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*FINAL REPORT*

# **Review of regulatory arrangements for Premium Rate Services**

London, November 6 2007

# Executive Summary

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## Executive Summary

Chapter 1 – Scope of work

Chapter 2 – Case for change

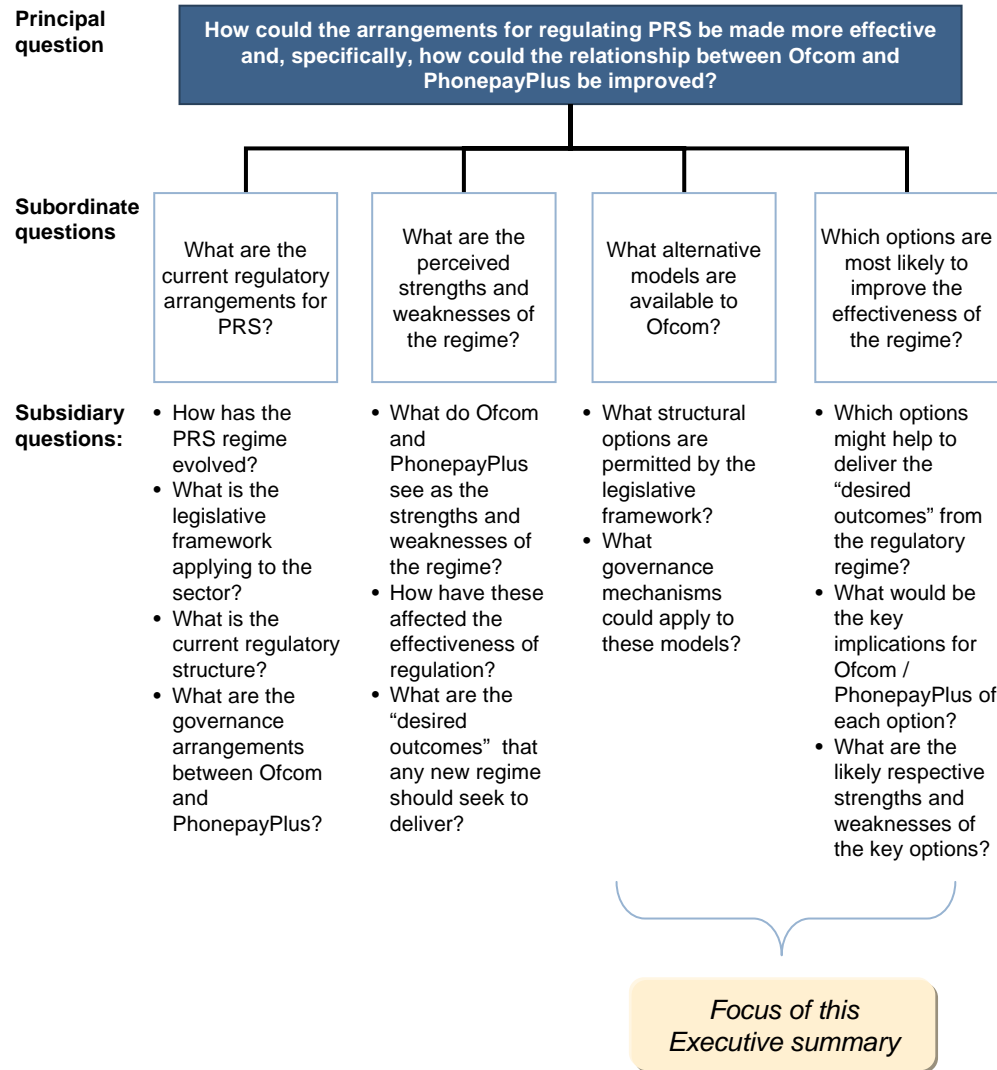
Chapter 3 – Models available & evaluation

Appendix A: Current situation

Appendix B: Model details

# This report is a review of the respective roles of Ofcom & PhonepayPlus in regulating PRS; it is an input to Ofcom's 'scope' review of PRS

- Ofcom has commissioned Spectrum to undertake a review of the arrangements between PhonepayPlus and Ofcom for the regulation of Premium Rate Services (PRS)
- This report is an input to Ofcom's overall review of regulation for PRS, internally known as the 'scope' review; its terms of reference include addressing issues of overlap between PhonepayPlus' role and that of other regulators and consumer protection bodies
- The study has, therefore, focused on reviewing the Governance arrangements between the organisations
- Our work has not been concerned with the impact or effectiveness of the reforms proposed in the Ayre report, in response to concerns about Broadcast PRS. Instead, it has focused on the wider relationship between the two organisations (for other types of PRS current or future)
- An important objective of the project is to align Ofcom's powers with its obligations to all stakeholders; provide clarity to all parties, and allow for some 'future proofing' of the relationship
- This Executive summary focuses on the options available to Ofcom and how they compare against the perceived strengths and weaknesses of the existing regime



# Our work has been informed by an extensive interview programme which has raised a number of key issues / objectives for the study

## Interviews

- **Ofcom:**
  - Lord Currie, Chairman
  - Ed Richards, Chief Executive
  - Sara Nathan, Ofcom Board Member (& PhonepayPlus Board Member)
  - Peter Phillips, Partner, Strategy & Market Developments
  - Claudio Pollack, Director of Consumer Policy
  - Tim Suter, Partner, Content & Standards
  - Chris Banatvala, Director of Standards
  - Gareth Davies, Director of 2004 Ofcom review of PRS
  - Tom Kiedrowski, Strategy Manager
- **PhonepayPlus:**
  - Sir Alistair Graham, Chairman
  - George Kidd, Chief Executive
  - Andrew Bud, PhonepayPlus Industry Board member
  - Paul Whiteing, Director of Policy and Innovation
  - Trays O'Reilly, Director of Standards and Communication
  - Brian Lund, Director of Corporate Services
- **Others:**
  - John Trotter, Bates Wells and Braithwaite
  - Kip Meek, former Chief Policy Partner, Ofcom

## Key issues / objectives raised through interviews<sup>1</sup>

### Lack of clarity / communication

- Greater clarity about respective roles, internally and externally, is needed
- The regime would benefit from improved communication and collaboration

### Need for a rapid reaction

- Given recent challenges in broadcast PRS, a need to signal to the industry / public that Ofcom is in the lead

### Play to respective strengths

- Changes to the regime should aim to:
  - maintain current ability to handle a large volume of consumer harm issues;
  - leverage Ofcom's policy-making skills

### Industry connections

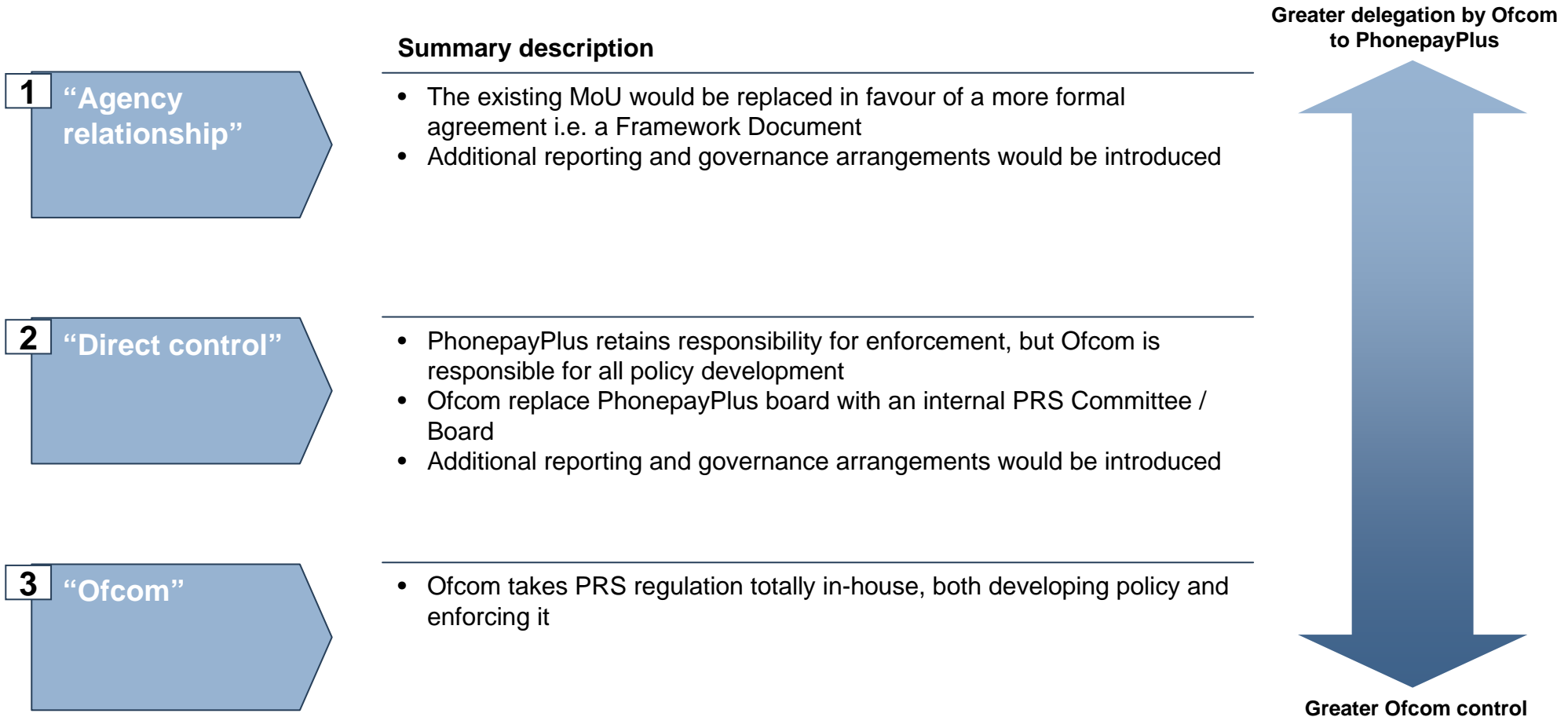
- Benefits to working with industry at a day-to-day level to assess future risks
- However, current tensions with industry exist

### Consider implementation requirements

- Potential reform options should be considered in light of their respective implementation requirements (e.g. avoiding changes to primary legislation)

Notes: (1) These are issues which were raised with Spectrum Value Partners in the interviews listed

# We have identified three alternative regulatory models which should be considered– these would reflect different degrees of control by Ofcom



# The following 6 slides describe and, then, evaluate the three regulatory models

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**1** “Agency relationship”

**2** “Direct control”

**3** “Ofcom”



**Description of regulatory model**

- For each model, sets out the **split of regulatory activities between Ofcom and PhonepayPlus**
- **Governance arrangements** envisaged under each model



**Evaluation of regulatory model**

- **Assesses** each model **against desired outcomes**
- Provides **Harvey Ball rating** against “desired outcomes”

## Model one, the “agency relationship”, would give Ofcom a greater policy setting role, as well as strengthening the governance arrangements

### Model description - split of responsibilities

- Ofcom delegates less to PhonepayPlus
  - no longer delegates some elements of the “policy framework” activity
  - continues to delegate day-to-day policy development - but, potentially, with more oversight, in these areas than under current arrangements

Regulatory activities	Lead responsibilities	Day-to-day responsibility
Setting and reviewing policy framework	• Ofcom	• Ofcom
Code approval	• Ofcom	• Ofcom
Policy development	• Ofcom	• Devolved to PhonepayPlus, but with greater Ofcom involvement
Code making / rule setting	• PhonepayPlus (as Code maker)	• PhonepayPlus
Operations / compliance	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus
Adjudications	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus

Notes: (1) See appendix for further details

### Model description - Governance

- The existing MoU would be replaced by a Framework Document
  - similar in nature to those used to determine the relationship between Government Departments and Executive Agencies
  - would have the same legal standing as an MoU, but would be **more formal, clearer and better defined**<sup>1</sup>
  - would make clear the hierarchy between Ofcom and PhonepayPlus, in particular, making clear that Ofcom sets the boundary and determines division of activities between the organisations
- A set of reporting / communication measures would be introduced:
  - a designated **sponsor** within Ofcom, responsible for facilitating communications, effective working and, when required, escalation of industry developments / threats higher within Ofcom
  - more **effective reporting** between PhonepayPlus CE & sponsor
  - Ofcom **observer** at some / all PhonepayPlus board meetings
  - more **frequent meetings** between senior Ofcom / PPP members
- A set of governance controls would also be introduced:
  - Ofcom having the ability to issue “**directive orders**” to PhonepayPlus
  - appointments at Board level to be for **finite periods**
  - Ofcom serving on the **appointment panels** of all **Board members**, and the **Chief Executive**
  - Ofcom would, therefore, have the possibility to **veto appointments / re-appointments**
  - **co-location** of PhonepayPlus with Ofcom, if logistically possible

# Model one would improve the clarity and control of the regime, whilst maintaining the existing core functions of both organisations

## Evaluation against desired outcomes

○ Low  
 ◐ Medium  
 ● High

Area	Assessment	Explanation
<b>Clarity</b>	◐	<ul style="list-style-type: none"> <li>• Framework document clarifies the hierarchy internally between Ofcom and PhonepayPlus</li> <li>• Clearer respective roles and responsibilities for Ofcom and PhonepayPlus which would be communicated to industry. Announcement of a new framework document would also signal a change to the market</li> </ul>
<b>Collaboration / Communication</b>	◐	<ul style="list-style-type: none"> <li>• Same measures available as under the MoU; but a move to a framework document could have a greater impact in achieving the required cultural change</li> <li>• Internal clarity about respective roles of two bodies would also improve unified external communication</li> </ul>
<b>Control</b>	◐	<ul style="list-style-type: none"> <li>• Ofcom is explicitly placed in charge of the policy framework</li> <li>• Greater clarity about the circumstances in which PhonepayPlus has to consult with, and report to, Ofcom and about the processes to be used in such consultations</li> <li>• Ofcom would not normally undertake “operational activities”, but would have ‘policy directive’ powers; these could be used, as necessary, to ensure PhonepayPlus, for example, operated to a certain set of procedures and processes at Ofcom’s request (e.g. when overlapping remit occurs)</li> </ul>
<b>Fleet of foot</b>	◐	<ul style="list-style-type: none"> <li>• PhonepayPlus is retained as Enforcement Agency, so is still able to investigate and to enforce sanctions rapidly</li> </ul>
<b>Connections to market</b>	◐	<ul style="list-style-type: none"> <li>• Extent of industry’s involvement in inputting into PhonepayPlus’s policy development need not be affected by the model</li> <li>• Clearer mechanisms for reporting emerging market problems / issues to Ofcom</li> </ul>

## Model two, the “direct control” model, would focus PhonepayPlus on the regime’s enforcement activities

### Model description - split of responsibilities

- PhonepayPlus retains responsibility for enforcement, in terms of running operations, measuring compliance, undertaking investigations and adjudications
- But Ofcom is responsible for all policy framework, policy development and rule setting activities

Regulatory activities	Lead responsibilities	Day-to-day responsibility
Setting and reviewing policy framework	• Ofcom	• Ofcom
Code approval <sup>1</sup>	• N/A	• N/A
Policy development	• Ofcom	• Ofcom
Order making / rule setting	• Ofcom	• Ofcom
Operations / compliance	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus
Adjudications	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus

Note: (1) Model two employs section 122 of the Act where Ofcom makes an Order rather than approves a code, hence the Code approval activity is not applicable

### Model description - Governance

- Model two would build on many of the arrangements in model one:
  - formal **Framework Document** would be established
  - a designated **Ofcom sponsor**
  - more **effective reporting** between PhonepayPlus CE and sponsor
  - the ability for Ofcom to impose “**directive orders**”
  - Ofcom would serve on the **appointment panel** for the Chief Executive and would, therefore, have a **veto** on his/her **appointment**
  - **co-location** of PhonepayPlus with Ofcom
- Model three would also imply further changes:
  - **dissolution of the PhonepayPlus board**, replacing it with a PRS Supervisory Board / Committee within Ofcom
  - **direct reporting** of CE to Supervisory Board / sponsor (e.g. to inform on market developments, key policy decisions, and key activities e.g. major fines / investigations)
  - a role for Ofcom in the nomination of the **Code Compliance Panel**
  - **performance assessment of CE** against agreed goals

# Model two would clarify roles, give Ofcom responsibility for all policy activities, but might also reduce access to industry expertise

○ Low  
 ● Medium  
 ● High

## Evaluation against desired outcomes

Area	Assessment	Explanation
<b>Clarity</b>	●	<ul style="list-style-type: none"> <li>• PhonepayPlus would continue to be responsible for enforcement, while Ofcom would take lead responsibility for all policy – presentationally, perhaps, a clearer dividing line for both parties and for external stakeholders</li> </ul>
<b>Collaboration / Communication</b>	●	<ul style="list-style-type: none"> <li>• Ofcom’s involvement in detailed policy could improve collaboration and communication between Ofcom and PhonepayPlus; but some potential loss of integration between policy and enforcement, given that sometimes it may be hard to separate these activities</li> <li>• Clearer hierarchy means that problems in jointly communicating should diminish; major policy communications all come from Ofcom</li> </ul>
<b>Control</b>	●	<ul style="list-style-type: none"> <li>• Ofcom would be in control of all policy</li> <li>• Ofcom would still not normally undertake “operational activities”, but would have ‘policy directive’ powers; these could be used, as necessary, to ensure PhonepayPlus, for example, operated to a certain set of procedures and processes at Ofcom’s request (e.g. when overlapping remit occurs)</li> </ul>
<b>Fleet of foot</b>	●	<ul style="list-style-type: none"> <li>• PhonepayPlus is retained as Enforcement Agency, so is still able to investigate quickly and to enforce sanctions</li> <li>• However, the regime could take a bit longer to react if Order needs amendment</li> </ul>
<b>Connections to market</b>	●	<ul style="list-style-type: none"> <li>• Replacement of PhonepayPlus Board by Ofcom Committee / Supervisory Board would remove direct industry representation at Board level<sup>1</sup>. Industry members could, perhaps, still have a role within Code Compliance Panel and through Industry Liaison Panel (which would, probably, then be linked to Ofcom rather than PhonepayPlus)</li> </ul>

Note: (1) Internal Ofcom Boards do not typically have industry members

## In model three, Ofcom would take over the whole regulation of PRS

### Model description - split of responsibilities

- Ofcom takes over all PRS regulation and does it in-house, with responsibility, at a day-to-day level, for regulating PRS

### Model description - Governance

- Ofcom would have **direct** control over PRS regulation
- No need for external governance procedures
- Internal governance procedures would be established consistent with Ofcom's existing arrangements

Regulatory activities	Lead responsibilities	Day-to-day responsibility
Setting and reviewing policy framework	• Ofcom	• Ofcom
Code approval <sup>1</sup>	• N/A	• N/A
Policy development	• Ofcom	• Ofcom
Order making / rule setting	• Ofcom	• Ofcom
Operations / compliance	• Ofcom	• Ofcom
Adjudications	• Ofcom	• Ofcom

Note: (1) Model three employs section 122 of the Act where Ofcom makes an Order rather than approves a code, hence the Code approval activity is not applicable

## Model three would remove concerns over clarity and collaboration versus control; but it might inhibit regulatory 'nimbleness' and access to industry




○ Low  
 ● Medium  
 ● High

### Evaluation against desired outcomes

Area	Assessment	Explanation
<b>Clarity</b>		<ul style="list-style-type: none"> <li>Abolition of a separate body should remove many, if not all, issues about who does what</li> </ul>
<b>Collaboration / Communication</b>		<ul style="list-style-type: none"> <li>Abolition of a separate body should limit any issues about communication or collaboration within regime</li> </ul>
<b>Control</b>		<ul style="list-style-type: none"> <li>Existing Ofcom governance arrangements could be used</li> </ul>
<b>Fleet of foot</b>		<ul style="list-style-type: none"> <li>Ofcom is not currently set up to deal with a huge volume of often small investigations in the PRS sector, or e.g. to identify quickly and stop 'rogue' services in this sector, processes for this would need to be established</li> <li>This, probably, does not play to Ofcom's current strengths:               <ul style="list-style-type: none"> <li>- currently set-up for large scale, policy-related investigations</li> </ul> </li> </ul>
<b>Connections to market</b>		<ul style="list-style-type: none"> <li>Although Ofcom has strong connections to industry, these are not currently as focused on operational issues; it would need to build this experience / knowledge of industry players</li> </ul>

# Our view is that Models 1 and 2 could be attractive; model 3 probably goes further than required

## Summary comparison of options in addressing desired outcomes

<p><b>1</b> “Agency relationship”</p>	<p><b>Pros</b></p> <ul style="list-style-type: none"> <li>signals a change in the relationship internally and externally</li> <li>gives Ofcom more formal role in PhonepayPlus’s governance, including control over policy framework and provision for directive powers, when required</li> <li>probably maintains strengths of the current regime</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>danger that framework document doesn’t carry enough weight and Ofcom lacks powers to ensure it is respected / adhered to</li> </ul> <p><b>Overall assessment:</b></p> <ul style="list-style-type: none"> <li>strong merits; should be considered further by Ofcom and PhonepayPlus</li> </ul>	
<p><b>2</b> “Direct control”</p>	<p><b>Pros</b></p> <ul style="list-style-type: none"> <li>clarifies PhonepayPlus’s role as Ofcom’s agent in PRS, delivering greater credibility to the regime and to PhonepayPlus</li> <li>clearer delineation of respective roles and responsibilities, which may lead to improved working relations</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>removes direct industry representation on PhonepayPlus Board</li> </ul> <p><b>Overall assessment:</b></p> <ul style="list-style-type: none"> <li>strong merits; should be considered further by Ofcom and PhonepayPlus</li> </ul>	
<p><b>3</b> “Ofcom”</p>	<p><b>Pros</b></p> <ul style="list-style-type: none"> <li>removes concerns over clarity, communication and collaboration</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>some parts of industry<sup>1</sup> perceive Ofcom as, potentially, more risk averse; some feeling that the model could, therefore, constrain market development</li> <li>could lose PhonepayPlus’s nimbleness and ability to process large volume of complaints</li> <li>Ofcom’s strength, is not (at present) in large scale handling of consumer complaints in the PRS sector</li> </ul> <p><b>Overall assessment:</b></p> <ul style="list-style-type: none"> <li>Goes too far and potentially does not play to either party’s strengths</li> </ul>	

Notes: (1) We have not spoken specifically to industry as a part of this study

## Models 1 and 2 would each have respective implementation and presentational issues that would need to be considered













	Implementation considerations	Presentational considerations
<p><b>1</b> “Agency relationship”</p>	<ul style="list-style-type: none"> <li>• Requires the agreement of PhonepayPlus’s Members to change the Articles of Association</li> <li>• Resource implications:               <ul style="list-style-type: none"> <li>- senior sponsor within Ofcom, with responsibility as a “gatekeeper” and facilitator between Ofcom and PhonepayPlus</li> <li>- requires Ofcom staff for policy oversight</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Needs to be easy to communicate to stakeholders (including government) the shift in the regime, in particular that Ofcom is taking an increased role:               <ul style="list-style-type: none"> <li>- Formal Framework Document and its content would be a significant shift from the original MoU</li> <li>- Ofcom would be taking an active role in ensuring alignment between PhonepayPlus / Ofcom policy, especially in areas with overlapping remits</li> </ul> </li> </ul>
<p><b>2</b> “Direct control”</p>	<ul style="list-style-type: none"> <li>• Requires use of Statutory Instrument to implement Order</li> <li>• Resource implications:               <ul style="list-style-type: none"> <li>- senior sponsor within Ofcom, with responsibility as a “gatekeeper” between Ofcom and PhonepayPlus</li> <li>- requires Ofcom staff for policy oversight and policy development (could involve transferring people from PhonepayPlus), consideration needs to given to how this would be funded</li> </ul> </li> <li>• Dissolution of PhonepayPlus entity into NewCo could create certain issues around transfer of existing PhonepayPlus contracts and liabilities.</li> </ul>	<ul style="list-style-type: none"> <li>• Explain to the market:               <ul style="list-style-type: none"> <li>- rationale for dissolution of the existing PhonepayPlus board and creation of Ofcom PRS Committee / Board</li> <li>- how Ofcom will maintain industry involvement, given that the Ofcom PRS Committee / Board would not include industry representatives</li> </ul> </li> <li>• Ensure retention of relationship between regulator and industry</li> </ul>

Source: Towerhouse Consulting LLP, Spectrum / Value Partners analysis

## The choice between model 1 and 2 may depend on striking the right balance between increased Ofcom leadership and retaining current capabilities

### Summary of proposed options

○ Low  
 ● Medium  
 ● High

	1 “Agency relationship”	2 “Direct Control”
<b>Clarity</b>	 <ul style="list-style-type: none"> <li>• Framework document should improve internal clarity about respective roles and remits</li> <li>• Signals change externally to industry</li> </ul>	 <ul style="list-style-type: none"> <li>• Substantially improved internal clarity of roles and remits between respective regulatory bodies</li> <li>• Dividing line clearer to external stakeholders</li> </ul>
<b>Communication</b>	 <ul style="list-style-type: none"> <li>• Improvement in internal communications and collaboration</li> <li>• External messages will still come from two separate bodies</li> </ul>	 <ul style="list-style-type: none"> <li>• Ofcom's involvement in detailed policy should lead to more consistent communications</li> <li>• Ensure no rift between policy / implementation</li> </ul>
<b>Control</b>	 <ul style="list-style-type: none"> <li>• Ofcom sets and reviews policy framework and has oversight over policy development</li> <li>• Minimal Ofcom involvement in day-to-day operation</li> </ul>	 <ul style="list-style-type: none"> <li>• Ofcom in lead on all policy</li> <li>• Also has directive power, when necessary</li> </ul>
<b>Fleet of foot</b>	 <ul style="list-style-type: none"> <li>• Maintains PhonepayPlus's fast case turnover</li> </ul>	 <ul style="list-style-type: none"> <li>• Maintains PhonepayPlus's fast case turnover</li> <li>• Regime unlikely to be able to react as quickly as under model 1 if Order needs to be amended</li> </ul>
<b>Connections to market</b>	 <ul style="list-style-type: none"> <li>• Maintains PhonepayPlus's current industry representation on its Board</li> <li>• Improvement in reporting of industry developments to Ofcom</li> </ul>	 <ul style="list-style-type: none"> <li>• Replacement of PhonepayPlus Board removes direct industry representation on Board</li> <li>• Continuing input at operational level, and to Ofcom through the Industry Liaison Panel</li> </ul>
<b>Implementation</b>	 <ul style="list-style-type: none"> <li>• Maintenance of existing structure minimises required organisational changes</li> <li>• Greater Ofcom oversight requires increased investment by Ofcom</li> </ul>	 <ul style="list-style-type: none"> <li>• Greater Ofcom resource implications, given increased role in policy activities &amp; creation of Supervisory Board</li> <li>• Requires use of Statutory instrument and transfer of PhonepayPlus's into NewCo entity</li> </ul>

Note: For greater detail, see individual model evaluation pages

# Chapter 1 – Scope of work

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Executive Summary

## **Chapter 1 – Scope of work**

Chapter 2 – Case for change

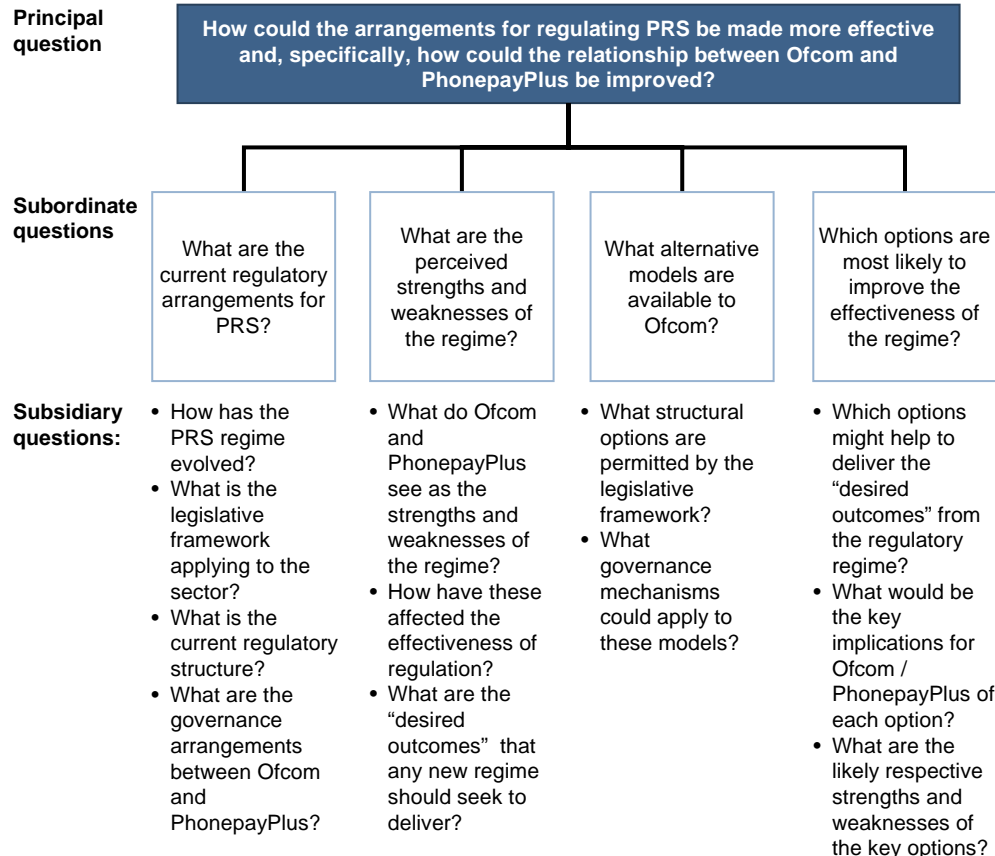
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- This report is an input to Ofcom’s overall review of regulation for PRS, internally known as the ‘scope’ review; its terms of reference include addressing issues of overlap between PhonepayPlus’ role and that of other regulators and consumer protection bodies
- The study has, therefore, focused on reviewing the Governance arrangements between the organisations
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- An important objective of the project is to align Ofcom’s powers with its obligations to all stakeholders; provide clarity to all parties, and allow for some ‘future proofing’ of the relationship



# Our work has been internal to Ofcom & PhonepayPlus; its objective has been to review the effectiveness of the regime for major stakeholders

## Interviews

- **Ofcom:**
  - Lord Currie, Chairman
  - Ed Richards, Chief Executive
  - Sara Nathan, Ofcom Board Member (& PhonepayPlus Board Member)
  - Peter Phillips, Partner, Strategy & Market Developments
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- **Others:**
  - John Trotter, Bates Wells and Braithwaite
  - Kip Meek, former Chief Policy Partner, Ofcom

## Stakeholder interests in an effective PRS regime

### Ofcom

- Overarching responsibility for ensuring that regulatory arrangements for PRS are effective

### Industry

- Provide consumers with confidence to use PRS services, whilst protecting legitimate industry interests (i.e. effective regime to “clamp down” rogues)

### Consumer

- Protect public from inappropriate, unfair and exploitative services
- Provide adequate mechanisms to ensure consumer awareness, transparency and fair services

### Other bodies

- Ensure that a body exists that is able to co-ordinate effectively with other regulators (e.g. ASA, Gambling Commission)

## Chapter 2 – Case for change

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Chapter 1 – Scope of work

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Chapter 3 – Models available & evaluation

Appendix A: Current situation

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# The PRS regime has evolved, over time, to cope with developments in the market, including the activities of “rogue elements”

## Market characteristics

### Market proliferation

- PRS market has grown substantially since 1986 in terms of:
  - number of Service Providers (from 16 in 1986 to 3,000-4,000 today)
  - Licensing and proliferation of Network Operators (e.g. Vodata, Mercury and then mobile operators)
  - breadth of services offered (SMS, Quiz TV, broadcast PRS, 0871)

### Technological innovation

- Shift from fixed telephone lines services, to mobile and the internet
- Services no longer just about voice content but now voting systems, ringtones etc.

### Micropayment mechanism

- PRS is shifting increasingly to being used also as a payment mechanism for services provided by others

### “Rogue elements”

- Potential to defraud customers has always attracted rogue elements
- New technologies offer new ways to take advantage of customers

## Evolution of PRS regime

1980s

- A **self-regulatory regime**
- ICSTIS started out as an offshoot of BT in 1986, in conjunction with the limited number of service providers

1990s

- Move to **co-regulatory regime**
- Professionalisation of ICSTIS
- Oftel gained backstop powers over live PRS and then all Controlled PRS

2000s

- Move to **“extensive” co-regulatory regime**
- Ofcom gained greater powers over PRS regulation through the Communications Act 2003, with ICSTIS as Ofcom’s Enforcement Agency
- ICSTIS’s powers over network operators also increased after reviews in 2004
- Rebranded to PhonepayPlus in 2007

Source: ICSTIS, interviews, Spectrum / Value Partners analysis

## In regulating PRS, a number of activities need to be undertaken

Regulatory activities	Description / explanation
<b>Setting and reviewing policy framework</b> <ul style="list-style-type: none"> <li>• Purpose and principles of regulation</li> <li>• Scope of regulation</li> <li>• Regulatory bodies</li> <li>• Regulatory powers</li> </ul>	<ul style="list-style-type: none"> <li>• The objective of the regulatory regime e.g. consumer protection and principles</li> <li>• The types of services and players to which the regime applies</li> <li>• The role and responsibilities of the regulatory bodies involved (e.g. PhonepayPlus, Ofcom)</li> <li>• The powers available to the bodies over the players in the market</li> </ul>
<b>Policy development</b> <ul style="list-style-type: none"> <li>• Development of specific policies</li> <li>• Keeping policies under review</li> </ul>	<ul style="list-style-type: none"> <li>• Development of regulatory principles into specific policies (e.g. on consumer privacy, minor protection, pricing of services, enforcement policy)</li> </ul>
<b>Rule setting</b> <ul style="list-style-type: none"> <li>• Application of policies to services</li> <li>• Keeping rules under review</li> </ul>	<ul style="list-style-type: none"> <li>• Development of specific rules applying to particular services to meet policy objectives e.g.               <ul style="list-style-type: none"> <li>- application of pricing policies to different media</li> <li>- setting of bond requirements</li> <li>- registrations / prior permission requirements</li> </ul> </li> </ul>
<b>Operations / compliance</b> <ul style="list-style-type: none"> <li>• Monitoring of market activity</li> <li>• Responding to stakeholder concerns (e.g. consumers)</li> <li>• Investigators</li> <li>• Media literacy</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation of monitoring services (e.g. prior permission regimes)</li> <li>• Monitoring key market developments for potential breaches (spikes in activity, development of concern services)</li> <li>• Receiving and handling complaints from stakeholders</li> <li>• Initiating and undertaking investigations of potential breaches of the rules</li> <li>• Ensuring that consumers are well-informed about risks and redress for PRS services</li> </ul>
<b>Adjudications and enforcement</b> <ul style="list-style-type: none"> <li>• Setting penalties for breaches</li> <li>• Undertaking appeals</li> <li>• Providing means for consumer redress</li> </ul>	<ul style="list-style-type: none"> <li>• Reviewing breaches and applying appropriate punishment</li> <li>• Undertaking hearings for organisations dissatisfied with regulatory punishment</li> <li>• Set up of consumer refund funds where appropriate</li> </ul>

## The responsibility for PRS regulatory activities is currently split between Ofcom and PhonepayPlus<sup>1,2</sup>

Regulatory activities	Lead responsibilities	Day-to-day responsibility	Comments
Setting and reviewing policy framework	<ul style="list-style-type: none"> <li>Ofcom</li> </ul>	<ul style="list-style-type: none"> <li>Joint Ofcom / PhonepayPlus</li> </ul>	<ul style="list-style-type: none"> <li>Ofcom conducting scope review, affecting policy framework</li> <li>Some activity is devolved to PhonepayPlus</li> <li>In this area, Ofcom has oversight through the PRS Condition and approval of the Code</li> </ul>
Code approval	<ul style="list-style-type: none"> <li>Ofcom</li> </ul>	<ul style="list-style-type: none"> <li>Ofcom</li> </ul>	<ul style="list-style-type: none"> <li>Under the Act, Ofcom approves the Code</li> </ul>
Policy development	<ul style="list-style-type: none"> <li>Ofcom</li> </ul>	<ul style="list-style-type: none"> <li>Devolved to PhonepayPlus; captured in the Code</li> </ul>	<ul style="list-style-type: none"> <li>Ofcom has oversight through approval of the Code</li> </ul>
Code making <sup>3</sup> / rule setting	<ul style="list-style-type: none"> <li>PhonepayPlus (as Code maker)</li> </ul>	<ul style="list-style-type: none"> <li>PhonepayPlus</li> </ul>	<ul style="list-style-type: none"> <li>PhonepayPlus is delegated the powers to make the Code under the Communications Act</li> <li>Ofcom has oversight through approval of the Code</li> </ul>
Operations / compliance	<ul style="list-style-type: none"> <li>PhonepayPlus (as the Enforcement Agency)</li> </ul>	<ul style="list-style-type: none"> <li>PhonepayPlus</li> </ul>	<ul style="list-style-type: none"> <li>PhonepayPlus is the designated Enforcement Agency under the Act</li> </ul>
Adjudications	<ul style="list-style-type: none"> <li>PhonepayPlus (as the Enforcement Agency)</li> </ul>	<ul style="list-style-type: none"> <li>PhonepayPlus</li> </ul>	<ul style="list-style-type: none"> <li>PhonepayPlus is the designated Enforcement Agency under the Act</li> </ul>

Note: (1) In the area of Broadcast PRS, Ofcom's current proposals under the Participation TV review, are that it would have lead and day-to-day responsibility for all regulatory activities. It is still, however, in discussions with PhonepayPlus over possible joint code making, operations / compliance and adjudications

(2) Further to the regulatory activities stated above, Ofcom has roles in the governance of PhonepayPlus (see appendix A for further details)

(3) This is a specific additional activity allowed for under the Communications Act

# Together, perceptions of strengths & weaknesses have informed our views about the “desired outcomes” from any reformed regime

## Perceived problems

- Insufficiently joint strategic approach to handling issues of overlapping remit (e.g. broadcast PRS)
- Lack of clarity on respective roles
- Insufficiently co-ordinated approach to communication
- Not enough oversight by Ofcom
- Lack of communication between the organisations at the senior levels
- No powers by which Ofcom can direct PhonepayPlus
- Lack of clarity on PhonepayPlus’s role to industry

## Key strengths

- PhonepayPlus able to deal with volume of consumer complaints
- PhonepayPlus’s proximity to industry - use industry knowledge when constructing policy and adjudicating (albeit not directly)
- Separation of Ofcom / PhonepayPlus; allows Ofcom to focus mainly on policy

## Desired outcomes to be achieved in new regime

Area	Specific criteria
<b>Clarity</b>	<ul style="list-style-type: none"> <li>• Improved <b>clarity</b> of roles and remit both:                             <ul style="list-style-type: none"> <li>- internally, between bodies of the regime</li> <li>- externally, to the industry and other regulatory bodies</li> </ul> </li> </ul>
<b>Communication</b>	<ul style="list-style-type: none"> <li>• Improved <b>collaboration and communication</b>:                             <ul style="list-style-type: none"> <li>- between bodies regulating the regime</li> <li>- externally from Ofcom and PhonepayPlus</li> </ul> </li> </ul>
<b>Control</b>	<ul style="list-style-type: none"> <li>• Higher degree of <b>policy control</b> from Ofcom</li> <li>• A more unified <b>chain of command</b></li> <li>• Improved ability to <b>influence</b> / provide direction by Ofcom on specific issues</li> </ul>
<b>Fleet of foot</b>	<ul style="list-style-type: none"> <li>• Maintain ability to <b>take action quickly</b> when required</li> <li>• Maintain <b>connection</b> between changes in the market and policy development</li> </ul>
<b>Connections to market</b>	<ul style="list-style-type: none"> <li>• Maintain ability to deal with <b>high turnover</b> of complaints, cases/investigations</li> <li>• Maintain ability to <b>leverage industry knowledge</b> and expertise</li> </ul>

## Chapter 3 – Models available & evaluation

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Executive Summary

Chapter 1 – Scope of work

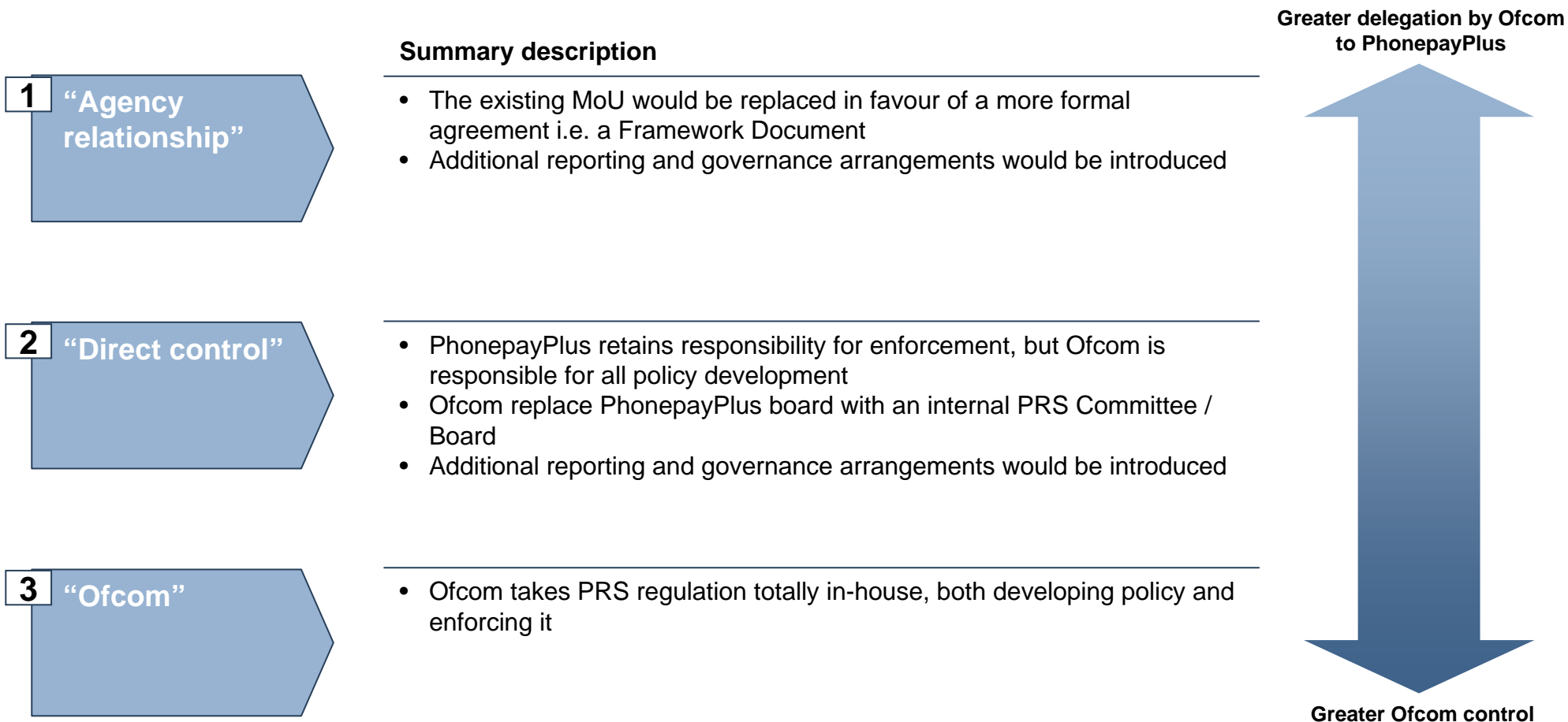
Chapter 2 – Case for change

**Chapter 3 – Models available & evaluation**

Appendix A: Current situation

Appendix B: Model details

## We have identified three alternative regulatory models which should be considered– these would reflect different degrees of control by Ofcom



## The following 6 slides describe and, then, evaluate the three regulatory models

1 “Agency relationship”

2 “Direct control”

3 “Ofcom”



### Description of regulatory model

- For each model, sets out the **split of regulatory activities between Ofcom and PhonepayPlus**
- **Governance arrangements** envisaged under each model



### Evaluation of regulatory model

- **Assesses** each model **against desired outcomes**
- Provides **Harvey Ball rating** against “desired outcomes”

## Model one, the “agency relationship”, would give Ofcom a greater policy setting role, as well as strengthening the governance arrangements

### Model description - split of responsibilities

- Ofcom delegates less to PhonepayPlus
  - no longer delegates some elements of the “policy framework” activity
  - continues to delegate day-to-day policy development - but, potentially, with more oversight, in these areas than under current arrangements

Regulatory activities	Lead responsibilities	Day-to-day responsibility
Setting and reviewing policy framework	• Ofcom	• Ofcom
Code approval	• Ofcom	• Ofcom
Policy development	• Ofcom	• Devolved to PhonepayPlus, but with greater Ofcom involvement
Code making / rule setting	• PhonepayPlus (as Code maker)	• PhonepayPlus
Operations / compliance	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus
Adjudications	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus

Notes: (1) See appendix for further details

### Model description - Governance

- The existing MoU would be replaced by a Framework Document
  - similar in nature to those used to determine the relationship between Government Departments and Executive Agencies
  - would have the same legal standing as an MoU, but would be **more formal, clearer and better defined**<sup>1</sup>
  - would make clear the hierarchy between Ofcom and PhonepayPlus, in particular, making clear that Ofcom sets the boundary and determines division of activities between the organisations
- A set of reporting / communication measures would be introduced:
  - a designated **sponsor** within Ofcom, responsible for facilitating communications, effective working and, when required, escalation of industry developments / threats higher within Ofcom
  - more **effective reporting** between PhonepayPlus CE & sponsor
  - Ofcom **observer** at some / all PhonepayPlus board meetings
  - more **frequent meetings** between senior Ofcom / PPP members
- A set of governance controls would also be introduced:
  - Ofcom having the ability to issue “**directive orders**” to PhonepayPlus
  - appointments at Board level & CE level to be for **finite periods**
  - Ofcom serving on the **appointment panels** of all **Board members**, and the **Chief Executive**
  - Ofcom would, therefore, have the possibility to **veto** on **appointments / re-appointments**
  - **co-location** of PhonepayPlus with Ofcom, if logistically possible

# Model one would improve the clarity and control of the regime, whilst maintaining the existing core functions of both organisations

## Evaluation against desired outcomes

○ Low  
 ◐ Medium  
 ● High

Area	Assessment	Explanation
<b>Clarity</b>	◐	<ul style="list-style-type: none"> <li>• Framework document clarifies the hierarchy internally between Ofcom and PhonepayPlus</li> <li>• Clearer respective roles and responsibilities for Ofcom and PhonepayPlus which would be communicated to industry. Announcement of a new framework would document also signal a change to the market</li> </ul>
<b>Collaboration / Communication</b>	◐	<ul style="list-style-type: none"> <li>• Same measures available as under the MoU; but a move to a framework document could have a greater impact in achieving the required cultural change</li> <li>• Internal clarity about respective roles of two bodies would also improve unified external communication; thus, also, limits ability for industry to play one against the other</li> </ul>
<b>Control</b>	◐	<ul style="list-style-type: none"> <li>• Ofcom is explicitly placed in charge of the policy framework</li> <li>• Greater clarity about the circumstances in which PhonepayPlus has to consult with, and report to, Ofcom and about the processes to be used in such consultations</li> <li>• Ofcom would not normally undertake “operational activities”, but would have ‘policy directive’ powers; these could be used, as necessary, to ensure PhonepayPlus, for example, operated to a certain set of procedures and processes at Ofcom’s request (e.g. when overlapping remit occurs)</li> </ul>
<b>Fleet of foot</b>	◐	<ul style="list-style-type: none"> <li>• PhonepayPlus is retained as Enforcement Agency, so is still able to investigate and to enforce sanctions rapidly</li> </ul>
<b>Connections to market</b>	◐	<ul style="list-style-type: none"> <li>• Extent of industry’s involvement in inputting into PhonepayPlus’s policy development need not be affected by the model</li> <li>• Clearer mechanisms for reporting emerging market problems / issues to Ofcom</li> </ul>

## Model two, the “direct control” model, would focus PhonepayPlus on the regime’s enforcement activities

### Model description - split of responsibilities

- PhonepayPlus retains responsibility for enforcement, in terms of running operations, measuring compliance, undertaking investigations and adjudications
- But Ofcom is responsible for all policy framework, policy development and rule setting activities

Regulatory activities	Lead responsibilities	Day-to-day responsibility
Setting and reviewing policy framework	• Ofcom	• Ofcom
Code approval <sup>1</sup>	• N/A	• N/A
Policy development	• Ofcom	• Ofcom
Order making / rule setting	• Ofcom	• Ofcom
Operations / compliance	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus
Adjudications	• PhonepayPlus (as the Enforcement Agency)	• PhonepayPlus

Note: (1) Model two employs section 122 of the Act where Ofcom makes an Order rather than approves a code, hence the Code approval activity is not applicable

### Model description - Governance

- Model two would build on many of the arrangements in model one:
  - formal **Framework Document** would be established
  - a designated **Ofcom sponsor**
  - more **effective reporting** between PhonepayPlus CE and sponsor
  - the ability for Ofcom to impose “**directive orders**”
  - Ofcom would serve on the **appointment panel** for the Chief Executive and would, therefore, have a **veto** on his/her **appointment**
  - **co-location** of PhonepayPlus with Ofcom
- Model three would also imply further changes:
  - **dissolution of the PhonepayPlus board**, replacing it with a PRS Supervisory Board / Committee within Ofcom
  - **direct reporting** of CE to Supervisory Board / sponsor (e.g. to inform on market developments, key policy decisions, and key activities e.g. major fines / investigations)
  - a role for Ofcom in the nomination of the **Code Compliance Panel**
  - **performance assessment of CE** against agreed goals

## Model two would clarify roles, give Ofcom responsibility for all policy activities, but might also reduce access to industry expertise

○ Low  
 ● Medium  
 ● High

### Evaluation against desired outcomes

Area	Assessment	Explanation
<b>Clarity</b>	●	<ul style="list-style-type: none"> <li>• PhonepayPlus would continue to be responsible for enforcement, while Ofcom would take lead responsibility for all policy – presentationally, perhaps, a clearer dividing line for both parties and for external stakeholders</li> </ul>
<b>Collaboration / Communication</b>	●	<ul style="list-style-type: none"> <li>• Ofcom’s involvement in detailed policy could improve collaboration and communication between Ofcom and PhonepayPlus; but some potential loss of integration between policy and enforcement, given that sometimes it may be hard to separate these activities</li> <li>• Clearer hierarchy means that problems in jointly communicating should diminish; major policy communications all come from Ofcom</li> </ul>
<b>Control</b>	●	<ul style="list-style-type: none"> <li>• Ofcom would be in control of all policy</li> <li>• Ofcom would still not normally undertake “operational activities”, but would have ‘policy directive’ powers; these could be used, as necessary, to ensure PhonepayPlus, for example, operated to a certain set of procedures and processes at Ofcom’s request (e.g. when overlapping remit occurs)</li> </ul>
<b>Fleet of foot</b>	●	<ul style="list-style-type: none"> <li>• PhonepayPlus is retained as Enforcement Agency, so is still able to investigate quickly and to enforce sanctions</li> <li>• However, the regime could take a bit longer to react if Order needs amendment</li> </ul>
<b>Connections to market</b>	●	<ul style="list-style-type: none"> <li>• Replacement of PhonepayPlus Board by Ofcom Committee / Supervisory Board would remove direct industry representation at Board level<sup>1</sup>. Industry members could, perhaps, still have a role within Code Compliance Panel and through Industry Liaison Panel (which would, probably, then be linked to Ofcom rather than PhonepayPlus)</li> </ul>

Note: (1) Internal Ofcom Boards do not typically have industry members

## In model three, Ofcom would take over the whole regulation of PRS

### Model description - split of responsibilities

- Ofcom takes over all PRS regulation and does it in-house, with responsibility, at a day-to-day level, for regulating PRS

### Model description - Governance

- Ofcom would have **direct** control over PRS regulation
- No need for external governance procedures
- Internal governance procedures would be established consistent with Ofcom's existing arrangements

Regulatory activities	Lead responsibilities	Day-to-day responsibility
Setting and reviewing policy framework	• Ofcom	• Ofcom
Code approval <sup>1</sup>	• N/A	• N/A
Policy development	• Ofcom	• Ofcom
Order making / rule setting	• Ofcom	• Ofcom
Operations / compliance	• Ofcom	• Ofcom
Adjudications	• Ofcom	• Ofcom

Note: (1) Model three employs section 122 of the Act where Ofcom makes an Order rather than approves a code, hence the Code approval activity is not applicable

## Model three would remove concerns over clarity and collaboration versus control; but it might inhibit regulatory 'nimbleness' and access to industry

○ Low  
 ● Medium  
 ● High

### Evaluation against desired outcomes

Area	Assessment	Explanation
<b>Clarity</b>		<ul style="list-style-type: none"> <li>Abolition of a separate body should remove many, if not all, issues about who does what</li> </ul>
<b>Collaboration / Communication</b>		<ul style="list-style-type: none"> <li>Abolition of a separate body should limit any issues about communication or collaboration within regime</li> </ul>
<b>Control</b>		<ul style="list-style-type: none"> <li>Existing Ofcom governance arrangements could be used</li> </ul>
<b>Fleet of foot</b>		<ul style="list-style-type: none"> <li>Ofcom is not currently set up to deal with a huge volume of often small investigations in the PRS sector, or e.g. to identify quickly and stop 'rogue' services in this sector, processes for this would need to be established</li> <li>This, probably, does not play to Ofcom's current strengths:               <ul style="list-style-type: none"> <li>currently set-up for large scale, policy-related investigations</li> </ul> </li> </ul>
<b>Connections to market</b>		<ul style="list-style-type: none"> <li>Although Ofcom has strong connections to industry, these are not currently as focused on operational issues; it would need to build this experience / knowledge of industry players</li> </ul>

## Our view is that Models 1 and 2 could be attractive; model 3 probably goes further than required

### Summary comparison of options in addressing desired outcomes

#### 1 “Agency relationship”

##### Pros

- signals a change in the relationship internally and externally
- gives Ofcom more formal role in PhonepayPlus’s governance, including control over policy framework and provision for directive powers, when required
- probably maintains strengths of the current regime

##### Cons

- danger that framework document doesn’t carry enough weight and Ofcom lacks powers to ensure it is respected / adhered to

##### Overall assessment:

- strong merits; should be considered further by Ofcom and PhonepayPlus



#### 2 “Direct control”

##### Pros

- clarifies PhonepayPlus’s role as Ofcom’s agent in PRS, delivering greater credibility to the regime and to PhonepayPlus
- clearer delineation of respective roles and responsibilities, which may lead to improved working relations

##### Cons

- removes direct industry representation on PhonepayPlus Board

##### Overall assessment:

- strong merits; should be considered further by Ofcom and PhonepayPlus



#### 3 “Ofcom”

##### Pros

- removes concerns over clarity, communication and collaboration

##### Cons

- some parts of industry<sup>1</sup> perceive Ofcom as, potentially, more risk averse; some feeling that the model could, therefore, constrain market development
- could lose PhonepayPlus’s nimbleness and ability to process large volume of complaints
- Ofcom’s strength, is not (at present) in large scale handling of consumer complaints in the PRS sector

##### Overall assessment:

- Goes too far and potentially does not play to either party’s strengths



Notes: (1) We have not spoken specifically to industry as a part of this study

## Models 1 and 2 would each have respective implementation and presentational issues that would need to be considered













	Implementation considerations	Presentational considerations
1 “Agency relationship”	<ul style="list-style-type: none"> <li>• Requires the agreement of PhonepayPlus’s Members to change the Articles of Association</li> <li>• Resource implications:                             <ul style="list-style-type: none"> <li>- senior sponsor within Ofcom, with responsibility as a “gatekeeper” and facilitator between Ofcom and PhonepayPlus</li> <li>- requires Ofcom staff for policy oversight</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Needs to be easy to communicate to stakeholders (including government) the shift in the regime, in particular that Ofcom is taking an increased role:                             <ul style="list-style-type: none"> <li>- Formal Framework Document and its content would be a significant shift from the original MoU</li> <li>- Ofcom would be taking an active role in ensuring alignment between PhonepayPlus / Ofcom policy, especially in areas with overlapping remits</li> </ul> </li> </ul>
2 “Direct control”	<ul style="list-style-type: none"> <li>• Requires use of Statutory Instrument to implement Order</li> <li>• Resource implications:                             <ul style="list-style-type: none"> <li>- senior sponsor within Ofcom, with responsibility as a “gatekeeper” between Ofcom and PhonepayPlus</li> <li>- requires Ofcom staff for policy oversight and policy development (could involve transferring people from PhonepayPlus), consideration needs to be given to how this would be funded</li> </ul> </li> <li>• Dissolution of PhonepayPlus entity into NewCo could create certain issues around the transfer of existing PhonepayPlus contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Explain to the market:                             <ul style="list-style-type: none"> <li>- rationale for dissolution of the existing PhonepayPlus board and creation of Ofcom PRS Committee / Board</li> <li>- how Ofcom will maintain industry involvement, given that the Ofcom PRS Committee / Board would not include industry representatives</li> </ul> </li> <li>• Ensure retention of relationship between regulator and industry</li> </ul>

Source: Towerhouse Consulting LLP, Spectrum / Value Partners analysis

## The choice between model 1 and 2 may depend on striking the right balance between increased Ofcom leadership and retaining current capabilities

### Summary of proposed options

○ Low  
 ● Medium  
 ● High

	1 “Agency relationship”	2 “Direct Control”
<b>Clarity</b>	 <ul style="list-style-type: none"> <li>• Framework document should improve internal clarity about respective roles and remits</li> <li>• Signals change externally to industry</li> </ul>	 <ul style="list-style-type: none"> <li>• Substantially improved internal clarity of roles and remits between respective regulatory bodies</li> <li>• Dividing line clearer to external stakeholders</li> </ul>
<b>Communication</b>	 <ul style="list-style-type: none"> <li>• Improvement in internal communications and collaboration</li> <li>• External messages will still come from two separate bodies</li> </ul>	 <ul style="list-style-type: none"> <li>• Ofcom's involvement in detailed policy should lead to more consistent communications</li> <li>• Ensure no rift between policy / implementation</li> </ul>
<b>Control</b>	 <ul style="list-style-type: none"> <li>• Ofcom sets and reviews policy framework and has oversight over policy development</li> <li>• Minimal Ofcom involvement in day-to-day operation</li> </ul>	 <ul style="list-style-type: none"> <li>• Ofcom in lead on all policy</li> <li>• Also has directive power, when necessary</li> </ul>
<b>Fleet of foot</b>	 <ul style="list-style-type: none"> <li>• Maintains PhonepayPlus's fast case turnover</li> </ul>	 <ul style="list-style-type: none"> <li>• Maintains PhonepayPlus's fast case turnover</li> <li>• Regime unlikely to be able to react as quickly as under model 1 if Order needs to be amended</li> </ul>
<b>Connections to market</b>	 <ul style="list-style-type: none"> <li>• Maintains PhonepayPlus's current industry representation on its Board</li> <li>• Improvement in reporting of industry developments to Ofcom</li> </ul>	 <ul style="list-style-type: none"> <li>• Replacement of PhonepayPlus Board removes direct industry representation on Board</li> <li>• Continuing input at operational level, and to Ofcom through the Industry Liaison Panel</li> </ul>
<b>Implementation</b>	 <ul style="list-style-type: none"> <li>• Maintenance of existing structure minimises required organisational changes</li> <li>• Greater Ofcom oversight requires increased investment by Ofcom</li> </ul>	 <ul style="list-style-type: none"> <li>• Greater Ofcom resource implications, given increased role in policy activities &amp; creation of Supervisory Board</li> <li>• Requires use of Statutory instrument and transfer of PhonepayPlus's into NewCo entity</li> </ul>

Note: For greater detail, see individual model evaluation pages

# Appendix A

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Executive Summary

Chapter 1 – Scope of work

Chapter 2 – Case for change

Chapter 3 – Options available & evaluation

## **Appendix A: Current situation**

- Overview of PRS market
- Overview of current regime

Appendix B: Model details

# The PRS market is characterised by a complex value chain and there is a particularly high risk of consumer harm absent regulation

## Rogue players

- PRS has always attracted a number of rogue players who intentionally defraud customers
- Their activities are facilitated by:

### Complex value chain

- A complex value chain with numerous participants
- Different regulators have jurisdiction over different elements

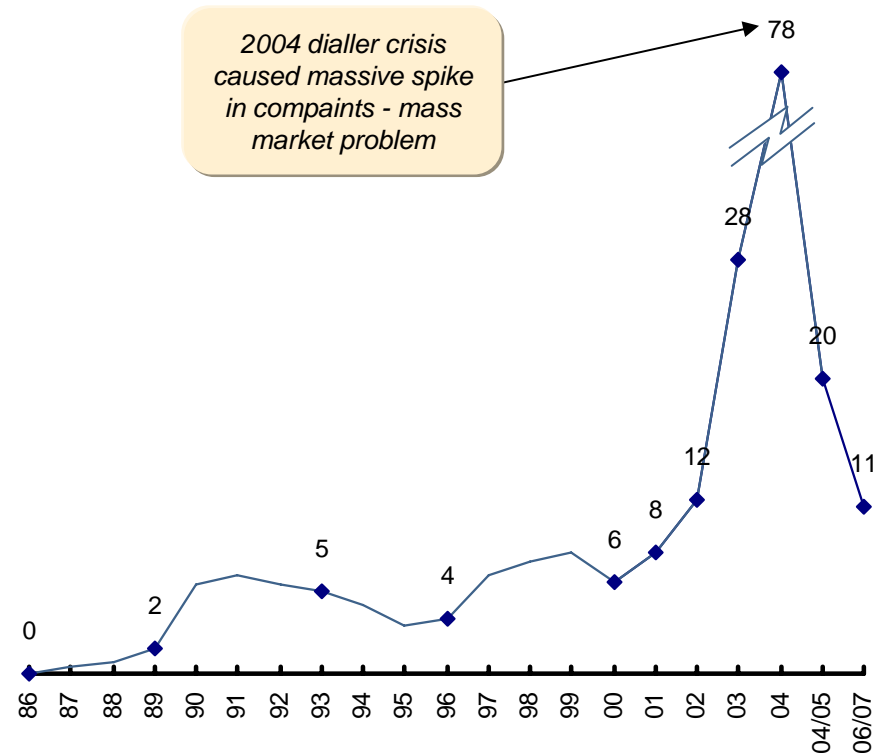
### Rapid cash flows

- Unlike most industries, players further down the value chain are paid before cash is taken from the consumer
- This has been remedied to some extent by PhonepayPlus's "30 day rule"

### Difficulties of detection

- Relies on consumer complaints
- Consumers may not notice payments on phone bills until the end of the month

## Number of complaints (000s)



Source: ICSTIS: A Celebration, ICSTIS annual reports, Spectrum / Value Partners analysis

# Going forward, service innovation will probably lead to greater use of PRS, but could also create more ways for rogue players to “rip off” consumers

## New PRS service innovations

### Payment mechanisms

#### Example innovations

- Online payments charged to phone bill
- Reverse-billed subscriptions
- Data charging<sup>1</sup>

### Products and services

- Further exploitation of Broadcast PRS
- Anonymous SMS services
- Mobile phone viruses
- Text chat services
- PRS gambling

### Platforms / prefixes

- VoIP (PC and normal-line based)
- Mobile-only adult services
- Voice shortcode

#### Risk areas

- Potential minor protection issues from new services allowing for purchases via online / mobile
- Increased overlaps with other regulators could create difficulties with enforcement
- Consumers have not had time to ‘acclimatise’ to new types of scams based around new products
- Consumers are unsure of regulatory safeguards and who appropriate regulatory bodies are
- Lack of pre-existing safeguards around new products and services
- New open platforms allow for greater ‘hacking’ and so consumer harm which is, initially, invisible to the end-user

Notes: (1) charges on top of mobile content pricing for downloads  
Source: ICSTIS: A Celebration, ICSTIS annual reports, Spectrum / Value Partners analysis

## The current PRS regime has evolved through four key phases of development

### 1986 – 1988: Self-regulatory regime

- Launched in 1986 to enforce a Code of Practice previously agreed between BT and the service providers
  - set up and funded by BT, service providers represented by ATEIP<sup>1</sup>
- Consisted solely of a Board and had no executive
- Market consisted of ~16 Service Providers, with one network operator (BT) who was strongly supporting of its activities
  - Enforcement could thus take place directly through BT

### 1988 – 1992: Self and co-regulatory regime

- Started to professionalise and move away from BT
  - the addition of an external Secretariat
  - expansion of the board
- This was rendered necessary by increases in the complexity of the market: both number of network operators and service providers rose
- PhonepayPlus's role also changed, in particular, due the addition of regulation of "live" services (added to PhonepayPlus's remit after an MMC investigation in 1990), enforced by Oftel itself.

### 1993 – 2003: Move to full co-regulatory regime

- Market complexity increased
  - through the launch of mobile operators in 1993
  - further fixed network operators
  - increased number of service providers
- Increasing concerns about all PRS, over and above those which already existed for "Live PRS"
- In 1999 Oftel thus extended its enforcement powers to all PRS services over a certain fee, not just live services, through a change in the licence conditions on Network Operators. Through this it took the backstop power for all PRS services

### 2003 – 2007: Extensive co-regulation / statutory regulation

- The Communications Act of 2003 removed the basis for the pre-existing regulatory regime
  - abolished the licences for network operators
- A new PRS regime required - prevailing desire was for the greatest degree of continuity possible
- Under this new regime PhonepayPlus has moved still closer to Ofcom, as Ofcom is now responsible for approving the PhonepayPlus Code, and the relationship between the two is key for the success of the regulatory regime

Notes: (1) Association of Telephone Information and Entertainment Providers

Source: ICSTIS, *A celebration*, ICSTIS annual reports, interviews, Spectrum / Value Partners analysis

## The policy and operational guidelines are captured in the code

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### Details - PhonepayPlus Code of Practice

- PhonepayPlus currently regulates the PRS market through its own Code, currently in its 11th edition (as of November 2006), which lays out the obligations on “providers of premium rate services” at each stage of the value chain, comprising:
  - Network Operators (those who provide the networks which carry the services)
  - Service Providers (those who provide the services which the networks carry)
  - Information Providers (those who provide the content of the service, if the service provider does not)
- The major obligations under the Code are on the *Service Providers*, to ensure that their services comply with the provisions of the Code, for example on such issues as fairness and legality. In the first instance any sanctions applied are applied to the Service Provider as responsible for the service. They are also responsible for the funding of PhonepayPlus
- *Network Operators* are made responsible for allowing the controls over service providers to function, through activities including:
  - terminating access to a specific PRS service or PRS provider
  - withholding payments to service providers for at least 30 days
  - withholding payments otherwise due to a particular SP, as PhonepayPlus requires, which may be passed to PhonepayPlus to satisfy outstanding fines or refunds
  - collecting information that PhonepayPlus may require to ensure ‘effective identification’ of their Service Providers
- *Information providers* (IPs) are responsible for complying with the provisions of the code where it applies to them. However, given that PhonepayPlus’s primary role is to regulate SPs and network operators, its direct dealings with IPs are limited
  - PhonepayPlus may only deal with the IP where the IP accepts full responsibility, in which case they are dealt with in the same way as a SP
- Enforcement of the Code can be triggered through either a consumer complaint or PhonepayPlus’s Executive can itself initiate an investigation, where it judges that there has been a breach of the code. It takes place through PhonepayPlus’s Adjudication Panel, which consists of three Board members drawn from the potential pool of nine Board members (not including the industry members); there is the potential for appeals first through PhonepayPlus itself and then an Independent Appeals Board.

Source: Code of Practice, Spectrum / Value Partners analysis

# The governance arrangements between Ofcom and PhonepayPlus are established in the Memorandum of Understanding

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## Details - Memorandum of Understanding

- Broadly, the MoU states that mutual support is essential for both Ofcom and PhonepayPlus to be able to do their respective jobs successfully, for example in effecting “clear and timely public communication”.
- The MoU starts by restating the existing legislation, namely:
  - in line with the Communications Act, Ofcom is the body with the responsibility of “furthering the interests of citizens in relation to communications matters”
  - thus has the power to itself order statutory legislation regarding PRS; however, it may also approve a Code, and under this PhonepayPlus has been approved as the “Enforcement Authority” for the regulation of PRS due to the approval of the Code, and it thus has responsibility for developing and enforcing the code that Ofcom will authorise
- Ofcom will not interfere in the operational work of PhonepayPlus unless “PhonepayPlus is failing to comply with undertakings, agreed processes or KPIs in circumstances where that is leading to a material negative impact on the adequacy of legislation”<sup>1</sup>, and to ensure itself that the above is not the case, Ofcom carries out oversight in three separate areas:
  - **Performance Management:** PhonepayPlus and Ofcom agrees a number of KPIs annually which must be included in PhonepayPlus’s Annual Activity Report. These KPIs cover efficiency targets such as percentage of consumers satisfied and efficiency of fine invoicing.
  - **Plan and budget:** PhonepayPlus prepares a budget and supporting plan annually, which must be approved by Ofcom
  - **Governance:** the MoU states that the “governance arrangements for PhonepayPlus, including the constitution and membership of its Board, are primarily a matter for the Board”<sup>2</sup> itself. However, it also recognises that “Ofcom has an interest in the governance of PhonepayPlus insofar as it is part of the underpinning of the arrangements in the Act” and hence “this situation should be reflected in Ofcom’s involvement in arrangements for the appointment of the chair of PhonepayPlus and other members of the PhonepayPlus board”
- There is thus no ability to choose or veto the appointment of the Chairman built in to the MoU, and Ofcom does not have the ability to choose members of the Executive

Notes: (1) Ofcom, *Review of regulatory arrangements for premium rate services*, p.17 (MOU)

(2) Sections 41 – 45, *ICSTIS / Ofcom Memorandum of Understanding* (August 2005)

## Appendix B: Model details

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Executive Summary

Chapter 1 – Scope of work

Chapter 2 – Case for change

Chapter 3 – Options available & evaluation

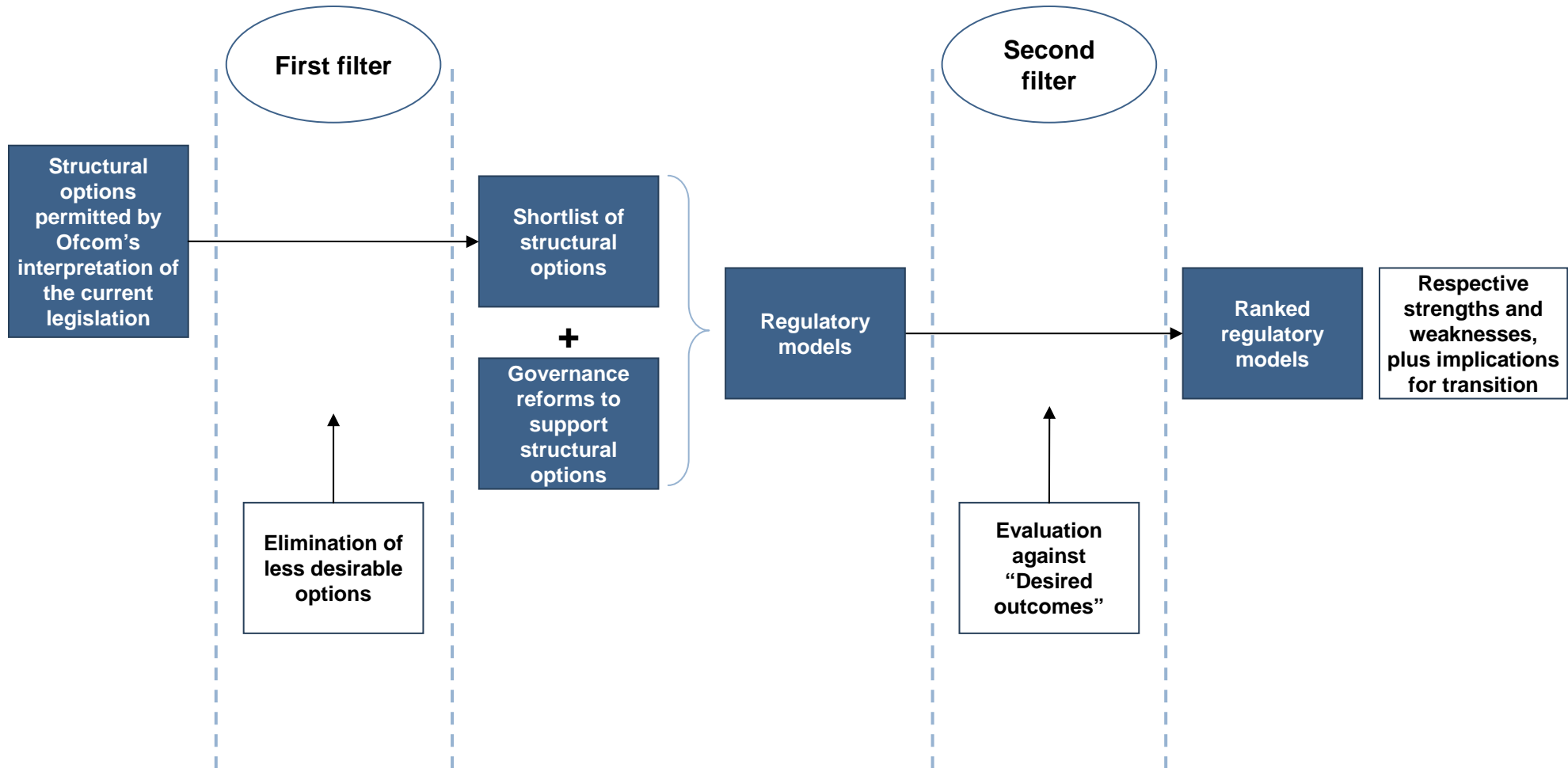
Appendix A: Current situation

### Appendix B: Model details

- Theoretical structural options
- Regulatory model case studies

# A framework capturing potential options and “desired outcomes” was used to identify suitable potential reforms

## Framework for assessing options



## At a high level, we have also examined some other potentially relevant Governmental bodies

	Policy area	Top level policy maker	Main operational policy body (“Code maker” in the PhonepayPlus case”)	Policy enforced by / detailed policy development (“Code enforcer” in the PhonepayPlus case)	Notes
1	Business rates	HM Treasury	DCLG	Valuation Office Agency / local authorities	Complex and cumbersome statutory structure arguably delivers sub-optimal results
2	Next generation networks	Ofcom	Ofcom / NGNUK executive members	NGNUK members / Chair / Secretariat	NGNUK as an unincorporated association enjoys a degree of independence. In practice Ofcom appoints the chair and secretariat and this means a high degree of control where necessary. Governed by formal constitution
3	Operational Aspects of regulation (e.g. migrations)	Ofcom	Ofcom / OTA in person	OTA	Ofcom appoints the OTA (after consultation); scheme administered through MoU. (Replaces previous scheme administered through changes to LLU contract)
4	NICC	Ofcom / industry	NICC (through NICC committee)	NICC working groups	Structure outdated and due to be replaced
5	Consumer dispute resolution	Ofcom (approves bodies)	The Ombudsman Service / CISAS	The Ombudsman Service / CISAS	Looks quite like current PhonepayPlus structure with high level “approval” given by Ofcom but everything else delegated
6	Consumer issues policy	Consumer Panel	Ofcom	Ofcom	Advisory function – appointment by Ofcom but with Secretary of State Approval. Not a standard statutory committee of Ofcom; rather, established under s16 of the Comms Act
7	Policy on elderly and disabled persons	Advisory Committee on Elderly and Disabled Persons	Ofcom	Ofcom	A statutory Committee of Ofcom with independent members; Ofcom appoints members

Source: Towerhouse Consulting LLP

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