

PhonepayPlus Consultation

2008/9 Annual Plan and Budget

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Introduction

The OFT welcomes the opportunity to respond to the consultation on PhonepayPlus's 2008/9 Annual Plan and Budget.

The OFT is the UK's national competition and consumer authority. Our mission is to make markets work well for consumers and this directs the approach we take to all our work. Supporting economic progress is integral to our role and by striving to make markets work well, we aim to deliver significant benefits to consumers, businesses and the economy. We want consumers to be able to make informed choices between suppliers competing for their custom. Businesses which are good at delivering what consumers want then prosper and enhance the productivity and competitiveness of the economy as a whole.

The OFT recognises PhonepayPlus as an important partner in protecting consumers. This is reflected in the Memorandum of Understanding between our two organisations and our close working relationship on enforcement matters (PhonepayPlus is, for example, an active member of the OFT-chaired Scams Enforcement Group). The OFT currently has civil powers under the Control of Misleading Advertisements Regulations 1988 and Part 8 of the Enterprise Act 2002 to tackle misleading advertisements. We have exercised these powers over the past few years in relation to a number of misleading prize promotions that used phone paid services, working closely with PhonepayPlus, the Advertising Standards Authority, Ofcom, and local authority Trading Standards Services to drive up standards in this particular market sector. We look forward to continuing to strengthen our relationship with PhonepayPlus at both a strategic and operational level.

OFT COMMENTS ON THE PHONEPAYPLUS ANNUAL PLAN

A. Proposed regulatory approach

1. We agree that consumer trust and confidence are critical to the continued growth of phone-paid services. In this context we fully support PhonepayPlus's proposed regulatory approach of pre-empting, preventing and protecting, with the emphasis on proactive and preventative regulation.

Pre-empting problems

2. We welcome the proposal to increase spending on research on consumer understanding and trust in a diversifying market and to share the findings with industry and wider stakeholders. An understanding of consumer perceptions is crucial to building consumer confidence in the market and developing wider policy. We would welcome the sharing of those findings with relevant stakeholders.

Prior Permission

3. We believe that prior permission arrangements are a further valuable tool for pre-empting consumer detriment where problematic services or new services with a high risk of potential harm have been identified. We agree that the use of prior permission arrangements should be risk based and proportionate to the potential for harm.

Monitoring

4. We believe that pro-active monitoring of compliance with the Code is another critical regulatory tool. We agree that monitoring should be targeted to the areas of greatest actual or potential harm. We welcome PhonepayPlus's proposal to publish a list of monitoring priorities. We believe, from experience of taking enforcement action and our previous research into the level of consumer detriment being caused, that prize draw promotions that utilise phone paid services (whether disseminated by mail, SMS text or automated calls) should be included within those priorities.

Preventing problems

Industry compliance

5. We welcome the proposal to arrange workshops with the industry and other stakeholders to address issue-specific matters of compliance. See our comments at paragraph's 12-14 below.

Consumer education

6. We welcome the proposal to create a distinct consumer advice section within the PhonepayPlus website and to review consumer literature to ensure it is focussed on those with the greatest need for advice and guidance (such as children and ethnic community groups). We have been particularly impressed by the phonebrain website targeting children, material from which has also been included in an information pack sent to 400,000 parents and schools. The OFT has adopted a similar approach to consumer education, particularly in the context of scams, where we are seeking to target those potentially most vulnerable to scams to equip them with the skills they need to avoid becoming a victim.
7. We will be looking to work in partnership with PhonepayPlus and other partners to maximise the reach and impact of our Scams Awareness Month campaign in February 2008.

International co-operation

8. We agree that international co-operation at both a strategic and working level is vital in the global marketplace. The OFT has developed strong and long standing relationships at a policy and enforcement level within the European Union and globally. For example, we are a founder member of the International Consumer Protection & Enforcement Network (ICPEN) and have established MoU's on enforcement cooperation with key international counterparts.
9. We welcome PhonepayPlus's proposal to support and seek to expand the membership and substance of the International Audiotex Regulators Network. We would be happy to discuss our own experiences, from our active participation in ICPEN, of trying to maximise the effectiveness of an international network of enforcers.

Protecting consumers and industry when problems arise

10. We agree that it is essential to deal promptly and effectively with wilful or reckless behaviour that threatens consumers and confidence in the wider phone-paid services market. We previously welcomed policy changes such as the 30 day payment rule and duties on networks to carry out due diligence as important steps in enhancing the regulatory regime for phone-paid services. We support the use by PhonepayPlus of its full range of sanctions to tackle those who wilfully operate services in breach of the Code and/or relevant statute. This includes use of its emergency powers to stop services that may cause widespread consumer harm, levying of fines and the banning of named individuals from operating phone-paid services for a period of time. We support the 'polluter pays' principle and believe that the level of fines should reflect the seriousness of the consumer harm caused and also be sufficient to act as a deterrent against future breaches of the Code.

Code Compliance Panel

11. We welcome the proposal to establish a Code Compliance Panel of dedicated adjudicators.

Coherent enforcement practice

12. We agree that, as far as possible, enforcement practice should be coherent and consistent to provide certainty to business. We would welcome the opportunity to directly engage – in partnership with PhonepayPlus, Ofcom, the Advertising Standards Authority, the Gambling Commission and local authority Trading Standards Services - with the industry, particularly in respect to prize draw promotions, to set out our views on compliance with the relevant statutes.
13. The OFT works closely with PhonepayPlus in seeking to drive up standards – primarily in terms of the transparency of advertising material - in the prize draw promotion market. Over the past 3 years the OFT has taken a significant number of civil enforcement actions under the Enterprise Act 2002 against those responsible for misleading prize draw promotions that utilised phone paid services. PhonepayPlus has regularly assisted the OFT in its investigations.

14. Engagement with both PhonepayPlus and the phone paid services industry will be very important with the coming into force in April 2008 of the new Consumer Protection from Unfair Trading Regulations, which implement the Unfair Commercial Practices Directive (UCPD). The UCPD seeks to stamp out unfair selling and marketing methods in a simpler and more effective way than the current sector specific laws. The UCPD introduces a general prohibition on traders in all sectors engaging in unfair commercial practices against consumers. It will put in place a framework for dealing with sharp practices and rogue traders who deliberately set out to exploit the loopholes in existing legislation.
15. We welcome PhonepayPlus's proposal to look at the possibility of publishing a statement next year explaining more fully the nature and structure of the arrangements it has with other regulatory and enforcement bodies.
16. To help further strengthen and facilitate enforcement cooperation at an operational level between PhonePayPlus and other civil and criminal enforcement agencies, we suggest that PhonePayPlus nominate an appropriate staff member as the initial point of contact for other enforcers.

Complaint levels

17. We endorse the sentiment that consumer complaint levels are not always an accurate indicator of the level of consumer harm. Particularly in the context of mass marketed 'scams', OFT research suggests that only a very small proportion of victims actually report a scam to the authorities. Important factors to consider beyond complaint evidence itself include a robust analysis of the underlying business model (for example whether there is underlying systematic deception) and the nature of the target audience.

B. Transparency and performance management

18. We welcome the proposal to develop a quarterly report specifically aimed at target audiences such as other regulators with an interest in PhonepayPlus's and consumers.
19. We note the proposal to explore methodologies for calculating the cost:benefit ratio of regulation. The OFT has undertaken work to assess and evaluate the impact of its work in terms of measurable consumer benefits (i.e. direct

financial impacts). We would be happy to discuss our methodology with PhonepayPlus.