

NOTES OF THE 21ST ILP MEETING HELD ON TUESDAY 17th AUGUST 2010

Present:

Jacqui Brookes (Chair) – FCS

Suhail Bhat – MEF

Ann Cook – ITV

Jeremy Flynn – AIME

Suzanne Gillies – PRA

Ann Hoitink- Ofcom

Nik Hole – The Number

Justin Hornby – UKCTA

Hannibal Latuff – BBC

Hamish MacLeod – MBG

Marianne Pendray (ITV)

Neil Pepin – Channel 4

Graham Pottie- BT Agile Media

Miranda Roberts – MEF

Wendy Ward- BT Agile Media

PhonepayPlus

Sir Alistair Graham

Bradley Brady

Mark Collins (part)

John O'Reilly– (minutes)

Apologies:

Paul Berney – MMA

Shawn Brown– MDA

Natalie Christian – BBC

Jeremy Hallsworth – BT

Mark Hawkins – MDA

Jeff Loan – Ofcom

Rory Maguire – H3G, MBG commercial

Ritu Manhas – Ofcom

Michael Traynor – BT

Paul Whiteing

Welcome:

Jacqui Brookes welcomed representatives to the meeting and apologies were noted.

Ongoing action log

Meeting / Action number	Description	Owner	Status
17.5	Monthly operational network report pack – complaints to be broken down into types, pending resolution of technical problems.	Mike Pemberton	PENDING
19.3	PRS scope review: provide update at next ILP meeting on 20 th April	Jeff Loan	CLOSED
19.7	Review analysis of breach history to help identify trends and include as a standing item on the agenda: Paul Whiteing to collate for August 2010 meeting.	James Harris	ONGOIN G
19.8	Consider the publication of Emergency Procedure cases acting as a tool to notify the industry only	James Harris	CLOSED
19.9	Create a working group to explore the CPRS definition for the next Communications Act.	Bradley Brady	ONGOIN G
20.1	Rory McGuire to summarise the status of Payforlt and other on portal services in a paper and circulate to ILP.	Rory McGuire	CLOSED
20.2	The ILP to provide information and feedback to Bradley Brady on what the working group should address.	Jeremy Hallsworth	CLOSED
21.1	New Code – ILP to be kept updated on progress with the development of the new Code of Practice	Mark Collins	NEW
21.2	Registration scheme – ILP to be kept updated on progress with the development of the Registration Scheme	Bradley Brady	NEW
21.3	Remove item on Participation TV from agenda	John O'Reilly	NEW
21.4	Administrative costs of formal investigations- discuss	Bradley Brady/Suzanne Gilles	NEW

1.0 Payforlt and other on portal services – analysis by Ofcom

Anne Hoytink updated the ILP on progress with Ofcom's application of the scope review analytical framework to mobile portals; fixed line portals and the Payforlt mechanism to

determine whether they should fall within controlled PRS regulation. The analysis will seek to identify the potential for actual and potential consumer harm. Publication is expected in autumn 2010.

Both the industry and the regulators recognise and accept the need to cooperate in the identification, definition and description of PRS. The industry advocates a pragmatic view on what requires control.

Discussion included whether the next Communications Act, or amendments to the current one, should on the one hand seek to make current definitions of what is a PRS to be more easily understood or whether a separate section in the Act was in fact needed. This would assist in decisions about which of these services then require specific regulation to ensure consumer protection.

Ofcom plans to consult in the autumn on PayforIt and on-portal services, with the statement published in spring 2011.

Mike Round passed comment on recent PayforIt developments, including the release of PayforIt v3 (31/03/10) and its increased rules and requirements. It was noted that v3 now supports both WAP and Web-based transactions. An increase in auditing has revealed increased levels in compliance, with full compliance levels desired by the end of June 2011. PPP's similar coverage/auditing of the platform was also highlighted.

The following points were noted:

- The potential for harm remains the main focus
- The element of financial harm as well as the quality of the service/product must be taken into account
- The industry would like to see a self-regulatory system, such as the PayforIt code that is demonstrably quicker to implement considered as part of the review

2.0 New Code

Consultation on the new PhonepayPlus Code of Practice came to an end on 15th June 2010.

PPP identified a number of relevant groups, including:

- "veteran" stakeholders
- "new" stakeholders
- Regulators, trade bodies, and government departments
- consumers

The consultation targeted 3 tiers of communication – full condoc, shortened condoc (and online survey), and verbal engagement (seminars, one-to-ones). This outreach returned various responses, indicating a 400% increase on the last Code consultation. The feedback included:

- 55 written responses (inc. condensed condoc)
- Comments noted from a further 91 parties (during workshops and seminars)
- 15 written responses and 40 sets of comments from Level 2s
- Commissioned qualitative consumer research specifically about the proposed outcomes in the new Code

The responses returned were used to create an issues log, highlighting approximately 80 issues to be considered.

Jeremy Flynn questioned whether the type of questions asked in the consultation may have limited the expression of other views and opinions of the industry. Mark Collins confirmed that the all issues raised were being considered, regardless of whether they fitted into specific questions.

The following issues were raised:

- Definitions of Level 1 and Level 2 providers should be clear and unambiguous
- Due diligence and risk control must be proportionate along the value chain
- '30 day rule' for withholding funds may have the potential for change following valuable industry input
- Virtual chat proposals must be appropriate
- The notion of 'automatic refunds' need only be applicable to serious consumer harm
- A requirement to check a client's financial strength may prove to be a barrier to trade/market entry and should therefore be removed
- Current proposals around delay must take account of certain services where delay is expected, or even necessary
- Expectations placed on Networks and Level 1 providers' monitoring must be proportionate
- Clarification is required on how Code 11 breaches will appear on the new database. Any breach history reflected should be reasonable

Next Steps:

- Work with Ofcom Lawyers and submit to Europe for approval
- Guidance supporting the new Code to be consulted upon later in the year
- Issues around registration and enforcement will be forwarded to the appropriate team; the new Code team will retain oversight of any Code related issues

Points of Discussion:

Jeremy Flynn commented that throughout the New Code consultation, the industry had provided high quality input, and that such interaction between the industry and PPP was key to success. Some points however still required coverage, for example, fixed price points in the Code. Bradley Brady reassured the ILP that all points raised will be fully considered and a response will be given to industry at the appropriate time. Following this note, a request was made by Jeremy Flynn on behalf of the industry, to hold an interactive event on any proposed changes *before* the New Code is submitted to Europe.

General Guidance:

- Appropriate use of number ranges
- Successful complaint handling methods
- Consumer refunds
- Clarity in/definition of the delivery chain
- Due diligence and risk control
- Live services conduct
- Method of exit from a service
- Opt-in to charging and marketing (PPP & ICO interpretations and standards)
- Prior Permission procedures
- Promotions and their clarity
- Undue delay guidance
- Low cost services(inc. 087)

Service Specific Guidance:

- Advice services
- Betting tipster services
- Children's services (with scope to expand to cover all vulnerable groups)
- Competitions (note Jeremy Flynn suggests this category should include quiz and auction services)
- Employment and Business
- opportunities
- DQ services
- Fundraising and Charitable promotions
- Public information services
- Quiz TV services
- Services using subscriptions
- SES
- Virtual Chat Services

Additional points raised on guidance:

- Discourage use of services by non-bill payer
 - A possible new approach, as opposed to obtaining bill-payer's permission
- Privacy
 - PPP guidance not consistent with ICO?
- Harm and Offense
 - Guidance in this area requires consistent application across all mediums
 - The principle of meeting the expectations of a reasonable customer, is embedded within the Code
- Industry would welcome clarity on how the CCP/Tribunal will use PPP guidance

Following the current developments on guidance there will be a 10-week consultation

- Requests were made to include members of the industry, the Executive and CCP in future workshops; Sir Alastair Graham said that PPP will take this away and think carefully about the proposal
- Hamish MacLeod noted the new outcome-based approach of the Code will breed a new era in PRS regulation, and that the three-way engagement between the industry, the Executive and CCP will be of benefit
- Jeremy Flynn highlighted the marked improvement in communication and cooperation between PPP and the industry; and suggested ways to improve communication with the CCP and the industry
- Mike Round advised of mobile network audit rules now sent to clients to increase and aid transparency efforts and noted concern over possible misinterpretation between PPP regulation and the CCP interpretation.
- Bradley Brady reaffirmed that the Executive will work with the industry in their compliance and transparency efforts so as to avoid Tribunal proceedings where issues can be properly resolved more informally.
- Jacqui Brookes noted that the new Code is moving in line with other regulatory bodies and that such changes and progressions are not entirely new prospects for the industry

(Action: Mark Collins)

3.0 Registration Scheme Update

Bradley Brady updated the ILP on the Registration Scheme project. PPP were close to signing an agreement with a vendor for the Scheme. A full update to the ILP and stakeholders more widely would be published once the contract and project plan had been agreed. This would include an update on projected costs.

Points of note following presentation:-

- Jacqui Brookes asked whether costs had increased from initial expectations
- Bradley Brady noted that outline figures given for the project in an earlier update were higher than the current expectations on how much the project would cost. Clarity on this would be given as soon as possible.
- Jeremy Flynn recommended a log of issues is produced to ensure all issues raised by industry were considered during implementation of the Scheme. Bradley Brady confirmed this would happen and that industry would be involved in the early project workshops with the vendor.
- Ann Cook made inquiries regarding registration help/guidance. The Executive confirmed that assistance will be provided and that engagement with the industry will be paramount to a successful start
- The Executive advised that the database is expected to go live in early 2011, subject to progress with the Code of Practice.
- Mark Collins advised that 087-prefixed numbers are expected to be exempt from the Registration Scheme
- An internal PPP project team has been established to provide full support to the project.
- The implementation team will establish
 - Business process definitions
 - Industry involvement in trial schemes prior to live launch

(Action: Bradley Brady)

4.0 Participation TV

A report published in June by Ofcom highlighted that the regulation of certain broadcast PRS services, including Adult Chat services and Psychic Tarot services, had settled the issue of how these services should be regulated. They will now be regulated by Ofcom using the BCAP Code from 1 September 2010. Accordingly the standing item will be removed from the agenda as an ongoing concern. Ofcom thanked the industry for their assistance.

5.0 PhonepayPlus Quarterly Report

Bradley Brady presented the quarterly report to the ILP, the following points were noted:-

- Jeremy Flynn asked that the KPI on investigations is reviewed to ensure that it is clear where requests for extra time from the industry are impacting on delivery (p.4).
- The KPI on internet usage should be reviewed to ensure it reflected meaningful measures of consumer or industry awareness (p.3).

- Jacqui Brookes noted the anomaly in 4.1 that if £300k was uncollected than, the collection rate was not 100%

Hamish MacLeod raised issues concerning the 070-number range; as no levy on this number range exists, it is only possible to accrue revenue through fines. As a result, this leads to the problem of funding for the regulation of this specific range. Bradley Brady reassured the industry that the number of cases involving this number range is now minimal and continue to be regulated/dealt with in the interests of all concerned.

6.0 PhonepayPlus Budget

Jacqui Brookes raised a question of how PPP's budget may be effected by the current economic climate and reductions made in government bodies.

Bradley Brady advised that PPP are aware of the current climate and the following points were noted:

- There have been budget reductions and a freeze on staff pay prior to the introduction of the new government and its public sector plans.
- Costs have continued to decrease over the past 3 years – highlighting the value for money PPP represents to the sector as a whole.
- The status of PPP as a private limited company was clarified, as not being caught under the government or agency umbrella. However PPP would continue to be rigorous in driving efficiencies in its own costs, while ensuring it could remain effective as a regulator.
- Consumer support volume has decreased, as have in turn resources allocated to this area.
- It is expected that the New Code and Registration Scheme will improve compliance in the sector and subsequently will lead to reduced costs over the next 3-5 years.

Jeremy Flynn questioned whether compliance advice should be given 'free of charge' or become ultimately a paid-for service. Sir Alistair Graham remarked that it would be inappropriate for a regulatory body not to provide free advice. Bradley Brady confirmed that compliance advice shall be given freely, but the scope of what was appropriate advice for PPP to give the industry needed to be reviewed to ensure it was within an appropriate scope.

The need to strike a balance between cost and regulatory effectiveness, which will in turn breed trust in the industry and success and growth, was highlighted. Bradley Brady reassured the ILP that this was a transformative year for PPP and that the business plan will seek to deliver reduced costs and will align itself with the current climate in the public sector.

(Action: Bradley Brady)

7.0 Meeting Held on 20th April 2010

The minutes were approved with no further comment.

Actions were reviewed as noted above.

8.0 Broadcast PRS

Neil Pepin said that regular meetings between broadcasters had been most useful and successful. Jacqui Brookes inquired as to whether a representative of Channel 5 had been included in the forums, it was confirmed that Channel 5 was involved.

Concerns were raised among broadcasters in relation to Ofcom, PPP and the New Code. These included:

- The Registration Scheme
 - Level 2 providers
- } Potential for double jeopardy

It was advised that in the event of any issues arising, Ofcom would take the lead and that PPP would only be active in a regulatory capacity where the problem had arisen from a non-content related issue.

Anne Hoytink subsequently added that the new arrangements affecting this type of television (i.e. that it is a form of advertising rather than editorial content, and must therefore comply with advertising regulation rather than our Broadcasting Code) come into effect from 1 September 2010. Ofcom and not the ASA will be enforcing the BCAP Code against these services from 1 September.

The question was posed in regard to whether or not broadcasters should, or should not have to register under the New Code where all relevant information is present and registered with Ofcom. The Executive confirmed this was being considered as part of the consultation on the Code.

9.0 Working Group Reports

- Complaints handling
 - Mark Collins confirmed that there is now guidance documentation regarding complaints handling
 - Jeremy Flynn contended that further work is needed in establishing who handles complaints at each stage and how resolution is to be achieved. Comment was made in reference to the need to engage one mobile network who had not yet engaged in the project.
 - The ILP working group is now closed, but further work will continue on taking the proposals forward.
- Shortcode database and Number Checker
 - Jeremy Flynn advised that objectives have been largely obtained at c. 93% accuracy
 - MNOs are using certain numerical codes when referring to PayforIt on itemised billing documents. It is stated that this is an issue which is now in hand for the registration system.
 - Jeremy Flynn contends that this is also an issue for the Number Checker and users of it. Consumers must be made aware for transparency reasons

- Mike Round advised such codes are in use as a direct response to overcoming problems borne out of the use of shared short codes
- The request was noted to have these codes made available on the Number Checker.

10.0 AOB

- Simon Bates' replacement
 - An announcement is due next week on the new Director of Operations
- Call price transparency
 - the Ofcom non geographic numbering review is looking at all aspects of the NTS regime, one aspect of which is call price transparency
 - call price transparency is an issue that many EU regulators are looking at
 - some stakeholders prefer pre-call announcements, although Ofcom has had to withdraw earlier proposals as unworkable
 - BT and other operators seek a technically feasible solution for price transparency, which pre-call announcements are not
 - If standard announcements were proposed detailed inter-network discussion would be required
 - This notion is not in conflict with competition law
 - One suggestion is that a separate number range be allocated involving a standard, network-wide price scheme
 - An Ofcom NTS working group including PRS representatives was suggested to address such issues
 - Rigorous debate will be necessary to obtain true pricing transparency, achieve common goals and establish technical feasibility of the mechanism
 - Ofcom plan to issue a consultation document on the non geo numbering review in early October 2010
- Jacqui Brookes OBE to stand down as Chair after two years' service
 - Nominations to be received by 6th September from the industry members of ILP
 - Elections to be held
 - Many thanks expressed to Jacqui Brookes OBE for her services throughout this period and further gratitude expressed by Sir Alistair Graham on behalf of PPP and the Board
- Administrative Costs of formal Investigations
 - Suzanne Gillies raised a recent case where the administrative costs of a formal investigation far outweighed the fine- Suzanne Gilles and Bradley Brady to discuss.
 - It was suggested that this would require further discussion with PPP in relation to the costs of the Executive

ILP meetings in 2010

Tuesday 16th November 10am-1.00pm

Tuesday 14th December (Budget Meeting) – 10.00-12.00

ILP meetings in 2011

Tuesday 15th February - 10am-1.00pm

Tuesday 19th April- 10am-1.00pm

Tuesday 12th July- 10am-1.00pm

Tuesday 15th November- 10am-1.00pm

Tuesday 13th December (Budget Meeting) – 10am-11.30am