



**PhonepayPlus' response to the
Byron Review's Call for Evidence**

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Summary¹

PhonepayPlus (formerly ICSTIS) regulates phone-paid services in the UK. These are the goods and services that can be bought and charged to mobile and landline phone bills, and mobile pre-pay accounts. Our regulatory scope is defined by reference to the Communications Act 2003. Our Code of Practice is approved by Ofcom.

We welcome the Byron Review, in particular its examination of the risks to children from exposure to potentially harmful or inappropriate material on the internet and in video games.

Contained in this response is background information on PhonepayPlus (including its role and duties which include responsibilities for consumer and child protection), relevant excerpts from our Code of Practice and recommendations as to issues which the Review might wish to consider.

Importance of the internet

High-speed access to the internet has transformed the lives of millions of Britons. It is generally acknowledged now that widespread availability of broadband internet is not only essential to the UK's economic competitiveness but also to its ability to function as an effective democracy.

According to research, consumer spending on the internet will reach £13.8 billion this Christmas, a 42% increase on last year. Facebook had nearly eight million users last month in Britain, a rise of more than 1,500% in the last 12 months. There can be no doubt that the internet has become an integral part of our lives.

Ofcom's Consumer Experience research showed that nine in ten consumers who have a PC also have an internet connection at home. 65% of us now have access to the internet and, of this number, 86% have a high-speed broadband connection.

Emergence of mobile broadband

However, access to the internet is no longer confined to PCs in fixed locations in homes and offices. Many people are enjoying the internet from a variety of mobile devices too, including mobile phones, iPods and personal digital assistants. Indeed, use of the internet in any location has increased from 66% in 2005 to 71% in 2007.

68% of people now have access to several competitive third generation (3G) mobile networks. Take-up of 3G services seems to be speeding up: 7.8 million consumers had subscribed to these networks by the end of 2006.

Recent technological developments – in particular the introduction of High-Speed Downlink Packet Access (HSDPA) – have enabled increases in download speeds from 384kbit/s to between 1.6Mbit/s and 3.6Mbit/s, and potentially up to 14.4Mbit/s in the future. These speeds are not dissimilar to those offered on fixed-line PC connections.

WiFi is another technology that offers the ability to access broadband internet on the move. According to Informa, the number of public WiFi access points increased from around 10,000 in 2006 to around 11,500 at the end of March this year. The UK continues to have more wireless 'hotspots' than any other European country.

Devices are also evolving to the extent that nearly 80% of the handsets sold in the first three months of 2006 were able to optimise internet content for mobile phones². Internet site

¹ All statistics, unless attributed otherwise, are derived from the Ofcom Communications Market Report 2007 and Ofcom Consumer Experience 2007.

² According to GfK research.

providers increasingly provide mobile-specific versions of their services, and mobile operators have begun to partner with the leading internet brands to ensure the experience for users is as rich as possible.

Networks have also lowered the cost of browsing the mobile internet, with four of the five network operators offering high volume data tariffs for £5 a month.

There is, then, evidence to suggest that the much-touted mobile broadband experience may soon become a reality for the general public.

Mobile gaming

Just as the internet is no longer confined to the fixed-location PC, video gaming is no longer the sole preserve of consoles and personal computers. Many sophisticated new mobile devices have the processing power and memory to make light of games that a few years ago would have been considered groundbreaking on dedicated gaming machines.

Juniper Research has estimated that global mobile-gaming revenues will increase from less than \$5 billion in 2006 to nearly \$10 billion worldwide by 2009. This will be driven by continued growth in subscriber numbers, an increase in roll-out of 3G services, falling game prices and a new generation of "made for mobile" games.

Market growth will be fuelled by increased purchases of so-called "casual" games. The research suggests that games that tap into the inherent strengths of mobile devices, rather than those which simply seek to replicate console or PC games on a handset, will enjoy the greatest success.

Mobile phones and young people

The mobile phone has become an essential part of modern life. Households with a mobile connection (93%) exceeded households with a fixed connection (90%) for the first time in 2006. At the end of 2006 there were nearly 70 million active mobile phone subscriptions in the UK, with further growth being driven by multiple handset or SIM ownership.

Mobile phone use – and especially take-up of next generation services such as downloads, gaming and mobile internet browsing – is especially prevalent among the young.

Those consumers who rely on mobile phones in the household (in so much as they do not have a landline phone) are more likely to be younger. This group (15 to 24-year-olds) has increased in size significantly since 2005, while among the general population take-up of mobile-only communications has remained stable.

60% of 10-year-olds own a mobile phone. This rises to 90% when children reach 15. Around two-thirds of children do not believe they could easily live their lives without a mobile phone and the internet, and would feel "left out" if they were forced to do so.

96% of 8 to 15-year-olds said their phone kept them safe and in contact with parents.

Mobile devices must therefore be an essential focus of the Review

PhonepayPlus believes that the way young people and children are accessing the internet is changing, and will continue to do so in line with the trends identified above. Neither the internet nor video games are any longer the sole preserve of PCs and consoles at home in the living room or the child's bedroom.

We urge the Byron Review to consider mobile technologies as an important means for children to access content and games available on the internet.

When assessing the risk posed by the internet and video gaming, devices other than personal computers and consoles must be included. Mobile phones are especially important in this regard, although iPods and other multimedia devices may assume a more important role in the future.

PhonepayPlus – our role and responsibilities

PhonepayPlus regulates all products and services that are charged to a phone bill or mobile pre-pay account and are defined as premium rate services under the Communications Act 2003. This includes interactive gaming and internet content delivered via Wireless Application Protocol (WAP).

We regulate using a Code of Practice that is binding on all providers of phone-paid services. The Code of Practice is approved by Ofcom. Our work focuses on the way consumers are charged for these services. We want to make sure that prices are clear and transparent, and we provide means of redress should consumers be the subject of dishonest or inaccurate billing.

However, we also have an important role as regards the content of services delivered and charged to a phone bill or mobile pre-pay account. For example, our Code sets out that:

- children's services must not contain anything which is likely to result in harm to children,
- services must not exploit children's credulity, lack of experience or sense of loyalty,
- services must not include anything which a reasonable parent would not wish their child to hear or learn about in this way.

The Code also states that:

- service providers must ensure that operators prevent persons under 18 years of age from taking part in any live chat service (for example, adult chat lines),
- if an operator has reasonable grounds to suspect that a user is under 18, the service provider must immediately end the service for that user.

More information on our organisation, our Code and the industry we regulate can be found in the following sections.

PhonepayPlus and the Byron Review

PhonepayPlus welcomes the opportunity to participate in the Review. We would be pleased to engage further should that be of help to Dr Tanya Byron and her team.

Among the topics that could be developed are:

- Children are technically proficient. However, are their new media skills inversely proportional to their maturity and capacity to deal with different types of content?
- When it comes to determining whether content and conduct is appropriate, what need is there for advisory and enforcement bodies to be independent of both political and industry manipulation?
- What bearing might different payment mechanisms have on the regulation of content?
- Filtering mechanisms: how might filtering software – and, crucially, its consumer front end – be standardised across platforms?
- Classification: again, how might this be coordinated across fixed and mobile platforms? This might include issues relating to the development of robust age verification systems tailored to online markets.

PhonepayPlus has some experience in the protection of children and would gladly share its learnings in relation to:

- PhonepayPlus' Code of Practice: what lessons might be learned from the way the content of phone-paid services is regulated;

- Consumer education and media literacy, including our attempts to reach a wider and younger audience such as through our website for children – www.phonebrain.org.uk;
- The cross-border nature of mobile and internet services. How to protect consumers from services based outside the jurisdiction of the local regulator.
- Regulating – and distinguishing between – very different types of content delivered in similar ways on similar devices: on the one hand, content that is relevant and highly attractive to children and, on the other, content that is singularly inappropriate for them.
- Access control mechanisms that work across platforms and products.

PhoneyPayPlus will monitor the Review with great interest. It is likely that its outcome will have much to offer our organisation insofar as it will provide insight into the likely future direction of regulation in a variety of markets including, potentially, our own.

We look forward to the conclusions of the Byron Review and would welcome the opportunity to contribute further in whatever way might be of use.

Independent Mobile Classification Body (IMCB)

In 2005 PhoneyPayPlus teamed up with the major mobile phone operators to create a subsidiary organisation – the Independent Mobile Classification Body (IMCB Ltd). IMCB is funded and supported by 3, O2, Orange, T-Mobile, Virgin and Vodafone.

The IMCB provides an independent classification framework. This framework assists content owners in determining which types of audio-visual commercial content should be classified in such a way as to restrict access to mobile phone users who have been age verified as 18 or over. The mobile operators have all committed to delivering robust age verification systems for their customer base.

More information about the work of IMCB, including a copy of the Classification Framework, can be found at www.imcb.org.uk.

PhonepayPlus and the phone-paid services market

About PhonepayPlus

PhonepayPlus (previously known as ICSTIS) regulates phone-paid services in the UK. These are the goods and services that we can buy by charging the cost to our phone bills and mobile pre-pay accounts.

We focus on pre-empting and preventing problems – the key, we believe, to effective long-term consumer protection.

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

- clear and accurate pricing information,
- honest advertising and service content,
- appropriate and targeted promotions.

We investigate complaints about phone-paid services. Where we decide that our rules have been broken, we can fine the company responsible, 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.

About phone-paid services

Phone-paid services offer some form of content that is charged to your phone bill or mobile pre-pay account. Services can be accessed by landline or mobile phone, fax, interactive TV (for example, by using the red button on the remote control) and PC (for example, in e-mails or on the internet).

As the regulator for phone-paid services, we hope to ensure that anyone can use these services with absolute confidence. Most phone-paid services are run responsibly and don't cause concern.

The money paid by users for these services is shared between the phone network carrying the service and the organisation(s) providing the content.

Typical services include:

- helplines (for example, for computer problems),
- competitions,
- mobile ringtone and logo downloads,
- TV voting (such as *Big Brother* and *The X Factor*),
- news and sports alerts,
- charitable giving,
- interactive games,
- information (for example, traffic updates),
- adult entertainment,
- directory enquiries.

Most services are advertised on either 09 dialling codes or, in the case of text services, four or five-digit short code numbers followed by a descriptive key word (for example, 11111 VOTE). Services offering adult entertainment must only be advertised on 0908, 0909 or 098 numbers and on mobile short code numbers beginning 69 or 89. Directory enquiry services are advertised on six-digit numbers beginning 118.

In some instances, such as interactive TV where you make 'calls' by pressing the red button on the remote control, the phone number may not be shown. However, it should be made clear to you what the charge is and that it will appear on your bill.

From 2008, we will also regulate all services offered on 0871 numbers.

The cost of phone-paid services

Calls vary in cost depending on the type of service you use and the way in which you access it (for example, landline or mobile phone).

Landline charges

Calls to 09 numbers from landlines vary in cost from 10 pence per call to £1.50 per minute. These charges apply when calling from a BT landline and are subject to a set-up fee of up to 6 pence per call from BT lines. Calls to 0871 numbers cost up to 10 pence per minute from landlines. Other providers may also impose set-up fees so you need to check call costs with your own phone network.

Mobile charges

Calls to 09 or 118 numbers from mobiles will vary in cost depending on your phone network. However, they will generally cost more than the advertised landline rate so consumers must check call costs with their own phone network.

Calls to 0871 numbers cost up to 35 pence per minute from mobiles.

Text services on mobiles (for example, TV voting) will be charged at a fixed rate (for example, 25 pence per text) plus your usual standard network charge. Many text services (for example, football goal alerts) work on a 'reverse-billed' basis. This means that you will be charged for receiving texts rather than paying to send them. The cost of these services will again vary depending on which network is being used and whether the services are sold on a subscription basis. Typical costs for a single text message received range from 25p to £1.50.

If the service is subscription-based, companies offering these services must make this clear to you, as well as the cost per text, how many texts will be received and how you can end the service by sending the word STOP.

Possible sanctions

When we uphold a breach of our Code, the company responsible must immediately amend the service and/or its promotional material so that it complies with the Code. In most cases, companies found in breach of the Code will be charged to cover the cost of our investigation. We also have the power to impose the following sanctions:

- formal reprimands,
- making companies come to us for prior approval,
- ordering companies to pay full refunds to complainants,
- imposing fines of up to £250,000 per contravention,
- barring access to services,
- banning named persons from operating services.

Reimbursements

You should always speak to your own phone network in the first instance to discuss any problems with your bill. As we do not regulate phone bills, we cannot insist that phone networks suspend payment of any disputed items. We can only order a provider of a phone-paid service to pay a refund once we have completed an investigation and where we have ordered a refund to be paid as a sanction.

If a consumer is in dispute over a bill, they should ask the phone company for details of its ombudsman service. If it can be shown that a phone has been used without the customer's permission to call certain types of service – basically live/recorded chat and live tarot services – we may be able to help obtain compensation.

Top tips

Consumers should:

- Know how to recognise phone-paid services by the numbers they use.
- Always read the terms and conditions in any advert.
- Be wary of 'free' offers or seemingly fabulous prizes. If something looks too good to be true, it probably will be!
- Never respond to unsolicited adverts – legitimate companies don't promote their services this way. To stop receiving many unwanted calls, register your phone numbers with the Telephone Preference Service (www.tpsonline.org.uk).
- Simply send the word STOP to the service number to quit a subscription-based text service.
- Keep an eye on their phone bill – talk to your phone company if there are charges you don't recognise.
- Visit www.phonebrain.org.uk, our fun and interactive website for children and young people.

Relevant sections of the PhoneyPayPlus Code of Practice

www.phoneypayplus.org.uk/pdfs_code/11th_edition.pdf

7.5 Children's services

Children's services are services which, either wholly or in part, are aimed at or should have been expected to be particularly attractive to children, who are defined for the purposes of this Code as people under 16 years of age.

7.5.2 Promotional material for children's services must clearly state:

- a) the usual cost of the service,
- b) that the service should only be used with the agreement of the person responsible for paying the phone bill.

7.5.3 Children's services, and any associated promotional material, must not:

- a) contain anything which is likely to result in harm to children or others or which exploits their credulity, lack of experience or sense of loyalty,
- b) include anything which a reasonable parent would not wish their child to hear or learn about in this way,
- c) make direct appeals to children to buy or donate, unless the product, service or donation is one which they could reasonably be expected to afford for themselves,
- d) encourage children to use other premium rate services or the same service again.

7.5.4 Children's services must not:

- a) generally cost more than £3, or in the case of subscription services, more than £3 per month,
- b) involve competitions that offer cash prizes or prizes readily converted to cash.

6.3 The conduct of live services

6.3.1 Unless PhoneyPayPlus grants permission to do otherwise:

- c) service providers must ensure that operators use reasonable endeavours to prevent persons under 18 years of age from taking part in any live service,
- d) if an operator has reasonable grounds, upon questioning a service user, to suspect that the user is under 18, the service provider must immediately end the service for that user.

6.3.2 The service provider shall take reasonable steps to identify and cut off calls made without the permission of the bill-payer.

5.3 Harm and offence

5.3.1 Services and promotional material must not, or must not be likely to:

- a) result in any unreasonable invasion of privacy,
- b) induce an unacceptable sense of fear, anxiety or distress,
- c) encourage or incite any person to engage in unreasonably dangerous practices or to use harmful substances,
- d) induce or promote racial disharmony,

- e) cause grave or widespread offence,
- f) debase, degrade or demean,
- g) promote or facilitate prostitution.

5.3.2 Services and promotional material must not, in circumstances where it is not reasonable for a consumer to expect such content or material (and subject to 5.3.1 above):

- a) contain material indicating violence, sadism or cruelty, or be of a repulsive or horrible nature,
- b) involve the use of foul language.