



## Communications Consumer Panel and ACOD response to PhonepayPlus' discussion document on vulnerability

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The Communications Consumer Panel (the Panel) and the Advisory Committee on Older and Disabled People (ACOD) welcome the opportunity to respond to PhonepayPlus' discussion document on vulnerability.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and microbusinesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

### Response

The discussion document rightly highlights both the increasing importance of the UK market for digital content and the ease of payment for such content. Fuelled by the always-on culture made possible via mobile devices such as smartphones and tablets this is a market that is growing rapidly, offering incredible convenience, choice and immediacy. Younger consumers are particularly prolific users, perhaps underlining the need to provide proportionate protection against the risk of unwittingly running up high bills.

Alongside the many benefits that the digital content market offers consumers come attendant risks - particularly as people who are in more vulnerable positions are more likely to use premium rate services (PRS) and can unknowingly and rapidly incur high bills. We note that in an undoubtedly related development, PhonepayPlus is receiving an increasing number of complaints about digital content (e.g. games and apps, ringtones and wallpapers). So whilst instantaneous payment brings huge benefits for consumers and businesses, it can also bring risks, particularly for consumers who are in more vulnerable positions.

In 2010, the Panel carried out work into behavioural economics and more vulnerable consumers<sup>1</sup>. Behavioural economics suggests that, in contrast to traditional economic models, consumers do not act in a perfectly rational manner. Consumers have limits to their ability to take in information; they are influenced by how things are presented, often to the extent of making bad decisions; they tend to be bad at anticipating the future; they care about other people and fairness; and they care more about losses than gains. Vulnerable consumers, particularly low income consumers and, to a lesser degree, older consumers, are more likely to display the biases identified by behavioural economics. This can put them at particular disadvantage in complex markets such as communications. We noted that it is crucial therefore that regulators and policy makers:

- Work harder to understand the differences in behaviour for different groups of consumers, particularly vulnerable consumers.
- Identify where these different behaviours may lead to different outcomes for different consumers and where this may cause vulnerable consumers to be particularly disadvantaged.
- Identify where the market and/or current regulatory interventions are failing to address this disadvantage and adopt policies and interventions to respond to these differences in behaviour; and address differential outcomes, testing these policies and interventions with experiments where possible.
- Are cautious about relying solely on providing information as a way of responding to differences in behaviour or addressing differential outcomes. Some evidence suggests that too much information or information that is too complex can lead to poorer consumer decisions and may thus have a detrimental effect on consumer welfare.

At the time, the Panel encouraged Ofcom, and regulators in general, to take the real behaviour of different groups of consumers, particularly vulnerable consumers, into account.

In line with this, we have previously welcomed the additional activity PhonepayPlus has undertaken to protect more vulnerable consumers, including the usability of its website and guidance related to in-app purchases for children. We appreciated the app store pilot conducted by PhonepayPlus in 2014 which has now led to consumers being able to purchase apps on the Google Play store (and other qualifying app stores) using their EE, Three or O2 accounts and be protected by PhonepayPlus' regulations.

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<sup>1</sup> *[Behavioural economics and vulnerable consumers: Panel introduction, Dec 2010](#)* (PDF);  
*[Behavioural economics and vulnerable consumers: summary of evidence, Dec 2010](#)* (PDF).

## *Risks*

In relation to the risks that more vulnerable consumers can face, bill shock is not a new issue but is now potentially easier to accrue, particularly for children and the less digitally confident. We agree that it is vital that consumers are aware of changes in the operation of their services- regardless of whether these come about as a result of market or regulatory changes.

We also note the comments made in the discussion guide in relation to the digital divide. We believe that this has two implications - for those offline, who may find that they are paying more for access to certain services e.g. obtaining telephone numbers via 118 numbers; and for those people online who lack the requisite confidence and skills and may either make purchases unintentionally (particularly due to misleading promotions) or find themselves stymied when they try to seek redress. Complaining and seeking redress can be difficult enough in the physical world - but obtaining the relevant details and pursuing redress can become all the more complicated online. We agree that this is of particular concern where subscription services are involved.

The discussion document highlights three particular areas of risk for children's use of services: in-app purchases; virtual currencies; and mobile competitions or subscription services advertised in apps and games designed for children. We note that complaints to PhonepayPlus appear to suggest that there are issues related to children's awareness of making a payment, in addition to the question of knowledge of how much they are spending. It is of significant concern that while PhonepayPlus' research found that 90% of parents say they would welcome a spending cap as a means to reduce the risk of high bills, Ofcom research suggests that only 10% of parents are aware that they can set limits to apps or in-app purchases on a phone or tablet. This suggests that there is scope for the industry, and communications providers in particular, to do more to help consumers take control of their spending.

## *Reducing risks*

In relation to the steps that PhonepayPlus has undertaken to address reducing risks to more vulnerable consumers, we note that in the previous Code of Practice the provision dealing with vulnerable consumers could only be applied when it could be demonstrated that a provider has intentionally sought to take advantage of such consumers. We fully support focusing on the outcome of a service rather than the provider's intent - recklessness should be no defence. As such we welcome that the new Code provision requires providers to exercise reasonable foresight as to who is likely to use their service and to take all reasonable steps to ensure that those customers are not at significant risk of detriment.

We also welcome PhonepayPlus' intention to publish guidance to industry on the definition of when a consumer might be more vulnerable. We fully agree that vulnerability has a fluid nature rather than being a simple binary position. Additionally, proactive early information sharing and identification of potential risks through the Early Warning System set up by industry is a very welcome development which will hopefully contribute to addressing problems before they multiply.

### *Additional options*

With regard to other options, we are strong believers in the value of evidence to be gained from complaint analysis - particularly as vulnerable consumers are more likely to use PRS than average consumers. It is crucial that all consumers can have their complaints and issues resolved.

We have previously welcomed PhonepayPlus' use of spending caps, which we believe can be a very effective tool to control bill shock. However we acknowledge that there may be other ways to achieve similar levels of protection and would be interested in discussing these with PhonepayPlus when appropriate.

### *The role of others*

We fully agree that, as in other areas of consumer harm, relevant regulators should act in harmony. In this case, regulators should indeed share information and experience to ensure that consumer protection is consistent and reliable, regardless of payment mechanics.

Industry also needs to be prepared to be more proactive in the protection of more vulnerable consumers. Consumers need tools to help control purchases and, when these tools have been designed and deployed, consumers need to be made aware of their existence. As we note above, the figure of 10% awareness amongst parents of the ability to limit app or in-app purchases is remarkably low and we would strongly encourage PhonepayPlus to work with industry to require promotion of such tools.

The provision of such tools can be used to highlight consumers' responsibilities and the need for parents to educate children about the mechanics of such services, so that they are not deterred from enjoying the benefits that digital content can bring by the personal experience of detriment.

In summary, the Panel very much welcomes PhonepayPlus' discussion document. It is timely and we believe that it highlights the right risks; we also support a co-ordinated approach to the mitigation of those risks. The development of the market for digital content is perhaps outpacing consumers' full understanding of the potential for detriment and harm - especially where vulnerable people are concerned. So we welcome and support PhonepayPlus' commitments and recommendations as set out in the summary section of the discussion document.

Two areas that we believe are especially important are the intention to publish guidance, following consultation, in respect of understanding that there is no rigid definition of vulnerability; and the focus on pre-empting and preventing harm. Progress in these areas will help consumers and industry alike, leading to higher levels of trust and confidence and fewer complaints and disputes.