



**2008-09 Annual Plan and Budget:
A Statement by PhonepayPlus following
its consultation published on 7 November
2007**

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Executive Summary and Background

PhonepayPlus issued its consultation document regarding its Annual Plan and Budget Statement on 7 November 2007. The closing date for responses was 5 December 2007, a necessarily short timeline given the need for PhonepayPlus to present final proposals to Ofcom early in the New Year.

The consultation document set out PhonepayPlus' Annual Plan and Budget for 2008-09 (the first year of PhonepayPlus' Three-Year Strategic Plan, which was published on 15 October 2007). The document stressed that an appropriate and robust regulatory framework is important to ensure consumer trust, which in its turn facilitates industry confidence in regard to investment and innovation in new types of phone-paid services and platforms through which they are delivered.

Approach

With an ever-increasing number of new service types, and new platforms such as VoIP on which premium rate payment is now possible, it is important to rebuild the public trust in phone-paid services that was eroded in 2007 following allegations of abuse in the participation TV sector. PhonepayPlus' view is that this is best achieved through its commitment to pre-emption, prevention and protection.

The consultation document identified a number of overarching principles which PhonepayPlus thought were important:

- We must have regard to the strained circumstances of the sector we regulate. Whilst regulatory cost is not a form of "commission" based on market size, we appreciate that a major shift in our funding levy towards increased investment in regulatory safeguards would be an unwelcome burden for some at this time.
- We must demonstrate efficiency and effectiveness in our work. The consultation document set out a number of proposals for measuring the market, consumer confidence and our effectiveness.
- Our annual plan must be true to the "Pre-empt, Prevent, Protect" agenda.
- We must assume regulatory responsibilities for the 087 number range in a proper way. Regulation of this area must be proportionate and address public concerns. We proposed to deal with 087 services through our existing Code and funding model, and in the first instance looked to ensure that the costs of 087 work are broadly consistent with the levy income that derives from these services.

Plans

PhonepayPlus' planned activities were set out as follows:

Pre-empting problems

- To increase research spending to £165,000 for the year in order to gauge the level of consumer understanding and trust in phone-paid services. A strong evidence base will become more important to identifying and mitigating risk in an increasingly diverse market. We would undertake to share all findings with industry and other stakeholders in order to facilitate best practice.
- To address any issues arising from the Ofcom Scope Review of Premium Rate Regulation, and to review the existing regulation framework to determine whether an overarching code, permissions regime, and use of expectations and precedent cases is

still the most effective way of meeting new challenges. We also expect to begin work on our 12th Code of Practice.

- To refine our monitoring regime so it is proportionate and targeted, and to publish a list of monitoring priorities and issues. We expect to report regularly to stakeholders on monitoring outcomes.

Preventing problems

- To continue to promote and extend our work around industry support. This work to include providing assistance to individual businesses, open-invitation workshops for stakeholders, and frequent exhibition at industry events. This will include workshops and other activities to support those who use 0871 numbers and so are new to PhonewayPlus regulation.
- To engage more with industries or sectors where there is substantial commercial interest in phone-paid services, such as broadcasters, publishers, online media, and others who run, host or carry promotional material for phone-paid services. These sectors have the ability to influence standards in the sector we regulate, and closer partnership will further reduce the risk of non-compliance and encourage best practice.
- To expand our existing facilities for shortcode and number checking so that billing networks and consumers can receive answers through our website, and via freephone IVR and our SMSus shortcode. By dealing with enquiries in this way we hope to reduce call-handling costs.
- To make a provision of £50,000 to develop our website. This will create distinct areas where advice can be tailored to the needs of industry and consumers respectively.
- To make a provision of £35,000 for consumer literature. We will review our existing publications to ensure that they target those consumers who most need advice. Whilst children and their parents have always been an important group, we must also examine other social groups such as elderly people and ethnic groups who are catered for by specialist TV channels.
- To continue to engage strategically at international level. As global capacity for mass-marketing increases, and trade barriers within the EU decrease, we need to understand and influence EU legislative proposals as appropriate. It is also important to have a network of enforcement that tackles UK problems caused by overseas business, and gives reciprocal support to overseas regulators where UK business is the cause. We will continue to support and possibly expand the IARN (International Audiotex Regulators' Network) accordingly.

Protecting Consumers and Industry as problems arise

- To introduce a Code Compliance Panel of dedicated adjudicators. This was the subject of consultation in 2007 and the Panel will begin sitting in 2008, with pay and other associated costs of approximately £47,000. This cost will be counterbalanced by savings in the cost of the PhonewayPlus Board, and the reduced need for reviews and oral hearings in light of the more detailed, considered adjudications we now publish.
- To seek to recover administrative costs associated with handling cases where serious breaches of the Code are upheld. In an extension of the "polluter pays" principle already used in relation to fines, the anticipated increase in income from these recoveries will be used to reduce the cost of regulation to the industry as a whole.
- To clearly communicate to all interested parties where a new phone-paid service or practice is deemed unacceptable, giving them the opportunity to change their service or practice. We would then stand ready to take more serious action against any business that continued with a service or practice deemed unacceptable.

- To continue to make our adjudicatory decisions as transparent as possible. We have already taken major steps to increase the information provided in terms of each case, including the thoughts and findings of the Panel in reaching its decisions.
- To ensure that policy and enforcement are coherent and consistent in an increasingly converged market, by continuing our close contact with other regulators. PhonepayPlus already has a Framework Agreement by which it acts as an agency of Ofcom, and a Memorandum of Understanding with the Office of Fair Trading. We are discussing a similar arrangement with the Gambling Commission, and may formalise other relationships such as those with the Advertising Standards Authority, the Information Commissioner's Office, and the Financial Services Authority.
- To review the current compensation arrangements for Live Services.

2008-09 Market and Levy

PhonepayPlus' Three-Year Strategic Plan had included assumptions of a 17% decline in market size in 2007-08, and 10% market growth in 2008-09. Subsequent information suggested that our 2007-08 forecasts may have been slightly pessimistic. Three-quarter year data now suggests that the market was down around 13% for the year to date.

PhonepayPlus had no wish to base the 2008-09 levy on an over-anticipated level of market growth, and accordingly the assumption for growth in 2008-09 was reduced to 5%. Based on this limited recovery our belief was that a limited increase would be necessary for the levy in 2008-09, taking into account that the cost of regulation has decreased for the third year in real terms. The consultation document expressed our belief that the 2008-09 levy would remain below 0.4%.

Responses and Conclusions

Respondents were generally supportive of our "Pre-empt, Prevent, Protect" principles, and of our expansion of the "polluter pays" principle to administrative costs where a breach is upheld.

Some responses indicated that not everyone within the PRS industry is clear about PhonepayPlus' exact relationship with the Industry Liaison Panel, believing the relationship is decision-making rather than advisory. Additionally some respondents expressed the mistaken belief that PhonepayPlus uses fines to increase its budget, and were clearly unaware of the levy rebate which is tied to the amount collected in fines during each financial year. Both these perceptions point to a need to for greater transparency and clarity.

Respondents were also unclear about the exact definition of "phone-paid services", an updated definition of what PhonepayPlus regulates. The change from the previous "premium rate services" was designed to reflect the climate of increased convergence in the communication sector, and the fact that most of the services regulated were not seen as "premium rate" but for what they are – TV voting, Dating and contact services, Sports alerts, Directory Enquiries, and mobile videos and music downloads. The case in general conversation and in non-legal materials for moving on from the dated, meaningless, and stigmatized use of "premium rate" is to aim debate and understanding. It is not intended to mask a form of mission creep. The activities in the budget relate to our duty as a regulator of a range of services defined by Ofcom under the powers given to them in the Communications Act 2003.

Many respondents questioned our assumptions around the calculation of the levy on the 087 number range that will be necessary when PhonepayPlus assumes regulatory responsibility for it, but conceded that the exact costs will be difficult to quantify until 087 services fall under our remit. PhonepayPlus is committed to incorporating 087 numbers into its existing work rather than creating a separate entity, but has pledged to keep the 087 levy under review to ensure that the impact of 087 regulation does not affect other phone-paid services markets.

Industry respondents questioned our assumptions around the growth of the phone-paid market. In light of this PhonepayPlus downgraded its assumptions when presenting the budget to Ofcom. However, we reject the argument from some respondents that the levy should track market performance. We believe the compliance failures in 2007 made a clear case for ensuring regulation is delivered well, and with due care, if our work is to part of the action to rebuild consumer trust in phone-paid services.

PhonepayPlus recognises the importance of showing how our approach to regulation reduces burdens on the phone-paid services industry. To do this, we will need to further quantify the benefits of good regulation, and will begin to refine the way in which we quantify regulatory impact through the forthcoming year. In addition we will continue to assess whether our Key Performance Indicators can be further focused on measuring core business objectives.

Following consultation PhonepayPlus can confirm that the levy will be set at below 0.4% for the 2008-09 financial year. An exact figure will be released in early March 2008.

Section 1

Summary of Responses

PhonepayPlus invited respondents to comment on any and all points in the consultation document. However we expressed particular interest on receiving views on the following areas:

- The size and challenges that the 2008-09 market may pose
- The expenditure plan, our focus on a “Pre-empt, Prevent, Protect” agenda, and the allocation of costs within this
- Our continuing shift towards the “polluter pays” principle through maximisation of administrative charge income and the use of fines
- Any external commercial, technical, legislative or other development that respondents felt the document did not address
- Our plans for research and for sharing our findings
- Our proposals for additional productivity measures
- Ways of assessing the benefits as well as the costs of regulation

Only ten responses were received, a small amount when compared to the average number of responses to PhonepayPlus consultations. Whilst three of those respondents were trade bodies our experience is that many major service providers and networks (with the exception of mobile networks) provide individual responses where they have comments to make.

Size and Challenges of 2008-09 Market

The majority of respondents questioned the market growth rates applied in PhonepayPlus' budget forecast. A smaller number expressed the belief that the budget should decrease in line with market performance this year, and continue to track market performance in future years.

As referenced earlier PhonepayPlus has reduced the assumption for market growth in 2008-09 in response to the views expressed here and our own data, which subsequently suggested that our forecasts for 2007-08 has been slightly pessimistic. However PhonepayPlus rejects the notion that our budget should track market performance, as a drop in market performance is not necessarily coterminous with the level of consumer risk or confidence. Indeed it can be argued that much of the reduction in market growth in 2007-08 is due to the reduction of consumer confidence caused by issue within Broadcast PRS.

Whilst we cite a fall in consumer complaints over the past year, a fall in consumer complaints is not necessarily an indicator that consumer harm has reduced. OFT research highlighted that a small number of victims report scams. This is especially true of markets such as phone-paid services, where the value of each individual transaction is small.

One respondent agreed that VoIP will be a major growth area in 2008-09, but questioned PhonepayPlus' remit in this area. PhonepayPlus does not seek to regulate all VoIP services but, where phone-paid services are delivered through a VoIP network with no PSTN breakout, we are already able to issue instructions to VoIP networks in order to deal with services which breach our Code. This is set out in more detail at paragraph 11.3.4 of the 11th Code.

Expenditure Plan and Allocation of Costs

Responses carried a general acknowledgement that prevention is better than cure, and consequently all respondents expressed support for our “Pre-empt, Prevent, Protect” agenda.

Specific comments and suggestions from individual respondents were as follows:

- That industry stakeholders will welcome the planned review of Prior Permissions
- That victims of alleged scams should be allowed to appeal against PhonepayPlus adjudications, in the same manner as businesses found in breach sometimes do
- The need to deal with the practice of reverse-billed SMS (work is already underway)
- That PhonepayPlus' compliance advice services compete with commercial entities who offer consultancy
- That website costs appeared to be high (some respondents requested a breakdown into development and maintenance costs which we have since provided)
- That EU planning and policy should be the domain of Ofcom

Whilst we are aware that some commercial entities offer consultancy for providers of phone-paid services, and that this includes elements of compliance advice, we do not see this as being in direct competition with PhonepayPlus' compliance advice service. Our service exists to support our widely supported agenda of prevention, and in this context it is right to offer free compliance advice to companies that wish to establish whether forthcoming services are at risk from breaching the Code.

Some respondents questioned the level of the 087 levy, but conceded it would be difficult to know an exact figure until PhonepayPlus took over regulation. One respondent expressed concern that there would be cross-funding from the levy imposed on other phone-paid services in order to support our work on 087, which is not PhonepayPlus' intention.

Support was expressed for our initial outlay to advise 087 service providers who are new to our regulatory framework with the belief this will pay dividends over the longer term.

Continuing Shift towards "Polluter Pays"

There was general support from all respondents for this course of action, especially as the level of collections for fines has greatly improved over the past year. Respondents also generally supported an extension of the "polluter pays" principle to administrative charges, although questioned what the revised admin charge levels will be. PhonepayPlus can confirm that revised admin charge levels will be released at the same time as the level for the 2008-09 levy.

External Developments

Specific comments and suggestions as to external developments which we may have failed to consider were as follows:

- PhonepayPlus should conduct an initial investigation to consider fraud, in nature of short-term calls duration and artificial traffic inflation to scope problem and loss to industry.
- PhonepayPlus should consider ensuring its new telephone system has built-in mechanisms to detect fraudulent activity, certainly those instances where an SP has installed equipment to play out a ring tone to the calling customer instead of answering the phone. Facilities such as Metered Pulse or Called Party Answer should be considered.
- PhonepayPlus should consider implications of PC-mobile convergence – e.g. mobile websites (this work is already underway).
- That the new definition of "phone-paid services" was potentially misleading. It would be unfair to expect the industry to fund extra consumer protection measures outside its scope.

We are always happy to consider investigations or technological upgrades that facilitate smarter investigation in line with our “Pre-empt, Prevent, Protect” agenda.

With regard to the definition “phone-paid services”, it is not our intention that the levy be used to fund consumer protection measures outside the scope of PhonepayPlus' remit. However with increased convergence leading to a climate of further technology and innovation, we must be prepared to address those issues where they do pose consumer risk.

Plans for Research

Respondents generally welcomed PhonepayPlus' research plans, with assurances sought that we will have full rights to any research we commission, and that we will share findings with industry and other stakeholders. We are pleased to make those assurances.

Two respondents offered separate suggestions, which were:

- A diary of research events on the PhonepayPlus website.
- Further education for mobile phone users as to potential scams.

We are happy to consider these suggestions as part of our ongoing work in the forthcoming year

Proposals for Additional Productivity Measures

PhonepayPlus' increased emphasis on cost benefits, and our announcement of a quarterly report aimed at target audiences, was generally welcomed.

One respondent asked whether more could be done to ensure the accuracy of levy collection, perhaps via year-on-year assessment rather than forecast.

Ways of Assessing Benefits of Regulation

Some respondents expressed support for the consultation document's assessment of how the cost of regulation could be benchmarked. There was no negative feedback as to the approach PhonepayPlus suggested.

One respondent said that a database of service providers, allowing access to information about the services they run, would reduce operational cost and also offer assistance to consumers and the industry if it were accessible from the website.

Other Issues

Other issues were as follows:

- The proposal of including a consumer section in PhonepayPlus' website was welcomed. Similarly the PHONEbrain website was seen as an impressive development.
- The suggestion of a single point of contact for other consumer protection bodies and enforcers.
- The requirement for more clarity around where precedent cases would be referred to Independent Appeals Body.
- The need to continue the improved communication between stakeholders and the PhonepayPlus Executive.

- The question of whether future budgets could be discussed with the Industry Liaison Panel prior to general consultation.

Section 2

Next Steps

PhonepayPlus' 2008-09 Budget has now received approval from the Ofcom Board. In light of this, the 2008-09 levels for levy and administrative charges will be formally confirmed in due course.

PhonepayPlus remains committed to the principles of pre-emption, prevention and protection, and welcomes continuous input from stakeholders as to how these principles could be better achieved.

Appendix A

List of Respondents

Networks

BT
Invomo
Mobile Broadband Group (3, O2, Orange, T-Mobile, Virgin and Vodafone)

Trade Bodies

Network for Online Commerce
Premium Rate Association
UKCTA

Regulators

Office of Fair Trading

Members of the Public

Mr. Mike Carroll
Mr. Anton May
Dr. Mike Ward

