

Communications Consumer Panel and ACOD response to PhonepayPlus' consultation on its Vulnerability Guidance

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

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

We welcome the opportunity to contribute to this consultation on behalf of vulnerable consumers using digital content.

PhonepayPlus (PPP) has previously highlighted the increasing importance of both the UK market for digital content and the ease of payment for such content - with which we agree. The Panel fully supports PPP's aims to mitigate the risk of unfair advantage being taken of any vulnerable group or any consumer in vulnerable circumstances and we welcome this guidance as a measure to improve providers' awareness of, and response to, this risk. Sensitive handling of consumers in vulnerable circumstances is vital in building trust in the market.

Where consumers are less likely to be able to make fully informed rational decisions, they are at greater risk of suffering detriment; providers should have reasonable foresight and take action to mitigate that risk.



Definition of vulnerability

The nature and effect of vulnerability is well-summarised in paragraph 2 of the guidance, which introduces the new vulnerability provision in the 13th Code of Practice (the Code).

We have previously supported PPP's intention to publish guidance to providers on the definition of when a consumer becomes vulnerable, recognising that vulnerability has a fluid nature, rather than being a simple binary position. We are pleased to see that the guide explains that a consumer can be vulnerable because of a defined characteristic *or* circumstance.

Any consumer can become more or less vulnerable at any time and it is important that providers do not simply focus on particular groups or treat vulnerability as a compliance exercise.

It is vital that providers make all of their charges clear for all consumers and have a clearly-defined, easy-to-access and easy-to-use process for complaints and redress. We have provided specific suggestions on defining vulnerability below, which we hope are helpful:

Under '*Vulnerability due to characteristics*' (paragraph 6), we would suggest adding '*Consumers who lack confidence with technology*', as highlighted in paragraph 2 and '*Consumers with a mental illness*'.

Under '*Vulnerability due to circumstance*' (paragraph 7), we would suggest adding '*Relationship breakdown/divorce*', as this can have a large impact on financial and decision-making capabilities.

Occasionally, people in vulnerable circumstances may ask a third party (a friend or family member) to act on their behalf. This could be informally, or in more serious cases through the instrument of a Power of Attorney. We wonder whether it might be useful to include within this guidance that Providers should be sensitive to such circumstances and have procedures to enable the appropriate handling of such situation. If providers don't allow this form of contact, detriment may well result.

Unfair Advantage

We believe it is right and fair to consumers that the Code is outcome-focused. Providers are in a position of power and should be encouraged to protect consumers from detriment. We welcome the update to the Code which means that proof that the provider has intentionally sought to take advantage of vulnerable consumers is no longer required.

As we have previously highlighted in our response to the PPP's discussion document on vulnerability, the always-on culture - made possible via mobile devices such as

smartphones and tablets - has fuelled the rapid growth of the market, offering convenience, choice and immediacy. Ofcom's Communications Market Report 2015¹ highlighted the UK's evolution into what has become a 'smartphone society', with 34% of UK adults checking their phones within five minutes of waking up.

Younger consumers are prolific users, especially of tablets, with further Ofcom research highlighting the need for providers to focus on protecting children as potentially vulnerable consumers:

- Ofcom's Children and Parents: Media use and Attitudes report 2015² showed that tablets are owned by 40% of 5-15 year olds, with many using the device in their bedroom, unsupervised.
- Ofcom's Children's Media Lives report³ (published January 2016) suggested that children have little understanding of the relationship between advertising and content and can fall foul of in-game incentives. There have been a number of high profile cases in the media in the past year that indicate similar occurrences.

We have previously highlighted the benefits of spending caps and we are disappointed to see that the good practice of allowing and encouraging these to be set has not made it into the draft guidance. We urge reconsideration of this - it has the potential to be a significant safeguard for the very consumers that the guidance seeks to protect.

The table of hypothetical examples provided in PPP's guidance gives a varied and helpful range of scenarios under which a consumer could be vulnerable to detriment - and sets out constructive methods of mitigating that detriment and building trust. It is here, perhaps, that there could be merit in the addition of spending caps as a way of mitigating detriment.

Throughout the scenarios described by PPP and the suggested actions, the messages "*act in a sensitive manner that does not seek to profit from their situation*", "*consider whether their service journeys are clear and unambiguous*", and "*ensure [they are] monitoring their complaints to identify any patterns*" are prominent - as is the need to take extra care regarding the protection of younger audience members. We endorse these messages and consider the way they are set out in the guide is clear, unambiguous and accessible to providers.

¹ <http://media.ofcom.org.uk/news/2015/cmr-uk-2015/>

² http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/children-parents-nov-15/childrens_parents_nov2015.pdf

³ http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/childrens-media-lives-year-2/children_media_lives_year2.pdf

Reasonable Foresight

We agree that it is not always easy to identify vulnerability at the point of a consumer's first use of a service - and as previously acknowledged, consumers can become more or less vulnerable over the course of time. Therefore we welcome the fact that PPP has consulted with industry to provide a non-exhaustive list of questions that providers can use as a start point for assessing risk of harm, monitoring ongoing risks and taking preventative or remedial actions.

The questions asked under the heading 'Risk Assessment' are all of value in assessing risk. However, many of them focus on the way the provider chooses to market their service. We would also encourage providers to look at the way vulnerable consumers may come into contact with their services beyond directly having been targeted by marketing; for example, through social media, or from within another service. It is vital that consumers understand exactly where charges start to apply; how much they are expected to pay; what commitment they are making; what the consequences of such commitments could be and how to cancel - and are able to cancel without penalty in circumstances where they have experienced detriment through no fault of their own.

Complaint Handling

As described by the Code, complaints from all consumers should be handled quickly, easily and fairly - and we agree with the statement in paragraph 13 of the guidance:

"Complaint handling that is sensitive and aware of the potential for consumer vulnerability should form part of a provider's approach to meeting this requirement."

Summary

We welcome this draft guidance, and we fully support PPP in its efforts to secure greater protection for consumers in vulnerable situations. We welcome, too, the focus on outcomes and effects on the consumer - which we believe is the right approach and which will benefit the industry and the consumers it serves.

We would recommend that consideration be given to including spending caps as part of the guidance.