

**MINUTES OF THE 398th MEETING**  
**PHONEPAYPLUS BOARD MEETING**

**Wednesday 26<sup>th</sup> August 2015**

**11.30am -1.30noon**

**PHONEPAYPLUS LIMITED, CLOVE BUILDING, 4 MAGUIRE STREET, LONDON SE1 2NQ**

**Board Members**

Peter Hinchliffe (Chair of meeting)  
David Edmonds (Chair designate of PPP)  
Kevin Brown – conference call  
Hugh Griffiths  
Steve Ricketts – conference call  
Ruth Sawtell  
Howard Webber  
Joanne Prowse (Chief Executive) – conference call

**PhonepayPlus**

Peter Barker  
Mark Collins  
Ayo Omidoyi  
Simon Towler

Stephanie Ratcliffe (minutes)

## 1.0 Apologies

Apologies were received from Andrew Pinder (Chair of PPP).

## 2.1 Proposals from the Project Board for the Review of Part 4 of the Code of Practice

### Background

The Executive advised the Board that further to previous updates they were now ready to present a proposal in respect of revised investigations and adjudications procedures, which are to be developed into a new Part 4 of the Code of Practice.

The Executive recapped the rationale behind the proposals for a review of Part 4, and then explained that the Project Board had whittled down an original 18 options to a proposal for a preferred option. The Executive then provided a detailed explanation of the schematic setting out how this option would work through four key stages – Jurisdiction, Investigation, Decision, and a limited right of Appeal. In respect of the last of these – Appeal – the Board was invited to consider whether such a stage was desirable and/or necessary.

The Executive confirmed this preferred option took account of previous industry feedback and Ofcom recommendations. In addition PhonepayPlus had received legal advice from Ravi Mehta of Blackstone Chambers on this option.

The Board **NOTED** the following points:

- Track 1 and 2 approach works well. However the Track 2 allocation decision requires a more robust and clearer process. The Executive propose to use the Code to set out a brief summary of the process and criteria and to record allocation decisions made.
- The proposal is that all Track 2 cases will involve a consideration of whether interim measures – revenue withholds and/or suspensions – are necessary. This will be in accordance with criteria broadly set out in the Code and which will ensure withholds/suspensions are a more effective deterrent and can be more proactively managed. These will be expanded on in the associated procedures document. This will provide greater flexibility than at present in terms of suspension, and thus remove the need to retain the current emergency procedure.
- The Case Management Committee (CMC) sends out a Warning Notice to a provider containing the breaches and sanction on the basis of recommendations from the investigations team. The CMC would be made up of Senior Executives and Board Members. The provider will have the option to accept in full, reject in full, or accept some of the breaches and/or sanctions and negotiate a settlement in respect of others.
- The Code Determination Panel (CDP) is formally the sole decision-making body in this model. The CDP would ratify any settlement arising from a provider agreeing to Warning Notice provisions or would be the body that considers whether to uphold the recommendations in the Warning Notice where the provider has not agreed. This body will be made up of legally qualified and lay representatives who are separate to PhonepayPlus save for their CDP role. This would provide greater independence and separation from the regulator than the present CCP, a particular bugbear of industry perception.
- An Appeal stage on limited grounds would provide an opportunity for a less costly and time-consuming “Judicial Review lite”, which could be beneficial to smaller providers unable to afford full Judicial Review costs.

### Discussion

Discussion focused on the structure and practicalities surrounding both the CDP, the involvement of non Executives and Executives in the CMC and how these bodies would interact with each other. The issue of independence was discussed and the Board **AGREED** that the term ‘separation’

represents a more accurate interpretation of independence within the context of the decision maker being 'separate' from the regulator.

## Decision

The Board **AGREED** on the following points:

- content with the overall direction of travel, however consider whether possible to further simplify and present in a more accessible way;
- content with the proposals of greater non Executive involvement in the earlier stages of the process and with the ultimate decisions resting with the CDP;
- to ensure successful delivery, the correct make up of the CDP is paramount;
- timings and speed of case turnaround must be appropriate with adequate transparency built into the process;
- to ensure execution of process and quality assurance are of the highest standard;
- to ensure the investigatory and CMC roles are clear, including the decision making process and consider renaming the Committee a regulatory panel;
- clarify cost implications (p.11 of the Board Paper) and provide further information and a cost model setting out clear assumptions;
- pending feedback from Ofcom, preference is to advocate one proposal going forward. However the Board expressed a preference to also further consider an option where an initial adjudication was made (and not just recommended) by an internal panel similar to the CMC, with the CDP then hearing subsequent Appeals. A final decision on a preferred option will be made at the September Board meeting.

Regarding the issue of the inclusion in the process of a limited right of appeal from CDP decisions, the Board expressed its preference that this possibility should be subject to consultation, with the preferred option being that this possibility should be removed. The Board **RECOMMENDED** the consultation document asks specifically for views on the right of appeal, in order to obtain industry feedback, before a final decision is made.

The Executive advised the Board that Ravi Mehta's legal advice document will be communicated to Ofcom in a manner that ensures that the confidential and privileged nature of the advice is preserved.

## End of Minutes

### Date & location of next meeting:

**Date:** Monday 21<sup>st</sup> September 2015

**Time:** 10.00-13.00

**Location:** PhonepayPlus, Clove Building, 4 Maguire Street, London, SE1 2NQ