

**MINUTES OF THE 380th
PHONEPAYPLUS BOARD MEETING**

THURSDAY, 9 February 2012

12.30 – 16.50 p.m.

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

Board Members

Sir Alistair Graham (Chairman)

Bob Chilton (except items 6.1.5, 6.2.2, 7.1, 7.2, 8.0)

Matti Alderson

Hugh Griffiths

Jeremy Hallsworth

Howard Webber

David Clarke

Paul Whiteing

David Cockburn (item 2.0)

Ofcom

Claudio Pollack (item 5.0 onward)

PhonepayPlus

Joanne Prowse

Patrick Guthrie

Dinah Tuck (item 2.0)

Mark Collins (items 6.1.2, 6.1.3, 6.1.4)

Michael Pemberton (item 6.1.5)

Shirley Dent (item 7.1)

Jetta Oliner (minutes)

Keplar

Stephen Locke (item 6.1.1)

Alex Deakin (item 6.1.1)

Pre-meeting discussion

The Board received a presentation by Mark Harris, Vice-President of Sophos Labs on 'Mobile Malware, Yesterday, Today and Tomorrow'

1.0 Apologies

None

2.0 Code Compliance Panel (CCP) report

David Cockburn delivered the CCP report for the period 10 November 2011 to 19 January 2012 and drew particular attention to the following additional points:

- A CCP forum is scheduled for 23 February.
- The Executive need to consider members' periods of appointment to the CCP as a matter of urgency so that re-appointments due at the end of March are staggered to allow for appropriate succession planning.
- There has been one Emergency procedure in which the provider accounted for approximately 30% of complaints in recent months. The case has been adjourned for further information to be provided.

The Board discussed a number of issues arising out of a provider's request for a review by the CCP where the Chair had suspended the prohibition sanction pending the outcome of the review.

The following emerging issues were discussed:

- Naming of directors had been recommended in a case involving non-payment of fines although it was recognised that this would not prevent the individuals from investing in a company and using spouse and/or other relatives as directors.
- Provisions of the 12th Code covering unsolicited and offensive promotions were raised for the first time.
- In two cases under the 11th Code, fines were imposed where consumers had been misled into buying virtual currency for a game. The promotions took place via Facebook and MSN.

(Action: Jo Prowse)

3.0 Minutes of the 379th Board meeting held on 17 November 2011

Subject to an amendment at page 2, the minutes were approved as an accurate record of the meeting.

3.1 Matters arising and action log

A revised version of the action log was circulated to the Board. Clarification was sought and provided around the evidence required for the naming procedure.

3.2 Standing and other declarations of interest

None

4.0 SECTION A: REPORTS FROM THE CHAIRMAN, CHIEF EXECUTIVE & CHAIRS

4.1 Chairman's report

The Chairman reported on the following developments since the last Board meeting:

- A meeting took place with Chris Pond, then director of consumer affairs at the FSA.
- Briefings with candidates short-listed for the role of Chairman took place prior to the panel interviews.

4.2 Chief Executive's update

The Chief Executive updated the Board on issues of note since the last meeting.

4.3 Reports from Committee Chairs

Finance, Budget and Performance Monitoring Committee

The Chairman reported on the following matters covered at the Finance Committee meeting on 7 November 2012:

- Responses to the draft budget were generally supportive and the Committee endorsed the approach to the budget.
- The three year financial plan was considered and it was noted that whilst it was important to continue reducing the costs of regulation, this should not be at the expense of maintaining an effective regulatory body.

Audit, Risk and Corporate Governance Committee

Bob Chilton reported on the following matters covered at the Audit Committee meeting on 7 February 2012:

- The Langland principles have been agreed and there are no problem areas.
- The revised Handbook for Board Members has been approved subject to some recommended amendments.
- The biennial security audit shows an improvement from two years' ago.
- The Executive were asked to consider whether the impact of the Olympics might lead to increased risks for consumers and what steps could be taken to minimise this.

Chairman Recruitment

Bob Chilton advised the Board on the process followed and asked that members approve the panel's decision to recommend the appointment of Andrew Pinder CBE subject to references and Ofcom approval. The Board unanimously agreed to recommend Andrew's appointment to Ofcom.

Bob Chilton was thanked for his work in chairing the recruitment panel.

5.0 SECTION B: BUSINESS PLANNING AND BUDGETING

5.1 Business plan and budget update 2012/13

Paul Whiteing updated the Board as follows:

- Only six responses to the budget consultation were received – this is fewer than in previous years and suggests that the budget proposals this year have not aroused strong industry feelings.
- Of the six responses, two were mainly about the funding model rather than the budget. As the funding model was reviewed relatively recently and there does not appear to be industry consensus around an alternative, the Executive is not proposing to reopen discussions about the

funding model at this stage. However, the work that the Executive is doing on making sure that polluters pay for the costs of regulation that they cause should help to address underlying concerns about the allocation of costs across different parts of the industry.

- Consultation responses were broadly supportive of the budget and of PhonepayPlus' business plan. Some questions were raised about some individual budget lines. These points will be addressed in PhonepayPlus' budget statement, but do not require amendments to be made to the proposed budget. Consequently, no change is proposed to the core budget as consulted on.
- On the Registration Scheme, the industry responses agreed with PhonepayPlus' recommendation that the registration fees for next year should be set as follows: registered charities will be exempt from fees; companies with an annual PRS turnover of less than £10,000 will be exempt from fees *in their first year of registration only*; all other registrants will pay a full fee. The budget will be discussed with the Ofcom Chairman and Chief Executive at a meeting on 29 February with the levy rate and registration fees then being notified to industry as soon after this meeting as possible.

The Board thanked Paul for the update and agreed with the position on the budget as set out.

6.0 SECTION C: REPORTS FROM THE EXECUTIVE TEAM

6.1 STRATEGY, POLICY AND REGULATORY EFFECTIVENESS

6.1.1 Micropayments

Stephen Locke and Alex Dean joined the meeting for this item to answer questions about the research they have carried out on micropayments for PhonepayPlus. Patrick Guthrie informed the Board that research had been carried out in the following areas:

- A market map and risk assessment to investigate which services were likely to cause consumer harm in the digital content market; and
- A regulatory gap analysis to ascertain what regulation exists in this area and whether it is effectively applied in practice.

The headline conclusions from this research are that the digital content market has some generic risk characteristics that may lead to consumer harm and are not dissimilar to risks found in the PRS market. It was noted that there were certain "risk hot spots".

The Board welcomed the research, agreed with the broad conclusions and asked the Executive to take forward the following next steps:

- To continue developing the analysis, focusing in particular on those areas likely to be highest risk to consumers.
- To continue discussions with the FSA and OFT about their regulatory remits and capabilities in this area.
- To start a conversation with companies in the digital content market to share knowledge from our experience of regulating PRS and to exchange views on how consumers can be best protected in the digital content market going forward.

(Action: Patrick Guthrie)

6.1.2 App guidance following consultation

Mark Collins presented "*Draft Guidance on Application-based Payment Services*" and asked the Board to note that:

- The guidance was designed to address areas of growing concern in the Apps market around repeat purchases and consent, and risks around security with virtual currency.

- The guidance had been developed in close partnership with industry through the ILP Futures Group.

Subject to a minor technical amendment, the Board approved the guidance and asked that it be published by the end of February.

(Action: Mark Collins)

6.1.3 Charities' Project update

Mark Collins presented "*Charities project and extension of "SKIP" pilot*". He outlined that the Executive had two main recommendations:

- That a research project be carried out to help PhonepayPlus develop the regulatory framework for PRS charitable giving in an evidence-based way, bearing in mind the rapid growth and changes we are seeing in this market.
- That following the conclusion of the "SKIP" pilot, that other registered charities be invited to apply to participate in the pilot; that decisions on granting the necessary Code disapplications be delegated to the Executive; and that the pilot should continue on current terms and no changes to the terms of the pilot should be considered until the research has been completed and considered by the Board.

The Board agreed to these recommendations. It stressed that there could be potential risks to consumers in this market and that the ongoing pilot and the further research outlined would need to test these risks more thoroughly before any further changes could be considered to the regulatory framework. The Board also asked the Executive to prepare a risk assessment framework to identify the main risks in this area and how they will be tested and mitigated.

The Board agreed to the further research but asked that the Executive review the detail of the proposal to ensure that it focused the research budget most effectively.

(Action: Mark Collins, Patrick Guthrie)

6.1.4 Consumer credit prior permission conditions – proposal for additional conditions following CA super complaint

Mark Collins presented "*Proposed changes to prior permission conditions for Consumer Credit*". The Board agreed that they were content to defer considering any changes until the Executive had done further work looking in more detail at the business model and complaints raised against one particular credit broker who is most active in this area. Further work will also be carried out on acceptance rates from non-PRS credit brokers.

(Action: Mark Collins)

6.1.5 Report on Informal Resolution

Mike Pemberton joined the meeting and presented the above report. The Board welcomed the report and the work of the team. Discussion ensued around the controls in place to ensure recurring low level harm was captured and/ or issues around due diligence, risk management and control could be effectively detected under the informal resolution procedure.

6.2 REPORTING AND PERFORMANCE

6.2.1 KPI Review – progress report

Jo Prowse presented the above report and thanked David Clarke and Jeremy Hallsworth for their input. The Board noted that the new framework proposed for the next financial year comprised of three sections:

1. Dashboard providing an summary of the overall 'health' of the organisation with reference to its adherence to performance targets;
2. Market indicators providing contextual information framing the position of the market which are outside PhonepayPlus' direct control but indicative of the effectiveness of regulation; and
3. Key performance indicators measuring the Executive's performance on key activities aligned to the business plan.

The following issues were discussed:

- The effort of collecting the information should be proportionate.
- There were limited indicators on efficiency and economy (unit costs) and it would be useful to include this over time.
- A consumer confidence and trust measure (which should go beyond consumer complaints) should be considered.

The Board endorsed the proposal for operation from 1 April 2012 and requested that further work be carried out with Board colleagues to reflect the points raised in discussion.

Claudio Pollack will take advice within Ofcom as to whether the KPIs are considered as suitable for the organisation but thought there was nothing which would trouble Ofcom.

(Action: Jo Prowse, Claudio Pollack)

6.2.2 Management summary report

Jo Prowse presented the management summary report for December 2011 and the KPI information for Q3 to the Board. The Board were asked to note the following points:

- There has been an increase in complaint volumes over recent months and the Executive is investigating the nature of these and ensuring enforcement activity is being carried out at the correct level. It was noted that approximately 40% of complaints are being driven by two or three organisations which are currently under investigation. An extra resource has been seconded into the investigations team in response to the anticipated increase in cases.
- The Finance Committee interrogated the financial accounts as presented in the pack in detail at their meeting on the 7th February.
- The first of the new reporting on prior permission activity has been included in the appendices with nothing exceptional to report this period.

7.0 SECTION D: ITEMS FOR INFORMATION ONLY

7.1 Report on PhoneBrain 2011

The board noted the above paper and congratulated all involved in the PhoneBrain culmination event and in delivering the successful PhoneBrain programme for 2011.

7.2 Report from the Science and Technology Select Committee on malware and cybercrime

The board noted the above paper and the positive references to PhonepayPlus.

8.0 AOB

None

End of minutes

Date & location of next meeting:

Date: Tuesday, 29 May 2012

Time: 12.30 – 17.00

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