



Business Plan and Budget 2010/11 A PhonepayPlus Consultation

A PUBLIC CONSULTATION

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Contents

Section Page	2
Foreword	3
Executive Summary	5
Section 1 Our Purpose and Role	10
Section 2 Achievements in 2009	12
Section 3 The Market and Other External Conditions	17
Section 4 Looking Forward to 2010 and the Financial Picture	19
Section 5 The Levy Setting Process	32
Section 6 Summary of Questions	34
Section 7 How to Respond and Next Steps	35
Appendix A PhonepayPlus Budget 2010/11	36
Appendix B Three Year Plan Task Progress	38
Appendix C Performance to Date 2009/10	45

Foreword

The business plan and budget we are publishing today for consultation outlines a number of substantive achievements we have delivered for consumers and industry alike. It also outlines an ambitious programme of work for 2010/11 that will change fundamentally how phone-paid services are regulated. More than that though, in acknowledgement of the current difficult economic climate, we have searched hard for efficiency savings and so will deliver an increased workload next year while costing 4.5% less in real terms than we will in 2009/10.

All good businesses must listen, understand and learn from what others say about them and nowhere is this truer than in regulation.

We are funded by the industry we regulate, so we must at all times ensure we are cost-effective and deliver excellent value for money. Providers must see the benefits of our regulation and we must show that the action we take is evidence-based, proportionate and achieves the desired outcome.

On the other hand, we are here to protect consumers from unscrupulous businesses and from unfair marketing practices. We must show the general public that, wherever possible, we have pre-empted problems before they come to market and proactively intervened to prevent harm from occurring. Where consumers have lost out, we must act firmly and quickly to make sure they get redress and prevent it from happening again.

If we do not listen, we will not learn and cannot find the right balance between meeting the needs of consumers and businesses. That is why I was eager to hear the results of the stakeholder audit we carried out during the summer. I was keen that this formed the basis of our business planning for 2010/11 and I am pleased to say that what you are about to read really does incorporate key learnings from that audit.

For example, you told us we needed to be more proactive to pre-empt problems or nip them in the bud. That is why we are creating a new team to work with industry to resolve low-level issues without the time and expense of a full investigation. Consumers will get what they want – possibly a refund – more quickly, and businesses will learn the necessary lessons so it doesn't happen again.

That is also why we are investing in our industry support function. Demand for compliance advice jumped 27% last year and we aim to meet that demand and so pre-empt issues. We have also committed to meeting another need identified in the audit: learning more about the industry and the services we regulate so we can better understand business concerns.

We also propose to invest in targeted service monitoring so we can identify potential issues arising from non-compliance and address them with industry before they become a problem for consumers.

Overall, consumers told us they see PhonepayPlus as a helpful resource. However, there are still many people who are not aware we exist, or what our remit is, or what they can do to protect themselves. That is why we have proposed an innovative new way to fund PRS literacy campaigns: we want to hear your views on whether polluters should pay the cost of raising awareness of phone-paid services and the regulatory protections in place. All in the name of building trust and, perhaps as a result, growing the market.

Finally, we heard businesses say how tough life is for them at the moment. We do not live life in a bubble, so we have reflected economic reality in a series of efficiencies and savings that make for a budget that is a sizeable reduction over previous years. However, we believe that a strong regulator contributes to the financial health of the industry, as even – perhaps especially – in hard times, it is crucial to maintain consumer trust and confidence in the PRS market.

We haven't stopped listening; in fact, this consultation is another example of our seeking your input. In 2010, we must continue work on our next Code of Practice and develop an industry wide registration scheme (among other things) and we can't do it without you. We want to know whether you agree with our priorities and business plan and I look forward to engaging with you during this consultation and more widely next year.

Sir Alistair Graham
Chairman

Executive Summary

2010/11 will bring significant changes to the regulation of phone-paid services. Many of these changes are based on requests from industry to develop a more robust, targeted and efficient regulatory regime for premium rate services (PRS). Among the expected developments in the coming year are:

- A new PhonepayPlus Code of Practice based on clear outcomes-based rules
- Revised guidance for the industry and for specific services
- A PRS provider registration scheme that will support the new Code of Practice and allow for regulation to be targeted at the main provider of the service
- Improvements to the PhonepayPlus Number Checker to enable coverage of nearly all PRS numbers
- A new approach to consumer complaints handling and redress, working in partnership with industry
- A strategic focus on monitoring and testing phone-paid services, in order to intervene more proactively and quickly where non-compliance is suspected
- An extension to our Compliance Advice service following significant growth in usage by industry of that service
- The development of a new Three-Year Strategic Plan for PhonepayPlus

We believe the combination of these pieces of work will deliver a substantively-improved regulatory framework for phone-paid services, which will provide better protection for consumers and fairer, more transparent, outcomes for all parties involved in the industry.

The priorities listed above present a challenging workload for PhonepayPlus in the coming year, with a substantial amount of additional work beyond our day-to-day regulatory functions. We are keen to meet this challenge in a way that recognises that the market we regulate is suffering the inevitable impact of the current recession. Our data shows that the PRS market, excluding 0871 services, is down around 8% on the same period last year. Including 0871, the total market we now regulate is approximately the same value as 2008/9 and there are signs of recovery in the second quarter. However, we have scrutinised our costs and resources to ensure we are as efficient and effective as possible, while still being sufficiently equipped to meet the expectations placed on us by our stakeholders.

The proposed PhonepayPlus budget for 2010/11 is £4,221,850. This is a **decrease** in spending on the previous year of **3%**. Taking into account the effects of CPI annual inflation, this is a **real-terms**

decrease of 4.5% year-on-year. As our current financial year saw a 0% spending increase on 2008/9, our costs are now **8.7% less in real terms than they were two years ago.** Given that, in this period, we have delivered a considerable amount of work and we have taken on the regulation of a new sector in 087, we believe this budget is efficient and effective and delivers excellent value to stakeholders.

In order to deliver such savings, we have examined carefully all cost centres and, in respect of the largest item, salaries, we have made no provision for increases and assume that all basic staff pay will be frozen in 2010/11. Our feedback from industry shows that they expect us to have highly-motivated, knowledgeable and efficient staff and, to ensure we are able to attract and retain talent during this tough economic period, we have maintained our ability to offer training and development opportunities and to award moderate bonus payments to reward real achievements.

In the coming year, we will also be launching a new set of Key Performance Indicators (KPIs) that are designed to better describe our major outputs and how we are performing against them. We will also undertake further reviews of our business processes and attempt to define our unit transaction costs in some areas so we can drive further efficiencies and demonstrate greater transparency on our costs.

This year, as well as presenting our costs in a standard account format, we thought it would be helpful to stakeholders to set out what proportion of our budget is allocated to our key regulatory functions, which can be defined by four distinct areas of regulatory activity:

1. Consumer Support

Over the last six months, we have seen a fall in consumer contacts to PhonepayPlus. As well as being a factor of the recession, with fewer consumers active in the market, we believe our consumer campaigns and proactive work with industry has led to less consumer detriment occurring across the sector.

We are proposing a new approach to funding our consumer awareness campaigns that would result in those fined for breaching the PhonepayPlus Code being charged a suggested sum of 5% of the fine to pay for this important work. This would mean, in effect, that the 'polluter' would pay for our consumer education programme. Our campaigns would be overseen by a new PRS Communications Advisory Group, comprising of communications professionals from a cross-section of industry and consumer protection agencies, which will be chaired by PhonepayPlus.

2. Industry Support and Intelligence

Over the last year, our Industry Support team saw a 27% increase in requests from industry for compliance advice. We believe this service is important to industry and consumers alike and is part of the approach we wish to take to prevent harm before it takes place. However, we know from recent research of users of this service that for advice to be really useful it is needed quickly. For this reason, we plan to allocate more resource to this area in 2010/11 by re-directing some away from consumer support, where we have identified real savings. This is particularly important as we will be publishing a new Code of Practice next year, which will need to be properly communicated and explained to the industry.

PhonepayPlus is a data-rich organisation. As well as consumer contacts, we have market data sent to us by networks, industry intelligence shared by our stakeholders, monitoring and service testing reports and research into the sector, commissioned both by ourselves and others. This information is critical to informing our work and assisting us in making evidence-based decisions. In 2010/11, we

want to focus the gathering and analysis of this data and information through a new intelligence team, so that we can make optimum use of this valuable resource. This should also aid us in supplying more information to industry on key developments and will further support our compliance, investigations and Code development functions.

We are also investing more in monitoring and service testing as part of our overall shift to more proactive harm prevention measures. This will be combined with a more targeted monitoring strategy, designed to focus on the highest risks to consumers and areas where industry compliance issues have arisen.

3. Investigations and Enforcement

Robust, fair and nimble enforcement action against serious breaches of the PhonepayPlus Code of Practice is critical to a healthy PRS sector. A significant shift in this work has taken place over the last two years, with the creation of the Code Compliance Panel and by improving the process by which cases are allocated so that only the most serious cases are sent to the Tribunal. This has resulted in a more effective enforcement regime, which is demonstrated by a significant rise in fines in 2009.

In 2010/11 we plan to develop this work a stage further by creating a new Complaint Resolution team, so that we are able to place a greater emphasis on resolving cases where there is no consumer detriment, without the need for a full investigation. This will support our intentions to prioritise cases that have led to more serious consumer detriment and to increase our ability to deal more quickly with minor Code infringements.

4. Code Compliance and Development

Much of the groundwork for our new Code of Practice took place this year, so 2010/11 will focus on delivering a thorough implementation programme for the new Code. PRS is known for being an innovative and dynamic sector and this can cause challenges for consumers, industry and regulators alike. Alongside our central Code, we aim to provide updates and advice to industry on developments in the sector and the impacts on regulation so that businesses can keep abreast of expectations around Code compliance.

Our achievements so far in 2009/10 include:

Developing a new Code of Practice

We issued a pre-consultation discussion paper in June 2009, to which we received a very positive response. Alongside this, we dedicated one of our regular Stakeholder Forums to the issue of the next Code, which was positively received by stakeholders. We expect to formally consult on the new Code early in 2010.

Ofcom Scope Review

We worked closely with Ofcom on the development of its policy options following its consultation on the scope of regulation for PRS. Ofcom's final statement was issued in October 2009 and contained a number of policy suggestions that PhonepayPlus is asked to consider and take forward.

0871 regulation

On 1 August this year, we assumed responsibility for 0871 regulation. The implementation of this new regulatory regime went smoothly. We worked closely and constructively in advance of this with the Industry Liaison Panel (ILP) to produce a Help Note that received positive feedback from a variety of parties who fell under PhonepayPlus regulation for the first time.

Mobile services and compliance

We concluded our 'Mobile phone-paid services and their marketing' consultation in January 2009 by publishing the final statement. This contained enhanced requirements targeted at those services where we had seen the greatest propensity for harm. As a result of this work and increased cooperation with the industry, we recently announced a 62% decrease in complaints about mobile phone-paid services between July 2008, when we initiated the Mobile Review, and October 2009.

The consumer experience and complaint handling

The initial findings from an ILP working group with industry were presented at the PhonepayPlus Forum on 5 November 2009. The group has subsequently agreed to produce a discussion paper for circulation in early 2010 in order to build better understanding about the problems and identify the means by which arrangements along the value chain can be improved.

Making 'polluters' pay more of the cost of regulation

To date, in 2009/10, the value of fines invoiced to those found in breach of the Code stands at £4,243,500; an increase of 80% on the whole of last year. Recognising that we need to take all reasonable steps to recover unpaid fines, we issued a Notice to Industry in August 2009 setting out changes to certain processes and procedures within PhonepayPlus, designed to ensure evermore vigorous enforcement.

Transparency of reporting adjudications and emergency procedures

Following numerous discussions with certain industry providers and the ILP, we have recently made a number of significant amendments to the way we report our adjudications. This is designed to provide greater clarity around the basis of the fine and the linkage with the revenue that the service generated.

Broadcast PRS

During the early part of the year, we finalised outstanding applications for prior permission for service providers to operate such services. We have continued to maintain a close dialogue with the main providers of these services and have kept abreast of developments in their compliance regimes to ensure that trust is restored and maintained.

Funding model review

As part of our review of the Code of Practice, we engaged KPMG to undertake a fundamental review of our funding model and assist us in analysing whether it remains fit for purpose going forward. KPMG made a number of observations about how we might improve elements of our funding model and these suggestions will be explored further in our consultation on the new Code of Practice in early 2010.

Working with other regulators and enforcement agencies

We have stepped up our activity in engaging and working with other regulators whose remit covers some element of the PRS market. At the same time, we continue to work closely and effectively with Ofcom on a range of matters where its strategic policy initiatives can (and do) touch upon aspects of phone-paid services regulation.

Industry Support and Compliance Advice

Our Industry Support & Policy team has handled 2,394 industry enquiries and 1,006 individual requests for advice from industry providers from April to October this year, an increase of 27% on last year. Given the increasing demand for this service we have reviewed the amount of resource available for this work so that we can consistently provide the service in a timely way.

Feedback and comment

We wish to gather our stakeholders' views on our priorities for next year, and the budget we have proposed to allow us to deliver against our objectives. Information on how to respond is contained in Section 7. **The closing date for responses is noon on 15 January 2010.** This is a shorter time period than normal for PhonepayPlus consultations due to the need to seek Ofcom approval of the Budget and publish the Levy in good time for the start of the financial year 2010/11.

Section 1

Our Purpose and Role

PhonepayPlus is the organisation that regulates phone-paid services in the UK – the services and goods that we can buy by charging the cost to our phone bills and pre-pay.

OUR VISION

Our vision is that anyone can use phone-paid services with absolute confidence.

OUR MISSION

Our mission is to deliver consumer protection where services are charged to some form of telecommunications account. We work with the industry to understand new challenges and pre-empt problems, to build understanding of our Code of Practice and to maximise compliance. We provide the public with information to allow people to make informed choices and protect themselves from loss or harm. Where necessary, we will investigate problems and take timely and effective action to stop harm.

OUR VALUES

Effective

We want a market in which the public can trust services in the knowledge that they can exercise choice with confidence. A market, too, in which businesses can trust in a well-designed Code, proportionately enforced, that allows them to invest and innovate with confidence. We pre-empt and prevent problems in the market we regulate and deal with misconduct in ways that ensure it does not happen again.

Accessible

We are a well-understood and easy-to-reach first port of call for advice, information and support for consumers, providers, networks, the media, government and public agencies.

Independent

We will listen to both sides of the story, look at the facts and act decisively but always on a basis proportionate to the size of the problem. We will always work with industry and other bodies to build our understanding and improve our effectiveness. But we will not lose sight of the importance everyone places on the independence of decisions relating to our Code and its enforcement.

Collaborative

We will work closely with all interested parties to encourage a safe and dynamic regulatory environment. We aim to be more enabling, creating a climate for investment and innovation.

Principled

We ensure that real choice and genuine security are created by the standards we set. We aim to build more trust across the market.

Confident

Our action is evidence-based in such a way as to command wide confidence. Our decisions and communications are clear and give stakeholders certainty on where we stand.

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?

Section 2

Achievements in 2009

ACHIEVEMENTS IN 2009/10 TO DATE

In our 2009/10 business plan, and following extensive consultation with industry and other stakeholders, we committed to undertaking a range of activities in the year. At the same time, we have worked closely with the ILP to identify a number of issues where regulation, industry practices or communication could be improved in order to bring benefits to the sector. We set out below the key activities we have undertaken this year that demonstrate our commitment to listen and act accordingly.

New Code of Practice

We are now well advanced with the development of the revised PhonepayPlus Code of Practice. Unlike previous versions, our plan this time has involved extensive pre-consultation (both formal and informal) with a wide range of stakeholders from industry and beyond. We issued a pre-consultation discussion paper in June 2009, to which we received a very positive response. Alongside this, we dedicated one of our regular Stakeholder Forums to the issue of the next Code, which was positively received by stakeholders. We expect to formally consult on the new Code early in 2010 and, notwithstanding that, we expect to commit resources to ongoing dialogue with stakeholders to ensure that we have a Code that is fit for purpose, as well as correctly targeted on the right parts of the industry value chain.

Ofcom Scope Review

We worked closely with Ofcom on the development of its policy options following its consultation on the scope of regulation for PRS. Ofcom's final statement was issued in October 2009 and contained a number of policy suggestions that PhonepayPlus is asked to consider and take forward; most of these recommendations will be considered as part of the development of the next PhonepayPlus Code. Included within this was the agreement that a registration scheme for providers would be established by PhonepayPlus; this suggestion had near universal support from respondents to Ofcom's consultation.

0871 regulation

On 1 August this year, we assumed responsibility for 0871 regulation. The implementation of this new regulatory regime went smoothly. We worked closely and constructively in advance of this with the ILP to produce a Help Note that received good feedback from a variety of parties who fell under PhonepayPlus regulation for the first time. From August – October 2009, we have received 110 complaints about such services and this has so far led to two adjudications by the Code Compliance Panel. It is important to note that, in cases where the complaint or problem is one where we think the provider of the service is best placed to resolve the issue, we have referred such matters back to the provider in line with the 0871 Statement of Application.

Mobile services and compliance

We concluded our 'Mobile phone-paid services and their marketing' consultation in January 2009 by publishing the final statement. This contained enhanced requirements targeted at those services where we had seen the greatest propensity for harm. Following extensive dialogue with the mobile aggregators, we also reviewed our Help Note on 'IP pass-through', which has allowed us (and the aggregators) to have a more targeted enforcement regime focused on the information provider, where that is appropriate, and where the aggregator meets the tests set down in the Help Note. As a consequence there has been a 100% increase in the number of information provider cases processed by the Code Compliance Panel in 2009 as compared to 2008.

We recently announced a 62% decrease in complaints about mobile phone-paid services between July 2008, when we initiated the Mobile Review, and October 2009. This decrease is not a coincidence and arises from a combination of actions taken by not only PhonepayPlus, but also industry providers, including the Mobile Network Operators, aggregators and others who have been equally dedicated to building greater trust in these services.

The consumer experience and complaint handling

We committed to review this issue, recognising that the experience that consumers have when they encounter problems with phone-paid services can be less than optimal. A project looking at the various facets of this issue was run with the support of a working group of providers from the ILP. This has proved very helpful and had led to the identification of potential methodology for improving customer care arrangements for consumers when they encounter problems.

The initial findings from this working group were presented at the PhonepayPlus Forum on 5 November 2009. The group has subsequently agreed to produce a discussion paper for circulation in early 2010 in order to build better understanding about the problems and identify the means by which arrangements along the value chain can be improved. At the same time, PhonepayPlus will be looking at further obligations, in the form of consumer outcomes, that it may be reasonable to include in the next Code of Practice and which will be consulted on in 2010.

Making 'polluters' pay more of the cost of regulation

To date in 2009/10 the value of fines invoiced to those found in breach of the Code stands at £4,243,500¹, an increase of 80% in fines awarded in the whole of last year. Alongside this year's fines, the Executive has raised charges in respect of the costs of administering and processing those cases of £267,011. The setting of fines, however, needs to be considered within the context of our ability to collect those fines. In the period to the end of October 2009 our fine collection rate stood at 87%, having set aside those fines from entities which are non-collectable following liquidation². Recognising that we need to take all reasonable steps we can to recover unpaid fines, we issued a Notice to Industry in August 2009 setting out changes to certain processes and procedures within PhonepayPlus designed to ensure ever more vigorous enforcement. This includes a greater willingness on our part to use debt collection arrangements to maximise collection from those who cease trading after running a 'scam'.

¹ From 1 April to 31 October 2009

² This figure also excludes any barred services and cases under review

Transparency of reporting adjudications and emergency procedures

Following numerous discussions with certain industry providers and the ILP, we have recently made a number of significant amendments to the way we report our adjudications. This is designed to provide greater clarity around the basis of the fine and the linkage with the revenue that the service generated. We have also recently reviewed our arrangements for publishing any action taken in respect of emergency procedure cases to ensure that there can be no misunderstanding as to the nature of the case and the stage it has reached at the time it is reported. We are confident that these changes will strengthen our transparency as a consequence of listening carefully to feedback received from many providers.

Broadcast PRS

During the early part of the year, we finalised outstanding applications for prior permission for service providers to operate such services. All told, we have now issued 22 prior permission certificates to service providers to operate such services. We have continued to maintain a close dialogue with the main providers of these services and have kept abreast of developments in their compliance regimes to ensure that trust is restored and maintained. We are now in the process of finalising our arrangements for reviewing these prior permission conditions with the main providers in order to conduct a health check to satisfy ourselves that the conditions are being adhered to. A programme of visits to service providers is now being devised and will be underway shortly.

Scams using 070 Follow Me Anywhere Numbers

As we committed to in our last business plan, we have taken a zero-tolerance approach to “missed call” scams involving 070 in order to stamp them out. During the year to October, we have investigated six cases involving these services and imposed fines totalling £1,125,000. Recognising, however, that the root to these issues can sometimes be the Terminating Communication Provider (TCP) we issued a Notice in Dec 2008 reminding such providers that any complaints about these services would necessitate us also investigating whether the TCP was in breach of the Code. So far, we have investigated one network and fined it £175,000 for breaches. The total number of complaints about 070 services in the period April to October 2009 has been 266, which is a 45% decrease over the same period in 2008.

We continue to adopt a zero-tolerance approach to these services and, at the same time, are working with other relevant agencies to share any intelligence we have about these services and the providers who may be involved in activities which may breach the criminal law.

Funding model review

As part of our review of the Code of Practice, we engaged KPMG to undertake a fundamental review of our funding model and assist us in analysing whether it remains fit for purpose going forward. As part of its study, KPMG met with a variety of industry stakeholders. KPMG has reported its analysis to PhonepayPlus and advised that the great majority of those stakeholders were firmly of the view that the current funding model is not ‘broken’. KPMG made a number of observations about how we might improve elements of our funding model and these suggestions will be explored further in our consultation on the new Code of Practice in early 2010.

Working with other regulators and enforcement agencies

A common concern expressed is that, as convergence of platforms and technologies continues apace, it is becoming harder for some providers to establish how the obligations placed by different

regulators on phone-paid services interact. For this reason, we have stepped up our activity in engaging and working with other regulators whose remit covers some element of the PRS market. At the same time, we continue to work closely and effectively with Ofcom on a range of matters where its strategic policy initiatives can (and do) touch upon aspects of phone-paid services regulation.

In 2009, we have engaged with the Advertising Standards Authority and are in the process of jointly reviewing and updating our case handling procedures to ensure that risks of 'double jeopardy' are minimised. We are also looking to ensure that, where possible, there is consistency between our approaches to the regulation of the advertising of phone-paid services.

In addition, we are currently in discussions with the Office of Fair Trading about concluding a Memorandum of Understanding with it (and its sister organisation Consumer Direct) which should give clarity to our partnership arrangements, especially in the context of the recently enacted Unfair Commercial Practices Regulations 2008, for whom PhonepayPlus is the nominated enforcement partner.

During the year, we have also worked closely with the Information Commissioner's Office (ICO), dealing with issues involving unsolicited marketing where the ICO have been broadly content for PhonepayPlus to take the lead in enforcement activity in respect of the EC Directive on Privacy and Electronic Communications Regulations.

During the year, we have stepped our work with law enforcement agencies like SOCA and the National Fraud Authority in respect of that small number of persistent offenders who breach PhonepayPlus' Code and go beyond that and break the law.

All of this activity will continue apace in 2010.

Industry Support and Compliance Advice

Our Industry Support & Policy team – which currently comprises just five staff – has been very busy, both formally and informally, engaging and advising numerous providers and operators in the market. From April – October 2009, the team has handled 2,394 industry enquiries and 1,006 individual requests for advice from industry providers. In the whole of 2008/9, the team handled 2,675 enquiries and requests, so this year's traffic has already increased by 27%. This suggests a very real and tangible demand for compliance advice which we very much welcome. Given the increasing demand for this service we have reviewed the amount of resource available for this work so that we can consistently provide the service in a timely way. Ensuring appropriate resource for this work is particularly important, as the team is also responsible for externally engaging with the industry and leading PhonepayPlus' work on producing the next Code of Practice.

Stakeholder Perception Audit

In order to enhance our relations with all stakeholders, we undertook a stakeholder perception audit early in 2009. The consultants interviewed a cross-section of stakeholders, representing industry and beyond – given the breadth of parties that have a stake and interest in our work. The responses were very encouraging, with a clear recognition that PhonepayPlus is changing for the better and is finding new ways to engage stakeholders that are being welcomed. That said, there were also some concerns that emerged which we have considered extensively and discussed with the Board.

From this, a work plan has been agreed that is designed to ensure that our engagement strategies maximise our dialogue with all relevant parties and ensure that the Executive is best placed to be able to regulate a fast-changing sector as we move forward. As part of this work, we are in early

dialogue with some industry providers about opportunities for enhanced training opportunities for our staff, in particular to ensure that they continue to keep up-to-date with changes in the marketplace. We will be encouraging more of this 2010.

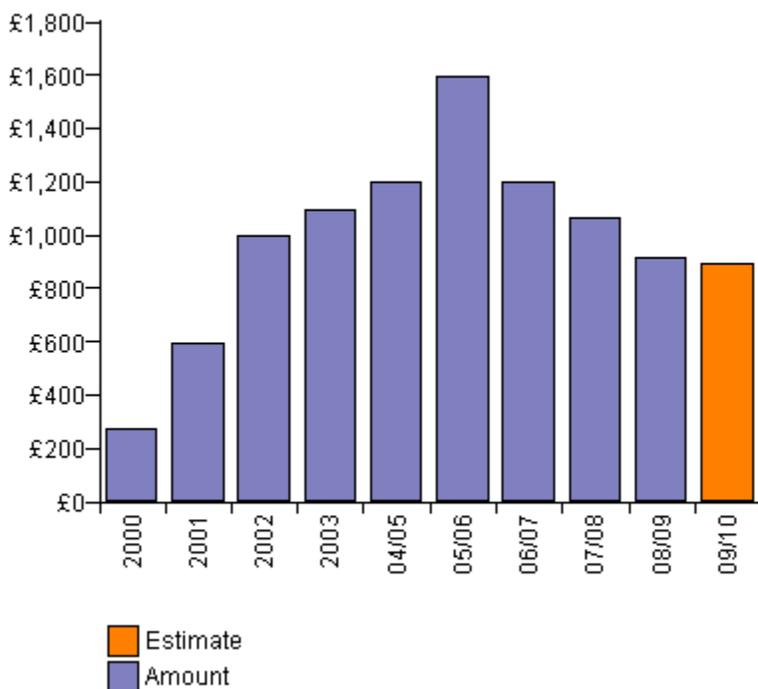
Section 3

The Market and Other External Conditions

Following the worldwide banking crisis, the UK entered recession this year alongside all major economies. This has naturally had an impact on the market for premium rate services and our quarterly forecast returns received from the Operators for the first two quarters of 2009/10 suggest the market will contract this year by around 8%, excluding income from 087 services. However, the decline in the second quarter slowed significantly and we will have a clearer view on the likely market forecast for the full year once we have information on the third quarter, early in 2010.

We began regulating 087 services in August and we have so far had two months' of outpayment figures for this sector, which indicate the market will be worth in the region of £60 million to £80 million this year. When 087 values are taken into account alongside the rest of the PRS market, it is likely that the total size of the market we now regulate will decline only slightly in 2009/10 to £900m. If the apparent slower decline in quarter two is continued, we would expect the total market we regulate in 2010/11 to increase. We should be able to give a clearer indication of this in our budget statement once we have third quarter data and the results of our current market review.

Annual Size of UK Industry (£m)



PhonepayPlus is currently carrying out its annual market review to try and gauge in more detail the impact the recession is having on the PRS sector and we plan to report on this in the first quarter of 2010.

In fixed-line PRS, there have been no significant market developments this year apart from the introduction of 087 to the regulatory regime. This part of the PRS market has been in steady decline for some years now as the services traditionally provided by fixed-line move onto mobile or online platforms.

The major mobile story of 2009 has been the Apple iPhone and, in particular, the launch of its applications store, which saw over 2 billion downloads in just over a year³. The success of the iPhone has seen the rest of the mobile market continuing to develop a new range of smartphones, such as the Palm Pre and Blackberry Storm, and the rise of a number of applications stores, such as Nokia's Ovi Store and the recently launched Vodafone 360. PRS providers are calling on the mobile networks and handset manufacturers to develop an open platform that would allow third-party providers to sell applications, media and other premium services to mobile users. If such an open platform were to be developed, this could have a huge potential for the growth of third-party and network own-content PRS on mobile.

With the announcement of the potential merger of T-Mobile and Orange, it appears that the mobile sector may be on the verge of some consolidation. The recession also appears to be blocking developments in services, with providers having difficulty securing funding while consumer spending is depressed.

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?

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?

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

³ Apple news release "Apple's App Store Downloads Top Two Billion" 28/09/09

Section 4

Looking Forward to 2010 and the Financial Picture

PRIORITIES FOR 2010/11

The next year promises to bring significant changes to the regulation of the phone-paid services sector, with a new PhonepayPlus Code of Practice, the introduction of a provider registration scheme and other outcomes from Ofcom's review of the scope of regulation of premium rate services.

These changes are the result of an important journey that the industry and regulators have taken together over the last few years, spurred on, in part, by the major breakdown in compliance in broadcast PRS, but also recognising that building consumer trust through improved transparency and effective redress are critical if phone-paid services are to prosper. On the industry side, we have seen a greater willingness to tackle the causes of consumer harm and improve compliance mechanisms. As a regulator, PhonepayPlus has worked to improve its understanding of the PRS industry and has striven to be more proactive, effective and responsive in its approach to regulation.

Our new Code of Practice, which we plan to consult on early in 2010, is designed to set out a clear set of outcome-based rules for those wishing to operate premium rate services. Alongside the Code, we plan to consult on an updated range of service-specific and other guidance to aid compliance and regulatory clarity.

Next year is the final year of our current Three-Year Strategic Plan. As well as focusing on delivering the objectives in our current plan, we have begun scoping out our next strategy. So that this can provide the framework for next year's business planning, we plan to consult early in 2010 on our next Strategic Plan, with the intention of publishing it soon thereafter.

Ofcom recently published a statement as part of its review of the scope of regulation for premium rate services. Key amongst its findings was the need to find a robust mechanism for clarifying which new phone-paid services qualify as premium rate services under UK law and are, subsequently, subject to regulation by PhonepayPlus. We welcome this development and hope it will bring increased clarity and certainty to the PRS sector.

Many in the industry have been calling for a registration scheme for PRS providers to improve transparency and allow for regulation to be targeted at all points of the PRS value chain. Ofcom's decision that PhonepayPlus should administer a scheme for registering premium rate service providers will undoubtedly bring improvements to PRS regulation. It will also make possible a shift in regulatory enforcement down the value chain to the party that exercises control over the content and promotion of the premium rate service. The scheme will also assist the industry in carrying out effective due diligence on business partners. PhonepayPlus is currently undertaking a rigorous scoping exercise to determine the most effective and efficient way to deliver a registration scheme for the PRS market. We plan to consult on the implementation of a registration scheme early in 2010, focussing on the scope and arrangements for running the scheme.

At this time, however, we have not made any budget assumptions or provision for such a scheme. However, given our current high level of reserves – see also Section 5 below – consequential to the increase in fines imposed in 2009, we propose that any such registration scheme be self-financing over time. We assume that the scheme will involve parties paying a modest annual fee for registration and that these fees would cover the costs of both setting up such a scheme and the ongoing costs of administering it. Clearly, if the scheme generated any surplus revenue, this would be returned to the industry just as it is now in reductions in the levy over time.

Ofcom also recommended that the current Number Checker for PRS numbers is improved, so that it covers nearly all services. Currently the Number Checker only contains service provider information for the top 500 09 numbers and for mobile shortcodes. Although this covers approximately 85% of searches, increasing the service provider information in the Number Checker to cover a greater number of PRS would bring significant consumer benefits. We are currently looking at how best to achieve this, including whether this should form part of the planned registration scheme.

There were also actions for us from the Ofcom review around the important areas of consumer complaints and redress and improving pricing transparency. We will be looking to take this work forward as part of the Code development process, working closely with the industry to find ways to improve the current position in each area.

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?

The Financial picture

The proposed budget for 2010/11 is £4.22m. This is a decrease in spending of **3%**, or £131k. Taking into account CPI⁴, this is a real terms decrease of **4.5%**. As 2009/10 also represented a real terms decrease in budget, taken together this budget represents an **8.7% decrease** on 2008/9, which was before assumed additional regulatory responsibilities for 0871. Given that PhonepayPlus has now taken on the regulation of 087 services and 2010/11 includes significant projects like the new Code of Practice, we believe this budget is efficient and effective and delivers excellent value to stakeholders.

We recognise the fact that the market we regulate is suffering a downturn along with the rest of the economy, which is why we have endeavoured to reduce our own costs, including a proposed freeze in salaries, despite the significant workload we face in the coming year. In particular, we have reviewed the use of our current resources, including people, to ensure we are making best use of these to deliver against our objectives and strategic plan.

Regulatory Functions

This year, as well as presenting our costs in a standard account format (see **Appendix A**), we thought it would be helpful to stakeholders to set out what proportion of our budget is allocated to our key regulatory functions. PhonepayPlus has four distinct areas of regulatory activity:

1. Consumer Support
2. Industry Support and Intelligence
3. Investigations and Enforcement
4. Code Compliance and Development

⁴ CPI annual inflation was 1.5% in October 2009 - <http://www.statistics.gov.uk/cci/nugget.asp?ID=19>

As part of our Three-Year Strategic Plan, we set out an ambition to pre-empt and prevent consumer harm in PRS through proactive engagement with the industry. By providing compliance advice and support to PRS providers through the Industry Support team and by increasing the amount of monitoring and service testing we undertake, we are more able to spot potential issues with services and advise industry on making them compliant with the Code. Coupled to this, by creating an independent Code Compliance Panel (CCP) and prioritising our investigations work to focus on the more serious cases we have been able to focus our enforcement activities on tackling the harm that most undermines consumer confidence in PRS and damages the industry.

For each of these areas, we will highlight the key activities we undertake, the resources we have allocated to carrying them out and the change proposed from the current year.

Consumer Support

PhonepayPlus exists to ensure that consumers are treated fairly when using premium rate services. Consumers need to have confidence that there are regulatory procedures in place to protect them and that there are mechanisms to assist them should things go wrong. Among the consumer support activities we undertake are:

- Our contact centre, which provides support and advice to consumers. While the majority of our consumer contacts are enquiries, we do receive a significant number of complaints. The contact centre therefore plays a key role in identifying consumer harm and alerting the organisation to issues that require action.
- Our consumer campaigns are aimed at providing useful and objective information to consumers on how to best use premium rate services, if they so choose. The aim of this work is to empower consumers to choose and use phone-paid services without detriment and also to assist them in detecting scams. Our current campaign aimed at parents who are planning to buy mobile phones for their children for Christmas⁵ is a good example of how this work can add value to the PRS industry through building consumer confidence.

Over the last six months, we have seen a fall in consumer contacts to PhonepayPlus. As well as being a factor of the recession, with fewer consumers active in the market, we believe our consumer campaigns and proactive work with industry has led to less consumer detriment occurring across the sector.

In 2009/10, we allocated a budget of £995,913 to these activities, which accounted for 23% of our total budget. This included £490,000 for our contact centre and £103,000 for consumer campaigns. This year, our budget in this area has been **reduced** to £798,319, accounting for **19%** of spending. This reduction is a mark of success of our consumer support measures and to our strategy of pre-empting and preventing harm. It has allowed us this year to divert even more resource into our proactive areas of work, which will continue to benefit consumers in reduced levels of harm and detriment in the PRS sector.

A proposed new approach to funding consumer campaigns

The extent to which PhonepayPlus has a role in raising awareness amongst consumers about the safe use of phone-paid services has long been the subject of discussion, especially in the context of business plans and their accompanying budgets.

⁵ A phone is for life, not just for Christmas www.phonepayplus.org.uk/output/A-phone-is-for-life.aspx

Many stakeholders see making consumers “PRS literate” as an essential part of the regulator’s responsibility and remit. It is, they argue, one of the best ways to build trust in the phone-paid services market and confidence in the premium rate payment mechanism. It helps pre-empt and prevent harm by making sure consumers have the tools to safely navigate PRS, thus lowering the cost of regulation over time.

On the other hand, some industry stakeholders claim it as an unnecessary expense. They argue that such consumer awareness campaigns erode trust and provoke fear among consumers by raising awareness of the minority of problem providers that exploit the risks inherent in the payment mechanism.

Before we explain our views on consumer awareness campaigns, we should first explain what we believe it to mean:

- Encouraging the use of phone-paid services – but only where an unfounded lack of trust is putting otherwise enthusiastic consumers off;
- Encouraging a balanced, accurate presentation (in the media and among key opinion formers) of phone-paid services and the opportunities and threats they offer consumers;
- Helping to correct unhelpful and erroneous statements about the market;
- Raising awareness of consumer rights and what protections there are in place should anything go wrong;
- Describing what scams and misleading promotions look like, and how they contrast with compliant, safe services;
- Explaining the measures in place to self-protect and provide piece of mind: for example, the ‘STOP’ command and Number Checker.

Conversely, we do not believe consumer campaigns should entail:

- Demonising – or evangelising – a particular provider, service or service type;
- Promoting fear and concern among consumers.

The vast majority of phone-paid service providers have their customers’ interests at heart. They want to design and market innovative new services that provide a great experience for consumers at an attractive cost. It is only a small minority of individuals and businesses that pose a risk to consumers.

There have, however, in recent times been a number of premium rate scams that have hit the headlines. Research has clearly shown that this has eroded trust in premium rate services which has, in turn, inhibited their take-up and growth.

Ofcom is charged by Parliament with building confidence in the use of some new technologies among UK citizens and consumers, known as media literacy. We believe there is a similar need for PhonepayPlus to raise levels of “PRS literacy” amongst consumers.

By providing accurate, balanced information on what opportunities there are for consumers, and how they can effectively manage any risks to them and their family – we will build up the level of trust in a way that benefits both providers and UK consumers.

Some examples of our consumer awareness campaigns activity include:

- Engaging with national and regional broadcast and print media to communicate a prescribed set of messages;
- Digital marketing campaigns to talk directly to consumers using rich content in their favourite online habitats; and

- Engaging directly with consumers via a distribution network of local techno-evangelists and proxies (e.g. teachers, community activists, etc). See PhoneBrain case study overleaf.

Any PRS literacy work should be accompanied by robust measurement that clearly demonstrates these benefits.

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?

Funding

The purpose of our PRS literacy activity is to build consumer awareness of PRS; to remove unnecessary obstacles in the way of consumers engaging with the services; and to reduce the cost of regulation by empowering consumers to safely use PRS.

Its cost should therefore be seen as an investment in building the market. We believe there are three possible funding models:

Option A:

A part of the PhonepayPlus budget is assigned to PRS literacy activity and paid for by the levy. This year we have suggested £65,000, a real terms decrease of 35% on last year's budget.

This will significantly constrain the activity we are able to undertake and our ability to build trust will be similarly limited. The reduction reflects the downturn in the market and in the economy more generally, and should not be taken as an indication that we see PRS literacy as a less important activity. Indeed, it may be seen by some as a counter-productive cost saving given its potential to help build trust in the market.

Option B:

Subject to a full legal evaluation, a sanction is introduced and made available to the Code Compliance Panel that makes the 'polluter' pay. This would take the form of a sum of money – 5% of the fine imposed – that the provider would pay. This money would be ring-fenced for PRS literacy activity.

To administer this new fund, a new PRS Communications Advisory Group would be created, comprising communications professionals from a cross-section of industry; consumer protection agencies; and chaired by PhonepayPlus. The activity and accompanying messages would be agreed by this group and would be executed according to its wishes.

It may be that fines imposed by the Code Compliance Panel in 2010/11 are low and the associated 5% PRS literacy fund does not allow for momentum to be created and maintained. For that reason, a sum of £100,000 would be taken from PhonepayPlus' reserves and used as a starting pot for the group's activity.

If fines are such that £100,000 is subsequently raised, that initial sum will be returned to PhonepayPlus' reserves.

Option C:

As per Option B, but a larger sum of £300,000 will be taken from PhonepayPlus' reserves and made available to the PRS Communications Advisory Group. This would allow for greater ambition and, potentially, a more significant positive impact on trust in the first year.

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?

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.

PhoneBrain – a consumer awareness campaign case study

During 2008, PhonepayPlus worked with Ministry of Sound, the Peter Jones Foundation and the Government-sponsored enterprise body Make Your Mark, PhonepayPlus to design PhoneBrain – a unique curriculum-based schools programme.

Available to all secondary schools and youth/education centres across the UK, PhoneBrain uses the skills and techniques GCSE students are required to learn to explain to teenagers how phone-paid services work. It explains the opportunities and threats on offer and how they can protect themselves and their friends and family from falling foul of scams, misleading promotions and overcomplicated terms and conditions.

Launched in December 2008, PhoneBrain allowed schools to download Adobe software, Ministry of Sound content and full curriculum-friendly lesson plans via the project website.

Learning about phone-paid services, while at the same time developing the skills they learned through the ICT curriculum, students were able to create and download their very own animated ringtone using audio-visual content provided by Ministry of Sound artists.

Young entrepreneurs were also given the chance to enter their own 'Dragons' Den' with the help of full Enterprise lesson plans, a business plan template and inspirational real-life cases studies. Teens were invited to come up with their own phone-paid service idea – the kind of thing they and their friends would love to use but is not currently available – and create an accompanying business plan, all the while learning about the regulatory regime: what's allowed and what's not.

Results

Below is a table which demonstrates the significant reach of the campaign (almost 60,000 teenagers from all parts of society across the UK). The third column provides a comparison with another campaign which saw a government department partner with a household name youth brand to engage with students in an almost identical way. It should be noted that PhoneBrain delivered comparable results at less than half the cost of the other campaign.

However, it was the depth of the campaign that impressed the most. The tens of thousands of students that took part in the lesson engaged with phone-paid services for a minimum of two hours (for most it was much longer as they chose to interact with the website out of school). During that time they learned what phone-paid services have to offer and, importantly, how to tell a good service from a non-compliant one.

And it wasn't just the students that had a chance to learn. As part of their business planning, teenagers interviewed their friends and asked many of the same questions that had allowed them to learn about phone-paid services during their lessons. Sixty-seven competition participants interviewed 880 friends and family during the course of the campaign.

Teachers and students have both embraced the campaign. Many have let us know that they would like to champion the programme among their peers in the future. We have already assembled a nationwide group of PhoneBrain evangelists to spread the word as we roll the programme out in future, so dramatically reducing costs and maximising take-up.

	PhoneBrain	Campaign 'X'
Unique visitors to teachers site	3,242	2,160
Registered teachers	761	1,404
Unique schools represented by registered teachers	708	774
Average number of students directly engaged in each school	83	77
Total number of students actively engaged in schools	58,764	59,600
Cost per student	£1.53	£3.61

Media

The campaign also presented a great opportunity to raise awareness of phone-paid services and the regulatory regime underpinning them. On the day of its launch, the PhoneBrain schools campaign was widely publicised across broadcast and print media; national and local. This included:

- BBC Breakfast (4 x items)
- BBC News 24
- BBC Radio 1 and 1Extra (including live phone-in)
- BBC Radio 5 Live
- 130 local radio programmes (via Independent Radio News)

Industry Support and Intelligence

We recognise that the vast majority of providers in the industry do not set out to cause problems for consumers. However, for many businesses it can be challenging keeping up with the latest guidance, regulatory actions and Code developments to ensure they are running a compliant service. For this reason, PhonepayPlus decided two years ago to create an Industry Support team that is available to give compliance advice and support to businesses wishing to operate a premium rate service.

We believe that supporting such providers to be compliant is a pre-emptive approach to regulation designed to stop problems before consumers are affected, and then go on to complain. This can range from getting advice on advertising copy to applying for a prior permission for certain services. Over the last year alone, we saw a 27% increase in requests from industry for this type of support, with a particular increase around the launch of 087 regulation over the summer. We welcome this response from industry, which demonstrates the appetite that exists for wanting to run compliant services.

We believe this service is important to industry and consumers alike, and is part of the approach we wish to take to prevent harm before it takes place. However, for this to be a really useful service to industry, we know that advice is needed quickly. Given the increase in demand, with our current resource it is becoming increasingly difficult to turn around requests for advice in a timely manner. For this reason, we plan to allocate more resource to this area in 2010/11 by re-directing some away from consumer support, where we have already identified real savings. This is particularly important, as we will be publishing a new Code of Practice next year, which will need to be properly communicated and explained to the industry, and which will also drive a further increase in requests for advice and support.

PhonepayPlus is a data-rich organisation. As well as consumer contacts, we have market data sent to us by networks, industry intelligence shared by our stakeholders, monitoring and service testing reports and our own and others commissioned research into the sector. This information is critical to informing our work and assisting us in making evidence-based decisions. In 2010/11 we want to focus the gathering and analysis of this data and information through a new Intelligence team, so that we can make optimum use of this valuable resource. This should also aid us in supplying more

information to industry on key developments and will further support our compliance, investigations and Code development functions.

Our core research priorities for 2010/11 are currently in development, but our early thinking suggests the following areas might be worth exploring:

Core research:

- Annual review of the market for premium rate services.

Consumer and Industry-focussed research

- In-depth consumer and industry engagement to better understand how “issues of the day” arise and generate significant consumer detriment

Consumer-focussed research:

- Vulnerable consumers: Consumer engagement to identify vulnerable groups and how they might experience consumer detriment when using premium rate services
- Consumer “readiness” to engage with emerging premium rate service models, and similar micro-billing mechanisms
- Assessing impacts, both positive and negative, on consumer trust in PRS

Industry-focussed research

- Regulation and the industry: Where does regulation help promote service use and consumer trust. Where does regulation hinder progress?
- Industry analysis: Contribution of the premium rate industry and premium rate services to the UK economy

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?

A key role for this new team will be to develop our monitoring and service testing work, so that we are able to undertake a more systematic approach to this work. We will focus on specific sectors to meet objectives from a monitoring strategy, designed to focus our work on areas of highest regulatory risk, or where regulatory changes mean we need to monitor impacts on consumers and the industry, for example in the recent introduction of 087 services to the PhonepayPlus regime. In drawing up such a strategy, we will seek the input of members of the ILP and other providers who share intelligence with us about market changes and potential risk areas.

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.

Investigations and Enforcement

Robust, fair and nimble enforcement action against serious breaches of the PhonepayPlus Code of Practice is critical to a healthy PRS sector. A significant shift in this work has taken place over the last two years, with the creation of the Code Compliance Panel, and by improving the process by which cases are allocated so that only the most serious cases are sent to the Tribunal. This has

resulted in a more effective enforcement regime, which is demonstrated by, on the one hand, fewer cases being heard by the Tribunal and, on the other, a significant rise in fines from these cases in 2009. By tackling services where the most harm is caused, and seeking resolution in cases where compliance issues exist but no consumer harm has occurred, we have been able to assist the industry in creating a more stable PRS sector.

In 2010/11, we plan to develop this work a stage further by creating a new Complaint Resolution team, who will assess every case that arises so that the most appropriate corrective action is taken. This will support our intention to handle minor noncompliance with the Code through a new resolution process, while prioritising cases that have led to more serious consumer detriment. This new team will significantly increase our ability to deal with minor Code infringements, which should enable us to be more effective in pre-empting more serious problems and prevent potential consumer detriment. The impact of this should also be felt across sectors as noncompliant services will be more systematically tackled, creating a more level playing field for compliant providers.

These changes will be cost-neutral as they will be achieved through reallocation of existing resources. In 2009/10, we spent £1,663,291 on our investigations and enforcement work, or 39% of our total budget. Next year, this amount **reduces** to £1,532,939, representing **36%** of our budget. This cost to industry is also decreased by our ability to raise admin charges against our investigations work, which means that the polluter pays for the costs of dealing with their noncompliance. We will continue to review how we operate our admin charges to ensure we are reclaiming the maximum possible from polluters to offset the costs to the wider industry.

Code Compliance and Development

Our Code of Practice is central to everything we do and it is critical to the industry that it is fit for purpose, easy to understand, and that compliance is achievable across the platforms and technologies on which PRS operate. We are in the process of developing a new Code of Practice, which is intended to be based on a set of key principles and rules that underpin a robust regulatory regime for PRS. This slimmed-down Code will be supported by a new suite of service-specific and general guidance to industry to aid compliance. We plan to consult on this new Code early in 2010, publish it in the autumn, with it coming into force in early 2011.

Much of the groundwork for this new Code took place this year, so 2010/11 will focus on responding to the consultation and delivering a thorough implementation programme for the new Code. PRS is known for being an innovative and dynamic sector, and this can cause challenges for consumers, industry and regulators alike. Alongside our central Code, we aim to provide updates and advice to industry on developments in the sector, and on the impacts on regulation, so that businesses can keep abreast of expectations around Code compliance.

In 2009/10, we spent £444,259 on our developing our Code, guidance and advice, equating to 10% of our budget. Next year, this will **rise** to £575,196, or **14%** of budget, to reflect the costs of successfully completing delivery and implementation of the 12th Code of Practice.

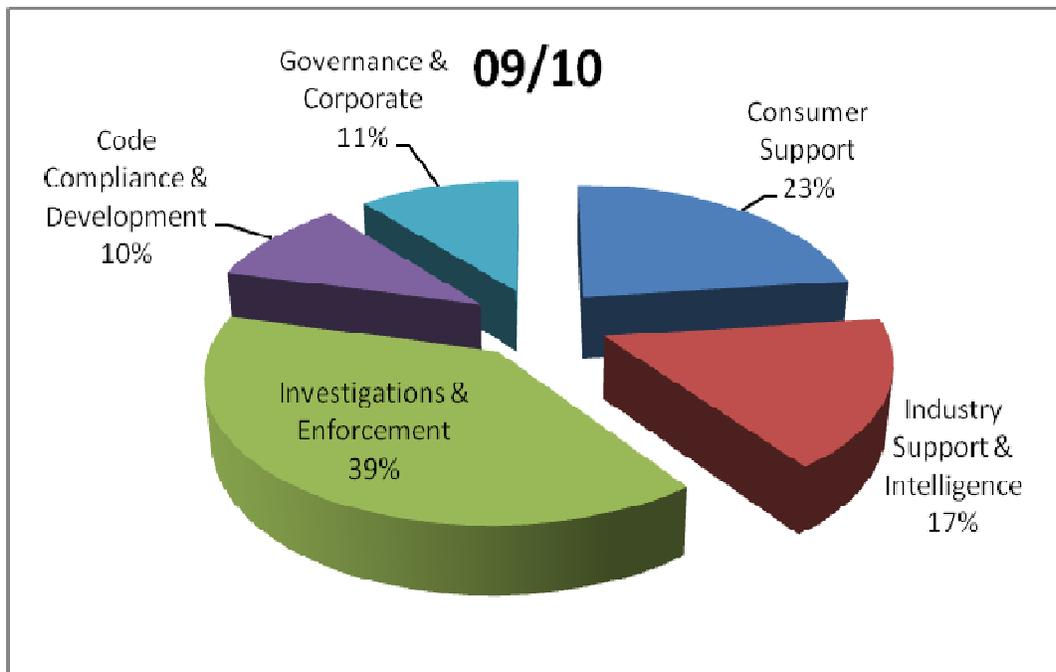
Governance and Corporate

As an independent regulator, with accountability to Ofcom for carrying out our functions, it is critical that we operate transparent, robust and effective systems overseen by a properly resourced and highly-skilled Board. There are, inevitably, some corporate costs that are required to allow PhonepayPlus to function, such as premises, ICT, HR and finance, but we are always challenging ourselves to keep these costs to a minimum, recognising that Ofcom and the industry would expect us to account properly for our expenditure.

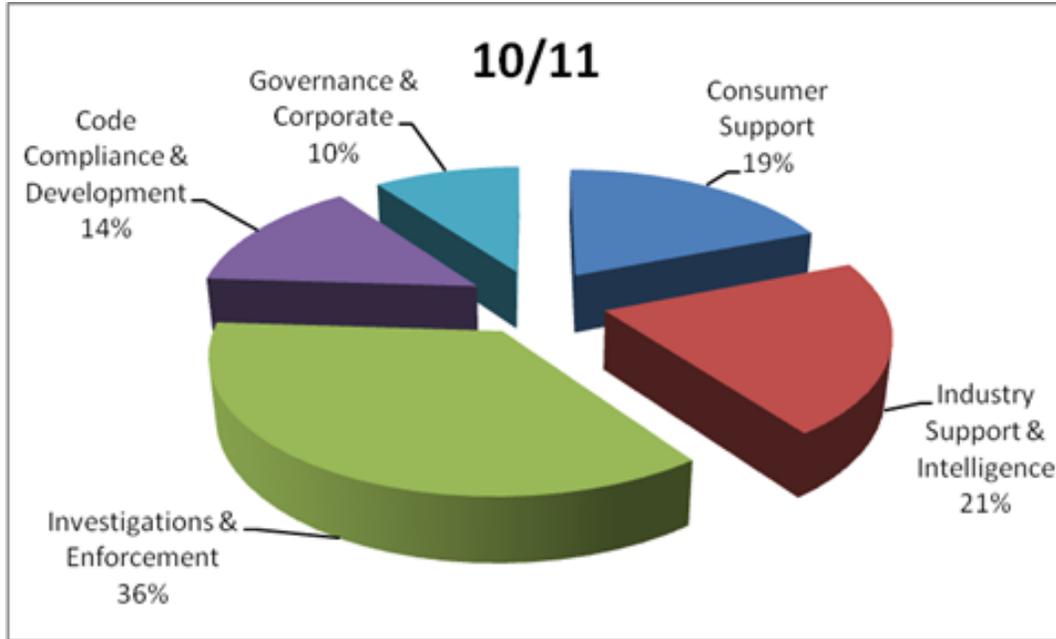
In the coming year, we will also be launching a new set of Key Performance Indicators (KPIs) that are designed to better describe our major outputs and how we are performing against them. We will also undertake further reviews of our business processes and attempt to define our unit transaction costs in some areas, so we can drive further efficiencies and demonstrate greater transparency on our costs.

In 2009/10, the total corporate and governance costs for PhonepayPlus were £481,832, or 11% of our total budget. Next year, we propose to **reduce** these to £441,855, or **10%** of our budget. This reduction has been achieved by refocusing our staff allocation in this area and through seeking greater efficiencies in our business costs. The lease on our current premises comes to an end in November 2010. We are therefore looking at securing the most cost-effective and business efficient deal for the next period, with a view to taking full advantage of current conditions in the property market. As we have not yet finalised our plans in respect of lease renewal or moving office, we would expect to meet any one-off costs associated with this from our reserves. We have made some small allocations in next year's budget against dilapidations and fixtures/fittings that we would expect to be a factor in any new lease that we secure. Our expectation is that this money would be repaid over the term of the lease, as we believe we should be able to deliver our next lease at the same cost as our current lease or better.

Annual Budget 2009/10 by function



Annual Budget 2010/11 by function



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.

Budget assumptions, Risk and Control

We set out below some the strategic assumptions made in drawing up this business plan and budget. Alongside each assumption we have identified the attendant Risk and Control mechanisms we have in place to mitigate the risk from materialising.

Budget Assumption	Risk	Controls
Staff turnover remains static	Recruitment budget assumed for low to moderate level staff turnover	HR strategy and exit interviews with staff to monitor turnover HR strategies for staff policies and reward structures to aim to minimise high turnover
Legal costs remain broadly static with a small increase in assumed budget	Predicated on litigation and legal challenges within parameters as seen over the last 3 years. No adverse judicial review is anticipated	In-house legal team draw on necessary support and advice from external Counsel where needs arise and litigation risk considered at earliest possibility by Leadership Team and Board along with options for remedying the risk

Code of Practice remains fit for purpose without the need for change before concluding the approval of a 12th Code in 2010	Basis for the Code and its application is challenged through the Courts or through CCP Tribunals and found to be flawed in its application to a high profile service	The Code has been approved by Ofcom following a rigorous legal assessment. Its application will be kept under review and Statements of expectation or prior permission continue to be utilised where necessary
Market risks and market innovation	New markets emerge in PRS that require research and Code amendments	Pre-empt emerging services by monitoring services in the market and continuing industry support relations
PhonpayPlus remains at current premises	Served notice by landlords	Lease in place until November 2010 with clauses in place to ensure notice is not served unless PhonpayPlus is in breach of the lease. Consideration is being given to options once our lease expires, with the intention that the option taken is cost-neutral or better when compared to current costs, given current market conditions. We have made modest budget allocations in 2010/11 against dilapidations and fixtures/fittings connected to any new lease

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

Section 5

The Levy Setting Process

PhonpayPlus is primarily funded by a levy on service providers deducted at source by network operators. Funds are withheld at network level and paid to PhonpayPlus. At the end of each year, these are reviewed against actual market activity levels and there is reconciliation, with any additional monies owed to PhonpayPlus paid over and/or any excess payments made by the networks on account refunded.

The levy rate is affected by a number of issues:

- The cost of regulation – the PhonpayPlus budget amount, the levy and other sources of funds have to cover.
- The expected size of the market – the amount of expected outpayments on which the levy would be payable.
- Fines and Administrative Charges collected in 2009/10 – these monies go towards the cost of regulation and therefore reduce the amount we need to collect through the levy.
- Market developments in the preceding year – if the phone-paid services market exceeds expectations in 2009/10, the additional levy collected would go towards covering the costs of 2010/11. On the other hand, a fall in the market in 2009/10 would involve the repayment of excess levy collected from networks and this deficit would need to be made good in the following year.
- Any need to make changes to the PhonpayPlus contingency reserves. These exist to deal with the possibility of winding-up of the organisation at some future point, without defaulting on obligations, and the need to deal with any new, exceptional 'spike' problems that require extra staff and legal or other resources.

Our position on each of the issues is set out in brief below:

- **The 2009/10 market:** Based on half-year figures and excluding 087, we believe that the market size will be as expected, which is an 8% decline from 2008/09.
- **Administrative Charges:** The Administration Charges are reviewed annually and will be notified along with the levy. We budget on the basis that we will recover and use in the same year a high percentage of the Administrative Charges levied.
- **Fines:** As of 31st October 2009, fines are significantly higher in 2009/10, compared to the same period in 2008/9. Of the 55 fines issued so far this year, 22 were over £80,000. In 2008/09, there were 37 fines issued with only one being above £80,000. Our policy will continue to be that we should not budget on the basis that fines will be levied and used in any given financial year, but that

any fines imposed should be retained and be available to meet the funding requirement in subsequent years.

- **Contingency reserves:** No reserves have been used during 2009/10. Our reserve level of £2.2 million as advised by our auditors as “appropriate and reasonable” will remain to cover winding-up costs or spikes in demand. This means that there will be no need in 2010/11 to replenish these funds.

- **Registration Scheme:** The proposed introduction of a new registration scheme for the industry in 2010 could result in a significant upfront cost for development for us. For this reason, we plan to hold a sum of £250,000 from our cash reserve as a contingency against this for next year only. If this money is required, as it is expected that the registration scheme will be self-funding through fees, it will be returned to our cash reserves and offset against the costs of regulation for the industry in due course.

- **2009/10 budget:** we expect our 2009/10 year-end expenditure to be under spent by approximately £195,000, 4% of the budget. This is due to a number of factors, including some delays in recruiting or replacing staff, and changes in the leadership team. These savings are not expected to be repeated in 2010/11. Where savings were made during the year through greater efficiencies, these have been carried forward into the 2010/11 budget.

Following final approval of the budget by Ofcom, we will inform industry of the outcome of this process and our levy requirements for 2010/11. On current projections, and in the absence of the latest information from financial returns from networks that pay over the levy, we would expect the levy to be reduced in 2010/11 based on this business plan and budget. A key driver for that reduction is the exceptional increase in fines during 2009/10, which will not necessarily repeat itself in future years.

Section 6

Summary of Questions

Set out below are the questions raised through the consultation document on which stakeholder feedback is welcomed:

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?

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?

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?

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

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?

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?

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?

Q8. What is an appropriate initial level of funding for our PRS literacy programme?

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?

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.

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?

Section 7

How to Respond and Next Steps

Where possible, comments should be submitted in writing and sent by email to response@phonepayplus.org.uk by no later than **noon, 15 January 2010**. Copies may also be sent by mail or fax to:

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PhonepayPlus
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4 Maguire Street
London SE1 2NQ
Tel: 020 7940 7403
Fax: 020 7940 7456

If you have any queries about this consultation, please telephone or email Bradley Brady using the above contact details.

Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.

Appendix A

PhonepayPlus Budget 2010/11

Summary Budget Table of Expenditure 2009/10

	Total Budget 2010/11		Total Budget 2009/10		Total Budget Variance	
	£	FTE		FTE	£	%
Staff, CCP & Board	2,512,578	50.5	2,661,827	50.8	(149,249)	-6%
Events & Consumer Education	115,000		150,500		(35,500)	-24%
External Professional Services	192,200		145,500		46,700	8%
Legal	155,000		140,000		15,000	9%
Research	170,000		171,000		(1,000)	-0.50%
Other Professional Services	36,140		55,240		(19,100)	-35%
Overheads	283,887		267,587		16,300	9%
Premises	412,191		364,259		47,932	9%
Printing	43,000		52,800		(9,800)	-19%
Telecoms	69,072		76,772		(500)	-0.01%
Website	82,000		81,000		1,000	0.01%
Depreciation	150,781		193,446		(42,664)	-22%
	4,221,850		4,359,931		(130,881)	-3%

Comments on budget variances

Staff, CCP & Board £149,249 decrease

The decrease has been achieved by not applying any cost of living (inflation related) increase to staff salaries for 2010/11. This is in recognition of the difficult economic climate and is in line with similar decisions taken by other public sector organisations, including Ofcom. We have also removed provision for extra staff that might be required for the regulation of 087, as to date this has not been required. In addition, we have reduced the number of Non-Executive Board Members from ten to eight, and changes in the leadership team have resulted in savings.

Events & Consumer education £35,500 decrease

The decrease is due to a proposed decrease in the consumer campaigns budget. As part of this consultation we have proposed a new approach to funding and managing our work in this area.

External professional services £46,700 increase

This increase is to allow for external resource that we may need to deliver the final stages of our new Code of Practice, as well as implementing an industry registration scheme.

Legal £15,000 increase

Our Director of Legal will leave the business in the spring and we do not plan to replace him. This extra budget is therefore set aside in case we require senior legal expertise that we will no longer possess in-house.

Other professional services £19,100 decrease

The decrease is due to a reduction in professional fees relating to Finance and other corporate activity.

Overhead budget £16,300 increase

This increase is due to revisions to our IT maintenance budget, including acquiring licences to operate SharePoint software to aid knowledge management within PhonepayPlus. In addition, offsite backup and business continuity contract costs have increased, following a change to a more reliable supplier.

Premises £47,932 increase

The lease on PhonepayPlus current premises expires in November 2010 and we have set aside funds to cover expected dilapidation costs.

Printing £9,800 decrease

A reduction in printing budget to reflect actual spend during the current year on Annual Report print costs.

Depreciation £42,664 decrease

The depreciation annual charge has decreased due to the leasehold cost pertaining to current premises becoming fully depreciated in the current financial year. A budget for furniture and fittings costs that could be related to our new lease has been included in the 2010/11 budget.

Appendix B

Three Year Plan Task Progress

OBJECTIVE: 1. PROVIDING EFFECTIVE AND PROPORTIONATE REGULATION TO THE INDUSTRY, BASED ON RESEARCH, RISK ASSESSMENT, MARKET UNDERSTANDING AND STRATEGIC INTERVENTION	
TASK:	ACTION:
<ul style="list-style-type: none">• We aim to be a better-informed and evidence-based regulator, producing an annual plan of research proposals. Working in closer partnership with Ofcom and others, we will maximise the potential for joint research initiatives in all aspects of the market.	<p>We continue to look for opportunities for joint research working with Ofcom and with industry. We have outlined areas of interest for future research work in this document and we welcome comments on whether these are the right objectives. We will consult the Industry Liaison Panel on our 2010/11 research plan following this consultation.</p>
<ul style="list-style-type: none">• Audit of regulatory principles. We aim to work to the best regulatory standards possible. We expect to undertake research to benchmark what 'best' looks like and then agree a plan that challenges us to achieve best practice as defined.	<p>The development of our new Code of Practice has taken on best practice principles of other regulators, such as Ofcom's Broadcasting Code, in developing a principles-based Code supported by more robust service-specific and industry-wide guidance.</p> <p>We will continue to look at other best practice improvements we can adopt, as well as developing our own improvements based on stakeholder feedback and input.</p>

<ul style="list-style-type: none"> • Provide a structured and transparent framework in which we apply regulations. The Code of Practice is the cornerstone of our regulatory framework, and sets the standards for the advertising, promotion and content of phone-paid services. It is imperative that the Code is kept up-to-date, and can be flexibly adapted and applied to external changes in the market. 	<p>We are well-advanced in the production of a new Code of Practice, reflecting outcomes from Ofcom's review of the scope of regulation of PRS, as well as feedback from the industry and other stakeholders on providing a more adaptive and flexible framework for regulation. We expect the new Code to come into force in the final quarter of 2010/11 following full consultation.</p>
<ul style="list-style-type: none"> • Subject to decisions arising from the Ofcom review of the scope of regulation, we believe that our regulations should remain principally focused on the service providers, as defined in our Code of Practice, and that we should keep under review their relationships with the value chain for delivery of services and ensure that mechanisms remain, in a changing market, for applying regulation at the point deemed as appropriate and legally relevant. 	<p>The introduction of our new Code of Practice combined with the proposed service provider registration scheme will allow for regulation to be targeted at the point in the value chain where the key decisions on promotion and operation of the service are taken, currently defined as Information Providers in our Code of Practice. Service Providers would still be subject to regulation and will be required to undertake appropriate due diligence on any sub-contracted parties. We will consult fully on this proposed new regulatory approach in 2010.</p>

OBJECTIVE:	
2. SECURING HIGHER LEVELS OF COMPLIANCE WITHIN THE INDUSTRY THROUGH INCENTIVES, THE CONSISTENT AND HIGH-PERFORMANCE APPLICATION OF OUR CODE, AND RAISING COMPLIANCE STANDARDS	
TASK:	ACTION:
<ul style="list-style-type: none"> • We will deliver an effective, consistent and high-performance Code Compliance Panel that will focus specifically on our adjudicatory work, leaving the main Board to dedicate its resources to other organisational and policy activities. 	<p>The Code Compliance Panel has now been in place for 18 months. Combined with a more strategic approach to cases, with most focus being given to cases that have led to consumer harm, there has been significant progress in tackling non-compliance across the industry.</p> <p>It has also allowed the Board to focus more on governance and policy issues as intended.</p>
<ul style="list-style-type: none"> • We will raise standards of compliance through monitoring and intervention. We will ensure compliance through strategic monitoring, focusing on specific markets and taking a holistic approach to correction of these markets. 	<p>The Research team has trained colleagues in other teams, including Investigations to undertake their own monitoring of services, which has significantly increased the amount of monitoring and service testing we can undertake. With the development of a new Intelligence function, we plan to further develop our strategic approach to monitoring and service testing to more effectively target high-risk services or to see the impacts of regulation on different market sectors.</p> <p>We will also explore opportunities to partner with industry to further develop effective monitoring of PRS throughout the value chain.</p>
<ul style="list-style-type: none"> • We will develop an industry support and compliance team. The Compliance Team will work with networks, trade bodies, sector groupings, publishers, broadcasters and other stakeholders to build understanding of the Code and compliance with it. 	<p>The Industry Support team has dealt with a 27% increase in demand for compliance advice in 2009. A small user survey has indicated this service is valued by industry, but would be improved if we were able to turn requests around more quickly. We have allocated more resource to this team in 2010/11, as we believe that supporting compliance with the Code has contributed greatly to pre-empting consumer harm.</p>

OBJECTIVE:	
3. ENSURING THE PUBLIC ARE BETTER INFORMED ABOUT THE SERVICES WE REGULATE, OUR ROLE AS THE REGULATOR AND THEIR RIGHTS UNDER THE REGULATIONS	
TASK:	ACTION:
<ul style="list-style-type: none"> • We will work with networks and billing suppliers to understand and develop the scope for information about calls to phone-paid services appearing on customer bills. 	<p>We have undertaken a project to understand the lifecycle of consumer complaints. Together with a working group from our Industry Liaison Panel we have come up with a proposal to greatly improve consumer redress processes in PRS. We are developing a discussion document for further consultation with industry early in 2010. We will ultimately produce guidance on improving consumer complaints handling to sit alongside our new Code of Practice.</p>
<ul style="list-style-type: none"> • One-stop shop for advice, assistance and complaints. We will develop literature, and engage with the public using various media such as web chat, SMS and websites. By developing these services, we will increase public understanding of phone-paid services and how they work. 	<p>We have made improvements to our website to make it simpler to navigate for consumers. Following the recommendation from Ofcom's review of scope of regulation for PRS, we will be further developing our number checker service so that it provides details for nearly all PRS, up from 85% of services currently.</p>
<ul style="list-style-type: none"> • We are responsible for educating and informing the public about phone-paid services. Through utilising existing channels with phone networks and consumer bodies, and developing new partnerships, we will increase awareness of phone-paid services and PhonepayPlus to ensure all customers who speak to us get the right information. 	<p>We have just launched a new campaign, <i>A Phone is for life, not just for Christmas</i>, aimed at parents who are buying their child a mobile phone. It provides simple advice on how to safely use mobiles and protect their children from unsuitable content. It also explains how mobile charges work and how to make children aware of high charges. This is an example of how PhonepayPlus works to raise awareness amongst consumers of the safe use of PRS. We believe this work is central to our role as an independent regulator and in the business plan consultation we are proposing a new approach to managing and funding this important work.</p>

OBJECTIVE: 4. TO BE MORE TRANSPARENT AND ACCOUNTABLE	
TASK:	ACTION:
<ul style="list-style-type: none"> • We will build on the existing arrangements for stakeholder engagement by implementing the proposals in our 2007 consultation. Through our website, we propose to report each quarter to the Industry Liaison Panel (ILP) and to stakeholders generally on key trends in market size and composition, complaint and enquiry traffic, and on trends identified through our monitoring, enforcement and industry support work. 	<p>We have continued to improve our communications with stakeholders, including through our forums, held three times per year, and by making improvements to our website. In 2010 we will be developing revised strategies to engage with stakeholders to ensure that we are receiving appropriate input to our work and also that we are effectively communicate our work to key stakeholders. This will be particularly important as we implement our new Code of Practice.</p>
<ul style="list-style-type: none"> • We plan in 2008 to start to regularly publish a package of performance measures related to our complaint and enquiry handling, our compliance support activities, and our work to inform and educate the public in relation to the services we regulate. 	<p>This information is contained in reports that we produce for the ILP and this is placed in the public domain on a quarterly basis alongside the ILP meetings.</p>
<ul style="list-style-type: none"> • We will extend our work on cost-benefit analysis. We will further develop our ability to present impact assessments in our consultations. We also want to develop some agreed methodology for assessing the consumer and business benefits of regulation, and to set these alongside costs. We will report on this over the term of the Plan period. 	<p>All of our policy consultations now, as a matter of routine, include an impact assessment. We have delivered efficiency savings in this budget through thorough review of our business process. We plan in 2010/11 to undertake further work on our unit transaction costs to see if further efficiency savings can be made in future years.</p>
<ul style="list-style-type: none"> • We will test forms of public meeting to better understand the views and concerns of the general public, as well as particular communities within the general public. We expect by 2009 to have improved arrangements for engaging with the public in all four nations. We propose, in particular, to develop a network of those who make regular and substantial use of the services we regulate as a way of identifying possible problematic issues earlier. 	<p>We have investigated ways of better gauging public views on PRS and in securing consumer input into our consultations and policy work. We have focussed to date on developing relationships with consumer organisations and in increasing the amount of consumer research we undertake. It is important that the cost of achieving this is proportionate and we continue to look at sustainable ways of delivering this objective.</p>

<ul style="list-style-type: none"> • With convergence in the communications sector, we recognise the need for a clear understanding between regulators and other public agencies with interests and responsibilities that, on occasion, coincide. This can be the case, for example, with premium payment for gambling, charity and broadcast services, and in relation to data protection, advertising and financial services regulation. 	<p>Building on the Memorandum of Understanding we developed with the Gambling Commission, we are continuing to work with other regulators whose remit means they have an interest in the PRS sector. We have developed a closer relationship with the Information Commissioners Office and the Advertising Standards Authority this year and we hope to further develop our relationship with the Financial Services Authority following the implementation of the Payments Directive.</p>
<ul style="list-style-type: none"> • Ofcom has important duties when recognising a code and regulator. We will ensure our accountability arrangements and dialogue with Ofcom are of the necessary quality. 	<p>The Framework Agreement that exists between Ofcom and PhonepayPlus has fostered more effective working relationships and communications between us. We fully supported Ofcom's review of scope of regulation of premium rate services and continue to offer support to Ofcom's other work in this area. We hold regular meetings with Ofcom to update them on progress with key projects and they attend our Board meetings and key external meetings to ensure they are fully informed of our work.</p>

OBJECTIVE: 5. ENSURE RESOURCES ARE FIT FOR PURPOSE	
TASK:	ACTION:
<ul style="list-style-type: none"> • We will operate in a modern, high availability, technological environment, ensuring the integrity and security of our data, privacy to complainants and accuracy in our information. 	<p>We have made significant improvements to our IT systems over the last two years to ensure they are fit-for-purpose. With the introduction of an industry registration scheme in 2010 we will be fully reviewing our current systems to ensure that this new tool is effectively integrated with our other functions.</p>
<ul style="list-style-type: none"> • Changing risks to our operations will be monitored and action taken to minimise our exposure to damage and/or losses/business downtime in the event of an emergency/catastrophic disaster. 	<p>We have effective and proportionate arrangements to cover all identified risks and contingencies. We continue to keep these under review against new risks, for example the potential for a 'flu pandemic this winter.</p>
<ul style="list-style-type: none"> • We will further develop our financial sustainability model, identifying emerging/receding revenue streams to sustain our financial viability and ensuring the reasonableness of charges to the industry. 	<p>We undertook a review of our funding model this year, which concluded that our current model was an appropriate financial system. There were some recommendations on how the funding model might be developed and we will consult on possible adjustments as part of our work on the new Code of Practice during 2010.</p>
<ul style="list-style-type: none"> • We will ensure our staff are skilled, rewarded commensurate with their skills and able to deal effectively with the changing environment in which they work, to deliver the necessary standard of services required. 	<p>This is a key commitment, as we need a talented and committed workforce to ensure we are able to deliver effective regulation on behalf of consumers and the industry. We have taken a tough decision to freeze staff salaries in 2010/11, to recognize the current difficult economic climate. However, we have maintained funding so that we can properly invest in training and developing staff and also to provide moderate bonuses for real achievements.</p>

Appendix C

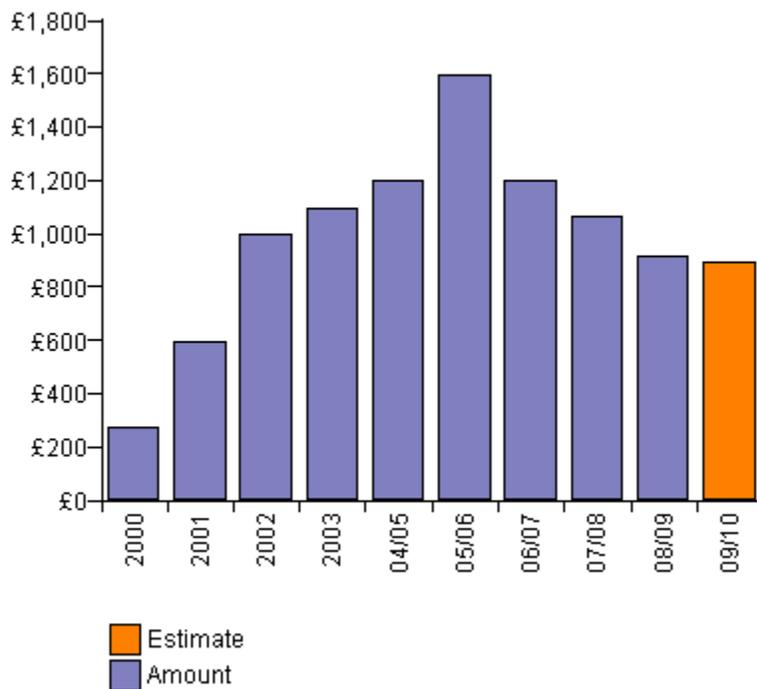
Performance to Date 2009/10

In the coming year we will also be launching a new set of Key Performance Indicators (KPIs) that are designed to better describe our major outputs and how we are performing against them. We will also undertake further reviews of our business processes and attempt to define our unit transaction costs in some areas, so we can drive further efficiencies and demonstrate greater transparency on our costs.

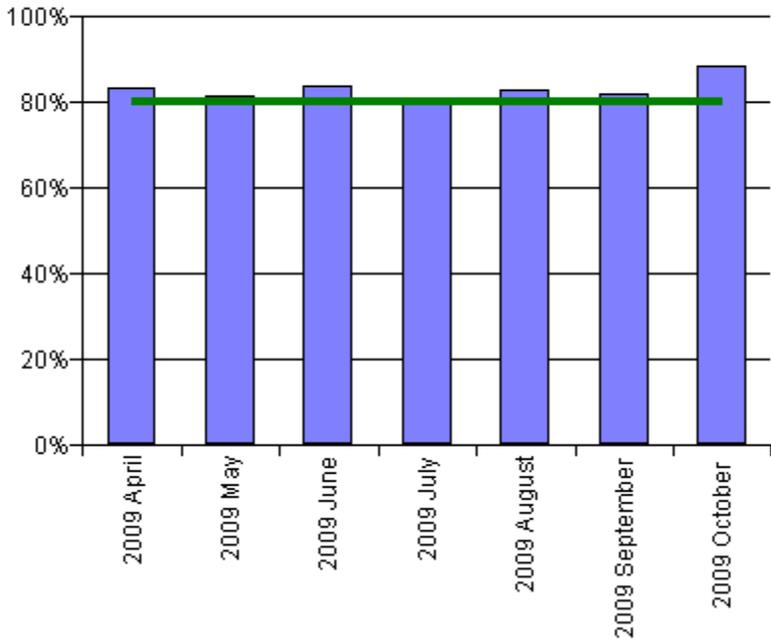
Key Performance data April – October 2009

The following tables set out our key performances by month over the period April to October 2009. We provide a written commentary for those KPIs which were not fully met in any month.

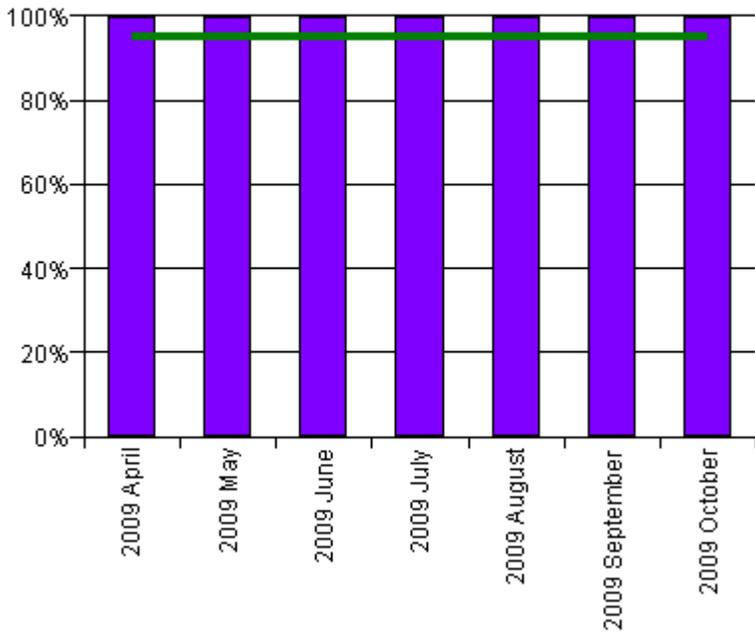
Annual Size of UK Industry (£m)



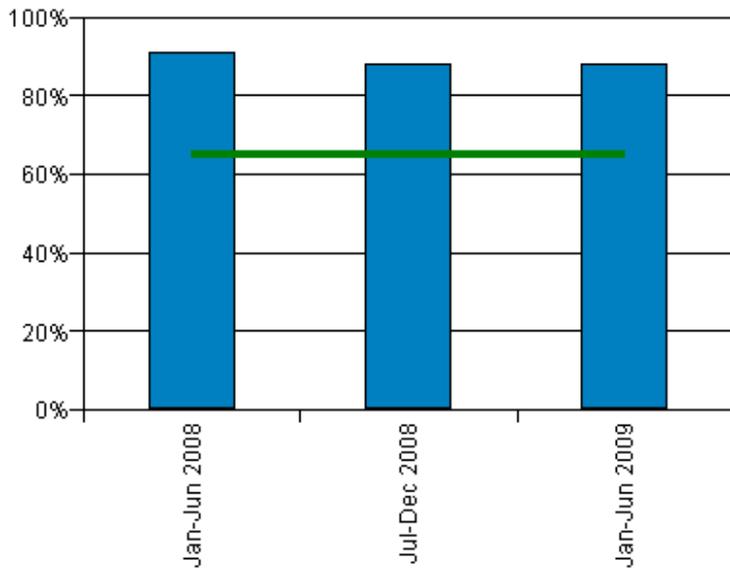
KPI: Calls Answered < 30 Sec



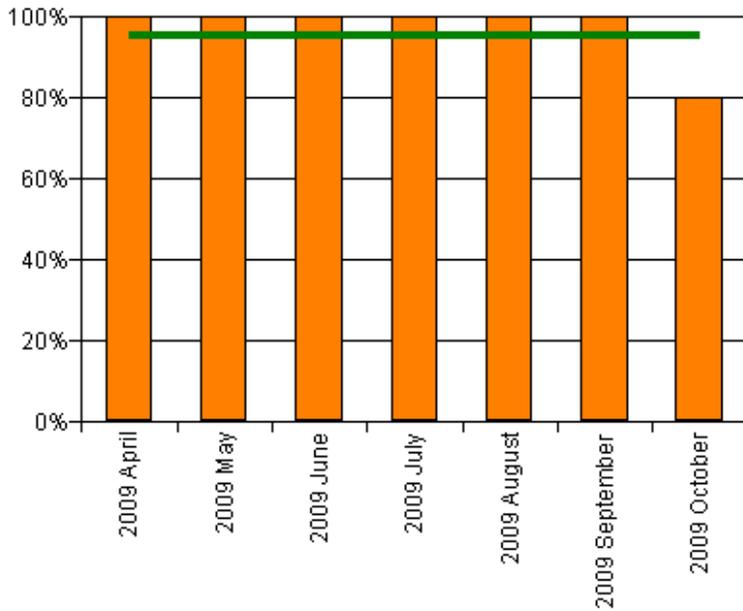
KPI: Out of Remit Correspondence < 10 Days



KPI: Positive Consumer Responses from Complainant Satisfaction Questionnaire

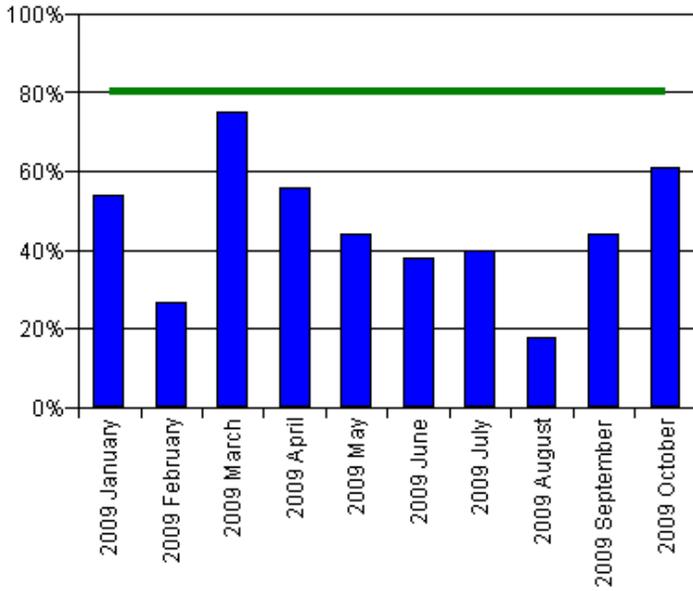


KPI: Fine Invoices < 10 Days of Tribunal Date



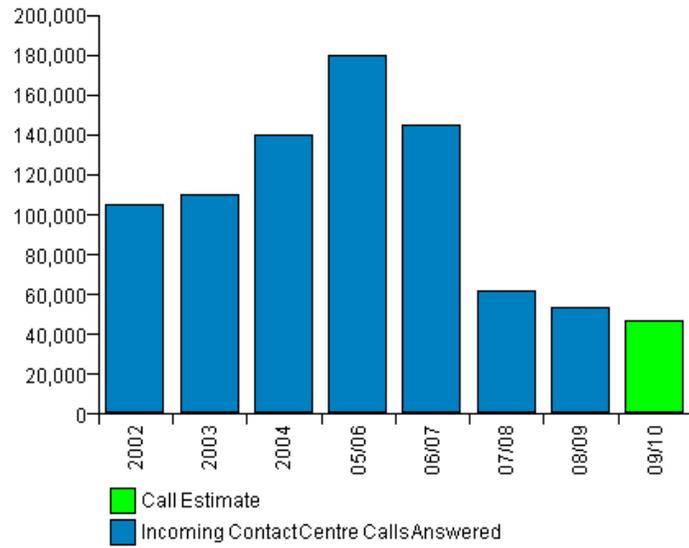
The failure to meet the KPI in October was the result of staff sickness and relates to two cases where there was a slight resulting delay.

KPI: Lead Cases Closed < 12 Weeks



We have found an increasing operational and commercial complexity in the services involved in serious breaches of the Code. This is combined with an increased level of available data and evidence, which means that to properly prepare a case for Tribunal is taking longer than has been the case in the past. Our intention to provide a new resolution process for minor noncompliance with the Code means that we should be able to focus more resource on more serious cases, bringing the overall time of investigations back into line with the standards set.

Annual Contact Centre Calls



Annual Number of Complaints

