

PhonepayPlus: Registration Scheme for Premium Rate Services – An interim update

13 April 2010

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Deadline for responses to item 4 a) is 25 May, 2010 and details of how to respond can be found on page 17.

Foreword

A 'pre-empt, prevent, protect' agenda is at the heart of everything we do. That is why we will shortly seek your views on a radically different Code of Practice that seeks to deliver outcomes rather than prescribe how services should operate. As long as businesses deliver these outcomes for consumers, they will be more free to design their services in a way that suits them and their customers.

One of the foundations of our new strategy is a registration scheme. A database of all providers in the industry, it will provide details of network operators, service providers and down the value chain to the content businesses that market to consumers.

The proposal is that no one will be able to contract with another premium rate business without first seeing a PhonepayPlus-designated registration number. This means all eligible providers will need to provide some basic information about their business, the directors that run it and the services they offer.

This will deliver a number of benefits to the market that we explain in this document. Providers will find it easier to carry out due diligence on their partners; consumers will be able to quickly find answers to questions about a service they have used or seen advertised; and because we will link our adjudications to businesses and their directors, rogue providers – the handful of individuals and businesses that sometimes give our industry a bad name – should have nowhere to hide.

This document comes in two parts. The first part outlines the Scheme's objectives and governing principles. At a high level, much of this has already been considered through various consultation exercises carried out by us and by Ofcom. That said, if anyone has any further information that has not yet come to light that they think would help us along the way, we'd be happy to have it.

We also outline our thinking on the Scheme's scope; the information we would require businesses to provide; and how it should be paid for. We are not inviting responses to these broader points at this stage. Instead, they will be considered as part a wider consultation around the new Code which will be published later in the Spring.

The second part of this document addresses our plans for the implementation of the scheme. It is essential, as we shall set out, that the database is not unduly delayed as it is essential to the delivery of the new Code. Furthermore, much of the industry has been calling out for such a scheme for some time, and we are keen to avoid any unnecessary hold-ups so businesses are able to take advantage of its many benefits as quickly as possible.

For that reason, we are seeking your views on implementation (Part 2) in a brief consultation lasting six weeks. This is a shorter timeframe than we usually like to offer but we believe it is important to get on with our work. I am grateful to our many stakeholders who have already participated in the development of the Scheme. I look forward to engaging with you all further during the development of this exciting step forward in the regulation of phone-paid services.

Sir Alistair Graham

Chairman, PhonepayPlus

Executive Summary

In October 2009 Ofcom published its statement on the scope of PRS regulation which included recommendations grouped around three themes:

- Making sure consumers are able to make informed purchasing decisions
- The need to provide consumers with effective redress when things go wrong; and
- Helping providers act more responsibly and so prevent consumer harm.

Throughout 2009 PhonepayPlus undertook an exercise to draft a new Code of Practice. At the heart of this are two main objectives. First, to simplify the Code, replacing detailed provisions which prescribe how certain service types can operate with an approach to regulation that instead seeks to ensure certain outcomes for consumers.

Second, to ensure that the right regulatory responsibilities sit at the right points along the value chain. Information Providers (IPs) will be held accountable for the day-to-day promotion and operation of services. Service Providers (SP), on the other hand, will be required to carry out effective due diligence and risk assessment and control on these IP clients that they contract with.

The draft Code of Practice, then, will propose distributing regulatory responsibility along the value chain. While IPs accept responsibility for the day-to-day promotion and operation of services, the SP continues to play an important part in ensuring consumers come to no harm as it must take reasonable care to ensure that only reputable businesses are allowed access to consumers via its platform.

On the basis that stakeholders agree with these proposals, this presents a number of challenges for the regulator and SPs. Foremost among them:

- PhonepayPlus must be able to find and enforce its Code against IPs, a community with which it has had little or no dealings in the past;
- SPs must be able to carry out effective due diligence on potential IP partners so that they do not fall foul of the new rules that apply to them.

Additionally, as part of its analysis Ofcom recognised the success of PhonepayPlus' Number Checker – a database that allows consumers to find out more information about a premium rate number such as its cost or customer support contact details. Some 75,000 checks are made every month, offering many consumers peace of mind about a number on their bill or putting them through to the company that can help provide redress should there be a problem.

For that reason, Ofcom recommended in the scope review that PhonepayPlus expand the Number Checker so that it helps with enquiries about almost all premium rate numbers (it currently returns information on around 85% of checks).

To meet the challenges identified above, Ofcom recommended that PhonepayPlus introduce a mandatory registration scheme for all providers.

PhonepayPlus has done detailed work on these recommendations and identified the following main objectives of such a scheme:

- To identify and hold information on relevant PRS providers;
- To provide businesses with a better understanding about the regulatory risk of partnering with other providers;

- To allow PhonepayPlus to enforce the new Code easily and effectively;
- To ensure repeat offenders (both trading entities and individuals) are readily identifiable; and
- To provide consumers and providers with an effective premium rate number checking facility.

PhonepayPlus has identified a number of principles that has informed its thinking as it proceeds with the development of the Registration Scheme (the Scheme) and the database that serves it.

- It must set out to achieve an increase in compliance;
- The Scheme will apply to all eligible providers, and deliver benefits to everyone involved in phone-paid transactions, including consumers;
- Only objective, factual evidence will be shared to help providers measure potential risk;
- The Scheme will not restrain trade for those who are entitled to provide PRS as registration will be low-cost and simple to complete;
- Benefits will be delivered in proportion to (and are likely to exceed) costs;
- The database will be secure in terms of access, data storage and stability; and
- The Scheme will be designed to cope with any increase in the number of industry participants and flexible enough to deal with changes to the market and regulatory regime.

We believe that these objectives and principles have broad industry support. It is difficult to imagine based on the needs identified by Ofcom; the responses to the consultation exercises mentioned above; and the many conversations we have had since with stakeholders across the value chain, that we need to spend more time defining the essence of the Scheme.

However, there are significant questions that remain to be answered and will be considered as part of our wider consultation on the new Code (due to be published later in the Spring). These include:

- **Who should register?** What should be the criteria by which we consider possible exemptions and based on these, which market segments do we plan to exempt from day one and why.
- **What should be registered?** What is the minimum information necessary to facilitate due diligence; allow PhonepayPlus to effectively enforce its Code; and provide consumers with the necessary details to find prompt redress?
- **How does the Scheme relate to wider regulation?** Should providers be prevented from operating services without a registration number?
- **What is an appropriate registration fee?** Should it be accounted separately or incorporated into the Levy?

The draft Code will propose that registration will be obligatory on all eligible providers, for without a registration number (provided when all mandatory information has been submitted) a company will not be allowed to contract with other providers and so will not have access to the market.

It will propose that registration applies to all providers, unless PhonepayPlus specifically excludes a particular service type. A decision to exclude would be made on the basis of the proportionality of registration for that service type, set against the regulatory and consumer benefits that would ensue. For example, a particular market segment may be considered for exclusion where it generates far fewer complaints than the industry average; where very few sanctions have been imposed against services; and where consumers have had little cause to check service numbers.

That said, should exempted providers wish to provide information about their business or services that they operate this will be encouraged and facilitated.

The draft Code will also set out that registrants are required to submit information to help providers carry out due diligence, especially when it is combined with other checks they make into potential partners. They must also provide the information necessary to allow PhonepayPlus to locate them and, where necessary, enforce its Code against them. Information Providers must also fill in contact information relevant to the services they provide, so that consumers are able to identify and contact the relevant provider in the event of an enquiry.

Some information will be mandatory and providers will not receive a registration number (and the resulting ability to operate in the market) if they do not provide it. Other information may be requested on a voluntary basis and can be offered in a spirit of transparency and goodwill to help consumers and businesses make decisions about whether to purchase from or contract with that provider.

We will propose that information provided to the scheme will not be verified by PhonepayPlus. Instead, it is the responsibility of the registrant to ensure that all information is accurate and up-to-date. If it transpires that certain data is not, the provider is likely to be found in breach of the Code and face stiff sanctions.

Access to the information contained in the scheme will be strictly controlled. While PhonepayPlus will have access to all data, registrants will only be able to see publicly available data on businesses they are considering contracting with. It will be impossible for providers to access and/or aggregate sensitive commercial information (for example, a rival's client list) and used for competitive advantage.

It is our intention that the Scheme will not reveal any information that would normally be outside the public domain (such as a director's passport number) – though the Scheme will be able to indicate whether the data kept on file matches the data held by the member making the query.

PhonepayPlus proposes to levy a modest charge for annual registration. We will be careful to ensure that the fee in and of itself is not so great as to provide a barrier to entry to the market. The charge will aim merely to recoup the cost of the scheme's development and ongoing maintenance and hosting.

There may be over time suggestions from industry and other stakeholders about potential improvements to the Scheme. We will positively consider these ideas along with opportunities we have identified to improve regulatory effectiveness.

Regarding implementation, time is of the essence if we are to deliver a robust database in time for the new Code to take effect in early 2011, and to meet industry's goal of having a scheme up and running as soon as possible to realize the myriad benefits.

However, our proposal to extend registration along the value chain may meet with opposition and Ofcom could decide not to approve the Code.

To that end, we would welcome views from stakeholders about whether or not they support our intention to carry on with the implementation of the Scheme, recognizing there is a risk (however small) that the proposed new Code might not be approved as proposed. We consider there to be strong industry support for a registration scheme, given responses to Ofcom's Scope Review and our own 2009 discussion document.

Finally, much work has already been done in preparation for the Scheme's delivery. We have conducted a thorough analysis of our own regulatory needs, and consulted an industry panel (representing a cross section of the PRS value chain) to identify the business requirements. We have also employed technical and legal consultants to ensure our tender specification reflects these requirements.

Part 1

1. Background

In November 2006, PhonepayPlus (then known as ICSTIS) published the 11th Edition of its Code of Practice that specifies obligations on Controlled Premium Rate Service (CPRS) providers around the promotion, operation and delivery of PRS. In order to discharge its duties PhonepayPlus currently uses a number of databases, including:

- SP registration database – internal to PhonepayPlus, this includes SP contact details and formal acknowledgement that they will comply with the Code;
- Number Checker database – publicly available, this allows consumers to enter a PRS number or shortcode for text/SMS numbers to ascertain information about service prices, entity names and customer service numbers;
- Records on barred directors and SPs – which is publicly available;
- Records of SPs which have permission to run certain categories of PRS;
- An internal database containing complaint details;
- Publicly available records of all PhonepayPlus adjudications on breaches of the Code since 2004;
- The Ofcom numbering database ('09' numbers); and
- A short code and keyword-provisioning database called shortcodes.com.

At the end of 2008, PhonepayPlus began to consult the PRS industry to get views on the development of a new Code and a corresponding register of all PRS industry participants. Given the growth of the PRS sector (revenues had grown from £230 million a year in 1999 to around £1 billion a year in 2008), the changing nature of service provision (mobile products were increasingly challenging traditional landline services) and the ever-increasing number of consumer complaints (more than 10,000 in 2007-08), it became clear that changes to the regulatory regime needed to be considered.

During the process participants expressed an overwhelming desire for greater transparency in the phone-paid services market, and for the creation of a level playing field within it. Many argued for a more rigorous database of the industry to achieve this. Furthermore, many stakeholders were supportive of shifting the focus of PRS regulation to make businesses responsible for the actions under their control, and in particular making IPs responsible for ensuring that the promotion and delivery of a PRS complies with the PhonepayPlus Code.

In June 2009 PhonepayPlus published the '12th Code of Practice Discussion Paper', which further emphasised the need for transparency and the requirement for a rigorous 'due diligence' procedure. This paper also considered how a register might assist in achieving these objectives. The proposals were met with near unanimous support from respondents, with many stating that such a database was essential to reducing consumer harm.

In October 2009, Ofcom published a review of PRS regulation and recommended a number of steps to improve the PRS industry. The review found that to ensure the regulatory regime "meets the needs of consumers, affords an appropriate level of consumer protection, and at the same time supports an innovative and changing PRS industry", a mandatory registration database should be implemented, with all Service and Information Providers required to register with PhonepayPlus prior to operating in the market:

“This registration scheme will be used to populate a searchable database to assist parties in carrying out due-diligence on their commercial partners, and will also support PhonepayPlus’ enforcement activities”.

Although the proposed registration database would incur some initial cost to set up, it was anticipated that the reputational benefit to the PRS industry brought about by the database – in terms of improved consumer confidence and fewer Code breaches – would more than offset this cost.

The Ofcom review also said:

*“All respondents agreed that PhonepayPlus was the most appropriate body to administer the database... [and that] PhonepayPlus should (therefore) have responsibility for the operation and administration of the registration scheme”.*¹

¹ For references, see ‘The PRS Scope Review – An analytical framework for assessing the risk of consumer harm, and steps to improve PRS regulation’, Ofcom, 28 October 2009 – http://www.ofcom.org.uk/consult/condocs/prs_scope/prs_statement/prs.pdf, pages 2 and 38 respectively.

2. New Code of Practice

PhonepayPlus has commenced drafting a new Code of Practice, the 12th edition since regulation began over twenty years ago. This time, instead of refining and revising the existing Code of Practice, we have responded to industry feedback and we are seeking to create a new, more flexible regulatory regime. The new Code of Practice will be based on a set of clear outcomes intended to deliver consumer protection, while also promoting compliance and best practice in the industry. These simple rules will be further supported by service-specific and more general industry guidance on how the Code is likely to be interpreted. The consultation on the new draft code is expected to be published in Spring 2010.

PhonepayPlus proposes to change the way it describes different businesses in the PRS value chain. They are:

- 'Network Operators' – remains the same as defined by the existing Code.
- 'Level One Provider' – currently defined as Service Provider. Any party in a PRS value chain, who is not a network, and who sub-contracts as part of a revenue-share agreement,
- Level Two Provider – currently defined as Information Provider. The last contracted party in a premium rate value chain who controls or is responsible for the operation and content of the relevant PRS (though we do not intend to regulate affiliate marketers and some others).

In reality a business may act as more than one of these defined parties in the provision of a particular service.

It is worth noting that a significant number of breaches upheld during the last few years could have been prevented by more robust due diligence coupled with risk assessment and control measures on the part of Service Providers in relation to their IP clients. Under the current Code up to May 2009, 65% of cases involved Service Providers who had breached the Code more than once. The research also shows that providers have breached the Code on numerous occasions in similar ways. Of all cases to May 2009 under the current Code, 22% contained a breach upheld against an Information Provider for the second time or more.

Where a slipshod approach to compliance has been demonstrated, the PhonepayPlus Code Compliance Panel has imposed fines and even bars on some or all of that provider's services. Enforcement then is clearly an important part of our regulatory duty. However, it is our belief that prevention and mitigation of consumer harm are of greater benefit, both to consumers and the industry, than punishment of harm after the event.

Therefore, the new Code will highlight the need for greater due diligence, followed by an assessment of risk once a client is contracted, and then an ongoing action plan to monitor and control any risk. It is this need for greater due diligence – and tools that will facilitate this work – that is one of the primary drivers for the development of a registration scheme.

3. The PhonepayPlus Registration Scheme

As we have set out above, much work has already been done to define the purpose and governance of the Scheme. We believe there was broad support among those that responded to our discussion document on the new Code and to Ofcom's Scope Review for the objectives we explain below. Ofcom's Scope Review clearly states that PhonepayPlus is best placed to build and manage the Scheme. We have identified certain principles that are based on regulatory best-practice and learnings from other similar registration and membership schemes.

However, there are significant questions that remain to be answered and will be considered as part of our wider consultation on the new Code (due to be published later in the Spring). These include:

- **Who should register?** What should be the criteria by which we consider possible exemptions and based on these, which market segments do we plan to exempt from day one and why.
- **What should be registered?** What is the minimum information necessary to facilitate due diligence; allow PhonepayPlus to effectively enforce its Code; and provide consumers with the necessary details to find prompt redress?
- **How does the Scheme relate to wider regulation?** Should providers be prevented from operating services without a registration number?
- **What is an appropriate registration fee?** Should it be accounted separately or incorporated into the Levy?

Below, we explain our thinking on each of these questions ahead of the wider consultation later in the Spring.

a) Objectives

The overarching objective of the Scheme is to prevent consumer harm by facilitating due diligence, making available details about providers and key individuals involved in the provision of phone-paid services. This due diligence, which should result in risk assessment and control mechanisms and be traceable over the lifetime of the business relationship, will take advantage of prior adjudication records to help assess that company's likely risk of harm to consumers and to the market.

It is envisaged that greater transparency in the market will reward compliant Level One and Two Providers by helping them demonstrate their good reputation to peers. It will also by contrast expose providers who repeatedly cause consumer harm. These incentives we believe will raise compliance across the industry.

In summary, PhonepayPlus' priority objectives for the Registration Scheme include:

- To identify Network Operators, Level One and Two Providers;
- To provide a better understanding of the regulatory risk of partnering with other businesses;
- To allow PhonepayPlus to enforce the Code more easily and effectively;
- To ensure repeat offenders (both companies and individuals) are readily identifiable; and
- To provide consumers and providers with an effective premium rate number checking facility.

In addition, PhonepayPlus has identified two secondary objectives:

- To minimise the administrative burden associated with registration; and

- To integrate with existing PhonepayPlus data systems to more easily provide intelligence which will then be shared with industry to aid compliance and prevent harm.

b) Principles

The Registration Scheme is based on the principle of ‘universality’; that is, the register will deliver benefits for everyone involved in phone-paid transactions, including consumers. To ensure there is no restraint of trade, PhonepayPlus will ensure that registration is relatively low-cost, simple to complete and will deliver significant benefits in proportion to its costs.

The principles of the Registration Scheme are summarised as follows:

- Regulatory effectiveness – the Registration Scheme will achieve an increase in compliance in the market and therefore prevent consumer harm;
- Universal impact – the Scheme will deliver benefits to everyone involved in phone-paid transactions, including consumers;
- Evidence-based – only objective, factual evidence will be shared among parties in the industry to assist providers in measuring risk (no subjective comment or opinion will be held on the database);
- Minimising barriers to entry – the Scheme will not restrain trade as registration will be low-cost and simple to complete;
- Cost-effective – benefits will be delivered in proportion to (and are likely to exceed) costs;
- Secure – PhonepayPlus will ensure the database system is secure in terms of access, data storage and stability; and
- Future-proofed – the system will be designed to cope with any increase in the number of industry participants and will be flexible enough to facilitate foreseeable changes to the current regulatory regime.

c) Scale

The Registration Scheme will apply at multiple stages of the CPRS value chain as a whole and will not be limited to any one element within it (for example, the Level One Provider community). Furthermore, it will be applicable to both fixed line and mobile phone-paid service providers.

As mentioned previously, the market players involved with the PRS value chain include:

- Originating Communications Providers (OCPs) – these are communications providers who offer consumers access to PRS. PhonepayPlus anticipates there are a few hundred of these, although in practical terms the top ten OCPs by market share will provide services to the vast majority of residential consumers;
- Terminating Communications Providers (TCPs) – known as ‘Network Operators’ under the new Code. TCPs have the commercial relationship with the Service Provider (SP), share with them the revenue from the cost of a call and provide the necessary network facilities to terminate the call on behalf of the SP. PhonepayPlus estimates there are around 60-70 TCPs actively involved in providing PRS services;
- Level One Provider – any party in a PRS value chain who is not a network, and who sub-contracts as part of a revenue-share agreement; and

- Level Two Provider – the last contracted party in a premium rate value chain who controls or is responsible for the operation and content of the relevant premium rate service (will not apply to affiliate marketers and some others).

While universality is a key principle of the Scheme, another is proportionality. While the benefits of the Registration Scheme should be obvious to all, it is not yet clear whether the rules will apply to all providers in the same way and whether the timing of implementation and enforcement will be the same across the industry.

For example, where a particular market segment generates far fewer complaints than the average; where very few sanctions have been imposed against services; and where consumers have had little cause to check service numbers a market segment may be considered for exclusion.

That said, should exempted providers wish to provide information about their business or services that they operate this will be encouraged and facilitated. This issue of possible exemptions will be considered in greater depth as part of the Code consultation, due to be published shortly.

d) Registration form

i. Registering the business

All providers will need to complete an online registration form to become registered on the registration database and receive an official PhonepayPlus registration number. This will in turn allow them to operate in the market, as they will not be allowed to contract with other providers without such a number. This applies even to those currently registered with PhonepayPlus – the aim is to ensure that everyone starts on a level playing field.

Once registered, in order to help businesses comply with rules governing the accuracy of information, members will be prompted to confirm their details are still accurate when logging-in. Registration terms are likely to be limited to 12 months, requiring members to log in and validate their details every year.

Those registering on the central registration database will be required to supply a range of *mandatory* information (with failure to supply meaning a registration number will not be provided, and if it is found to be inaccurate PhonepayPlus is likely to investigate the registrant on the assumption a breach of the Code has occurred). PhonepayPlus considers any registration scheme is likely to require the provision of the following information, where applicable. As discussed, stakeholders will have the opportunity to comment on these and suggest other categories of information through the upcoming consultation on the new Code.

- Business name;
- Companies House number (or foreign equivalent);
- Trading name(s);
- Previous name(s);
- Parent company(ies) with its/their Companies House numbers (or equivalent);
- Previous parent company name(s)
- Nominated company director's address;
- Company address for receiving written instructions and regulatory contact number; and
- The date the business was incorporated.

Those registering will also be able *voluntarily* to supply further information, such as:

- Business bank account details (must be in EU);
- Directors' dates of birth;
- Other contact details (for purpose of investigations; finance; general);
- Category of provider (TCP, Level One, Level Two);
- Size of company (by employee number);
- Directors' passport numbers; and
- Directors' origins – EU or non EU.
- Link to website; and
- Entity branding for registration page.

Once the information has been registered satisfactorily, the Scheme will then generate a unique Registration ID for each member. Other providers will need to request and make a note of this before contracting with the party.

ii. Registering services

Consumers of PRS benefit greatly from a facility to find out more information about a premium rate number, such as its cost or customer support contact details. Some 75,000 checks are made using the existing PhonepayPlus Number Checker every month, offering many consumers peace of mind about a number on their bill or putting them through to the company that can help provide redress should there be a problem.

The current Number Checker provides information on some 85% of PRS numbers. In order to expand this service to include almost all PRS numbers as Ofcom has recommended, providers must be able to populate their own service information rather than relying on PhonepayPlus to do so on their behalf as is currently the case. In particular, the Registration Scheme will require all Level Two Providers to do this on a mandatory basis, unless otherwise stated.

If the Level Two Provider does not populate the service information (and is therefore likely to be in breach of the Code), the Registration Scheme will automatically populate the service information with the details of the relevant Terminating Communications Provider (TCP) – as identified by Ofcom's number allocation database – or that of the 'Aggregator', from shortcodes.com.²

It will be important, therefore, for TCPs and aggregators to ensure their partners correctly populate and maintain information on the number ranges for which they have taken responsibility. The Registration Scheme will make it as easy as possible to do this. As an added complication each mobile shortcode number can have more than one service registered on it. If a number shares multiple providers, each would have to register their interest and ensure the aggregator – whose contact details will be returned to the consumer – is able to quickly forward on enquiries to the right organization.

Mandatory information fields may include and, again, will be subject to views as part of the wider Code consultation:

² 'Aggregators' here are Service Providers ('Level Two' providers under the new Code of Practice 12) which marry access numbers to service content and provide technical support facilities, including usage statistics and billing information, to take the service to consumers.

Short codes, or short numbers, are special telephone numbers, significantly shorter than full telephone numbers, that can be used to address SMS and MMS messages from mobile phones or fixed phones.

- Consumer-facing premium rate number (and keyword);
- Service name;
- Name of the business providing customer care; and
- Customer care number;

In addition, a provider may choose to include additional information about the service to help resolve a customer enquiry at the earliest possible moment. For example, they might feed in the name and type of service, tariff, type of content (e.g. adult, etc), and a free-form field for providing a more detailed description, or to alert customers to particular issues in real time.

e) Governance

i. Background

Many responsible providers have for some time championed the potential for a Scheme to make it more difficult for problem providers to mislead consumers, thus bringing down the cost and burden of regulation for compliant providers that make up the majority of the market.

During 2009, there was some discussion with industry (represented particularly by the Association for Interactive Media and Entertainment) over the scheme's governance: who would build it; how would it be funded; would it generate revenue and, if so, for whom; and how would future development decisions be taken.

Many of these questions have been answered by Ofcom in the Scope Review as explained in the background section of this document. It was proposed, and then agreed, that PhonepayPlus should build and run the Scheme. Given that we are a not-for-profit organization, it follows that the primary purpose of revenue generated by the scheme is to recoup the initial development costs. Ongoing registration fees should be designed such that they pay for the essential maintenance of the scheme along with the running costs associated with it.

PhonepayPlus fully understands and appreciates the need to reassure industry that potential enhancements that would deliver operational benefits to industry – i.e. process efficiencies and cost-savings – will be fully considered, assessed and, where appropriate, acted upon. To that end, once the scheme is up and running and delivering its regulatory agenda we will expect our Industry Liaison Panel to advise us on any potential enhancements and how they might be achieved.

ii. Funding

As discussed, the sole purpose of any revenues generated by the scheme would simply be to recoup the initial development costs, with ongoing registration fees designed to pay for the essential maintenance of the Scheme and the running costs associated with it.

Were any surplus to be built up over time as a result of registration fees, PhonepayPlus would consult with Ofcom and industry as to its best use.

iii. Use and Security of Data

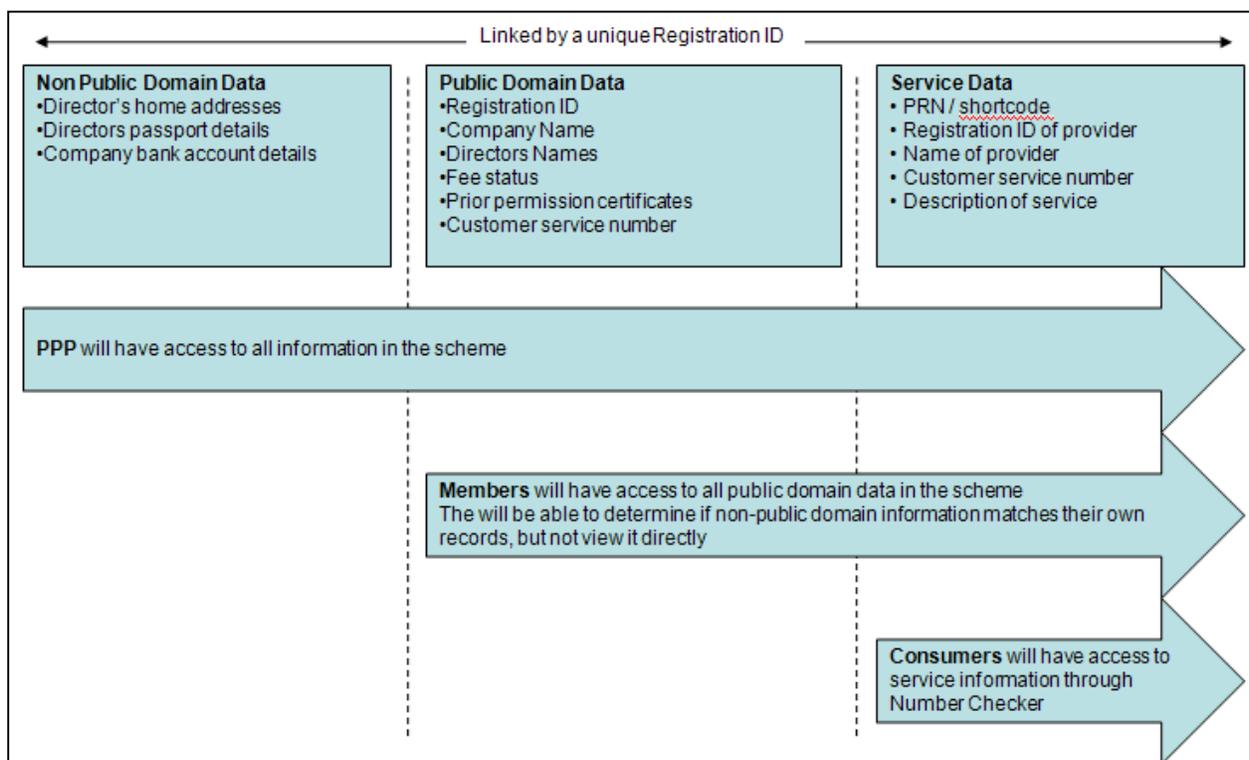
The overwhelming majority of data captured through the Registration Scheme will be information already in the public domain. However, out of practical necessity some information (such as passport information

or bank account details where volunteered, and commercially sensitive prior permission certificates) will need to be privately held.

A governing principle of the Scheme is that all information must be stored and displayed appropriately. This means providing access securely to users and allowing providers to determine the level of voluntary information they choose to share with their peers. This also means that the highest levels of security must be built in to the scheme in order to minimise the risk of any data being accessed inappropriately.

PhonepayPlus' use of provider data will be fully transparent and accountable to users and this policy will be brought to the attention of users upon initial registration. This use of data will not change without full consultation with industry and will remain fully compliant with the law.

It is envisaged that the Scheme will operate by allocating a unique Registration ID to every entity in the PRS value chain, with access to data available as per the table below.



PhonepayPlus will:

- Be able to access all data in the Registration Scheme, with registrants able to access publicly available data to facilitate due diligence, especially when combined with other checks they make into potential partners;
- Ensure the Registration Scheme will not make public any information that would normally be unavailable in the public domain (such as a company director's passport number). Instead the scheme will be able to indicate whether the data kept on file matches the data held by the member making the query; and

- Ensure members will not be allowed to simply access all the contents of the database in order to search for potential customers or to gain some other commercial advantage – for example, the database will not allow a member to search for the customers of another member.

Level One and Two Providers should be able to see the following information about other members:

- Publicly available information provided during registration;
- Sanctioned compliance advice; and
- Relevant adjudications.

Additionally, PhonepayPlus intends to make the following available to members about their own business and services:

- Aggregate complaint volumes and Number Checker search reports; and
- Industry consultations and notices pertaining to the relevant market segment.

Finally, it is assumed that data will be retained for five years and then archived.

Part 2

4. Implementation

a) Matter for consultation

As we have seen, there was broad support for a registration scheme in responses to PhonepayPlus' discussion document on a new Code published in June 2009.

AIME, an industry trade body, called it an "essential requirement". BT commented that a registration scheme "that lists all players, with contact details and the service they provide, along with access to relevant prior permissions would be a big step forward".

MX Telecom, a service provider, responded that such a scheme "represents the single most effective means of fostering compliant services and consumer protection". AQA 63336, a content provider, also signaled its support.

Respondents to Ofcom's Scope Review also set forward their view that PhonepayPlus was best placed to govern and manage the scheme. Ofcom's statement says that: *"All respondents agreed that PhonepayPlus was the most appropriate body to administer the database... [and that] PhonepayPlus should (therefore) have responsibility for the operation and administration of the registration scheme"*.³

There is, then, near unanimous support from those stakeholders that have provided substantive comments to date for the scheme and PhonepayPlus' role in running it. Furthermore, many industry commentators have explained the need for such a database to be up and running as soon as possible, so they are better able to carry out effective due diligence on their partners. Consumers, too, make good use of the existing Number Checker (there are currently c. 75,000 checks per month) so it stands to reason that they should have access to an enhanced Number Checker as part of the Scheme as soon as possible.

From a regulatory point of view, it is essential that the database is in place, and the Scheme in operation, by the time the new Code comes into force.

As we explain below, much work has already been done on the Scheme. However, there is much more yet to do. We believe we must carry out the tender process within the next couple of months if the database is to be built, tested and refined in time.

Risk management

One of the foundations of the new Code is our proposal to directly extend regulation to content providers (known as 'Information Providers' under the current Code and Level Two Providers in the next), making sure that regulation targets the most appropriate provider in the value chain. We propose that Level Two providers take responsibility for the promotion and operation of their services and provide prompt customer redress where required.

While Level One Providers will no longer be responsible for the promotion and operation of services, they will instead have the requirement to carry out effective due diligence on Level Two Provider partners, and to have effective risk management and control systems in place.

³ For references, see 'The PRS Scope Review – An analytical framework for assessing the risk of consumer harm, and steps to improve PRS regulation', Ofcom, 28 October 2009 – http://www.ofcom.org.uk/consult/condocs/prs_scope/prs_statement/prs.pdf, pages 2 and 38 respectively.

In order that we are able to enforce the Code effectively, and to facilitate due diligence, registration will need to be extended along the value chain to include Level Two providers.

As we have said, we consider that respondents will endorse these proposals. At every step, from Ofcom's Scope Review to our discussion paper (which set out the direction of travel for the new Code) respondents have signaled their firm support.

However, we must bear in mind the possibility that our proposal to extend registration along the value chain may meet with opposition by respondents. If that is the case, and Ofcom decides not to approve the Code, we will not be able to require Level Two providers to register on the new database.

To that end, we would welcome views from stakeholders about whether or not they support our intention to carry on with the implementation scheme, recognizing there is a risk (however small) that the proposed new Code is not supported by respondents, and therefore not approved by Ofcom.

Do respondents agree that PhonepayPlus should continue with the implementation of the Scheme to meet the timing requirements detailed above?

Where possible, comments should be submitted in writing and sent by email to sbates@phonepayplus.org.uk by no later than 25 May 2010. Copies may also be sent by mail or fax to:

Simon Bates
Director of Standards & Communications
PhonepayPlus
1st Floor, Clove Building
4 Maguire Street
London SE1 2NQ
Tel: 020 7940 7474
Fax: 020 7940 7456

If you have any queries about this consultation, please telephone or email Simon Bates 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.

b) Ensuring a cost effective solution that is fit-for purpose

Establishing appropriate business requirements is the most important step in any implementation project. We have undertaken an extensive internal review of processes and data-flows to establish and prioritise the regulatory benefits that a new Registration Database might allow. This process began in September 2009 and was led by consultancy firm Blueprint Ltd and based on an industry standard “use-case” methodology. We also consulted a panel representing a cross-section of the PRS value chain to assess businesses’ view of what the Scheme should deliver.

Charteris, a consultancy with extensive experience in developing similar registration and membership schemes, are providing specialist technological oversight to ensure that the regulatory and business requirements we have worked alongside industry to identify are translated into an adequate functional specification.

Our responsibilities under the Data Protection Act have been fully considered and weighed. We are also mindful of the requirement to maintain the confidentiality of sensitive commercial information. A pre-requisite of any successful tender will therefore be the ability to demonstrate robust security protocols.

The implementation and running costs of the Scheme are likely to be of significant interest to stakeholders. Until we have completed the tender process though, we will not be in a position to give an accurate idea of these costs; even an indicative figure is difficult to provide at this stage given the many options available. For example, an off-the-shelf database (a configurable version of an existing product) could be significantly less expensive than a bespoke design built from scratch to meet our precise needs.

We aim to spend £125,000 on professional services (technical consultancy and legal advice) by the time the Scheme is delivered. The database itself will cost no more than £750,000 to build though this amount could be significantly lower. Ongoing maintenance and hosting costs will be no more than £150,000 per annum; again, this figure could well be revised downwards.

Wherever possible we will – and we will instruct our advisors to – make sure costs are kept to a minimum. We aim to provide an update on more precise project build costs following the tender process.