

PhonepayPlus

Investigations & Sanctions Procedure

PhonepayPlus
Contents

Foreword
01

Section

- 1 Purpose
02—04
- 2 Investigations
05—08
- 3 Adjudication and sanctions process
09—25
- 4 Sanctions
26—32
- 5 Oral hearings and the Independent Appeals Body
33—34
- 6 Publication of adjudications
35—37



[Foreword](#)

The purpose of the PhonepayPlus Code of Practice is to set a regulatory framework for the premium rate services (PRS) industry that enables consumers to use PRS with confidence. Our default position is always to try and work with industry to build in compliance to services using the principles of the Code, whether that's through issuing Guidance, offering bespoke compliance advice or working consultatively and collaboratively on managing risks to consumers and the market.

However, from time to time things can go wrong. When they do, we will take firm action when the acts or negligence of providers or Network operators have led to consumers being harmed, or where strong potential for consumer harm exists. We recognise that, when this happens, most providers want to co-operate fully with PhonepayPlus, but we also realise that the processes we have around investigations and sanctions can seem to be complex for those outside the organisation. As a consequence, we have become aware of many 'urban myths' about our enforcement of the Code, which when analysed bear little resemblance to facts.

Over the last year, we have worked hard to improve transparency around our investigations and sanctions process, so that the industry can understand and have confidence in the process. For example, we recently published a schematic on our website that sets out, in graphical form, the processes we follow when enforcing the Code of Practice.

As part of our drive to greater openness, we are for the first time publishing our Investigations and Sanctions Procedure. This, we believe, is an unprecedented step amongst regulators. This procedural handbook is designed to further clarify what are, necessarily, quite legalistic and detailed rules in Part Four of the Code of Practice, which sets out how we carry out investigations, which procedures we can use and what sanctions we may impose.

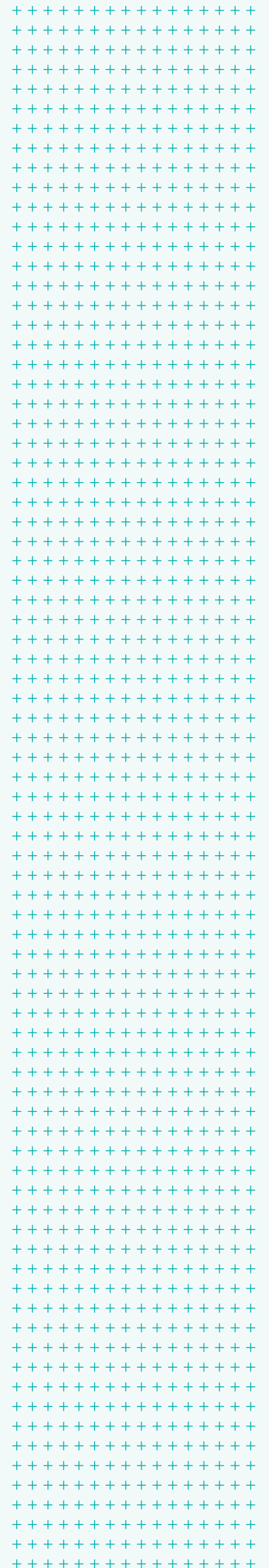
This new handbook is designed to support the new Code of Practice, which will come into force on 1 September 2011. Over the next few months, as we and the industry prepare the transition from the current 11th edition of our Code of Practice to the new Code, we will be carrying out further testing on the procedures set out in this handbook. As part of this ongoing evaluation, we welcome feedback from all stakeholders on the procedures, and in particular their clarity, so that we can continue to ensure that we are doing our best to effectively communicate our enforcement processes to our stakeholders, as well as ensuring that we continue to meet the principles of good regulation, especially in respect of transparency, proportionality and consistency. This handbook is a living document and, accordingly, we expect to be updating it as we move forward.



Paul Whiteing
Chief Executive

PhonepayPlus
Section 1

Purpose
02—04



Purpose

- 1 The 12th edition of PhonepayPlus' Code of Practice marks a step-change to key aspects of the framework for the regulation of premium rate telephone services (PRS) in the UK. The Code is focused on the outcomes that consumers should expect when purchasing a premium rate service and it sets out clear responsibilities for all providers in the value-chain, from Network operators through to those promoting and providing the service. Our vision and focus remains, however, on ensuring consumers can use these services with absolute confidence. We seek to achieve this through an emphasis on proactive compliance, proportionate remedies and pre-emptive action, rather than simply finding fault arising from complaints. This means, in practice, that where the actual or potential for consumer harm is considered minor, we are often able to resolve such cases informally. Coupled with proactively supporting industry in achieving compliance with the Code, these approaches should prove effective in driving up standards across the industry for the benefit of all. However, in a relatively small number of cases, things can and do go wrong, and Part Four of the Code sets out how PhonepayPlus will go about instigating or investigating complaints, as well as the procedures and process for adjudicating and setting sanctions where breaches are found by the Code Compliance Panel (CCP)¹, whose decisions are independent of the PhonepayPlus Board and Executive.
- 2 This document is a comprehensive handbook to Part Four of the Code and applies equally to all parties in the PRS value-chain. The purpose is to provide both transparency and clarity around the informal resolution process and formal investigative procedures used by PhonepayPlus in enforcing the Code. The handbook also seeks to clearly set out all the details of the adjudications process, including that used by the CCP to determine fair and reasonable sanctions, as well as the rights of a provider or Network operator should it find it is the subject of a PhonepayPlus investigation and/or sanction. It is essential that our processes are not only effective and capable of producing a proportionate, consistent and reasonable outcome, but that they can be clearly understood by industry.
- 3 This handbook may be used by all stakeholders, including consumers, but will be particularly useful to Network operators, Level 1 providers and Level 2 providers. It seeks to clarify our expectations as to the responsibilities which should be taken by all of those parties involved in the premium rate value-chain. Although Level 2 providers are ultimately responsible for the content, promotion and operation of a service, we expect all Level 1 providers and Network operators to carry out a satisfactory level of due diligence and risk assessment when contracting with providers, to achieve the outcomes as set out in the Code and supporting Guidance². Where we find evidence of a failure in meeting these responsibilities, we may initiate an investigation into that party. We may also pursue parallel investigations into various parties at different levels within the value-chain in relation to the same service. This document sets out what we expect by way of co-operation from any Network operator or provider in that situation, and it also makes clear what actions can mitigate any adverse finding that could follow.

4

Our focus on compliance means there is an expectation that Network operators or providers should always seek ways to encourage improved compliance standards, regardless of where they sit within the premium rate value-chain. Although this may not always involve PhonepayPlus directly, where information is shared with us, it will be handled fairly and sensitively so as to support businesses, while addressing any consumer harm and the need to improve compliance standards. If a provider or Network operator is found to be the subject of an investigation, we expect full co-operation from the relevant parties, as made clear in this document. We may also require co-operation from other parties in the value-chain in order to verify information received from the main party associated with the investigation.

¹ The Code Compliance Panel is responsible for PhonepayPlus' adjudicatory function. With a significant level of independence from PhonepayPlus, it is made up of six members, each with specialist legal or adjudicatory experience.

² PhonepayPlus publishes Guidance from time to time to support compliance with the Code of Practice. This includes Service-Specific Guidance and General Guidance on matters such as 'Due diligence and risk assessment and control on clients' and 'Consumer refunds'.

PhonepayPlus
Section 2

Investigations
05—08

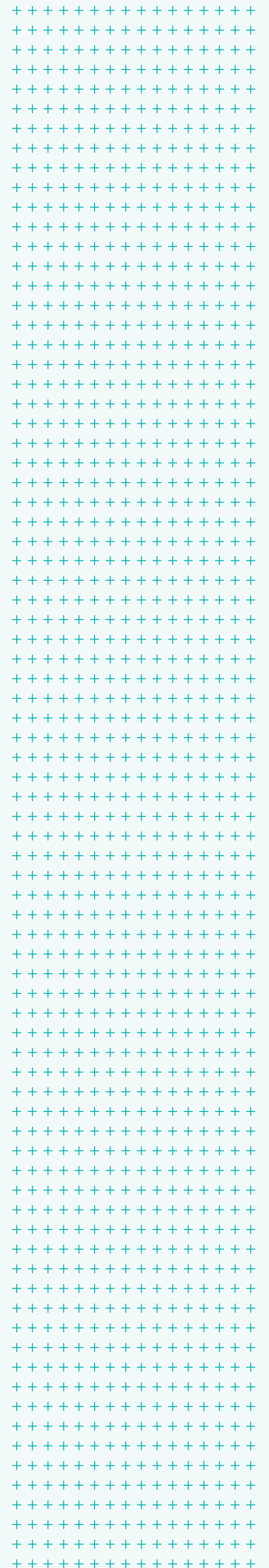
Co-operation with PhonepayPlus
– what we expect
06

Preliminary investigations and the
Fast-track process
07

Track 1 procedure
– paragraph 4.3 of the Code
07

Track 2 procedure
– paragraph 4.4 of the Code
08

Emergency procedure
– paragraph 4.5 of the Code
08



Investigations

Co-operation with PhonepayPlus – what we expect

- 5 PhonepayPlus expects Network operators or providers associated with services under investigation to fully co-operate with the Executive leading the investigation and to comply with the requests for information made under paragraph 4.2.3 of the Code in a timely, straightforward and thorough manner. Information supplied to the Executive must be accurate to the best of the Network operator's or provider's knowledge. Where a service is found to be in breach and sanctions are considered necessary, any deviation from the expected standard of co-operation during the investigation may be treated as either an aggravating or mitigating factor, which may have an impact on the severity of the sanctions imposed. Further guidance on this can be found below under 'aggravation and mitigation'.
- 6 Information and evidence is requested by the Executive, so that it can get to the facts of the case and determine appropriate action to remedy any issue and ensure consumers are not adversely placed at risk. Requests for information do not have any other purpose, and it is PhonepayPlus' duty to act proportionately in making such requests. It may, in some cases, be necessary to make further requests as the investigation proceeds.
- 7 Where a relevant party fails to respond and/or provides false or inaccurate information, the Executive may raise a breach of paragraph 4.2.4 and/or paragraph 4.2.5 of the Code, which applies to Network operators, Level 1 providers and Level 2 providers. Where a company within the premium rate service value-chain provides information obtained from an associated individual, agent or other third party, and that information is false or inaccurate, the company who provides the information and seeks to rely upon it may be found to be in breach of this provision. It is recommended the source of the information is identified to PhonepayPlus when it is provided.
- 8 To assist stakeholders in providing co-operation throughout an investigation, PhonepayPlus has produced an 'Enforcement Schematic', which sets out in diagrammatic form how our investigations processes work. It is available on our website.

Preliminary investigations and the Fast-track process

- 9 Any investigation involves the search for information and evidence relating to services that have been monitored by the Executive, or reported by a complainant or member of the industry. As identified in [paragraph 4.2.3](#) of the Code, that search for information and evidence may be broad and far reaching, intended to assess where relevant:
- The business systems in place, including due diligence and risk assessment;
 - The contractual arrangements made between parties within the value-chain, or with parties who are agents of a provider contributing to the promotion, operation or delivery of the premium rate service;
 - The promotion of the service;
 - The operation of the service;
 - The provision of customer care services, including refunds.
- 10 Where there are isolated complaints relating to a service and the evidence suggests any potential breach is likely to be considered minor, the case may be referred to PhonpayPlus' Complaint Resolution Team and PhonpayPlus' 'Fast-track process' may be used to gather relevant information, identify any potential minor breaches and agree an immediate remedy with the Network operator or premium rate service provider within the context of their role in the value-chain. This may involve arrangements for a refund in some cases to affected consumers.
- 11 As set out in Part Four of the Code, there are three procedures available to the Executive when dealing with potential breaches of the Code. The decision as to which procedure is appropriate in any given case is a decision for the Executive based on the evidence available and the assessed potential impact, using the same criteria employed by the Tribunal⁹ when assessing the level of seriousness of a case (see paragraph 43 below). However, cases are reviewed internally on a regular basis and, where information is provided that warrants a change in approach, it will be given due consideration and relevant parties will be notified of any change.

Track 1 procedure – paragraph 4.3 of the Code

- 12 Where there are apparent compliance issues identified relating to a service, or services, operated by one premium rate provider, but the actual or potential consumer harm is considered minor (see paragraph 54 below), the Executive may consider referring the case to the Complaint Resolution Team to use the 'Track 1 procedure' and develop an agreed action plan to remedy potential breaches.
- 13 The Executive may gather information associated with the promotion and operation of the service and set out the potential breaches. An action plan will be proposed by the Executive. Where it is agreed, the provider may need to document the implementation of changes to the service or business systems. The Executive may undertake routine monitoring of the service to test implementation. Any dispute relating to the action plan, or failure to implement it, may result in a Track 2 procedure being initiated.

Track 2 procedure – paragraph 4.4 of the Code

- 14 Where there are apparent compliance issues that are of a more serious nature than minor, or there is relevant previous breach history to be considered, the Executive may consider referring a case to the Investigations Team. Consideration of the criteria used by Tribunals to set the seriousness rating for a case, as is explained and set out below (in paragraphs 45 to 54), may assist with these case management decisions.
- 15 The Executive may gather information and evidence from a variety of sources, which may include parties found within the value-chain, Ofcom, other enforcement agencies, and consumers or complainants.
- 16 A formal investigation letter and case report will be prepared, setting out a description of the service and potential breaches identified. This will be shared with the relevant Network operator, Level 1 provider or Level 2 provider, requesting they respond formally to the breaches raised. The case will then be put before a Tribunal and the matter will proceed to adjudication. All documents in the Tribunal ‘bundle’⁴ will be available to the party under investigation.

Emergency procedure – paragraph 4.5 of the Code

- 17 The ‘Emergency procedure’ is used only in the most serious of cases where we believe very serious consumer harm has occurred and requires urgent remedy. In these cases, we will begin an immediate investigation that may result in the instant barring of access to the service in question.
- 18 The Executive will assign a case to the Investigations Team in these circumstances, and evidence of the seriousness of the case, the background information obtained and an explanation of potential breaches will then be presented to three members of the CCP. If the CCP members approve the use of the Emergency procedure, the Network operator(s) will be informed and formal directions issued barring access to the service.
- 19 The Executive may gather information from a variety of sources, which may include parties found within the value-chain, Ofcom, other enforcement agencies, and consumers or complainants.
- 20 A formal investigation letter and case report will be prepared, setting out a description of the service and potential breaches identified. This will be shared with the relevant Network operator, Level 1 or Level 2 provider, requesting they respond formally to the breaches raised. The case will then be put before a Tribunal to decide on the breaches raised and any appropriate sanctions. The Tribunal bundle will be disclosed to the party under investigation.

³ The Tribunal consists of three members of the Code Compliance Panel who adjudicate on cases presented to it by the Executive.

⁴ The bundle is the package of documents relating to the case, including the breaches raised by the Executive with supporting evidence and any responses and evidence sent in by the Network operator or provider.

PhonepayPlus
Section 3

Adjudication and sanctions process
09—25

The purpose of imposing sanctions
10—11

The Tribunal – paragraph 4.6 of the Code
12—24

Establishing whether breaches
have occurred
14

Establishing the severity of the breaches
14—15

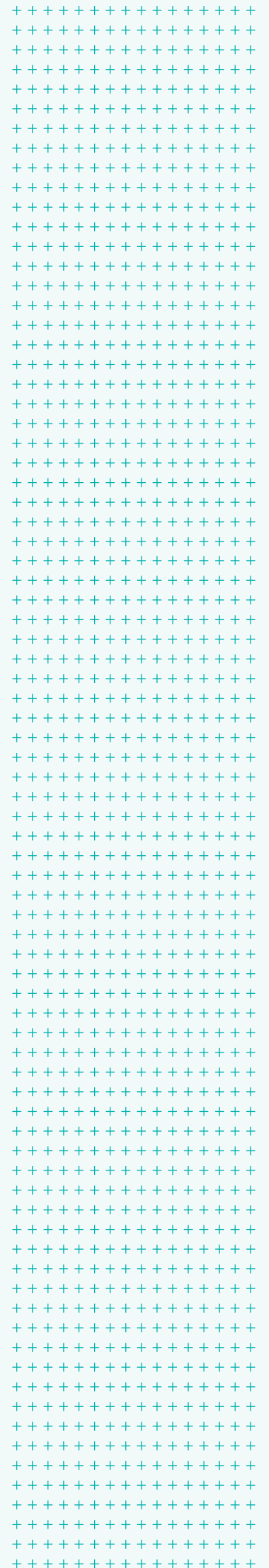
The initial overall assessment
16

Examples to be considered in reaching an
initial overall assessment of the breaches
16—21

Adjustment and final assessment
22

Aggravation and mitigation
23—24

Reviews – paragraph 4.7 of the Code
25



Adjudication and sanctions process

The purpose of imposing sanctions

- 21 Sanctions may only be applied in cases where a Tribunal has determined that a Network operator, Level 1 provider or Level 2 provider has conducted its business, or operated a service, in breach of one or more rules or responsibilities set out in the Code.
- 22 Each case is taken on its own merits and sanctions applied may vary depending on the Tribunal's analysis of impact and culpability, service revenue data, and any mitigating and/or aggravating factors. Some, or all, of the sanctions can be applied in any case, depending on the circumstances. The Tribunal will take into consideration the principles of good regulation when imposing sanctions: that any regulation, or indeed any action to enforce regulations, should be transparent, accountable, proportionate, consistent and targeted (meaning only used in cases where action is needed).
- 23 When applying sanctions, the Tribunal will be guided by:
- The need to protect both actual or potential consumers and build consumer confidence in the premium rate services market;
 - The need to maintain high standards of compliance within the industry to maintain due diligence, good regulation and confidence in the industry;
 - The need for targeted sanctions to appropriately impact at the point in the value-chain that is most likely to ensure continued compliance with the Code;
 - The degree of responsibility for provision of the service in breach, or for managing the provider of such service;
 - The fair distribution of responsibility for consumer protection and Code compliance across the value-chain;
 - The need to deliver the strongest safeguard that the breach of the Code in question is unlikely to be repeated by the party in breach, or others in the industry;
 - The need to provide clarity and regulatory certainty as to the way the offending service, and services of a similar nature, are to be delivered in future.
- 24 The variety of sanctions available allows for different circumstances to be addressed effectively and to achieve the goals set out above. For example, in order to restrict the profitability of non-compliance, a Tribunal may impose a fine at an appropriate level so as to deter companies repeating the same breaches in future, or deter third parties from copying a service model, or promotional material, that is in breach.

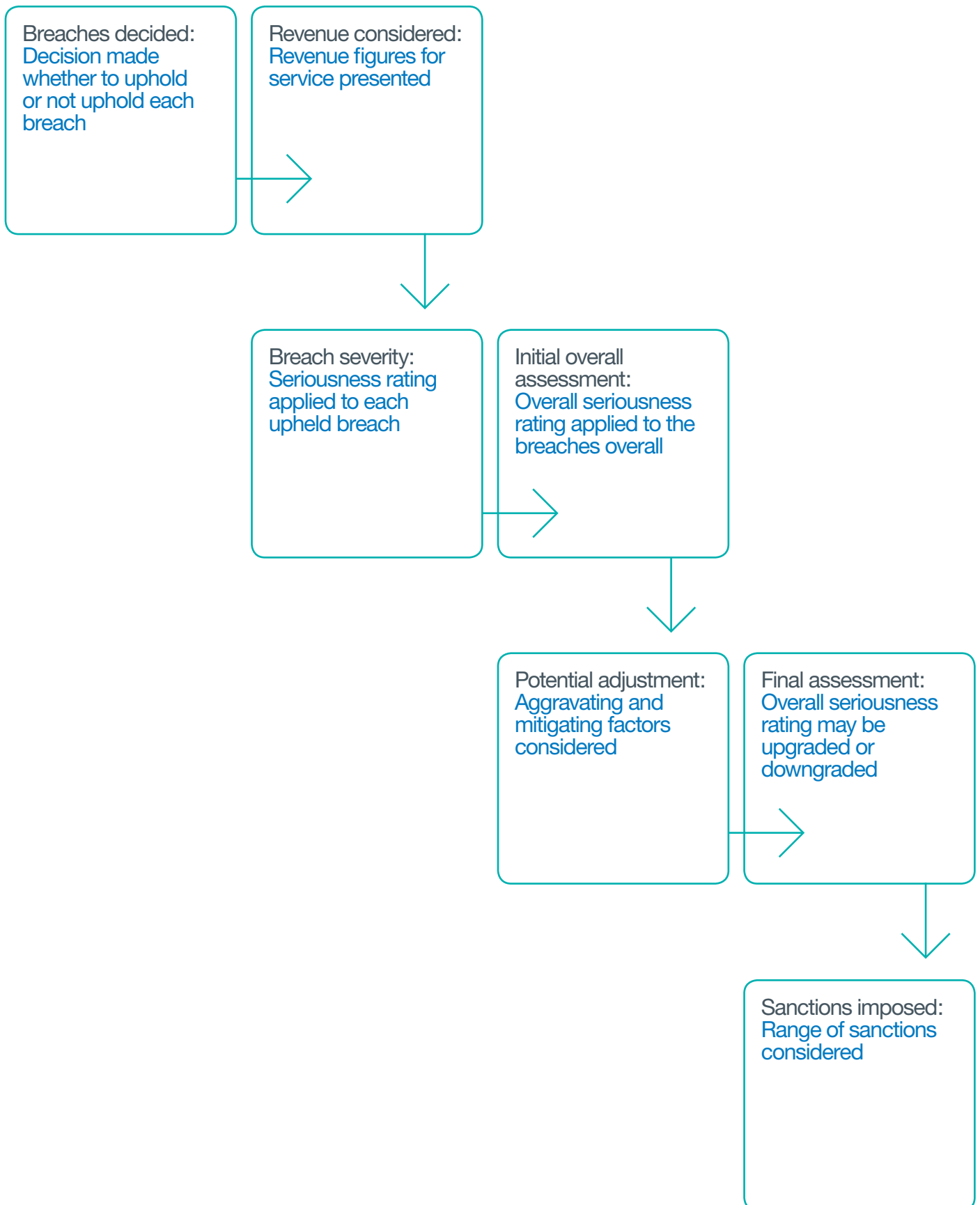
- 25 In another example, a Tribunal may order compliance advice to be sought from PhonepayPlus for a set period of time while improvements are made to the company's business systems. This may also be done in order to establish effective dialogue between a Network operator or Level 1 provider and PhonepayPlus, and ensure the implementation of due diligence procedures that may pre-empt the operation of non-compliant services.
- 26 Alternatively, a warning may be imposed on a relevant party, which may also set out the key factors that led to the breach, in order to encourage future discipline in a Network operator's or provider's ability to assess risks inherent with a service and to mitigate any consumer harm arising on its platform. Another approach could see a Tribunal order that a category of service operated by the company must be submitted for prior permission⁵ for a set period (for example, where a Level 2 provider has had two or more services found in breach of the Code), in order to ensure current and future services are not operated, or launched, in a manner that is non-compliant with the Code.
- 27 A final example may involve the imposing of a refund sanction in a case where breaches of the Code had clearly been shown to cause consumer detriment. This sanction could be used to restore consumers to the position they would have been in, had the breaches not occurred or the service in breach had not operated. The refund sanctions available may be imposed in any case, regardless of whether there are breaches of rules under Part Two of the Code or responsibilities under Parts Three or Four of the Code, and they may be undertaken with consideration of consumers who are either directly, or indirectly, affected by a Network operator's, Level 1 provider's or Level 2 provider's breach of the Code.
- 28 A formal investigation, and the imposing of sanctions, is not an end in itself, but a trigger for improved compliance standards alongside clarity of interpretation of the Code.
- 29 The Registration Database will be maintained effectively to assist PhonepayPlus in ensuring the purpose of any imposed sanction is delivered following a Tribunal's adjudication (see Section 6).

⁵ Certain types of premium rate services pose a greater risk of harm to users because of their content; examples include live chat, gambling and counselling. These services can only be operated if PhonepayPlus has first provided written prior permission, which may set further service-specific conditions on Network operators or providers.

The Tribunal – paragraph 4.6 of the Code

- 30 In accordance with paragraph 4.4 (or 4.5, where relevant) of the Code, where the Executive decides it necessary to formally investigate the promotion and operation of a service by a premium rate provider, or the potential breach of a rule by a Network operator, Level 1 provider, or Level 2 provider, a formal case report will be prepared. The case report will be presented to the relevant party, giving it an opportunity to set out in writing its response to the potential breaches. The case report will set out the background to the investigation; describe the service when considering Part Two rules and/or the business processes when considering Part Three or Part Four responsibilities; document any monitoring and testing undertaken; and provide details of any complaints, where relevant. The Executive will present the potential breaches, explaining the evidence and facts obtained during the investigation. The Executive expects responses to be supplied promptly, usually within ten working days, and Network operators and providers need to have systems in place to meet such deadlines.
- 31 The case report, amended where necessary, and including any responses from relevant parties, will then be presented to three Tribunal members selected from the Code Compliance Panel. This will usually happen a week in advance of the hearing, so that members will have time to read the papers prior to meeting for the Tribunal. The case report will also be provided to the relevant party under investigation.
- 32 When making an adjudication, the three Tribunal members will examine the facts and the evidence presented in the papers, and they will determine whether any breaches raised by the Executive have been established.
- 33 Prior to a case being considered by the Tribunal, time may be given to the relevant party to make an informal representation to the Tribunal members in person on the day of the hearing, if they so elect.
- 34 An informal representation is a chance for the relevant party to clarify the facts of the case, and the response that it has submitted within the papers, to the Tribunal in person. It is also the Tribunal's opportunity to explore and ask questions to gain a fuller understanding of the issues involved and of the actions of the parties concerned. Because of the nature of the clarification that may be useful to the Tribunal, it is preferable for a person with knowledge of the promotion and operation of services, or alternatively a person responsible for compliance with the Code, to attend. The Tribunal does not expect legal representations during the informal representation, but clarification given on any point of law already raised in the papers may be considered.
- 35 An informal representation is primarily intended to clarify the facts that have been submitted within the papers to the Tribunal. New evidence or arguments (either written or oral) will not normally be permitted at this stage. In some cases, a Tribunal may request that an informal representation be made by a relevant Network operator or provider. An informal representation is usually limited to 30 minutes, as this should be enough time for clarification of necessary matters within the papers.

Sanction-setting process diagram:



Establishing whether breaches have occurred

- 36 The presentation of individual breaches will be the same whether the Executive has raised a breach of a rule under Part Two of the Code, or a responsibility set out in Part Three or Part Four of the Code.
- 37 The provision of the Code will be interpreted by reference to the common usage of words as written in the Code. The Tribunal may also make reference to any definitions found at [paragraph 5.3](#) of the Code and any Guidance published, from time to time, by PhoneyPayPlus.
- 38 The Tribunal will consider the reasons, given by the Executive, for its consideration that the breach has occurred, referring to any evidence that it considers relevant in the papers, or that might reasonably be expected to be held by the Executive.
- 39 The Tribunal will consider any response given by a relevant party and examine the information supplied by the Network operator or provider, referring to any evidence that it considers relevant in the papers, or that might reasonably be expected to be held by the Network operator or provider. The Tribunal will expect the Executive to have made all reasonable enquiries for information and evidence held by the Network operator or provider during the course of its investigation.
- 40 Where breaches are admitted, the Tribunal members will consider the facts, assess the Executive's interpretation of the Code and consider the Network operator's or provider's admissions. If the interpretation is accepted, the Tribunal will probably uphold the admitted breaches.
- 41 Where breaches are disputed, the Tribunal will examine the evidence using the burden of proof used in civil law cases: on the 'balance of probabilities'. This means the Tribunal will consider the submissions made by both parties and consider whether it is more likely than not that the breach has occurred.
- 42 The Tribunal will adjudicate on each breach separately, and when it has made a decision, it will declare a breach either 'upheld' or 'not upheld'.

Establishing the severity of the breaches

- 43 If the Tribunal determines that breaches have occurred, the next stage is to establish the level of seriousness of each breach, and of the case as a whole. Both are assessed on a five-step scale:
- Minor
 - Moderate
 - Significant
 - Serious
 - Very serious

- 44 PhonepayPlus considers any breach of the Code to warrant attention and remedial action, so as to improve compliance standards. Severity levels associated with particular service characteristics may vary from case to case, depending on the circumstances.
- 45 A non-exhaustive list of the criteria a Tribunal may consider in assessing the severity of the breaches is as follows:
- The significance of the breach, including the potential impact on the average consumer's ability to make a free and informed transactional decision and/or the impact on the enforcement of the Code in order to protect the interests of consumers and other industry participants;
 - The severity and/or extent of actual consumer, societal or market harm, and the potential for further consumer harm;
 - The effect on children or others who may be in a position of vulnerability⁶;
 - The potential for loss of confidence by consumers in premium rate services in general;
 - The actual and potential revenue generated by the service;
 - The extent to which the service is able, through its design and operation, to deliver its purported value to consumers.
- 46 Where a Tribunal is assessing the severity of a breach in relation to any responsibilities set out in Part Three of the Code, the Tribunal may consider both the adequacy of the business systems, as put in place by the relevant party, their development, operation and maintenance, and the actual or potential impact caused by that relevant party's failure to meet those responsibilities.
- 47 It is recognised that an isolated case of a Level 1 provider failing to implement control mechanisms in relation to a perceived risk may result in a very significant level of consumer harm. Alternatively, a serious and repeated failure to undertake due diligence, or undertake risk assessments on clients, may result in only low-level consumer harm. A Tribunal may give extra weight to the adequacy of the business systems put in place, but is likely to consider the impact felt either directly, or indirectly, by consumers as a factor by which proportionate levels of severity are found.

⁶ 'A position of vulnerability' may be created by a person's character or circumstances, such as children who might fail to understand the costs involved in a service, or where a public information service targets its marketing at a particular group of consumers based on the general economic circumstances facing them. Where a breach of the Code appears to have a significant impact on people in a position of vulnerability, the severity level given to the case overall is likely to be serious or very serious, depending on the Tribunal's view of the facts.

The initial overall assessment

- 48 The Tribunal will consider each breach that it has upheld and allocate a provisional severity rating for each breach, using the five-step scale set out in paragraph 43 above. In doing so, the Tribunal will be guided by the criteria and examples set out below (see paragraph 54). These criteria and examples are not binding on the Tribunal, but are to support its assessment and serve as an aid to consistency.
- 49 Where only one breach is upheld, the severity given to that individual breach will usually be declared as the initial overall assessment of the case.
- 50 Where two or more breaches are upheld, other things being equal, a Tribunal will usually consider it appropriate to declare the initial assessment as matching the highest severity level given to one or more breaches. One possible reason for setting a different severity level may be a collection of breaches of a less serious nature being upheld and considered together, to warrant a higher initial overall assessment to be declared.
- 51 The reason given for the initial overall assessment will be set out in the adjudication report and will be published.

Examples to be considered in reaching an initial overall assessment of the breaches

- 52 This section sets out some illustrations of the level of seriousness that may be applied by a Tribunal to individual breaches; from 'minor' up to 'very serious'. These are only a guide, and the lists are not exhaustive.
- 53 PhonepayPlus considers that a breach of a responsibility set out in Part Three of the Code may directly and/or indirectly affect consumers. For example, where a Network operator or Level 1 provider fails to meet its responsibility to conduct due diligence, or undertake adequate risk assessments of providers, that breach of the Code may indirectly impact on consumers when non-compliant services are permitted access to the network and consumers are harmed as a result. Evidence of any indirect impact on consumers may be presented to a Tribunal when addressing breaches of responsibilities under Part Three of the Code.
- 54 The examples below may be considered when analysing the seriousness, or potential seriousness, of individual breaches and determining the initial overall assessment. The descriptive criteria for each severity level (listed in the boxes) are a guide to support the Tribunal's assessment as to severity. A Tribunal may be further assisted by reference to the examples provided. However, the decision as to severity is ultimately left to the Tribunal who will consider all the circumstances surrounding the breaches upheld, alongside the particular facts and circumstances of the case, which always differ and have a specific context.

Minor

Minor cases are likely to have had little or no direct or indirect impact on consumers and shown little evidence of potential harm arising.

and/or

The nature of the breaches is likely to have had little or no detrimental effect on consumer confidence in premium rate services and complaints have been narrowly defined and directed at the party in breach.

and/or

The cost incurred by consumers may be minimal, with the breaches having the potential to generate limited revenue streams.

and/or

Breaches found within services that are still capable of providing some purported value to consumers and which were designed to provide a legitimate product or service may be considered 'minor'.

Examples may include:

- A technical issue had rendered a service temporarily unavailable to consumers contrary to what was stated in its promotion;
- There is no consumer contact number, or other required consumer support information, in an otherwise compliant service, but another route of enquiry is available;
- The promotional material for a service contains pricing information and, despite the information lacking sufficient prominence, there is no evidence of consumers incurring financial detriment;
- The service promotional material is not clear in its description of the service, but there is no evidence of consumers incurring any financial detriment;
- A provider has unintentionally failed to register a service it operates with PhonepayPlus in relation to an otherwise compliant service.

Moderate

Moderate cases are likely to have a discernable effect, directly or indirectly, on consumers and/or show evidence of some potential harm likely to affect consumers.

and/or

The breaches, if continued, may also be capable of having a slight impact on consumer confidence in premium rate services.

and/or

The cost incurred is more likely to be material to consumers, with the breaches capable of inflating revenue streams relating to the service.

and/or

Breaches found within services that are still capable of providing some purported value to consumers and which were designed to provide a legitimate product or service may be considered 'moderate'.

Examples may include:

- A small-scale service that has limited marketing and reach is advertised inaccurately, which may be capable of impairing the transactional decision of consumers;
- A service that has used a mechanic that induces consumers to subscribe has not made them sufficiently aware that there are premium rate charges, but there is little or no evidence of consumers being misled by any suggestion the service is 'free';
- A Network operator or Level 1 provider has failed to undertake effective due diligence/risk assessment and control on their client, who in turn has caused consumer harm in an isolated, unintentional incident;
- An isolated incident where a limited number of consumers received unsolicited promotions for a service and such promotions were for a limited period of time;
- A Network operator or provider has failed to register as an organisation operating premium rate services, but has sought to rectify this at the earliest opportunity when put on notice of the requirement in the Code.

Significant

Significant cases are likely to have had a material impact, directly or indirectly, on consumers and show substantial potential for harm to consumers.

and/or

The nature of the breaches is likely to have caused, or have the potential to cause, a drop in consumer confidence in premium rate services.

and/or

The cost incurred is likely to be material to consumers, with the breaches likely to generate considerably inflated revenues for the service. The service itself is still capable of providing some purported value to consumers.

and/or

The nature of the breaches is such that the legitimacy of the service as a whole is put in doubt.

Examples may include:

- The service has purposefully or recklessly been promoted in such a way so as to impair the consumer's ability to make a free and informed transactional decision;
- The nature of the breaches, or the impact felt by consumers, was such that it had some detrimental effect on consumer confidence in premium rate services;
- A service which operated in breach of a condition specified in the prior permission certificate granted in relation to the service or service category has caused some consumer harm;
- A Network operator, Level 1 or Level 2 provider has negligently or repeatedly failed to comply with a PhonepayPlus requirement, such as registration of the organisation or its services;
- A service, which failed to supply pricing information or adequate details relating to the provider of the service, was such that the legitimacy of the service as a whole was put in doubt, when consumers accessed it and were charged unknowingly.

Serious

Serious cases have had a clear detrimental impact, directly or indirectly, on consumers and the breaches have a clear and damaging impact on consumers.

and/or

The nature of breaches means the service would have damaged consumer confidence in premium rate services.

and/or

The cost incurred by consumers may be higher, and/or the service had the potential to generate higher revenues, as a result of the breaches.

and/or

The service has been operated in such a way that demonstrates a degree of negligence, recklessness or intention of non-compliance with the Code.

Examples may include:

- A service that has promotional material that has been designed with the intention to not provide consumers with adequate knowledge of the service or the costs associated with it;
- A service that is non-compliant in relation to a series of rules and/or responsibilities, which indicates a systemic failure to meet outcomes set out in the Code;
- A service that generates substantial revenues through a recklessly non-compliant promotion that misleads consumers;
- A Network operator or Level 1 provider has failed to develop and/or consistently use due diligence processes for its clients, which may have had a detrimental impact on the investigation and enforcement of the Code. Dependent on the nature and size of any detrimental impact, this may be considered 'very serious'.

Very Serious

Very serious cases have a clear and highly detrimental impact, directly or indirectly, on consumers.

and/or

The nature of the breaches, and/or the scale of harm caused to consumers, is likely to severely damage consumer confidence in premium rate services.

and/or

Consumers have incurred an unnecessary cost, or the service had the potential to cause consumers to incur such costs, and the service is incapable of providing any purported value.

and/or

The service was designed with the specific purpose of generating revenue streams for an illegitimate reason, which is likely to be considered 'very serious'.

and/or

Where the nature of the breaches is such as to cause distress or offence, or takes advantage of a consumer who is in a position of vulnerability.

and/or

The breaches demonstrate fundamental non-compliance with the Code in respect of a high exposure/revenue generating service, or a 'scam'.

Examples may include:

- A service purports to provide a service or product that does not, and has never, existed and/or seeks to leverage vulnerable consumers in order to generate an income;
- A service offered content that is likely to cause widespread and substantial distress, harm or offence, such as an adult entertainment service containing references which suggest or imply the involvement of persons under 18 years of age;
- A service with the sole purpose of generating high revenues and does so through intentional or reckless design, such as a gambling service that has fundamental errors in its systems;
- A service which operated without prior permission being granted, where one or more Code outcomes or standard prior permission certificate conditions were not otherwise met, and consumer harm was identified;
- A Network operator or provider has supplied inaccurate, false or misleading information when registering the company or any of its services, which may have had a detrimental impact on investigation and enforcement of the Code.

Adjustment and final assessment

- 55 The Tribunal should then consider whether there are any relevant factors arising from the facts of the case, and the evidence presented, which may result in an adjustment of the severity level of the case. The Tribunal has the discretion to adjust the severity upwards or downwards within the five bands above. The adjustment will be made by reference to the criteria set out below and having given due consideration to any illustrative examples published by PhonepayPlus from time to time.
- 56 Where there are factors of aggravation and mitigation considered together, these may be balanced by the Tribunal. The level of severity is unlikely to be adjusted, unless there are clear reasons to do so, supported by the evidence presented to the Tribunal. Any adjustment must ensure the final decision remains proportionate to the overall impact and detriment caused, or potentially caused, to consumers and/or regulatory enforcement. For example, in most cases where the initial overall assessment is declared 'serious', it is unlikely factors of mitigation will reduce the severity level to 'minor' or 'moderate'. Equally, it is unlikely that a Tribunal would consider factors of aggravation capable of increasing the severity level declared at the initial overall assessment from 'moderate' to 'very serious'.
- 57 Where any Tribunal decides to use its discretion to adjust the level of severity, it will give its reasons for doing so and declare a final assessment, which will be published. It is the final assessment rating that will be used by the Tribunal when considering which sanctions, if any, are fair and reasonable to impose.

Aggravation and mitigation

58 After the criteria has been considered and an initial overall assessment made, the Tribunal will then consider whether there are any factors arising from the evidence, that justify making an adjustment in the severity of the case.

59 The following provides a non-exhaustive list of factors which may warrant an increase in the severity of the seriousness level and the sanctions to be imposed (aggravation):

- Failure to follow available Guidance, or failing to take appropriate alternative steps, which, had it been followed, would have meant the breach was unlikely to have occurred;
- Continuation of the breach after relevant parties have become aware of the breach, or have been notified of the breach by PhonepayPlus;
- The fact that the breaches occurred after a prior notice has been given to industry, such as the publication of a 'Compliance Update' or an adjudication, in respect of similar services or issues;
- The harm occurred following the supply of compliance advice to a provider where that advice has not been fully implemented;
- Any past record of the party, or of a relevant director, being found in breach may be considered relevant:
 - For breaches of the same nature
 - For any other breaches of the Code;
- Failure to fully co-operate with the PhonepayPlus investigation, including delayed or incomplete responses to information requests, which fail to meet the level expected by PhonepayPlus (see paragraphs 5 to 7 above).

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The following provides a non-exhaustive list of factors which may warrant a decrease in the severity of the seriousness level and the sanctions to be imposed (mitigation):

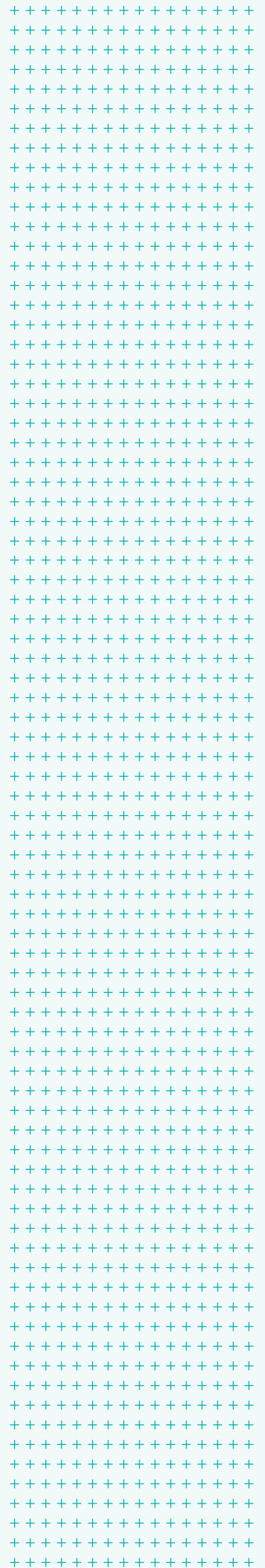
- Some, or all, of the breaches were caused, or contributed to, by circumstances beyond the control of the party in breach, except where they could reasonably have been prevented by meeting obligations set out in Part Three of the Code;
- The Network operator or provider has taken steps in advance to identify and mitigate against the impact of external factors and risks that might result in the breach, and has notified PhonepayPlus of this action;
- The Network operator or provider has taken steps to end the breach in question and to remedy the consequences of the breach in a timely fashion, potentially reducing the level of consumer harm arising from the initial breach(es);
- The Network operator or provider has adopted a proactive approach to refunding users, including complainants, which is effective in relieving some consumer harm arising from the breach(es);
- The Network operator or provider has proactively engaged with PhonepayPlus in a manner that goes beyond the level of co-operation that is generally expected;
- The Network operator or provider has taken action to ensure that the risks of such a breach reoccurring are minimised (including through a review and overhaul of its internal systems, where necessary) and that any detriment caused to consumers has been remedied.

61

While these factors may be considered, it is the discretion of the Tribunal to attribute a final assessment that remains proportionate to the breaches identified, ensuring compliance standards remain high and consumers are protected in the future.

Reviews – paragraph 4.7 of the Code

- 62 Any determination made by an original Tribunal may be reviewed by a Review Tribunal. Paragraph 4.7.1 of the Code makes it clear what determinations can be reviewed and has a broad list covering the various matters that may be dealt with by the CCP.
- 63 Reviews can be requested by either the relevant party, or by PhonepayPlus. Paragraph 4.7.2 of the Code provides time limits for when requests are to be made. This varies depending on the evidence that forms the basis of the review. Where the information is known to the relevant party or to PhonepayPlus, the request must be submitted within ten working days of the publication, or the sending of the decision or administrative charge invoice. Where the information is new and not reasonably available at the time of the original determination, requests are expected to be submitted within 30 days of the publication, or the sending of the decision or invoice. In highly exceptional circumstances, a later request for a review may be considered by the Review Tribunal. Some examples of this may include:
- The receipt of clear evidence that indicates that data records relied upon to establish a breach of the Code were faulty and the breach ought not to have been upheld; or
 - The receipt of evidence suggesting that false or inaccurate information was supplied by a third party to PhonepayPlus during the investigation, resulting in an incorrect adjudication.
- 64 An application for review must not be frivolous. Paragraph 4.7.3 of the Code sets out the test by which the Review Tribunal will use its discretion to determine whether to change the decision of the original Tribunal. The application must raise a new issue of fact or law, as opposed to making the same submissions in a different way. It must show that the new evidence was not reasonably available to the party seeking the review at the time of the original Tribunal and indicate the reasons why the Review Tribunal should review the decision in light of it. Alternatively, if there is substantive evidence to demonstrate that the original Tribunal's decision was clearly unreasonable, a review may also be requested.
- 65 Applications will be presented to the Chair of the CCP, or another legally qualified member of the CCP, if required, in accordance with paragraph 4.7.4 of the Code. S/he will consider the grounds and decide whether a review of some, or all, of the original adjudication is merited. Once the decision has been made, the relevant party will be notified and, if the application has been accepted, the Review Tribunal date will be fixed for the review as soon as is practicable.
- 66 Applications for review do not automatically suspend the sanctions imposed. In many cases, it may not be appropriate for sanctions to be suspended and any invoices, or other requests associated with sanctions, must be met by the relevant party. If a relevant party wishes for the Review Tribunal to consider suspending the sanctions, either wholly or partially, it must make an application in writing for suspension, along with its request for a review. This will be presented to the Chair of the CCP (or other legally qualified member of the CCP) in accordance with paragraph 4.7.5 of the Code. Unless there are exceptional reasons in the particular case to grant the suspension, the Chair will only suspend sanctions if a review has been granted, and s/he is satisfied that undue hardship would result from not granting the suspension and that there would be no significant risk of public harm in granting it.



PhonepayPlus
Section 4

Sanctions
26—32

The range of sanctions available
– paragraph 4.8 of the Code
27—32

A formal reprimand and/or a warning
27

Remedy the breach
27

Compliance advice and prior permission
28

Compliance audit
28

Barring
28

Prohibitions
29

Fines
30

Refunds – including refund directions
under paragraph 4.9 of the Code
31—32

Administrative charges
32

Sanctions

The range of sanctions available – paragraph 4.8 of the Code

- 67 PhonepayPlus has a range of sanctions which Tribunals can use to remedy any breach identified and improve compliance standards in the industry. Tribunals can impose any number of sanctions from within the range set out at paragraph 4.8.2 of the Code. Tribunals may be mindful of the overall impact a combination of sanctions may have upon a service and/or the provider. PhonepayPlus is aware of the financial implications of some of the sanctions, including the fine, the barring provisions and refund provisions. When imposing a combination of sanctions, the Tribunal will take into consideration the cumulative impact and seek to ensure sanctions are reasonable and proportionate in all the circumstances.
- 68 The different sanctions may be considered useful in achieving different regulatory outcomes. PhonepayPlus will seek to ensure sanctions are imposed effectively and appropriately, so that any regulatory action is targeted.
- 69 The final assessment may be considered a useful guide as to what sanction(s) are to be imposed, so that regulatory action is proportionate. Revenue statistics and other relevant financial information, where appropriate, may also guide a Tribunal when imposing sanctions that may have a financial impact, so that proportionality in the round is achieved.
- 70 The Tribunal may consider previous adjudications, where relevant, to assist in determining the appropriate sanction to impose, in order to ensure regulatory action is consistent.

A formal reprimand and/or a warning

- 71 These are distinct sanctions available to the Tribunal. A formal reprimand is a severe reproof or rebuke. This is an indication of wrongdoing that warrants immediate and effective action by the party in breach, and potentially those associated with the provision of the service across the value-chain.
- 72 A warning involves the declaration of words of caution, giving notice of concerns regarding a party's conduct. This may involve a description of the object of concern and a call to act promptly, so as to avoid similar problems in future. To ignore such a sanction may result in current, or future, services being investigated and higher penalties, if there are further adjudications against a company.

Remedy the breach

- 73 Any breach, whether 'minor' or 'very serious', will require some attention from the party in breach, and remedial action will be necessary in order to improve compliance standards. However, the Tribunal can specifically require the relevant party to remedy the breach, where there has been reluctance to make changes evidenced during the investigation.
- 74 Where this sanction is imposed, PhonepayPlus will have the option to initiate a new investigation raising a further breach (for non-compliance with a sanction), if evidence arises suggesting remedial action has not been taken, or has not been adequately implemented, within a reasonable period of time, as specified by the Tribunal.

Compliance advice and prior permission

- 75 This is given or granted by the PhonepayPlus Executive directly to individual providers at any point within the chain of provision of premium rate services. It is given by the Executive, following an assessment of service information and promotional material, which is supplied by the provider requiring the advice or permission; or, alternatively, the provision of information relating to internal business systems. Advice seeks to guide the provider's conduct, both present and future, so as to improve the provider's knowledge and understanding of Code compliance. It is intended to pre-empt future compliance issues and protect consumers.
- 76 Where a Tribunal has concerns relating to potential consumer harm arising from the service, or similar services in future, it has the power to order a party in breach to pursue and implement compliance advice, or seek prior permission to operate a service, from PhonepayPlus.

Compliance audit

- 77 This is a thorough examination, by an independent party agreed by PhonepayPlus, of the internal procedures a Network operator or provider has in place to ensure that it complies with its obligations under the Code. It may consider due diligence undertaken when a Network operator or provider is making commercial arrangements for the provision of premium rate services, access to telecommunications networks, or the technology required to operate premium rate services for the benefit of consumers. It may consider staff training and a Network operator's or provider's understanding of the Code of Practice, as well as the development of new services and their compliant operation and promotion.
- 78 The compliance audit is intended to identify and address issues that may have led to non-compliance in the past and pre-empt future compliance issues to protect consumers. A member of the industry may elect to undertake such an audit itself. However, the sanction is available to the Tribunal and may be considered appropriate to use in cases where there is a breach history, or where there is evidence that the business systems adopted by the party in breach contributed to the non-compliance demonstrated within a service.

Barring

- 79 The Tribunal has the ability to impose bars on a Network operator or provider. These can relate either to number ranges on which the service operates, and/or particular service types, and can be applied to some, or all, of the number range and/or service type, depending on the severity of the breach. Barring is always imposed for a defined period of time. The length of any bar is determined by the seriousness of the breach and all other relevant factors particular to the case.
- 80 A bar must be imposed for a defined period of time. This may be given in days, months or years; or it may be defined according to a specific action that the relevant party must do, such as making a service compliant, or payment of an outstanding invoice for a fine or administrative charge owed to PhonepayPlus.

Prohibitions

- 81 The Tribunal may restrict the business operations of a relevant party for a defined period, so as to address consumer harm, give time to enable effective improvement to services, or to punish a relevant party and/or an associated individual⁷ for the non-compliant services it has operated or permitted to operate. There are three different types of prohibition:
- Prohibition from any involvement in specified types of service – [paragraph 4.8.2\(f\)](#);
 - Prohibition from any involvement in all premium rate services – [paragraph 4.8.2\(g\)](#);
 - The prohibition from contracting with any specified party registered with PhonepayPlus – [paragraph 4.8.2\(h\)](#).
- 82 The first two prohibitions are only applicable in cases where the relevant party and/or the associated individual have been found to have been knowingly involved in a serious breach, or series of breaches, of the Code. The severity of the cases, and in particular the number of repeated breaches of the Code, may impact on the Tribunal's decision as to the extent of the prohibition.
- 83 The third prohibition focuses on the relationship between two or more contracting parties in the premium rate value-chain. Under the new Code, registration is an important obligation for all relevant members of the industry, designed to aid the exercise of due diligence responsibilities set out in Part Three of the Code and to improve compliance standards. Where these standards fall, and relevant parties are found in breach of the Code, the Tribunal may consider it appropriate to prohibit a relevant party from contracting with any specified registered parties (or any parties that ought to be registered).
- 84 Each prohibition must be imposed for a defined period of time. This may be given in days, months or years; or it may be defined according to a specific action that the relevant party must do, such as completion of a compliance audit under a separate sanction imposed in accordance with [paragraph 4.8.2\(k\)](#) of the Code.

⁷ An associated individual may be prohibited by way of sanction by a Tribunal. However, PhonepayPlus must follow the procedure set out in [paragraph 4.8.6](#) of the Code before a decision on the prohibition can be made. That paragraph requires PhonepayPlus to make all reasonable attempts to inform the associated individual and the relevant party in writing. The associated individual and/or the relevant party will be given the opportunity to respond in writing; they may make an informal representation, or request an oral hearing, prior to any decision being taken to impose this sanction.

Fines

- 85 Fines serve a dual purpose in that they remove some, or all, of the benefit or profit made from the non-compliant services and equally serve as a strong deterrent against future non-compliant activity being initiated by the party in breach, or by other members of industry intent on operating similar services.
- 86 The fine seeks to play a strong role in pre-empting further similar harm, and protecting consumers from such harm reoccurring. A Tribunal may consider using a refund sanction in conjunction with a fine to address the harm caused, further establish a deterrent and seek redress for consumers directly affected by the breaches upheld.
- 87 Alternatively, where refunds have proactively been given by the party in breach, significantly reducing the consumer harm and affecting the profit made from the breaches, the Tribunal may consider this when deciding what level of fine is proportionate.
- 88 Fines may be imposed up to £250,000 per breach. The Tribunal must impose fines that are proportionate, given all the circumstances, and therefore all the guide fine levels are without a lower limit, meaning each range begins at £0. The Tribunal will consider the final assessment of the seriousness rating when making a decision as to a proportionate fine. The bands of case seriousness and the usual levels of fines they may attract are:
- Minor: up to £5,000
 - Moderate: up to £20,000
 - Significant: up to £50,000
 - Serious: up to £100,000
 - Very serious: up to £250,000 per breach
- 89 A fine may be appropriate in all cases that have a seriousness rating which is more severe than minor. Fines can be:
- Confiscatory – broadly related to the revenue generated by the party found to be in breach in relation to the service, and may be applicable where the service has failed to deliver the value that it purported to offer to the consumer; or
 - Punitive – usually reserved for more serious cases and will be in excess of any revenue generated by the party found to be in breach in relation to the service, so that it adequately punishes the Network operator or provider for its non-compliance and acts as a suitable deterrence from future non-compliance.
- 90 The fine levels set out above are for guidance purposes and actual fines may exceed these levels (up to the statutory limit of £250,000 per breach), if justified in an exceptional case where, for example, a higher fine may be required to act as an adequate deterrent from future non-compliance, or where it may be required to impose a fair or proportionate sanction.

Refunds – including refund directions under paragraph 4.9 of the Code

- 91 Where a service has operated in breach of the Code and the breach has had an impact on consumers, PhonepayPlus expects a premium rate provider to consider making refunds directly to affected consumers. [Paragraph 2.6.4](#) of the Code states “where refunds are provided to consumers they must be provided promptly and in an easily accessible manner”. This is true in relation to refunds made following dialogue with consumers, engagement with the PhonepayPlus Complaint Resolution Team or following an order by a Tribunal as a sanction under [paragraph 4.8.2](#) of the Code.
- 92 To ensure refunds are made to consumers in an easily accessible manner, providers are expected to consider the size of refund when selecting a method of redress. Any refund process must not act as a barrier to consumer redress, either by placing any unreasonable burden on the consumer when making a claim, or by making receipt of the refund so difficult that it deters consumers from completing the process.
- 93 A Tribunal may consider it appropriate to make a general order for refunds to complainants under [paragraph 4.8.2\(i\)](#) of the Code, for example when:
- An identifiable (and possibly excessive) financial detriment to consumers has occurred;
 - Consumers were either deceived or misled with reckless or wilful intent, or through negligence;
 - The product or service was not supplied, or was of unsatisfactory quality;
 - The marketing or promotional material misled consumers into purchasing. This would include promotional material that stated a lower price than the amount the consumer is actually charged, or suggested that a service was free, when it was not.
- 94 Under [paragraph 4.8.2\(j\)](#) of the Code, a universal refund will require the provider to issue a refund to all consumers who received a premium rate charge from the service, even where they have not made a complaint. This sanction will only be used in circumstances where the service has failed to provide its purported value, and/or there has been very serious consumer harm, or a very serious breach of the Code of Practice has occurred.
- 95 Providing refunds to consumers in appropriate cases is important in resolving non-compliance. It is recognised in the Code at [paragraph 4.9](#) that monies may be retained by different parties in the value-chain, such as the Network operator or Level 1 provider. In order that refunds are awarded appropriately and without delay, systems need to be established so that relevant parties can assist in the provision of refunds from revenue retained by a Network operator or Level 1 provider in response to a PhonepayPlus direction (‘a retention’, as defined in [paragraph 4.9.1](#) of the Code).

96 PhonepayPlus can intervene where relevant parties fail to pay refunds promptly in response to a Tribunal sanction, and it will do so in accordance with paragraph 4.9.2 of the Code. A direction will be sent to the Network operator or Level 1 provider ordering it to make the refund payments. The relevant party will be responsible for any associated administrative costs. In relation to the obligation to make refunds on behalf of a party in breach, there is a three-month limitation period set in paragraph 4.9.3 of the Code. This period runs from the completion of the adjudication process, provided that any reasonable time for any appeals has also passed.

97 Refund sanctions are payable before fines or any administrative charge due to PhonepayPlus. Paragraph 4.9.4 of the Code makes it clear that monies outstanding, because of the failure of the relevant party to pay a fine or administrative charge to PhonepayPlus, may be paid out of funds from a retention; however, this will only be ordered in a direction once refunds are made, or the three-month limitation period has passed.

Administrative charges

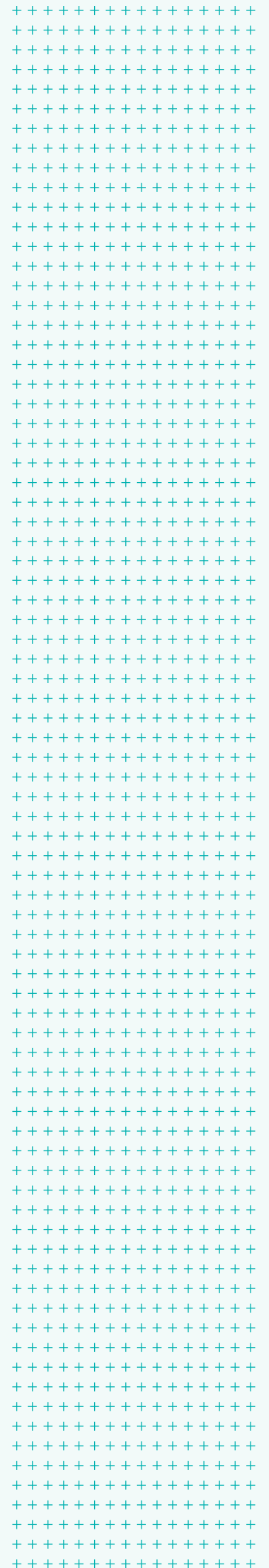
98 PhonepayPlus' policy is to ensure that, where resources and costs are incurred through investigating Network operators or providers in breach of the Code, these costs are met by those parties, rather than from the general industry levy.

99 For these reasons, all relevant parties found to be in breach of the Code can expect to be invoiced for the administrative and legal costs of the work undertaken by PhonepayPlus. The charges related to this activity are published annually by PhonepayPlus and are agreed with PhonepayPlus' external auditors. In cases where it has been determined that one or more breaches have occurred, the Tribunal members will make a recommendation to the Executive of the administrative charge to be imposed on the Network operator or provider. This may be imposed on a full cost recovery basis or, exceptionally, on a percentage basis, where circumstances justify this. Examples of the latter include where the Tribunal has not upheld a major part of the case brought by the Executive.

100 The Executive will give due consideration to that recommendation when using its discretion to invoice a Network operator, or a provider, for administrative costs in relevant cases.

PhonepayPlus
Section 5

Oral hearings and the Independent
Appeals Body (IAB)
33—34

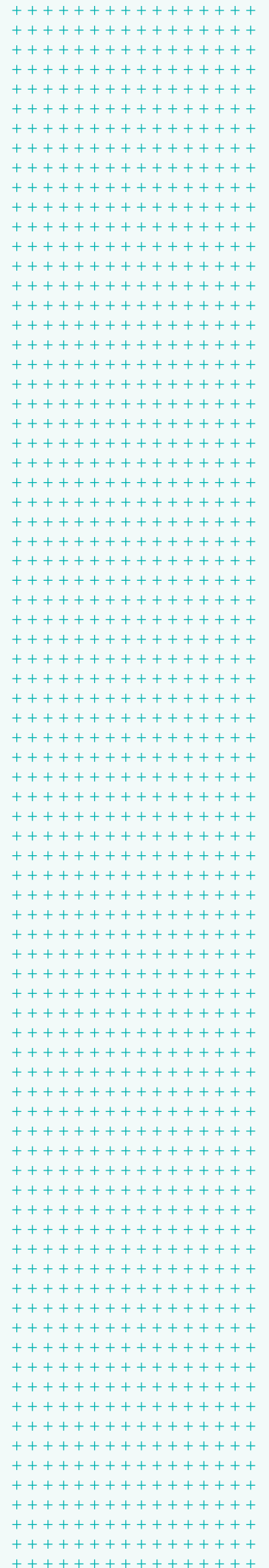


Oral hearings and the Independent Appeals Body (IAB)

- 101 Any relevant party responding to a formal investigation, or who has received a determination by the Tribunal in relation to its premium rate services, has the right to request an oral hearing by a Tribunal in accordance with paragraph 4.11 of the Code. This request needs to be made on receipt of an allegation of a breach of the Code by PhonepayPlus, or within ten working days of the sending of a Tribunal decision to the relevant party.
- 102 Where an oral hearing has taken place, the relevant party has the right to appeal to the Independent Appeals Body (IAB) against the Tribunal decisions and adjudications (other than any adjudication by consent) in accordance with paragraph 4.12 of the Code. The three possible grounds for appeal are listed in paragraph 4.12.3 of the Code:
- The disputed decision was based on error of fact;
 - The disputed decision was wrong in law; or
 - The Tribunal exercised its discretion incorrectly in reaching its decision.
- 103 PhonepayPlus has published in Annex 3 of the Code, and on its website, the powers and procedures of the IAB.

PhonepayPlus
Section 6

Publication of adjudications
35—37



Publication of adjudications

- 104 The decision of a Tribunal, in relation to the alleged breaches, the seriousness rating of the case and the sanctions set, is formal in nature. The Tribunal will prepare, with the assistance of the Clerk to the Tribunal, an adjudication report setting out the decision.
- 105 Adjudication reports published by PhonpayPlus following a Tribunal, in accordance with paragraph 4.13 of the Code, are intended to provide:
- A description of the service;
 - The key facts leading to the Executive's raising of potential breaches and aggravating or mitigating factors;
 - The submissions from the responding Network operator, Level 1 provider or Level 2 provider; and
 - The decision of the Tribunal.
- 106 The sanctions imposed in published cases may assist in improving compliance standards, not just by the party in breach, but in other parts of the industry.
- 107 The Executive will attempt to informally notify relevant parties of the decision within two working days of it being reached. The full adjudication report will usually be published two working weeks after the Tribunal hearing. It will be provided to relevant parties prior to publication.
- 108 Adjudications will form the basis of a relevant party's breach history. Details of any adjudication will be recorded on the relevant party's record on the PhonpayPlus Registration Scheme, as well as being published on the PhonpayPlus website, including:
- The date of the Tribunal;
 - The breaches raised, both upheld and not upheld;
 - The seriousness rating for the case;
 - Revenue band within which the service falls;
 - Sanctions imposed; and
 - Any other key information associated with the investigation.
- 109 The PhonpayPlus Registration Scheme will record breach history records associated with relevant providers or their directors, including any adjudication by a Tribunal, for three years from date of publication of the relevant decision. In cases where the final assessment given to the case is 'very serious', the adjudication will be recorded on the Registration Scheme for five years, from date of publication of the relevant Tribunal decision. This information is provided on the Registration Scheme to assist due diligence searches conducted by Network operators or providers on their current, or prospective, business partners. The Registration Scheme acts as one of many sources of information that may be relevant to contracting parties.

110

Previous adjudications may offer additional guidance to the industry on the criteria used by the Tribunal to assess seriousness ratings in different cases. They also act as an incentive to improve compliance standards across the industry, as a deterrent against the adoption of non-compliant service models or promotional material, and assist in providing clarity in the interpretation of the Code.

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