

Action4 response PhonepayPlus Strategic Plan 2014-17

Introduction

Action4 welcomes and thanks PhonepayPlus for the opportunity to respond to its consultation entitled PhonepayPlus Strategic Plan 2014-17 on behalf of its members.

As a membership driven trade association representing commercial businesses operating within the non-geographic telephony sector, we are starkly aware that effective regulation is intrinsically linked to the good levels of industry and consumer trust and in turn a buoyant industry.

List of questions for consultation

Q1: Do you have any views on how changes in technology, the market and/or consumer behaviour could affect the PRS industry over the period 2014-17? What do you think the implications of these changes might be for regulation and do you think we have sufficiently addressed these in our strategic plan?

Certainly the introduction of service and access charges as of 2015 will have some effect on the industry and, in turn the consumer, as will new legislation such as the consumer rights directive. With this piece of legislation we are already seeing confusion as to what is and what is not a premium rate number or service. Technology will of course develop or rather the ways in which it is used to allow consumers to access content and be charged, will develop and increase opportunities for new innovation; or rather with good and considered regulation this will happen. What we are concerned with is how regulation will support and further these opportunities and not stifle and restrict these. You say that you wish to prevent harm rather than reacting to it but unfortunately we are seeing real examples of this not happening, such as daily newspapers not displaying costing messages and breaches not being raised against them, yet well-known operators within the industry having breaches brought against them with harm being alleged to have taken place over several but years with no action taken by PpP prior to them being found in breach.

The facts speak for themselves:-

Below is a paragraph from our response document to the budget of 2010/2011
“It also seems out of kilter that any industry worth £1.2 billion had a regulator costing the industry “just” £2.2million and now an industry you suggest is worth £900 million in your own budget prediction needs £4.2 million as a budget.”

It seems incredible that in 2014/2015 the industry is worth circa £763.7 million yet regulation is to cost £4,444,465. Albeit that this figure is now gross of VAT.

You speak of “the industry providers we regulate and the consumers we serve”. When did you become a consumer rights body? In terms of the industry you serve, the facts above speak for themselves. We are being informed that foreign companies

no longer want to come to the UK to invest and we have UK operators moving to other arenas, such is the worry that they may be found in breach and have huge crippling fines imposed upon them. Whilst we in no way condone any activities that are likely to cause deliberate harm we do support industry players who seek to operate their business in a commercial way. One such problem is when a provider comes to the regulator to clear copy and can then still be found in breach despite having followed advice. You can have a breach made against you and are tried in a kangaroo court and still have to pay all the costs even if you are found innocent.

In previous times ICSTIS as you were then called, and previous Chairs would seek to work closely with all trade associations and encourage membership so that assistance could be afforded if there was an issue via the ability to contact and have true market information. You now have a registration scheme and no one is allowed apart from the regulator, to know who is operating within the market place. Why can you not ask registrants if they wish to have their details shared with interested parties therefore complying with the Data Protection Act?

“You state an increase of calls by 32% - is this due to a real raise? Or it is that the registration scheme has not led to consumers contacting service providers directly or their networks instead coming straight through to PpP?” - We posed this question to you in our budget response we now find out the increase is due to the mobile operators not dealing with their own customers and sending them directly to PpP. Ofcom has now had to become involved - why should the industry pre se have to pay for the poorly trained staff within the mobile operators?

Whilst we agree that the delivery mechanisms for PRS have increased, the complexity of delivery is largely an irrelevance to regulation of the intrinsic components as defined by the Communications Act of 2003. In particular, 120 section 7 and 8 stand. The key component as to who is liable for the provision of the service goes hand in hand with the revenue stream. Indeed it is those involved in this revenue stream that funds you as the regulator. Your vision, mission, values and key objectives must be to foster and support growth in the industry, alongside fostering consumer protection, although your clear role is to have a code of practice that is easy to understand and administered fairly for all. If there are services operated on other pre-fixes which demonstrate all the characteristics of PRS you can, with Ofcom's blessing regulate them.

Q2: Do you agree with PhonepayPlus' proposed vision statement for 2014-17? If not, what alternative would you propose and why?

“Absolute confidence” is not when a market is declining in revenue terms and industry players are moving away. In the last ten years the use of the phone particularly the mobile has increased dramatically yet revenues continue to decrease. For absolute confidence you need to be able to encourage and attract people to enter the market and bring new and innovative ideas, certainly legislation that has been introduced to the UK particularly from the EU and has been poorly interpreted by agencies such as BIS has not assisted the industry.

We completely disagree with your new “vision” the UK consumer is protected when they use other payment mechanisms such as credit cards, by the FSA and other consumer and regulatory bodies. To be blunt you have hardly succeeded in your current role let alone proposing that you broaden your horizons; we remember when ICSTIS tried to say to the credit card industry that all credit card payments should be

governed by them because there was an end subscriber, revenue share and content via the phone. Visa politely declined. We feel as if the market and particularly your vision of regulation is moving to the FTC and FDA as in the USA and whilst this brought absolute clarity to that market it also killed the industry over night.

Q3: Do you agree with PhonepayPlus' proposed mission statement for 2014-17? If not, what alternative would you propose and why?

We largely disagree with your mission statement; firstly a world-class regulator, if your vision is accepted, could one assume that the chair has become Cesare Borgia and the author of the document Machiavelli. Where in the world has regulation of PRS been successful? Therefore your analogy may be an unfortunate one in the long term. Consumers certainly must form a significant part of your thinking behind the code and its implementation, but we have real examples where consumers are not given SP's details to get a refund and not given call barring information and assistance in how to address concerns they have. At the end of the day you can write whatever you want but it will be the implementation and your actions that will play out the real results. Just as the Borgios discovered, you can invade a country demand that your rule and power is absolute but "absolute power will always corrupt absolutely".

We do agree with having a code that is fit for purpose and supports innovation in a fast changing industry, the digital part is not what will cause harm it is the consumer not having clear information and instructions.

We do agree that "understanding the market in which we operate and how it is evolving, so that we can take early, proportionate and targeted action where needed to prevent consumer harm" is an admirable goal as is "working with providers to build a healthy market with high standards of compliance."

Surely your mission should be to be fair, consistent and acting appropriately in relation to advising industry and all interested stakeholders, including the consumer in relation to the operation of premium rate services, and to have and administer a clear concise and reasoned code of practice.

The 2003 Communications Act clearly defines that there should be a body to administer a code of practice as authorised by Ofcom via the Secretary of State. This body in the act relates to PRS and no other payment mechanisms unless they fail under general conditions or directions such as when follow me around numbers were abused.

Q4: Do you agree with PhonepayPlus' proposed core values for 2014-17? If not, what alternatives would you propose and why?

Firstly why would you change your values just because your staff can't remember seven words and then claim that part of your new values will include intelligent. These statements seem diametrically opposed.

Forward Looking:- How can you be experts in the operation of PRS when you have not run services and the majority of your staff have not worked in a commercial arena let alone a telecoms one? However we agree that you should seek proactively and

collaboratively to build compliance and consumer protection rather than to respond to problems after they have emerged. Media monitoring would assist you in this value.

Credible and trusted: whilst this is a nice sentiment for a value, the reality is as yet this has not been fully delivered to either the consumers or the industry

Intelligent: we believe that this value should be alter to read, transparent not intelligent so:-

Transparent: we aim to demonstrate at all points sound judgement informed from evidence and to act in a fair, principled, pragmatic and commercially aware way.

Focused on delivery: if consumers should be the heart of your work, then the industry should be the brains and other stakeholders the brain stem. How will you focus and deliver? Without an industry fully behind you, instead of paying lip service to you, then you will not be properly and fully informed of what is truly occurring within the industry. In relation to value for money we reiterate our earlier statement:-

Below is a paragraph from our response document to the budget of 2010/2011
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It seems incredible that in 2014/2015 the industry is worth circa £763.7 million yet regulation is to cost £4,444,465. Albeit that this figure is now gross of VAT.

Perhaps your core values should be:-

Independent, transparent, principled and adaptable to the needs of the industry and all it's stakeholders.

To us the consumer is a stakeholder. Maybe your staff could remember the above simple sentence. Why do you feel the need as a body to keep changing what you are and what you stand for and are employed to do? In many respects you have achieved many of the original goals you set yourselves, surely you should be focusing on working with industry to increase revenues whilst ensuring the consumer gets what they paid for.

We urge you to remember that your role is to regulate the industry to ensure that the consumer has a positive experience: you are not a consumer regulatory authority, but an industry one.

Q5: Do you agree with PhonepayPlus' proposed key strategic objectives for 2014-17? If not, what alternatives would you propose and why?

We agree with Objective 1:- to help consumers to use premium rate services safely.

However your bullet points below are subjective, for example in point one you say you will help consumers to obtain redress where they have suffered harm. I have seen in the last year at least 2 cases where you allowed "harm" to go on for 2 years, in one case the SP repeatedly asked for the consumers' details so they could remove

them from their database and refund them - you refused to provide the consumers' details. Also the use of vulnerability and children worries us; earlier you mentioned an increase in the use of PRS by children - what evidence do you have to support this? In regard of the word "vulnerable" just because you are old or young this does not make you vulnerable. According to the Oxford concise dictionary, vulnerable means:- "exposed to the possibility of being attacked or harmed, either physically or emotionally." We do agree that those individuals who have disabilities or are of lower intelligence or who do not have others with whom they can consult may have times when they may be more vulnerable than others. A child in the mail has a parent/carer to consult and set rules for them.

In regard to consumers we have no issue with consumers being informed with sensible and reasoned information in relation to PRS.

Objective 2:- seems fair and measured.

Objective 3:- we agree with this objective but believe that this should be extended to include trade bodies from all walks of life not just consumer bodies. We agree with preventive rather than reactive measures. However with research this should be quantitative and qualitative with the industry knowing all the costs. We recently saw a spending cap piece of research which was almost useless as any conclusions will be null and void when the NGCS changes happen next year. Industry was not consulted and when the author asked for the costs of the research she was not allowed to know what it cost. The regulator must remember who funds it.

Objective 4:- We agree with this objective.

Objective 5:- We agree in principle however we believe that point one should read

- Ensuring that our regulation continues to deliver the outcomes for consumer and industry set out in our Code of Practice.

You mention in your annex that 85% of consumers do not complain and this suggests the extent of consumer harm. Can we see the evidence for this statement? PpP should be proud of the industry that it regulates all too often it is negative about the industry.

We agree that your rationale for declining margins is free digital content – however perhaps the real reasons for the decline is that service providers have moved from PRS to other payment mechanisms as regulation is too dogmatic, or simply moved to other areas of business. Hence PpP's wish to be able to regulate these other areas such as pay pal, value cards and digital wallets.

We absolutely disagree that your remit should be extended we have seen you try and do this by claiming that 0844 and 0870 are PRS in a recent statement, they are not as we said earlier, if Ofcom deems that you should regulate a particular phone service they can currently do this.

Conclusions

"Our Vision" or rather yours – we absolutely do not believe that your regulatory remit should be extended.

Your work is funded by the industry and as such should be agreed by it. Various things in regard to your operation are questionable such as the level of administrative charges whether a company is guilty of a breach or not are also worrying. In a court a defendant only pays legal costs if found guilty. The cost of your registration scheme leads to entities operating without registration claiming lower levels of income or changing their names.

You also talk about networks and the varying ability they have internally of pointing customers to you. Surely it is the right of a network to handle their customers issues and enquiries in relation to PRS on the front line and to only pass the consumer to you if they themselves cannot resolve the issue. Your staff need to be trained to ask whether the person enquiring has gone through all the agreed processes.

We recognise you claim that you are seeing an increase in complaints from children via their parents. This has been an age old industry problem and one which is a fine balancing act of industry duty re promotional and parental control and access to the devices allowing access to the services.

Parents are responsible for putting safe guards in place in relation to internet usage and surely this must be the same for the use of PRS. The industry should be held accountable for unscrupulous marketing activities but cannot physically stop a child from calling a service. Only the child themselves or a parent can do this.

We agree with your priority to work with other bodies involved in the industry but note you never mention trade bodies who have direct relationships with their membership. We do recognise that the ILP should serve this perhaps but question its role. We do agree that changes to EU law and how this may or may not affect the industry should be a paramount to your work in relation to the industry et al.

We suggest a full review of your processes and the controls and measures and balances that are in place within your organisation.

We would suggest a review is held but only once a full independent internal audit is carried out of how complaints result in breaches and how the current budget in terms of staffing and premises is conducted.

We are well aware that the cost of regulation is not based on market size alone, but we must stress that PpP must be very aware in their actions and budgetary demands on diligent companies. With this in mind we are keen to encourage best value regulation which includes seeking cost savings for compliant businesses wherever possible and, therefore, fully support the "polluter pays" environment. We currently have an industry which has suffered a massive reduction in revenues and a reported drop in consumer complaints when looking at past years and believe that the regulator must take these factors into consideration when setting its strategic plan.

We welcome a strategic plan and hope that this will mean true and meaningful involvement with the industry to establish the exact role and remit that PpP should fulfil to benefit all involved parties. We would however question whether it is PpP's job to educate consumers. We would urge PpP to work with the providers of the service to ensure that consumers seek and get resolution from those that have provided the goods to the purchaser. Certainly the Consumer Right Directive encourages alongside other EU legislation that the contract between provider and consumer should be that.

We support the gathering of public, market and external intelligence and the working and involvement of consumer agencies. However surely your intelligence will increase through more dialogue with the industry, and those that actively engage with consumers on a day to day basis. We question the level of focus and emphasis being placed on work in consumer education.

We have previously mentioned in other responses that at some point it may be worth the industry calling for an external auditor to look at the budgets and systems you use to assess harm.

When looking at the split of regulatory activity our main and recurrent comment is that PPP should always strive to offer effective, proportionate and best value regulation. Most of all effective regulation for all involved within the industry consumer provider and supporter as we said in our budget response “Which means keeping costs firmly confined within their scope of regulation and remit; PpP must not be drawn into other arenas of regulation.”

Echoing our comments above we are very happy to see a collaborative approach to regulation which will explore the potential of working with the ILP and industry and are pleased to note the commitment to share information with stakeholders.

We applaud PpP's efforts to regulate and as a body you have achieved many things however if you, as a regulator, move to a point when you forget that without the industry you regulate you do not have a role, you become Malvolio.