



**MINUTES OF THE PhonepayPlus BOARD MEETING**

**THURSDAY 28<sup>th</sup> FEBRUARY 2008**

**NO. 360**

**14:00 – 16.40**

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

**Attendees:**

Sir Alistair Graham (Chairman)  
Bob Chilton O.B.E (Deputy Chairman)  
Stephen Locke  
Nicolas Higham  
David Clarke  
Ed Boddington  
Andrew Bud  
Sara Nathan

Peter Phillips

George Kidd  
Brian Lund  
Trays O'Reilly  
Paul Whiteing  
Ted Lean  
Stephanie Ratcliffe (Minutes)

## **1.0 Apologies**

Mike Short  
Mike Tully

## **2.0 Minutes of the 359<sup>th</sup> Board Meeting**

The minutes were read and approved with no further comments.

### **2.1 Matters Arising**

There were no matters arising.

### **2.2 Standing Declarations on Conflicts of Interest on Agenda Items**

Andrew Bud in respect of Sanctions Guide Policy (**paper 4.2.1**).

## **3.0 SECTION A: REPORTS FROM THE CHAIRMAN AND CHIEF EXECUTIVE**

### **3.1 Chairman's Update**

The Board were advised of the following:

1. A recruitment process is underway with the aim of recruiting new members from the sector and non-sector members with a wider consumer public interest background. The interview panel will be chaired by Sir Alistair Graham and will include an independent assessor. The Chairman thanked those members who had agreed a short extension of their terms of office to allow a single transition date in the Autumn.
2. The 2008/9 budget was presented to Ofcom and has been approved. Outstanding issues being addressed with Ofcom include 0871 Regulation, Code amendments to introduce the Code Compliance Panel, Participation TV and PayFort.
3. Following the approval of the 2008/9 budget a levy of 0.39% has been set for 2008/9.
4. The Code of Compliance Panel (CCP) training session was successful, thanks to Trays O'Reilly and Ted Lean. The CCP Chairman, David Cockburn, will attend future Board meetings to advise on compliance progress and panel operation.

### **3.2 Chief Executive's Update**

George Kidd gave an operational report for December 2007 to January 2008. Figures showed an increase in complaints, mainly due to issues with mobile content and subscription services. There had been an upturn in the use of our number checker and the service had been improved to maximise the coverage of the service. It was reported that the executive was reviewing the methodology for identifying and recording “complaints”. The aim was to distinguish between those who had out of remit issues and those who were “number-checking” from those who had explicit complaints or other problems in relation to in-remit services. The meeting agreed the importance of establishing a set definition in order to allow meaningful historic comparisons

Trays O’Reilly confirmed that SMSus, the new number checking service, has had positive public response and media coverage, we continue to advertise the service and increase information provided to the public.

Andrew Bud questioned whether a report on feedback from operators and stakeholders on how they view and rate our quality of service, such as measuring KPI’s via an annual independent stakeholder survey, is in the pipeline. Trays O’Reilly confirmed we are looking to extend our customer satisfaction process and agreed the need for a structured process and stakeholder survey.

#### **4.0 SECTION B: REPORTS FROM THE EXECUTIVE TEAM**

##### **4.1 STRATEGY, BUDGET AND GOVERNANCE**

###### **4.1.1 The new Ofcom: PhonepayPlus Relationship**

George Kidd updated the Board on progress made with Ofcom. He explained discussions covered and actions taken, noting items of importance. He noted that we had reached positive closure on the issue of the 2008/9 Budget and the new regime for Participation TV. The Board was asked to agree the executive should focus on:

- Ensuring the sustainability of the relationship, not least through regular meetings
- Bringing key outstanding issues to closure; the transfer arrangements for 0871 and the technical actions needed to bring the Code Compliance Panel into operation
- Finalising the Framework Agreement’s reporting arrangements

The Board were asked to agree that we aim to settle new strategic monthly reporting arrangements in March and agree this format with the Board by correspondence.

The Board approved the recommendations.

**(Action: George Kidd)**

###### **4.1.2 PhonepayPlus 2008/9 Plan**

George Kidd presented the 2008/9 internal Operations Plan to the Board identifying the criteria against which performance is to be measured, key goals and performance indicators. The Board were asked to agree the plan for finalisation in March.

Discussions focused on the best action to take for improving consumer trust, identifying the best strategic approach and improving on communication of panel decisions and improved feedback in terms of compliance.

The Board approved the 2008/9 Plan.

###### **4.1.3 Board Resolutions consequent upon the Governance Changes to the 11<sup>th</sup> Code of Practise**

A paper on board resolutions was presented to the Board. The Board were informed of the resolutions that need to be passed, consequent upon the changes to the Code approved by Ofcom, which will come into effect on a date expected to be in April 2008. Sir Alistair Graham confirmed prior to the meeting that related members resolutions had also been passed.

The Board passed the following resolutions:

- 1) That the Framework Agreement between PhonepayPlus and Ofcom agreed in December 2007 is formally ratified by the Board. The Board noted that where Ofcom identifies an issue it considers to be of particular importance or relevance, it will have the ability to give direction to PhonepayPlus. The Board also noted the intention to review the effectiveness of the arrangements in December 2008.
- 2) That when approved by Ofcom the amended 11th Code, making provision for the establishment and operation of the Code Compliance Panel, be adopted and applied by the Company from the date of it coming into effect.
- 3) That with effect on and from the date the Code comes into force the Board delegate to a Tribunal comprising Code Compliance Panel members the function of undertaking adjudications or reviews of adjudications in respect of alleged breaches of the Code and in respect of the grant or refusal of permissions and the imposition of conditions in permissions granted under the Code

## **4.2 POLICY AND EXTERNAL AFFAIRS**

### **4.2.1 Sanctions Guide**

The Executive presented a paper proposing revisions to our published Sanctions policy. The core revisions related to the explanation and application of mitigating and aggravating factors and a staged approach to escalation of sanctions designed to drive compliance, particularly in terms of “repeat offenders”.

A declaration of interest was made by Andrew Bud – also recorded above. The Chairman invited Andrew Bud to give his thoughts and then to step out of the meeting while discussion continued.

Andrew Bud was anxious to see improved compliance. He thought particular thought had to be given to the application of the Code provisions allowing an “SP>IP pass through”

- He recognised the arrangement was discretionary but thought this provision brought greater transparency and fairness to the regime.
- He thought particular care was needed when working on sanctions policy to avoid “unintended consequences”.
- In particular arrangements should encourage industry dialogue with PhonepayPlus in circumstances where a possible Code breach had been identified.

Andrew Bud left the meeting whilst discussion continued.

In the discussion that followed the following points were noted

- serious and repeated offending was not acceptable and had to have consequences. Further action was necessary to communicate this
- the use of the informal procedure had to have limits – it was not acceptable to engage repeatedly with the same party on an informal basis in relation to repeated misdemeanours
- there is an issue to be addressed if an aggregator Service provider is repeatedly involved with serious Code breaches, even if that aggregator and its IP partners choose to make use of the discretionary “SP>IP pass through”
- Escalating financial sanctions had to be part of the equation but hopefully as a deterrent, not an outcome

The Board agreed a revision of the sanctions statement was required. The executive was asked to bring forward a text that addressed the points bulleted in these minutes with final review of the guide at the next Board meeting.

Andrew Bud rejoined the meeting.

**(Action: Ted Lean)**

#### **4.2.2 MOU**

Paul Whiteing provided the Board with an update on the MOU. Discussions continue between with the Gambling Commission and Ofcom and it has been confirmed that the final MOU will be signed Executive to Executive, rather than Board to Board.

#### **4.2.3 Ofcom/PhonepayPlus Participation TV Update**

Paul Whiteing provided the Board with an update on Participation TV. Commercial discussions continue around the interpretation of certain conditions however we have received positive feedback from service providers and continue to make good progress.

It was noted that PhonepayPlus are pleased to have been able to make such positive progress.

#### **4.2.4 Mobile World Congress Report from Barcelona February 2008**

Andrew Bud provided an update of the Mobile World Congress. He advised that the main topic of discussion focused on the increasing use of mobile broadband whereby UK mobile operators are acting as service providers. It is expected that this will have a dramatic affect on the mobile industry.

### **4.3 FINANCE & OPERATIONS**

#### **4.3.1 Budget and Levy 2008/9**

Brian Lund advised the Board that Ofcom and the FB&PM Committee have approved the budget.

Details of the budget will be published on the PhonepayPlus website together with an announcement of the revised levy rate of 0.39% which is an increase from last year, reflecting the decrease in the market in 2007/8 and the financial implications for PhonepayPlus and the lower baseline for market growth assumptions in 2008/9. The levy was calculated based on the scope of regulation as of January 2007 as communicated by Ofcom.

The audit of actual levels of revenues and outpayments for network operators that was inaugurated under Annex 1 to the Code has been carried out. Results have been received from all of the network operators, with the exception of Vodafone.

**(Action: Brian Lund)**

#### **4.4. Update on AR&CG Meeting 5<sup>th</sup> February 2008**

##### **4.4.1** An update of the AR&RC meeting was provided:

- the risk register analysis was reviewed and noted. The Committee recommended that the format be adjusted to provide an executive summary of all risks, with new and emergent risks being highlighted.
- network audits are an ongoing Code provision. The Finance team will be contacting each network audited to gain feedback on how we may improve the process involved.

#### **4.5 Update on HR Meeting 20<sup>th</sup> February 2008**

##### **4.5.1** The staff survey and messages from leavers carried out in 2007 was positive in some areas, and less positive in relation to career progression and recognition. Turnover was high in 2007 relative to past years. The Executive had explained the work in hand to address priority issues.

Other areas discussed included:

- Employee Handbook
- Pay Conditions
- New version of the HR Strategy replacing the existing Strategy
- Approved new Guidelines for Staff Dealing with Material of an Illegal Nature

Sir Alistair recommended we consider secondments to improve on career progression.

**(Action: Gail Wallwork)**

#### **4.6 Monthly Operational Report December 2007 to January 2008**

The operational report was noted with no further comments

## **5.0 SECTION C: ITEMS FOR INFORMATION ONLY – SEPARATE BUNDLE**

### **5.1 Recent and Forthcoming Meetings**

- NOTED the item for information only

### **5.2 Risk Analysis**

- NOTED the item for information only

### **5.3 Convergence Think Tank Update**

- NOTED the item for information only

### **5.4 HR&RC Meeting Minutes 19<sup>th</sup> December 2007 and FB&PM Meeting Minutes 7<sup>th</sup> February 2008**

- NOTED the items for information only

### **5.5 Action Log Update**

- NOTED the items for information only

## **6.0 AOB**

### **6.1 Allied Telecommunications Ltd Case Update**

Ted Lean presented an update of the case and highlighted the key issues. He confirmed PhonepayPlus had not been able to recover any monies, despite the favourable ruling of the court, as no funds had been withheld by the network operator. The Liquidation of Allied was nearing completion, but PhonepayPlus would be able to recover a significant portion of its costs of the action. Advice from Counsel had been received as to the steps that could be taken to pierce the corporate veil, and pursue individual promoters of the services that were fined.

The Board approved the recommendation to proceed in line with the Counsel's proposal.

### **6.2 Publication of Emergency Procedure Operation**

The Board asked for advice on practice in relation to issuing industry/media statements when Emergency procedures are applied.

George Kidd confirmed that we had a policy of fully answering questions on EPs – and of providing information on the nature of the case and the party or parties involved. At issue was the merit of moving to publication of this information as a matter of routine given the seriousness of the harm and the need to alert the public and industry.

The Board recommended an agenda item for the next Board meeting to review the policy on how to handle the publication of EP cases.

**(Trays O'Reilly)**

### **NEXT MEETING**

Date: Thursday 24<sup>th</sup> April 2008

Time: 14:00 – 17:00

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