

Review of the current PhonepayPlus Live Entertainment Services Compensation Scheme Arrangements

RESPONSE BY COM AND TEL (UK) LTD TO CONSULTATION DOCUMENT

3rd October 2008

Com and Tel (UK) Ltd wish to thank Phone Pay Plus for the opportunity to respond to this consultation document. We offer live services of all the genres mentioned; adult, non-adult and tarot/psychic and try always to take a responsible view of running our services and dealing with our users. We have been established since 1998, initially running straight forward chat services and extending this to tarot/psychic in 2003.

We aim to build traffic steadily and consistently. This means attracting regular users as well as trying to attract new calling customers who we hope will enjoy using our services and ultimately become regular users also. It is therefore important that the customers we attract are able to pay their phone bills, use their telephones responsibly and have recourse to complain, should they be dissatisfied with the service or should, for example, their circumstances change and they have any difficulty in paying their phone bill.

Through good regulation by Phone Pay Plus and a sensible line adopted by us based on these regulations, we are pleased to state that we receive only a tiny amount of complaints. This amounts to between zero and 10 calls a year, where the caller is dissatisfied with the service. These callers are either offered an alternative reading (in the case of psychic entertainment) or a rebate for the calls made. In the case where either is possible, we usually allow the customer to choose their preference. Additionally, we receive a small amount of claims for unauthorised use, some of which are genuine and some of which are not. The great majority of these come to us through Phone Pay Plus and also are of a very small number. We take all complaints very seriously. Where a customer requires calling, we will do so at our own expense and take the time to discuss the issue at hand. We then investigate and if necessary in complex cases, liaise with Phone Pay Plus to reach a satisfactory outcome. Usually this will result in a rebate offered to the complainant and the corresponding amount is deducted from the appropriate Information Provider's revenue.

As we pride ourselves on running services of the highest quality, we would prefer to run services that are 100% complaint free. We also have a very small amount of staff handling a relatively large volume of traffic and the time taken for each complaint is undesirable and costly. While we are dealing with complaints, we are unable to use this time and apply ourselves to building our business! We therefore take a proactive stance to try and avoid receiving complaints altogether in the first instance. Some measures we take are advising Information Providers on clear call charge and warnings on each promotion, clear warnings on service introductions and specific training to live operators on picking up and disconnecting callers who are underage or who do not have the bill payer's permission. We are also able to impose credit

limits or block high spending callers and will even call a telephone number of a caller who suddenly starts making high volume calls to verify that it is indeed the bill payer who is making the call and that they are aware of the call spend generated.

With a ten year history of successfully keeping claims to a minimum and dealing with them satisfactorily, Com and Tel feel that if all Service Providers take a similar stance, the compensation fund becomes redundant. There remain the possibilities of mass-scale fraud, where a customer requires a rebate and there a Service Provider has effectively taken the revenue, shut down and disappeared, but this is unlikely for Live Services, with a bonding system in place, as long as the bond amounts are reasonable and risk is properly assessed by Phone Pay Plus at application stage. There also remains the possibility of a network closing without paying the Service Providers and problems arising from this. In this case it would not necessarily be fair to expect a Service Provider to make a rebate without an inbound payment. This could be a possibility for Phone Pay Plus to consider during this consultation. To my knowledge, this has not happened in the past, but in the current market climate is always a possibility. We cannot see another reason for maintaining a compensation fund, other than such circumstances arising.

This aside, our preference is to maintain market quality for live services generally, which we believe is only possible through the continuation of the current Phone Pay Plus prior permission scheme and a bond being lodged by live Service Providers. We therefore answer the questions below accordingly.

Q1 – What evidence are you able to share to support our data and intelligence about the growth in the number of mobile phone calls to live entertainment services?

There has certainly been a considerable rise in the use of mobile phone users, although these do not constitute the majority of our calling customers. Unfortunately because of the way statistics are presented to us, we are not able to assess the exact number of mobile users compared to land-line users accessing our lines, although we would estimate this at around 20%.

Q2 – Do you or do you not favour option 1? Please give detailed reasoning where applicable.

We would agree with Phone Pay Plus and their assessment of the marketplace. We also agree that the Scheme is in need of change.

As stated in our introduction, whilst we feel that Prior Permission and the Live Service Provider being bonded is important we do agree that the Compensation Scheme would appear to be redundant at this time. This is, in our opinion, only on the condition that Prior Permission and Bonds remain in place. Service Providers must continue to show exactly how they intend to handle their promotions, run their services, record their calls and train and manage their operators as well as declaring the capacity and volume of calls they are likely to receive (covered by a declaration of the amount of simultaneous calls and lines in the Phone Pay Plus Live application process).

We can only foresee a circumstance to maintain some sort of compensation scheme, where there is the possibility of a network closing without paying the Service Providers and problems arising from this on the Service Provider repaying any claimants from revenues they have not received. We are unsure what stance Phone Pay Plus would take should this occur. Would complaining customers have to be rebated by the Service Providers if they had received no revenues and indeed, would the current Compensation Scheme allow for rebates in these circumstances?

Q3 – Do you or do you not favour option 2? Do you see the current arrangements as being the valuable ‘barrier to entry’ into this section of the industry that some providers have stated? Please give detailed reasoning where applicable.

Again we absolutely agree with Phone Pay Plus in their assessment that “it would mean leaving this side of the industry open to too much risk all at once, especially from potentially unknown new entrants with no established record who could potentially cause consumer harm and drive high levels of unauthorised use without being immediately detected by the regulator.

We do feel that current arrangements are indeed a valuable barrier to entry, which help protect the industry and the consumer. The Bond is a guarantee of commitment by the Service Provider to run his services according to his agreement with Phone Pay Plus and according to the details he has declared during the Prior Permission application process.

Q4 – Do you agree with our assessment that risks attached to this option are greater than the short-term business impact that would arise? If not, why not?

Yes we absolutely agree. The risks on Service Providers running live services (which often run at necessarily high tariffs due to operator cost) with no bonds in place are potentially enormous. Service Providers having taken no financial risk and having made no commitment other than a signature could disappear overnight. This would leave the calling customer without recourse for compensation. Small companies who are not financially stable and potentially unable to pay their customers would also be able to enter the market. The Bond therefore offers security and commitment of the Service Provider. The Bonds should reflect the size of the intended project in terms of billable traffic as well as a risk assessment based on the history of the Service Provider. We feel the initial entry level of the Bond should be high (amounts above £20,000 as indeed is the case of chat line application) to give a guarantee of commitment, protect the industry, the Consumers and give adequate protection in the case of compensation. This amount can then be reduced when a track record is proven in this field.

Q5 – Do you or do you not favour option 3? Please give detailed reasoning where applicable.

Com and Tel are open to both this option and to option 4 and we would be satisfied if either of these were chosen. Having raised the point previously of the possibility of a Network closing without paying the Service Providers and problems arising from this in terms of customer rebates, we would value Phone Pay Plus’ comments on this

before making a final decision. We would want to know what the procedure would be in the case that this arose and whether the Service Provider would indeed be responsible for making customer rebates from unpaid revenues, or if this would be a case for maintaining a compensation scheme.

Bearing in mind the reduction in claims that Phone Pay Plus has seen, (but also considering that this is not necessarily the total sum of claims, as customers can claim rebates directly through customer help lines etc) the total amount of claims is likely to run into thousands, possibly tens of thousands, but not an amount approaching the sum currently held in the Compensation Fund. We therefore feel that if Option 4 is chosen, the amount of £1500 security is a reasonable sum per Service Provider. We would like to know also what this would equate to in terms of total revenues held within the fund, should this go ahead. The costs of maintaining this fund also do not appear to be detailed, which would of course be a consideration.

Looking at this more closely, in the worst case scenario in the case of a closure of a Network, there is a possibility of almost three months real revenue going unpaid to a large number of Service Providers and Information Providers (35 day end of month standard payment means two months traffic has been generated at the time of the first non payment, plus a potential delay while services are closed) plus all future revenues lost on residual traffic and long term promotions that cannot be changed due to long deadlines. Customer complaints in this time could run into thousands of pounds with Service Providers having no resources no make rebates.

As long as Phone Pay Plus feel that the current bond system allows for this and would reasonably cover such sums, we agree that the Compensation Fund could be removed. It remains however a question in point as to whether Service providers would in fact be responsible for such rebates, should these circumstances arise and whether the Bonds are relevant in the case of non-payment by a Network?

Q6 – Do you or do you not favour option 4? Please give detailed reasoning where applicable.

Our answer is the same as it is to question 5.

Q7 – Do you or do you not favour this option? Please give detailed reasoning where applicable

We do not favour this option. we also envisage concerns arising from an enforcement perspective and agree that it may be unlikely that suitable insurance of this nature could be easily secured. We feel should this option be approved, there should be a number of "industry approved" insurances available. Phone Pay Plus should have a list of recommended Insurance Companies and should insist that Service Providers are covered by one of those on the recommended list. How keen Phone Pay Plus would be to do this is a matter for their consideration. If however, a list of recommended Companies was not made available, Service Providers would risk inadequate coverage. We also concur that a service provider could evade their responsibilities by cancelling their policy before a number of claims emerged or indeed simply by failing to keep up repayments on their policy.

We feel that this consultation is best answered by option 3 or 4 and adequate provisions can be made through the continued implementation of prior permission, bonds, the abolition of the Compensation Fund or if necessary in the case of a Network closure, a reduced Compensation Fund. We feel that Phone Pay Plus can adequately deal with this and there is no need to involve independent companies, insurance or otherwise.