



Response to PhonepayPlus Review of Information, Connection and/or Signposting Services

on behalf of The Number UK Ltd (118 118)

27 September 2012



Introduction and Background

kgb ('knowledge generation bureau') is a privately held, New York-based company and the world's largest independent provider of directory assistance and enhanced information services. kgb has built some of the most successful brands in the telecommunications, customer care and enhanced information services sectors.

In 2002, kgb (then known as InfoNXX) established 118 118 (The Number UK - TNUK) which soon became the largest and most well known provider of directory services in the UK. Last year, it handled over 40 million calls, providing both core directory services and a range of enhanced offer, advertising and other information services.

kgb has also pioneered the provision of a broad range of wholesale and retail information services beyond traditional directory assistance services and in 2010 launched kgbdeals.com.

Response to Questions

Q1: Do you agree with our definition of Information, connection and/or signposting services (ICSS)? If not, what alternative would you propose?

Whilst the precise wording of the definition is probably not critical, TNUK believes that it provides an unduly positive view of these services and particularly the added-value which they apparently provide.

The description that the services provide "*information, advice and/or assistance*" may be true for some, but it is clearly not true for many ICSS. As PPP highlights, many such services simply use search engine marketing and optimisation techniques in order to displace the organisation's own website (which would otherwise provide cheaper or free means of making contact).

They do so in order to generate premium rate revenue, where none would otherwise exist (or need to exist). In that situation, the ICSS provides no "*information, advice and/or assistance*" (or certainly none of any value) because in the absence of the optimised ICSS, the consumer would have come by the same information anyway, but at a lower or zero cost.

TNUK believes it is odd that although the word "*signposting*" appears in the name, it does not appear anywhere in the definition, despite the fact that it is sole limited function of many of these services.

Q2: Do you agree with our description of how ICSS operate? Are there other variants not covered in this section?

TNUK has no comments to make on this question, as we are satisfied that PPP has described all of the variants of which we are aware.



Q3: Do you agree with the distinction we are making between the connection and signposting aspects of ICSS on the one hand and directory enquiry services on the other? If not, why not?

Whilst TNUK broadly agrees with PPP's distinction, we would stress in slightly stronger terms what we regard as being the most fundamental difference, which relates to the use of internet search

That is, DQ providers use internet search/advertising to market their services in a straightforward manner, which is obviously the usual practice for many commercial organisations. A consumer is unlikely ever to come across the webpage of a DQ provider unless they were looking for one and if they do so, they do so knowingly and intentionally. Moreover, the use of internet search is not a fundamental part of the business of a DQ provider, not least because a provider's website may well provide directory information to consumers in a manner which is free to them and generates no revenue for the provider.

In stark contrast, ICSS providers' business relies entirely on the use of internet search in an almost parasitic manner in order to push their 'service' onto consumers who are actually looking for something quite different. TNUK doubts that few, if any, consumers would actively search for an ICSS provider, but rather they come across them unintentionally (and sometimes unknowingly) when looking for something else quite different. Specifically, ICSS providers target other services (such as NHS Direct, DVLA or HMRC) which give them the best opportunity to ride off the back of existing high demand for someone else's service, rather than because there is any particular added value which they can offer. Indeed, it is often quite the reverse as consumers may be misled into paying far more than is necessary to call a particular number.

In that sense, TNUK believes that there is something inherently 'dishonest' (albeit perhaps not unlawful) about the way in which ICSS are promoted and provided. Whilst ICSS providers may argue that the charges for their 'service' is akin to the charges for a DQ service, that fundamentally misses the point. Namely, when a consumer calls a DQ service, they know exactly what they are calling and why they are calling it, but when a consumer calls an ICSS that is very often not the case.

Q4 – Do you agree with our assessment of consumer harm in relation to ICSS? If not, why not?

Q5 – Is there other evidence of concerns and/or harm that you are aware of and which have not been referred to in this section? If so, please provide them and any evidence that substantiates them.

TNUK agrees with PPP's assessment of consumer harm.

In particular, we agree that the harm derives mainly from the fact that consumers are being misled by the manner in which many ICSS services operate. As PPP suggests, consumers are misled in one of two ways:-

1. The consumer thinks that the ICSS is the service itself. In this situation, it is highly unlikely that they would expect to pay PRS charges for the call and will therefore suffer a direct and unexpected consumer detriment as a result.



2. The consumer thinks that the ICSS is providing some legitimate added value or information for which it is worth paying a premium. In reality the service which they are seeking is available at a low or zero cost and would in fact have been more immediately visible to the consumer was it not for the search engine marketing or optimisation employed by the ICSS provider.

TNUK also believes that there is a reputational risk to DQ providers, in terms of 'guilt by association' with ICSS providers. We have a concern that consumers may view DQ providers and ICSS providers as offering a similar type of service and that if they suffer a bad experience with an ICSS provider (in terms of bill shock/unexpected charges), they may also be less likely to call a DQ provider.

In particular, they may not appreciate that a DQ provider (with an incentive to persuade consumers to call the service again) will focus on delivering the fastest and most efficient service possible (recognising that this is DQ consumers' highest priority). By contrast, the ICSS provider may well have attempted to lengthen the call in order generate as much revenue as they can.

This is made all the more likely by the fact that ICSS providers have no recognised brand or reputation which they are keen to protect and develop and are probably most unlikely to stay in the market in the long term. As a result they will have no interest in whether consumers are likely to want to call again or the reputation of the 'service' that they are offering, not least because the 'service' is based upon misleading consumers. By contrast, DQ providers have a long term interest and investment in the sector, which is not best served by misleading consumers or providing a poor experience.

Q6 – Do you agree with our assessment that ICSS carry a level of risk which meets the threshold for a prior permissions regime? If not, why not?

TNUK agrees that ICSS clearly carry a sufficient level of risk to meet the threshold for a prior permissions regime.

Once again, the key determining factor is that very many ICSS only exist because of their ability to mislead consumers and/or to exploit their lack of understanding or lack of willingness to investigate properly the number which they are calling. This creates a very clear and present risk of consumer harm. As PPP has highlighted, this may well place many ICSS in breach of the Code of Practice in any case.

Therefore, requiring prior permission should be seen as an essential step. Indeed, TNUK believes that many of the existing categories of prior permission carry a significantly lower risk than ICSS, principally because consumers are far less likely to be misled and therefore to call the numbers when they would not have chosen to have done so, as they properly understood the nature of the 'service'.

Q7 – Do you agree with our proposed exemptions from a requirement to seek prior permission? If not, why not?

TNUK agrees with PPP's proposed exemptions. We also welcome the explicit reference in the Prior Permission Notice that DQ services are excluded from its remit.



Q8 – Do you agree with this assessment and PhonepayPlus’ proposed conditions around Search Engine Marketing (SEM)? If not, why not?

TNUK agrees with PPP’s proposed conditions.

PPP’s key objective should be to ensure that when consumers call a ICSS they do so intentionally and in the full knowledge of the ‘service’ that they are going to receive i.e. being signposted/connected to a number on a premium rate, which they could otherwise have called at a much lower or zero rate. (In these circumstances, TNUK believes that few consumers would in fact choose to call an ICSS.

We therefore welcome in particular PPP’s proposal that web-based promotions should not use metadescrptions or metatags which mislead consumers as to the nature of the service being offered.

Q9 – Do you agree with the need to require the inclusion of specific wording in SEM results as displayed to the consumer on-screen in search engine results that states “This is a premium rate telephone service”? If not, why not?

TNUK agrees with this need, although we do not actually believe that this is the core problem or cause of consumer harm.

The benefit of this proposal assumes that consumers understand what is mean by a “*premium rate telephone service*”, which is far from certain as anecdotally many appear to believe that all 08 number ranges are included within that description. In which case, consumers may legitimately believe that certain public services (such as NHS Direct, DVLA or HMRC) are PRS, as they understand the term. Therefore, having this drawn to their attention may well not be sufficient to avoid them being misled when calling the service and in some ways might almost be viewed by some as giving the ICSS some form of legitimacy.

Q10 – Do you agree with this assessment and PhonepayPlus’ proposed conditions around promotion of ICSS? If not, why not?

Once again, TNUK agrees with PPP’s assessment and its proposed conditions. As we have attempted to make clear throughout this response, we believe that the means of promoting ICSS is the key issue, because harm arises primarily from the fact that consumers are currently being misled.

We believe that PPP’s proposed conditions should be effective in addressing the problem of misleading promotions. However, the application (or otherwise) of condition B(ii) would appear to be potentially both the most important consumer protection measure and the point of greatest contention, as we discuss below.

Q11 – Do you have any views on whether condition B ii) should be applied to all ICSS, or whether an altered condition, as outlined above, should apply only to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.



TNUK views with some caution the apparent claim by ICSS providers that they offer a genuine service by providing connection or signposting to some hard to locate customer service numbers. However, we would also note that this significantly undermines the nature of the connection or signposting services which they provide to many other numbers (such as NHS Direct, DVLA or HMRC) which are clearly not hard to locate.

As regards condition B(ii), TNUK believes that it is necessary to distinguish between connection and signposting services, which are quite different in this context. Whilst it may just about be legitimate for ICSS providers to charge a premium rate for signposting to a hard to locate number, TNUK does not accept that it would be legitimate for them to charge a premium rate for connection to such a number.

Consequently, we believe that condition B(ii) should always be applied to connection services. The effect of such a requirement may well be to incentivise ICSS providers to offer signposting to hard to locate numbers (where condition B(ii) may be dis-applied) rather than only a connection service (where condition B(ii) may not be dis-applied). Such an incentive would be quite proper.

If one compares DQ providers with ICSS providers (as they like to do), an ICSS connection only service would be the equivalent of a DQ provider only offering an onward connection to the number which the consumer had requested, rather than just the number itself. That would clearly be viewed as quite unacceptable and a cause of harm by increasing costs to consumers. Whilst some DQ customers choose the convenience of being onward connected to the number, many do not because of the inherent increased costs. Indeed, even where the customer does wish to be connected, the DQ provider will also provide the number itself, so as the consumer does not have to incur further charges if they wish to call it again subsequently.

TNUK believes that the same considerations should apply to ICSS. If ICSS providers choose to oblige consumers to be connected to their desired number (rather than simply to obtain the number) they must accept the greater restrictions contained within condition B(ii).

Even in cases of signposting services to hard to locate numbers (where it may be legitimate for condition B(ii) to be dis-applied) PPP must still be very cautious as to when it should make the decision actually to do so. TNUK notes and welcomes PPP's statement that evidence must be provided that the number "*is not easy to locate*", but it is entirely unclear what this means in practice and how the rule will be applied.

TNUK suggests that a simple rule which could be applied is that the number does not appear anywhere on the organisations website. This would mean that the only way in which it could be obtained would perhaps be to call some other number in order to ask for or be put through to the customer services or complaint number in question. In these circumstances, there would be some genuine time or effort required (beyond internet search) in obtaining the number, which could not be counteracted by search engine optimisation techniques. TNUK does not accept that if the number is published by the organisation anywhere on its own website that it could be described as genuinely hard to locate.

Furthermore, such a rule would be easy to test and enforce simply by typing the number into a search engine and seeing what (if any) results it produces. This would provide a guaranteed method of determining whether and where the number is available online.



In addition, as part of the evidence, PPP might also request the ICSS provider confidentially to provide information as to how it acquired the number. Although this is perhaps a slightly more subjective test of the degree to which it is “*not easy to locate*”, it would allow PPP to make a genuine assessment of that question in order to determine whether it is legitimate to charge a premium rate for providing signposting to the number.

Whatever test PPP decides to apply in this case, it must be real and genuine. It must ensure that ICSS providers are not able easily to circumvent it by claiming that numbers are “*not easy to locate*” (for example because they do not appear in the principal “contact us” section of the website) whereas in reality a couple of minutes spent on Google would reveal the same number.

Q12 – Do you agree with this assessment and PhonepayPlus’ proposed conditions once a consumer has dialled an ICSS? If not, why not?

Once again, TNUK agrees with PPP’s assessment and its proposed conditions. We have nothing further to add to PPP’s assessment other than strongly to support the requirement that consumers are told the per minute cost of the call before being connected to their requested number. This is akin to the obligation already imposed on DQ providers by PPP which we support as an effective means of addressing and minimising any risk of bill shock which might otherwise occur on longer calls.

Q13 – Do you have any views on whether condition B should be applied to all connection and signposting services, or whether an altered condition, requiring that the consumer is given the website of the organisation they are looking for rather than the actual number, should apply to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so please provide them, and any evidence which supports them.

TNUK would refer to our response to Q11 above as we believe that the issues are the same in both cases.

By way of summary, we believe that condition B should continue to apply to automatic connection services and should only be dis-applied as regards signposting services where there is clear demonstrable evidence that the number is genuinely “*not easy to locate*”. PPP should devise a simple and objective test to ensure that this is the case and not allow ICSS providers to circumvent it, by claiming that the number is harder to locate than is actually the case.

Q14 – Do you agree with this assessment and PhonepayPlus’ proposed condition where an ICSS collects personal and/or confidential data from consumers? If not, why not?

TNUK is most concerned to learn that there are instances in which ICSS providers are not simply collecting irrelevant data in order to lengthen the call unnecessarily, but that they are doing so in a manner which is in breach of the Data Protection Act and therefore unlawful.

Clearly, TNUK (and one would hope every other resposdee to this consultation) would strongly support a condition which requires ICSS providers to comply with the Data Protection Act as well as the necessary



notifications to the ICO. Just as importantly, we support a requirement that they must be able to demonstrate such compliance unequivocally to PPP.

However, we would also make a broader point. The fact that ICSS providers behave in this manner is far more serious than justifies simply not granting prior permission. It clearly suggests that any such provider is disreputable to the point where they should not be permitted to offer any form of premium rate service at all. Any organisation which operates in this way obviously has a complete disregard for the interests of consumers and so is likely to be the cause of many other forms of harm beyond the data protection issues. It says much about the reputation and operations of ICSS providers more generally.

Once again, we would draw a distinction with legitimate DQ providers who would never act in a similar manner and go to considerable lengths to ensure that they comply with the Data Protection Act in relation to the much larger quantities of data which they hold.

Q15 – Do you have any thoughts on whether a bond is necessary? If so please provide them, and any evidence that supports them.

Whilst acknowledging that a bond will always create a barrier to entry to some extent, TNUK believes that it is clearly justified in this case.

As we have explained throughout this response, we believe that the potential for consumer harm is significant in relation to these services and far more significant than in relation to many other PRS which do not rely on misleading consumers as the basis for their operation.

As such, it is right and proper to disincentive providers who may not be intending to offer a genuine and fair service, from entering into the market. A bond is one potential means of doing so. In particular, it should be noted that the barriers to entry more generally to become an ICSS are extremely low, which is probably why the market has become attractive to disreputable providers. It is a service which can be set up quickly and with minimal cost and can be highly profitable at the expense of unwitting consumers, even if only operated for a few weeks.

PPP should therefore do everything possible to try to keep these providers out of the market. Such considerations comfortably justify the imposition of a bond as part of the requirements for obtaining prior permission. This is not least because a disreputable provider may do everything necessary initially to comply with the prior permission requirements, only to withdraw from them subsequently once permission has been granted.

Q16 – Do you agree with our impact assessment? If not, why not?

TNUK agrees with PPP's impact assessment.

We have nothing further to add, except to reiterate once again the significant potential for consumer harm and the very low barriers to entry which define this market. Indeed, the costs of complying with the prior permission requirements are also low (even for a small provider) and generally only require things to be done differently rather than requiring a large number of additional measures to be put in place.



The fact that PPP's prior permission proposals may reduce revenues and incentives should be seen as an example of effective regulation to protect consumers, rather than a regulatory burden which undermines its adoption.

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