

PhonepayPlus

**Call for inputs around the extension of
PhonepayPlus regulation to remaining revenue-
sharing ranges**

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1. Ofcom's consultation on simplifying non-geographic numbers

1.1 [Ofcom's consultation on 'Simplifying Non-Geographic Numbers'](#), published in December 2010, highlighted a number of issues around how the market for non-geographic numbers currently operates. Central to this is poor consumer confidence in many of these number ranges and a lack of price transparency.

1.2 As part of this consultation, Ofcom looked at how the market for 084x revenue-sharing numbers operates. This number range is used by many organisations to operate customer helplines and has a maximum price of 5p/minute if called from a BT landline (though call rates are higher from other networks and from mobile phones). It also considered the long term future of 0870 numbers in the light of any overall change to the non-geographic system.

1.3 Ofcom's consultation highlighted a lack of price transparency and consumer confidence in non-geographic numbers. Ofcom's preferred option for managing the revenue-sharing ranges is an unbundled approach. In this model, the retail price presented to consumers would consist of an access charge (set by the originating telephone company) and a service charge (selected by the company using the telephone number and covering termination costs as well as any revenue share).

1.4 An important element of this approach is that any promotion of a revenue-sharing number makes the cost of the service (i.e. the service charge) clear. Ofcom has noted that, although this obligation could be enforced on those number ranges currently regulated by PhonepayPlus, it was not clear how such an obligation could currently be imposed on any other numbers which could potentially become unbundled (0843/44 but also potentially 0845 and 0870).

1.5 To this end, Ofcom raised the possibility of extending PhonepayPlus' remit to these numbers. Ofcom noted that they would expect any regulation by PhonepayPlus to be proportionate, bearing in mind the lower pricing tariff on these calls, but to include an obligation on providers to state the service charge in all advertising. The extension of the obligation would also ensure that there was an organisation to provide consumer redress in the event of any inappropriate use of those numbers.

1.6 PhonepayPlus is already responsible for regulating 0871/2/3 numbers, which provide similar services to those on 08xx numbers, albeit at a higher price.

1.7 This document sets out how regulation by PhonepayPlus could address the transparency requirements around 08xx revenue-sharing numbers, and other consumer risks that have been identified. It also sets out how PhonepayPlus could apply a proportionate approach, recognising the lower pricing tariff, and responds to some potential concerns that 08xx revenue-sharing providers may have around being regulated as premium rate services.

1.8 The document seeks inputs on these issues from providers of 08xx revenue-sharing services and from consumers (and their representative bodies) to inform the next stage of Ofcom's consultation on simplifying non-geographic numbers. PhonepayPlus will provide all responses it receives directly to Ofcom. In order to ensure that we do so in a timely fashion,

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we would ask that all evidence from interested parties is received by Monday, 30 January 2012.

2. About PhonepayPlus and our regulatory framework

2.1 PhonepayPlus is the industry-funded, non-statutory and independent regulator of premium rate services in the UK. These are loosely defined as services which are charged above standard rate to a consumer's phone bill and/or pre-pay account. Examples include services offering downloadable content (such as music, video games, ringtones); competitions; voting during TV shows, such as the *X Factor*; directory enquiry (118) services; chatlines (for entertainment or advice or support purposes); and payment for physical services, such as car parking charges.

2.2 Our goal as a regulator is that everyone should be able to use premium rate services with absolute confidence. In pursuit of this goal, we have a Code of Practice that sets appropriate standards for promotion, operation and content. Among other things, our Code requires: clear and accurate pricing information; honest advertising and service content; and appropriate and targeted promotions.

2.3 Over the last three years, PhonepayPlus has significantly shifted its approach to regulation to focus on the early pre-emption and prevention of consumer harm, through greater support for industry and consumers and robust action to tackle emerging risks, rather than just dealing with harm after it has occurred.

2.4 The recently-launched [12th Edition of the PhonepayPlus Code of Practice](#) is a radically different approach from previous Codes, offering a more flexible, outcomes-based framework than its predecessors. The new Code encourages innovation by giving providers some flexibility to determine how they will achieve the outcomes set out in the Code, rather than being obliged to follow prescriptive rules. Because of this increased flexibility, the new Code can be more easily applied to different 'levels' of regulation, based on the levels of risk and potential detriment identified. PhonepayPlus has also launched a new Registration Scheme for providers of premium rate services to help facilitate compliance with the Code.

2.5 PhonepayPlus has [a range of powers to investigate and address breaches of the Code](#). An informal procedure is used in cases where the consumer harm is not significant and where the provider is co-operative in addressing the complaint. In cases where the harm is more significant or where the provider is not co-operative in providing redress, then a formal investigation can be opened. Under the formal procedure, an independent Code Compliance Panel Tribunal assesses whether breaches of the Code have occurred and decides on the appropriate sanction(s) to impose.

2.6 PhonepayPlus also works with consumers to help inform them about premium rate services, and to help them identify and deal with concerns or complaints they may have. Our consumer support programme includes the [award-winning PhoneBrain programme](#), primarily aimed at secondary schools and youth clubs, and also the PhonepayPlus Number Checker facility, which can be found on the PhonepayPlus homepage and enables consumers to check premium rate numbers on their phone bill and obtain a customer helpline number for the provider of the service.

2.7 For more information about PhonepayPlus, visit our website: www.phonepayplus.org.uk

Experience of regulating the 087x market

2.8 PhonepayPlus took over the regulation of 0871/2/3 numbers (which provide similar services to 08xx numbers) in August 2009. Our experience in regulating this market underscores the relevance of our regulatory framework in dealing with these consumer risks.

2.9 In the first two years of regulating the 087x market:

- PhonepayPlus dealt with more than 400 customer complaints about 087x services. The main areas of complaint were around a lack of suitable pricing information and being delayed on a call while being held in a queue.
- Checks on 087x services in our Number Checker facility have averaged just over 2,000 per month.
- PhonepayPlus has undertaken three formal investigations concerning 087x services involving missed call or fax-back scams.
- PhonepayPlus has undertaken 68 informal cases concerning 087x services. These have generally concerned complaints around pricing information or undue delay.

2.10 While the number of customer complaints to PhonepayPlus around 087x numbers has remained relatively stable, our assessment from our own internal monitoring and from consumer forums is that the extent of consumer harm on 087x numbers has diminished as a result of PhonepayPlus regulation. For example, there are considerably fewer complaints on consumer forums about scams operating on 087x numbers than there were when we took on regulation.

2.11 While some providers may have initially migrated away from 087x numbers, the market for services provided on the 087x range has remained stable since PhonepayPlus took on regulation in 2009 and has held up well despite adverse market conditions. This would suggest that initial fears that our regulation would undermine the 087x range have not been borne out.

3. How regulation by PhonepayPlus could address consumer concerns with respect to 08xx revenue-sharing numbers

3.1 The PhonepayPlus regulatory framework is structured to provide a clear framework for companies providing services over revenue-sharing ranges, including those which are not currently defined as Controlled Premium Rate Services. We appreciate, however, that there may be a requirement to consider the applicability of the framework in its entirety for those ranges where the underlying purpose of the revenue-share is to offset costs of providing a service to consumers (e.g. call centre or call-handling costs), rather than to serve as a revenue stream.

Set out below are relevant elements of our framework that might apply to 08xx revenue-sharing numbers.

Price transparency

3.2 Outcome Two of our Code of Practice specifies: *That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any decision to purchase is made.*

3.3 This Outcome is underpinned by eight Rules that set out what information needs to be given to consumers, including information on pricing, and how it must be presented.

Potential for scams

3.4 The potential for scams is addressed under several Outcomes in the Code and their underpinning Rules:

Outcome One: *That premium rate services comply with the law.*

Outcome Two: *That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any decision to purchase is made.*

Outcome Three: *That consumers of premium rate services are treated fairly and equitably.*

Outcome Four: *That premium rate services do not cause the unreasonable invasion of consumers' privacy.*

Undue delay in answering a call

3.5 Outcome Three of the Code around fair and equitable treatment of consumers specifies that: *premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.*

Question 1: Do you consider that PhonepayPlus' consumer protection rules are appropriate for the lower-cost revenue-sharing ranges if they were to be administered by PhonepayPlus? If not, why not? Please supply any evidence that supports your view.

4. Potential concerns around PhonepayPlus taking on the regulation of 08xx numbers

4.1 We are aware that 08xx providers not currently subject to PhonepayPlus regulations have expressed three main concerns about these numbers potentially being regulated by PhonepayPlus:

- That regulation may mean their services being branded in consumers' eyes as 'premium rate', further reducing consumer confidence in using these numbers.
- Concerns around the regulatory burden of falling under our Code of Practice.
- Concerns around the financial cost of regulation, given that PhonepayPlus is industry-funded.

4.2 We set out below our response to these concerns and invite stakeholder views.

Branding of 08xx as 'premium rate'

4.3 While we recognise this concern, which was also expressed by many providers of 087x services prior to PhonepayPlus taking on regulation of the 087x number range, we do not consider that it is likely to be borne out in practice for a number of reasons.

4.4 Firstly, as referenced in Ofcom's consultation document, consumer confidence in non-geographic call services is already low, with specific reference to the 08xx number ranges which are not yet regulated. In this scenario, regulation is more likely to improve, rather than reduce, consumer confidence by addressing the issues that consumers care about – such as price transparency, undue delay and the potential for scams.

4.5 Secondly, Ofcom research¹ suggests that many consumers already consider 08xx numbers to be premium rate. Regulation by PhonepayPlus is therefore unlikely to materially change the perceptions of consumers in this regard.

4.6 Thirdly, similar concerns were raised when we took on the regulation of 087x services in 2009. However, since we took on regulation, the size of the 087x market has remained static and has not declined, as some predicted it would. We have seen no evidence of either consumers or providers withdrawing from the market because of concerns around association with premium rate.

4.7 Despite these considerations, we would be willing to consider options with the industry for how 08xx services, including 0870, could be branded differently for consumers on the PhonepayPlus website from other services we regulate, on the basis that they are lower-cost and are primarily used as a means to access customer helplines for organisations that apart from this do not provide premium rate services.

¹ Ofcom's 'Consumer Transparency in Telephone Numbering' research:
<http://stakeholders.ofcom.org.uk/binaries/consultations/wmctr/annexes/transparency.pdf>

Question 2: In the event of the lower-cost 08xx revenue-sharing ranges being subject to PhonepayPlus regulation, do you consider it would be necessary to modify the branding or presentation of this regulation? If so, what changes would you consider to be necessary?

Regulatory burdens

4.8 Compliance with regulation inevitably involves some costs for businesses. However, the PhonepayPlus regulatory regime has been designed to ensure that these costs are proportionate to the risks involved. Drawing on our experience with 087x services, we are confident that our regulatory regime could be applied in a way that is proportionate for the remaining 08xx services, recognising the lower call tariff involved.

Question 3: We discuss the appropriateness the application of the existing PhonepayPlus rules to the remaining 08xx ranges in Section 3. Do you have any comments on the potential additional regulatory burden that inclusion of a low-cost number range in the PhonepayPlus regulatory controls might impose, and how we can ensure it is proportionate to the risks identified in Section 3?

Cost of regulation

4.9 PhonepayPlus is funded by industry through a levy on each premium rate transaction which falls under our regulatory remit.

4.10 The levy is calculated in advance based on PhonepayPlus' budget for the financial year ahead, which is fully consulted on with industry and then approved by Ofcom prior to implementation. The cost of the levy is then offset by other income received by PhonepayPlus, for example income from fines for breaches of the Code.

4.11 The PhonepayPlus budget for 2011/12 is £3,799,743 and the current levy is 0.35% on the network outpayment – i.e. the revenue share – from each premium rate transaction. Our budget is approved by Ofcom each year following public consultation, and the levy is then calculated by setting the approved budget requirement against the projected outpayments over the course of the year. The PhonepayPlus budget for 2011/12 represents a real terms decrease of 13.2% over 2010/11. [Our budget proposals for 2012/13 are currently undergoing consultation.](#)

4.12 Bringing additional 08xx numbers within PhonepayPlus' remit will mean the levy being applied to all calls using 08xx numbers. The amount raised by the levy will depend on the size of the 08xx market but we would expect that the overall levy rate would decrease, should our remit widen to include additional 08xx number ranges.

4.13 We note from our experience of regulating the 087x market that payment of the levy since 2009 has not had a noticeable revenue impact on the market, which remains the same size as it was in 2009, though we are aware of some migration to 0843/44.

Question 4: Do you have any views on whether the current levy approach would be appropriate for the low-cost revenue-sharing ranges?

5. Responses and next steps

We are seeking the inputs of all interested stakeholders on the considerations contained in this paper by no later than **Monday, 30 January 2012 (seven weeks from the date of issue of this document)**.

Where possible, comments should be submitted in writing and sent by email to alittlemore@phonepayplus.org.uk.

Copies may also be sent by mail or fax to:

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

Respondents should note that all responses will be passed to Ofcom, as part of its ongoing consideration of 08xx regulations. We also intend to publish all responses we receive. Please indicate if you would prefer that your response, or parts of your response, are kept confidential.