

BETWEEN:

PHONEPAYPLUS LIMITED

Executive

-and-

NUMBERGRP NETWORK COMMUNICATIONS (IRELAND) LIMITED

Respondent

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ADJUDICATION BY CONSENT (“CONSENT ORDER”)

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**Introduction**

1. This Consent Order shall relate to the matter under PhonepayPlus case reference 34513, and the oral hearing requested by the Respondent.
2. This Consent Order is made following admissions of liability by the Respondent for the breaches set out in the schedule to this Consent Order, with the Respondent for commercial reasons preferring to settle the case by way of agreement rather than protracted adversarial proceedings.
3. This Consent Order further sets out the agreement of the parties in respect of the sanctions to be imposed on the Respondent and the administrative charges to be paid. The agreed sanctions and administrative charges have been approved by a legally qualified member of the Code Compliance Panel pursuant to paragraph 3.16(d) of Annex 2 to the PhonepayPlus Code of Practice (twelfth edition) (“the Code”).

**Agreed sanctions**

4. The sanctions hereby agreed by the parties are:
  - a. a penalty of £35,000;
  - b. a formal reprimand;
  - c. a requirement that the Respondent remedy the breaches by amending the IVR to ensure that (i) consumers are made aware there is a fault on the number they are trying to reach, and that they may call 118xxx to obtain an alternative number, (ii) pricing is given immediately after recital of the

- premium rate number, and (iii) a non-premium rate contact number is included;
- d. a requirement that the Respondent seek compliance advice for the Service within two weeks of the date of publication of this decision and thereafter implement that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus; and
  - e. a requirement that the Respondent refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.


#### **Administrative charges**

- 5. The Respondent shall pay the legal and administrative charges incurred by PhonepayPlus in relation to this case in the sum of £10,000.

#### **Payment of fine**

- 6. The fine and administrative charges are to be paid as follows:
  - a. £35,000 within 28 days of the date of this Consent Order; and
  - b. the remaining £10,000 to be paid by 20 May 2015

subject to any alternative payment arrangements which may be agreed between the parties.



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Linda Lee (Chair)  
On behalf of the Oral Hearing Tribunal  
[ 16 ] May 2015

**Schedule**

**IN THE PHONEPAYPLUS TRIBUNAL**

**CASE REF: 34513**

**BETWEEN:**

**PHONEPAYPLUS LIMITED**

**Executive**

**-and-**

**NUMBERGRP NETWORK COMMUNICATIONS (IRELAND) LIMITED**

**Respondent**

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**SUMMARY OF SERVICE AND ADMITTED BREACHES OF THE CODE**

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**The Service and its promotion**

1. The service is a directory enquiries ("DQ") service operating on the shortcodes 118 820 and 118 472 (the "Service"). It commenced on 19 September 2013. Prior to commencing the Service, Numbergroup obtained compliance advice from the Executive on 22 May 2013 which included the following:

*"In relation to the recording specifically, as a point of best practice, I would recommend that pricing information is stated after the call-to-action is stated, rather than state the PRN three times and then relay call cost information. This will go some way to ensuring that all users hear the required information, and mitigate the risk of a user terminating the call prior to hearing all required information which is material to them making and informed decision."*

2. The Respondent initially represented that the Service was promoted by way of both online advertising and an IVR. However, the Respondent eventually decided to promote the Service solely by way of an IVR (the "IVR") that consumers heard if they called numbers for businesses which had leased their telephone numbers from Numbergroup Network Limited ("Numbergroup"), a network operator which provides telephone numbers to companies, and could not get through to those businesses.

3. In relation to the IVR, the call cost appears after the half way point of the call. The Executive considered that the structure of the IVR was such that the call cost appears well after a consumer would expect that the entirety of the key information that is contained in the IVR would have been provided. Thus the consumer would have been highly likely to think that the key information had been provided before reaching the call cost information and hang up, thus never receiving any call cost information.
4. The Executive further considered that the likelihood of a consumer who received the IVR not receiving the call cost information was because of both the structure of the IVR itself and the context in which a consumer would have come across it. That context was a consumer calling a business, not getting through to that business, and, then receiving an IVR with the instruction to "*Please call 118 472*". That instruction was repeated three times, with office opening timings then being given (with, the Executive noted, no explanation that the office is that of the Respondent and not the organisation that the consumer was originally trying to call) before call cost information is provided.
5. The Executive considered that the nature of the Service differed from a normal DQ service, in that whereas a normal DQ service is initiated by a consumer because they want a number to be put into their possession, the Service is initiated by a consumer because they have tried a number that is already in their possession and have been redirected towards the Service because of a fault on the line.
6. In the Executive's view, there is a risk that consumers would have called the Service because (i) they had not waited to hear the end of an IVR which, given its context was lengthy and disclosed no reason at its outset to indicate that the most key information was contained after the halfway point of the call, and, (ii) they believed that the number for the Service was a number that was connected with the business they were originally trying to contact (and not a wholly separate premium rate DQ service), and, (iii) they were accordingly unaware that the number called was a third party premium rate service. The Executive considered that the belief that the number for the Service was a number that was connected with the business consumers were originally trying to contact was reasonable, given that nothing in the IVR (even if

heard to the end) told a consumer that they were being directed towards a DQ service.

7. The Executive noted that once the Service was called, an operative of the Respondent answered. From the monitoring and complaint information, the Executive observed a pattern in which the following chain of events generally occurred:

- a. the consumer called the Service, having been played the IVR on a prior call and having been provided with the number for the Service;
- b. on calling the Service, the consumer was connected to an operator, the operator asked which number the consumer had been trying to call; with this information, the operator then asked whether the consumer minded being put on hold;
- c. if the consumer agreed, they were put on hold whilst the operator tried to find out what the issue was with the number in question;
- d. the operator returned to the consumer to tell them that the number that they had tried to call is unavailable (if it was) and offered to find them an alternative number;
- e. if the consumer agreed, they were put on hold again whilst the operator found an alternative number;
- f. the operator returned to the consumer to provide an alternative number and at this point the call was usually ended.

8. The Respondent provided an average time for call duration of 3.67 minutes for premium rate number 118 472 and 3.75 minutes for premium rate number 118 820. The Executive noted that most calls in the monitoring and complaint evidence were longer than either of these figures.

9. Consumers were put on hold during the course of the Service whilst faults may be identified, and once a fault was identified the consumer was then asked whether they wanted to be found an alternative number.

## **Complaints and Monitoring**

10. The Service was the subject of 79 complaints from 19 September 2013 to 9 June 2014.

11. The complaints vary in their content, though unexpected and excessive charges were a recurring complaint. A significant number of them provide particulars that demonstrate that the chain of events described above occurred on numerous occasions.

### **The Admitted Breaches**

12. Breaches of rules 2.3.1, 2.2.1(a), and 2.2.5 are admitted by the Respondent in respect of the Service.

#### **Rule 2.3.1 of the Code provides:**

***“Consumers of premium rate services must be treated fairly and equitably.”***

13. The Service enticed consumers on the basis of the IVR. The IVR was fundamentally unfair.

14. The starting point in considering the fairness of the IVR is that it was placed so that consumers received it when they expected something quite different than a DQ promotion. They engaged with it when they expected to call and be put through to a business.

15. With that context; it was incumbent upon the Respondent to be scrupulous about the provision of key information, because the placement of the IVR was an unexpected promotion of paid for telephony services. The IVR promotion of the Service breached rule 2.3.1 in the manner it was placed, and, because it did not provide the fundamental information that it was a promotion for a premium rate DQ service at all.

16. Operators checked to see whether there was a fault on the line and the Executive noted that the operators were unable to resolve any fault established.

#### **Outcome 2.2 provides:**

***“Transparency and Pricing***

***That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”***

Rule 2.2.1 of the Code provides

“[...]

***(a) Promotional material must contain the name (or brand if part of the name) and the non-premium rate UK contact telephone number of the Level 2 provider of the relevant premium rate service except where otherwise obvious.”***

17. A breach of rule 2.2.1(a) has been admitted by the Respondent. This is on the basis of the reasoning set out in the Tribunal decision in this matter published on 21 August 2014 (the “Original Tribunal decision”).

Rule 2.2.5 of the Code provides

***“In the course of any promotion of a premium rate service, written or spoken in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.”***

18. The Promotions and promotional material Guidance provides:

## ***“2. Pricing information***

### ***2.1***

*Pricing information is one of the fundamental pieces of information that promotional material for PRS must display. This is to ensure that consumers are fully and clearly informed of how much the premium rate service is likely to cost them, before they commit to purchase. The principle rule around transparency of pricing in the PhonepayPlus Code of Practice is Rule 2.2.5*  
[...]

## **Prominent and proximate**

### 2.8

*Pricing information where consumers are unlikely to see it, or where it is hard to find, is unlikely to be judged as 'prominent', or 'proximate', by a PhonepayPlus Code Compliance Panel Tribunal ('PhonepayPlus Tribunal').*

### 2.9

*'Proximate' is a new term within this edition of the PhonepayPlus Code of Practice, and can be defined as being next to, or very near, the means of consumer access to a service. The most common example of information not being proximate is providing pricing information which is too far from the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service) within the promotion."*

### 2.10

*Lack of prominence, or proximity, most often takes place online (both web and mobile web), where the price is provided in small print elsewhere on the page from the call to action. We have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product, rather than as clear and correct 'standalone' information; the price is sometimes provided separate from the page with the call to action, or lower down on the page in such a way as to make the consumer have to scroll down to see the price. Any of these practices are unlikely to be viewed as compliant with PhonepayPlus' Code of Practice by a PhonepayPlus Tribunal."*

19. The IVR was in breach of rule 2.2.5 in that it did not provide key pricing information until after the halfway point, a long message and well after the call to action. There was no proximity as the call cost was not near to the first call to action (the first giving of the 118 number on the IVR), and, there was no good reason why a consumer would wait on the line for the second call to action (the second giving of the same



118 number on the IVR). As such there was even less good reason why a consumer would wait on the line for the third call to action (the third giving of the same 118 number on the IVR). It was only after these three repetitions of the call to action (and then further information regarding office opening hours) that pricing information was provided.

20. Given the context of the promotion of the Service (i.e. the consumer being played the IVR with its instruction to "Please call 118 472/820", having tried and failed to connect to a number that is already in their possession) there was an increased need to place key pricing information proximate to the call to action and this breach was aggravated by the failure to do so.

21. The structure of the Service meant that the justification behind, and legitimacy of, significant call charges were entirely dependent on consumers being made aware of, and consenting to, the call charges being incurred. It was therefore crucial that the Respondent was upfront about call costs. It was not and it therefore breached rule 2.2.5.

### **Aggravating and Mitigating factors**

22. The Executive noted the following aggravating factors which are accepted by the Respondent:

- PhonepayPlus had given relevant notice to industry in the form of numerous prior adjudications relating both to pricing and unfair and inequitable treatment;

23. The Executive noted the following mitigating factors :

- The Respondent had taken some steps to end the breaches within three hours of receipt of notification of breaches by PhonepayPlus.
- The Level 2 provider had previously been informed in an email from the Executive dated 4 November 2013 that the Service was compliant with the Code albeit, the Executive was not aware of the full consumer journey at the time.

## **Seriousness**

24. The Executive accepted that the case should overall be regarded as significant and that appropriate sanctions should be imposed accordingly.