

**Title:**

Mr

**Forename:**

Rory

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Maguire

**Representing:**

Organisation

**Organisation (if applicable):**

Association for Interactive Media and Entertainment (AIME)

**Additional comments:**

AIME is the UK Trade Association for the Interactive Media and Entertainment Industries and its Members operate in various forms of consumer entertainment services, some of which are monetised using various micropayment technologies including premium rate.

Through its members' businesses, approximately 80% of the £650m annual premium rate revenue is processed, providing essential services to consumers, taxation revenue to the UK and extensive employment.

AIME worked closely with PhonepayPlus to review the initial proposals for the 13th Code and has commented extensively on the proposed code changes through its consultation response. AIME's response has been granted an extension to 24th September. Please see AIME's current response document (draft until 24th September and then final) in full on [www.aimelink.org/regulatory](http://www.aimelink.org/regulatory). It would be beneficial to read our complete response as this response to Ofcom will only contain the areas where AIME is recommending that Ofcom does not approve the draft code until relevant revisions are in place

**Question 1: Do you consider Ofcom should approve the draft PPP thirteenth Code of Practice in its current form? Please provide an explanation to support your response.:**

AIME is supportive of a majority of the changes proposed by PhonepayPlus as they serve to enhance protection to consumers while allowing businesses to continue to provide innovative and exciting new consumer services.

There are areas of the proposed code that AIME has particular concerns about and AIME has advised PhonepayPlus in detail of those concerns, summarised below. These are mainly centred on the rights of providers of premium rate services to operate in a fair, pragmatic and

consistent regulatory environment without unpredictable business risk.

As a result of these concerns, we recommend that Ofcom does not approve the draft PhonepayPlus Code until those concerns have been discussed further and the necessary changes implemented into the draft. To address some of the concerns, we recommend, where necessary, removal of negative changes to enforcement procedures from the current consultation, pending a complete review of enforcement procedures in the light of active legal challenges. We are recommending a procedural overhaul that can then be consulted on separately.

Particular concerns expressed by AIME in its response to PhonepayPlus are:

1. Withhold once a Track 2 investigation instigated. AIME understands the need for retaining funds against deliberate polluters who may not pay the resulting fine and admin charges. But without the necessary protection mechanisms for ensuring that legitimate businesses are able to make appropriate modifications to their service and continue, the withhold may cause insolvencies prior to a hearing by the Tribunal. This can affect the legal and human rights of the provider. The resulting potential litigation will increase costs for PhonepayPlus which will have to be funded from the remaining industry. Some of AIMEs larger members in the mobile services arena have expressed concern about reduced investment in premium rate services since 2013 which has been attributed to the increased business risk through current enforcement procedures. Ofcom should not support changes that could create additional situations where legitimate companies could be pushed into insolvency.

2. Proposed changes to Oral Hearings. Ofcom should not approve this change as it removes the rights of a premium rate provider to determine how the allegations against its service are heard by the adjudication body. The decision criteria to allow an Oral Hearing are not independent of PhonepayPlus under current drafting and opportunities for bias exist with the proposed process. This will risk increase levels of legal challenges. Ofcom should not approve changes that create anomalies with EU and UK laws.

3. Prior permission replaced with special conditions in Code. AIME views this change positively, but as currently drafted by PhonepayPlus new conditions have been introduced on subscription services that were not present before and have not been consulted on. We are advising PPP to move subscription services to a separate section to include the unique conditions that are relevant to subscription services. Ofcom should not approve the draft code until anomalies such as this are corrected.

4. Changes to the 'Vulnerability' definition and scope. AIME supports conditions that ensure vulnerable consumers are protected from deliberate targeting, but the proposed changes represent high risk for providers that have not targeted vulnerabilities, but whose service has been used by a vulnerable person. We have recommended that usage of a service by a vulnerable person who has suffered financial distress can be resolved with refunds instead of broad sanctions, that PPP should align vulnerability definitions with other bodies such as Ofgem and the NHS and that the burden of proof for intent to target must be part of any PPP enforcement action. Under current drafting, the business risk is high and will stifle innovation and investment in new consumer services. Ofcom should not approve a Code that creates business uncertainty.

5. Removal of Ofcom budgetary oversight. This allows PhonepayPlus to increase its budget

unhindered and apply increased levy on the premium rate industry without adequate governance. We believe that if a change is to occur, a budget approval body should be formed from stakeholders (including the industry that funds PPP) that can approve (or not) the future PhonepayPlus budget. The operation of this proposed body must be entered into the Code before Ofcom approves it. PhonepayPlus has expressed ambition to enter non-PRS micropayments markets. This is causing concern as it should not occur under current funding models or the granted remit. Ofcom should not approve a code that permits runaway spending by its regulatory agency. Instead, Ofcom should periodically review the role of the PRS agency to ensure that value for money is being delivered with adequate consumer protection alongside a healthy industry.

**Question 2: If the draft Code were to be approved by Ofcom, what period of time do you consider would be appropriate before the thirteenth Code of Practice became enforceable by PPP? Please provide an explanation to support your response.:**

AIME recommends that Ofcom does not approve the draft Code in its current form for the reasons stated above and due to AIME members concerns that PhonepayPlus may have introduced unintended consequences that could result in increased legal challenges from companies who have not set out to cause consumer harm but who have their businesses put under financial and reputational risk by the current and proposed changes to enforcement procedures.

Due to the timetabled need to implement certain changes to support the NGCS implementation in 2015, we recommend that the proposed negative changes to the Code related to Enforcement Procedures are removed from the current draft, reviewed separately and consulted on for an additional update to the Code. This will allow the current draft (pending other AIME recommended changes as detailed in the answers to Question 1) to proceed unhindered by potential legal issues and become implementable in early 2015 to meet NGCS timescales.