

2008/9 Annual Plan and Budget: A PhonepayPlus Consultation Issued by PhonepayPlus on 7 November 2007

Response from Dr Michael Ward (member of public)

As a result of the move to ADSL, the opportunities for dialler crime have been significantly reduced and the total number of complaints to PhonePayPlus (PP+) has been falling as a result. The dialler problem has not gone away, however, and the problems arising from unsolicited reverse charge WAP push and SMS messages, and from various types of fraud would seem to be as bad as ever.

Before allocating any costs to specific areas, the major decision that PP+ has to face is whether to continue in the same vein as ICSTIS (reacting slowly, inconsistently, and after-the-fact to premium rate crime) or whether to channel its funds and activities in the direction of policies that will prevent premium rate crime occurring in the first place.

If PP+ decides to take measures that will actually begin to halt premium rate crime, it is clear what form those measures need to take, and, therefore, where funds should be channelled. PP+ should¹:

The expenditure plan/focus on a pre-empt, prevent and protect agenda/allocation of costs

- **Allow phone users of opt out of all premium rate – including reverse charge SMS**
This would protect not only the consumers who opted out, but would provide a powerful incentive for the Premium Rate Sector (PRS) to clean up its act.
- **Report theft and fraud to the police**
While those hide vital details in small print may be (merely) guilty of “mis-selling”. Those who steal using rogue diallers or unsolicited reverse charge SMS, and those who defraud the public using “parcel deliveries”, “missed calls”, and “competitions”, are criminals. PP+ has a clear legal and moral duty to report such criminals to the police. The evidence is unequivocal in such cases since a complete electronic record is created of every stage of the fraud or theft. It would not take many jail sentences before the PRS reformed itself.
- **Introduce meaningful sanctions for repeat offenders**
The adjudications published on the PP+ show that many PRS firms (mBlox and Opera being notable examples) are repeatedly fined for essentially the same offences. Although such firms are often barred in addition, the “bars” are meaningless when those firms are free to team up with a new Information Provider (IP) and continue with a particular fraud or mechanism for stealing money from phone users – at least until the next adjudication. In addition to reporting crime to the authorities, PP+ should have a sliding scale of penalties for Service Providers (SPs) that (for example) repeatedly send unsolicited reverse charge SMS. After repeat offences, such firms should be punitively fined – so that the fine is greater than the sum of money stolen – and barred from sending *any* reverse charge SMS for a period of time.
- **Insist on a robust and verifiable opt-in mechanism for “subscription” services**
As things stand, SPs may claim that subscribers to reverse charge SMS opted in by ringing from a phone (not their own mobile) for which no records have been kept. SPs should be required to keep verifiable details of opt-in and – when there is a complaint - those details should be checked against with ISP or Network Provider (NP) records. Failure or refusal to supply such records should be treated as admission of guilt.
- **Make the SP fully responsible for issuing refunds ordered by PP+**
PRS victims seeking refunds from SPs are typically forced to ring a series of 087 numbers in order to reach the IP. IPs sometimes then deny responsibility forcing the victim to chase up and down the “value chain” in order to obtain a refund - which will often be just a few pounds. Insisting that SPs accept refund claims and process them themselves would result in more refunds actually being paid and would serve as an incentive for SPs to clean up their act. SPs

¹ suggestions grouped under the bullet points you have provided

should also be forced to pay their refunds by restoring a mobile phone customer's balance rather than by sending out cheques and causing more inconvenience for victims.

[Ideally, the NPs should process complaints and refunds, but I realize that regulation of the NPs is beyond PP+'s remit. Alternatively, the model provided by "postwatch" could be followed and PP+ could deal with SPs on behalf of the complainant.]

- **Allow PRS victims to appeal against adjudications**
Currently, SPs can appeal twice against PP+ decisions. SP victims have no right of appeal. Against decisions that go in favour of SPs or against PP+ refusals to hold investigations.
- **Consider outlawing technologies where abuse is (almost) inevitable**
Diallers certainly come into this category. It is also questionable whether it will ever be possible to establish a safe reverse charge SMS regime.
- **Consider the composition of the PP+ board**
In the "Help Note for network operators on performing 'due diligence'; November 2006²" NPs are advised to exercise "due diligence" by (for example) "Checking the PP+ website for any prior adjudications made against the service provider/information provider or individuals." There is, however, no evidence that PP+ exercises such diligence when appointing board members. All three "Industry Representatives" would fail the test that PP+ specifies, and another member of the PP+ board (not an industry member) stands accused (by Eckoh) of selling Eckoh the "winner selection process" that Eckoh later followed when it "mised" entrants to the "Richard & Judy" competition. PP+ agreed that "the offending procedures appear to have been in place *at least* since Eckoh took over the Competition" and yet this same PP+ board member now sits on the PP+ adjudication panel.³ Since "the vast majority of [PRS] services are run responsibly"⁴, it should be very easy for PP+ to recruit industry board members with a record of integrity and honesty and there should be no question of recruiting non-industry board members whose integrity has been publicly compromised. Current PP+ policy on board membership cannot but send the "wrong message" to the PRS.

Shift towards the 'polluter pays' principle/administrative charge income and use of fines.

- **Consider a different funding mechanism for PP+**
PP+ is currently funded from levies and fines. Since a proportion of the levies and all the fines represent the proceeds of crime, this provides a vested interest in PP+ maintaining the status quo. This state of affairs also provides a disincentive for PP+ to report premium rate crime to the police: if funds are officially recognized as the proceeds of crime, those funds will no longer be available to PP+. Finally, there is the moral question: "Is it ethical for a regulator to derive a significant part of its income from money that has been stolen from the public?"
- **Establish a fund to compensate PRS victims**
Because PRS criminals are often based offshore or, even if UK based, go into liquidation after perpetrating a theft or fraud, premium rate victims are sometimes unable to obtain refunds ordered by PP+. If the PRS were forced to contribute to a fund which could be used to compensate PRS victims - even where the firms conduct the scam had disappeared - this would protect the public and serve as a powerful incentive for the PRS to clean up its act.

Any external commercial, technological, legislative or other development not addressed.

- **PP+ should begin considering the implications of PC-mobile convergence**
As more and more of the functionality traditionally associated with computers is provided by mobile phones, the risk of threats for from "malware" aimed at phones increases. PP+ needs to start looking at the implications before this becomes a major problem.

² http://www.phonepayplus.org.uk/pdfs_helpnotes_code11/net_duediligence.pdf

³ http://www.phonepayplus.org.uk/pdfs_adjuds/eckoh_oralhearing.pdf

⁴ <http://www.phonebrain.org.uk/mobile/>

Our plans for research and for the sharing of our findings.

- **Educate all mobile users as to how they can protect themselves from premium rate**
NPs, and third parties who recruit customers for the networks, should be obliged to include information with every SIM card or phone supplied to a customer as to how a customer can protect him/her self from premium rate and what to do if he/she becomes the victim of a premium rate crime (such as unsolicited reverse charge SMS) against which there is no way for consumers to protect themselves. This material should include tips such as the following:
 - Use broadband not dial-up
 - Having moved to broadband, disconnect your old modem
 - Check your bill thoroughly or, if PAYG, check regularly for unexpected SMS
 - Ask your NP to block calls to 09 numbers and short codes
 - Avoid companies offering “ringtones” and “wallpaper” for your mobile
 - Ignore “missed”, “undelivered parcel”, and “you have won” calls.
 - Register with the TPS
 - Contact PP+ if you fall victim to a PRS scam

Our proposals for additional productivity measures.

- **Stop issuing press releases about how PP+ is going to “boost confidence” in PRS**
The money spent on the salaries of those responsible for these press releases would be better spent on enforcement. If PP+ simply stopped the PRS stealing from us, public confidence in the industry will follow automatically. It would not require “boosting”.

Ways of assessing the benefits as well as the costs of regulation.

- **Acknowledge the failure of “light touch regulation”**
In the past, ICSTIS seemed to take the view that the premium rate industry would flourish best when regulations was “light touch”, in other words when premium rate criminals were given a great deal of free reign to continue stealing from consumers. This strategy is profoundly misguided – even from the point of view of the “industry”. Increasing numbers of parents (myself included) are forbidding their teenage offspring from having anything to do with premium rate. If (for example) I allowed my children to buy a ring-tone or obtain any other one-off “service” or “product” from the premium rate industry, it is likely that they would find themselves victims of an unwanted “subscription” that would rapidly use up the credit on their SIM cards. As more and more people hear about the premium rate industry and what it gets up to, more and more people will turn their backs on premium rate. Far from allowing the industry to flourish “light touch regulations” risks strangling the industry at birth.
- **Reward good behaviour and monitor the results**
PP+ should consider awarding some kind of acknowledgment to SPs who (after a suitable probationary period) have demonstrated that they do not steal from or defraud their customers. Such firms could also be rewarded with lower levies. Such measure would get the honest premium rate firms behind regulation and encourage good practice. The numbers of firms receiving such acknowledgments (published alongside a list of adjudications each month) would provide an indication of whether the numbers of honest firms was growing – and thus of how well regulation was benefitting the industry.

If PP+ took the above measures, premium rate crime would diminish significantly and the budget required to police mis-selling amongst the remaining firms would be reduced accordingly. This would free resources for consumer education and research into future PRS threats.