

Review of the Current PhonepayPlus Live Entertainment Services Compensation Scheme Arrangements



Response to the consultation by the Premium Rate Association for and on behalf of its members

October 2008

Introduction

The Premium Rate Association thanks PhonepayPlus for this opportunity to add comment to this consultation.

Whilst welcoming the review of the scheme, which we believe is well overdue, we wish to place on record our concern at the way this matter has been handled to date. It has taken 2 years to get to the consultation stage and only as a result of frequent requests by the PRA for PhonepayPlus to instigate a review. We are also concerned by the discrepancy in records that we are aware of through our dialogues with the trustees and the then ICSTIS. It is not fit, right, or proper that any regulator takes this amount of time to act upon industry concerns.

We were also disappointed by the trustees absence from the pre-consultation meeting we requested in Manchester earlier this year and that PhonepayPlus representatives leading the session were poorly briefed on the schemes history; greatly reducing the value of the meeting. It would also appear that PhonepayPlus did not take adequate steps to inform all schemes contributors of the meeting and therefore the outcome of the meeting may not properly reflect the full cross section of views.

As the agent for the premium rate industry PhonepayPlus has an important role to play in instigating and overseeing balanced regulation that both protects the consumer and enables the industry to function. We believe that through the lack

of timely action to remove unnecessary regulation, the industry has not been best served. We hope that action will be taken to restore this required balance.

The majority of Service Providers work hard to ensure that consumers using live entertainment services receive a first class service and that any customer concerns are appropriately addressed. This customer service ethos is evident in the low and falling level of complaints received by PhonepayPlus.

We would also remind PhonepayPlus that the bond and fund is designed to ensure financial safeguards exclusively for the refund of unauthorised calls, which are outside of a Service Providers direct control. Service Providers have demonstrated the ability to meet the cost of these claims. These matters are unrelated to either the quality or the promotion of a service, in our opinion, the current code requires all reasonable claims to be paid and therefore ultimately live services should be treated in the same way.

The MMC Report of 1989 refers to compensation for unauthorised use and not to the protection of the vulnerable or children.

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

We have no additional evidence to provide regarding the breakdown of mobile and fixed line share of call origination. We would concur that the estimated increase in mobile originating calls would appear likely, as a reflection of an increased take-up of mobile telephony generally.

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

We do not favour option 1 as we share the belief that the current arrangements are no longer fit for purpose.

The fund is costly to administer and, in the current climate, provides no intrinsic consumer protection when considered against the other consumer protection measures in place.

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

The Premium Rate Association would not support option 2 and share the PhonepayPlus’ view that removing the current arrangements in their entirety at this stage would be ill advised.

We are of the view that appropriate regulation is good regulation and that the industry does benefit from having correct safeguards in place. The removal of all consumer protection measures at once may expose the industry to unwelcome risk. Rapid deregulation is likely to send undesirable signal to less reputable operators and encourage the testing of yet unproven boundaries. .

We believe that properly considered self and co-regulation to be the best method to enable the industry to move towards an effective self regulated market. In doing so we believe a phased and well monitored approach to be the preferred mechanism.

It would be our hope that PhonepayPlus would continue to monitor this section of the industry with a view to removing or reducing the bond as a second phase.

We understand that the current arrangements do form a 'barrier to entry' and whilst this is not the stated purpose of the scheme, this would appear to serve as a useful additional protection. The flip side is that live licenses now appear to be being brokered.

If the bond were to be retained purely as a 'barrier to entry' then we believe that it would be appropriate for this money to be returned following completion of a suitable probation period.

We would however draw attention to the fact that regulation should be true to its original purpose. We would not encourage the retention of regulation that has outlived its stated purpose purely for its associated benefits. In these circumstances appropriate measures specific to the area of concern should be considered. Many of these safeguards are already built into the prior permission requirements, which would ultimately appear a more appropriate vehicle for ensuring safe and compliant services.

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

We believe that if incorrectly handled the cost to industry of deregulation through possible damage to consumer confidence would outweigh any immediate financial gain.

Whilst we believe it is prudent to minimise unnecessary administrative costs as soon as practically possible, this comparatively small cash return would not warrant risking the long term stability of the market.

The desire within the industry to disband the fund, and ultimately the bond, is based not upon short term financial returns, rather it is the spirit of having regulation appropriate to purpose. As the fund is not being drawn-down upon for compensation claims, its continued existence for this purpose is without foundation. It must be acknowledged that the industry and the code has moved on from when this system was put in place.

Once the stability of the industry without the fund has been assessed, we believe that similar consideration should be given to the removal of the bond, based upon Service Providers proven record in the payment of claims.

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

We support this option and believe that it would provide the required consumer and industry protection. This proposal would remove the element of the existing scheme which has been the source of most contention and would reduce unnecessary administrative costs.

As the fund is not being called upon for compensation claims, its continued existence does not justify its administrative price tag. We believe that the bond will continue to act as an adequate and cost efficient safeguard to ensure that there is consumer redress against any unauthorised use.

We would reiterate our belief that the bond should be kept under review with the intention that it should be phased out as the industry matures. At that stage PhonepayPlus may wish to retain the bond only where an individual service provider has a poor track record in dealing with legitimate claims.

In supporting this option, we would want to ensure that repayment of the monies to the contributors is conducted swiftly and painlessly.

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

We believe on assessment that option 4 would be less favourable than leaving the fund at its current level. This option would entail the same costs and difficulties as option 3 in returning capital to the fund's contributors, only with the end result that with the fund still existing there would be little or no saving in the annual administration fees.

As there has been no recourse to the fund for the payment of a compensation claim of any amount, the funds should either exist unchanged as a political sentiment, or must be acknowledged as superfluous and scrapped in its entirety.

Q7 – Do you or do you not favour option 5? Please give detailed reasoning where applicable.

We would not favour this option as we do not believe an adequate need has been demonstrated for a communal compensation fund and hence its replacement with an underwritten insurance scheme would appear equally unnecessary.

We believe that Service Providers have demonstrated an ability to pay claims made against them with out recourse to a separate fund and therefore the decision as to whether they choose to insure separately against this liability is one for each individual service provider. This would appear equally valid whether that payment is made directly or whether from money held within a bond that would require topping up by the Service Provider.

This is aside from the practical difficulties of negotiating an appropriate policy.

Conclusion

We believe that the proposal outlined by PhonepayPlus in option 3 to be a sensible approach to deregulating this section of the industry and at this stage we would support the removal of the fund, whilst leaving the bond in place. The proposals will remove a costly and unnecessary administrative mechanism, whilst maintaining what would appear to be adequate safeguards against consumer harm.

We ask on behalf of the industry that this dissolution of the fund is conducted swiftly and that the industry does not see a repeat of the drawn out process experienced with the dissolution of the old compensation fund. In dissolving the fund no unnecessary administrative charges should be placed against it.

We believe that the dismantling of the fund may present considerable problems, due to the apparent discrepancies between the records of fund contributors and actual contributions to the fund. We believe that it is imperative that these matters are fully and transparently investigated ahead of the funds liquidation, with any issues fully reported to the industry.

If option 3 is chosen, it is our belief that once its impact has been assessed that consideration is then given to the reviewing the future of the bond as a second phase of deregulation. Our preferred option continues to be a level regulatory playing field for all services.