

## Response to the BIS consultation on *‘Empowering and protecting consumers’*

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# About PhonepayPlus

PhonepayPlus (previously known as ICSTIS) is the *industry funded, non-statutory* and *independent* regulator of premium rate services (PRS) in the UK. These are the premium rate goods and services that you can buy by charging the cost to your phone bill and pre-pay account.

We regulate services using our Code of Practice. This sets out the rules with which all providers of PRS must comply. Among other things, we require:

- Clear and accurate pricing information;
- Honest advertising and service content; and
- Appropriate and targeted promotions.

We investigate complaints about PRS. Where our independent panel decides that the rules have been broken, we can fine the company responsible (up to £250,000 per breach of our Code), bar access to its services and even bar the individual behind the company from running other services under a different company name. Our investigations and adjudications service is free to consumers and fully independent.

Over the last three years, PhonepayPlus has significantly shifted its approach to regulation to one that favours pre-emption and prevention of consumer harm, through closer engagement with industry on driving up standards and developing services that comply with regulation.

The next stage in the evolution of this approach has been the publication of our new Code of Practice in March 2011. The new Code, which came into force on 1 September, sets out just six objectives that PRS providers must meet, which in combination should deliver a positive outcome for their customers.

Under the Communications Act 2003, Ofcom has responsibility for the regulation of premium rate services. In December 2007, it was confirmed that PhonepayPlus would act as the agency which carries out the day-to-day regulation of the PRS market on Ofcom's behalf. The [Formal Framework Agreement between Ofcom and PhonepayPlus](#) can be viewed here.

We are non-profit making and our Board consists of seven non-executive part-time Board members and the Chief Executive of PhonepayPlus. Our Board is supported by a full-time Executive. For more information please view the [PhonepayPlus governance statement](#).

PhonepayPlus Limited is a non-profit-making Company Limited by Guarantee, registered in England under Company Number 2398515. View [PhonepayPlus' Report and Financial Statement 2010/2011](#).

## Summary

PhonepayPlus welcomes the Government's wide-ranging review of the consumer protection and enforcement landscape that exists today. Empowering consumers has never been more essential, given the ever increasing complexity of the various markets that consumers – which increasingly includes children – have to face in their daily lives. There is an abundance of choice and offers, especially on the internet, but information is not a substitute for genuine empowerment.

We at PhonepayPlus are on the front line of this change, regulating as we do a digital environment that is converging content, services and payments across a proliferating range of platforms, devices and, especially, smartphones.

Our non-statutory regulatory model nevertheless has 'teeth', which means that we can be nimble and react to this fast-changing environment. Our proactive approach to regulation is no longer driven just by consumer complaints (as important as they are), but also by state-of-the-art in-house monitoring as well as a collaborative industry dialogue. That said, we are a one-stop shop for consumers who use premium rate services and need information or advice about them. We have 25 years' experience of drawing up Codes of Practice for such fast-moving markets, and our enforcement powers are effective and give redress to consumer harm which, like in any market, can occur.

Given our experience in all of the matters that form part of this wide-ranging review, we have structured our response to be aligned with the chapter headings of the BIS consultation.

We are keen to support the Government as it progresses these plans, which are ambitious. We would caution, however, against moving to implement any changes without first making sure that the right structures, funding, governance and expertise are in place for any body taking on new functions. To do otherwise could undermine the many interesting proposals set out in the consultation paper.

# Chapter 1 - Introduction

Premium rate services (PRS) typically offer some form of content, facility or other service that is charged to users' phone bills and/or pre-pay accounts. They can offer information and entertainment services via fixed or mobile phone, fax, computer or interactive digital TV. Regulation of PRS is designed to ensure that consumers can use these services with confidence and have access to effective redress when they encounter problems.

Examples of premium rate services include, (amongst others):

- Charitable donations via text message (including Vodafone's 'JustGiving');
- Games;
- Directory enquiry services;
- Gambling;
- Adult services;
- Ringtones.

## Consumer harm

The PRS market has characteristics which carry specific risks of consumer harm, which requires niche and specific regulation.

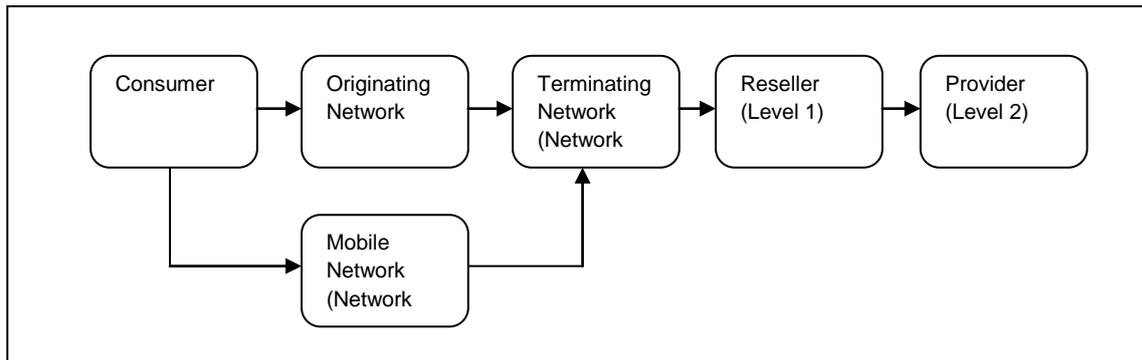
In general, we consider consumer harm to include incidences where:

- Consumers pay higher prices than expected;
- Services delivered are of a lower quality than expected;
- Innovation in the market is reduced;
- Consumers encounter difficulty in seeking redress;
- Consumers inadvertently access inappropriate and offensive content;
- Providers behave in an opportunistic manner (including the potential for scams);
- Consumers' privacy is invaded;
- Consumers suffer a loss of reputation;
- Consumers suffer a loss of dignity; and
- Consumers suffer anxiety and distress (such as that caused by nuisance phone calls).

## The characteristics of the PRS market

For PRS, the network which bills the consumer (such as BT or Vodafone) does not generally supply the service (an issue described by Ofcom as, "bill-supply separation").

In simple markets, the person who charges you for a good or service generally has a role in its supply; however, in the PRS market, there is a complex and fragmented value-chain, with large numbers of suppliers operating at different levels in the chain (as described below). As a result, consumers often find it difficult to establish responsibility when they suffer harm or detriment.



The services consumed through PRS are generally electronic or relate to information (such as voting or information services), which mean that consumers are only able to ascertain the quality of the service at the point of purchase. Additionally, many services require little or no authentication, which encourages consumers to purchase on impulse, without properly checking the charges they may face. As a result, there is an enhanced risk that consumers may not receive the services that they expect.

For organisations who wish to offer PRS, barriers to entry and exit are low – particularly at the Level 2 (or ‘merchant’) level. This means that consumers who suffer harm are left with no means of redress.

The price of PRS is generally low, when compared to other goods and services; this generally discourages consumers from seeking redress in all but the most extreme of circumstances.

Some PRS services that lead us to investigate them relate to inappropriate or offensive content, which is only suitable for the adults who request them.

Consequently, Ofcom recently noted that for consumers,

*“because the retail price is set by the OCP (Originating Communications Provider [a consumer billing network such as British Telecom]) rather than the PRS supplier it can be difficult for consumers to obtain precise pricing information. Secondly, when the consumer has a complaint, it is not always easy for them to identify who is responsible and how to obtain redress. Thirdly, low barriers of entry and exit, a complex supply chain and rapid technological change could incentivise opportunistic behaviour towards consumers.”*

***Ofcom: Review of premium rate services, an application of the analytical framework, July 2011***

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Additionally, Ofcom noted the existence of incentives in CPR services:

*“to provide low quality or high priced services. This raises particular problems for consumers as services such as digital content are typically “consumed upon purchase”, which means that they are exempt from some provisions of the Consumer Protection (Distance Selling) Regulations 2000 in respect of the right to cancel”<sup>1</sup>*

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*Ofcom: Review of premium rate services, an application of the analytical framework, July 2011*

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## PhonepayPlus

In 2011, the PRS market was worth **£816 million**, up from **£810 million** in 2010. PhonepayPlus regulates some 3,000 organisations – of which 9% of those are based overseas.

Over 70 public limited companies use PRS – with many smaller companies, including publishers, broadcasters and software companies using PRS services. New ways of paying for electronic goods and services are also being developed, such as virtual currencies which can be ‘topped up’ through PRS – such purchases increased by 400% in 2010.<sup>2</sup>

Charities are increasingly looking to PRS (through the use of text donations) as a way of providing flexible charitable giving. Charitable giving through PRS is estimated to grow to £96 million by 2014.<sup>3</sup>

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<http://stakeholders.ofcom.org.uk/binaries/consultations/review-prs/summary/condoc.pdf>

<sup>2</sup> Brands such as Boku and Zong use PRS to allow payment through social network sites, such as Facebook, Google+ and Bebo

<sup>3</sup> Such as ‘JustGiving’ by Vodafone, the recent West African aid appeal and Comic Relief

## Chapter 2 - Information, Advice and Education

PhonepayPlus supports the view that, for consumers to be empowered, they must be able to understand their rights and how to employ their rights to prevent problems occurring, or to gain redress (generally a refund) when a problem is unavoidable.

There are many effective blogs and websites that relate to PRS – such as '[Who Calls Me](#)' and '[Money Saving Expert](#)' – which allow consumers to share information about services that have caused them harm. PhonepayPlus engages with these sites in order to provide an effective resolution to the problems consumers describe.

PhonepayPlus has unique knowledge of the PRS market and its specific characteristics that can sometimes cause consumer harm. This knowledge allows PhonepayPlus to address structural market problems, especially in relation to a consumer's billing network's (such as BT or Vodafone) inability to provide accurate information about the service supplied on a consumer's telephone bill (see below in relation to our Number Checker).

### Call Centre

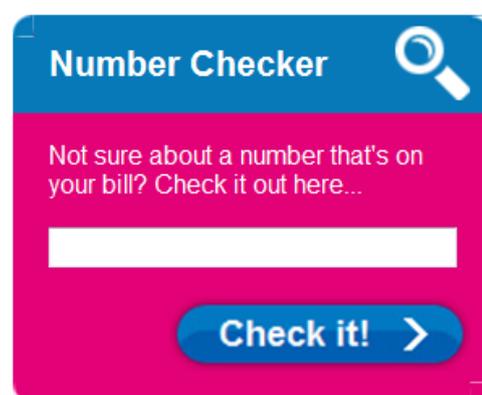
PhonepayPlus assists consumers in navigating what can be a complex market. One way we achieve this is through a dedicated consumer call centre. Our call centre has dealt with nearly 27,000 complaints in the last three years. All complainants are kept informed throughout our investigation cycle of the progress of their complaint.

### Registration

PhonepayPlus requires all organisations which supply PRS to consumers to register on our website. Registration is a simple and quick process. It gives PhonepayPlus access to data which allows us to quickly target the organisations that are causing consumer harm, as well as to track the individuals who repeatedly cause damage to the market and consumers through unscrupulous behaviour. One way we empower consumers is by putting this data into their hands in the form of our Number Checker service.

### Number Checker

One unique service we provide to consumers is our Number Checker. This allows consumers to analyse their telephone bills or pre-pay accounts and find information about the premium rate services which have been billed to them. Our Number Checker received 707,997 requests for information about the organisations that appeared on their bills in 2010.



The data behind Number Checker is currently populated through a manual intelligence-gathering

exercise based on the previous month's most-checked numbers.

2157	Other Mobile Network	talk	1200 mins	y	0.0035	0.000
2154	Other Mobile Network	talk	1200 mins	y	0.0057	0.000
2205	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
2233	Other Mobile Network	talk	1200 mins	y	0.0024	0.000
2251	Magic Numbers	talk		n	0.0004	0.000
2300	Payfort	content		n	0.0030	0.511
2355	Magic Numbers	talk		n	0.0133	0.000
2357	Other Mobile Network	talk	1200 mins	y	0.0253	0.000
03/08/10 Tue	Magic Numbers	talk		n	0.0043	0.000
0321	Magic Numbers	talk		n	0.0054	0.000
0406	Magic Numbers	talk		n	0.0427	0.000
1019	BT 'b' Rate	Voice	UnLim	y	0.0105	0.000
1202	BT 'b' Rate	Voice	UnLim	y	0.0039	0.000
1205	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
1218	Other Mobile Network	talk	1200 mins	y	0.0001	0.000
1235	BT 'b' Rate	Voice	UnLim	y	0.0052	0.000
1236	Other Mobile Network	talk	1200 mins	y	0.0151	0.000
1301	Other Mobile Network	talk	1200 mins	y	0.0008	0.000
1308	Other Mobile Network	talk	1200 mins	y	0.0446	0.000
1314	BT 'b' Rate	Voice	UnLim	y	0.0210	0.000
1414	Magic Numbers	talk		n	0.0005	0.000
1540	Orange	talk	1200 mins	y	0.0251	0.000
1545	BT 'b' Rate	Voice	UnLim	y	0.0006	0.000
1826	Other Mobile Network	talk	1200 mins	y	0.0019	0.000
1940	BT 'b' Rate	Voice	UnLim	y	0.0119	0.000
04/08/10 Wed	BT 'b' Rate	Voice	UnLim	y	0.0126	0.000
0051	Orange Answering Service	talk		n	0.0010	0.000
2046	#Multimedia Services Sent	text		n	0.0000	0.000
2048	#Multimedia Services Recd	text		n	0.0000	0.350
2047	Other Mobile Network	talk	1200 mins	y	0.0036	0.000
2049	Mobile Text Messaging	text	500 texts	y	0.0000	0.000
2123	BT 'b' Rate	Voice	UnLim	y	0.0504	0.000
2224	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
2225	Magic Numbers	talk		n	0.0047	0.000
2226	Other Mobile Network	talk	1200 mins	y	0.0003	0.000
05/08/10 Thu	Other Mobile Network	talk	1200 mins	y	0.0004	0.000
1402	Other Mobile Network	talk	1200 mins	y	0.0056	0.000
1421	Orange	talk	1200 mins	y	0.0108	0.000
1422	Orange	talk	1200 mins	y	0.0011	0.000
1420	Other Mobile Network	talk	1200 mins	y	0.0024	0.000
1452	Other Mobile Network	talk	1200 mins	y	0.0025	0.000
1455	Other Mobile Network	talk	1200 mins	y	0.0113	0.000
1540	Orange	talk	1200 mins	y	0.0008	0.000
1627	BT 'b' Rate	Voice	UnLim	y	0.0038	0.000

This has generally resulted in about 80% of 'number checks' concluding in data being returned.

Our unique position in the market, trusted by consumers, has enabled us to complete an industry-funded project which allows PRS providers to directly populate the information on Number Checker.

We hope that this new mechanism for providing Number Checker data will result in virtually every query resulting in more accurate data being provided.

This should lead to greater transparency in the market and reduce the 'friction' involved in a consumer making an enquiry about a PRS. PhoneyPayPlus believes that this transparency should better allow PRS providers to compete on areas such as consumer service, and, accordingly, to 'nudge' PRS providers in to less detrimental behaviours.

## Consumer Literacy Working Group

In 2010, PhoneyPayPlus established a Consumer Literacy Working Group (the CLWG). Made up of representatives from industry, consumer groups and other regulators, the CLWG acts as a sounding board for PhoneyPayPlus' consumer literacy work, helping to develop individual projects and offering professional expertise.

With an emphasis on campaigns aimed at consumers who could be considered vulnerable – whether it be because of their age, their economic situation, their lack of technical knowledge or a variety of other different circumstances – and with a commitment to employing a partnership approach wherever possible, PhoneyPayPlus' consumer literacy programme is an important part of our pre-emptive, collaborative approach to regulation

Members include:

*Empowering and Protecting Consumers – PhoneyPayPlus response*

- Citizens Advice Bureau
- 118 118 (The Number)
- Association for Interactive Media & Entertainment (AIME)
- BT agilemedia
- Channel 4
- Citizens Advice Bureau
- Consumer Focus
- Directgov
- Mobile Entertainment Forum
- Ofcom
- Parentline Plus

## PhoneBrain

Mobile phone ownership is becoming ubiquitous amongst children. Ofcom reports that today 49% of 8-11 year olds have a mobile phone and that number rises to 82% in the 12-15 age bracket. Parents are correctly concerned about children's access to inappropriate material, and also the possibility of tying themselves into expensive subscription payments for PRS (such as weekly mobile ringtone or games clubs). PhonepayPlus recognises this vulnerability and we conduct consumer literacy projects in order to prevent any harm occurring – our key project in this area is our award-winning PhoneBrain schools programme.<sup>4</sup>

This programme aims to help young people recognise PRS and understand the potential costs involved, while at the same time highlighting the opportunities associated with PRS. All of this is done through free-to-download, curriculum-relevant teaching resources that are available on [the project website](#).

Over the past two years, over 800 teachers in England and Wales have signed up for the PhoneBrain resources, with thousands of secondary school students creating their own mobile ringtones (linked with Information Communications Technology) or producing business plans for new, compliant PRS (linked with Enterprise/Business Studies) in the classroom. The project's success was recognised in PhonepayPlus winning a Hollis Sponsorship Award in the education category in 2010.

## Know your numbers

[Research published by PhonepayPlus in March 2010](#) showed that 54% of people aged 55+ do not know what an advertised premium rate service will cost – a finding that led PhonepayPlus to devise the 'Know your numbers' campaign, which ran in Spring 2010.

Working with the charity Age Concern (now Age UK), PhonepayPlus produced and printed posters, bookmarks and memo boards that explained the types of services that operated on

<sup>4</sup> <http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/medlitpub/medlitpubrssi/children/>

09, 0871/2/3, 118 and mobile text shortcode numbers. Written in simple and easy-to-understand language, with input from Age Concern as to the most favourable print requirements for older people, these materials were then distributed through various Age Concern channels as well as free of charge to 1,000 libraries across the UK.

## Response to consultation

**PhonepayPlus notes the Government’s ambitious plans to integrate publicly-funded support services into a single public offering delivered through the Citizen’s Advice service.**

PhonepayPlus works closely with Citizen’s Advice within the CLWG and receives referrals from consumers who initially contact Citizen’s Advice offices on PRS matters.

PhonepayPlus supports the Government’s initiative through Trading Standards to log all complaints on an integrated system. Furthermore, we would like to offer our assistance to inform the design of the dataset coding, so as to most productively capture specific consumer harm in PRS and low-cost (or micropayment) transactions generally.

PhonepayPlus notes the advantages in efficiency for Government spending in centralising all funding for consumer education into one place, such as the Citizen’s Advice.

Whilst we reiterate that, much like the work of Which?, PhonepayPlus’ activities are not dependent on public funding, our view is that some specialist sectors (such as the PRS market) require specific expertise in terms of management and co-ordination in order to gain the most effective benefit to any relevant consumer education campaign.

### Question 2

*Do you agree that the OFT’s consumer information role should be transferred to the Citizens Advice service?*

PhonepayPlus notes the Government’s proposals and urges that any body which takes on the OFT’s consumer information role should have the necessary resources, budget and relevant expertise to deal with both the volume and the variety of issues that consumers are likely to raise.

### Question 4

*Do you agree that the OFT’s consumer education roles should be transferred to the Citizens Advice service? What are your views about the types of consumer education activity that are most valuable and how they should be managed and coordinated?*

PhonepayPlus notes the Government’s proposals in respect of the transfer of OFT powers in relation to consumer education to Citizen’s Advice. PhonepayPlus urges that Citizen’s Advice be granted sufficient budget, resources and expertise to exercise its function properly.

Any consumer education activity should always be measured against criteria of being valuable, targeted, and meeting an identified and a measurable consumer need.

## Chapter 3 - Consumer Code Approval

In March 2011, PhonepayPlus published its [new Code of Practice](#), the twelfth edition. Previous Codes had sought to prescribe precise rules which suppliers must comply with; however, as few prescriptive rules as possible are included in the new Code, with these being replaced by guidance on achieving compliance.

This guidance is non-binding on industry, allowing providers to develop approaches to compliance that best suit their business and their services. To assist further with this, PhonepayPlus offers industry a free compliance advice service.

In drawing up the new Code in close consultation with the PRS industry and other stakeholders, PhonepayPlus recognised the need to move away from a set of rules tied to specific technologies and service types – such an approach all too easily runs the risk of being overtaken by new technologies and innovations in the market.

Working with other regulators, consumer groups and industry, we aimed to future-proof this new Code as much as possible. The best way to achieve a flexible, nimble Code was to focus on the positive outcomes for consumers that providers should always achieve.

These positive outcomes are:

- **Legality**
  - Outcome: “That premium rate services comply with the law”.
- **Transparency and Pricing**
  - Outcome: “That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”
- **Fairness**
  - Outcome: “That consumers of premium rate services are treated fairly and equitably.”
- **Privacy**
  - Outcome: “That premium rate services do not cause the unreasonable invasion of consumers’ privacy
- **Avoidance of harm**
  - Outcome: “That premium rate services do not cause harm or unreasonable offence to consumers or to the general public.”
- **Complaint handling**
  - Outcome: “That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily.”

These outcomes and our approach allows us to protect consumers now as well as in the future when they are making electronic payments. Naturally, the Code applies nationally, as PRS is a national issue that does not recognise administrative boundaries – so the same standard is applied across the UK (and for providers operating from outside of the UK's

borders but that use UK premium rate numbers). This allows PhonepayPlus to ensure a level playing field and a consistent consumer experience.

Although PhonepayPlus' Code of Practice is compulsory, not voluntary, and therefore is outside of the CCAS system<sup>5</sup>, PhonepayPlus' Code did evolve from a voluntary network code, following the privatisation of the telecommunications market in the 1980s.

The PRS market has moved on from that and the specific characteristics of the PRS market now make a voluntary Code of Practice unlikely to sufficiently deter consumer harm.

PhonepayPlus has maintained the relevance of its guidance through regular iterations of the Code and has relevant current experience in the process of code approval with the EU Commission.

### Response to consultation

PhonepayPlus notes the possibility that, in the absence of an OFT-operated CCAS scheme, the commercial and voluntary sector (along with recognised brands, such as **Which?**) may arise to fill the gap that is left.

**PhonepayPlus supports the need for national codes of practice, where possible, and offers its expertise to assist any Primary Authority seeking a model for code approval and certification.**

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<sup>5</sup> In that it is supported by the Communications Act (2003) and the CPRS condition

## Chapter 4 - Consumer Advocacy

PhonepayPlus is an independent, industry funded, non-statutory regulator. Our Code is proportionate and evidence-based. To this end, we collect and collate evidence of consumer attitudes to PRS, and use this to inform our regulatory policy to make sure that consumers as a whole are treated fairly when using PRS.

Regular users of PRS represent around one third of the wider population. To ensure that the policy we develop and the regulatory actions we follow best serve this subset of consumers, PhonepayPlus carries out bespoke market research, working with specialist research agencies who recruit actual PRS consumers to ensure regulation properly serves their needs.

### 0871, 0872 and 0873 issues

In 2009, PhonepayPlus commissioned Analysys Mason to conduct research into the use of 087 numbers through online surveys of consumers, as well as face-to-face interviews. Amongst other issues, the research found that:

- 44% of 0871 callers have either made a complaint about or had an issue with a 0871 service in the past six months.
- Lack of understanding on price: When asked how much an 0871 call costs, one in three users said they did not know and 40% were unaware of the additional cost of calling from a mobile.
- Delays are a significant annoyance to callers: 70% of callers said they would complain if kept on hold for more than 10 minutes.<sup>6</sup>

This assisted PhonepayPlus in drafting relevant rules in the new Code of Practice for these number ranges. Since PhonepayPlus has assumed responsibility for regulation of the market, there have been improvements in pricing transparency and more information is provided when consumers are kept on hold. Furthermore, in terms of revenue, the 0871/2/3 market, following years of decline, has now stabilised and is slowly growing.

### Consumer feedback on the new Code of Practice

During the consultation process for the new Code of Practice, PhonepayPlus engaged researchers to conduct a qualitative study of the proposed rules. Whilst the research highlighted a general gap in consumer knowledge about the existence of a PRS regulator, it did re-enforce that the issues they are concerned about when using PRS are addressed by the Code of Practice.<sup>7</sup>

<sup>6</sup> <http://www.phonepayplus.org.uk/News-And-Events/News/2009/6/Research-reveals-need-for-greater-price-transparency-in-087-services.aspx>

<sup>7</sup> [http://www.phonepayplus.org.uk/For-Business/~/\\_media/Files/PhonepayPlus/Research/PhonepayPlusCode12TheViewFromConsumerresearch.pdf](http://www.phonepayplus.org.uk/For-Business/~/_media/Files/PhonepayPlus/Research/PhonepayPlusCode12TheViewFromConsumerresearch.pdf)

## Consumer refunds

A key part of PhonepayPlus' role is to assist consumers in seeking refunds. One key power under the Code of Practice is the ability to mandate that organisations found in breach of the Code offer specific refunds to complainants. This service is free to consumers.

Furthermore, following the introduction of our new Code, PhonepayPlus' independent Tribunal can now order a blanket refund to all consumers who engaged with a service.

These powers nudge PRS providers to resolve complaints, without the need to refer to the regulator at all, and furthermore create an incentive to, when the consumer harm is sufficiently minor, deal with the complaints on a fast-track basis.

In an effort to further encourage this behaviour, PhonepayPlus established its Complaint Resolution Team in 2010. This dedicated team is designed to deal speedily with minor complaints that might warrant redress, without the need for a formal investigation.

Since its inception in 2010, PhonepayPlus' Complaint Resolution Team has secured just under £24,000 worth of refunds for consumers and has helped PRS providers operate better services for consumers.

## Response to Consultation

**PhonepayPlus notes the Government's proposals to create a single focus (run by Citizen's Advice) for the co-ordination of publicly-funded consumer advocacy functions.**

PhonepayPlus also notes the importance of a strong consumer voice to provide a contrasting, balanced opinion to regulators in respect of the substantial resources that regulated firms expend. To this end, PhonepayPlus supports any initiative which adds further weight of opinion in its process of developing codes of practice and guidance, provided that that body has sufficient resource and expertise to execute its function.

**QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?**

The Government's approach to combining as many consumer advocacy functions as possible in Citizen's Advice may be the best approach. However, PhonepayPlus urges that great care be taken in respect of Citizen Advice's structure, governance and funding, in order to deliver on what will be (by definition) a wide remit.

**QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?**

PhonepayPlus notes the Government's plans to abolish Consumer Focus and transfer its sectoral and general advocacy functions to Citizen's Advice. PhonepayPlus' view is that this approach can only be successful if the governance, funding and competence is in place to successfully deliver mechanisms and regulation which support consumers.

## Chapter 5 - Enforcement of Consumer Protection Legislation

Despite PhonepayPlus' best efforts to build compliance in the market through collaborative, relevant guidance and a free compliance advice service, PhonepayPlus inevitably must still deal with instances of consumer harm. As mentioned in the previous chapter (under the heading 'Consumer refunds'), PhonepayPlus has developed a Complaint Resolution Team which, where appropriate, seeks to resolve issues informally on behalf of consumers.

However, some incidences of harm are sufficiently serious and far-reaching to warrant a formal investigation. PhonepayPlus' enforcement action is backed up by significant powers of sanction. These include:

- The requirement to remedy the breach (specific advice to prevent further harm);
- The requirement to obtain compliance advice on specified services;
- The ability to bar an organisation from operating a service or category of services;
- The ability to prohibit named individuals who operate behind an organisation and prevent them from operating in the market for a defined period;
- The requirement to undertake a compliance audit to improve systemic failings;
- The requirement to refund complainants in a suitable manner;
- The requirement to issue blanket refunds in particularly serious instances; and
- The capability to fine up to £250,000 per breach of our Code of Practice.

In cases of an immediate and significant threat of consumer harm, PhonepayPlus can initiate an 'Emergency procedure', which can result in a service being removed from the market immediately (within 48 hours), while a full, formal investigation is launched as soon as is practicable.

PhonepayPlus' adjudication procedure is independent of the organisation, and those subject to investigation have a right of appeal to a further independent body, the Independent Appeals Body (the IAB).

The overwhelming majority of our cases are national, affecting consumers irrespective of county lines, and therefore PhonepayPlus is a 'one-stop shop' for PRS enforcement. We have worked in the past with the police and others (such as the Information Commissioner's Office and the Gambling Commission) where the law may have been broken and those other organisations are the competent authority best able to prosecute the case, thus avoiding a 'double jeopardy' situation from arising.

## Response to consultation

PhonepayPlus notes the Government's plans to establish a Trading Standards Policy Board to lead the co-ordination of national, regional and cross-local authority boundary enforcement work in England and Wales; however, PhonepayPlus remains unaffected by the proposed changes since we are not reliant upon the OFT's enforcement powers. PhonepayPlus recognises the difficulties in estimating consumer detriment in the UK, and notes that, by various measures, it potentially exceeds \$6.6 (or £3.3) billion in 2011. Furthermore, PhonepayPlus notes that UK spending on consumer enforcement measured less than £247 million in 2009/10. Therefore, PhonepayPlus notes the potential value that can be gained by reducing consumer detriment by increasing spending on enforcement by bodies, such as Trading Standards.

PhonepayPlus is a 'one-stop shop' for education, enforcement and consumer protection in a niche market. Our unique position in the market allows us to continue to serve both consumers and the PRS market without incurring an expense to the Government.

PhonepayPlus has always looked to build constructive and collaborative relationships with other regulators and consumer protection agencies, especially in terms of sharing intelligence and working together to ensure effective consumer protection,

**QUESTION 32.** PhonepayPlus notes the Government's commitment to self-regulatory schemes (such as that run by the ASA, as well as PhonepayPlus). We support and welcome the opportunity to be able to refer appropriate cases to an appropriate enforcement authority, with wider powers to gather evidence and greater powers to injunct and enforce against those who (for whatever reason) fall outside of our ability to deliver effective consumer outcomes.

PhonepayPlus has no specific view on whether such a referral should be made to the proposed Trading Standards Policy Board or Joint Enforcement Board or a national enforcement squad within the Trading Standards Network, provided that body has sufficient resource and expertise to act swiftly to prevent consumer harm.

## Consumer Protection Framework

PhonepayPlus has recently responded to the Government's call for inputs for the Communications Review being led by DCMS. [Our response](#) (see Appendix A), sent jointly with leading PRS industry trade bodies, asked the Government to take the opportunity of this review to examine the consumer protection framework in place in the wider digital micropayment sector, including when consumers are using payment mechanisms that are underpinned by financial services-based legislation. If consumer confluence and trust in the UK's digital services is to be maintained and lead to significant growth, then ensuring that there is an effective, proportionate and accessible consumer protection framework in place will be critical.

## For more information, contact:

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