

## Business Plan and Budget 2010/11 - A PhoneyPlus Consultation

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### Introduction:

Over the financial year, PP+ fined PRS participants to the tune of £4.2m.

Of this £4.2m, only £2.3m was apparently considered "collectable"

Of this £2.3m, 87% was actually collected.

So PP+ actually retrieved c£2m.

### **This figure represents 47% of the total fines.**

The budget for 2010/11 is proposed as being £4.2m.

There is accordingly a c£2.2m shortfall, to be met by the levy.

So fines are contributing 47% of the PP+ budget, with the levy contributing the remaining 53%?

We accept that polluters are also contributing via the levy, but against this backdrop, is it not rather disingenuous to trumpet a "polluter pays" philosophy?

We would like to suggest that in future PP+ calculate the levy on the basis of the shortfall between the fines *due* (or at the least those marked as "collectable") and the budget, so non-polluters don't end up paying for PPP's inability to gather the fines due?

After all, if the inability to collect a fine is due to the network operator/service provider failing to perform the necessary due diligence then the fine is extended up the value chain to them. It seems rather an imbalance to not have the same burden of responsibility on the regulator?

We have suggested within our response to the ongoing COP12 consultation that the efforts that PP+ make to recover fines should be enshrined in the Code itself, but if the industry was secured as we have suggested therein, there would perhaps be fewer fines levied.

We also wonder whether a business plan and budget can be adequately considered when such sweeping changes are planned to the governing principles by which PP+ operate, although we accept there may be planning deadlines which must be adhered to.

For example, a service provider registration process of the type we have proposed might result in a massive reduction in fraud.

This in turn should result in a massive reduction in fines.

That in turn should result in a sizeable reduction in enforcement activities.

But then the transition to a newer more pre-emptive strategy will likely see an increased burden on PP+ with regards to compliance advice.

So PP+ will perhaps do more work pre-emptively *and as a result* less work on the enforcement side.

This could have a very significant effect on the budgetary environment, as negligible revenue generated by fines will mean a massively-increased levy under the current regime?

So “polluter-pays” is no longer a viable model, as there will (hopefully) be too few polluters to pay for the compliance advice and assistance required by the non-polluters?

PP+ poor success rate of recovering fines is surely related to the lack of pre-emptive action taken? As mentioned in the previous industry consultation, we believe PP+ currently focuses too heavily on enforcement and too lightly on prevention.

**We look forward to hearing and exploring further the recommendations made by KPMG.**

#### **Your questions:**

***Q1. PhonepayPlus will be developing a new Three-Year Strategic Plan in 2010. Do you think our purpose and role as set out above still describes the priorities for regulation in the phone-paid services sector? If not, how do you think this should develop?***

No. Modern technologies have for many years meant you are able to pursue prevention rather than cure, should you wish. That you have not is a matter for considerable regret.

You perhaps need an additional value section as below:

#### **Pre-emptive**

Our focus is firmly on prevention rather than cure. We expect to build, maintain and improve a largely preventative regulatory system, with fines and enforcement rarely-used measures.

***Q2. What information or evidence do you have about market trends and about the overall size of the phone-paid services market in 2009/10?***

None beyond that available to PP+

***Q3. What information or evidence do you have about any specific segments or content areas and their potential for real growth or decline over 2009/10?***

None beyond that available to PP+

***Q4. How do you see the phone-paid services market developing in 2010/11?***

That will depend on how PP+ respond and act throughout these consultation processes. We would hope that fraud would dramatically reduce and therefore the level of activity might drop in the short-term.

**Q5. What comments do you have on the priorities for 2010/11? Are there other projects or issues that you think PhonepayPlus should consider for the coming year?**

Yes, very many.

Please refer to our response to the COP12 consultation.

**Q6. Do you agree that PhonepayPlus should increase consumers' PRS literacy, in so far as it builds an appropriate level of trust in the market?**

As you've indicated that this literacy program might be funded from the levy, we'd like to see what goals can be enshrined and precisely what benefits are envisaged before agreeing?

**Q7. How should PRS literacy work be funded, through the industry levy or through a new fine sanction imposed for breaching the PhonepayPlus Code of Practice?**

PP+ only recovered 47% of fines last year, so any activity needs to bear that in mind. Expecting legitimate operators to fund the activities of a regulator who fails to collect fines and then charges against the shortfall is unlikely to be well-received when further spending plans are announced.

The relationship between the levy and the fines perhaps needs to be re-examined before drilling down into details like these.

**Q8. What is an appropriate initial level of funding for our PRS literacy programme? As an indicator, the PhoneBrain initiative described below cost in the region of £100,000 as a single campaign.**

Impossible to answer without some clear goals. As many people would use the internet to search for advice we'd ask whether PPP has any sponsored advertising programs like Adwords in place, or whether any analysis of consumer first port of call has been done?

**Q9. What areas should PhonepayPlus focus its core research programme in the coming year? Do you have knowledge of any industry research initiatives in these areas that we could leverage?**

"Regulation" implies both prevention and cure. PP+ is predominately an enforcement agent.

You have said "In 2009/10, we spent £714,636 on our proactive work with industry, or 17% of our budget. This year we plan to **increase** this to £873,542, or **21%** of our budget on supporting the industry in this way.

*The majority of this shift reflects moving staff resources from consumer-focused work to industry facing work, specifically designed to reduce harm and complaints from the public. Over time, we believe this approach will prove cost-effective, as a more compliant industry should reduce the overall cost of regulating the sector."*

We agree, indeed our COP12 response uses this perspective as the guiding principle.

**Q10. Do you support our proposed budget changes for 2010/11 having regard to the activity and strategy that drives the changes? If not, please explain why.**

Yes we agree, but would ask the relationship between the levy and the fines is re-examined.

**Q11. Do you have any comments as any other risks that PhonepayPlus might face that are not identified above as part of the business plan design?**

If your enforcement duties lessen but your advisory duties increase, PP+ might have a relatively unchanged workload burden with a massively reduced yield from fines.

If PP+ found an OPEX shortfall of close to 100% of budget in a future financial year, is there no other funding route except the levy?

At the moment we have the worst of both worlds – an insecure industry supposedly paid for by the polluters (who should not even be allowed to get off the ground) which is in fact not the case as most fines are not recovered, leaving the legitimate participants within PRS to make up the shortfall.

If PP+ was funded more “accountably” we might expect to see performance targets met and a predefined scale of charges instead of the current levy system.

It has been suggested that a service provider registration scheme be implemented, which seems an excellent idea (for compliance reasons also) – we would be interested to see what level of funding would be generated from within such an implementation?

**In conclusion:**

We are happy to advise further on any of the issues within this document or within our response to the COP12 discussion paper. We can be contacted on 0845 475 8800 or by sending an email to [phonepayplus@skycomuk.com](mailto:phonepayplus@skycomuk.com).

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