

Communications Consumer Panel and ACOD response to PhonepayPlus' further assessment of Information, Connection and/or Signposting Services

Introduction

The Communications Consumer Panel and the Advisory Committee on Older and Disabled People (ACOD) welcome this opportunity to respond to PhonepayPlus' further assessment of Information, Connection and/or Signposting Services (ICSS).

The Communications Consumer Panel is an independent body of eight experts who work to protect and promote people's interests in the communications sector. We were established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and small businesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of small businesses, which face many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues.

There is also cross-membership with ACOD. This means that Members, in their ACOD capacity, provide advice to Ofcom on issues relating to older and disabled people including television, radio and other content on services regulated by Ofcom as well as about issues concerning the postal sector.

Response

In our September 2012 submission, the Panel welcomed PhonepayPlus' initiative to require greater transparency at all stages of the ICSS consumer journey so that consumers can be better protected from potentially misleading ICSS. We are therefore pleased that PhonepayPlus is continuing with its prior permission proposals, and we agree that it is

right to reject the three alternatives outlined in point 1.6 of the further assessment document.

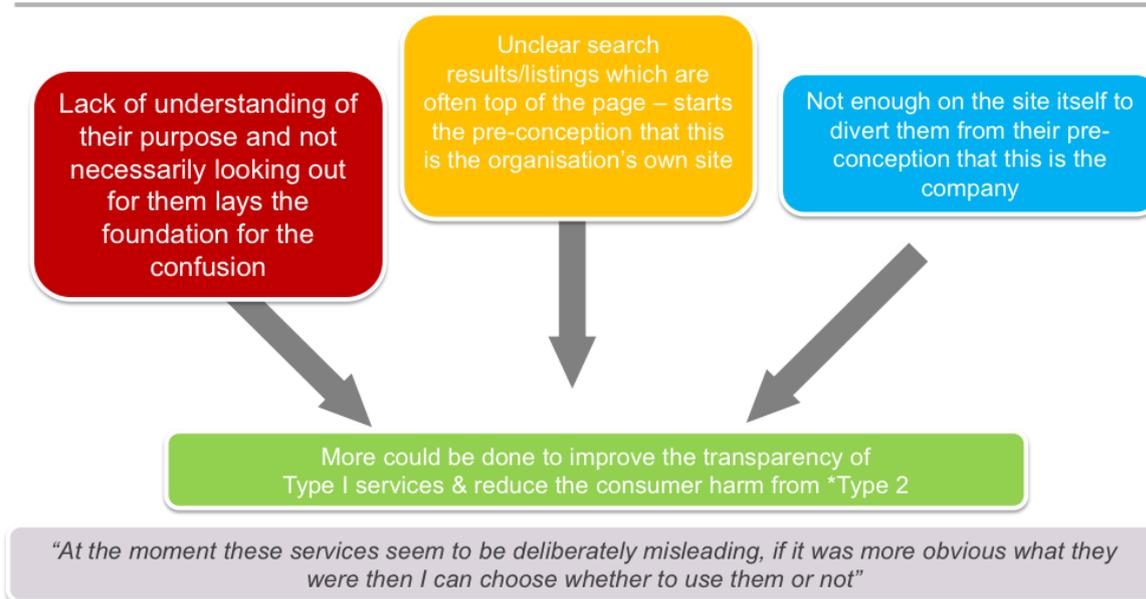
The evidence from the latest research study confirms that the concerns raised in the 2012 review were valid. There is strong evidence (78% of consumers think that they were calling the end organisation rather than an ICSS, and 72% of ICSS users were unclear about the service) that users of ICSS are systematically confused throughout the customer journey when using both Type 1 and Type 2 ICSS. The research also highlights the detriment that can occur as consumers find themselves paying for advice or information via a premium rate service, when the same is available direct from public or other commercial providers at little or no cost. The new research commissioned by PhonepayPlus finds that the biggest complaint about ICSS services is the lack of transparency.

The Panel believes that transparency and clarity at all stages of the ICSS journey will lead to informed consumer choice. Users of ICSS should be in no doubt about the nature of the service; the fact that it is not the end organisation; and the cost involved. Currently, it seems that there are many elements that militate against informed consumer choice, including: ICSS being perceived as the end organisation, or a representative of it; a lack of, or unclear, pricing information; the role of Search Engine Marketing (SEM); no equality of information about the end organisation; and an absence of helpful “in call” alerts once the consumer makes an ICSS call. In combination, these issues not only diminish consumer choice but could also cause actual harm and detriment. As we move towards a “digital by default” environment the potential for harm increases, so it is important to take action sooner rather than later.

This is of particular concern for more vulnerable consumers, including those who rely on mobile phones rather than a landline service - as calls to 09 premium rate numbers can cost significantly more than when called from a landline.

In our opinion, the mechanics of the issue that give rise to concern are summarised well in Jigsaw's research findings:

A number of factors combine to create confusion around ICSS services



* Type 2 feedback was based on qualitative interviews only

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The Panel therefore continues to support in principle a prior permissions regime, backed by effective and proportionate measures to ensure consumer protection.

Specific points: Complaints

The Panel notes that PhonepayPlus has seen a steady increase in complaints about ICSS despite Google having strengthened its AdWords policy and PhonepayPlus having consulted on measures to tighten regulation. This, taken alongside the examples highlighted in the document (e.g. most calls to the DVLA in December 2012 being made via ICSS when the number is easily obtainable from their website; and the public company which had received 123 complaints about use of ICSS) and the figure of 78% of callers thinking they were contacting the end organisation, gives cause for major concern. And there is a direct cost to consumers - the data supplied also suggests that, on average, consumers spent around £16 contacting the public company concerned via an ICSS, when the cost of calling them direct is significantly less.

Whilst it is impossible to put a number on it (because complaints may go to different agencies and companies and not be captured in total) we believe that the number of consumers detrimentally affected will be far greater than the numbers who complain to the regulator. Also, the Jigsaw research highlighted the experience of consumers who said

that even where they had been misled and had lost money, they generally didn't complain for three main reasons:

- They don't know who to complain to
- They think it will be too much hassle
- They feel "a bit stupid" for having called the number.

These people will still have suffered detriment - but will not be "counted" in any data.

We also note that, despite the previous adjudications and concerns expressed in the July 2012 consultation, PhonepayPlus has found a further six ICSS providers in breach of the Code, with all but one of the adjudications rating the consumer harm as "serious" or "very serious". This suggests that enforcement of the Code has not served on its own as a suitable deterrent to a significant number of those providing ICSS.

Consumer Understanding of call pricing

As part of its work on non-geographic numbering, the Panel is aware that according to Ofcom's 2009 Consumer Survey, four fifths of consumers have never looked up pricing information to determine the cost of a call. Although this research did not include 090 numbers specifically, its findings are of interest in this context. While for some consumers this was because they did not place much importance on knowing the price of making non-geographic calls (NGCs), for others it was because prices are often complex and not transparent (29% of consumers cited reasons relating to pricing complexity and lack of transparency). In addition, even if callers choose to look up charges, it is not always easy to obtain the correct price of NGCs. The research found that 15% of people said that search costs are high relative to the associated benefits and 14% said they were not aware of where to find the information.

We note that the current Jigsaw research found that consumers are less familiar with 09 premium rate prefixes and what they are being charged for them and do not understand this charging model.

The research highlights that consumers feel more should be done to make it clear that these services are offering premium rate directory style services. They then have a choice as to whether or not to use them.

Consumer Understanding of ICSS

The research found that 82% of respondents said that they used the internet to find telephone numbers. According to the research, 42% of AB consumers who are online claim to be aware of ICSS services - falling to 35% of those in DE households. The majority of consumers therefore do not appear to realise that ICSS even exist, let alone how they operate and what they may cost. Therefore when they are looking for phone numbers for organisations it is reasonable to assume that consumers do not expect to encounter the option of being connected through a premium rate service. We note that the research found that 30% of respondents claimed to have visited an ICSS website. Of those, 14%

thought it was a paid for service, whilst 56% thought it was the end company's webpage. Even amongst ICSS users, 72% consider that it is not clear what these services are offering. The Panel believes that these figures make a compelling case for action.

The July 2012 consultation outlined PhonepayPlus' concern about ICSS' use of Search Engine Marketing (SEM) to give an ICSS website greater prominence in search results than the website of the organisation the consumer is actually seeking to contact. As background context to this, we note that while the research found that 69% of those online claimed to be aware that the shaded area at the top of an internet search page contained paid for advertisements, awareness was significantly lower among over 45s and those in C2DE households. Even among those who are aware, 67% of adults online say that they still click on those results at least sometimes. It is of note that, for some people, paid for adverts helped foster an organisation's credibility because they convey a sense of size and income.

It is of significant concern that the research found that most consumers don't understand that end organisations' names can appear in URLs that do not belong to that organisation. This is not unreasonable and it is therefore not surprising that consumers had a tendency to be misled by the fact that the name of the company/service searched for often formed part of the URL of the ICSS service. So there seems to be wide scope for misunderstanding, to the potential detriment of consumers. The Panel believes that ICSS providers should take responsibility for remedying this - and that the proposed prior permission regime will help ensure that this happens.

Site design

We agree that, when connected to the landing page of the ICSS service, there is insufficiently clear information to alert consumers to the fact that they are about to call an ICSS, rather than the organisation they wish to contact. Although some sites are clearer than others, the research highlights how the use of official logos, imagery, maps and head office addresses serve to confuse consumers. Other stylistic approaches add to the confusion according to the research: e.g. many of the sites do not advertise their own brand or promote themselves as a directory service as clearly as they could; details of, for example, the ICSS provider's name or costs of the call can be quite small or easy to miss - especially from a smartphone. This is generally unhelpful given that the consumer is probably expecting a quick search yielding basic contact information and is unlikely to notice such things. And this situation can be a particular issue for consumers with visual impairments.

The language used by some sites can also serve to exacerbate consumer confusion e.g.: 'URL'; 'information may be found without charge by searching in the public domain'; 'this information (rather than phone no.) can also be found for free on their website'.

The danger is that because consumers tend to be goal-focussed (i.e. looking to locate the phone number for the organisation they require) and because the most prominent feature on the ICSS landing page is often the phone number, this tends to lead the consumer to call the number rather than to look in more detail at other information on the site. This is

compounded by ICSS providers who give greater prominence to the name of the organisation they are connecting to rather than to their own name or brand. As the consultation notes, the landing page is therefore unlikely to jolt the consumer out of the mistaken impression they formed at the search results stage.

Customer Service Standards

We note that PhonepayPlus “recognise that some organisations do make their phone numbers hard to find on their web pages to encourage consumers to use other means of information or communication that are cheaper for the organisation to provide - such as web FAQs or email.” Whilst outwith PhonepayPlus’ ambit, this is a matter of concern and we would urge such organisations to offer an improved level of customer service - at least making all contact routes, including by phone, as clear as possible. Participants in the research reported costs of using an ICSS of between £1 and £30 - and upon receiving their bill were often unsure whether this was down to the end company itself. In a commercial environment where outsourcing is common, it is easy to understand why consumers may believe that a third party is authorised to act as an agent of the provider. It is, we believe, the duty of ICSS providers to be clear that they are a separate entity so that consumers are better informed.

We appreciate fully that there may be cases where a consumer would find value in using an ICSS, especially if time is short, and would therefore be prepared to pay a premium rate for it - we note that 32% of ICSS users agreed that these services would save them time and 34% agreed that these services are useful (although only 11% agreed that these services offer good value for money). However, we note PhonepayPlus’ finding that they see no evidence that ICSS providers are targeting organisations that make their phone numbers hard to find and where the potential value of the service to the consumer may therefore be greater.

National DQ (118) services

We agree that DQ (118) services tend to have clearer branding than ICSS, and are marketed around this branding (e.g. 118 118) and not the organisations to which calls are being connected. As a result, consumers know what sort of service they are getting - in the research, 96% of users said they knew that they were contacting a paid-for directory enquiries service. By comparison, 78% of people who had used an ICSS thought that they had dialled the number of the organisation they were looking for, rather than a premium rate service, and only 17% realised that they had called a paid-for directory service. Therefore we agree that it is reasonable to treat these services differently from a regulatory perspective and to exclude DQ (118) services from the scope of an ICSS prior permission regime. As a general point however, the Panel would welcome connection charge information being given by DQ services **before** a caller is connected.

Search Engine-based marketing

The research highlights the important role that search behaviour and the identification of results plays in this process. The Panel therefore supports the proposal for the search engine result to make clear the type of premium rate service being promoted; and that all SEM results for all Type 1 ICSS should start with “Premium rate connection service” and Type 2 ICSS should start with “Premium rate assistance service”.

Changes to the promotion of ICSS

The Panel notes PhonewayPlus’ proposal (and reasoning) to remove the requirement for ICSS providers to provide the actual number of the organisation the consumer is looking for on their website - although the requirement remains to provide a link to the end organisation’s website. However, as the research notes: “No-one starts out with the intention of looking for a directory service on the internet - they are looking for the direct end organisation telephone number.” So when entering an ICSS site where they see the end organisation’s name and a telephone number, many assume it is that organisation’s website (or a free telephone listing service). The research also says that many people call an ICSS unknowingly. It is therefore even more critical that, in relation to the format of an ICSS’ display of information, PhonewayPlus requires that accompanying information is presented in a way that is **equally** prominent to the phone number being promoted, in addition to being proximate, and legible.

Changes to the conditions post-dialling of an ICSS

We welcome the conditions relating to the alerts a consumer will receive upon connection to an ICSS. We note from the research that there are significant transparency issues related to the calls themselves at present: for example, number only providers do not inform the customer that it is a directories service they are calling; the numbers are typically given too quickly to take down/recall; not everyone is clear what they are calling/being connected to; and while connection services are transparent about the call cost, they do not explain that the alternative would cost less nor do they always give a choice about whether the caller wants to be connected through.

We note PhonewayPlus’ intention to remove condition c) - the requirement for the consumer to be informed if there is a possibility that they will be placed in a queue upon connection. We accept that it is difficult for providers to anticipate any delay after connection, that such an alert would extend the length of the call and that the research suggests that consumer decisions are based on more tangible information e.g. who the provider is and the cost of the call. However, as such calls are charged on a per minute basis, we would urge PhonewayPlus to monitor closely the duration of calls and take appropriate enforcement action if such calls appear to be unduly lengthy or prolonged.

We continue to support the proposed Condition g), requiring that where personal information is sought to allow an ICSS provider to log into consumers’ online accounts, then consumers are informed clearly of this and that they could undertake the same activity for free themselves. We note that a concern was raised in response to the 2012

consultation that this might extend the length of a call, and therefore the cost to consumers. We note, too, PhonepayPlus' intention to change the final line of condition g) to read: "They should also be advised that information about how this data will be stored, retained or further used is available on the ICSS providers' website. Providers should ensure that such information is fully and clearly provided on the website relevant to the number the consumer has called".

We have significant concerns about this proposed amendment to Condition g). As the consultation notes, ICSS numbers are advertised both online and in classified advertisements. As such, it would be possible for a consumer who does not have internet access, or the skills/confidence to engage online, to be excluded from this information. It is estimated that 10.8 million UK adults do not use the internet and 16 million lack basic online skills. A large number of consumers would therefore be excluded. The Panel does not believe this to be a sustainable position. Secondly, unless they are online at the same time as the call, consumers would be placed in a position where they are unable to immediately evaluate the impact of consenting to release their data. And if a caller terminates the call to access these terms and conditions, a second call will require further costs being incurred.

There is a further major issue in respect of people's experience of nuisance calls. The market for online data is significant and it is vital that people make a truly informed choice about the implications of releasing such information **before** doing so. The Panel is very concerned that inadvertent, or ill informed, release of personal information could, inter alia, have the unintended consequence of generating unwanted calls in the future. We hope that PhonepayPlus will take this into account when considering the issue, and we would strongly urge that a way is found for complete but concise information to be given to consumers on making calls to ICSS.

We agree that the consumer should be informed of the identity of the provider and the cost per minute of the service upon connection - particularly given consumer confusion about ICSS and that the research found that some participants who had used ICSS felt that they seemed to use tactics to 'deliberately' keep people on the phone.

Collection of personal and/or confidential data from consumers

We note the issue and concerns about ICSS collecting consumers' personal information (e.g. passwords) where the implication is that the ICSS is associated with the end organisation. We note, too, the view of some organisations that the proposals should be strengthened to prohibit such data collection altogether.

PhonepayPlus' view is that in a great majority of cases, the consumer provides these confidential details only because they believe an ICSS to be a legitimate representative of the organisation they are looking to contact; and that conditions set out around promotion of ICSS, and on connection to an ICSS, will allow consumers to make a fully informed decision. As we understand it, in PhonepayPlus' view, if the consumer still chooses to breach the terms and conditions of use by providing confidential information to a third

party then this is a matter for the organisations, and not a regulatory body, to enforce. The Panel does not agree fully with this position.

We note that in Jigsaw's research, some participants who had used ICSS felt that they were asked for quite a bit of personal information and were left with a degree of anxiety over how that would be used. The Panel would argue that, in cases where personal information to access accounts is requested, the organisation (i.e. the ICSS) that is requesting those details has an obligation to make clear to the consumer that, by providing them, they are at risk of breaching the relevant organisation's (the end organisation) terms and conditions; and that the ICSS operative will essentially have access to the entire account, including payment details. This situation should in our view be articulated clearly on ICSS' websites, and concisely explained during the call if such information is sought by the organisation. This issue is compounded by the proposed change to condition g).

We agree with the proposed additional condition c) in relation to the restriction of the collection of data to that necessary to facilitate provision of the service.

Conclusion

The Panel remains concerned about the nature of some of these services, including the extent of consumer knowledge and understanding of ICSS; the marketing and design techniques employed; the lack of transparency throughout the consumer journey; the undue prolonging of calls to premium rate services; and the invitation to provide personal/logon data to third parties.

We have reservations about some of the proposed amendments, as detailed earlier - and trust that PhonepayPlus will carefully evaluate our concerns. We would also welcome greater clarity about the use of the word 'should' in relation to certain conditions, rather than 'must'.

However, overall, the Panel welcomes this initiative to provide clear and enforceable protections for all consumers. Ultimately, if service providers are transparent with potential consumers, people will be able to make an informed choice about whether to use a service, on the basis of evaluating whether the added value justifies the expenditure.