

MINUTES OF THE PHONEPAYPLUS BOARD MEETING

**THURSDAY 18 NOVEMBER 2010
NO. 374**

12.30-16.40

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

Hugh Griffiths

Jeremy Hallsworth

Howard Webber

Paul Whiteing

David Cockburn (item 2.0)

In attendance:

Bradley Brady

Joanne Prowse

Mark Collins (item 5.1.2)

James Harris (item 5.3.2)

Jodie Isaac (item 5.3.2)

David Levitt (item 5.3.2)

David Oatway (item 5.2.2)

Stephanie Ratcliffe (Minutes)

Pre-meeting discussion

The Board received a presentation from Roger Craven, CEO of Vir2, on 'Mobile and Charities' and requested the presentation is circulated to the Board.

1.0 Apologies

Apologies were noted from Claudio Pollack at Ofcom and for the late arrival of Hugh Griffiths.

2.0 Code Compliance Panel report

David Cockburn delivered the Code Compliance Panel (CCP) report on Tribunals for the period 15th September to 28th October 2010 and advised the Board that Jodie Isaac will be taking over as Head of Investigations.

The following points were noted:

- A CCP Forum was recently held; the main topic for discussion centred on the Sanction Guide review.
- Performance panel appraisals have taken place. Feedback on the panel has been positive and the panel has likewise demonstrated enthusiasm. The performance appraisal for the Chair of the CCP will be taking place in December.
- We are pleased to announce Louise Povey's re-appointment following the end of her probationary period and as confirmed by the Chairman, Sir Alistair Graham.
- Four Tribunals were held consisting of eight cases, two informal representations and applications for prior permission. A trend for fewer and less complex cases being brought to Tribunal is becoming increasingly apparent.
- The role of the CCP, within the context of prior permission applications, requires further consideration and applications are being referred to the Executive.
- An application for review (SB7 Mobile Ltd), which demonstrated the robustness of the service revenue figures, was granted.
- Fine figures remain at their lowest reported.
- Oral hearings – Kushbinder Singh Abhol has been withdrawn, Bluestream Mobile Ltd is confirmed with a hearing date to be fixed in February, two further hearings are in the pipeline.

The following emerging issues were discussed:

- Babe TV adjudication – virtual chat services demonstrated controversy and misleading information. Ofcom is taking separate regulatory action against one provider which may result in the loss of the license to broadcast such channels.
- Remote gambling services – a Service Provider was found in breach of prior permission; however, the case was adjourned while the panel sought further clarification on revenue figures. Following new information received, the panel reached a decision on size of fine and bar on service.
- Consumer credit service where brokers harvested the details of consumers wishing to take out loans. The increasing number of enquiries made via the Number Checker became cause for concern and led the Executive to carry out further investigations, whereupon the service was found to be defective in several ways.

3.0 Minutes of the 373rd Board Meeting held on 16 September 2010

The minutes were approved without amendment.

3.1 Matters arising and Action Log

- Independent monitoring – Bradley Brady confirmed an internal review has taken place; however, resource issues are to be resolved before further progress can be made. Progress is also moderate due to the new Code and Registration Scheme taking priority. The proposition was noted to repeat the exercise next year.
- Action 267 – in progress, focus groups to discuss benefits with staff have taken place. Feedback will be circulated to the Board in due course.

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:

- Colette Bowe's visit to PhonepayPlus was productive. The Leadership Team presented on the broad proposals for the forthcoming Business Plan, which allowed Ofcom to become acquainted with PhonepayPlus' intended direction of travel.

Hugh Griffiths joined the Board meeting.

- Claudio Pollack continues to act as main point of contact at Ofcom, while further announcement from Ofcom is anticipated.
- An ILP meeting was held on 16th August under the new Chairmanship of Hamish MacLeod.
- An industry Forum meeting, which included breakout groups and discussion on PhonepayPlus' proposed Strategic Plan, was held and constructive feedback provided.

4.2 Chief Executive's update

The Chief Executive presented an update on recent developments and issues of interest were noted:

- Staff – results of the staff engagement survey have been circulated to the Board under separate cover.
- Aggregator compliance concerns – meetings continue to be held with aggregators whose compliance record requires further consideration.
- Pursuance of bad debt with service/information providers – the Board was updated on the legal issues involved in collecting such amounts from providers.
- Reversed charged services – Ofcom continue to review the scope of regulation in the context of these services.

Additional comments regarding the staff survey were noted:

- Ensure the model, used to cite the survey and the measures PhonepayPlus uses to rate itself against, are proportionate to the type of organisation.

- Review the survey's phraseology and consider including the option 'no view' alongside 'agree/disagree'.
- Ensure KPIs and targets are in place on assumptions made.
- Strong communication results feature positively in the survey; however, continue to give further thought to career development and promotion opportunities.

The Board agreed for the HR Committee to review the findings in further detail and, if required, revert back to the Board.

(Action: Paul Whiteing/Gail Weightman)

4.3 Reports from Committee Chairs

Finance Committee

Sir Alistair Graham reported on matters covered at the recent Finance, Budget & Performance Monitoring Committee meeting, held on 9th November:

- Budget Review and Analysis 2011/12 with proposed direction of travel;
- Management Summary Report period ended 30th September 2010;
- Review of development costs, budget of Registration Scheme along with registration costs review;
- Collection of fines and related issues.

Audit Committee

Bob Chilton reported on matters covered at the recent Audit, Risk & Corporate Governance Committee meeting, held on 9th November:

- Progress on annual governance review refinements and how these are tested against various methodologies;
- Role of Committee in ensuring internal controls are in place;
- Review of the risk register with emerging and escalating risks;
- Update on the Registration Scheme database with the request for appropriate audit trails and tests to be applied across the organisation.

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. He explained that the industry was generally supportive and in acceptance of the proposed objectives.

The final document and statement are being drafted and will be circulated to the Board shortly. Publication of the draft plan is intended for early December. Several responses concerned with AOT submissions have been discussed with Ofcom and these will be included in the responses to the consultation.

The Board noted the report and was asked to provide feedback and comments to the Executive, as soon as possible.

5.1.2 Business Plan & Budget 2011/12

The Business Plan & Budget 2011/12 was discussed at some length, following an earlier consideration of the proposed Business Plan & Budget by the Finance, Budget & Performance Monitoring Committee. The overall budget which involved a reduction in real terms of circa 13% (10% in cash terms) based on current agreed regulatory activity

was agreed by the Board. It was agreed that the Chairman would also write to the Chairman of Ofcom about the proposed Business Plan within the wider context of the proposed Three-Year Strategic Plan.

(Action: Sir Alistair Graham/Paul Whiteing)

5.1.3 Code 12 consultation update

Mark Collins provided a progress update on the new Code. The Board was asked to note and provide feedback on the update, Annex and communications plan.

The following points were noted:

- PhonepayPlus proposes to create a webpage which will be dedicated to the new Code and Registration Scheme; to include FAQs and headlines on progress.
- A Code 12 Programme Team meeting was held on 17th November. Discussion focused on the quality and aesthetics of the new Code document.
- The apparent 'tight' schedule for the launch of the product, in March 2011, was discussed. The Executive explained next steps and advised the timetable was reasonable and did allow for unforeseeable adverse delays.
- The objectives under Annex A were defined as a 'plan in development' and 'work in progress'.
- Consumer working groups and Number Checker integration will run simultaneously alongside the implementation of the new Code.

The Board noted and endorsed the update.

5.2 REPORTING AND PERFORMANCE

5.2.1 Management Summary Report period ended 30th September and October 2010

Joanne Prowse advised the Board of the operational and financial data for October and period ending Q2. The Board was asked to note the paper and recognise that the current reporting is in its early stages of development and subject to improvements.

The following points and recommendations were noted:

- Following the ILP meeting on 17th November, several KPIs will be further reviewed.
- Data integrity issues, coupled with the process being new and not fully formed, have meant a probable lack of integrity in some numbers and data on investigations.
- Further provision of information, on the number of monthly cases resolved informally, is in progress.
- Following a trend for fewer cases brought to Tribunal, the practicality of reducing the frequency of Tribunals will be considered and the panel consulted upon, accordingly.

Discussion on the Treasury Management followed; the objective was reiterated to save and maximise on income. The Executive advised a cash flow forecast is employed and confirmed, in agreement with the Finance Committee, to liaise with Ofcom on better rates/options available.

5.2.2 Consumer risk register and bi-annual review

David Oatway presented the market risk register and bi-annual review to the Board:

- MT-billed services – following previous consumer research and in-house analysis, the driving force behind the large number of complaints is to be determined. Completion is expected by year-end.
- International calling cards – this is being considered following the liquidation of a provider in the market for these services.
- Digital goods purchases – services targeted at children require in-depth analysis to identify where the problem in terms of 'bill shock' actually lies. The new Code is expected to provide new opportunities for improvement.
- TV advertising services promotion – discussions with Clearcast and evidence-gathering on the nature of the problems identified are underway to gain a better understanding of potential consumer harm.
- TV non-compliant editorially-based PRS – a letter outlining the issues identified will be issued shortly; TV channels and Ofcom will be advised accordingly.
- TV PRS red button services – further investigation is underway to ascertain why these services have topped Number Checker and whether there is real cause for concern. An online questionnaire is proposed to identify the motivation behind the use of Number Checker.
- Near-future risks: dongle-jacking was discussed and considered by the Board to be of high risk, due to its potential to cause serious damage. The Executive advised a high risk was not ascertained at the recent Mobile Network Operators' meeting; we are, however, not complacent, but aim to firstly establish the type of risk and then identify its potential for damage. With only a few isolated cases reported and the diversity of the smartphone market, the risk remains difficult to measure. A plan of action is underway with Mobile Broadband Group members to monitor and mitigate these risks.

The Board concluded on the following:

- Obtain a better understanding of required action to take;
- Consider revising the commercial risk methodology to ensure all risks have been captured and covered;
- The register is work in progress – present at the next Board meeting with particular focus on the risk of dongle-jacking.

A recommendation was made to invite a security search company to a pre-Board meeting presentation.

(Action: David Oatway)

5.3 PROJECTS

5.3.1 Registration Scheme project update not required

5.3.2 Sanction Guide review project

The Sanctions Guide team presented a review of the Sanctions Guide project to the Board. James Harris advised that, following further discussions at the Code 12 Programme Meeting held on 17th November, additional views have since been incorporated.

The Board was asked to:

- Consider improvements on the current sanctioning process;
- Decide on the objectives – agree on process and methodology to develop a sanctioning process and new guide under the new Code. In particular, the removal of the points scheme and the adoption of a new mechanic for making an

initial assessment, taking into account aggravating and mitigating factors, with the aim to articulate levels of seriousness and harm and to ensure sanctions are proportionate in seriousness rating (step 4).

The following points and recommendations were noted:

- Reword and provide clearer meaning on principles (p.4);
- Point 10b Applying Sanctions – replace the ‘value chain’ with ‘at the point of detriment’;
- Current steps illustrated represent mere explanations and proposals – work is in progress;
- Ensure factual as well as evidence of probabilities is considered and accounted for – distinguish between factual conclusions and judgemental processes/applications;
- The CCP will test and review the Sanctions Guide prior to any final agreement by the Board.

The Executive confirmed that the proposed new structure is intended to come into force at the same time as the new Code and will centre on potential, as well as actual, breaches.

The Board confirmed it was content to proceed on the basis not to reject existing arrangements until satisfied the new approach is more successful, transparent and communicable.

The Executive agreed to continue work on the Sanctions Guide and to present at the next Board meeting.

(Action: David Levitt/Jodie Isaac)

6.0 **AOB**

None

Next Meeting:

Date: Thursday 10th February 2011

Time: 12.30 – 17.00

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