

## **Response to PhonepayPlus Strategic Plan 2014-17 consultation**

**on behalf of The Number UK Ltd (118 118)**

**7 July 2014**

## Introduction

TNUK welcomes the publication of PPP's third 3 year Strategic Plan. We believe that the establishment of 3 year strategic planning cycle is a worthwhile addition to the annual Business Plan process.

However, it is obviously important that the process is real and meaningful. Missions, visions, core values and strategic objectives must be more than simply fine words – they must translate in tangible and measurable actions and activities, which can be seen in how PPP conducts its work. If that is not the case, there is an obvious risk that stakeholders will lose confidence not just in the 3 year strategic planning process itself, but also in PPP's commitments more generally.

Whilst TNUK welcomes the substance of PPP's proposed Strategic Plan, we do not intend to comment on the substance of what is being proposed. We agree that the proposed Plan contains a reasonable and well-considered foundation for PPP's work over the next 3 years. We agree with the changes which PPP has proposed since the last Plan and in particular with the identified need for it to consider how the PRS industry is changing and what the regulatory response should be. Clearly, that presents new challenges in terms of adequately protecting consumers, which PPP has correctly recognised.

However, PPP will also be acutely aware that as a result of changing consumer preferences, most sectors of the PRS industry are facing considerable challenges and many are suffering declining usage and revenues as a result. Whilst it is not PPP's role to promote particular commercial business models, it should be cognisant of potential barriers and burdens which regulation can impose. As business models evolve, PPP should be willing to re-evaluate whether such regulatory restrictions are still necessary and appropriate in the new age. If not, it should be willing to act swiftly to remove them.

## Overview

As mentioned above, TNUK does not intend to comment on the substance of the proposed Strategic Plan, but there is one particular very relevant issue, which we wish to highlight. We describe it as *'the use of a premium rate number as a brand'*. The issue can best be summarised as follows.

PPP has traditionally viewed a premium rate number as simply that: a telephone number which provides a means of access to a premium rate service by voice or by text. As such, there appears to be an implicit assumption that the public display of a premium rate number automatically amounts to a promotion, within the definition of the Code:-

*“‘Promotion’ means anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services...”*

It would appear that this assumption applies however and wherever the premium rate number is displayed.

TNUK does not believe that the public display of a premium rate number should automatically of itself be regarded as a promotion of a premium rate service. Although it may very often amount to a promotion, we believe that the display of the number should be viewed within the context in which it is presented. Due

regard should also be had as to how the display of the number is likely to be regarded by the public. It is this issue which we would ask PPP to reconsider.

The question of a premium rate number being used as a 'brand' therefore becomes a relevant and important one. As PPP will be aware, TNUK uses 118 118 as its public facing brand as well as the means of access to its service, which we discuss in further detail below. Whilst we accept that it was our decision to adopt this approach, we do not believe that the simple use of our (now very well established) brand should automatically be viewed as a promotion of a premium rate service.

As PPP will be well aware, this is not simply a matter of academic interest. Much of PPP's regulation is targeted at promotions of premium rate services and in particular, they attract the need for pricing information to be included which must be "*prominent, clearly legible, visible and proximate to the premium rate telephone number ...*" The question of whether the use of a premium rate number will always amount to a promotion is therefore a very important one.

Whilst the issue is probably most relevant to TNUK, it may well have broader relevance particularly within the DQ industry, where providers often use their premium rate number as their public facing brand. It might in the future also become more relevant to other PRS sectors, particularly those that use shortcodes, which have similarly memorable characteristics.

## Relevance to the Strategic Plan 2014-17

TNUK has chosen to raise this issue at this time because of its obvious relevance to PPP's longer-term thinking about how the PRS market will develop in the future. There are a number of areas within its proposed Strategic Plan which refer to the importance of this kind of future thinking and understanding, which it is worth highlighting briefly.

Point 4 of the mission refers to "*understanding the market in which we operate and how it is evolving ...*"

The first of the core values is:-

***"Forward looking:*** *We are experts in the market in which we operate and understand how technology, business models and consumer behaviour are changing and may change in the future."*

But perhaps most important and relevant in this context are the strategic objectives and in particular the Objective 4, which states:-

***"To ensure that regulatory frameworks keep pace with market changes.***

- Developing our knowledge of how the market in digital content and services is changing and of the implications of this for consumers, providers and regulation.*
- Working with industry, other regulators and government to build a consensus on the best and most effective responses to these changes."*

TNUK notes that Objective 4 is a newly created strategic objective, the inclusion of which we very much welcome. The other four objectives are all broadly related to consumer protection and whilst it is right and proper that that should be PPP's fundamental purpose, it is good to see formal recognition of the importance of PPP developing a sufficient understanding of how the market which is regulating is changing, so as it can adapt its regulatory approach accordingly. Indeed, this is particularly important in a 3 year Strategic Plan which is required to look beyond the present and to consider how regulation should apply differently in the future.

From reading the Strategic Plan in its entirety, it is clear that PPP is thinking of the future largely in terms of how technology will develop, how that will affect the services offered to consumers and what changes to regulation may be required as a result. TNUK agrees that is probably the most important aspect of its future thinking, but it should not be the only one.

As PPP is well aware, volumes of usage in most of the 'traditional' areas of PRS are in decline. Providers are responding to this decline in different ways. Some may be adopting new or amended forms of PRS and PPP has shown itself willing to understand those changes and adapt its regulation accordingly. However, others (such as TNUK) are diversifying outside of the PRS market entirely into other unrelated businesses. Whilst this may at first not appear to be something with which PPP must concern itself, the purpose of this response is to highlight the one area in which issues might arise, namely the use of a premium rate number as a brand (for services both within and outside the PRS market).

We would therefore stress the importance of PPP applying those elements of its mission, core values and strategic objectives which we have highlighted above, in this context as well as the more obvious context of changing PRS.

## **What is a brand?**

As we highlighted at the start, TNUK's principal request is that PPP consider the issue of '*the use of a premium rate number as a brand*'. In so doing, it may be helpful to PPP to understand how TNUK views its brand and may wish to use it in the future.

As PPP will be well aware, '118 118' is both TNUK's brand as well as the telephone number which provides the means of access to its most popular PRS. As a company which had no prior history of operations or other businesses in the UK when 118 118 was launched in 2002, it made obvious sense to adopt the telephone number as the public name and face of the business.

Over the course of the following 11 years, a huge amount of time, effort and money has gone into developing the brand and establishing it within common consciousness. As a result, it is probably now one of the most well-known and recognisable brands in the UK. It is therefore also an extremely valuable commercial asset, which TNUK would like the ability to exploit.

And yet at the same time, it remains a premium rate number and a means of access to PRS, whilst also being so much more than that and with the potential to develop yet further. But without broader thought

and consideration from PPP, its status as a premium rate number risks inhibiting the use to which it can be put as a brand, which TNUK regards as fundamentally unjust.

In order to illustrate the point, it is worth highlighting some of the other services which TNUK has already launched using the 118 118 brand:-

- 118 118 CABS
- 118 118 BEAUTY
- 118 118 SURPRISES
- 118 118 MONEY

It is clear that none of these services are PRS and therefore it might at first appear as if no issue arises. However, so far TNUK has been careful not to use '118 118' in isolation to promote any of these services, but rather they have always been described as '118 118 XXXX' in order to distinguish them from the voice DQ PRS and therefore to avoid any suggestion that they may be viewed as promoting it. But that approach clearly has its limitations.

TNUK's ambition is to develop '118 118' as a standalone brand in its own right which can then be applied to a range of other businesses, entirely unrelated to the voice DQ service. The intention is that consumers would come to recognise 118 118 as a reliable and trustworthy brand and therefore would be willing to utilise products or services which they had not utilised previously, purely on the strength and familiarity with the brand. Virgin and Easy are probably the most obvious examples of how this has been done successfully elsewhere. Whilst we clearly have no intention of discontinuing the voice DQ service, we do intend to continue to extend the brand to other products and services, as we have already begun to do.

We therefore would like to be able to use and publish the 118 118 brand, without it automatically being deemed to be promoting the voice DQ service. This would simply be an honest reflection of the reality of how the brand was being used in a much wider context, which in no way lessens the effectiveness of regulation designed to protect the quite distinct PRS market.

Specifically, we are concerned that the current strict and limited interpretation of the Code means that any use of the 118 118 brand must always be accompanied by DQ pricing information. Not only do we believe that this is unnecessary when the brand is being used in a wider context, but it is actually positively misleading. Clearly, where 118 118 is being used in relation to services other than DQ it will mislead and confuse customers for them to be informed of the DQ price.

Ironically, the display of pricing information in this manner would actually turn the use of 118 118 into a promotion of the DQ service, in a way in which TNUK never intended. Of course, it would also very much dilute the broader brand messaging which TNUK wishes to build up over time i.e. that 118 118 is not (exclusively at least) a DQ brand. It would be very hard to develop that consumer understanding, if we were always required to display pricing information next to 118 118.

## Next Steps

TNUK fully recognises that we are raising new issues, which PPP has not previously had to consider and therefore it is unlikely to have an established position at this time. However, we believe that the 3 year Strategic Plan is the best place to raise these points. We would therefore strongly urge PPP to consider and review this as a genuinely new issue and be prepared to think broadly in deciding how to resolve it.

TNUK is open to how best to move forward on this issue. We would be willing to continue discussions on a bilateral basis, perhaps including any other providers who feel that the issue is also likely to be relevant to them. Alternatively, we would be equally happy if PPP chose to consult on the matter in order to elicit wider views.

We assume that PPP will not feel that it is necessary or appropriate to include this issue in the Code itself, but we do believe that PPP should provide a written statement of policy in order to provide clarity and certainty for the future. Whilst, we have no objection to the matter being addressed through informal discussion and negotiation, rather than an open consultation (if PPP does not feel it necessary), TNUK does believe that all parties would benefit from the outcome being formally documented.

It seems that a Guidance note would be the most obvious way to achieve this. That may be a new separate Guidance note specifically on this issue, or it could be an amendment and addition to the existing Service-Specific Guidance Note on DQ services, if PPP believes that the issue is only likely to impact that sector. Either way, we understand that PPP has just begun the process of reviewing its current Guidance, with a view towards issuing a consultation in January on proposed changes. This would therefore seem to present the perfect opportunity to consider this issue and to have it included within the new Guidance which PPP will issue in 2015. We very much look forward to being a part of that process and of course we would be happy to discuss the matter in more detail with PPP on a bilateral basis, at any time.

*All queries in relation to this response should be to Simon Grossman, Director of Government, Regulatory & Business Affairs, The Number, Whitfield Court, 30-32 Whitfield Street, London W1T 2RG – [simon.grossman@118118.com](mailto:simon.grossman@118118.com) – 07971 050 001*