

**MINUTES OF THE PHONEPAYPLUS BOARD MEETING**

**THURSDAY 16<sup>th</sup> SEPTEMBER 2010  
NO. 373**

**12.30-16.50**

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

**Board Members present:**

Sir Alistair Graham (Chairman)

Matti Alderson

Bob Chilton (Deputy Chairman)

David Clarke

Ruth Evans (Part only)

Hugh Griffiths

Jeremy Hallsworth

Howard Webber

Paul Whiteing

David Cockburn (item 2.0)

Claudio Pollack from Ofcom

**In attendance:**

Bradley Brady

Mark Collins (item 5.1.2)

James Harris (item 2.0)

David Levitt (item 5.3.2)

David Oatway (item 5.1.3)

Joanne Prowse

Stephanie Ratcliffe (Minutes)

## **Pre-meeting discussion**

The Board received a presentation from Andrew Pickup and Len King from Consult Hyperion on the future of mobile money. The Chairman thanked Consult Hyperion for the presentation and requested the presentation is circulated to the Board.

### **1.0 Apologies**

None, except apologies were noted for Ruth Evans, required to leave the meeting at 2.40pm.

The Chair advised agenda item 5.1.3 will be brought forward and handled after agenda item 2.0.

The Chair advised the Board that Peter Phillips has left Ofcom and will be taking up the post of Chief Operating Officer at Cambridge University Press. Until a suitable replacement is appointed, it has been agreed that Claudio Pollack will attend the Board as an observer.

He welcomed Joanne Prowse as Director of Operations to PhonepayPlus.

### **2.0 Code Compliance Panel Report**

David Cockburn delivered the Code Compliance Panel (CCP) report to the Board on Tribunals for the period 10 June-2 September 2010.

The following points were noted:

- 20 cases were heard and 12 informal representations were conducted. The decline in the amount of fines and informal representations is mainly due to the nature of cases.
- A lack of Emergency procedure cases is due to improved co-operation with the Network operators.
- Oral Hearings update – The Couchplay Ltd hearing has been cancelled; Khushbinder Singh Abhol is due for hearing on 23<sup>rd</sup> September; Bluestream Mobile Ltd is in initial negotiations to proceed.
- Transact Ltd's notice of appeal case is likely to go ahead with a date for a hearing to be convened.

The following emerging issues were discussed:

- Following the Executive's statement published on multi-party chat services on prior permission, all prior permission applications are now subject to a six-month review.
- Network operators are required to report quarterly on their premium rate outpayments. Where reports have not been submitted by a specific date, a range of penalties will be imposed, depending in severity on the culpability of the breach.
- Where sanctions are not complied with, the breach will be categorised and a bar placed on all PRS services until payment is received. In cases where the Service Provider steps in and pays the fine for the Information Provider, the period of bar will remain until the Executive receives evidence that the Information Provider has reimbursed/refunded the Service Provider.
- Fixed-line scam services are becoming increasingly apparent. Most cases do not require an Emergency procedure and are dealt with swiftly, following good co-operation from the operators and with minimum harm to the consumer. Where the Executive feels it necessary, issues are referred to the police.
- Google case involving 0871 numbers. This unusual case demonstrates unclear pricing information whereby a promotion appears on the Google search engine, which is not supported by clear pricing information or contact information. The Executive will, with the

assistance of Bradley Brady, address the issue of misplacing 0871 numbers from other websites with contacts at Google initially.

- Following a case of a subscription service marketed by the Information Provider using affiliate partners, it has come to light that promotions by web-based affiliate marketing partners for other websites can be misleading. Service Providers and Information Providers have therefore been advised by the Executive that they will be held responsible for relinquishing control of promotions to affiliates.

The Chair of the CCP thanked James Harris, who will be leaving PhonepayPlus at the end of the year, on behalf of the Board and the CCP for his hard work and commitment.

**(Action: James Harris/Bradley Brady)**

### **3.0 Minutes of the 372nd Board Meeting held on 17 June 2010**

The minutes were approved without amendment.

#### **3.1 Matters arising and Action Log**

The Executive confirmed actions will be removed from the log on completion.

#### **3.2 Standing and other declarations of interest**

There were no standing nor other declarations of interest recorded.

### **4.0 SECTION A: REPORTS FROM THE CHAIRMAN, CHIEF EXECUTIVE and CHAIRS**

#### **4.1 Chairman's report**

The Chairman reported on developments since the last Board meeting:

- An ILP meeting took place on 17<sup>th</sup> August. Jacqui Brookes will stand down as Chair of the ILP after two years' of service and will be replaced by Hamish MacLeod.
- The annual Board Member appraisals have been completed. Due to heavy work commitments, Ruth Evans has agreed to step down as member of the Code Compliance Panel and will be replaced by Howard Webber.
- Colette Bowe from Ofcom plans to visit and meet with staff at PhonepayPlus on 3<sup>rd</sup> November.

#### **4.2 Chief Executive's update**

The Chief Executive reported on recent developments and issues of interest:

- Staff training – the staff training programme commissioned with AIME proved very successful with positive feedback received. A further programme is planned and Board participation is welcome.
- Following aggregator compliance concerns over adverse complaint trends about services, a meeting with the CEO of one aggregator was held. The meeting proved constructive and further follow up meetings are planned to review compliance. The new Code, when implemented, will enable greater due diligence powers to prevent non compliance.

#### **4.3 Reports from Committee Chairs**

## **Human Resources and Remuneration Committee**

Matti Alderson reported on the recent HR&RC Committee meeting held on 15<sup>th</sup> September:

- An annual HR update was provided with focus on the new Code, future skills requirements, the need to target areas where consumer harm may exist and to make best use of resources.
- Future progress will focus on providing further accomplishments with limited resources, talent management, staff calibre and staff mentoring.
- An update on benefits review and its importance in relation to staff motivation and retention was provided. Progress will be presented to the Board.
- Feedback was sought and recommendations were noted on the diversity questionnaire.

## **5.0 SECTION B: REPORTS FROM EXECUTIVE TEAM**

### **5.1 STRATEGY, POLICY AND REGULATORY EFFECTIVENESS**

#### **5.1.1 Update on Strategic Plan 2011-14**

Bradley Brady presented an update on the strategic and business planning process 2011-14. The draft plan was issued for consultation on 3<sup>rd</sup> September, a Business Plan & Budget for 2011/12 is now underway.

Key factors to consider include the new Code, the Registration Scheme and PRS market developments. The Board were asked to provide feedback on the process for business planning and the proposed timetable.

The following points were noted:

- Challenges will include the delivery of significant cost savings. The Leadership Team will support the managers who are required to justify efficiencies and resources.
- Following discussions with Ofcom and the ILP at the August meeting, the challenges PhonepayPlus face, with the implementation of the new Code and Registration Scheme, are recognised and the proposed business planning information was well-received.

The Board approved the overall process and timetable for the business planning.

**(Action: Bradley Brady)**

#### **5.1.2 Code 12 consultation: update and next steps**

Mark Collins presented the Board with a full draft of the new Code and produced a supplementary paper on recent changes made, following a Code 12 Programme Board meeting held on 15<sup>th</sup> September.

The Board were asked to approve the Code, subject to minor changes remaining for discussion with Ofcom, and to consider the first drafts of guidance notes.

The Board discussed the proposals to change specific paragraphs and confirmed:

- 2.2.2 – change approved

- 2.2.8 – explore further options, final decision to be delegated to the Chief Executive
- 2.3.12a – review further with industry, no change to be currently implemented
- 2.3.12b – change approved
- 2.3.12c – change approved
- 2.5.6 – change approved
- 2.5.7 – final decision to be finalised off line with the Executive
- 3.1.5 – change approved. Ensure the rule concerning the requirement to have internal arrangements to ensure compliance with the Code is covered under guidance.
- 3.5 – change approved
- 4.2.8 – change approved and rephrase to “*against any party/parties*”
- 4.4.6 & 4.5.1h – change approved
- 5.3.8b – change approved and reference amend to 5.3.8a not b.

The Board made the following recommendations:

- Produce web-based guidance
- Ensure the guidance is directed at consumers/users, not just providers
- Produce a user-friendly fact sheet on guidance for consumers

Mark Collins confirmed the next steps include the Code submission to Ofcom, BIS and Europe, followed by publication in the UK of changes highlighted in the Code. He welcomed any further comments to be discussed off line and fed back to him by 24<sup>th</sup> September.

**(Action: Bradley Brady/Mark Collins)**

### **5.1.3 Wireless Media Consulting (WMC) monitoring findings**

Robin Thompson from WMC presented to the Board findings of research undertaken on compliance, with approx. 400 services within the PRS market sectors, predominantly high risk sectors 090 prefixes, PSMS and Payforit. WMC explained the methodology, testing and quality assurance processes used to determine whether services are compliant with the Code.

The following points were noted:

- Results of findings are classified into different levels of severity which allow prevalent levels of consumer harm to be identified as follows:
  - Security level 1 – failures of pricing, subscription, non compliance with fundamental requirements, unapproved content/activity
  - Security level 2 - failures which are important but less critical disclosures
  - Security level 3 - failures to meet best practise guidelines although technically compliant with the Code

Key violation examples to the Code were illustrated:

- Unclear marketing messages; conflicting pricing information; pricing hidden in Terms and Conditions; lack of identifiable pricing; pricing displayed below fold of screen and requiring scroll down; lack of content provider information; misinterpretation of product offering. These examples of violation were not prevalent amongst PRS subscription services.
- Unclear opt-out information; marketing information unclear and not understandable to end a subscription service.
- Payforit – content file unavailable; helpline number invalid or non-functional. Consensus prevailed over the need to identify whether there

was any link/connection between the helpline number and content file being inoperative.

- Promotional methods using TV and SMS marketing messages for PSMS are worst hit, due to a lack of real estate space available to define the Terms and Conditions.

Key recommendations were presented, alongside the examples of violation, to encourage compliance for content providers.

To determine how the findings relate to PhonepayPlus' serious complaints and whether any consistencies are apparent, the Executive agreed to:

- Focus on the areas of violation;
- Undertake a benchmarking exercise to track trends going forward;
- Review severity level 3 and consider whether a bar is rightly pitched;
- Ensure proportionality is maintained.

The following recommendations were made:

- Consider how we imbed the findings into the market and aim, firstly, to pre-empt rather than to protect.
- Work with industry to improve compliance levels, identify poor performers, assess the risks, implement the recommendations and publish findings.

The Executive advised that it is currently not possible to undertake this type of research, to the same scale, in-house; however, we endeavour to design a toolkit to enable us to carry out in house research annually and to share results with the industry.

The Board approved the recommendations made to tackle serious non compliance identified by WMC and to repeat the exercise in 2011 to identify whether any improvements had been made in compliance rates. The Chairman thanked WMC for their presentation.

**(Action: Bradley Brady/David Oatway)**

## **5.2 REPORTING AND PERFORMANCE**

### **5.2.1 Quarterly Operational Report Q1**

Paul Whiteing updated the Board on operational and financial data for Q1, including data relating to the period ended 31<sup>st</sup> July.

The following points were noted:-

- The new Director of Operations, Joanne Prowse, will be leading a review of KPIs and management and improving on the current reporting process, in line with the new Code and Registration Scheme.
- Financial data for August shows an underspend of £68K, a reduction in trade debtors of £17K.
- Payments are waiting to be secured from Information Providers for three cases. We have reverted to the Service Providers.

The Board noted the paper and proposition made to split the KPI measure relating to the increasing use of PhonepayPlus' website into two – namely use of complaints and use of consumer understanding.

## **5.3 PROJECTS**

### 5.3.1 Registration Scheme Project Update

Bradley Brady confirmed that we received six tender applications for the Scheme, of which two applicants were shortlisted. A vendor has now been nominated and constructive dialogue and contract negotiations are underway.

A controlling specification document is being drawn up with a wider IS strategy in mind as we take the opportunity to explore where we can join further efficiencies, in line with the Registration Scheme database and the new Code. An implementation team has been set up and user group workshops with the industry will focus on the design of the database.

Contract finalisation is expected end of September with project kick-off scheduled for 4<sup>th</sup> October. Industry will be kept informed of progress and provided with an approx. registration fee figure based on costs of hosting.

The Board noted the update and commented on the excellent work in progress.

### 5.3.2 Sanction Guide Review Project – Introduction

David Levitt introduced a paper on the Sanctions Guide review project which explains the detailed process of how the Tribunal evaluates a case in terms of ratings and sanctions imposed. Further to issues which have arisen on pricing transparency and clarity on how the CCP determine sanctions, the new regime presents a good opportunity to review and update the sanctions policy. The Board were asked to provide comments.

The following policy recommendations were noted:

- Start afresh with a 0% based approach;
- Seek consensus to reference that sanctions can be escalated on past sanctions
- Include a reference to breach history;
- Provide examples in the guide and continue to demonstrate these examples to the industry;
- Publish the criteria and demonstrate its consistency.

The Executive confirmed the intention to compress the guide and include flowcharts for enhanced reading.

Following the above recommendations, the Board noted the report and agreed for any further comments to be fed back to the Executive.

**(Action: David Levitt/Paul Whiteing)**

## 6.0 AOB

None

## 7.0 SECTION C: ITEMS FOR INFORMATION ONLY

None

**Next Meeting:**

**Date:** Thursday, 18<sup>th</sup> November 2010

**Time:** 12.30 – 17.00

**Location:** Bates, Wells and Braithwaite Solicitors, 2-6 Cannon Street, EC4M 6YH