the transitional arrangements will only impact upon procedural provisions; substantive breaches will be assessed under the Code that was in place at the time they are said to have occurred. This proposal looks to be appropriate and will ensure that no party will be expected to meet a new burden that they could not have been aware of at the relevant time.

In summary, Ombudsman Services is of the view that the proposed Code amendments, at provisions for implementation, look to be reasonable.

I hope the above is of assistance. If you require further information about our services, generally, or my comments on this matter please contact our legal and policy advisor, Daniel Fox, in the first instance at dfox@ombudsman-services.org or by telephone on 01925 772 625.

Yours sincerely,



Lewis Shand Smith

**Chief Ombudsman and Chief Executive
Ombudsman Services**