

Consumer Vulnerability and Premium Rate Services

Report by Stephen Locke, May 2010

1. Executive Summary

PhonepayPlus is not alone in seeking to get to grips with the concept of consumer vulnerability. Many regulators and public bodies have specific requirements to cater for the needs of people in vulnerable situations, but the concept is as slippery as it is important. This paper seeks to develop a framework for the assessment of vulnerability that will be of practical use to PhonepayPlus in the full range of its operations, drawing on assessment of selected calls to the Customer Call Centre, analysis of recent Tribunal cases, consumer and industry research prepared by external agencies, and the work of other organisations such as the Office of Fair Trading, Ofgem and Consumer Focus.

One important consideration is that consumers are not necessarily passive participants in the market, even where they are in a vulnerable position. There are plenty of circumstances in which they are aware of their vulnerability – possibly even over-aware – and act accordingly. This kind of situation is directly relevant to PP+'s central objective of ensuring that consumers can use phone paid services with trust and confidence. A lot has been done to improve the standing of the sector following the major problems involving diallers, mobile ringtones and TV voting, although such trust can easily be lost if there are high profile 'scams' that hit the press.

More difficult to handle are the situations in which consumers may be vulnerable but are unaware of it. There are particular problems in the phone paid sector because technologies and market structures are hard to understand, and many users struggle to get information from industry help-lines and call centres – on average it takes them 7 calls to get a problem resolved, and many will give up before they reach that point. Building on the OFT's thinking and their division of vulnerability into individual (ie arising from the specific circumstances of the consumer) and situational/transactional (ie arising from the nature of the service on offer or the way it is promoted or operated), a typology of types of vulnerability is proposed. As well as the more obviously recognisable vulnerabilities faced by, for example, children and older people, this introduces factors such as limited technical and market knowledge, limited economic resources, limited sources of support, lack of awareness of rights and the natural credulity that can leave some people open to the most flagrantly dishonest scams.

The paper concludes with recommendations for action in four main areas – customer care, monitoring and investigations, Code Compliance Panel Tribunals and education and outreach.

2. Introduction

Consumer vulnerability is important to PhonepayPlus (PP+). It is flagged up prominently in the organisation's set of values linked to its Mission Statement:

"In carrying out our mission, we are committed to ...staying aware of, and responsive to, the ways in which consumers, or particular sets of consumers, may be vulnerable when using premium rate services and striving to ensure that they receive the necessary protection"

[PP+ website, March 2010].

It also features in the current Code of Practice

“Services and promotional material must not...take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.”

[PP+ Eleventh Code, April 2008 edition].

But vulnerability can also be an extremely slippery concept, seemingly subjective and hard to use as the basis for clear-cut regulatory actions.

This report has been prepared at Phonepay Plus’s (PP+) invitation. Its central purpose is to develop thinking on the nature of consumer vulnerability and the way in which PP+ should reflect this in its work as a regulator. The full remit is attached as Annex A.

In preparing the report, I have drawn on the following in particular:

- Recordings and analysis of 18 cases handled by the PP+ Consumer Contact Centre, and selected by Customer Service Advisor Florian Demuth for the potential vulnerability of the consumers concerned.
- Analysis of the 42 most recent cases handled by Code Compliance Panel tribunals, dating back to January 2008, where the issue of vulnerability has been raised in some form or other.
- The research report prepared by consultants Think Tank for PP+ in January 2010 on the current and future market for Premium Rate Services.
- The work of the Centre for Consumers and Essential Services at the University of Leicester, and in particular its Round Table seminars in late 2009 and early 2010.
- Documentation from other regulators on vulnerability, notably the Office of Fair Trading (OFT) and Ofgem.
- Ongoing work at Consumer Focus, including a Board paper prepared in January 2010 by Jonathan Stearn and Sarah Brooks, and subsequently published on the organisation’s website at <http://www.consumerfocus.org.uk/assets/1/files/2009/06/8.1-Consumers-at-a-disadvantage.pdf>.

I have been particularly grateful to Linda Lennard, of the Centre for Consumers and Essential Services, and Florian Demuth in the PP+ Consumer Contact Centre for their advice and help.

I start by looking at some general definitions of vulnerability (section 3) and examples of how other regulators and public bodies develop the concept (section 4). We then assess how these concepts might apply to different sectors of the phone-paid market (section 5) and propose a. In section 6 a typology of vulnerability is proposed, which it is hoped PP+ will find helpful in its regulatory and other work. In section 7 some ideas are offered on how the proposed model of vulnerability might bear on different service types and payment platforms. Section 8 makes suggestions for actions in different areas of PP+’s work, and section 9 offers ideas on possible further research.

3. General definitions of vulnerability

The Oxford English Dictionary defines vulnerability as a situation in which the victim is

“Exposed to the risk of being attacked or harmed, either physically or emotionally”

This doesn't take us very far, though it does highlight the need to link vulnerability to the ideas of “risk” and “harm”, of whatever kind. More helpfully, the United Nations has developed this further in the context of social development:

“Vulnerability is a state of high exposure to certain risks, combined with reduced ability to protect or to defend oneself against those risks and to cope with the negative consequences that ensue when the risks occur.”

[World Summit for Social Development, Experts Group Report, 1998, cited in J. Stearns and S Brooks, Consumers at a Disadvantage, Consumer Focus Board paper Jan 2010]

The UN experts also observe that some groups have a much greater exposure than others, because of , for example, socio-demographic characteristics, economic status, physical or mental condition, lifestyle etc. But it is still important to note:

- Vulnerability is a circumstance, not an innate human condition. Some people may be vulnerable for multiple reasons, and on a permanent basis; but many others may only be vulnerable for a short period, or only in one area of their lives.
- Higher levels of risk faced, for example, by people who are elderly, disabled or young do not mean that all people in those categories are vulnerable; equally, people who are not in those categories may be vulnerable for reasons that are not immediately obvious. There are significant pitfalls in stereotyping.
- People can take action to mitigate their own vulnerability, or that of family members or close friends, provided they are aware of it in the first place.

The third point above is particularly pertinent. Consumers, as well as public agencies, will have views on how vulnerable they are and how much it matters to them – it is not just a “top down” concept. This is effectively the inverse of trust and confidence – which in turn relates directly to PP+'s Vision that anyone can use phone-paid services with absolute trust and confidence. We return to this point in section 5 below.

But at this point the key conclusion to note is that consumer vulnerability is essentially a risk assessment, which should start with an appraisal of how likely it is that a person or group of people will suffer harm in a given situation. The next section looks at how some other agencies have developed this concept as a guide to their work.

4. Vulnerability concepts used by other public bodies

One agency that has built up a relatively detailed model of vulnerability is the **Office of Fair Trading** (OFT). The OFT published its Prioritisation Principles in 2008 as a guide to work planning. A major element in the principles is the impact of a given development on consumers' welfare in the market concerned. Welfare in turn is measured in terms of both economic variables such as price, quality, range or service, and non-economic variables such as avoidance of physical harm or emotional

distress. Indirect benefits such as deterrence and improved consumer and enforcer awareness are also considered. But within this assessment particular weight is given to disadvantaged consumers who may be vulnerable to exploitation or who may not be able to share the benefits of competition.

Under this heading the OFT identifies consumers who:

- may be vulnerable to exploitation by rogue traders;
- are unable to share the benefits of competition, for example, because they are hard to reach or have limited market access;
- are in debt; or
- cannot afford to take the higher risks that sometimes go with better value for money.

The OFT's Prioritisation Principles further note that

"While the OFT has no legal or other mandate to redistribute wealth or power to intervene in individual disputes, we may sometimes favour projects that would benefit disadvantaged consumers, in order to build consumer confidence in markets."

[OFT Prioritisation Principles, Oct 2008, para 4.3]

This thinking was fleshed out further in a speech given by the Director General of Fair Trading (DGFT) in October 2009 [John Fingleton, Consumer Interest in Fair Markets particularly in a Recession, speech to Consumer Focus Scotland]. The DGFT identifies two different types of vulnerability:

- **Individual vulnerability** – related to the characteristics and capability of the individual. These would typically include literacy and numeracy, but would also extend to those with poor ability to manage, for example, cash-flow and debt. Geographical location, age and access to support networks are seen as major influences here too.
- **Situational/transactional vulnerability** – arising from the nature of goods and services consumed or the way in which they are purchased. This can apply before purchase – for example, as a result of high-pressure sales techniques or preying on a particular anxiety – or it can apply after purchase, for example, where consumers are locked into a contract as a result of poor information, unfair exit fees, barriers to switching or complex pricing structures. Everyone, potentially, is vulnerable in this sense, if only in relation to a specific market or individual transaction.

The DGFT makes three further interesting observations on levels of vulnerability, both with potential implications for PP+:

- Situational/transactional vulnerability is most likely to increase at a time of major changes in markets, for example because of new technology or changes in sales methods, or where individual circumstances have changed. Lack of familiarity makes it much harder for consumers to mitigate risk in the way they would with ordinary everyday transactions.
- Vulnerability of both types may become more acute in a recession as consumers face financial difficulty in paying for essentials and have less room for manoeuvre in managing their budgets. Meanwhile, the risk of individual scams preying on consumer desperation may be much more severe – it is common for pyramid selling schemes to boom in a time of economic hardship.

- The growth of the internet brings greater risks of increased situational/transactional vulnerability. Distance between the buyer and seller is one key factor; another is data warehousing and the mass storage of personal data; and a third is the security of payment details arising from remote transactions.

Among the sectoral regulators, **Ofgem** has developed a framework for considering vulnerability, as part of its Consumer First initiative. Protecting vulnerable consumers is a central part of the regulator's corporate strategy, but it is clear that there are many dimensions to vulnerability that make the issue quite a complex one. For example, one consumer may be physically frail but well off; another may be young and fit but on a low income and living in a poorly insulated home; others may have learning difficulties or be struggling with English as a second language.

These complexities lead Ofgem to propose a four-category approach to vulnerability in relation to the energy market:

- **Capability-based vulnerability**, where consumers are unable to engage effectively in markets because of low skills or lack of financial competence
- **Economic vulnerability**, where consumers on low incomes may be at greater risk of debt and may have more difficulty heating their homes adequately
- **Physical vulnerability** on the part of those who are elderly or have physical disabilities
- **Structurally excluded**, where consumers cannot play a full part in the market because of geographical isolation, lack of internet access or access to non-cash payment mechanisms.

These categories all seem closer to the OFT's "individual vulnerability" typology – it may be that situational/transactional vulnerability is lower because the energy market is a mature and relatively stable one (though high-pressure sales and barriers to switching have been serious problems in the past and continue to be to some extent).

A third public body that has to take on board vulnerability issues is **Consumer Focus**, the recently established advocacy body that has replaced National Consumer Council, Energywatch and Postwatch. Set up under the Consumers, Estate Agents and Redress Act 2007, Consumer Focus is required by statute to have regard in all of its work to:

- disabled or chronically sick individuals;
- individuals of pensionable age;
- individuals with low incomes; and
- individuals residing in rural areas.

The Act does not describe these groups as vulnerable, but the associated notes on the Bill that were prepared for Parliament at the time do mention the word.

Consumer Focus also has to reach a working definition of consumers who are vulnerable because its complaint-handling facility for energy and postal complaints (termed the Extra Help Unit) is available only to designated consumers at particular risk of vulnerability. Under the Act consumers can be at risk of vulnerability because of:

- age;
- income;

- disability or sickness;
- rural location;
- inability to pursue a complaint against an energy supplier by reason of mental or physical disability, lack of basic skills, or personal circumstances; or
- disconnection or threatened disconnection, and inability to pursue this due to personal circumstances, the urgency of the situation or the complexity of the case.

These provide some useful pointers (and a rare example of how vulnerability is handled in legislation and associated documents) but Consumer Focus is still working on a more comprehensive framework for assessing vulnerability, with a paper due to go to the Board in June 2010.

5. Application of vulnerability concepts to the phone-paid market

The table below shows how the separate issues of awareness of vulnerability and actual vulnerability interact. The top two boxes are of most interest for this study and form the focus of sections 5.1 and 5.2 of this report.

		Awareness of vulnerability	
		High	Low
Actual vulnerability	High	Consumer likely to steer clear for good reasons – but still some risk to PP+ reputation if there is a strong public consensus that it is a “no go area”	High risk to consumer, to industry and to PP+ reputation
	Low	Under-engagement – a problem for industry revenues and market failure	No risk unless personal or market circumstances change

5.1 Situations where consumers are aware of their vulnerability and act accordingly

As described in section 3, one key element of vulnerability relates directly to PP+'s Vision – the extent to which consumers consider themselves vulnerable in dealing with the service. This is the direct obverse of consumer confidence.

Some general context is provided here by the Consumer Focus 2009 Consumer Conditions Survey [Consumer Focus/Ipsos Mori, Dec 2009], which follows on from a similar survey previously run by the Department for Business, Innovation and Skills (DBIS). The main focus of the survey, based on nearly 6,000 telephone interviews, was to assess consumer confidence in each of 45 different markets, looking at six different headings on each, and developing a Consumer Confidence Index for each market based on the means of each set of scores:

- range and choice available;
- living up to expectations;
- protecting consumer rights;
- trustworthiness of advertising and marketing;
- the ease of comparing quality; and
- the ease of comparing prices.

In addition, consumers were asked about their overall experience in each of the markets and whether or not consumers had made a complaint in that market or had “cause to complain”.

Phone-paid services were not addressed directly, but questions were asked about mobile phone services (as opposed to handsets) and fixed-line telephone services. Both scored relatively poorly – mobile phone services ranked 30th (out of 45 sectors) and fixed-line telephone services ranked 39th. By contrast, PCs and software scored rather better at 18th, and [leisure related] CDs, videos, DVDs, video games or other related software came in at 2nd.

The survey suggests a spectrum of markets ranging from those consumers enjoy being active in – such as those with a large leisure or pleasure element – to those consumers prefer to avoid because they feel out of their depth – typically, markets embodying a large amount of necessity and “distress”.

Consumer confidence levels – a spectrum of market types

The typology below sets out 5 different market types, from those most likely to engender confidence to those most likely to cause consumers to feel out of their depth.

1. Markets consumers enjoy being active in – the leisure/pleasure or “feel-good/retail therapy” markets (such as TVs, DVD or MP3 players, clothing or footwear, books, newspapers or magazines, CDs, videos, DVDs – which all achieved higher scores)
2. Markets consumers are content to engage with, but mainly for every day, more mundane, matters or for “hygiene” factors (such as home insurance, DIY materials or hardware, hairdressing, barbers or beauty treatments, which achieved middling scores)
3. Markets consumers accept the need to engage with occasionally in order to achieve certain ends, or at a critical event (such as home improvement products, chemist, pharmaceutical or medical products, which achieved middling scores)
4. Markets consumers would prefer to avoid if they possibly could, such as “when things go wrong” (for example with their car or pet – vehicle repairs or servicing or vets’ goods or services did not score well)
5. Markets consumers feel “out of their depth” in, perhaps out of concern that they do not possess sufficient knowledge to be able to compare goods or services (such as with certain financial services: private pension plans and mortgages did not score well).

Choice and control are major elements here too – the markets at the top of the list instil high levels of consumer confidence, while those at the bottom end generate a feeling of angst and vulnerability. The feeling of dependency on general communications network services, their inherent complexity, and problems with switching all push them well towards the bottom of the list.

In addition, the survey included some questions specifically about vulnerability. Consumers were asked whether or not they feel at any particular disadvantage in any of the markets – “for example, because of any health problems, of access to shops, or making sense of the information, or your financial circumstances”. Overall 19% of the total sample felt they were at a disadvantage in at least one of the markets they were asked about. Mobile and fixed-line telephone services were broadly in

line with the average here. Interestingly, those who did consider themselves disadvantaged were more likely to

- be female;
- have a disability;
- be in the 16-34 age group;
- be from an ethnic minority ;
- have a low household income (up to £12k gross pa);
- use the internet but purchase over the phone; and
- have made a complaint or felt they had cause to complain.

But the last of these points expressly includes those who felt they had cause to complain as well as those who actually complained – data elsewhere in the study confirms that consumers from low-income households are less likely than consumers from high-income households to have made a complaint. Fixed-line telephone services topped the entire list of 45 sectors in terms of levels of complaints (27% said they had cause to complain, 23% actually did so), and mobile services were 5th (23% and 18% respectively).

In terms of phone-paid services the picture may be a bit brighter than with fixed-line and mobile network services. There is no separate data in the consumer conditions survey, but the Think Tank research report prepared for PP+ in January 2010 [Current and Future Market for Premium Rate services, pp 13-14] contains some interesting survey findings on levels of trust. Respondents gave the following reasons in response to a question on why they did not use premium rate services:

“the services don’t interest me” – 71.4%

“I don’t trust paying this way” – 10.4%

“the services are not good value for money” – 9.3%

“I often don’t trust the companies I see advertising these services” – 4.0%

Don’t know – 4.9%

The second and third categories can both be taken as indicating a lack of trust (and consequent feeling of vulnerability), but the total still comes to only around 14%. This suggests that there is – at least at present – not an endemic problem regarding perceived vulnerability across the phone-paid market as a whole.

But there are two caveats. First, the situation can easily change – another major high profile “scam” similar to those experienced in recent years with diallers, ringtone subscriptions and TV voting would rapidly generate a mood of vulnerability among consumers across the phone-paid market as a whole. Once lost, trust is hard to regain and it takes time. Second, there are within the phone-paid sector certain services that are seen as “essential” and so position themselves well towards the bottom of the five-level spectrum set out on page [6]. This is particularly true of 0871 lines run by customer service centres or help lines, where the consumer has little choice over whether to engage – page 18 of the Think Tank report [see above] records the significant anger about these services among consumers involved in the qualitative research. The report notes that “This was particularly

strong where consumers had problems with a service and the only way these could get resolved was to call the company.” Other services such as Directory Enquiries and practical advice lines may be utilitarian in purpose but they operate in a clear competitive space and so are unlikely to engender the same feeling of vulnerability.

5.2 Situations where consumers may be vulnerable but are not aware of it

This is a more difficult area to assess as the group of people concerned is a hard to reach one, unlikely to prompt the regulator to act unless things go wrong (and possibly not even then). As the discussion of the OFT’s analytical framework in section 4 suggests, vulnerability is not a static concept – it can apply to different people at different times, for a very wide range of reasons. It can also apply to the entire population in specific circumstances. But a picture of the nature of consumer vulnerability can be gained from qualitative research carried out for PP+ by Recom on the customer experience of making complaints about phone-paid services [“Mapping the journey and re-engagement”, Research in Communications, March/April 2009] and from subsequent qualitative research by the same agency [“What happened to customers who complained about a PRS?”, June 2009]. In addition, some useful insights have been built up from direct observation of the work of the customer contact centre. Meanwhile a complementary, but slightly different, perspective can be built up from analysis of reports of investigations cases that have gone to the Code Compliance Panel Tribunal.

The PP+ Customer Contact Centre receives calls from a wide range of consumers. Callers tend to be older than the average phone-paid service user – the majority of those making contact are over 40, and very few are under 20. But around 15% of callers are adults enquiring on behalf of a child, and a further 6% call on behalf of a relative or friend. The control group in the study – of consumers who had a complaint but did not approach PP+, having either sorted the matter out themselves or directly with their network – is much younger, with the majority being in their 20s. The Recom research reveals a number of useful insights into the level of vulnerability of those calling in:

- There is **huge ignorance** among complainants to PP+ of how premium-rate services work. More than 70% of respondents in the quantitative study were unaware that they had initiated a premium-rate service, and more than 75% did not know why they had been billed.
- Similarly, there was **great confusion** about which company was responsible for what, and the difference between network providers and service providers, and most respondents found it hard to remember the name of the service provider from their initial inquiries.
- All consumers approached their Network Provider as their first port of call, as this was usually a mobile phone service with which they had a contractual relationship. But in many cases where complaints had ended up with PP+, **Network Providers were unhelpful** and sought simply to pass the caller on to someone else. Many less confident consumers gave up after contacting the Network Provider. Poor service from networks left some consumers less confident, and more vulnerable, than they had been before.
- More than half the complainants took **7 attempts** or more to solve the problem at hand – showing extraordinary persistency in doing so. In one case it took 23 attempts.
- Perhaps surprisingly, there was some evidence that **students and retired people** were actually more rather than less likely to make a complaint – suggesting that those with more

time and more constrained resources were more persistent than those in full-time employment or those with childcare duties.

- There were widespread reported problems of **children accessing services** unwittingly or without telling their parents.
- The vast majority – around 97% – of complaints in the period studied related to **services delivered to mobile phones**. The services most complained about were mobile personalisation/subscription/downloads and adult content and texts – together accounting for over two thirds of the total, with much of the remainder relating to services the complainant could not describe because they had merely received unwanted texts.
- In terms of payment mechanisms, those on **mobile phone contracts** were more likely to suffer large financial detriment than those on Pay as You Go (PAYG) – because they were less likely to find out about unwarranted expenditure until much later.
- A different kind of detriment was experienced by **PAYG customers**, especially where this was relied on as a main phone connection – unsolicited charges were more likely to leave the consumer out of contact, for example, for emergencies by using up all the available credit.

My own assessment of a sample of calls received by the PP+ contact centre largely bears out the experiences set out above. The PP+ contact centre operates a series of ratings that are made once a call is complete, including a rating of the vulnerability of the complainant on a scale from 0 (no specific vulnerability) to 5 (highly vulnerable). For this report a collection of recordings and documents relating to 18 complainants with a vulnerability score of at least 3 were evaluated, and they give a very good flavour of the types of vulnerability consumers in this sector can face. All of the 18 calls received related to reverse-charge SMSs. Of these:

- 10 were from parents or guardians of children;
- 6 related to a specific alleged scam where unsolicited reverse chargeable text messages were received, causing the consumer to be billed for £4;
- 1 was from an elderly woman who had unwittingly spent £80 for reasons she couldn't work out;
- 1 was from an elderly man who entered a quiz service without realising he had signed up to a subscription.

In the worst case in the bundle, one mother of a teenage son had ended up with a bill for £471 for games services billed by means of reverse SMSs arriving at the rate of one a minute and costing £1.78 each. Meanwhile, in a couple of other cases it was clear that English was not the first language of the complainant, and that they were not familiar with their consumer rights.

These cases illustrate very clearly the following general themes relating to vulnerability:

- There is a high level of **misunderstanding of how the market works** and many technical terms go over people's heads.
"I kept deleting messages thinking that if I didn't reply I wouldn't be charged for them."
"I don't want downloads, I'm 73."
"What's the difference between a mobile phone and a handset?"
"I'm useless with things like inboxes."

- **Not only are children vulnerable, but their parents are too**, because they pay the bills.
“She seems to have signed up to something but every time we put some money into her phone it just goes. She clears all her texts so we don’t know what she has signed up to.”
“My son got into a muddle and can’t remember where he downloaded music from.”
“My daughter has started crying because this has been happening.”
“We were charged 7 lots of £1.50 on a single day in August but my 15-year-old son has a very short memory.”
- Any problems are compounded where **people are disorganised** in keeping records, for example, of SMSs received, services contracted for and amounts of money paid – some callers simply didn’t have enough detail for PP+ to be able to help.
- People with **English as a second language** have a significant disadvantage in getting their concern across, especially if they are also unfamiliar with their consumer rights (or even unaware that they have any). Good contact centre practice and well-trained staff can get round this, but it is likely that many of those affected won’t even try to complain – especially given the evidence from the Think Tank research that poor customer service from network providers, the normal first port of call, puts many off from pursuing their cases.

The final piece of research for this report involved an assessment of cases “from the other end of the telescope”, that is, where Code Compliance Panel (CCP) Tribunals had considered vulnerability in some form in reaching a conclusion on breaches of the Code and on appropriate sanctions. Reports were collected on all the cases since January 2008 where vulnerability was mentioned – most commonly in association with breaches of 5.4.1b of the Code but in one or two cases in relation to other aspects. (As stated on page 1 of this report, 5.4.1b of the Code stipulates that *“Services and promotional material must not...take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.”*)

In all, 42 cases were assessed. In 23 of these, clause 5.4.1b of the Code was upheld because there had been charges levied by reverse SMS and the Tribunal was satisfied with the evidence that at least some of these had been unsolicited. In a further 12 cases, the breach was raised for similar reasons but the Tribunal was not convinced there was sufficient evidence of unsolicited reverse charges; in 4 of these 12 cases the Tribunal agreed there had been unfair practices but considered these to have been more appropriately covered by 5.4.1a of the Code (misleadingness) rather than 5.4.1b.

With the 23 cases where 5.4.1b was upheld, the typical ruling of the Tribunal was as follows:

“The Tribunal considered the evidence and concluded, on the balance of probabilities, that users had received unsolicited chargeable text messages from the Information Provider. The Tribunal further concluded that the Information Provider had taken unfair advantage of the fact that it possessed the mobile phone numbers of the complainants and could send out charged messages to them at will without their knowledge or consent, which had made users vulnerable. The Tribunal therefore upheld a breach of paragraph 5.4.1b of the Code.”

[Case no 770506/GL]

In other words, there was no specific evidence of vulnerability on the part of the consumers concerned other than that they had a mobile phone to which reverse SMSs could be charged, and for which the company concerned had access to the number. We return to this issue in section 7 below.

The other 7 cases are a bit more instructive in what they tell us about vulnerability. They include:

- a case where consumers calling an auction advice line to check on possible fraudsters were considered vulnerable because they had probably been **exposed to fraud** in the past;
- a similar case where consumers calling a (high-charging) housing benefit line were considered vulnerable because they were **likely to be poor** and could have got the same information for free;
- a service that locked people's PCs with an error message that required users to call a premium-rate number to "renew their licence" – which it was held to be taking unfair advantage of **consumers in a state of anxiety** about getting their computers working again;
- a fax communication to hotels, purporting to be on behalf of a client looking for a conference venue and requiring two immediate, long and expensive premium rate fax replies – which was held to be taking unfair advantage of **businesses in a state of anxiety** about filling out their bookings; and
- an unsolicited mail-shot promotion for an "unclaimed prize draw line" costing £10.50 for 7 minutes, and charging £1 to remove names from the relevant database – which was held to be taking unfair advantage of the consumers concerned as the information presented to them suggested that they had **to pay for a service that should have been free**.

In addition, one case clearly should have raised issues of vulnerability though 5.4.1b was not raised as a breach. This involved an employment information line, promoted by SMS and aimed at **foreign arrivals or new immigrants seeking work**. Callers were then charged £1.50 a minute and left hanging on the line for 8 to 9 minutes. The Tribunal noted in its conclusions that this case had been harmful to a vulnerable group of individuals, but it was not able to uphold a breach because this had not been covered by the staff investigation.

6. A typology of vulnerability in the phone-paid market

It is clear from the analysis above is that vulnerability is a complex concept with many different variables and interpretations. The table below seeks to capture all the main elements identified, and to present them in a simplified form that will be helpful to PP+ in the full range of its work. It builds in particular on the OFT's model of individual and situational/transactional vulnerability; rather than divide up all the different types of vulnerability identified between the two columns, each is assigned a rating of likely importance from • (low) to ••• (high).

Vulnerability in the phone-paid market

Type of vulnerability	Individual vulnerability	Importance/risk rating	Situational/transactional vulnerability	Importance/risk rating
Limited technical /market knowledge	Major issue arising from research and cases to date	•••	Affects everyone to some degree; particular problem with really complex services or those involving many players	••
Limited economic resources	Worst for those left high and dry eg because PAYG credit used up or contract bills mount unawares	••		
Disorganised/ chaotic lifestyle	Limited access to records and key documents – leading to confusion eg over what happened, who was involved, how much money was spent	••		
Limited sources of support	We can only guess how big a problem it is because those who are really left out are unlikely to reach PP+	•••?		
English not first language	Many services hard enough for native English speakers to understand	••		
Lack of awareness of rights	Major issue especially for younger people and new arrivals to the UK	•••	To some extent affects entire market given very limited awareness of how premium rate services work	•
Children	May well have vulnerabilities on all the other dimensions listed; their dependence makes parents vulnerable too	•••		
Elderly	Some elderly people are active players and good at targeting complaints but others suffer other vulnerabilities eg physical infirmity	••		
Susceptibility to flagrantly dishonest scams	Big problem for those who suffer from natural credulity – and biggest for the very poor	•••	Scams eg unsolicited reverse-charge SMS, rigged voting systems can affect entire market but consumers have little practical defence	•••
One-off stressful situations eg bereavement, job loss, illness			Can affect anyone at a particular time – but some forms of content or service may pose higher risks to those facing crises	••

7. Service areas and payment platforms – developing the vulnerability model

The extent to which different types of vulnerability arise from different service types and payment platforms is not easy to gauge given the limitations of data and the circumstantial nature of some of the vulnerabilities described above. The two following tables are intended merely as an illustration of the types of vulnerability that may arise – the associated levels of risk are little more than hypotheses at this stage. The classifications of service categories used are those that appear in the Think Tank report on the Current and future Market for Premium Rate Services [Jan 2010].

Service category	Specific service type	Types of vulnerability	Risk rating
Information	Directory Enquiries	Limited	minimal
	Other info services	Susceptibility to scams Poor English Stressful situations/crises	•• •• •••
Calling	International	Poor English People with poor market knowledge	••• •••
	Other		•
Entertainment	Adult	Children Heavy use and limited economic resources Lack of awareness of rights	••• •• ••
	Competitions	Lack of awareness of rights	••
	Flirt/date/chat	Children Heavy use and limited economic resources	•• ••
	Gambling/lotteries	Children Heavy use and limited economic resources	•• ••
	Mobile games	Children	•••
	Other entertainment	Children	••
	Tarot/astrology/psychic	Heavy use and limited economic resources Stressful situations/crises	•• •••
Engagement	Voting + participation TV	Scams due to rigged voting systems	••
Personalisation and Gifts	Ringtones, wallpapers etc	Children Limited technical/market knowledge	••• ••
Payments	Charity donations	Probably limited but may be scams that exploit natural credulity or others associated with reverse charge SMS	•
	Non-phone based content and services	Scams a possibility in pay for product markets	•
Other services		?	

A similar analysis is possible on the basis of different payment platforms. Again the categories used are those that appear in the Think Tank January 2010 report. Because they vary so widely, market shares for each payment mechanism have been added.

Payment Platform	Share of Market	Types of vulnerability	Risk rating
Premium SMS	39.1%	<p>Susceptibility to flagrantly dishonest scams – individual eg because of natural credulity</p> <p>Susceptibility to flagrantly dishonest scams – situational/transactional eg where reverse SMS charges levied on consumers who have not opted in, or don't think they have</p> <p>Children (especially when using reverse-charge SMS eg for subscription services and downloads)</p> <p>Limited technical/market knowledge</p> <p>Limited economic resources – possible to rack up large bills or wipe out much needed credit on PAYG</p> <p>Limited sources of support</p> <p>Lack of awareness of rights (eg STOP command)</p>	<p>•••</p> <p>•••</p> <p>•••</p> <p>••</p> <p>•••</p> <p>•••</p> <p>••</p>
Directory Enquiries	27.2%	Limited	-
Premium Voice (09)	21.1%	<p>English not first language – problem eg for calling cards and some advice lines</p> <p>Lack of awareness of rights (eg where service does not deliver what it promises or where there are undue delays)</p> <p>One-off stressful situations – scope for unfair advantage eg with advice and counselling services, chat-lines</p> <p>Limited economic resources (less of an issue than with 087 below as services mostly non-essential)</p>	<p>•••</p> <p>••</p> <p>••</p> <p>•</p>
Premium Voice (087)	9.7%	<p>Perceived vulnerability/anger at being forced to use PRS for an “essential” service</p> <p>Limited economic resources (bigger problem than above where 087 service is deemed essential)</p>	<p>Risk is mainly to standing of sector as a whole/consumer confidence</p> <p>••</p>
Mobile internet billing	2.6%	Limited technical/market knowledge (eg where Payforit mechanisms considered hard to understand)	••
Red Button	0.3%	Limited technical/market knowledge	•

The analysis in this table confirms the picture emerging from contact centre monitoring and the experience with recent CCP Tribunal cases – that is, that the biggest visible source of consumer vulnerability in the phone-paid market arises from use of the SMS mechanism and especially from reverse-charge SMS. But this conclusion is subject to two caveats. First, it may well be that there is significant “hidden” vulnerability arising from other payment mechanisms, and especially from 09 premium voice services. It is possible that – even where such services are manifestly substandard, for example because of undue delays or poor-quality content – some users are reluctant to complain, or do not consider it worthwhile, and have resolved simply to stop using the service. The immediate problem facing the consumer is rather different here from that associated with a constant stream of seemingly unstoppable SMSs costing £1.50 a time.

Second, it is perfectly possible that the position will change over time as new services, and new forms of detriment, are introduced. Had we done this analysis five years ago, the overwhelming problem would have been rogue internet diallers embedding themselves in people’s computers and generating huge premium-rate charges on landlines.

8. Recommendations for action by PhonepayPlus

One general recommendation arises from the approach adopted by the OFT in justifying action expressly on behalf of consumers who are in a position of vulnerability. Like the OFT, PP+ does not have a remit to redistribute wealth or power in favour of disadvantaged parts of society. But it does have a remit to promote consumer confidence in general, and it is clear that bad experiences for a particular group such as children or older people can have a big impact on the level of trust in the sector. Services that take advantage of people who are vulnerable make good media stories!

The other recommendations arising from this report all relate to specific areas of PP+ activities – customer care, monitoring and investigations, CCP tribunals and education and outreach. We look below at each of these in turn.

8.1 Customer Care

The 18 recordings I monitored from the PP+ Customer Contact Centre suggested that the general standard of service from staff working in the centre is very high. Call handlers were well informed, knowledgeable, sympathetic and very patient in dealing with consumers who were often confused and sometimes exasperated at having been handed from one organisation to another before reaching PP+. My only suggestions from listening to the calls are:

- Some of the calls seem to have lasted an extraordinarily long time – 19 minutes in one case. It may be possible to “cut to the chase” a bit faster, so ensuring that others are not kept waiting. In a couple of cases the callers I monitored had been waiting for several minutes before getting through.
- In one or two cases it was clear that the caller was having real difficulty understanding what was going on, yet staff used jargon or technical terms. Because the vast majority of callers are polite, and probably quite relieved at finding PP+ as a “friend” after indifferent or unhelpful treatment at the hands of their network provider, this language doesn’t get questioned much, but I had the impression that some callers were more perplexed at the end of the call than PP+ would have wanted.

- Making an immediate assessment of vulnerability (among other things) as a result of the call is a good idea, but in practice the markings I reviewed were a bit mechanical – 5 points for a child, 3 points for an old person and so on. The typology on page 12 of this report may be helpful in providing some different dimensions for staff to assess – and possibly also probe during the conduct of the call.

These are however only modest recommendations for a system that on the whole works very well. Far more important is the objective of improving customer care quality “upstream” among the network providers. **It is absolutely unacceptable that more than half the complainants surveyed by PP+ had to make 7 calls or more before their case was resolved. Hurdles of this kind are likely to be too much for all but the most persistent to overcome. This is probably the most important issue to be addressed if consumer vulnerability in the phone-paid sector is to be successfully reduced.**

The Recom recommendations on improving consumer experiences, reproduced at Annex B, would bring clear benefits for all consumers and especially those who are in a position of vulnerability. It may be that PP+ can help this process along the road, both through the planned new customer service provisions set out in the draft 12th Code and by sharing some of the messages about vulnerability set out in this report.

8.2 Monitoring and Investigations

More proactive monitoring is needed if some of the worst forms of unfair treatment of consumers are to be unmasked. One endemic problem is that many of those most at risk are unlikely to complain, or even to be aware of their right to do so. It is not surprising that many of the calls coming in to the contact centre where the consumer is considered vulnerable are from parents of children who have run up unexpectedly large charges, while the vast majority of cases involving vulnerability that make it through the investigations process relate to unsolicited reverse-charge SMSs. Many of the consumers affected by the latter may be technically “vulnerable” but they are articulate enough to make a reasoned and targeted complaint, and they have a strong incentive to do so if the alternative is to be exposed to continued losses from uncontrolled charges for unwanted services.

The cases described on page 11 probably give a truer flavour of how phone-paid services can impact on consumers who are vulnerable for one reason or other. But these cases generally yield few complaints, and often depend on a referral from another agency such as trading standards. This suggests that PP+ would do well to build up its sources of market intelligence, and encourage those with knowledge, for example, of a specific client group to come forward. Mystery shopping could help too, provided it is based on reasoned hypotheses of where problems are likely to exist.

8.3 Code Compliance Panel Tribunals

Cases involving 5.4.1b of the Code have become something of a *bête noire* for CCP Tribunals, because they have become so closely associated with unsolicited reverse-charge SMSs to consumers at large. This kind of detriment is still within the meaning of the Code provision, which expressly covers “circumstances”, as well as [personal] characteristics that may make consumers vulnerable. It is also clear that whichever provisions of the Code are used, there should be an effective mechanism

for preventing unsolicited charges that consumers can do nothing to prevent. But this is probably better done through an express Code provision rather than through a general vulnerability one as has been the case up to and including the 11th Code. It is encouraging in this respect to see such a clause included in the draft 12th Code which is currently out for consultation [Rule 2.3.3].

It may also be helpful for investigators to bear in mind the UK Regulations implementing the Unfair Commercial Practices Directive (May 2008). See

http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft931int.pdf .

These Regulations include 31 specific practices that are banned in all circumstances. One deals directly with the practice of providing and charging for services that are unsolicited and now covered by Clause 2.3.3 of the draft 11th Code:

“Asking for payment when the consumer didn’t ask for the product

Demanding immediate or deferred payment for, or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in accordance with regulation 19(7) of the Consumer Protection (distance selling) Regulations 2000 (this is known as inertia selling).”

[OFT Guidance on Consumer Protection from Unfair Trading, 2008]

But further provisions deal with other aspects of vulnerability especially those that create vulnerability through various forms of misleading statement. Examples include bans on claiming to be a signatory to a code of conduct when the trader is not; stating that a product can legally be sold when it cannot; and making persistent and unwanted solicitations by telephone, fax, email or other remote media except to enforce a contractual obligation. All could quite reasonably fall under the Legality provisions of the PP+ Code.

As well as the 31 practices that are expressly banned under the Regulations, there are also General Prohibitions of practices contrary to professional diligence. Practices are prohibited if they cause the consumer to make a different decision as a result of misleading, aggressive or other unfair behaviour on the trader’s part. There is also some guidance under this heading that has a direct bearing on vulnerable consumers:

“Where a clearly identifiable group of consumers is particularly vulnerable to the practice or to the underlying product because of their mental or physical infirmity, age or credulity in a way the trader could reasonably be expected to foresee, and where the practice is likely to materially distort the behaviour of only that group, then it is the average member of that group [ie of the group of vulnerable consumers] that is the relevant average consumer.” [OFT guidance, section 14.35]

In other words, the yardstick for assessing whether a practice targeted at a particular vulnerable group is unfair under the General Prohibition is the average member of that vulnerable group rather than the average of consumers in general. This too may be a worthwhile point for PP+ to secure legal advice on as it could lead to greater use of the Legality provisions of the Code in cases involving specific groups of vulnerable consumers.

8.4 Education and Outreach

PP+ already has a great success story here, with the development of the Phonebrain initiative aimed at children and young people. This is clearly a continuing priority if the needs of one particular vulnerable group are to be met.

In principle there is a strong case for extending this to other groups as resources permit. Groups such as the elderly, recent arrivals to the UK and those on very low incomes are harder to reach but there are other organisations such as Age Concern/Help the Aged, Toynbee Hall, the Child Poverty Action Group, NSPCC, Gingerbread, the Immigration Advisory Service and the Refugee Council that have excellent links to relevant groups. Citizens Advice also has a very important presence in this market. One way forward may be to develop some joint initiatives with Ofcom and/or other regulatory bodies dealing with consumer protection in particular sectors as it is highly likely that the groups in question will not see phone-paid services as a distinctive sector in its own right.

These links are also worth building up for the encouragement of information flows in the opposite direction, in the form of market intelligence. Trading Standards may have a significant part to play here too in improving PP+ knowledge of areas where unfair advantage is being taken of consumers who are vulnerable. This in turn may feed directly into monitoring exercises of the kind described in section 8.2.

Annex A

Scope of study

1. Review thinking about vulnerability in different agencies that may be relevant to PhonepayPlus
2. Produce an overview of consumer vulnerability with respect to premium rate services and where necessary with reference to specific marketing methods, service delivery and billing platforms and typical patterns of service use
3. Identify key aspects of service genre, technical platform and service engagement that have potential to create issues for consumers
4. Identify/suggest the main groups of vulnerable consumers and develop a common definition of vulnerability that can be used by PhonepayPlus
5. Identify groups whose vulnerability is unique (to that group), either because of their susceptibility to detriment or because of a specific interaction between a given genre of service and their own susceptibility
6. Suggest, as necessary, strategies for regulatory action in tackling consumer vulnerability
7. Suggest possible follow up research.

Annex B

Recommendations from Recom for improving call handling in Network and Content Providers

DO	DON'T
Treat the caller with sensitivity, especially if the complaint involves a child	Assume that callers understand PRS – many don't and may find it hard to explain their problem
Acknowledge there's a problem	Act as if nothing is wrong
Take responsibility for resolving the issue	Ignore or blame the customer
Apologise to the caller	"Pass the buck"
Use a script that contains the same info and advice that is on the website	Leave customers to sort it out for themselves
Take time to explain clearly what has happened and why	Assume that every caller can just go to the website to find advice
Set out and explain the options available that meet the caller's needs – how to stop the text, how to get a refund, how to complain to the regulator etc	Forget to find a way to compensate the customer in some way for what has happened.

Source: Research in Communications report to PhonepayPlus, What happened to customers who complained about a PRS? June 2009