

Business Plan & Budget 2012/13

A PhonepayPlus Consultation

A PUBLIC CONSULTATION

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Foreword

Sir Alistair Graham, PhonepayPlus Chairman

This year we mark our 25th Anniversary, and my last Business Plan & Budget as the Chairman of PhonepayPlus.

Over the past 25 years, no one can be left in any doubt that we have changed significantly – through building stronger and more effective relationships with our stakeholders, including the industry we regulate, to drive-up standards. We've also done this by placing a greater focus on pre-empting harm to prevent problems in the market, and by dealing with misconduct in ways that ensure it does not recur. This approach to regulation provides for increased consumer confidence, decreasing complaint levels, increased market opportunity and lower costs.

This year, we undertook a bi-annual stakeholder audit. The results were very positive and encouraging: they demonstrate that we are perceived as an organisation that is better than ever before at engaging and listening, in order to develop effective regulations, requirements and guidance that industry need. This should ensure consumers can have greater trust in premium rate as a payment mechanism for purchasing goods and services in an increasingly digital environment.

This is my fifth budget as Chairman of PhonepayPlus. As we continue the journey of change that I describe above, it is important that our Business Plan & Budget support effective and efficient regulation. There are five reasons why I think this is the right Business Plan & Budget for PhonepayPlus and for the premium rate industry, with which we work closely and which pays for our costs.

- Firstly, the budget supports the journey set out in our Three-Year Strategic Plan for sustaining our effectiveness as a regulator, whilst continuing to drive down the costs of regulation. On top of the savings we have made this year, our proposed budget for next year will mean we achieve an almost 20% real terms reduction in our costs over just two years.
- Secondly, the budget supports us in placing our key priorities for next year, specifically effectively embedding the new outcome-based 12th Code of Practice and Registration Scheme.
- Thirdly, the budget is designed to help us work with industry to address non-compliance with the Code and any consequent consumer harm at the earliest possible stage. Taking a pre-emptive approach to consumer harm is essential to support market growth and innovation, and to ensure that consumers have full confidence that they will get a fair deal. This is never more necessary than in times of economic hardship and austerity.
- Fourthly, the philosophy underpinning this budget is one of continuing to engage with and listen to both industry and consumers, to develop effective regulation, with our key characteristics of being an independent, non-statutory and industry-funded regulator.
- Finally, the budget ensures that we are able to maintain our capacity for responding to technological change in the market, so that we can support innovation whilst also

tackling emerging consumer risks. Good examples are our recent and ongoing work on in-app billing, malware and micropayments.

I commend this business plan to you.

A handwritten signature in black ink that reads "Alistair Graham". The signature is written in a cursive, flowing style with a large loop at the end of the name.

Sir Alistair Graham, Chairman

Executive summary

2011/12 has seen PhoneyPayPlus successfully implement a new regulatory framework for premium rate services (PRS), which included the introduction of a dramatically different Code of Practice, focused on outcomes, combined with a mandatory, industry-wide Registration Scheme, designed to provide greater transparency about market providers and, in turn, aid due diligence along the value-chain. This significant piece of work to bring in a new regulatory framework has been welcomed by industry. It is designed to support the market in building compliance, to support growth in consumer confidence as well as to provide greater opportunities to innovate through the simplified Code.

This year has also seen ongoing improvements in our enforcement strategy, with the majority of complaints fast-tracked for effective and speedy resolution where the actual or potential harm is considered relatively minor. For the more serious and widespread harm, our formal investigative procedures ensure we move cases to adjudication efficiently, to ensure consumers are properly protected and our dealings with industry are proportionate and effective in driving-up compliance.

These achievements, delivered in the context of significantly reduced costs of regulation, bring benefits to both consumers and industry alike. However, it will require increasing effort to ensure the benefits of this investment in our new regulatory framework are captured for our key stakeholders. Our activity in 2012/13 will therefore be critical towards this goal, and will require delivery of a range of measures to fully realise the new regime and pre-empt market detriment from the fast-changing technical landscape.

Our areas of focus to achieve these critical objectives are

- Unlocking the value in the new regulatory framework. This is a considerable undertaking given the marked change that this new Code makes over all previous Codes and approaches, including where the 'regulatory bite point' sits in terms of responsibilities along the value-chain for compliance;
- Developing new Guidance to keep pace with the innovating market and the need for ongoing regulatory certainty and clarity from providers;
- Providing industry support services to help industry implement the principles of the Code into everyday business;
- Maximising the benefits of the new Registration Scheme and leveraging the new data available to deliver richer market intelligence;
- Aiding industry to develop effective due diligence and risk control procedures;
- Understanding market developments and the place of PRS in the micropayment environment;
- Managing emerging risks from malware and inappropriate use of 'in-app' billing. With the rapid growth in the ownership of smartphones by consumers and children alike, we believe that the risks in this area are growing, and will need considerable resource deployment and intelligence sharing in collaboration with industry providers and other enforcement bodies;
- Utilising thematic monitoring to drive-up compliance in the market and reduce consumer detriment in market sectors where there appear to be patterns of underperformance;

- Undertaking consumer-focused research, particularly in the areas of engagement with new technologies and services;
- Increasing the richness of consumer evidence and intelligence for effective enforcement action;
- Taking swift action against those who continue to abuse their relationship with consumers, thus minimising the risks to consumer confidence and the opportunities for growth needed in the market;
- Delivering on informal procedures to increase compliance, and focusing the full weight of our investigative resource onto the most complex cases and areas of serious harm, ensuring appropriate targeting of the value-chain;
- Working in closer collaboration with industry, increasing our stakeholder engagement to best meet the regulatory challenges;
- Reviewing our Key Performance Indicators (KPIs) and ensuring they continue to best measure our progress in delivering the outcomes expected from the new regulatory framework;
- Challenging our costs base and continuously reviewing our effectiveness and efficiency.

We believe that prioritising on these areas of activity will enable us to improve further on the effective regulatory service we offer to consumers and our stakeholders, whilst minimising risk to the market from new and emerging threats. 2012/13 is the second year of our current Three-Year Plan and a short statement on that plan is at Annex D of this document – the five strategic objectives in the plan will provide the framework for all other activity carried out by us in the next year.

In considering the outlook for the market in the coming year, we take into account the present relatively flat nature of demand, and so we are not surprised that our latest outpayment figures suggest that the current size of the market is smaller than in 2011/12. While the third and fourth quarters are traditionally the strongest, we are not assuming that there will be short-term growth. We are currently carrying out our full market review for 2011, which we will publish alongside the approved Business Plan & Budget for 2012/13 in March next year.

We are conscious that the current market conditions reinforce the case for us to continue reducing the cost of regulation. The almost 20% real terms reduction in our costs we are achieving over the period 2011-2013 is therefore an important contribution in helping to support the market. However, we would emphasise that PhonepayPlus' budget is not intended to, and nor should it, closely track changes in the size of the market in a given year. Like any other organisation, PhonepayPlus needs to be resourced on the basis of what it needs to deliver effective outcomes, whilst continuing to drive efficiencies. An approach that closely linked the budget to the size of the market would result in greater volatility in the budget and could compromise effective regulation, which would not be in the best interests of the industry or consumers.

The core, levy-funded budget

The proposed core budget for 2012/13 is **£3,742,183**. Having absorbed unusually high inflation this year, we are able to propose a cash decrease in our budget of £57,560 from

2011/12. This is a decrease of 1.5% in cash terms and 6.5% decrease in real terms taking into account the current rate of CPI.

On a like-for-like basis, the real cost of our core regulation has **now fallen by 19.6% in just two years**. Against the backdrop of the scale of what we have delivered in that period and what our priorities are for the next year, this is a significant achievement and represents excellent value to all of our stakeholders.

The further reduction in our costs for the coming year is a reflection of the current success of parts of the market in driving out the systemic risks of previous years, and is a testimony to a growing commitment to treating consumers fairly and equitably. This success is enabling us to gradually commit resources away from reactive enforcement action after harm has occurred, and towards proactive engagement with industry which prevents as much harm as possible from occurring in the first place. This has been part of our longer-term strategy, dating back to our first Strategic Plan in 2008. It is one that, over time, is driving compliance and consumer confidence. It is also reducing the overall cost of regulation.

However, we remain sensitive to the continually challenging nature of the economic situation for the PRS market, particularly in the face of competition from other micropayment platforms. We are committed to ensuring that regulation is proportionate and fit-for-purpose, and that it enables the regulated market to remain competitive and innovative.

Feedback and comment

We wish to gather stakeholder views on our priorities for next year, as well as on the budget we have proposed to allow us to deliver against our objectives. Information on how to respond is contained in Section 7. **The closing date for responses is 20 January 2012.** This period of time allows us to seek approval from Ofcom for the budget and publish the levy in good time for the start of the financial year 2012/13.

Section 1: Our purpose and role

1.1. Phoneyplus is the organisation that regulates premium rate services (PRS) in the UK – the goods and services that we can buy by charging the cost to our phone bills and/or pre-pay accounts. Following the drawing-up of our second Three-Year Strategic Plan (2011/14), we took the opportunity to review, and then consult upon, our Vision and Values. As a consequence, we decided that our Vision remained fit-for-purpose but that some modification was appropriate in respect of our values. These are re-stated below.

OUR VISION

1.2. Our vision is that anyone can use premium rate services with absolute confidence.

OUR VALUES

Effective

1.3. We want a market in which the public can trust services in the knowledge that they can exercise choice with confidence. A market, too, in which businesses can trust in a well-designed Code, proportionately enforced, that allows them to invest and innovate with confidence. We pre-empt and prevent problems in the market we regulate and deal with misconduct in ways that ensure it does not happen again.

Accessible

1.4. We are a well-understood and easy-to-reach first port of call for advice, information and support for consumers, providers, Network operators, the media, government and public agencies.

Independent

1.5. We will listen to both sides of the story, look at the facts and act decisively but always on a basis proportionate to the size of the problem. We will always work with industry and other bodies to build our understanding and improve our effectiveness. But we will not lose sight of the importance everyone places on the independence of decisions relating to our Code and its enforcement.

Collaborative

1.6. We will work closely with all interested parties to encourage a safe and dynamic regulatory environment. We aim to be more enabling, creating a climate for investment and innovation.

Principled

1.7. We ensure that real choice and genuine security are created by the standards we set. We aim to build more trust across the market.

Efficient

1.8. We will continually strive to deliver our activities efficiently, challenging ourselves to find new ways of working and improved systems and processes that reduce the costs of regulation, without undermining the quality of the protection we offer consumers.

Transparent

1.9. We will aim to share all relevant information on activities and will respond to all reasonable requests for such information. We will always be open and transparent in our dealings, unless in doing so we would undermine our regulatory effectiveness or breach the rights of others to confidentiality.

Section 2: Achievements in 2011

2.1. 2011 has been dominated by the successful delivery of the new regulatory framework. That success was not ours alone; it was a combined effort which saw considerable support from a great many providers and their trade bodies. We continue to engage productively with stakeholders and see this as a key way of working to be effective in what we do. In particular, we engage and consult with industry providers and their trade bodies, to ensure that our work is informed by industry insight and that we collaborate effectively with industry for the benefit of consumers. Our Industry Liaison Panel (the ILP) provides an excellent source of feedback and has created a number of working groups to support developments in areas, such as sharing intelligence on the future of the PRS market, improving our Number Checker and guiding our consumer literacy programme. Such input helps to improve regulation and outcomes for consumers in the market.

2.2. In our 2011/12 Business Plan and in our published Three-Year Plan, we consulted on, and then committed to, undertaking a range of activities. You can track a summary of our progress on all of these activities in Annex C. In this section, we set out the highlights of our progress so far this year in delivering the current Business Plan.

Implementation of the new regulatory framework

2.3. The primary focus of our work in 2011 has been the culmination of our review of the entire regulatory framework for PRS. As a consequence, a different form of Code of Practice was adopted, supported by a mandatory, industry-wide Registration Scheme, new Guidance and publication of all of our investigations procedures for the first time – more is said about each below.

New outcomes-based Code and sanctions

2.4. The new Code came into effect on 1 September this year and, in the run-up to that event, we handled over 6,500 contacts from industry members through our Industry Services and Registration Teams. The launch was a significant milestone for PhonepayPlus and we anticipate that the new simplified Code will facilitate innovation and growth in the PRS market, as well as enabling better due diligence and transparency, helping to lower risks of consumer harm.

New industry-wide Registration Scheme

2.5. This year, we delivered a new industry-wide Registration Scheme. This was a significant information systems and business change project that we delivered on time and within budget. We believe that a successful Registration Scheme is vital for us to deliver the principles of the new Code, as well as continuing to drive down costs of regulation over time. The new Code and Registration Scheme will help us, and industry, to build compliance into the market by encouraging effective due diligence and risk control through shared market intelligence. We look forward to working with our Industry Liaison Panel (ILP) and others to ensure that the Registration Scheme continues to deliver benefits to the market in 2012/13 and beyond.

New Guidance

2.6. We believe it is vital that the Code works in practice, keeps pace with the rapidly developing PRS environment and provides continuing regulatory certainty during this stimulating growth. To this end, we have published 22 pieces of Guidance to support the launch of the new Code and have already opened a consultation on new Guidance for in-

app billing, which we produced in conjunction with the ILP Futures Group. We also issued a new Fact Sheet for charities new to the PRS industry and worked with UNICEF to pioneer a new innovative model for charitable subscription donations.

Faster resolution for minor harm

2.7. In the first full year of Complaint Resolution Team activity, we have secured redress for over 4,600 consumers and directly intervened to obtain over £30,000 in refunds. Resolving low-level consumer harm informally with providers for the majority of complaints enables us to focus our enforcement activity on more significant harm.

Publication of Investigations & Sanctions Procedure

2.8. This year, we published for the first time our Investigations & Sanctions Procedure, which applies to the new Code of Practice. This publication reflects our commitment to improve transparency around our investigations and sanctions process, ensuring that the industry we regulate understands and has confidence in this process. To help make our procedures as clear as possible, we also published a schematic on our website that sets out, in graphical form, the processes we follow when dealing with complaints about services.

2.9. The Investigations & Sanctions Procedure handbook and the schematic benefitted from the feedback of industry trade bodies, in particular AIME. We believe that both publications give welcome transparency and clarity to what are, by necessity, quite legalistic and detailed rules. We also believe that we have led the way amongst our fellow regulators in publishing our procedures in this manner.

PhoneBrain

2.10. We are committed to Government's agenda for empowering consumers, especially younger people who increasingly are leading the way in their ownership of smartphones. One way we express this commitment is through our PhoneBrain work. PhoneBrain is the schools programme that develops young people's confidence in using PRS by helping them to recognise PRS and understand the potential costs involved, while at the same time highlighting the opportunities associated with the services available. All of this is done through free-to-download, curriculum-relevant teaching resources that are available on the project website (www.phonebrain.org.uk). To encourage engagement with the project by schools and students, an annual enterprise and ICT competition runs alongside the programme.

2.11. In line with our commitment to increase both the range of partners involved in PhoneBrain and industry involvement, as well as the potential to share costs, we have improved and extended the programme and competition in 2011. With the help of the Clubs for Young People network, we have rolled out the programme to youth clubs nationwide for the first time, with the goal of reaching young people not enrolled in formal education. Social entrepreneurship charity, Live UnLtd, is offering a prize fund of £6,000 and business mentoring support to the young people who come up with the best ideas for a premium rate service that has a community or social benefit. Shortlisted ideas will be judged by a panel that includes industry representatives in a culmination event at ITV's headquarters in London in January.

Section 3: The market and other external conditions

3.1. We are currently carrying out our annual market review which is designed to inform regulatory activity, as well as provide a 'health check' on the state of the industry. Last year saw the market increase from £810 million in 2009 to £816 million in 2010. Current figures based on outpayments so far this year indicate that this positive growth will not be repeated this year and that the market will decrease; this is driven by a significant decline in directory enquiry (DQ) services, in particular.

3.2. There is some evidence of movement between billing mechanisms in the market. For example, payments made via SMS decreased in the first half of the year with a corresponding increase of outpayments for Payforit. This may suggest that some services are moving to that platform. We are interested in any evidence of services traditionally operating on premium SMS moving to direct billing mechanisms generally, and Payforit in particular.¹

3.3. Mobile convergence and the increasing penetration of smartphones may further increase pressure on the UK PRS market. Easier access to online information on smartphones may particularly challenge traditional PRS information services, such as DQ services. The divergence of micropayment mechanisms that is accompanying mobile convergence may further squeeze premium SMS billing, with micro-billing platforms, such as PayPal and Google Wallet, making paying by debit and credit card more simple and more convenient – even for more traditional PRS services. In addition, the non-geographic calls services market (NGCS), which 09, 118 and 087x premium rate numbers form part of, seems to be declining generally – Ofcom estimated that this market declined by approximately 14% in 2010. We are interested in views on any specific increasing risks of consumer harm presented by the current economic situation and of a declining NGCS market generally.²

3.4. There have, however, been positive developments in the market this year, and the growth of smartphones presents an opportunity as well as a challenge. We have seen the return of premium SMS to mainstream broadcasting as well as the roll-out of live London bus times via SMS. Both of these examples point to continuing innovation in the market, as does in-app billing which we recently consulted on. We are interested in your thoughts on the current barriers to innovation in the market, either regulatory or commercial.

Understanding the market

3.5. Each year, we undertake a review of the PRS market in order to assess present and potential market risks to consumers. In our market review of 2011, we have given particular focus to understanding opportunities and barriers for growth and innovation in the market. We are also exploring how children are engaging with PRS services, especially reviewing the risks of harm posed by services on smartphones that are particularly attractive to children aged 13 and under. As usual, our market review will be published in the first quarter of 2012.

¹ See Annex D

² *The flow of funds in the market for non-geographic calls*, 3 November 2010, Analysys Mason, p25 and *Simplifying Non Geographic Numbers*, December 2010, p35

Lower-cost services – including 087x

3.6. This year, we published a Guidance Note on lower-cost services – adding clarity and certainty to the regulation of (amongst other things) 087x services. We excluded providers who only offer 087x numbers from both the need to register as an organisation and the need to register 087x numbers on our Number Checker service.

3.7. Despite the decline in the non-geographic calls market, the 087x market has remained relatively steady in terms of revenue for the fifth quarter in a row (at approximately £17m per quarter). Furthermore, it appears that the missed call activity that we had seen on the number range has substantially decreased. This year, we had no formal investigations against 087x services and 91 informal cases, mostly related to a lack of or inadequate pricing information, or long waiting times.³

Applications and Information services

3.8. This year, Ofcom estimated smartphone penetration at 27% for adults and 47% for young teens. Smartphones are characterised by their ease of access to email and the internet. This places consumers within close reach of generally free information services. These free information services are increasingly competing for consumer attention by offering an experience tailored to the user's handset in the form of an application (or 'app'). We are interested in how these apps may affect existing PRS information services and also how apps might be either purchased or monetised using PRS, or, conversely, abused by malware; we are also keen to establish what guidance we can offer in order to ensure that consumers enjoy positive outcomes when using an app which is related to PRS.⁴

Charities

3.9. This year, Mobile Network Operators introduced higher revenue-share with charities on shortcodes. Charitable giving via premium rate shortcodes may expand considerably in the next year, and is estimated to reach £96 million per year by 2014. We welcome the innovation of the market in this area and aim to support charitable giving via PRS in whatever form as a positive outcome for consumers. However, drawing on lessons from the past, we want to work with charities and the PRS industry to make sure there are sufficient controls in place to prevent unscrupulous providers taking advantage of this innovation in giving, harming consumers and tarnishing the reputation of the market as a whole – and good causes in particular. We are interested in receiving views on the future potential developments in relation to charitable giving via PRS.⁵

Q1. What information or evidence do you have about market trends and about the overall size of the PRS market in 2011/12?

Q2. What information or evidence do you have about any specific segments or content areas and their potential for growth and decline over 2011/12?

³ See Annex D

⁴ *Communications Market Report*, August 2011, Ofcom, p49

⁵ *Sending out an SMS, the potential of mobile phones for charities and non-profits*, Charities Aid Foundation, June 2011

[http://www.nfpsynergy.net/includes/documents/cm_docs/2011/n/nfpsynergy_sms_report_version_20_july_2011.pdf]

Q3. How do you see the PRS market developing in 2012/13? In particular, do you have any insights into how PRS might develop on social media, smartphones or other platforms?

Section 4: Looking forward to 2012 and the financial picture

Priorities next year: Unlocking the value in the new regulatory framework

4.1. During 2011, we launched a new Code of Practice. The development of the new Code involved two years of consultation and created a framework which would enable more positive outcomes for consumers, while giving industry flexibility in how they achieved those outcomes. During the consultation period, we listened to industry when they told us that it was the specific application of the Code's outcomes that would decide whether the new Code could be judged a success. It is with this in mind that we formulated our plan for the coming year.

4.2. The success of the new Code has a number of interlinked dependencies, including clear Guidance that keeps pace with the market and a Registration Scheme that facilitates good due diligence and risk control, while also driving efficiencies in enforcement and intelligence. Supporting these activities, especially in the first year, will require a range of resources, expertise and considerable effort.

Priorities next year: New Guidance

4.3. It is clear that, with the new Code, we must provide an appropriate balance between regulatory certainty (in the form of Guidance) and flexibility (in terms of how Code outcomes are achieved). PhonepayPlus intends to continue to consult and collaborate with industry on effective Guidance, particularly in relation to due diligence and risk control, PRS billing with smartphone apps, and in creating integrated payment experiences between web and phone.

Priorities next year: Realising the full benefits of the new Registration Scheme

4.4. This coming year will be the first under the operation of the new Registration Scheme. In order to apportion responsibility at the appropriate point in the value-chain, we must maintain accurate data in the Registration Scheme. The accurate provision of data by providers is mandatory under the new Code. However, we recognise that the more the Registration Scheme benefits its users, the more industry will take ownership of the Scheme – with better outcomes all round. We aim to work with the industry through our ILP so that the Registration Scheme continues to improve in terms of functionality and value-for-money, and remains a useable and useful allocation of resources in the coming years.

Priorities next year: Importance of due diligence and risk control in the new framework

4.5. The new Code aims to apportion responsibility for causing consumer harm to the appropriate provider in the value-chain. This is a step change, the importance of which should not be under-estimated in securing greater compliance. Although the Registration Scheme will facilitate our investigations, our aim, wherever possible, is to prevent harm from occurring in the first place – as we have done with some success under the 11th Edition of the Code. Due diligence by PRS providers on their clients has a vital part to play in helping us to pre-empt consumer harm and has been something that has been lacking from in some parts of the industry. By checking the breach histories of potential partners and then developing and *implementing* risk control plans, providers can better manage risks and carry out their due diligence responsibilities under the new Code. Our focus this coming year is to ensure that we work in collaboration with providers to ensure that due diligence and risk control processes are both proportionate and effective in continuing to prevent harm. Early

discussions with some providers have been positive about this, but we do not underestimate the work we need to undertake to drive changes in some business and cultural practices.

4.6. We are aware that there may be a risk that providers further down the value-chain are smaller in terms of size and may not be able to meet their obligations in relation to fines. When harm does occur, we will work with the all providers and Network operators to ensure that, wherever possible, fines are recovered. We take the enforcement of sanctions extremely seriously and, whenever it is proportionate to do so, we will use debt enforcement action in the courts, as well as issuing directions to withhold revenue when it is appropriate to do so. Where individuals persist in offending, we will not shy away from taking enforcement action to bar them as 'named individuals' from providing all PRS for a defined period.

Priorities for next year: Research strategy

Consumer-focused research

4.7. Consumer-focused research is a core element of our research strategy. In 2012/13, we will continue to track and understand UK PRS users' experiences within the wider context of engagement with the digital economy. Our research will consider consumers' attitudes towards engagement with technologies and factors which come into play if something goes wrong. This gives us a better understanding of what typifies normal consumer behaviour and the expectations that consumers have. Also of importance is our understanding of consumer behaviour at the margins, in particular vulnerable consumers, of whom children form an important and growing group, especially as smartphone penetration increases.

4.8. All of this helps us to build a better picture of consumer experiences with PRS, to complement our analyses based on complaints and enquiries received by PhonepayPlus.

4.9. Some of the areas where we intend to focus our consumer research in 2012/13 include

- How consumers are engaging with new technologies and services, including mobile, tablet applications and social media;
- Looking at the consumer journeys of consumers who have encountered problems with different types of PRS, in order to determine whether there are patterns with poor experiences for consumers seeking redress;
- Avoidance of 'bill shock' – looking at reasonable thresholds after which a consumer should be contacted;
- Consumer awareness of PRS-related security issues with connected media devices.

Driving-up compliance in the market: Thematic monitoring

4.10. We are also committed to gathering evidence of best practice and non-compliance in the market; in order that we can gauge the effectiveness of the Code and Guidance, or take action, as appropriate, to prevent consumer harm. We will continue to undertake this through a combination of analysis of complaint trends, stakeholder engagement, consumer-focused research and in-market testing of services.

4.11. In particular, the monitoring and testing of services will form the evidential basis for activities designed to increase levels of compliance, with a view to reducing consumer

detriment and increasing consumer trust. In 2012/13, we expect to develop a thematic monitoring plan focused on several aspects of PRS in various market sectors where there appear to be patterns of underperformance with compliance, or where the outcomes in the new Code are driving higher expectations from consumers. These are likely to include, but will not be limited to:

- Customer care – testing the provision of contact information for PRS consumers who experience problems and the quality of service for consumers using customer care. A recent discussion at the ILP identified evidence of poor customer care as a challenge that the industry needs to address.
- Transparency of pricing and opt-out information – examining whether consumers are made aware of what they should expect to pay for a service, how they will be charged, and how they can disengage with a service and marketing. In particular, this will focus on Mobile Terminating (MT) billed services, including subscriptions and chat/quiz models.
- Affiliate marketing – ensuring that services which are promoted by affiliate marketers provide consumers with adequate information about the service proposition, charging model and costs associated with using the service.
- In-app payments – in the emerging market for in-app payments, ensuring that there is transparency for consumers who pay via PRS.
- Due diligence and risk control – ensuring that we work with Level 1 providers, such as aggregators, to ensure that their policies and processes for due diligence and risk control are robust and effective.
- Bill shock – testing that Level 2 providers are taking proactive action when they detect possible bill shock scenarios.
- Charging without consent – working with providers on consent methods being deployed.

Given the dynamic nature of the PRS market, it is expected that additional issues will emerge and require attention during 2012/13.

Q4. What comments do you have on the priorities for 2012/13? Are there other projects or issues that you think PhonepayPlus should consider in the coming year?

The financial picture – the core, levy-funded budget

4.12. The proposed budget for 2012/13 is £3,742,183. Having absorbed unusually high inflation this year, we are proud to be able to propose a cash decrease in our budget of £57,560 from 2011/12 which is a 1.5% reduction in cash terms and a 6.5% reduction in real terms taking account of CPI. By the end of the next financial year, we will have reduced the direct cost of regulation by 19.6% since 2010/2011.

4.13. In recent years, we have published our budget with reference to six areas of activity. For the purposes of comparison, we still publish the budget in terms of these activity areas at Annex A. In order to continue to offer this approach to the budget, we explain our Registration Scheme costs separately at Annex B.

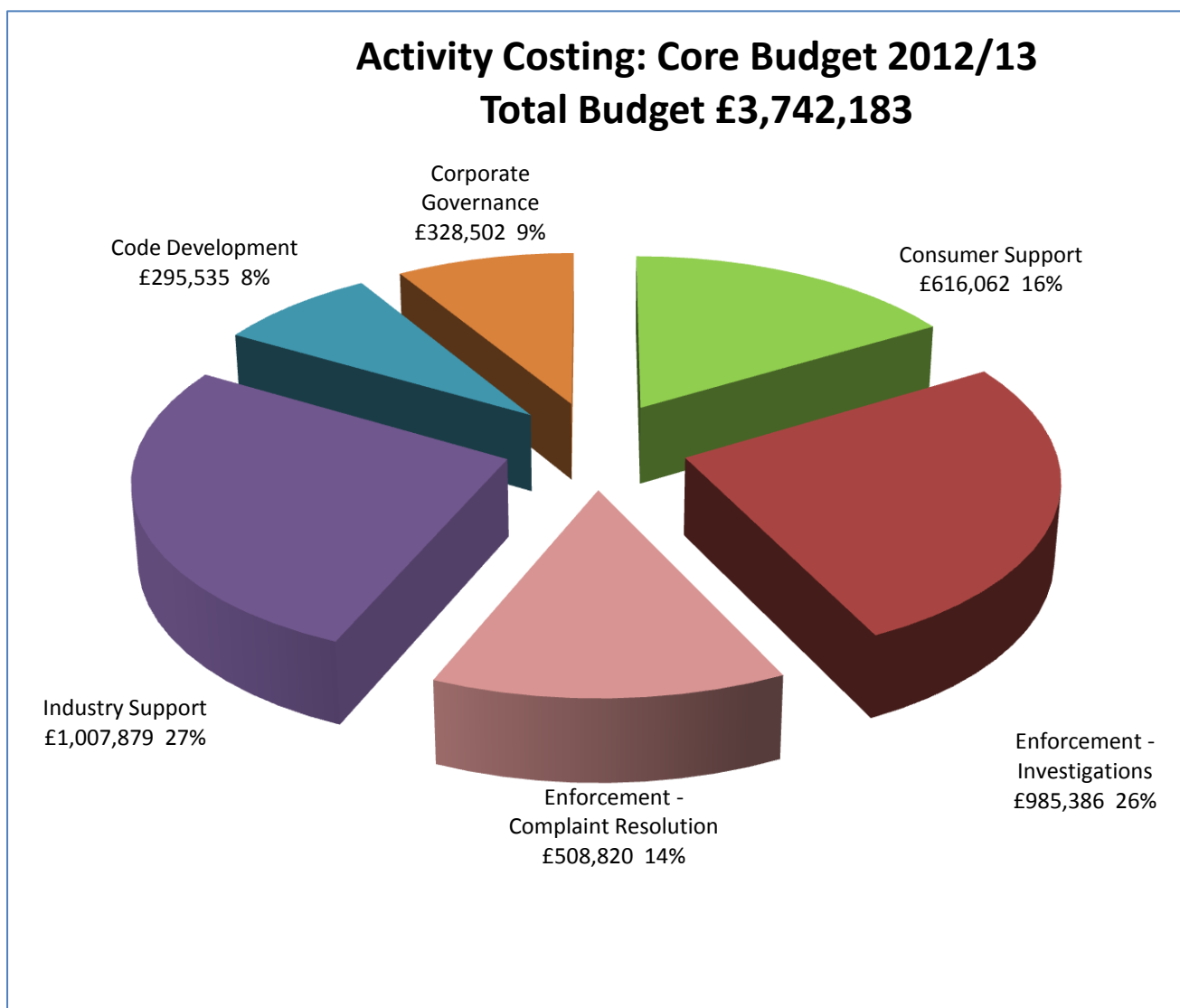


Figure 1

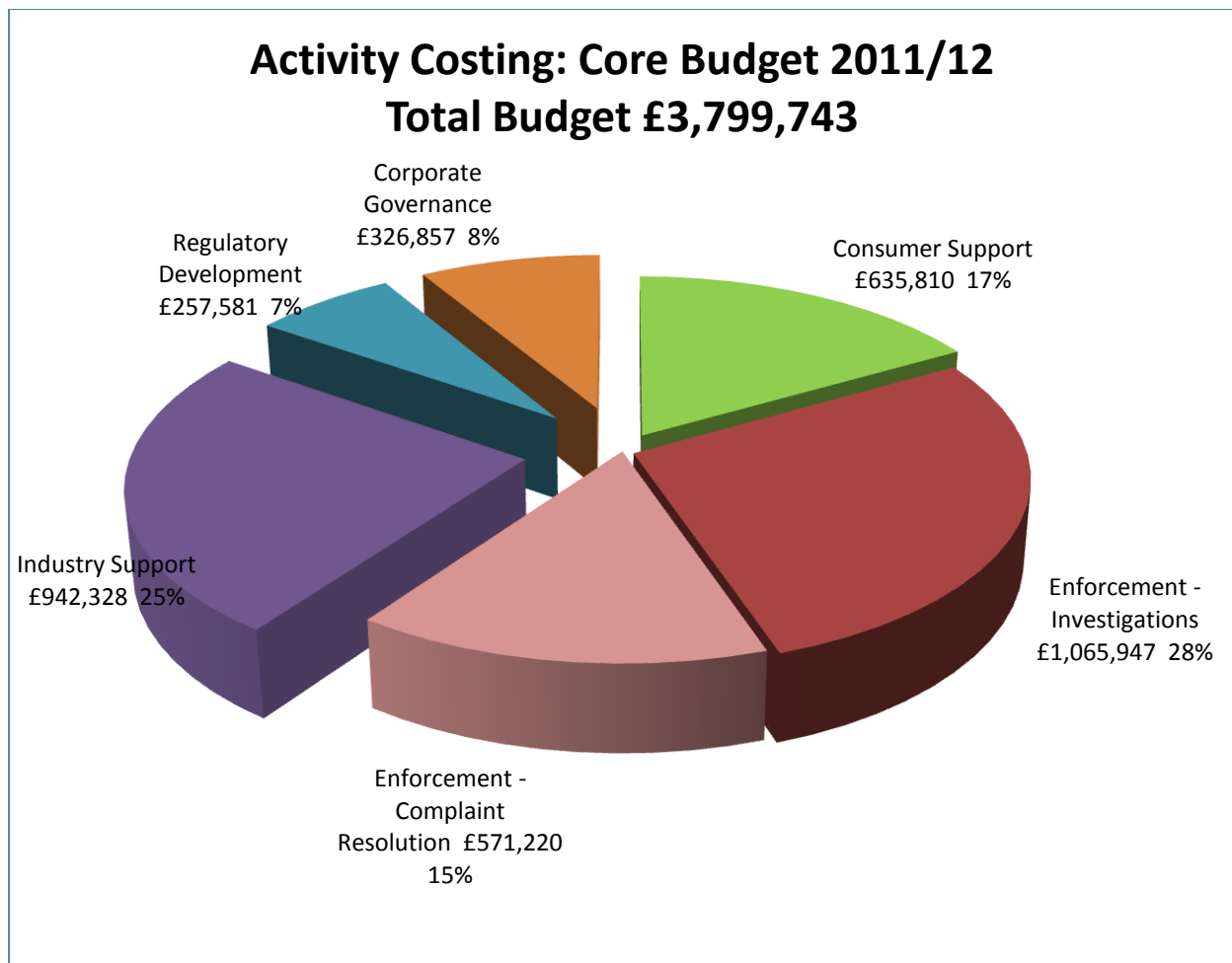


Figure 2

4.14. The further reduction in our costs for the coming year is a reflection of the current success of the market in driving out the systemic risks of previous years, and is a testimony to the market's commitment to treating consumers fairly and equitably. This success has enabled us to commit resources away from enforcement action after harm has occurred, to engaging with industry and preventing as much harm as possible from occurring in the first place.

4.15. We remain sensitive to the continually challenging nature of the economic situation for the PRS market – in particular, in the face of competition from other micropayment platforms. We are committed to ensuring that regulation is appropriate and fit-for-purpose, and enables the regulated market to remain competitive and innovative.

4.16. We recognise that, while regulation drives benefits for consumers, it is ultimately a cost that they must pay in their service fees, and so we continually challenge our costs to ensure that we deliver our service in the most effective and cost-efficient way. As the new Code beds-in and takes effect in ways that we expect in terms of incentives for compliance, then we expect to make further savings in subsequent years of our current Three-Year Plan.

Consumer Support

4.17. Over the last six months, we have averaged 1,800 contacts and 600 complaints to our Consumer Service Team each month. This continuing volume of activity indicates that we should be cautious about removing too much resource in the Consumer Services area.

4.18. As well as meeting our Key Performance Indicators (KPIs) and continuing to fulfill our responsibility to consumers who contact us via our Consumer Services Team, this year we also propose to:

- Provide our Number Checker at the consumer's point-of-need, working in partnership with industry (via the Consumer Literacy Working Group and the Industry Liaison Panel);
- Increase the richness of consumer evidence and intelligence for market intelligence and effective enforcement action;
- Continue to develop the PhoneBrain consumer literacy campaign which assists children and young people to safely use premium rate services, thus further pre-empting the need for regulatory intervention and related costs;
- The budget for all consumer literacy activity will be further focused in 2012 and reduced by 13% to £65,000; and
- Share appropriate aggregated complaint data with Level 1 aggregators, resellers and Network operators.

4.19. Last year, we budgeted to spend £635,810, or 17% of our resource, in this area, including staffing our contact centre and carrying out our consumer literacy work.

4.20. This year, we propose to reduce our spending in this area to **£616,062**, or 16% of our estimated budget.

Industry Support & Intelligence

4.21. As anticipated, demand for Industry Support services was exceptionally high in 2011. We handled over 6,500 calls and emails from industry as we assisted the market both register and prepare for the new Code. Experience has shown that a strong Industry Support service is vital in helping industry implement the principles of the Code in their everyday business.⁶

4.22. During the coming year, when the new Code is bedding-in, we will also roll out up-to-date Guidance on key areas. This will require that sufficient resource is available to guide industry in its practical implementation. We will also streamline our prior permission regime and move existing prior permission holders to the appropriate permission structure for the new Code.

4.23. Informed policy-making and effective enforcement require evidence and our Research & Market Intelligence Team offers a cost-effective basis for taking our work forward. This team has worked this year in developing insights into market trends and developments. We intend to particularly focus on the potential abuse of PRS by rogue malware – recent reports suggest that evidence of rogue malware on Android apps has increased by 800% in between February and May 2011. We intend to work with in

⁶ See Annex D

partnership with Ofcom, the OFT, Get Safe Online, the Committee of Advertising Practice and BIS. A further priority in the coming year is to leverage the new data available via the new Registration Scheme to deliver richer market intelligence, as well as to drive policy and enforcement activities.⁷

4.24. In 2011/2012, we budgeted to spend **£942,328** on Industry Support & Intelligence. In 2012/2013, we propose to increase spending to **£1,007,879**, or 27% of our budget, in this area, in order to ensure that the new Code is successfully implemented in practice.

Regulatory enforcement

4.25. In 2011/12, we created a new Complaint Resolution Team, an important development in terms of how we seek to enforce the Code of Practice. Since this team has now made a significant contribution to our activity, we consider it appropriate for us to explain our plans for regulatory enforcement under two headings: Complaint resolution and Investigations.

Complaint resolution

4.26. This year saw considerable success for our Complaint Resolution Team. We were able to successfully deal with 80% of our informal cases within 10 working days. Over 4,000 consumers gained refunds, for a total value of over £30,000 – though this total does not include the value of refunds obtained by consumers who did not require our direct intervention, nor the value gained by improving complaint-handling procedures of those providers we contacted or the value in dealing with low-level harm quickly.⁸

4.27. The integration of our complaint resolution functions with our Consumer Support Team has been responsible both for the level of success we achieved and has also resulted in delivering efficiencies, which have enabled us to propose costs savings in this area. Assuming that complaint levels remain constant, we anticipate that we will still be able to meet our consumer-related key performance indicators in the coming year, while still spending less.

4.28. We propose to spend **£508,820 in 2012/13** on complaint resolution activity, or 14% of our budget – a reduction of 1% from 2011/12.

⁷ *Android Malware Acts As An Sms Relay*, Trend Micro
http://us.trendmicro.com/imperia/md/content/us/trendwatch/researchandanalysis/02_android_malware_acts_as_an_sms_relay__080311_.pdf

⁸ See Annex D

Investigations

4.29. Now that our Complaint Resolution Team is resolving the vast majority of our cases through less formal procedures, our Investigations Team has been able to focus on the worst consumer harm in the market. In 2009/10, the independent Code Compliance Panel (CCP) fined £5,280,250, whereas in 2010/11 it fined £989,959 (an 81% decrease) – indicating that the prior unprecedented regulatory action had a significant impact. Continuing this trend, in the first half of this year, the CCP has fined approximately £380,000 – indicating that these gains have continued. We are beginning to gain confidence that the present risk of consumer harm in the market is at a relatively lower level. However, we should not become complacent and have retained suitable legal expertise in order to facilitate a smooth transition to the new, outcomes-based code.

4.30. Our priority this year is to bring into effect the outcome principles of the new Code and target the appropriate providers in the value-chain, while maintaining our record for quick and cost-effective investigations. We will continue to develop relationships with first tier providers so that investigations are framed with the best evidence available.

4.31. Last year, we budgeted **£1,065,947**, or 28% of our budget, on formal enforcement. Some of these costs are recovered through administrative charges, where such charges are considered appropriate by the Tribunal along with other sanctions (such as fines).

4.32. In the coming year, we propose to spend **£985,386** on investigations enforcement activity, or 26% of our budget – a reduction of 7.6% of our total resource from 2011/12. Should formal enforcement activity remain at current levels and the new Code transition prove effective, we anticipate that costs could be reduced further in 2013/14.

Code Compliance and Development

4.33. Having published a new, outcomes-based, flexible Code in 2011, the emphasis this coming year is on developing proportionate, informed and collaborative Guidance in order to keep pace with a rapidly changing and innovating market. In particular, we would like to focus attention on Guidance for web-based consent to charge issues, due diligence and risk control, and also more effective rules in relation to children's services.

4.34. Furthermore, we intend to further develop and refine other services that we provide, such as our Number Checker database, our due diligence reporting and our prior permission application systems, in order to fully realise the potential of the Registration Scheme.

4.35. Our regulatory development, including our Code and Guidance, is informed by and benefits from effective relationships with industry stakeholders, as well as other regulatory enforcement agencies and Government. We remain committed to working with providers to establish Guidance and policy that enable innovation. We will continue to fully consult on any substantive changes to our regulation and we intend to continue allocate appropriate resource to this activity.

4.36. Our plan is to spend **£295,535** in this area in 2012/13, or 8% of our budget – a marginal increase of 1.1% over 2011/12's budget, and down from our peak of 14% of budget in 2010/11.

Governance & Corporate

4.37. Like all small businesses, we face the challenge of ensuring we operate efficiently and keep operating costs to a minimum, while also ensuring we remain effective and able to deliver our remit. As a regulator with public functions, we have additional accountability for our activities and spending, which means further necessary costs for governance and controls.

4.38. We have continued to challenge every single cost and have been successful in maintaining low costs already achieved and also further reducing other areas. In particular, we continue to enjoy a reduction in the terms of our lease and have successfully completed an Information Systems restructure which has reduced our costs in this area.

4.39. Next year, we plan to spend **£328,502** on our corporate and governance costs, or 9% of our budget – a small increase of 0.2% over our allocation of 8.6% of resource in 2011/12.

Q5. Do you support our proposed levy budget changes for 2012/13, having regard to the activities and priorities in the first full year of the new Code that drive those changes? If not, please explain why.

The financial picture – the Registration budget

4.40. For many years, the PRS industry had called for a Registration Scheme to be extended to PRS providers. Following consultation on costs and requirements, we delivered this significant project within time and budget in 2011. In Section 6, we discuss our options for setting the fee level in detail and ask for your input on our proposal.

4.41. The Registration Scheme costs can be divided into operating and set-up costs. Operating costs include specific technical resources retained by PhonepayPlus in order to maintain the data and also the infrastructure required to deliver required performance levels. Following discussions with the Industry Liaison Panel, a £15,000 budget has been added in order to improve the usability of the Scheme. Improvements to usability and functionality using this budget will be proposed through our ILP. Set-up costs include the design and build of the Scheme and the installation of the infrastructure required. All capital expenditure costs associated with the build of the Scheme are being depreciated over five years.

Q6. Do you agree that we should make a provision in the Registration Budget for improved usability of the Scheme? Are there particular functions of the Scheme you would like to see enhanced? If so, what are they and what benefits would they bring?

4.42. Overall, we expect to spend **£334,437** in 2012/13 on our Registration Scheme. This is a new cost and, in Section 6, we set out proposals for adjusting the fees from April 2012, in order that we recover the full costs of the Scheme over a reasonable timeframe.

Section 5: The levy-setting process

5.1. While the Registration Scheme is funded by an annual fee, the core budget is primarily funded by a levy on providers – deducted at source by Network operators. Funds are withheld at Network operator level and paid to us by them on their clients' behalf. At the end of each year, these funds are reviewed against actual market activity levels and there is reconciliation, with any additional monies owed to us paid over, and/or any excess payments made by the Network operators on account refunded.

5.2. The levy rate is affected by a number of issues:

- The cost of regulation – the budget amount that the levy and other sources of funds have to cover;
- The expected size of the market – the amount of expected outpayments on which the levy would be payable. The market size is also affected by the remit, as defined by Ofcom. If this is narrowed, then the cost of regulation for the remaining providers will increase accordingly;
- Fines and Administrative Charges collected in 2011/12 – these monies are always returned to funders insofar as they go toward the cost of the future year's regulation and, therefore, reduce the amount we need to collect through the levy. This year's fine income is much lower than recent years;
- Market developments in the preceding year – if the PRS market exceeds expectations in 2011/12, the additional levy collected would go towards covering the costs of 2012/13. On the other hand, a fall in the market in 2011/12 would involve the repayment of excess levy collected from Network operators and this deficit would need to be made good in the following year;
- Any need to make changes to our contingency reserves – these exist to deal with the possibility of winding-up of the organisation at some future point, without defaulting on obligations, and the need to deal with any new, exceptional 'spike' problems that require extra staff and legal or other resources. We plan to make no adjustments to these funds at the present time; and
- The overall impact of UK taxation policy, as it affects a company such as PhonpayPlus.

Non-adjusted levy and the adjusted levy

5.3. The graph below shows the non-adjusted levy requirement for the last few years and a projection for the next period. This non-adjusted rate would be the levy we would need to raise, if we did not receive any other income (such as fines, administration charges or bank interest), and is relatively stable as it relates the total budget to the size of the regulated market. The adjusted rate is the amount we are required to levy once the costs of regulation are offset by other income. As this amount is subject to great variation, the actual rate levied can appear to change dramatically from year to year.

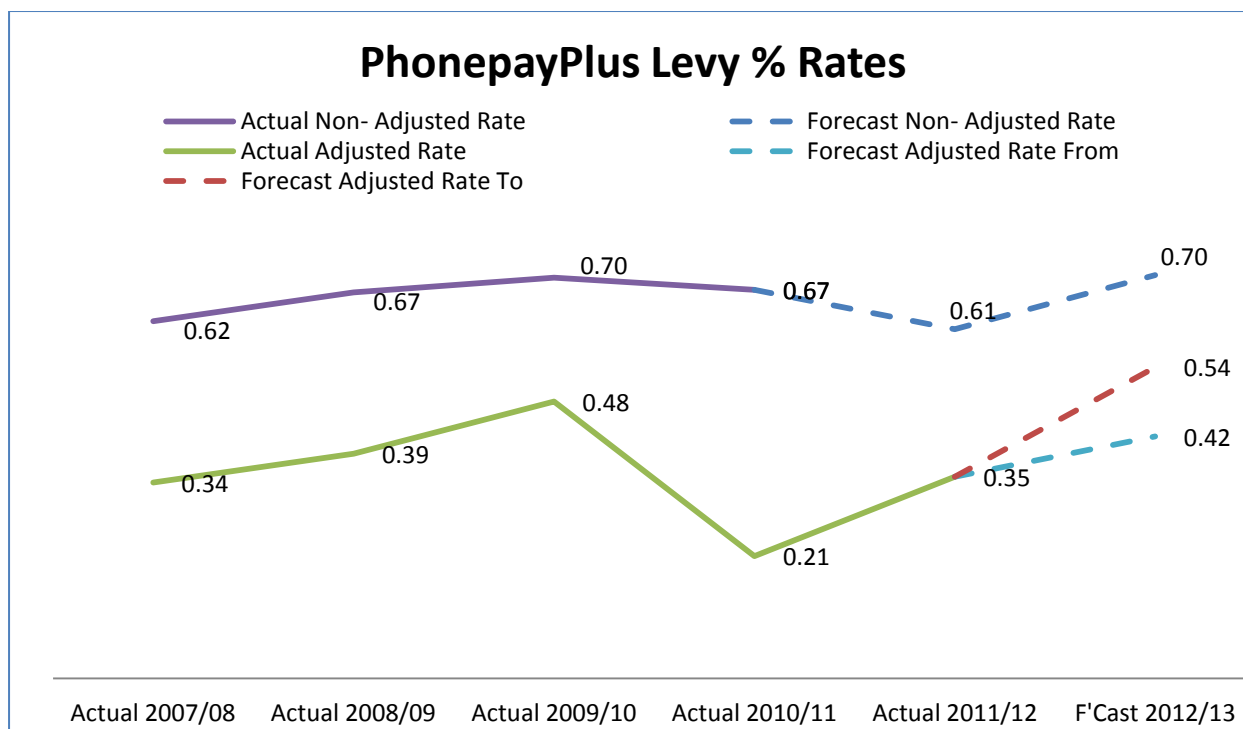


Figure 3

5.4. The rate of our non-adjusted levy (before it is adjusted by the balance of fines and administration charges) takes into consideration two factors: the value of the market in relation to the value of our budget. A lower value market, therefore, can contribute to a higher non-adjusted levy, as we are seeing in the current year when the non-adjusted rate is expected to increase from 0.61 to 0.66.

5.5. Notwithstanding our commitment to find efficiencies and reduce our budget, where possible, it is necessary to maintain a certain budget level to ensure effective regulation. This means that, should the Controlled Premium Rate Service Condition be narrowed in definition, the cost of regulation for the remaining market will inevitably be increased. Likewise, our business costs retain flexibility to gain from economies of scale and the non-adjusted levy rate would decrease, should our remit widen.

5.6. Our position on each of the issues identified at 5.2 is as follows:

The expected size of the market

5.7. Based on half-year figures, we believe that the market for 2012/13 will decline from the 2011/12 position. The 2011 market review is underway and, by the time the levy is set in March, we will have the benefit of third quarter network return figures, which means that we should be able to more accurately predict the market trend.

Administrative charges

5.10. The administrative and prior permission charges are reviewed annually and will be published along with the levy. We budget on the basis that we will recover and use in the same year a high percentage of the administrative charges levied.

Fines

5.11. Fines issued this year are lower still than their peak in 2009/2010 (see Annex C) and are expected to be lower than the £0.9m levied in 2011/12. The reduced fine level reflects an increase in compliance and a decrease in consumer harm in the UK PRS market. However, we remain vigilant and continue to work with industry to build consumer trust and prevent damage to the market, particularly in relation to innovations such as in-app billing on smartphones.

5.13. Our policy will continue to be that we should not budget on the basis that fines will be levied and used in any given financial year, but that fines will be retained and be available to meet the funding requirements in subsequent years.

Contingency reserves

5.14. No reserves have been used during 2011/12. Our reserve level of £2.2m, as advised by our auditors as “appropriate and reasonable”, will remain to cover winding-up costs or spikes in demand. This means that there will be no need in 2012/13 to replenish these funds.

UK taxation policy

5.19. During 2011/12, PhonpayPlus VAT-able services have been subject to a review by HMRC. This review is currently ongoing and may result in change to PhonpayPlus' VAT registration status. This could have an adverse effect on the levy and result in an increase of our VAT liabilities. Currently we claim back somewhere between £250,000 and £300,000 in VAT annually through our current VAT status.

Levy developments in the preceding year

5.15. An anticipated consequence of our preventative approach to harm would be that our levy would naturally increase this year – as a result of a reduction in fine income.

5.16. Levy outpayments were, in fact, higher than forecast in 2010/11; therefore, there is a £75,000 contribution to costs in 2011/2012.

5.17. Following the final approval of the budget by Ofcom, we will inform industry of the outcome and our levy requirements for 2012/13. Based on current projections and, in the absence of the latest information from financial returns from Network operators that pay over the levy, we would expect the headline levy to be increased, as expected.

5.18. Our initial assessment, based on two quarters of network returns only, suggests that this proposed budget, if approved following consultation, would lead to the levy being set within a range of **0.42-0.54%**. The range is wider than previous years because of the uncertainty around HMRCs review of our VAT status, which the Industry Liaison Panel has been updated about.

Section 6: Registration Scheme Budget and Fees

Background

The Registration Scheme has been the subject of much industry support and demand. The Scheme was launched in April 2011, and on 1 September, it became mandatory for most PRS providers to be registered. The 12th Code provides scope for PhoneyPayPlus to decide the precise scope of which parties need to register. Currently, all providers, with the exception of those providing services on 087x numbers, must register. Separately, in deciding a fee structure for the first year ending 31 March 2012, we decided that certain classes of providers should be exempt from paying the current fee of £100.

In creating the Registration Scheme, one of the considerable unknowns (which caused uncertainty from a financial modeling perspective) was how many active providers there were in the market for PRS. We commissioned a study from researchers to assist us with sizing the market, as well as used market intelligence from a range of providers, trade bodies and the ILP about the aggregate number of partners and clients they had. We received a wide range of data which suggested that the market could be made up of anywhere between 500 and 30,000 active providers. Our modeling assumptions were prudent and assumed that operational and capital expenditure costs could be fully recovered over five years, with a paying provider base of circa 3,500 providers. Currently, there are 3,200 registered providers, of which some 1,400 receive an exemption from payment – either as a consequence of their relevant revenues being below the qualifying limit of £5,000 annually or because they are a registered charity. As was always going to be the case, the assumptions that underpinned the first year costs now need to be reviewed.

The remainder of this section sets out details about the underpinning assumptions about how many registrants will enter and leave the market each year, alongside information about costs and exemptions. Finally, a range of options is set out about future charging models, having regard to the assumptions and cost information.

Financial Model Assumptions

We assume that the whole PRS market is now registered – and that the number of market participants will **remain static in the period 2012/13 on a base case that the fee structure remains unchanged. We also assume that, for every organisation that registers between today and 1 April 2013, one organisation will leave the market.** The trend for registration indicates approximately 30 new organisations register each week and that, in the financial year 2012/13, a further 1,560 organisations will register, with a similar number leaving the market.

Registered	Total
Organisations registered - exempt from fee (including 185 charities)	1,418
Organisations registered – paid	1,785
Grand Total	3,203

Figure 4

**Registration status as at 25 November 2011*

Q7. Do you agree with our Registration Financial model assumptions?

Scheme Costs

A budget for 2012/13 is set out in Annex B. This includes a provision of £15,000 for industry enhancements referred to earlier. For each line item of expenditure, we have provided a descriptor as to the driver of the cost, including whether this cost is a fixed cost or one that has a variable element to it over time. Most of the significant costs of this Scheme, being as it is a Scheme built around the provision of a Customer Relationship Management (CRM) system, are fixed, contractual and now spent costs. Where there are costs directly in control of PhonepayPlus, such as ongoing staff support, we intend to review these during the first full year of the Scheme in 2012/13, in order to test our assumptions and to drive further efficiency savings. We have challenged ourselves to reconfigure ongoing support costs and identify savings upwards of 20% on staff costs after the first full year of operation.

The Fees

The objective of setting fees is to recover the costs of the Scheme over a reasonable time period typically linked to, but not limited by, the period under which the capital expenditure is depreciated (five years). The costs comprise both the initial capital expenditure involved in developing the CRM but also the ongoing support costs, including the significant increase in telephone support we now offer to registrants through our Registration Helpdesk: we have found that, whilst many of the issues raised through this telephone contact are set out in FAQs on our website, the fact is that many providers find it more convenient to speak to one of our staff. This has a bearing on the ongoing support costs, as we have handled over 2,000 calls since the launch in April and still take some 20 per week.

As also stated above, when we set the initial fee at £100, this was financially modeled around there being some 3,500 paying registrants. In reality, the total number of registrants is below that and the number of paying registrants is just under 1,800 providers.

The period for first year exemptions will draw to a close in April 2012, and we must now consider options for continuing the exemptions, withdrawing them or modifying them. We will now consider these options in more detail and explain our preferred option. In each case, we have assumed and modeled the proposed charges on the Scheme assumptions described above. In addition, we have assumed a break-even by around **year 7** of the Scheme being in operation.

In respect of those parties currently exempt, they fall into two types: first, registered charities (of which there are 185 registered under the Scheme); and second, providers whose PRS revenues in any 12-month period were going to be below £5,000. Over 1,200 have registered selecting this option, and we have taken a considerable sample of these providers and validated that they are legitimately claiming the exemption. Whilst it is generally assumed that these are small businesses, we are not able to easily validate this and anecdotal evidence suggests that a significant minority may not be small businesses, but rather ordinary businesses for whom their PRS activities are not the mainstay of their revenues.

We have considered four main options for the fee structure for 2012/13:

Option 1 – Maintain the status quo

6.14. Our first option is to maintain the current exemptions for charities and those with PRS revenues under £5,000 in the next 12-month period. The principal advantage of this option is that it would provide continuity in the fee structure and would maintain exemptions intended to support charities and smaller, new entrants into the market. However, the disadvantage of this option is that to ensure the Scheme pays back within a seven-year period, the fee would have to rise significantly next year for fee-payers, which has the potential to be perceived as unfair when almost half of registrants are paying nothing. A further downside is that we cannot be confident that the current exemption for businesses with a PRS turnover below £5,000 is well-targeted to support smaller, new entrants into the market, given that it can also be claimed by larger businesses with small PRS revenues on an ongoing basis.

In 2012/2013, the fee would be in the range £180-205 + VAT.

Option 2 – Remove all exemptions and have a flat fee for all registrants

6.15. This would mean charities and businesses with a PRS turnover of less than £5,000 pay the same as all other registrants. The advantage of this option is that it would spread the cost evenly across all registrants. However, the disadvantage is that it would mean we no longer had a fee structure that was designed to support charities and small businesses entering the PRS market.

In 2012/2013, the fee would be in the range £100-£125 + VAT.

Option 3 – Remove the exemption for organisations with a PRS turnover of less than £5,000 per year

6.16. Our third option is to keep the exemption for charities, but to remove the exemption for organisations which earn less than £5,000 per year from PRS, so that they pay the same rate as other providers. The advantage of this option is that it would maintain support for charities, whilst distributing the costs of registration more evenly across other PRS providers. The disadvantage of this option is that it would remove support in the fee structure for smaller, new entrants into the market.

In 2012/13, the fee would in the range £110-135 + VAT.

Option 4 – Keep the exemption on charities and re-design the exemption for smaller, new entrants into the market

6.17. A fourth option is to maintain the exemption for charities and re-design the exemption for smaller, new entrants, so that it covers those in their first year of registration only who have a PRS turnover of less than £10,000 (rather than the current threshold of £5,000). This would have the advantage of better targeting the exemption to support smaller, new entrants to the market. It is also likely to be perceived as fairer, as even businesses with a PRS turnover of less than £10,000 will have to pay after their first year on the Scheme, keeping the fee down for others. One possible disadvantage would be a lack of certainty over the number of current £5,000 exempt organisations who might decide to exit the PRS market, rather than pay an ongoing registration fee.

In 2012/13, the fee would be in the range £110 - £135 + VAT.

Our preferred option

6.18. We reviewed the options above and our preference is for **Option 4** for the following reasons:

(a) It avoids a significant increase in the registration fee for current fee-payers and provides a more equitable basis for sharing the costs than the current exemption structure does;

(b) It nonetheless continues to support charities and smaller, new entrants in their first year, which we think is important to promote growth, innovation and consumer participation in the PRS market;

(c) By removing the indefinite exemption for businesses with a PRS turnover of less than £5,000, it limits a potential loophole and makes the Scheme easier to administer, helping us to achieve our goal of reducing registration costs.

Q8. Do you agree with our assessment of the options, with particular reference to our assumptions and our preference? If not, do you have other suggested options?

Section 7: Responding to the consultation

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later than 20 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 pguthrie@phonepayplus.org.uk.

Copies may also be sent by mail or fax to:

Patrick Guthrie
Director of Strategy & Communications
PhonepayPlus
1st Floor, Clove Building
4 Maguire Street
London SE1 2NQ
Tel: 020 7940 7403

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

Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all, or part, of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.

Summary of Questions

Q1. What information or evidence do you have about market trends and about the overall size of the PRS market in 2011/12?

Q2. What information or evidence do you have about any specific segments or content areas and their potential for growth and decline over 2011/12?

Q3. How do you see the PRS market developing in 2012/13? In particular, do you have any insights into how PRS might develop on social media, smartphones or other platforms?

Q4. What comments do you have on the priorities for 2012/13? Are there other projects or issues that you think PhonepayPlus should consider in the coming year?

Q5. Do you support our proposed levy budget changes for 2012/13, having regard to the activities and priorities in the first full year of the new Code that drive those changes? If not, please explain why.

Q6. Do you agree that we should make a provision in the Registration Budget for improved usability of the Scheme? Are there particular functions of the Scheme you would like to see enhanced? If so what are they and what benefits would they bring?

Q7. Do you agree with our Registration Financial model assumptions?

Q8. Do you agree with our assessment of the options, with particular reference to our assumptions and our preference? If not, do you have other suggested options?

Annex A: Budget 2012/2013 (excluding Registration Database budget – see Annex B)

	Budget	Budget	Variance	Change	Comments
	2012/13 £	2011/12 £	(Inc)/Dec £	%	
Staff	2,376,478	2,366,891	(9,857)	0.4	The increase is due to temporary staff costs to cover maternity leave and additional recruitments costs as two Board members term of office is complete.
Communications	103,850	138,150	34,300	-24.8	The decrease is a result of a new approach to deliver consumer and industry campaigns.
External Professional Services	146,000	155,000	9,000	-5.8	This budget allows PhonepayPlus to bring in external expertise, as required; this keeps overall costs down by not requiring full-time specialist staff. The decrease is due to the reduced need for these services during 2012/13.
Legal	123,333	97,000	(26,333)	27.1	The increase is due to a provision for additional legal costs as a result of Code 12 implementation.
Intelligence	150,000	150,000	0	0.0	This budget is for external market intelligence and research work.
External Audit	23,205	17,750	(5,455)	30.7	We have allowed for more activity in external auditing for 2012/13.
Overheads	295,029	290,375	(4,654)	1.6	This overhead budget includes costs such as energy costs and stationery. The increase is due to higher costs relating to business continuity support.
Premises	306,914	325,433	18,519	-5.7	Reduction reflects the renegotiation of lease in 2011 on current premises.
Publications	10,740	11,315	575	-5.1	This budget is for printed publications which are primarily online documents, with the exception of the Annual Report and the Code of Practice where there will be limited print runs.
Telecoms	44,030	43,463	(567)	1.3	This telecoms is continually reviewed to ensure the most cost effective price plans are obtained.
Website	37,850	51,000	13,150	-25.8	This reduction reflects further planned changes to the hosting and management of the website.
Depreciation	124,754	153,367	28,613	-18.7	
TOTAL	3,742,183	3,799,743	57,560	-1.5	

Annex B: Registration Budget (not included in the Core Budget – see Annex A)

Registration Scheme Expense Budget 2012/13

	Budget 2012/13	Key points:
Staff	108,974	Includes direct staff plus recharge of staff time from core budget. These costs will be under review as the Scheme matures.
Legal	5,000	For PhonepayPlus-initiated developments of the Scheme.
Overheads	85,229	Mainly fixed costs of hardware and software maintenance.
Premises	16,054	Recharge of costs from the core budget, driven by staff time (direct & indirect) spent on the Scheme.
Web interface & website development	8,541	Includes £15k for industry-initiated developments of the Scheme, which is a non-mandatory spend. Offsetting this is £6k of recharge to the core budget for support of network returns.
Depreciation	110,639	Fixed cost of depreciated build, depreciated over five years.
TOTAL	334,437	Note that the Scheme is forecast to be within the original £1.625m budget over 5 years.
Total excluding staff cost	225,463	

Figure 6

Annex C: Key data

Outpayments per sector

Year 2009/10	Landline	Mobile	DQ	087	PayForIt	Total
Q1	44,715,635	58,162,923	35,314,507	0	2,213,188	£140,406,253
Q2	45,755,188	58,031,069	38,428,137	10,224,816	2,221,779	£154,660,989
Q3	51,520,062	59,696,090	36,869,647	14,611,738	2,273,176	£164,970,713
Q4	43,869,920	57,352,895	34,644,303	14,498,885	3,446,338	£153,812,340
Annual	185,860,805	233,242,977	145,256,593	39,335,438	10,154,481	£613,850,294

Figure 7

Year 2010/11	Landline	Mobile	DQ	087	PayForIt	Total
Q1	45,266,859	55,439,992	37,262,249	18,401,667	3,380,214	159,750,980
Q2	41,941,108	54,682,718	38,047,101	18,149,041	3,625,628	156,445,595
Q3	46,203,416	58,477,774	36,546,182	17,095,403	3,878,279	162,201,054
Q4	40,465,883	58,515,164	30,524,150	16,616,640	5,980,575	152,102,410
Annual	173,877,266	227,115,647	142,379,680	70,262,751	16,864,696	630,500,040

Figure 8

Year 2011/12	Landline	Mobile	DQ	087	PayForIt	Total
Q1	40,571,833	50,623,677	30,868,878	16,355,459	4,501,230	£142,921,077
Q2	34,290,919	52,814,369	31,228,771	16,744,890	4,990,768	£140,069,717
Q3						
Q4						
YTD	74,862,752	103,438,046	62,097,649	33,100,348	9,491,998	£282,990,793

Figure 9

Business Data

*Note: April contained only 16 business days due to national holidays, including Easter and the Royal wedding.

Consumer Support call volume

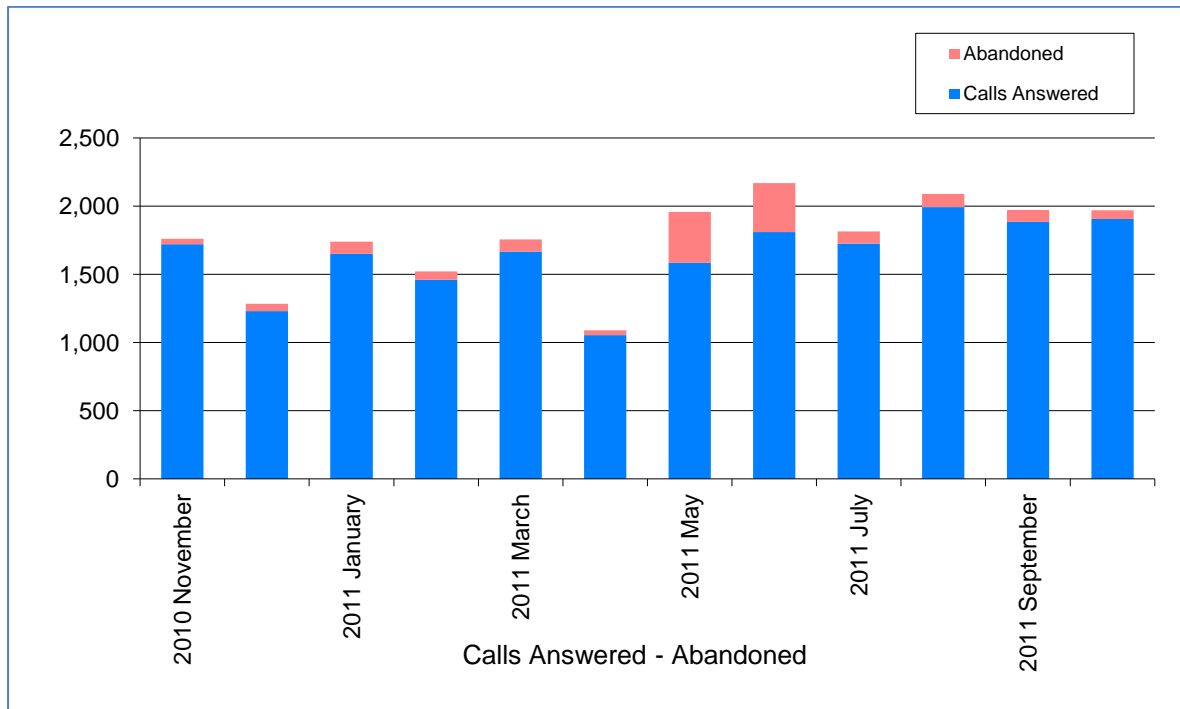


Figure 10

KPI: Consumer Support calls answered under thirty seconds

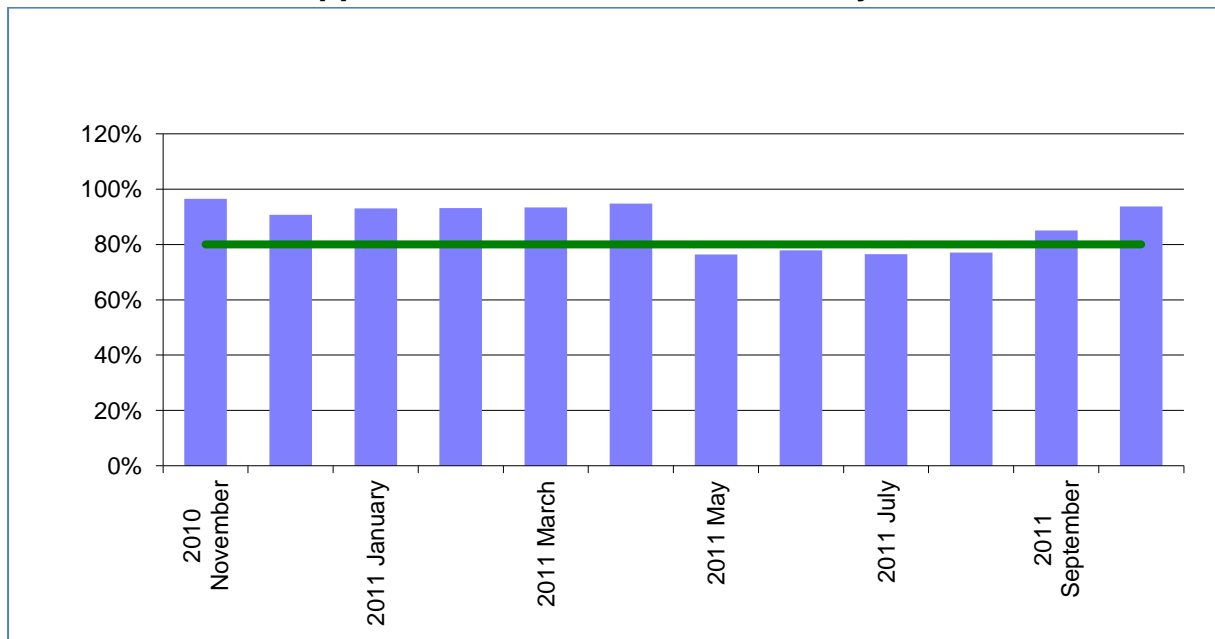


Figure 11

Consumer enquiries (excluding complaints)

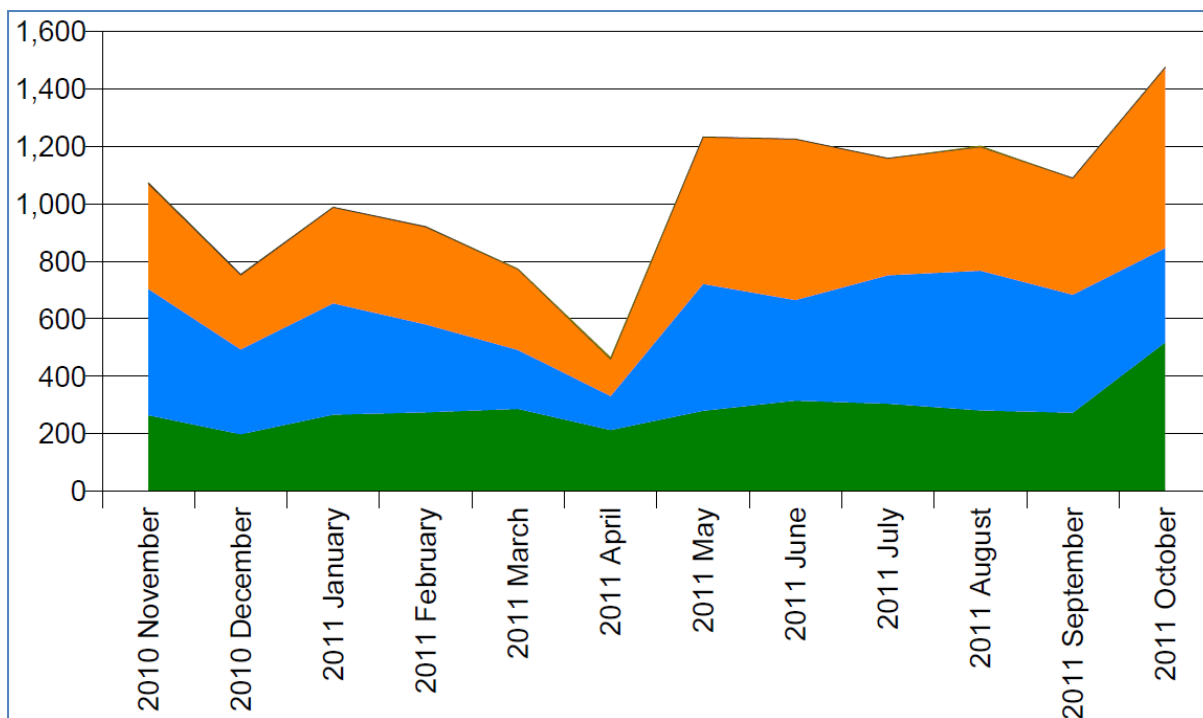


Figure 12⁹

Type of Enquiry	General Enquiry	Number Check	Out Of Remit	Request For Information	Other	Month Totals
2010 November	265	439	367	2		1,073
2010 December	199	295	259	2		755
2011 January	267	388	333			988
2011 February	275	306	339	1		921
2011 March	287	205	281		2	775
2011 April	214	118	129		6	467
2011 May	281	441	511			1,233
2011 June	316	350	560			1,226
2011 July	305	447	407			1,159
2011 August	282	486	431		4	1,203
2011 September	274	411	405			1,090
2011 October	519	328	628			1,475
Totals for Period:	3,484	4,214	4,650	5	12	12,365

Figure 13:

⁹ Note: Recent months have seen an increase in consumer enquiry volumes which can be attributed in part to the new CRM driving better working practices around the recording of out-of-remit enquiries.

Consumer Complaints

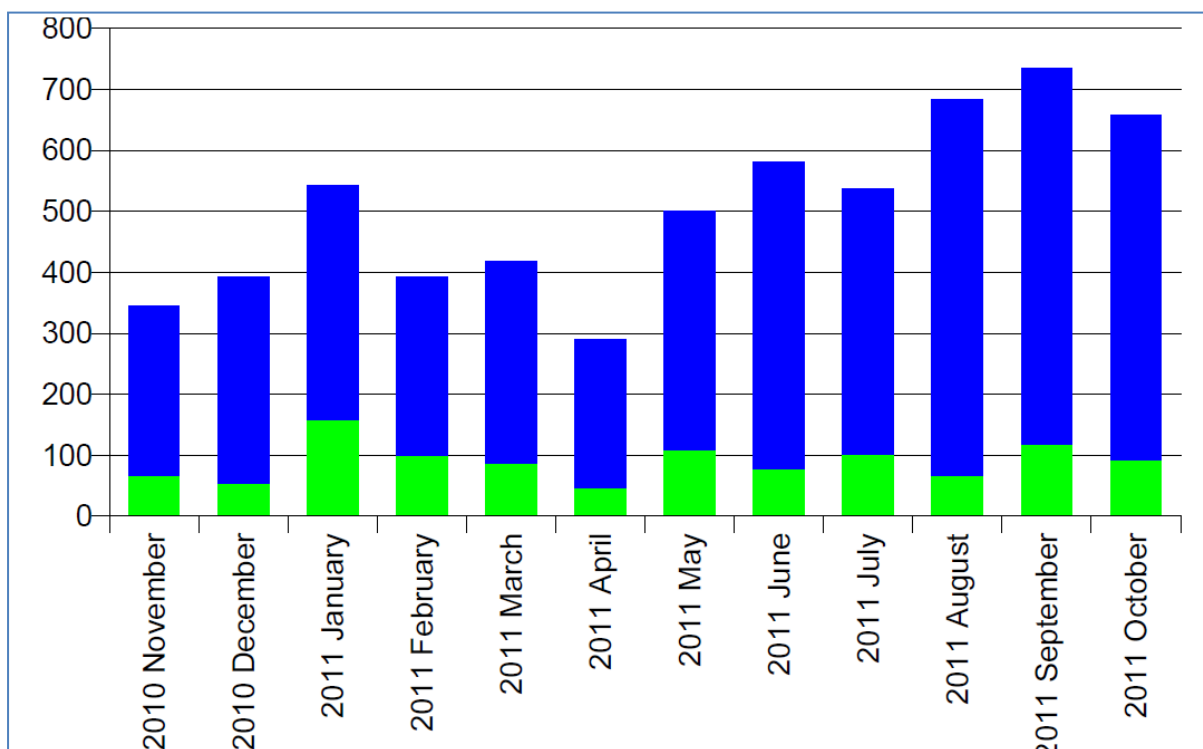


Figure 14

Month	Landline	Mobile	Total
2010 November	67	278	345
2010 December	53	339	392
2011 January	159	383	542
2011 February	99	293	392
2011 March	86	333	419
2011 April	47	242	289
2011 May	108	393	501
2011 June	77	504	581
2011 July	101	435	536
2011 August	67	617	684
2011 September	117	618	735
2011 October	92	567	659
Totals for Period:	1,073	5,002	6,075

Figure 15

How our complaints were resolved

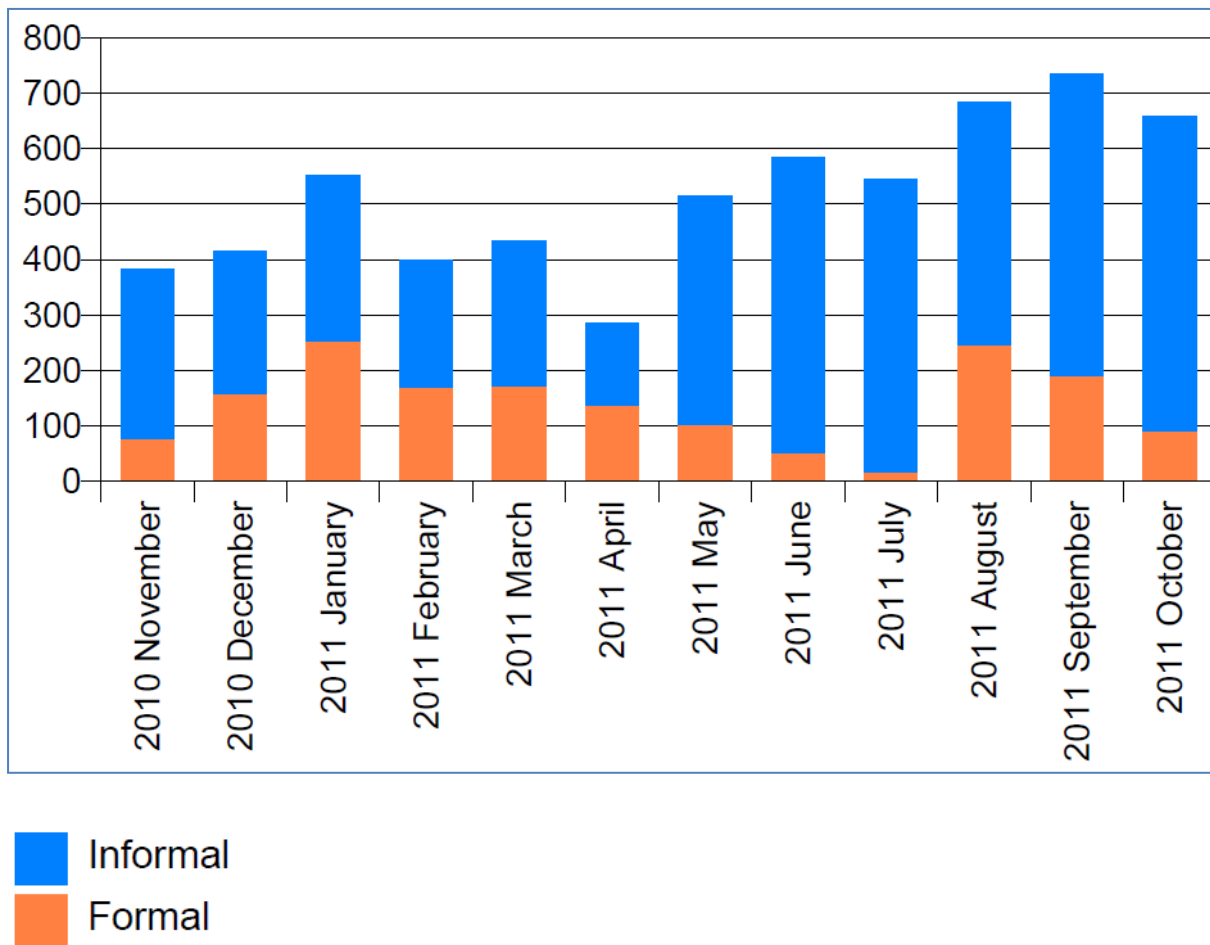


Figure 16

Industry Support, written advice

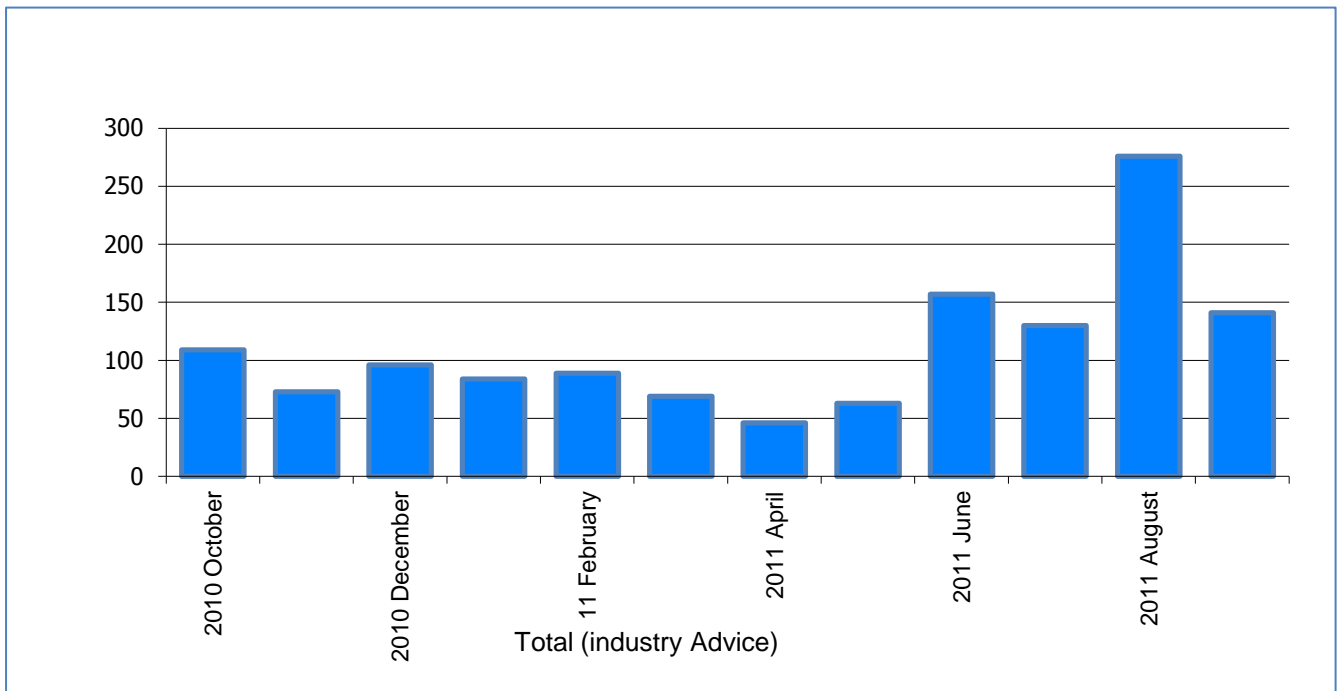


Figure 17

Industry support, general enquiries

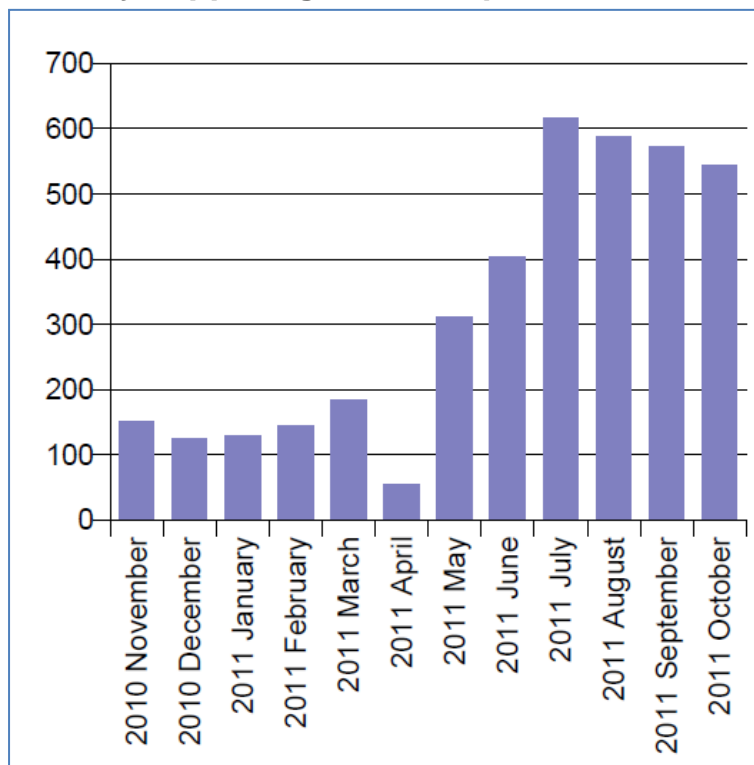


Figure 18

Prior Permission applications

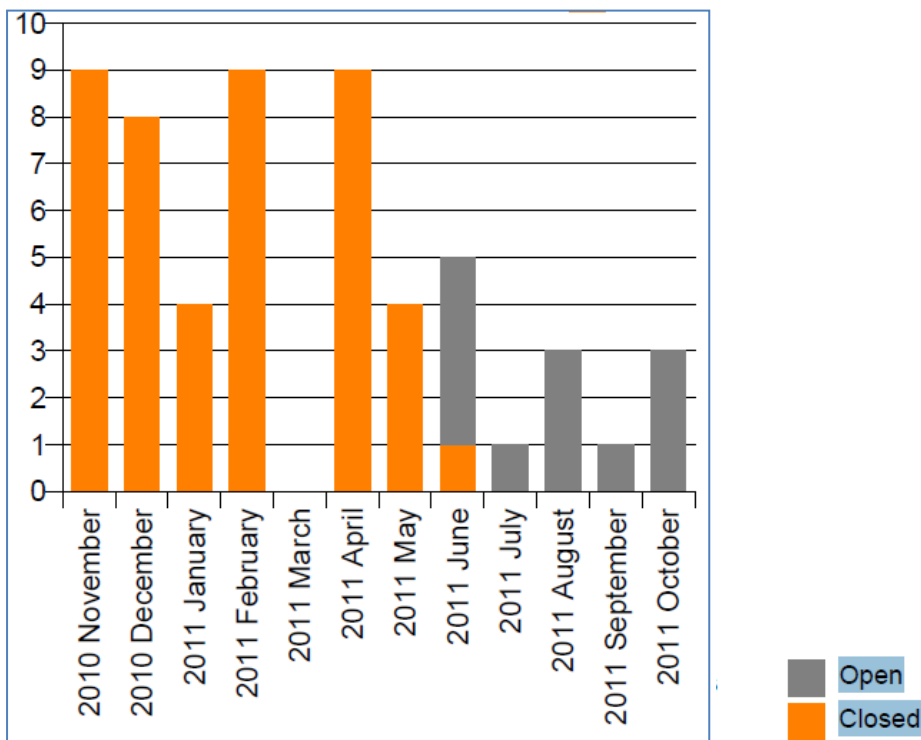


Figure 19

KPI: Industry advice given in under five days

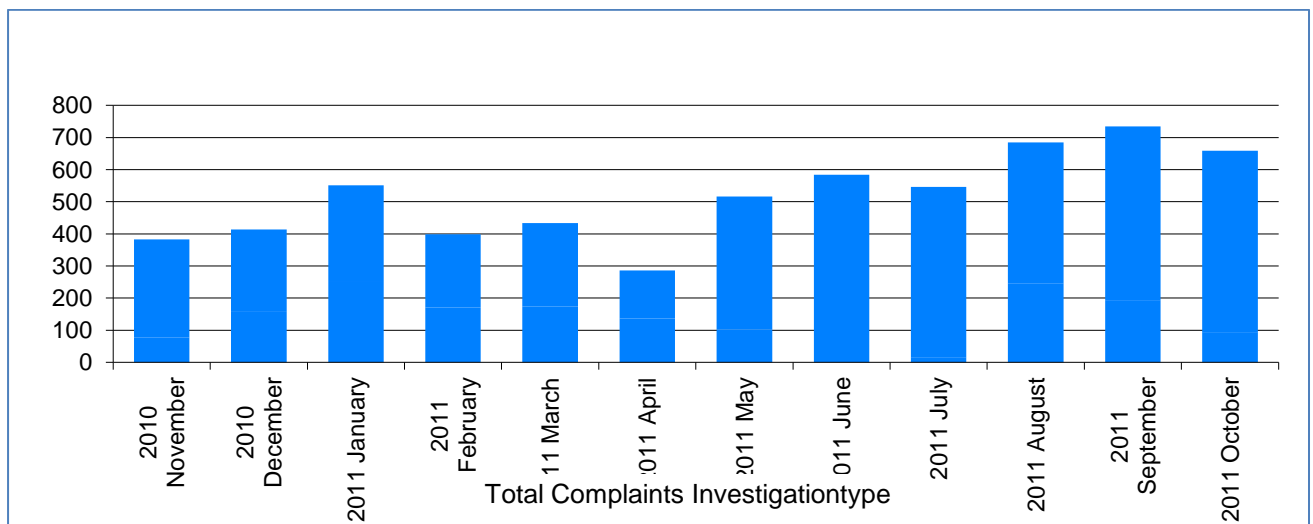


Figure 20

Registrations by payment or exemption

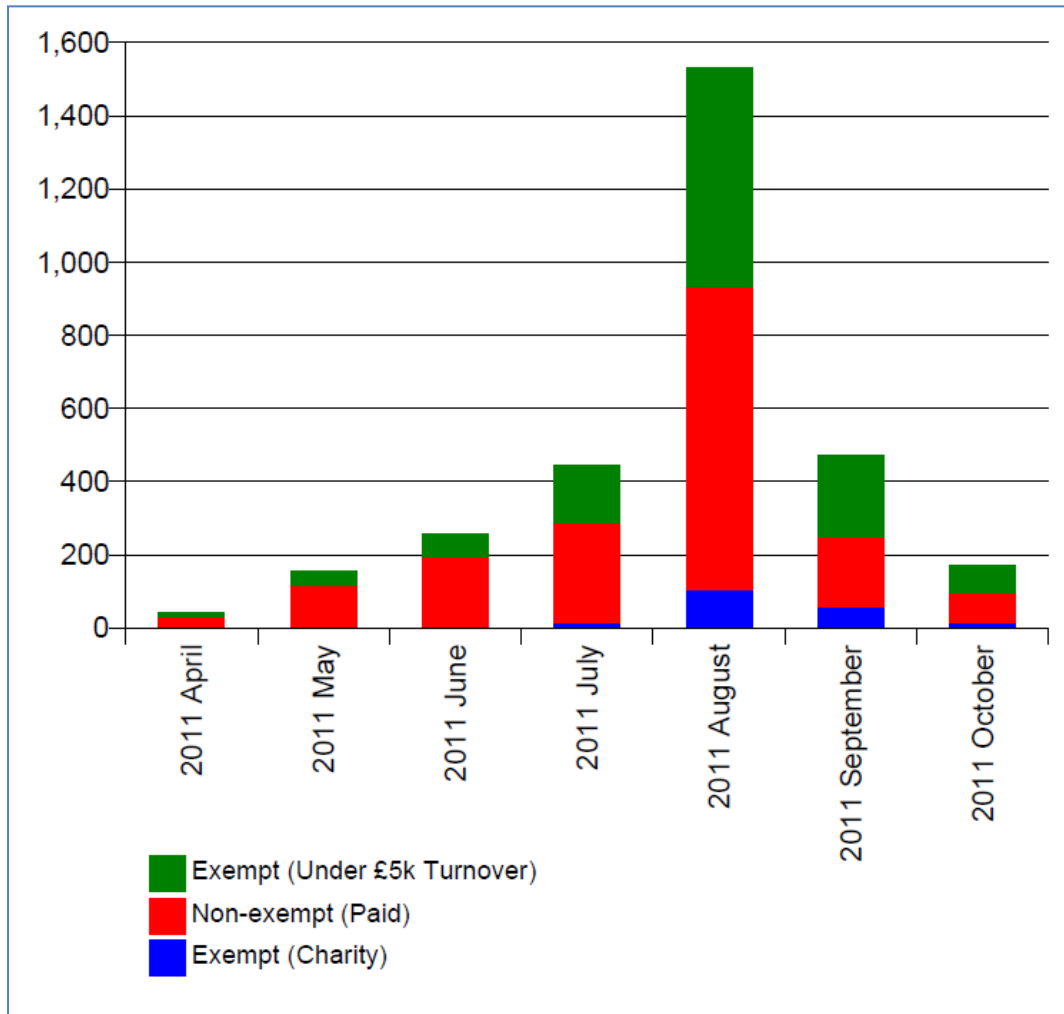


Figure 21

Composition of the Registration Scheme

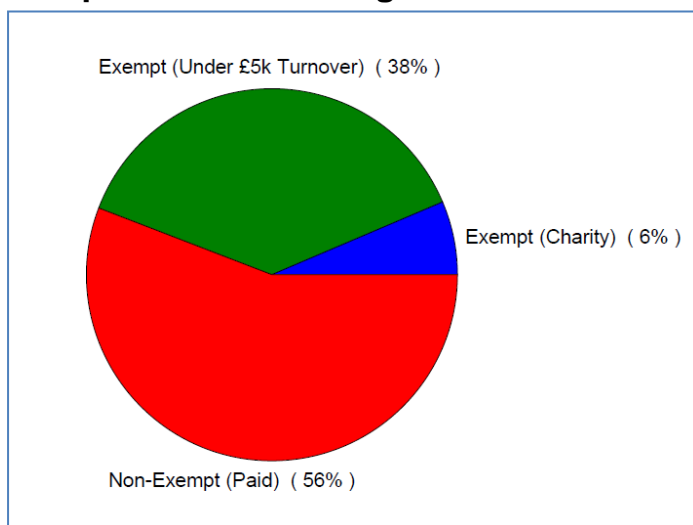


Figure 22

Annex D: Three year strategic plan – Progress to date

Objective 1

Create a proportionate outcomes-based regulatory regime for the premium rate services sector by launching and successfully implementing the new Code of Practice and industry Registration Scheme.

We expect to:

Progress so far:

Deliver on the comprehensive plan for implementing the new Code and Registration Scheme and through that plan ensure a smooth transfer without unnecessary disruption or confusion to industry providers.	A comprehensive implementation plan was rolled out by the Executive to ensure that stakeholders had all necessary materials, guidance and support available to them, so that they understood their changing obligations in time for enforcement day on 1 September 2011.
Draw up a plan for reviewing and measuring the effectiveness, over time, of the new Code and Registration Scheme in terms of the impact on consumer outcomes and our vision.	A plan is in place and the first draft has been considered by the Board, alongside a communications plan with stakeholders.
Review the administrative charges we set under the Code and publish an updated schedule of charges in time for 1 September 2011.	These were reviewed and published in time for enforcement day on 1 September 2011. As the Executive operate the new regulatory framework and bring about further changes to their processes, they will ensure these are reflected in updated charges.
Work with Ofcom to ensure that the PRS regulatory regime remains fit-for-purpose in a changing digital environment for micropayments.	A dialogue at various levels, and involving the parts of Ofcom with interests in this area, is underway. A similar dialogue will be held with other bodies (such as the FSA), where necessary and timely.

Objective 2

Pre-empt and prevent consumer harm and build consumer trust in PRS by working with the industry to build-in compliance to all emerging and developing premium rate services. Drive-up overall levels of compliance in the market through strategic use of monitoring and increased use of informal resolution of minor Code breaches.

We expect to:

Progress so far:

Periodically benchmark overall market compliance in order to determine compliance trends and report on these, as appropriate.	Externally-commissioned market compliance reports are providing us with quarterly updates in key areas of higher risk to consumers. There is currently resource in place to undertake this until the end of 2011/12.
Issue timely guidance and other information to industry providers about emerging trends in the market so that providers can be aware of areas of	This objective has now been incorporated into our 'business as usual' processes, and notifications are being issued to providers

risk that they should manage with care.	where trends have emerged, such as from recent adjudication trends.
Report periodically on trends in the use of informal resolution procedures in order to assist providers in building compliance into their services.	An update on the most frequently raised Code provisions within the Complaint Resolution Team is routinely included in the published quarterly report. Quarterly reporting, including informal trends, is a standing item on the ILP agenda.
Report on key trends in compliance failings and work with industry and trade bodies to drive improvements in the overall compliance with the Code of Practice.	Ongoing work with in underway to identify key trends and issues around consumer harm. These risks are discussed within the ILP Futures Group, and in workshops and one-to-ones with trade bodies and key industry stakeholders, and actions are agreed.

Objective 3

Inform the development of the Code of Practice and targeting of enforcement action by increasing the quality of intelligence about the premium rate services market and its consumers through more effective use of internal and market data, supported by targeted research.

We expect to:

Progress so far:

Plan and publish an annual research and intelligence plan, outlining key areas of priority each year.	This will commence in 2012.
Ensure enforcement action is targeted on the appropriate point in the PRS value-chain and, in particular, bring enforcement action against due diligence and risk control failings where the evidence for this supports it.	The key purpose of the new 12th Code is precisely to ensure that enforcement is targeted on the appropriate point in the value-chain. As the new Code forms part of 'business as usual', we will expect this action to be delivered.
Work with industry to drive improved practices in due diligence and risk assessment and control in order to minimise opportunities for scams and sharp practices.	Guidance on 'Due diligence and risk assessment and control on clients' issued alongside the new Code. ILP training carried out around this Guidance, with a view to cascade through the industry, and Industry Services trained to offer bespoke advice to individual providers.
Build strategic partnerships on research and intelligence with stakeholders to make best use of limited resources.	New relationships have been built with several Government agencies to share intelligence in relation to higher-risk areas. Other strategic partnerships are being formed with other regulators, Government

	<p>departments and agencies, most recently, BIS, the OFT and the UK Payments Council.</p> <p>We continue to maintain dialogue with other stakeholders groups.</p>
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Objective 4

Work with industry to assist consumers of premium rate services to increase their ability to use them safely and confidently.

We expect to:

Progress so far:

<p>Launch a more robust and accurate Number Checker facility for consumers of PRS.</p>	<p>As a by-product of launching the new Registration Scheme, all providers will be supplying the necessary records to populate the Number Checker. This facility should, as a result, be more accurate over time than the current manual entry system deployed by the Executive.</p>
<p>Work with all phone companies to ensure that the provision of information to their customers about PRS is accurate and easily accessible.</p>	<p>Monthly complaint and number checker data is shared with the MNOs which are actively used to analyse problem services on their networks.</p> <p>Intelligence is shared between PhonepayPlus and MNOs on Track 2 investigations in train, and any red or yellow cards issued accordingly.</p> <p>Increased dialogue as part of a stakeholder engagement programme is planned for 2012.</p> <p>Development of access to the Number Checker facility on MNOs systems is currently being assessed.</p>
<p>Undertake mystery shopping exercises to understand what the consumer experience is when using PRS, particularly when problems are encountered, and work with the results from that research to improve signposting for consumers with enquiries or complaints about PRS.</p> <p>Develop research to understand consumer behaviour in the PRS market, including hard-to-reach consumers and those engaging with new technologies and services, and use the findings to inform policy development as well as monitoring and enforcement activities to ensure the pre-emption and prevention of consumer harm.</p>	<p>The scope of piece (or sector-specific pieces, as required) will be informed by the findings from the upcoming market review and a research piece on complainant psychology, which is currently at the scoping stage (see below).</p> <p>In collaboration with the Communications and Regulatory Development Teams, we are currently (October 2011) developing the scope of a research piece to understand what consumers do when they experience detriment, looking not only at what motivates them to complain, but also what motivates them to find out more about their problem and what factors inhibit them from pursuing their issue further.</p>

<p>Work with children's and other groups to assist in ensuring that children are equipped with the skills necessary to manage PRS micropayments, especially on mobile devices, and to use services, where they choose to, with trust and confidence.</p>	<p>PhoneBrain 2011 was launched in March and the competition closes on November 18. As well as promoting to schools, we have this year partnered with Clubs for Young People to roll out the programme and competition to a network of 3,500 youth clubs in the UK. This year's enterprise competition is supported by Live Utd, who are offering a £6,000 bursary and mentoring to help bring the best ideas with a social entrepreneurship emphasis to market.</p> <p>We aim to review and refresh the teaching resources in 2012, with an emphasis on apps and micropayments.</p>
<p>Work with industry, other regulators and consumer organisations to ensure consumers can access PhonepayPlus at the point of need.</p>	<p>This is an ongoing 'business as usual' activity. Part of our Communications Strategy is designed to ensure that we deliver and measure this action.</p>

Objective 5

Deliver effective and efficient regulation for the premium rate services sector through smarter use of resources and further investment in building knowledge and skills of PhonepayPlus staff.

We expect to:

Progress so far:

<p>Continue over the period of the plan to seek reductions in our costs in real terms.</p>	<p>This is the second year of the Three-Year Plan in which we have proposed a reduced budget. Overall, this is a 19.6% reduction in two years.</p>
<p>Review all operational processes under the new Code to ensure that we are maximising opportunities to work in the smartest and most efficient way.</p>	<p>Work processes have been reviewed as part of the work to deliver the CRM and Registration Scheme system. Process review is now ongoing as part of 'business as usual' activity.</p>
<p>Review our KPIs to ensure appropriate management of resources and effective performance.</p>	<p>A plan is in place to review KPIs alongside the work to measure the effectiveness, over time, of the new Code and Registration Scheme.</p>
<p>Review the prior permission regime and ensure it is fit for purpose under the new Code.</p>	<p>The prior permission regime has been reviewed which concluded that all regimes will continue under the 12th Code. Changes to who should seek permission and transitional arrangements from the 11th to 12th Code have been published in a Notice to Industry in advance of the new Code implementation date. The Board will review the regime from time to time to ensure it remains fit-for-purpose.</p>

Produce benchmark data on unit costs and, where possible, assess this data against equivalent information from other bodies in order to understand how costs can be challenged on an ongoing basis.	This is ongoing. Scoping work has been completed and means by which this can be appropriately compared with other organisations in hand.
Implement HR strategies to ensure that we have a workforce properly resourced and kept up to date with developments within the industry they regulate.	The Leadership Team is reviewing the skills and competencies of the Executive to ensure that we have a workforce that is fit-for-purpose in a changing environment.

Annex E: KPI reports

Maximise compliance by providers with the PhonepayPlus Code of Practice and ensure that "polluters" pay			
Measure	Target	Actual	Comments
Fine Collection Rate	80%	78%	The collection rate of 78% is due to non-payment of fines. Collection processes have been exhausted.
Administration Charge Collection Rate	80%	46%	The collection rate of 46% is due to non-payment of administration charges. Collection processes have been exhausted.
Emergency Procedure cases brought to adjudication within 20 working days	90%	N/A	There have been no Emergency Procedure cases in Q2.
Informal cases resolved within target (Fast-track within 10 working days/Track 1 within 30 working days)	80%	93%	
Ensure that we act in a way that is proportionate and transparent			
Measure	Target	Actual	Comments
Notices to Industry sent soon after adjudication	< 30 days	N/A	There were no Notices to Industry after an adjudication required in Q2.
Tribunal minutes published after panel	< 11 days	100%	
Board meeting minutes published after being agreed	< 7 days	100%	
Maximise awareness and understanding of the role of PhonepayPlus			
Measure	Target	Actual	Comments
Increasing usage of PhonepayPlus website	Upward Trend	N/A	*Due to the Google Analytics tag being dropped inadvertently from the website, stats are unavailable for Q2 2011.