Response to PhonepayPlus Code of Practice (12th Edition) Review Update on behalf of The Number UK Ltd (118 118)

26 March 2014

Introduction

As PPP will be aware, significant parts of its regulation and guidance are based on a wide variety of financial limits or spending caps as they may also be described. These various financial limits occur in 3 places:-

- The Code of Practice
- The Guidance
- The Prior Permission Notices

These financial limits are extremely important, not only because their use is widespread throughout all of the parts of the PPP regulatory regime, but also because they sit at the heart of some of the most impactful regulation which PPP imposes. They are, by definition, a very intrusive and blunt regulatory instrument, as they provide an absolute and immovable limit at which something must happen or cannot happen. They are therefore, critical both in terms of the protection which they provide to consumers, but also in the impact which they have on providers and the viability of their business models for offering a particular premium rate services.

The financial limits set by PPP have one of 3 primary purposes:-

- Set an absolute limit on the total cost of any call (or a subscription limit)
- Set a limit at which a spend reminder is required
- Set a limit at which certain advertising or promotion requirements are imposed

The first of those financial limits is inevitably the most impactful, both on consumers and on providers, but the other two are also very important and have a significant effect.

It is therefore vital that all of the financial limits which PPP imposes are set at the correct and appropriate level, after due and careful consideration. It is also critical that there is consistency between them in order to ensure fairness to all parties concerned and avoid any risk of adverse unintended consequences.

TNUK understands that PPP is reviewing these financial limits as part of this Code review process and we strongly agree that it is right and proper for it to do so. This is not only because a Code review is a significant point at which to take stock and ensure that all aspects of regulation remain appropriate, but also because Ofcom's NGCS review has raised the limit of 09 PRS more generally. It is therefore important that PPP's own financial limits are adjusted in line with (or at least with due regard to) the changes which Ofcom

has made in order to ensure that they do not become out of sync, thereby creating harm to either consumers or providers. We welcome PPP's intention to undertake such a review, but TNUK is anxious to ensure that it is a full, rather than a partial, review of all PPP's financial limits.

The Current Approach to Financial Limits

In response to PPP's previous Call for Inputs, TNUK recommended PPP take a holistic approach to the issue of financial limits, in place of the somewhat ad hoc approach which has been adopted to date. That is particularly needed bearing in mind that separate and overlapping requirements exist in the Code, the guidance and the prior permission notices. We repeat that request and urge PPP to ensure that it is reflected in the upcoming formal consultation. From what has been published so far, it appears that PPP may not yet be taking the overarching approach (encompassing all of the various financial limits) which we feel is required and we make the following comments by way of illustration.

Para 2.5 of the Call for Inputs considered the question of spending caps (within the section dealing with Ofcom's NGCS review). However, it only mentioned Rules 2.3.12 (a) and (b) which set the spending caps for sexual entertainment services and services that are particularly attractive to children. This therefore appeared to be PPP's principal focus on this issue.

Para 2.12 referred to non-codified spending caps, which it said "*includes consideration of prior permission regimes (such as live chat, psychic, and multi-party chat)*" and said that these would be included as part of the review.

Para 2.13 stated that Rule 2.3.12 (c) which includes spend reminders for virtual chat services, would have to be amended.

Subsequently, in a separate section on 'Future Proofing', the Call for Inputs again referred to the issue of spending caps at para 3.11 to 3.14, but again only mentioned Rule 2.3.12 (b) in relation to spending caps on services that are attractive to children.

Meanwhile, at para 2.9, PPP stated that it was commissioning consumer research to underpin its analysis of spending caps. It provided no detail as to what the research would cover, although the implication was that it would be in relation to sexual entertainment services and services attractive to children (as those were the only caps mentioned at that point in the document.

Of greater concern to TNUK is the apparently even more limited approach being taken by PPP in the current Update. Following the consumer research which it commissioned, PPP seems to have narrowed its focus to just two issues.

Paras 2.2 to 2.10 deal exclusively with live services and PPP's proposed graduated response to the imposition of spend reminders, opt-ins and forced release.

Paras 3.7 to 3.12 deal exclusively with children's services and PPP's desire to broaden the range of the limit and to impose an additional cumulative limit.

A Broader Approach to Financial Limits

TNUK understands that neither the Call for Inputs nor the current Update are intended to represent a comprehensive analysis or review of all of PPP's financial limits and we expect more detail will be provided in the formal Code consultation.

However, it is not clear why some financial limits were mentioned in these documents and some were not and whether PPP therefore believes that some of the limits are more in need of review than others. TNUK strongly believes that all of the limits should be reviewed consistently and would be anxious to avoid any risk that some of them may be inadvertently overlooked and not included within PPP's review.

In that context, PPP will be aware that the financial limits currently included within its Code, guidance and prior permission regime go beyond just live services and children's services. For example they include:-

- Prior permission for '*Services over £1.28 + VAT per minute*'
- Prior permission for '*Services over 85p + VAT per minute where total cost exceeds £25.54 (ex VAT)'*
- Prior permission for '*Call TV quiz*' services
- Prior permission for '*Consumer credit'* services
- Prior permission for '*Multi-party chat*' services
- Prior permission for '*Professional Advice*' services (as distinct from Live Services generally
- The Code, guidance and prior permission requirements concerning subscription services
- The Code and guidance requirements related to the need for spoken price information in audio/visual promotions
- Guidance on '*Virtual chat services*'

Whilst some of these issues were referenced (albeit briefly) in the Call for Inputs (although not the current Update), others were not included at all. For example, there was no mention either of the prior permission notices for services costing over £1.28 or 85p or the requirements for verbal announcements to be included in audio/visual promotions for services generally exceeding £3.83 + VAT.

These longstanding non-service specific requirements may be easily overlooked by PPP in the much broader review of the Code which it is undertaking. However, they are nevertheless just as worthy of review as the live services which appear to be PPP's focus, if PPP is to avoid the risk of the various limits becoming inconsistent and out of sync. As we discuss in the next section, TNUK believes that PPP should take a consistent approach to adjusting all of the existing financial limits by the same degree, unless there is compelling evidence which justifies a different approach.

It was notable, therefore that in commissioning its research on spending limits, PPP chose to limit the focus only to the five categories of live services (together with the separate research on children's services). No reason or explanation for this was given in either the Call for Inputs or the Update or the research itself. TNUK recognises the costs and practicalities of undertaking this type of consumer research and PPP may therefore have decided that it was not possible to include all of the types of financial limit listed above.

However, TNUK would obviously be concerned if the limits of the research indicated that PPP's intention to review the financial limits was equally limited. That is even more so, because despite making some slightly wider references in the Call for Inputs, the proposals contained in the Update (following receipt of the research) are indeed limited only to live services and children's services. As we now explain, TNUK hopes that the full Code review consultation will include some much wider proposals for an all encompassing review of the financial limits.

A Consistent Approach to Financial Limits

At para 2.9 of the Update, PPP outlines its proposal "*to move to a more graduated consumer protection regime with a spend reminder at £15, an opt-in at £30 and then a cap/forced release at £45"*. TNUK notes that PPP is only proposing to apply this regime to live services, which explicitly excludes DQ services (and many of the other categories which we have listed above).

At this stage, TNUK is not proposing to comment on the detail of how such a graduated regime may or may not apply to DQ services as we will await the full Code consultation and any wider proposals regarding its applicability which PPP may make.

However, for now the important point to note is that PPP has proposed a 50% increase in the basic cap/forced release limit from £30 to £45. We note that this is significantly below the limit of £71 which would be proportionate to the increase in the PRS cap which Ofcom has set during the course of the NGCS review. PPP has not provided any specific justification as to why it has proposed the increase in the cap should be at 50%. However, TNUK assumes that PPP believed that it represents a fair compromise between a greater increase (which would be proportionate to the Ofcom increase, but not supported by the consumer research) and a lower limit (which would unduly limit the development of PRS and be significantly out of step with Ofcom's decision). Specifically, there does not appear to be any reason why the 50% increase is particularly applicable only to live services and should not equally apply to any other category of financial limit.

If that is indeed the case, TNUK believes that 50% should therefore act as a benchmark by which all of the other financial limits listed above should be adjusted, unless there is compelling evidence to indicate otherwise. We note that PPP has conducted separate research into children's services and we make no comment on what caps may be appropriate in that case. But in the absence of similar such research in relation to the other categories, we believe that a similar 50% increase should apply.

We note that for some specific categories of service, PPP may not simply be proposing a direct increase in the limit, if for example it feels that the type of service provided may benefit from a spend reminder or an opt-in. As all types of service differ, PPP may legitimately determine that different approaches are required in different cases. This is most likely to differ according to factors such as: whether the nature of the service is likely to lengthen calls; how addictive the service may be; what level of harm is likely to result from a forced disconnect.

However, setting aside service specific differences (which may require the introduction of different measures) there seems to be no reason why all of the existing basic financial limits (such as those prior

permission notices relating to higher rate services or the obligation for verbal price announcements on audio/visual promotions) should not be increased by the same 50% which PPP has proposed.

As far as TNUK is aware, that 50% increase has been driven entirely by Ofcom's increased limits set within the NGCS Review and therefore it should apply equally across the entire PRS market. As has been discussed above, that increase is required both in order to allow for the future development of services at a higher rate than has been available historically and in order to maintain consistency and fairness across the PRS market thereby avoiding any unintended adverse consequences which may otherwise occur from an inconsistent approach to regulation.

We look forward to seeing how PPP deals with this important and wide-ranging issue within the formal consultation and will welcome the opportunity to respond accordingly.

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