

Statement following consultation on the Business Plan & Budget 2016/17

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1. Executive Summary

- 1.1. PhonepayPlus has published its Business Plan and Budget for 2016/17 with an emphasis on supporting growth, innovation and competition in the market in the interests of consumers and ongoing focused delivery of operational and financial effectiveness and efficiency.
- 1.2. The key financial statements for 2016/17 are:
 - 1.2.1. The budget is £3,995k, representing a real terms saving of 11%.
 - 1.2.2. The forecast for the level of retained funds available to offset the levy is £1,000k.
 - 1.2.3. The market size forecast, as measured by network outpayments, is £430.5m.
 - 1.2.4. The adjusted levy is 0.63%.
- 1.3. We will not seek to change the levy model as currently applied at this time, but the planned funding review will be undertaken in the coming year and further consideration will be given to an unadjusted levy model.
- 1.4. The final Business Plan and Budget 2016/17 has been revised following consultation on a draft Business Plan and Budget 2016/17 published on 14 December 2015, with deadline for comment of 29 January 2015.
- 1.5. We value the input of our stakeholders and have carefully considered the consultation feedback received from each of six organisations.
- 1.6. The final Business Plan and Budget reflects on feedback and includes further budget savings which have reduced the scale and scope of some of our planning, but do not compromise our capability to deliver our required regulatory functions.
- 1.7. Our response to stakeholder feedback is set out in section 3.
- 1.8. The revised final Business Plan and Budget 2016/17 is published separately alongside this statement.

2. Analysis of Consultation Feedback

2.1. We have received feedback on our Business Plan and Budget for 2016/17 from six organisations:

- Mobile Broadband Group;
- Association for Interactive Media and Entertainment;
- BT;
- Action 4;
- UK Competitive Telecommunications Association;
- Federation of Communication Services.

2.2. From this feedback, we are pleased to note the broad level of support for our current regulatory approach, in particular the level of engagement and collaboration we have been able to develop with industry stakeholders. We are also pleased where due recognition has been given to efficiency and effectiveness changes already made or planned, such as our relocation to cheaper premises, streamlining the adjudicatory process through the development of Code 14, and improving the automation of handling consumer contacts.

2.3. We have analysed the common issues arising across the feedback.

- 2.3.1. There is some concern that we may be seeking to broaden the scope of our remit.
- 2.3.2. There is a view from respondents that our budget is too high, in the context of both for the size of the Premium Rate Services (PRS) market and the financial pressures industry players are under.
- 2.3.3. There is a call for us to make further cuts to our budget. These calls are expressed either as an additional percentage reduction, or through suggestions where perceived savings could be achieved through operational changes.
- 2.3.4. Regarding the activities for 2016/17 as set out in the Business Plan, there are concerns about the cost of some areas (e.g. contact centre, compliance monitoring) and/or their efficacy (e.g. consumer education, investigations team workloads). The broad nature of the comments and assumptions made across the feedback suggests, however, that there is not a detailed understanding of the underlying scope of our regulatory work.
- 2.3.5. No comments have been made regarding the potential size of the PRS market for 2016/17.
- 2.3.6. There is a difference of opinion as to whether the existing adjusted levy model should be changed to the proposed unadjusted levy model, with a majority in favour of keeping the existing model.
- 2.3.7. There are a range of factors to be built into any discussions about future alternative funding models. These include: a focus on cost drivers; fine collection rates; better application of the “polluter pays” principle and fairer apportionment of costs; developing other income streams (e.g. Registration Scheme fee levels, charges for direct services).

3. PhonepayPlus response

3.1. Regulatory scope

- 3.1.1. We are clear that our regulatory remit is limited to premium rate services, as defined and set out in Section 120 of the Communications Act 2003. Specifically, our Code of Practice applies to controlled premium rate services (CPRS), a subset of PRS, as defined and agreed with Ofcom.
- 3.1.2. We remain committed, however, to working closely with other regulators to try to ensure clarity and consistency of regulation across different payment mechanisms and different types of services provided.

3.2. Budget context

- 3.2.1. Our budget is set in line with the level of regulation required, risks and market activity not in relation to the size of the PRS market as measured financially. We operate in a fast moving and complex environment, where ongoing potential for consumer harm, market issues and increasing transaction levels is placing additional demands on our resources. There are over 16 million users of PRS in the UK¹, and as technology becomes more complex and consumers become more inclined to complain throughout the value chain, in social media and other channels, we need to have the capacity and capabilities to maintain and enforce compliance with our outcomes based Code on their behalf to support a healthy and innovative market.
- 3.2.2. While there is not a direct correlation with market size, we are committed to delivering efficient and value for money regulation as set out in our strategic plan. We remain very mindful of the costs of regulation, both in absolute terms and within the context of the market, and will continue to identify wherever we can meaningful cost savings. We have managed our resources, systems and processes to deliver a 26% real-term reduction in costs since 2009/10 in the context of increasing volumes and complexity. As set out in our Business Plan, we will continue to seek out further efficiencies.
- 3.2.3. This said, cost efficiencies cannot be achieved in isolation; key regulatory costs are driven by the market and need to be addressed if further savings are to be achieved. We are looking to networks in particular to collaboratively seek synergies, de-duplication, and improvements to their own complaint handling capabilities.
- 3.2.4. It is our view that the level of resources budgeted for in 2016/17 is needed to ensure the effective maintenance and enforcement of compliance with our Code, and that a significantly different budget, notwithstanding further efficiencies we are able to achieve as stated above, is only possible through a radical shift in industry collaboration, regulatory remit and approach.

3.3. Operational costs

- 3.3.1. We continue to rigorously review all aspects of our cost base, ensuring that the resources we need to deliver our strategic regulatory approach represent good value for money.
- 3.3.2. Cost savings of £226k in real terms had already been identified through:

¹ Annual Market Review 2014

- The full year impact of relocating our offices, enabling overall property costs to fall by 26% (22% if the increase in asset depreciation is included);
- Delivering the planned improvements to our IT and business systems, enabling costs in this area to be reduced by 8% (21% if the reduction in asset depreciation is included);
- Ongoing organisational development work, enabling us to more flexibly manage our staff capacity and identify opportunities to ensure we limit wage inflation in total staff costs to 1.6%.

3.3.3. We have further reviewed our budget and made additional savings of £274k in total:

- Further reduction in people and IT systems costs by £127k through stretch target efficiencies and reduced development/activity;
- Reduced level of budgeted external legal advice by £40k. Given the operational uncertainty of when and how much external legal advice may be needed, we will make additional contingency provision in this area;
- After review of how we use PhoneBrain to engage with consumers (most notably young people), halting the film competition this year and limiting our capacity for alternative consumer education work saving £48k;
- Reduction in policy budget by £59k, reducing our planned capacity to:
 - engage with government on regulatory and market changes;
 - maintain industry knowledge and engagement;
 - develop consumer behavioural insight;
 - help consumers use PRS with confidence through e.g. mystery shopping;
 - horizon scan for emerging risks.

3.3.4. The total real-term savings of £500k make a total PhonepayPlus budget of £3,995k for 2016/17. This brings the overall real-term reduction to 11% over 2015/16.

3.3.5. Focus will be given in the next financial year to the potential for future cost savings achieved with co-operation of the market, including monitoring and compliance synergies and the complaint handling capabilities of the network operators.

3.4. Contact management

3.4.1. There appears to be a fundamental misconception about the resources we commit to handling and assessing the contacts we receive, both online and from phone calls, which is incumbent on us to provide further understanding. Our broad scope of operations is:

- We receive over ¼ million contacts from consumers annually, either online (including use of Number Checker) and by telephone;
- We deal with nearly 90% of these contacts through automated means (as well as Number checker, we use interactive voice response on our phone systems);
- Around 10,000 – 15,000 complaints are received online annually following use of Number Checker;

- We are currently responding to over 33,000 telephone calls per annum; after filtering of enquires, roughly half are complaints;
 - Total complaints are currently running at nearly 30,000 annually.
- 3.4.2. We have budgeted for a dedicated team of 13 staff in this area, of which 6 have call handling incorporated into their wider roles. The team collectively provide for the professional handling and assessment of all enquires and complaints, including the initial filtering of the remaining non-automated enquires and, for complaints, determining non-compliance or compliance with our Code and preparing the way for further investigation and enforcement where required.
- 3.4.3. To be clear, we do not seek to provide complaint resolution, working with consumers on individual cases to seek refunds or other forms of redress. Consumers are directed through automated means and call handlers back to their network, or the provider of the service, and only to revert to us if they remain unsatisfied. We will, however, aim to meet our strategic objective of helping consumers use Premium Rate Services with confidence, by supporting individuals where appropriate and proportionate in the line of making further regulatory enquiries.
- 3.4.4. Our Business Plan sets out areas in which we will continue to seek improvements in data capture and automation of contact handling. We have for example revisited the information that consumers hear in our interactive voice response (IVR) before they speak to a member of PhonepayPlus staff and improved what they receive to help them resolve issues efficiently.
- 3.4.5. We have experienced problems with Mobile Network Operators (MNO) call-handling practices which were contributing to an overall increase in call volumes to PhonepayPlus, and we have worked with the MNOs and Ofcom to seek improvements which have contributed to call volumes falling back from a peak in the summer of 2015. However more work and improvement in this area is required.
- 3.4.6. We will continue to develop our staff by building their skills and knowledge so that within current capacity we are able to respond flexibly to spikes in different areas of work (e.g. increased contact levels; increased complaints; more complex initial requests for information).

3.5. Outsourcing

- 3.5.1. We do not see outsourcing of some or all of our contact management to be a viable option.
- 3.5.2. We have not identified any significant cost savings to be made through outsourcing. This is due to improved and continuing front end automation, filtering of enquires and complaints, the cost of outsourcing the call handling compared to the cost of the small number of FTEs, and the second tier resource required to analyse the outsourced call handling data.
- 3.5.3. We have concluded that the most effective and efficient way to process complaint information alongside other market intelligence is in-house. This includes the requirement for knowledge of the niche PRS sector, greater control and flexibility over the capture of consumer data, and the use of a single database system that manages all contacts through to investigation and enforcement.

3.6. Compliance monitoring

- 3.6.1. As a regulator we will always ensure we are able to access information independently, while operating in a framework which allows us to build in intelligence from other sources. In practice this means that, in addition to handling and assessing complaints as described above, we will have an independent compliance monitoring capability.
- 3.6.2. We recognise that there is the potential for economies of scale in compliance monitoring between ourselves and that undertaken by MNOs, and as part of 2.5 above, welcome the opportunity to discuss further how these can be achieved while meeting each of our respective objectives.

3.7. Investigations and enforcement

- 3.7.1. Our contact handling and assessment process acts as an efficient filter, processing complaint information and market intelligence such that some 400 separate cases each year are put forward for further consideration by the investigations and enforcement team (9 staff).
- 3.7.2. We expect that the implementation of Code 14 will help streamline the adjudicatory process, but significant resource is still required to ensure we thoroughly investigate cases fairly and prosecute them proportionately. With our current commitment to deliver an outcomes-based code, the scope of activities of the team includes:
 - Undertaking detailed further investigations to decide whether cases should be: closed; held under review; resolved informally (Track 1); or resolved formally (Track 2);
 - Engaging with service providers to allow them to understand the issues under consideration and respond within reasonable timescales;
 - Ensuring there is a clear and robust audit trail for all decisions taken;
 - Building complex and comprehensive legal arguments and evidence to bring any case before a Tribunal, balancing robustness with timeliness;
 - Dealing with all post-adjudicatory work, including breaches of sanctions and naming cases.

3.8. Policy solutions

- 3.8.1. Our regulatory toolkit also includes identifying and applying policy solutions to issues arising more generally in the market.
- 3.8.2. In addition to holding our Code of Practice and supporting procedures to constant review, and updating guidance around these as necessary, we also value the opportunities already in place with industry to find ways in which barriers to high compliance can be broken down. These include working with an expanded and enhanced Industry Liaison Panel; making effective use of its Rapid Response Team mechanism where required; and our detailed programme of one-to-one meetings and engagement with industry representative bodies, network operators and service providers.

3.9. Levy calculation

- 3.9.1. As outlined in the Business Plan, there are three factors that impact on the size of the annual levy for 2016/17:
- 2016/17 PhonepayPlus budget;
 - 2015/16 retained funds (fines and admin charges collected, plus over/under recovery of the 2014/15 levy);
 - 2016/17 estimated size of the PRS market (as measured by outpayments from network operators to aggregators/service providers).
- 3.9.2. The PhonepayPlus budget as stated in 2.4 above, has been revised to £3,995k.
- 3.9.3. Following on from recent Tribunal decisions, we now expect the level of retained funds available from 2015/16 to offset the levy in 2016/17 to be £1,000k (£200k higher than previously set out).
- 3.9.4. In the future (levy 2017/18 onwards) we expect the streamlined adjudicatory process within Code 14 to enhance the collection of fines and administration charges, both through enabling earlier withholds and through the creation of additional opportunities for early settlement of cases.
- 3.9.5. We will also continue to explore other legal possibilities to maximise the collection of fines and administration charges, including how we utilise debt recovery agencies and structure any potential alternative funding models.
- 3.9.6. With no comments arising from the consultation process, our estimate of the size of the PRS market for 2016/17 remains unchanged at £430.5m.
- 3.9.7. The adjusted levy for 2016/17 is therefore calculated as follows:
- PhonepayPlus budget = £3,995k;
 - Less: £262k Registration Scheme and other income (bank interest);
 - Less: £1,000 retained funds;
 - Total to be funded by adjusted levy = £2,733k.
- 3.9.8. With an estimated market size of £430.5m, the adjusted levy for 2016/17 will therefore be 0.63% (compared with the estimate of 0.74%, and the actual rate of 0.60% for 2015/16).

3.10. Funding review

- 3.10.1. Given the reluctance expressed by the principal industry funders to change to the proposed unadjusted levy model, we will continue with the current adjusted levy model in 2016/17. The adjusted levy will be at the rate set out in 3.9.8 above.
- 3.10.2. We do, however, remain committed to continuing discussions with industry to consider alternative funding models where appropriate. In doing so, during 2016/17 we aim to:

- Achieve greater clarity about the pros and cons of different models, especially regarding possible variations to the existing adjusted levy model;
- Build in agreement on the real drivers of cost to PhonepayPlus and the role of industry to help alleviate these;
- Assess the potential impacts arising from a new dialogue with industry, where we seek to see if we can develop our outcomes-based regulatory approach further to explore what can be done to remove or reduce barriers to investment and innovation;
- Question, in effect, whether there is a new funding model that would support the proposition that regulation which strives to promote a competitive market place, with an effectively functioning industry generating decent profits and stimulating investment and innovation, is good for the consumer.