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**“PhonpayPlus – a Three-Year Strategic Plan – 2011/14”  
– consultation response by The Number November 2010**

**Q1 Are we right to replace our mission statement with a simple description of our activities?**

Yes. Care should also be taken to ensure that the definition of relevant services matches the definition of PRS in the Communications Act, or that any differences are explained.

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

These values are appropriate, but ‘proportionate’ should be added. It is critical for regulators that operate in dynamic markets to remain proportionate so that outdated and un-necessary rules get rolled back, and urgently needed ones can also be added where there is clear consumer harm or risk.

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

The PRS market is going through a period of change. The emergence of application-based payments and other innovations present opportunities and risks for the industry and consumers. It will be very important for PhonpayPlus to not only monitor developments, but to support innovation by regulating in a manner that will maximise innovation whilst minimising harm. Broadly that should take the form of ex-ante (ie proactive) regulation where there is proof of high levels of risk to consumers, and ex-post (ie reactive) regulation where that threshold is not clearly passed. Regulation should be proactive where risk is structurally high or the evidence of harm is high, and regulation should be rolled back where that is no longer the case.

PhonpayPlus needs to be mindful of taking a proportionate and joined-up approach to regulation, benchmarking its efforts and successes against other adjacent regulators, laws and sectors. Failure to take this balanced approach would likely lead to displacement of consumer harm, rather than prevention of consumer harm. For example, if PRS rules are much more onerous than rules applied to credit-card payments and other payments mechanisms, then innovation will be stifled, and consumer harm will be displaced, but overall consumer welfare would not be increased.

To achieve this outcome, PhonpayPlus should adopt an approach of being as flexible as possible, with the ability to proportionately react as quickly as possible to emerging problems.

There is one major development to the regulatory environment that is due to take place in 2011 and has the potential to massively impact consumer confidence and industry work on compliance for PRS for years to come – Ofcom’s Non-Geographic Service Review. This review has the potential to make changes that could significantly alter the dynamics in the industry, simplicity of tariffs, and address concerns that consumers have raised to PhonepayPlus. PhonepayPlus should add an objective related to its role in ensuring that the Non-Geographic Review succeeds in reducing consumer harm, and that any recommendations and rules from Ofcom are smoothly implemented in terms of how they impact the industry and consumers in 2011 and beyond.

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

The launch of the new Code of Practise is an opportunity to improve regulation, but it is notable that the deliverables that have been identified are focused solely on the workings of the Code rather than the outcome it achieves for consumers and industry. If the Code is well know with good documentation and supporting materials, but fails to support innovation for consumers, and fails to deliver safe outcomes for consumers, then it should not be deemed a success. The Objective and Deliverables should be tied to methods for ensuring that innovation, efficiency and consumer protection have been meaningfully achieved, with clarity of how and when that success can be measured as having been achieved.

**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?**

Compliance is not an end in itself, but is a means for achieving an important outcome. If compliance is to be a goal then PhonepayPlus must focus very heavily on achieving proportionate, targeted regulation so un-necessary rules are rolled back promptly. If a rule is important, set it, ensure compliance and gain benefits for consumers. If it is unclear how necessary a rule is, roll it back into being guidance of best practise instead and cease to require compliance of it (but retain the right to re-impose the rule if consumer harm emerges). If that approach is not adopted, then in an evolving market there will constantly be more rules to comply with, innovation will be strangled, and the cost of ensuring compliance will always rise as the scope of regulation inevitably expands to consider all new eventualities.

PhonepayPlus should add an Objective to regularly review what rules can cease to be required for compliance and which can be modified to become recommended best practise instead (or removed entirely).

**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?**

As part of PhonepayPlus’ efforts to increase the quality of intelligence about the phone-paid services market, they should seek to work closely with industry, Ofcom and other regulators to ensure there is no un-necessary duplication of resources spent on information gathering.

**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?**

The Number agrees with this Objective but notes that in its current wording it may be hard to measure to what extent it has been achieved. As part of PhonepayPlus' methodology, there should be a focus on working with Trade Groups and the wider industry to achieve as much as possible in terms of Consumer Literacy, with PhonepayPlus only initiating solo efforts where it needs to close gaps that cannot be achieved in conjunction with Trade Groups or other industry representatives. To extend the reach of messages and to minimise cost, there should be a focus on trying to leverage PR and media coverage where possible, rather than just buying media.

**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?**

Yes, The Number agrees with this.

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