



**PhonepayPlus**  
**A Three-Year Strategic Plan – 2011/14**  
**Draft for Consultation**

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## About PhonepayPlus

Under the Communications Act 2003, Ofcom has responsibility for the regulation of premium rate services (PRS). These are the premium rate goods and services that you can buy by charging the cost to your phone bill and pre-pay account. PhonepayPlus carries out the day-to-day regulation of the PRS market in the UK on Ofcom's behalf through its Code of Practice.

Premium rate services operate on the 09, 118 and 0871/2/3 non-geographic number ranges. PhonepayPlus also regulates chargeable mobile text shortcode numbers – the five- and six-digit numbers used to enter competitions, download mobile content or give to charity via text – and we have also taken action against rogue services operating on the 070 number range.

We focus on pre-empting and preventing problems – the key, we believe, to effective long-term consumer protection. We regulate services using our Code of Practice. This sets out the rules with which all providers of phone-paid services must comply. Among other things, we require:

- clear and accurate pricing information;
- honest advertising and service content;
- appropriate and targeted promotions.

We investigate consumer complaints about phone-paid services. Where we decide that our rules have been broken, we can fine the company responsible, bar access to its services and even bar the individual behind the company from running other services under a different company name. Our investigations and adjudications service is free to consumers and fully independent from industry.

PhonepayPlus also undertakes consumer research to inform the development of its Code of Practice and to further understand consumers' engagement with phone-paid services.

# 1 Executive Summary

PhonepayPlus published its first Strategic Plan covering 2008/11 in 2007. The objectives of this first Plan included developing a more proactive approach to consumer protection through building effective relationships with the industry. The aim of this industry outreach was to increase compliance with regulation through better understanding on both sides and also to ensure PhonepayPlus' work was informed by the needs of industry.

This strategic approach has led to significant improvements in the levels of consumer complaints about Premium Rate Services (PRS) and has reduced the level of serious consumer harm in the market. Engagement with the industry has also led to the development of a new, more targeted regulatory framework comprising of a flexible, outcomes-based Code of Practice and an industry Registration Scheme, both launching in 2011.

With the current Strategic Plan reaching the end of its life, PhonepayPlus has developed a new Strategic Plan for 2011/14. This document sets out the key elements of the Plan for consultation with stakeholders, before the final Plan is published later in 2010.

## Vision, Mission and Values

### ***Our vision***

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

PhonepayPlus is minded to maintain its current vision statement for the new Strategic Plan, as it feels this still effectively describes its role. However, the current mission statement is seen as unnecessary and so it is planned to replace this with a simple description of PhonepayPlus' main activities.

As a body carrying out public duties, our values should support our vision and provide a framework for us when carrying out our activities. The current values for the organisation are to be:

**Effective**

**Accessible**

**Independent**

**Collaborative**

**Principled**

**Confident**

We feel it is timely to review these values to see if they still underline the priorities for the organisation. Following discussion, the PhonepayPlus Board believes that the values "Independent" and "Confident" no longer need to be set out in this way. PhonepayPlus' independence is guaranteed by the Communications Act and Ofcom are required to ensure that is the case when approving our Code, so we feel it is unnecessary to include this as a value. The Board also feel that PhonepayPlus has demonstrated it carries the confidence of its key stakeholders, so a value setting this out is no longer necessary.

However, we feel that we should add two new values to this list:

### **Efficient**

We will continually strive to deliver our activities efficiently, challenging ourselves to find new ways of working and improved systems and processes that reduce the costs of regulation without undermining the quality of the protection we offer consumers.

Over the last three years PhonepayPlus has succeeded in reducing its budget by around 9% in real terms, but we are not complacent about the costs of regulation to industry and will continue to challenge ourselves further in the coming years.

### **Transparent**

We will aim to share all relevant information on activities and will respond to all reasonable requests for such information. We will always be open and transparent in our dealings, unless in doing so we would undermine our regulatory effectiveness or breach the rights of others to confidentiality.

PhonepayPlus already aims to act in an open and transparent manner in the way it operates. However, we feel we can share more information with the public and stakeholders about some of our work. Our default position will always be to share information unless there is a compelling reason why we cannot.

We believe these changes to our values will provide a clear framework against which to measure our approach and performance. These values will inform our approach to further developing PhonepayPlus as a modern regulator, working in partnership with industry to deliver positive outcomes for consumers.

## **Objectives and Strategies 2011/14**

The objectives set out below are designed to underpin the next stage in the development of PRS regulation, building on the shift to proactive actions developed over the last three years. PhonepayPlus is putting in place new processes and structures that will mean we can better protect consumers by closer working with the industry. Together with the new Code and industry Registration Scheme, this will help us build-in compliance to premium rate services so that the potential for consumer harm is minimised.

### **Objective 1**

#### **Launch and successfully implement the new Code of Practice and industry Registration Scheme, creating a flexible, fair and proportionate regulatory regime for the Premium Rate Services sector.**

The new Code of Practice has been designed to allow PRS providers to run their services flexibly, as long as they achieve compliance with six outcomes designed to offer consumers effective protection from harm. The new Code removes many prescriptive and service-specific rules in the current Code to help achieve this flexibility. For providers that would like further clarity on what is expected from them in terms of good practice and compliance, PhonepayPlus will issue Guidance to support the Code that will be developed in conjunction with industry to meet this need.

The new Code extends responsibility for regulation throughout the value chain. Those providers who have responsibility for the promotion, operation and content of the PRS will be responsible for ensuring the consumer outcomes are met. Providers who form part of the value chain from the premium rate service through to the consumer will be responsible for

carrying out due diligence checks and ongoing risk assessment and monitoring on their business partners.

The second major change, which is closely allied to the new Code, is the introduction of a mandatory industry Registration Scheme for all providers of PRS. This Scheme, which is widely supported by industry, will both ensure that the new Code can be effectively enforced throughout the value chain and will also assist providers in carrying out due diligence checks.

## **Objective 2**

**Work with the industry to build in compliance to all emerging and developing premium rate phone-paid services. Drive-up overall levels of compliance in the market through strategic use of monitoring and increased use of informal resolution of minor Code breaches.**

We plan to develop a suite of guidance materials for industry, improving our online advice and promoting the free compliance advice service with Level 2 providers as they come under direct regulation of the new Code of Practice (these are the providers who are responsible for the content, operation and promotion of a PRS).

Building in compliance to services will ensure that most consumer harms never occur and over time this will build consumer trust in PRS, encouraging more merchants to use the payment mechanism.

We have been developing smarter monitoring tools and improving our strategic approach to service testing over the last year and we believe this has had a significant impact on our ability to manage market risk. We have also been able to spot and resolve some serious Code breaches before they have caused major consumer harm.

## **Objective 3**

**Increase the quality of intelligence about the phone-paid services market and its consumers through more effective use of internal and market data, supported by targeted research, to better inform the development of the Code of Practice and to better target enforcement action.**

PhonepayPlus is committed to basing its regulatory actions on clear evidence. This is important not only in terms of ensuring that limited resources are put to most effective use, but also to ensure that any action we take is proportionate to the level of harm or risk to consumers.

Progress was made this year in better analysing our internal sources of data, such as network returns and consumer complaints, to ensure we make best use of this valuable intelligence. We believe our industry knowledge will be further strengthened by the introduction of the industry Registration Scheme, which will provide the clearest data yet on the numbers of providers in the market and the number of PRS in operation.

We use bespoke research to augment this material or to fill in gaps in our knowledge on the industry or consumers' behaviour. We have been increasingly successful over the last year in targeting our research with PRS consumers, in particular some hard-to-reach groups, such as virtual chat customers and users of adult services. We want to build on this approach to ensure we better understand consumer behaviour and experience of PRS and consider this appropriately when taking regulatory action on consumers' behalf.

## **Objective 4**

### **Work with industry to assist consumers of phone-paid services to increase their ability to safely and confidently use premium rate services.**

PhoneyPayPlus exists to ensure consumers are able to use premium rate phone-paid services with confidence. We believe this is best delivered by working with the industry to achieve compliance with our Code of Practice. However, we also believe there is a need to communicate directly with certain groups of consumers, particularly those who may be vulnerable to harm when using PRS, to provide them with information that will empower them to make confident choices in their use of services.

We have begun to develop a strategy for 2011 and beyond in this area. We recently set up a group of experts from industry, regulators and consumer groups to advise on how to best target our limited resources to have the greatest possible positive impact for consumers and, through enhancing consumer trust in PRS, the industry itself.

## **Objective 5**

### **Deliver effective and efficient regulation for the premium rate services sector through smarter use of resources and further investment in building the knowledge and skills of PhoneyPayPlus staff.**

PhoneyPayPlus made a commitment in its current Strategic Plan to reduce the costs of regulation by up to 10% in relation to the size of the market regulated. We understand the importance of being efficient and effective, given we are funded by a levy on industry. We have achieved real terms cost reductions of around 9% over the last two years, while also taking on regulation of a new market sector (0871/2/3), developing a new Code of Practice and delivering a 52%<sup>1</sup> fall in consumer complaints.

As we move into the next cycle of business planning in the autumn, which will be framed by this Strategic Plan, we will be forensic in testing every budget line and every resource to ensure we are balancing the need to be effective with the requirement to deliver value for money. While we do not want to give a commitment on reductions at this stage, we plan to set out a properly reasoned and costed projection of our costs over the next three-year period in our Business Plan consultation at the end of 2010. We therefore feel it is appropriate to ask for stakeholders' views and comments at that stage, when we are able to set out our proposals and supporting evidence in full.

## **Next steps**

This Strategic Plan sets out a number of questions for stakeholders, which are summarised in Chapter 6. The consultation period for the plan ends on 12 November 2010, information on how to respond can also be found in Chapter 6.

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<sup>1</sup> PhoneyPayPlus Annual Report 2009/10

## 2 Our Vision and Mission

The purpose and role of PhonepayPlus as a regulator of premium rate services was set out as part of our first Strategic Plan covering 2008/11. The current Vision and Mission statement is set out below. In our consultation on our Business Plan for 2010/11<sup>2</sup> we asked stakeholders to comment on whether these statements still described the principles for regulation in the premium rate services sector or if they needed further development.

### **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.

In our final statement on the Business Plan for this year<sup>3</sup> we set out the responses received. There was broad agreement that the purpose and role set out in the Business Plan document contained the basis for a new Three-Year Strategic Plan for PhonepayPlus. However, respondents raised a number of issues they felt needed to be considered as part of the development of the new strategy.

Some respondents raised the issue of the scope of PRS regulation, including whether there was enough clarity over what services fell within PhonepayPlus' remit. Ofcom has responsibility for setting the scope of PhonepayPlus' regulation through clarifying which services that meet the legal definition of PRS should be regulated under the PhonepayPlus Code of Practice. In its statement on the review of the scope of regulation for PRS in October 2009, Ofcom set out an analytical framework that could be used to determine whether a service falling within the legal definition of PRS, as set out in the Communications Act 2003, should be a controlled PRS and therefore subject to PhonepayPlus' regulation. Ofcom has stated that it intends to apply the analytical framework to PRS where the status quo may not be sufficiently protecting consumers, or where regulation may no longer be necessary. Ofcom are minded to carry out the first such review this year, to determine whether the mobile payment mechanism Payforit and "on portal" mobile content services should be subject to PhonepayPlus regulation.

There were views that PhonepayPlus could take its aim to pre-empt and prevent consumer harm further by closer working with industry and using new technologies to detect non-compliant services. This draft strategic plan sets out how PhonepayPlus plans to extend pre-emptive and preventative regulation, while recognising that for this to be truly successful it will need strong support from industry.

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<sup>2</sup> The consultation, which has now closed, can be found here:  
<http://www.phonepayplus.org.uk/upload/Business%20Plan%20and%20Budget%202010-11%20-%20Final.pdf>

<sup>3</sup> <http://www.phonepayplus.org.uk/upload/2010-2011-Budget-Statement.pdf>

It was also felt by stakeholders that PhonepayPlus should also be aware of convergence and developing technologies when drawing up its new strategy. We have taken this on board and have endeavoured to ensure that regulation keeps pace with developing technologies and services in the sector, a key reason why we are currently reviewing our Code of Practice to create a more outcomes-based, flexible regulatory framework.

Some stakeholders questioned PhonepayPlus' role in consumer education, with the view that this could be delivered by Ofcom and the industry. Although we are committed to developing our consumer literacy work, we recognise that more could be achieved here through closer working with industry and partnership working in this area forms part of this strategy.

There was also the sense that the current enforcement regime was having a detrimental impact on investment in the UK market. 2009 was an exceptional year for our enforcement action, in terms of the fines levied against the industry by our independent Tribunal. However, the industry has repeatedly asked for the regulator to more effectively target those providers that cause consumer harm and taint the market for the whole industry. We continue to carefully assess our enforcement activity to ensure we are acting proportionately, but we are also committed to driving-out consumer harm from the PRS market.

Having reflected further on the current vision and mission statement, we believe the vision statement still encapsulates neatly the purpose and role of PhonepayPlus and should be retained for the new Strategic Plan.

However, we also feel that the mission statement is unnecessary and could be replaced with a simpler statement of PhonepayPlus' activities on behalf of consumers and industry. We therefore plan to remove the mission statement from the new Strategic Plan and our website in due course.

**Q1. Do you support the retention of the PhonepayPlus vision statement for the new Strategic Plan? Are there other elements of our role that you feel should form part of our vision statement? Are we right to replace our mission statement with a simple description of our activities?**

## **Our values**

As a body carrying out public duties, our values should support our vision and provide a framework for us when carrying out our activities. Our current values are:

### **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.

The values set out above also form part of the current PhonepayPlus Strategic Plan. We feel it is timely to review these values to see if they still underline the priorities for the organisation. Following discussion, the PhonepayPlus Board believes that the values “Independent” and “Confident” no longer need to be set out in this way. PhonepayPlus’ independence is guaranteed by the Communications Act, which requires any body operating a Code of Practice to regulate premium rate services to be independent from the industry. Ofcom are required to ensure that is the case when approving our Code, so we feel it is unnecessary to include this as a value. The Board also felt that PhonepayPlus had demonstrated it carries the confidence of its key stakeholders, so a value setting this out was no longer necessary.

However, we feel that we should add two new values to this list:

### **Efficient**

We will continually strive to deliver our activities efficiently, challenging ourselves to find new ways of working and improved systems and processes that reduce the costs of regulation without undermining the quality of the protection we offer consumers.

We recognise that the world economy is facing challenging times and the PRS market is not immune from this. Over the last three years PhonepayPlus has succeeded in reducing its budget by around 9% in real terms, but we are not complacent about the costs of regulation to industry and will continue to challenge ourselves further in the coming years. We look at this in more detail later in this document.

### **Transparent**

We will aim to share all relevant information on activities and will respond to all reasonable requests for such information. We will always be open and transparent in our dealings, unless in doing so we would undermine our regulatory effectiveness or breach the rights of others to confidentiality.

PhonepayPlus already aims to act in an open and transparent manner in the way it operates, however we feel we can go further in some areas to share information with the public and stakeholders on our work. We do not currently fall under the auspices of the Freedom of Information Act, but we recognise that as a public body in law we should aim to meet the spirit of that legislation. There are occasions when we will need to hold back information, for example if it might prejudice regulatory enforcement action we are taking or where it is

commercially confidential information from an industry stakeholder to which we have access. Our default position will always be to share information unless there is a compelling reason why we cannot.

We believe these changes to our values will provide a clear framework against which to measure our approach and performance. These values will inform our approach to further developing PhonepayPlus as a modern regulator, working in partnership with industry to deliver positive outcomes for consumers.

**Q2. Effective, Accessible, Collaborative, Principled, Efficient and Transparent. Do you agree that these values create the right framework for PhonepayPlus as a modern regulator? Are there other values you think PhonepayPlus should consider adopting that would further strengthen its aims to be an open, responsive and flexible organisation?**

### 3 Review of Strategic Plan 2008/11

A Strategic Plan is not meant to predict the future, but rather to set a logical course for development of an organisation based on the best available information at the time it is produced. Reviewing our delivery against the objectives set three years ago, we have been very successful in delivering many of the targets we set ourselves, while others were not fully met, often because the world and market we regulate have changed. This review aims to highlight both the successes and the learning points from the objectives in our first Strategic Plan.

In PhonepayPlus' Three-Year Strategic Plan 2008/11, we set ourselves an overarching objective:

'Anyone can use phone-paid services with absolute confidence'.

This objective has driven our work over the last few years and remains the Vision statement of the organisation. When we planned our three-year strategy in 2007, this objective helped to switch our focus from reactively addressing consumer harm to more proactively aiming to pre-empt and prevent harm occurring at all. This approach aimed to embrace both industry and consumers, helping providers to develop compliant services that deliver positive outcomes for consumers.

We developed five objectives for the Strategic Plan and below we reflect on our performance against them in the last three years.

#### **1. Providing effective and proportionate regulation to the industry based on research, risk assessment, market understanding and strategic intervention**

The introduction of the new Code of Practice in 2011 is a big step forward in our aim of providing effective and proportionate regulation to the industry. The new Code will be the framework we need to deliver the more flexible and adaptable regulation that we set out to achieve in 2007.

Informing the new Code are the conclusions of Ofcom's PRS Scope Review published at the end of 2009. One of the main recommendations of the Scope Review was the introduction of a mandatory registration scheme for the PRS industry, with all participants in the sector being required to register their businesses with PhonepayPlus. This recommendation has been adopted and, following wide consultation with industry, the launch of the Registration Scheme is scheduled for spring 2011, coinciding with the launch of the new Code.

The registration of providers and the extension of regulatory responsibilities along the entire PRS value chain mark a significant departure from the statement in our Three-Year Strategic Plan 2008/11: 'we believe our regulations should remain principally focused on the service providers'. However, our experience of investigating Information Providers under the 11<sup>th</sup> Code of Practice and our engagement with the industry suggested that regulation would be more effective if we were able to target compliance action at the part of the value chain where the non-compliance had occurred.

In line with our objective of pre-empting consumer harm we have developed our monitoring and research capability, these functions now sitting under the umbrella of the Intelligence Team. The activities of the Intelligence Team feed into our Quarterly Reports and form the basis of our Market Risk Register, the mechanism by which we track potential problems in

the market and progress in solving them. The Market Risk Register is discussed at regular intervals internally and any actions required to mitigate risks are taken.

## **2. Securing higher levels of compliance within the industry through incentives, the consistent and high-performance application of our Code and raising compliance standards**

In the Three-Year Strategic Plan 2008/11 we promised to deliver an independent, effective and high-performance Code Compliance Panel (CCP). Now in its second year, the CCP has established itself as an independent arbiter of cases brought to Tribunal and has, in separating the functions of PhonepayPlus' Board from Tribunal decisions, reinforced the transparent and fair principles that underpin enforcement of the Code and our adjudications process. For example, in 2009/10, only 5% of cases heard by the Tribunal had some aspect reviewed.

Our Industry Affairs Team has developed strong links with industry stakeholders, with requests for compliance advice significantly increasing and frequent updates and advice issued to industry via online publication of Notices to Industry, Help Notes and newsletters. The introduction of the Complaint Resolution Team in 2010 was a notable step towards working closer with industry to resolve problems for the consumer in the most effective and efficient way possible.

## **3. Ensuring the public are better informed about the services we regulate, our role as the regulator and their rights under regulation**

We have made great strides in the last three years in consumer literacy. Our schools project, PhoneBrain, won a national sponsorship award and engaged thousands of students in learning about the premium rate services we regulate and what compliant services should look like. We continue to develop cost-effective, targeted and informative consumer literacy campaigns.

With the re-launch of our website we had the opportunity to provide consumers with more information online. Our Number Checker service now returns information on 93% of premium rate shortcodes and we hope to improve this further once the industry Registration Scheme is in place. We regularly publish advice and information for consumers in a variety of formats, from FAQs to informative and entertaining videos. We have also connected with the public via social media, contributing to blogs where appropriate and issuing regular Twitter feeds.

In 2010 are taking steps to consolidate our partnership working with relevant consumer groups, by setting up a Consumer Literacy Working Group, with both industry and consumer group representatives.

## **4. To be more transparent and accountable**

In the last three years we have striven to be more accountable to our stakeholders, whether they are the consumers we aim to protect and inform or the industry that funds our work.

In 2009 we commissioned an independent stakeholder audit that gave us insight into how the industry we regulate views us and our work. While the feedback was mainly very positive and supportive, some concerns were raised, particularly in relation to perceptions of transparency and openness.

Steps we have taken to improve industry understanding about our operations and procedures include the publication of a quarterly report on key performance indicators and other business objectives. We are currently undertaking a unit-costing exercise to give added transparency to our expenditure. We are also designing publications and information packs that clearly explain our procedures, including complaints, investigations and Tribunals.

In 2010 we appointed an independent Lay Assessor and introduced a written policy in relation to complaints about PhonepayPlus, reinforcing the fact that we aim to be an accountable, responsible regulator willing to learn from mistakes and improve our performance.

We continue to enjoy excellent relationships with other regulators, particularly Ofcom, who we work closely with on matters of mutual interest.

## **5. Ensure resources are fit for purpose**

To do our job properly and deliver effectively to all our stakeholders we need to ensure that we have the right staff and the right systems, capable of coping with a fast-paced, technology driven industry.

The introduction of the Registration Scheme in 2011 will assist greatly in collecting accurate data and delivering efficient working practices and business processes.

In parallel with refining our business processes, we have looked hard at our expenditure budget, making efficiencies where we can and ensuring that we deliver best value to industry, particularly where the levy is concerned. Our costs are now around 9% less in real terms than they were three years ago, despite taking on the regulation of 0871/2/3 numbers. We have stabilised the unadjusted levy rate at consistently under 0.8% and when we could deliver a lower adjusted levy rate (the rate industry members actually pay) through the collection of fines etc. we have done so, with the discounted levy rate<sup>4</sup> in 2010/11 being just 0.21% of premium rate service outpayments, the lowest rate for several years.

The people who deliver PhonepayPlus' objectives – our staff – are critical to our success. Our HR policy over the last three years has attracted and developed considerable talent and we aim to work ever closer with industry and other stakeholders to train staff and keep pace with developments in the market.

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<sup>4</sup> The levy paid by the industry is discounted by fines and other income collected by PhonepayPlus throughout the preceeding year.

## 4 Market Developments and Trends

One of the major challenges in regulating the phone-paid services market is that the range of services and the technologies and platforms utilised are constantly adapting and developing. While we would never claim to be able to predict how the market will develop, through our industry engagement, market intelligence and research we are able to track trends and make informed forecasts of developments in the sector.

This section sets out some of our current information on the premium rate services market, which has informed the development of this Strategic Plan.

### Trust and confidence

Our recent research shows that consumers have never been more enthusiastic about paying for goods and services with their phones.<sup>5</sup> As we predicted back in 2007, convergence and smartphone penetration levels are starting to make a significant impact upon life in the UK.<sup>6</sup>

Thanks to successful regulation and the efforts of the UK premium rate service providers in driving consumer protection standards higher, consumers trust in phone-paid services has steadily risen since the problems in participation TV of 2007. Consumers are once again enjoying entering competitions, playing games, and voting in reality shows on TV. In our research of those surveyed only around 10% of people state lack of trust as a reason for not using PRS.

Consumers are learning more about the ease of donating to charity via their mobile phone. The creation of dedicated charity shortcodes and the willingness of networks to zero-rate contributions for some high-profile campaigns, such as Comic Relief, has done much to promote PRS as a source of charitable giving.

These developments are positive steps forward in creating a climate of consumer trust around PRS as a payment mechanism; a goal shared by both PhonepayPlus and the industry.

### Market performance

Whilst targeted regulatory action has driven out some of the worst harm from the market, evidenced by the significant fall in consumer complaints, it is also clear that the recent recession has made this a challenging market for premium rate services. The market has shown a significant decline in recent years, though 2009 showed some signs of bottoming out and recovery in some sectors. A fuller analysis of the current PRS market can be found in the 2009 Market Review carried out for PhonepayPlus by Thinktank research<sup>7</sup>.

### Micropayments

Many believe the next stage in development of the PRS market is the use of the payment mechanism to charge consumers for small transactions for consuming content on the

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<sup>5</sup> Thinktank research, March 2010: <http://www.phonepayplus.org.uk/upload/Current-and-future-market-FINAL-Thinktank.pdf>

<sup>6</sup> Ofcom Communications Market Report, August 2010, 12.8 million smartphone users in May 2010: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr10/>

<sup>7</sup> Thinktank research, March 2010

internet, known as micropayments. While there is an inherent challenge in persuading consumers to pay for content in the internet space, which is seen by many consumers as somewhere content can be consumed largely free of charge, content providers are eager to find new ways of monetising their businesses. For example, some high-profile companies have erected paywalls around their content and are more stringently enforcing their intellectual property rights in the courts.

Some research suggests there is consumer resistance to advertising on their phones, suggesting people would indeed be willing to pay specifically for entertainment content which contains “premium allure” and was ad-free<sup>8</sup>.

As predicted by many, the mobile phone is becoming a key device in commerce. In a survey for KPMG, 46% of consumers used their phone to conduct a banking transaction (up from 19% in 2008) and the number of consumers who used their phone to find a retailer increased to 28% (from 9% in 2008). Indeed paying even for physical goods and services by phone is already possible. For example, you can park at the local train station; buy a song, video or game to enjoy on your train journey; order a coffee on arrival at your destination and even get a lunchtime pizza all paid for through your phone (though not all necessarily charged to your phone bill)<sup>9</sup>.

PRS is only one of the payment mechanisms benefiting from this explosion in mobile commerce. PRS’ ability to compete with credit cards and other payment platforms will be based largely on consumer confidence in regulation and redress, as well as whether the outpayment rates offered to merchants are competitive with other payment intermediaries.

### **Smartphones, application stores and online services**

2009 was the year of the mobile application store. What once was a cottage industry of application (or “apps”) manufacturers is developing into a fully fledged industry (average number of employees in an app producer is now 20 – up from 5 in 2008). The smartphone app industry alone is estimated to be worth over \$2 billion globally in 2010 and is estimated to be worth nearly \$20 billion by 2014<sup>10</sup>. Yet only a small portion of this is charged to a telecommunications bill – despite consumers’ appetite for the concept<sup>11</sup>.

Apps are able to make use of the technology available to smartphone users through enhanced processing power, faster data connectivity, powerful graphics and audio, high-definition video cameras, geographic-location capabilities, accelerometers and touch-screen functionality. Already we are seeing some of these functions combining with traditional social networking and chat applications to generate novel services to consumers.

With these applications come new risks. PhonepayPlus has commissioned research on the potential for apps on any platform – proprietary or, more likely, open source – to cause significant harm by automatically generating an electronic payment without the user’s consent. Initial results are expected by autumn 2010.

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<sup>8</sup> KPMG report, *Consumers and Convergence IV*, July 2010, <http://rd.kpmg.co.uk/docs/Consumers-Convergence-IV-for-web.pdf>

<sup>9</sup> *ibid*

<sup>10</sup> Research 2 guidance, August 2010: <http://www.research2guidance.com/the-smartphone-application-market-has-reached-more-than-2.2-billion-dollars-in-the-first-half-of-2010/>,

<sup>11</sup> Thinktank, Current and Future market for Premium Rate Services, March 2010 <http://www.phonepayplus.org.uk/upload/Current-and-future-market-FINAL-Thinktank.pdf>

Massively multiplayer games are pioneering “freemium” services models. Here the majority of gaming experience is provided free and customisation or short-cuts, which enhance the experience, can be purchased via a premium charge. This creates unique challenges in communicating costs and other vital information to consumers and also is challenging established boundaries between child- and adult-targeted services<sup>12</sup>.

Increasingly consumers are choosing to trade personal data for cheaper electronic goods and services<sup>13</sup>. This combined with the new potential to track consumers’ location and image creates risks for consumers’ privacy. Indeed the more that people share information, the more they worry about it being misused or causing them harm.

Social media such as Facebook and Bluesquare are now prevalent in society. Premium rate services are increasingly able to take advantage of these social networks by creating content that is then championed by advocates to friends and colleagues. With the opportunities of such promotion come challenges to ensure that other consumers are informed of the vital information they require when taking the decision to participate.

Recent years have also seen the rise of the mobile internet. Consumers who cannot utilise applications (perhaps for reasons of compatibility) are increasingly utilising the mobile internet to engage with premium rate services. Whether on dedicated sites and portals, the design of these sites creates opportunities for promotions targeted and tailored to the individual. However, they may also create opportunities for those seeking to mislead or lure consumers inadvertently into purchasing decisions they later regret.

### **The future of phone-paid**

Providing a billing experience that combines the ubiquity of mobile phone use with the speed of cash and the safety of a credit card is the challenge for the market. Whether the solution is direct-to-bill or involves premium rate texts, PhonepayPlus is committed to working with the industry to achieve positive outcomes for consumers in their use of phone-paid services.

Good regulation must maintain a level and fair playing field. The new Code of Practice due to launch in 2011 provides flexibility and shares PhonepayPlus’ 25 years of advising and adjudicating on premium micropayments. Working together, industry and the regulator can ensure the necessary environment of consumer confidence is built to allow whatever potential new services emerge to utilise the PRS payment mechanism.

**Q3. Do you agree with PhonepayPlus’ assessment of future market developments? Do you have any other insights, data or intelligence that would help to inform PhonepayPlus’ Strategic Plan for a specific market sector or for premium rate services as a whole?**

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<sup>12</sup> BBC, *When the tech becomes unfriendly* February 2010 <http://www.bbc.co.uk/news/10572375>

<sup>13</sup> KPMG, *Consumers and Convergence IV*, July 2010: <http://rd.kpmg.co.uk/docs/Consumers-Convergence-IV-for-web.pdf>



## 5 Objectives and Strategies 2011/14

The timing of the development of this Strategic Plan creates a number of challenges in setting objectives with certainty, namely:

- the development of a new Code of Practice, due to come into force in 2011;
- the planned introduction of a new mandatory industry Registration Scheme;
- rapid developments in the online micropayments market sector, particularly those accessed by mobile telecoms;
- continuing economic uncertainty following the banking crisis with resulting pressures on public finances and consumer spending.

Nevertheless, we believe many of the objectives we would be looking to take forward at this time still make strategic sense for PhonepayPlus and the phone-paid services sector. As discussed earlier, the current strategic plan has seen the focus of regulation of PRS move towards a greater emphasis on pre-empting and preventing harm in the market, which has helped to foster greater compliance in the industry and driven down consumer complaints. We believe proactive regulation of this sort is the right approach for a modern regulator and so further evolution of this strategy could bring even greater benefits to building consumer trust in the PRS payment mechanism.

Given the regulatory and economic uncertainties surrounding the PRS market at this time, while we would hope that this proposed strategic plan will be fit-for-purpose for the period through to 2014, we think it would be prudent to commit to reviewing this plan earlier to ensure that remains the case. For that reason we expect to test the strategic plan and, if necessary, review these objectives early in 2012, or sooner if required.

### Proposed strategic goals for 2011/14

Through the introduction of a new Code of Practice supported by a mandatory industry Registration Scheme, PhonepayPlus is seeking to create a step change in the way the premium rate services market is regulated in the UK. While the current and previous Codes have ensured that consumers are protected from deliberately misleading or fraudulent services and serious harms, both the industry and regulator recognise that to create a trusted and competitive payment mechanism, the PRS sector needs to deliver more positive outcomes for consumers, coupled with effective, proportionate and targeted regulation.

PhonepayPlus wants to work with the industry to further improve compliance across the PRS sector, with a view to delivering the six key consumer outcomes that provide the framework for the new Code of Practice:

- legality of services;
- transparency of pricing and terms and conditions;
- fairness of treatment;
- privacy of consumers' data and information;
- prevention of harm and offence;
- swiftness of complaint resolution and redress.

Through the autumn of 2010, PhonepayPlus will be working with the industry to renew the Guidance supporting the new Code of Practice for providers of particular services and the industry generally, to ensure that it is proportionate, fair and effective. We will consult the industry on this new Guidance as we want a sense of shared ownership, drawing on how best-practice providers wish to work with the regulator to improve the reputation and standing of the premium rate market in the UK. We believe this is critical if PRS are able to

develop as a competitive payment mechanism as traditional PRS continue to migrate online and across digital platforms.

The objectives set out below are designed to underpin the next stage in the development of PRS regulation, building on the shift to pre-emptive and preventative actions developed over the last three years. The new Code, industry registration and the new processes and structures PhonepayPlus is putting in place will mean that we can better protect consumers by closer working with the industry on building in compliance from the start.

## **Objective 1**

### **Launch and successfully implement the new Code of Practice and industry Registration Scheme, creating a flexible, fair and proportionate regulatory regime for the Premium Rate Services sector.**

2011 will see the most significant change to PRS regulation since the introduction of the first Code of Practice and the establishment of ICSTIS in 1986. The new Code of Practice has been designed to allow PRS providers to run their services flexibly, as long as they achieve compliance with six outcomes designed to offer consumers effective protection from harm. The new Code removes many prescriptive and service-specific rules in the current Code to help achieve this flexibility. For providers that would like further clarity on what is expected from them in terms of good practice and compliance, PhonepayPlus will issue Guidance to support the Code, developed in conjunction with industry to meet this need.

The new Code extends responsibility for regulation throughout the value chain. Those providers who have responsibility for the promotion, operation and content of the PRS will be responsible for ensuring the consumer outcomes are met. Providers who form part of the value chain from the service through to the consumer will be responsible for carrying out due diligence checks and ongoing risk assessment and monitoring on their business partners. Through this change we intend to hold providers responsible only for that which they have control or could reasonably be expected to influence. It will enable us to work proactively with all parts of the PRS value chain in ensuring compliance with the Code and also, where necessary, ensure we can target enforcement action at the providers responsible for causing consumer harm.

The second major change, which is closely allied to the new Code, is the introduction of a mandatory industry Registration Scheme for all providers of PRS. This Scheme, which is widely supported by industry, will both ensure that the new Code can be effectively enforced throughout the value chain and will also assist providers in carrying out due diligence checks. Over time we believe the Registration Scheme will become a powerful tool for industry and the regulator and, with the improvements it will bring to the reach and accuracy of the Number Checker, will bring benefits to consumers.

### ***Key Deliverables***

- Ensure the introduction of the new Code of Practice and the industry Registration Scheme is well-communicated to industry to ensure effective implementation.
- Develop an ongoing programme of support to industry stakeholders, in particular new entrants to regulation, to assist them in achieving compliance with the new regulatory regime.
- Continue to work proactively with industry on developing practical and accessible Guidance in support of the new Code of Practice to ensure this keeps pace with changes in the sector.

**Q4. Do you agree with this objective? Will our key deliverables ensure the new regulatory regime is successfully implemented and gain industry buy-in?**

**Objective 2**

**Work with the industry to build in compliance to all emerging and developing premium rate phone-paid services. Drive-up overall levels of compliance in the market through strategic use of monitoring and increased use of informal resolution of minor Code breaches.**

PhonepayPlus has provided free compliance advice to industry for some time now and this service has been much used and valued by providers. We wish to develop this approach further through developing our suite of guidance materials to industry, improving our online advice and promoting the compliance advice service with Level 2 providers as they come into direct regulation under the new Code of Practice (these are the providers who are responsible for the content, operation and promotion of a PRS).

We have recently restructured to create a new Complaint Resolution Team, whose purpose is to deal with low-level consumer harm, resolve complaints speedily and work with providers to improve compliance. We believe this new team will complement our proactive compliance advice service by offering providers the opportunity, where appropriate, to bring their services into compliance without the need for investigations and formal Code breaches.

By building-in compliance to services, consumers will be better protected, as this will ensure that most consumer harms never occur and over time this will build consumer trust in PRS and encourage more merchants to use the payment mechanisms.

While the vast majority of the PRS industry shares our goals to create a compliant, trusted market for consumers, we of course recognise the need to remain vigilant in such a diverse, fast-moving sector, to ensure that consumers remain protected across all services. Keeping track of services, particularly as they move online and disperse across many platforms and media, can be a challenging job, particularly given limited resources.

We have been developing smarter monitoring tools and improving our strategic approach to service testing over the last year and we believe this has had a significant impact on our ability to manage market risk. We have also been able to spot and resolve some serious Code breaches before they have had a major impact on consumer harm.

Through further development of strategic monitoring and tying this to our new complaint resolution process, we aim to further drive up compliance with the Code of Practice's consumer protection outcomes over the period of the next Strategic Plan.

***Key Deliverables***

- Refine the industry compliance advice service to clarify its role and scope in supporting providers in building in compliance to their services.
- Develop our Complaint Resolution team to ensure it is fully trained and resourced to support industry in resolving minor consumer complaints and breaches of the Code.
- Improve our online advice to industry on compliance with the Code of Practice. This will include easily accessible advice and guidance, online Q&As and links through to further live support if needed.

- Work further with industry, including the key trade bodies, on developing best practice for particular service sectors and in communicating this to providers throughout the value chain.
- Further explore the use of external monitoring services to see where they may add value to PhonepayPlus' in-house monitoring work.
- Work with industry to explore cooperation on external monitoring, where appropriate, to avoid duplication and make best use of valuable, finite resources.
- Conduct "sweeps" of market sectors where the industry alerts us to poor practice and potential Code breaches, in order to drive up standards and avoid "lowest common denominator" compliance, taking action through informal measures, where appropriate.

**Q5. Do you agree with this objective? Will our key deliverables assist in meeting the aim of assisting the industry in building in compliance to services and also assist in driving up overall levels of compliance in the market?**

### **Objective 3**

**Increase the quality of intelligence about the phone-paid services market and its consumers through more effective use of internal and market data, supported by targeted research, to better inform the development of the Code of Practice and to better target enforcement action.**

PhonepayPlus is committed to basing its regulatory actions on clear evidence. This is important not only in terms of ensuring that limited resources are put to most effective use, but also to ensure that any action we take is proportionate to the level of harm or risk to consumers.

Developments in technology and convergence of media platforms makes monitoring changes in the market and assessing potential risks to consumers ever more challenging. PhonepayPlus has begun to develop stronger links with the industry to better understand how these changes impact providers and services, to ensure that our assessment of compliance with the Code is informed by sound knowledge of industry best practice.

Progress has been made this year in better analysing our internal sources of data, such as network returns and consumer complaints, to ensure we are making best use of this valuable intelligence. We believe our industry knowledge will be further strengthened by the introduction of the industry Registration Scheme, which will provide the clearest data yet on the numbers of providers in the market and the number of PRS in operation.

We are then only using bespoke research to augment this material or to fill in gaps in our knowledge on the industry or consumers' behaviour. We have been increasingly successful over the last year in targeting our research with PRS consumers, in particular some hard-to-reach groups, such as virtual chat customers and users of adult services. We want to build on this approach to ensure we better understand consumer behaviour and experience of PRS and consider this appropriately when taking regulatory action on consumers' behalf.

### **Key Deliverables**

- Further improve our business systems to ensure that we can make better use of internal data and intelligence.

- Invest more in training for staff on industry-related matters, to ensure we remain up-to-date on developments in the marketplace.
- Build on recent developments in researching the views of PRS consumers to ensure our regulatory decisions are further informed by the experience and needs of the users of services.

**Q6. Do you agree with this objective? Will our key deliverables ensure that we have a firm evidence base to inform our decision making and regulatory actions, or should we be considering other sources of data and information?**

#### **Objective 4**

**Work with industry to assist consumers of phone-paid services to increase their ability to safely and confidently use premium rate services.**

PhonepayPlus exists to ensure consumers are able to use premium rate phone-paid services with confidence. We believe this is best delivered by working with the industry on achieving compliance with our Code of Practice. However, we also believe there is a need to communicate directly with certain groups of consumers, particularly those who may be vulnerable to harm when using PRS, to provide them with information that will empower them to self-regulate their use of services.

A key example of this is our PhoneBrain campaign, which informs children of how to safely use PRS. We have also recently worked with Age UK (the leading UK charity for older people) on a “know your numbers” campaign to give older people confidence in using non-geographic numbers, including 0871 and 09.

We have begun to develop a strategy for 2011 and beyond in this area, but we will now be doing this with the advice of group of experts from industry, regulators and consumer groups, on how to best target our limited resources to have the greatest possible positive impact for consumers and, through enhancing consumer trust in PRS, the industry itself.

#### **Key Deliverables**

- Establish the Consumer Literacy Working Group as an effective advisory body for PhonepayPlus on communicating with vulnerable consumers.
- Develop a programme of consumer literacy work that meets the needs of vulnerable consumers, based on evidence and research.
- Explore opportunities for sponsorship or partnership working that might amplify the reach of PhonepayPlus’ work in this area.

**Q7. Do you agree with this objective? Will our key deliverables assist in meeting the needs of vulnerable consumers and build trust in the PRS industry?**

#### **Objective 5**

**Deliver effective and efficient regulation for the phone-paid services sector through smarter use of resources and further investment in building knowledge and skills of PhonepayPlus of staff.**

PhonepayPlus made a commitment in its current Strategic Plan to reduce the costs of regulation by up to 10% in relation to the size of the market regulated. This was designed to

be a signal that we understood the importance of being efficient and effective, given we are funded by a levy on industry. We have achieved real terms cost reductions of around 9% over the last two years, while also taking on regulation of a new market sector (0871/2/3), developing a new Code of Practice and delivering a 52% fall in consumer complaints.

We recognise that the economy has been through a difficult recession and that the public finances require the Government to take difficult decisions on spending priorities. Although we are not publicly funded, we recognise that as a body carrying out public functions, we should ensure we are applying the fullest possible rigour to our organisation in terms of its costs and resources. For example, this year we have already succeeded in successfully negotiating a new lease for our offices at a significantly reduced market rate.

As we move into the next cycle of business planning in the autumn, which will be framed by this Strategic Plan, we will be forensic in testing every budget line and every resource to ensure we are balancing the need to be effective with the requirement to deliver value for money. While we do not want to give a commitment on reductions at this stage, we plan to set out a properly reasoned and costed projection of our costs over the next three-year period in our Business Plan consultation at the end of 2010. We therefore feel it is appropriate to ask for stakeholders' views and comments at that stage, when we are able to set out our proposals and supporting evidence in full.

### ***Key Deliverables***

- Keep the PhonepayPlus Key Performance Indicators under review and ensure they continue to be aligned with the strategic plan priorities;
- Develop a framework for unit cost analysis and seek to benchmark this data with other, comparable bodies;
- Undertake, in the context of implementation of the Registration Scheme, a full IS review and create a strategy for rationalising IS infrastructure and costs;
- Keep the organisational structure under review and ensure that it is modelled to deliver maximum effectiveness for least cost;
- Review all third party supplier arrangements and ensure that they are delivering effective value for money.

**Q8. Do you agree with this objective? Will our key deliverables assist in ensuring PhonepayPlus achieves maximum efficiency while ensuring it remains effective as a regulator?**

## 6 Responding to the consultation

Where possible, comments should be submitted in writing and sent by email to [bbrady@phonepayplus.org.uk](mailto:bbrady@phonepayplus.org.uk) by no later than 5pm on Friday 12 November 2010. Copies may also be sent by mail or fax to:

Bradley Brady  
Director of Strategy & Communications  
PhonepayPlus  
1<sup>st</sup> Floor, Clove Building  
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.

### **List of questions for consultation**

- Q1. Do you support the retention of the PhonepayPlus vision statement for the new Strategic Plan? Are there other elements of our role that you feel should form part of our vision statement? Are we right to replace our mission statement with a simple description of our activities?
- Q2. Effective, Accessible, Collaborative, Principled, Efficient and Transparent. Do you agree that these values create the right framework for PhonepayPlus as a modern regulator? Are there other values you think PhonepayPlus should consider adopting that would further strengthen its aims to be an open, responsive and flexible organisation?
- Q3. Do you agree with PhonepayPlus' assessment of future market developments? Do you have any other insights, data or intelligence that would help to inform PhonepayPlus' Strategic Plan for a specific market sector or for premium rate services as a whole?
- Q4. Do you agree with this objective? Will our key deliverables ensure the new regulatory regime is successfully implemented and gain industry buy-in?
- Q5. Do you agree with this objective? Will our key deliverables assist in meeting the aim of assisting the industry in building in compliance to services and also assist in driving up overall levels of compliance in the market?

- Q6. Do you agree with this objective? Will our key deliverables ensure that we have a firm evidence base to inform our decision making and regulatory actions, or should we be considering other sources of data and information?
- Q7. Do you agree with this objective? Will our key deliverables assist in meeting the needs of vulnerable consumers and build trust in the PRS industry?
- Q8. Do you agree with this objective? Will our key deliverables assist in ensuring PhonepayPlus achieves maximum efficiency while ensuring it remains effective as a regulator?